

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.103

CROCP-16-2020 (O&M)
Date of decision:- 02.08.2023

Court on its Own Motion

VERSUS

Ravjot Singh and others

.....Respondents/contemnors

2.
Ravjot Singh and another

IOIN-CR-5878-2019 (O&M)
..... Petitioners

VERSUS

Amarpal Singh and others

.....Respondents/contemnors

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Ankur Mittal, Amicus Curiae and
Ms. Kushaldeep Kaur, Advocate and
Mr. Shivam Garg, Advocate.

Mr. Vaibhav Sehgal, Advocate
for the contemnors-Ravjot Singh.

HARPREET KAUR JEEWAN, J.

1. A reference has been received from the learned Single Judge to determine the following question:

“whether the unauthorized recording of the Court proceedings would amount to a criminal contempt?”

2. During the Court proceedings in CR-5878-2019 (O&M) titled as Ravjot Singh and another Vs. Amarpal Singh and others, the learned Single Judge observed that respondent-Ravjot Singh, Rohit Kumar

Baggan and Gurvinder Singh were recording the Court proceedings on their mobile phones. Respondent-Ravjot Singh is one of the petitioner in the aforesaid civil revision and remaining two persons were stated to be his employees. The learned Single Judge got examined one of the mobile phone and found that live videography of the Court proceedings was recorded. The second mobile phone was also having a clip of Court's videography though not related to said Bench. However, the third mobile phone could not be opened. The learned Single Judge observed that the occurrence is to be treated with extreme seriousness and would deem to be contempt of the Court, besides it also amounts to the obstruction in administration of justice. It was also observed that though under Section 11 of the Contempt of Courts Act, 1971 it would be within the jurisdiction of the Court itself to enquire into the contempt, however, the aforesaid question was referred to the Division Bench for determination. As per the orders of Hon'ble the Chief Justice the reference was received by this Bench.

3. On 13.1.2022, the respondents-contemnors were present in the Court and the Coordinate Bench noticed that they have not denied the recording of the Court proceedings. However, they sought time to file reply and requested to take a lenient view in view of their purported ignorance.

4. Ravjot Singh-respondent-contemnors filed his reply by way of affidavit wherein he submitted that he never intended to scandalize or lower down the authority of the Court or to obstruct the process of administration of justice. He was not aware of the consequences of

recording the Court proceedings and was under an impression that recording of the Court proceedings peacefully and without affecting the hearing of the case in any manner would not be an offence. He was not having any malafide intention or motive for recording the proceedings. He recorded the Court proceedings peacefully and as a layman without being aware of the serious repercussions. Now, he has understood that proceedings cannot be recorded without the permission of the Court. He tendered unconditional apology for his conduct and also gave assurance not to repeat such an act in future.

5. Rohit Kumar Baggan-respondent-contemnor submitted in his reply stating that he is employee in the Gas Agency of Ravjot Singh-respondent. He admitted that on the relevant day i.e. 15.11.2019, he attended the Court proceedings in CR-5878-2019 and submitted that Ravjot Singh was recording the Court proceedings on his mobile phone. He also tendered unconditional apology and prayed for lenient view and further submitted that he was not having any malafide intention to interfere or obstruct the process of administration of justice in any manner.

6. Respondent-contemnor-Gurvinder Singh also tendered unconditional apology in his reply and submitted that he did not record the Court proceedings though he was present alongwith Ravjot Singh in the Court on that day i.e. 15.11.2019. He submitted that he is a poor person and was not even aware that such recording is against law. He also submitted that he was not having any malafide intention to interfere or obstruct the process of administration of justice.

7. We have heard Mr. Ankur Mittal, Amicus Curiae and all the respondents-contemnors present in the Court.

8. Today the respondents-contemnors have also tendered unconditional apology and reaffirmed their ignorance as stated by them in their written replies. Ravjot Singh stated that he is one of the petitioner in the case whereas Rohit Kumar Baggan accompanied him being his employee. Gurvinder Singh-respondent submitted that he came along with Ravjot Singh as his driver. They have specifically stated that they have no malafide intention to interfere with the Court proceedings but just out of ignorance, Court proceedings were recorded on the mobile phone of Ravjot Singh and none of them denied the fact of recording. They have also tendered unconditional apology.

9. However, the Amicus Curiae apart from submitting written submissions emphasized that though the courts in India are Open Courts and even trials are conducted in Open Courts except with few exceptions as in POCSO Act, but despite that recording the court proceedings would amount to contempt if it is done without the permission of the court. The Amicus Curiae referred various provisions of different countries and the provisions of Model Rules For Live Streaming And Recording Of Court Proceedings.

10. Though, the respondents-contemnors have tendered unconditional apology and they do not dispute the fact that one of them was recording the Court proceedings on the mobile phone but in order to answer the reference, we have examined the legal provisions with the assistance of the Amicus Curiae.

11. The Contempt of Courts Act, 1971 (hereinafter referred to as ‘the 1971 Act’) defines the meaning of the contempt in two categories i.e. criminal contempt and civil contempt. Civil contempt to mean “willful disobedience” to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court. The objection of providing punishment for civil contempt is primarily to ensure “effective implementation of an order” whereas the definition of criminal contempt as provided under Section 2 (c) of the said Act would go on to show that it includes doing of an act which is “scandalizing” or “tendering” to lower the authority of any Court apart from creating interference or obstruction in the administration of justice. The definition of “Criminal Contempt” as in Section 2 (c) of the 1971 Act reads as under:-

- (i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
- (ii) Prejudices or interferes or tends to interfere with, the due course of any judicial proceedings; or
- (iii) Interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

12. We are seized of the changed scenario. It is an age of Right to Information, use of technology and the courts being Open Courts in India; a question of great importance is raised as to whether even in such changed circumstances, the recording of the proceedings of the Court is prohibited or not?

13. Even in the other countries, there are Acts and Rules providing specific provisions for punishments, where the photographs are taken or proceedings are recorded without the consent of the Court.

Section 41 of the Criminal Justice Act, 1925 of United Kingdom

provides such a prohibition, which reads as under:-

“Section 41:- Prohibition on taking photographs, etc., in court.

(1) No person shall-

(a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof;

(2) For the purposes of this section-

(a) the expression "court" means any court of justice, including the court of a coroner:

(b) the expression "Judge" includes recorder, registrar, magistrate, justice and coroner

(c) a photograph, portrait or sketch shall be deemed to be a photograph, portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid.

Section 9 of Contempt of Court Act, 1981**Use of tape recorders.**

(1) Subject to subsection (4) below, it is a contempt of court-

(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;

- (c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).
- (2) Leave under paragraph (a) of subsection (1) may be granted or refused at the discretion of the court, and if granted may be granted subject to such conditions as the court thinks proper with respect to the use of any recording made pursuant to the leave; and where leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.
- (3) Without prejudice to any other power to deal with an act of contempt under paragraph (a) of subsection (1), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited shall (unless the court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the court may direct.
- (4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

14. Similar provisions are there in the United States of America which prohibits using and operating a device to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person within a judicial facility without the approval of the Court or presiding judicial officer subject to some exceptions. 201 Pa. Code, Rule 1910 as United States of America reads as under:-

“201 Pa. code, Rule 1910

A. General statutory prohibition. It is unlawful and a criminal offense to use or operate a device to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person within a judicial facility or in an area adjacent to or immediately surrounding a judicial facility without the approval of the court or presiding judicial officer or except as provided by

rules of court. See 18 Pa.C.S. 5103.1 (relating to unlawful use of an audio or video device in court).”

15. Similar provisions also exist in Canada under Section 136 of Courts of Justice Act R.S.O.1990, Chapter C.43 making certain prohibitions in recording the Court proceedings except with the authorization of the Judge which reads as under:-

Section 136 of Courts of Justice Act:-

Prohibition against photography, etc., at court hearing 136:-

- (1) Subject to subsections (2) and (3), no person shall,
 - (a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,
 - (i) at a court hearing,
 - (ii) of any person entering or leaving the room in which a court hearing is to be or has been convened, or
 - (iii) of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;
 - (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or
 - (c) broadcast or reproduce an audio recording made as described in clause (2) (b). R.S.O. 1990, c. C.43, s. 136 (1).

Exceptions

- (2) Nothing in subsection (1),
 - (a) prohibits a person from unobtrusively making handwritten notes or sketches at a court hearing;
 - (b) prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or

replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).

Exceptions

(3) Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;

(b) in connection with any investitive, naturalization, ceremonial or other similar proceeding; or

(c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.”

16. Similar prohibition is there in Criminal Justice Act (Northern Ireland) 1945 which reads as under:-

Prohibition on taking photographs etc. in court.

(1) No person shall-

(a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or

(b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction of such photograph, portrait or sketch;

and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine not exceeding level 3 on the standard scale.

(2) For the purposes of this section----

(a) the expression “court” means any court of justice (including the court of a coroner), apart from the Supreme Court.

(b) the expression “judge” includes recorder, registrar, resident magistrate, justice of the peace sitting out of petty sessions and coroner;

(c) a photograph, portrait or sketch shall be deemed to be a photograph portrait or sketch taken or made in court if it is taken or made in the court-room or in the building or in the precincts of the building in which the court is held, or if it is a photograph, portrait or sketch taken or made of the person while he is entering or leaving the court-room or any such building or precincts as aforesaid.”

17. In ***Ramakrishna Gowda vs. Chairma, Zee Television, New Delhi and others; 2000 AIR (Karnataka) 276*** it was observed that the Court proceedings in the High Court or any other Court subordinate thereto cannot be videotaped, photographed or telecast without taking prior written permission from the High Court. The relevant paragraph of the said decision reads as under:-

“xxxx

8. That the Court halls have a sanctity and symbolize the divinity of justice it seeks to represent. The Court halls cannot be used for any purpose other than the holding of Court proceedings for dispensation of justice. The proceedings in the Court are held in open and the public in general can attend the proceedings unless otherwise directed. But nobody can be permitted to defile the same. The Court proceedings in the High Court or any Court subordinate thereto cannot be video taped, photographed or telecast without taking prior written permission from the High Court.”

18. We are seized of the fact that during the Covid Pandemic, the Court proceedings were exclusively conducted through video conferencing where the Advocates and litigants had been joining the video conferencing from all different places and they had been watching, hearing and participating in the Court proceedings without coming to the Court. Even now, where the proceedings are being held through virtual mode, the Advocates and litigants have an access to the Court proceedings through an electronic mode by way of joining video conferencing.

19. Apart from this, it is an era of Right to Information. The Right to Information Act, 2005 also provides that information required by an individual should be made available to him though there are certain restrictions with regard to seeking third party information under the said Act.

20. We are also seized of the fact that now a days all the orders passed by the Court are made available on the website which can be directly viewed by the litigants. There are various computer applications which facilitate the flow of information to the end users of Justice Delivery System. The details of various such facilities of e-Courts developed by Hon'ble Apex has been enumerated in the Judgment of the Hon'ble Supreme Court by a three Judge Bench in **Swapnil Tripathi vs. Supreme Court of India 2018(10) SCC 639** which reads as under:-

“C.3 Platforms created for service delivery

94. e-Courts Portal: Online mechanisms 28 (websites) are available for stakeholders such as litigants, advocates, government agencies, and the police to track case status, view

cause lists, judgments and daily orders. The services.ecourts.gov.in portal is a one stop access point where a person can locate a case from any court across the country by using different search criteria available on the website. Data is available on the portal for disposed of and pending civil and criminal cases across the country. The portal also contains judgments and orders of the district judiciary.

95. Mobile App: e-Courts Services mobile app available on Android and iOS provides facility for all stakeholders including advocates and parties, to 28 Online services are available at –(i) ecourts.gov.in, (ii) services.ecourts.gov.in and (iii) districts.ecourts.gov.in PART C create a portfolio of cases in which they are associated and track them for future alerts. A facility to search the case by a QR Code is also provided and the App has been downloaded multiple times.

96. SMS Push: Litigants and advocates get an SMS alert on their cell phones, in case of any adjournment, scrutiny, registration, transfer of case, disposal, uploading of orders, etc.

97. SMS Pull: This facility allows advocates and litigants to send the CNR number (which is a unique number tagged for every single case in the country) and receive a response with the current status of the case.

98. Automated e-Mails: Litigants, advocates and police stations receive information on regular e-mails in relation to the cause lists, transfer of cases, disposal, copies of orders and judgments.

99. Touch Screen Kiosks and Service Centre: Dissemination of case status has been made simple with the installation of touch screen kiosks in various court complexes across the country. This allows litigants and advocates to view their case status at the touch of a button. The same information can also be obtained from Judicial Service Centres established in court complexes.

100. E-Payment: In order to facilitate ease of payments, online payment of court fees, fines, penalties and judicial deposits through the epay.ecourts.gov.in has been facilitated. Citizens can make payments online without the use of cheques, cash or stamps, with the help of this portal. PART C

101. E-Filing: For convenience, facility for online filing of cases and case papers with the court registry has been provided. This facility is integrated with standard application software across all the districts and subordinate courts.

C.4 National Judicial Data Grid

102. The NJDG is a public portal that provides a database of pending and disposed of cases in various High Courts and District Courts across India. The NJDG portal njdg.ecourts.gov.in provides transparency in the judicial system to all citizens by allowing them to view statistics of cases pending before various courts. The World Bank has also acknowledged NJDG as a significant innovation. It serves as a national judicial data warehouse that may be used to shape legislative policy.

C.5 Other facilities created to speed up justice delivery

103. NSTEP: National Software and Tracking of Electronic Process, is a mechanism that consists of a centralised service tracking application and a mobile app for court bailiffs. NSTEP has been created for speedy delivery of process and to reduce inordinate delays in judicial procedures. The mobile app, equipped with GPS location tracking assists the bailiffs in real-time and transparent tracking of services. The mobile app also has the PART C facility to record the photo and signature of the receiver. In case of non-service of notice or communication, the mobile application instantly communicates it to the central NSTEP server.

104. Video Conferencing: In an effort to speed up the judicial process, video-conferencing facilities connecting courts and jails have been established in 488 courts and 342 jails across India.

C.6 Concept of Video-Streaming/Web-Cast

105. Advancement in technology and increased internet penetration has facilitated transmission of live or pre-recorded video feed to devices like computers, tabs and mobiles. Live-webcast or streaming of court proceedings in real time can be implemented through available technological solutions. Live-webcast or streaming is the fastest method for communicating and is most suited for connecting geographically dispersed audiences.”

21. All these facilities have been created to provide an access to information to the litigants to whom such information relates. All these facilities highlight the importance of right to information and openness of the Court proceedings.

22. “Model Rules for Video Conferencing for Courts” were framed by Hon’ble Apex Court of India. In pursuance to the said Rules, the Punjab and Haryana High Court made “Video Conferencing Rules”

which are included as part-H of Chapter-I Volume V of “High Court Rules and Orders”. Unauthorised recording by any person has been disallowed as per sub Rule VI Rule 3 under Chapter II General Principles. The same reads as under:-

“Chapter II-General Principles

3. General Principles Governing Video Conferencing

- (i) Video conferencing facilities may be used at all stages of judicial proceedings and proceedings conducted by the Court.
- (ii) All proceedings conducted by Court by way of video conferencing shall be judicial proceedings and all the courtesies and protocols applicable to a physical Court shall apply to such virtual proceedings. The protocol provided in Schedule I shall be adhered to for proceedings conducted by way of video conferencing.
- (iii) All relevant statutory provisions applicable to judicial proceedings including provisions of the CPC, CrPC, Contempt of Courts Act, 1971, Indian Evidence Act, 1872 (abbreviated hereafter as the Evidence Act), and Information Technology Act, 2000 (abbreviated hereafter as the IT Act), shall apply to proceedings conducted by video conferencing.
- (iv) Subject to maintaining independence, impartiality and credibility of judicial proceedings and subject to such directions as the High Court may issue, Courts may adopt such technology advances as may become available from time to time.
- (v) The Rules as applicable to a Court shall *mutatis mutandis* apply to a Commissioner appointed by the Court to record evidence and to an inquiry officer conducting an inquiry.

(vi) There shall be no unauthorized recording of the proceedings by any person or entity.”

(emphasis supplied)

23. The Hon'ble Supreme Court of India in ***Swapnil Tripathi Vs. Supreme Court of India (supra)*** while dealing with the question as to whether the case proceedings of a Supreme Court of “constitutional importance having an impact on the public at large or a large number of people” should be live streamed in a manner that is easily accessible for public viewing; observed that courts in India are ordinarily open to all members of public, who are interested in witnessing the court proceedings. However, due to logistical issues and infrastructural restrictions in courts, they may be denied the opportunity to witness live court proceedings in *propria persona*. It was further observed that by providing “virtual” access of live court proceedings to one and all, it will effectuate the right of access to justice or right to open justice and public trial, right to know the developments of law and including the right of justice at the doorstep of the litigants. Para No.50 of the said judgment reads as under:-

“50. As aforesaid, courts in India are ordinarily open to all members of public, who are interested in witnessing the court proceedings. However, due to logistical issues and infrastructural restrictions in courts, they may be denied the opportunity to witness live court proceedings in *propria persona*. To consummate their aspirations, use of technology to rely or publicise the live court proceedings can be a way forward. By providing “virtual” access of live court

proceedings to one and all, it will effectuate the right of access to justice or right to open justice and public trial, right to know the developments of law and including the right of justice at the doorstep of the litigants. Open justice, after all, can be more than just a physical access to the courtroom rather, it is doable even “virtually” in the form of live streaming of court proceedings and have the same effect.”

23.1 The Hon’ble Apex Court further observed that publication of court proceedings of the Supreme Court is a facet of the status of this Court as a court of record by virtue of Article 129 of the Constitution, whose acts and proceedings are enrolled for perpetual memory and testimony. Further, live streaming of court proceedings in the prescribed digital format would be an affirmation of the constitutions rights. The observations by the Hon’ble Apex Court in paragraph No.51 reads as under:-

“51. Publication of court proceedings of the Supreme Court is a facet of the status of this Court as a court of record by virtue of Article 129 of the Constitution, whose acts and proceedings are enrolled for perpetual memory and testimony. Further, live streaming of court proceedings in the prescribed digital format would be an affirmation of the constitutions rights bestowed upon the public and the litigants in particular. While doing so, regard must be had to the fact that just as the dignity and majesty of the Court is inviolable, the issues regarding privacy rights of the litigants or witnesses whose cases are set down for hearing, a also other exceptional category of cases of which live streaming of proceedings,

may not be desirable as it may affect the cause of administration of justice itself, are matters which need to be identified and a proper regulatory framework must be provided in that regard by formulating rules in exercise of the power under Article 145 of the Constitution. It must be kept in mind that in case of conflict between competing constitutional rights, a sincere effort must be made to harmonise such conflict in order to give maximum expression to each right while minimizing the encroachment on the other rights. We are conscious of the fact that in terms of Section 327 CrPC and Section 153-B CPC, only court-directed matters can be heard in camera and the general public can be denied access to or to remain in the court building used by the Court. Until such direction is issued by the Court, the hearing of the case is deemed to be an open court to which the public generally may have access. The access to the hearing by the general public, however, would be limited to the size and capacity of the courtroom. By virtue of live streaming of court proceedings, it would go public beyond the four walls of the courtroom to which, in a given case, the party or a witness to the proceedings may have genuine reservations and may claim right of privacy and dignity. Such a claim will have to be examined by the court concerned and for which reason, a just regulatory framework must be provided for, including obtaining prior consent of the parties to the proceedings to be live streamed.”

23.2 The Hon’ble Apex Court further observed that our legal system subscribes to the principle of open justice. The prayer for live

streaming of court room proceedings has its genesis in this principle. Live streaming will allow real time access to courtroom proceedings to litigants and to every member of the society.

23.3 Hon'ble Apex Court considered "Comprehensive Guidelines for Live Streaming of Court Proceedings in Supreme Court" including "kind of matters to be live streamed" and "manner of live streamed" and decided to frame Rules under Article 145(1) in order to determine all the modalities. It was also observed that to start a project of live streaming of the court proceedings of the Supreme Court on the "internet" and /or on radio and TV through live audio-visual broadcasting/telecasting universally by an official agency, such as Doordarshan, having exclusive telecasting rights and/or official website/mobile application of the Court, must be implemented in a progressive, structured and phased manner, with certain safeguards. It was specifically held in para No.154 that Supreme Court shall hold exclusive copyright over re-use, capture, re-editing or re-distribution of such videos streamed on-line and archived with the Registry. The said paragraph reads as under:-

"154. The Supreme Court shall hold exclusive copyright over videos streamed online are archived with the Registry: and re-use, capture, re-editing or re-distribution, or creating derivative works or compiling of the broadcast or video footage, in any form, shall not be permitted except as may be notified in the terms and conditions of use and without the written permission of the Registry."

24. "Model Rules For Live Streaming And Recording of Court Proceedings" has also been framed by the Hon'ble Apex Court and under

Rule 9.2 there is Prohibition and restrictions on unauthorized usage of the recording of the live stream. The said Rule reads as under:-

“9.2 Prohibitions and restrictions on usage of the recording or live stream:

i. No person/entity (including print and electronic media, and social media platforms) other than an authorized person/entity shall record, share and/or disseminate live streamed proceedings or archival data.

This provision shall also apply to all messaging applications. Any person/entity acting contrary to this provision will be prosecuted as per law. The court shall have the exclusive copyright in the recordings and archival Data.

Any unauthorized usage of the live stream will be punishable as an offence under the Indian Copyright Act, 1957, Information Technology Act, 2000, and other provisions of law, including the law of Contempt.”

25. Usage of the phone for sending SMS, to attend an urgent call from family or friends or clients or to contact the client where it does not hamper the court proceedings and does not create disturbance was considered to be a question within the domain of the Judge to determine as to whether it would amount to contempt or not? and such a view was taken by the Hon'ble Madras High Court in the case of ***K.Neelamegam v. Durgamoorthi, Revenue Divisional Officer 2011(13) RCR (Criminal) 627***, wherein the following observations were made:-

“38. Therefore, carrying a mobile phone inside the court hall or keep it in a silent mode or the occasional alerts or looking at the short messages received through mobile phone or forwarding messages in reply without

disturbing the court proceedings cannot be said to be an obstructing the course of administration of justice attracting criminal contempt proceedings. In fact, the technology so advanced that it is unthinkable that the counsel can be without the aid of mobile phone. The mobile phone provides multifarious services. Today one can get the cause list sent through SMS on a small fee paid to certain agencies. Software has been developed to have statutory enactments seen from a mobile phone. Counsel can keep in touch with his office or office staff or juniors. A counsel can also get messages from some other court regarding the progress of the case. At times, a message or SOS call from his family or friends or clients. The facilities available in a mobile phone for the counsel will also apply to clients who attend Courts. In Supreme Court from the Court halls, the Court masters contact the registry officials from the intercom even during the middle of court proceedings. Many a times, this court through the services of other side counsels or court masters sent messages to counsels, who are not present at the time of calling their cases and to avoid the cases to go for default. One can multiply the advantage of the facilities which come through advancement of technology. This was not to suggest that they are free to use mobile phone, lest it may hinder or hamper the court proceedings. Ultimately the Judge who conducts the

proceedings in a particular court hall will be the ultimate authority to decide the disturbance if any caused due to ringing of mobile phones and if it was so intolerable that only a punishment for contempt alone was the way out. “

26. The Gujarat High Court in the case of ***Suo Motu v. S.B. Vakil Advocate, High Court of Gujarat 2006(53) R.C.R (Civil) 551***, held that ringing of alarm on the phone of an Advocate, when he immediately rushed outside the court shall not amount to contempt of court.

27. Keeping in view the definition of “criminal contempt” under Section 2(c) of the Act of 1971, recording of the court proceedings without the consent of the court would have the tendency to scandalize as in the days of active social media, such recording can be misused by unauthorised editing and uploading on the social media can be misused through online publications methodology. Permitting such recordings in the Court proceedings, can have the tendency of being misused and circulated, when such recording is done without disclosing the purpose and without obtaining a specific permission from the Court. As such unauthorized recording will definitely come within the definition of “Criminal Contempt in view of its definition provided under Section 2(c) of the Contempt of Courts 1971.

28. In ***Balakrishna Pillai vs. Balachandran; 2001(1) R.C.R.(Criminal) 281*** it was held that no person whether he is a member of a press or otherwise or any other member of the public who is entitled to take photograph of the proceedings of the Court including subordinate Courts without the permission of the High Court. If any person takes

photograph violating the above procedure that will amount to Contempt of Court. The relevant portion reads as under:-

15. In the light of the above facts, we are of the view that the action on the part of the fifth respondent in taking photograph of the proceedings in the Court is improper. It is made clear that no person whether he is a member of a Press or otherwise or any member of the public is entitled to take photographs of the proceedings of a Court including subordinate Courts without the permission of the High Court. If any person takes photographs violating the above procedure, that will amount to contempt of Court. So far as the facts of this case are concerned, we are satisfied that the fifth respondent was not aware of the prohibition in taking photograph. Further, he says that he took photograph from the Court hall and nobody prevented him from taking the photograph. The proceedings reported are with regard to the framing of charges against the accused and we are of the view that the publication of the photograph has not in any way interfered with or prejudiced the proceedings in the Court. Taking all these facts into consideration, we are of the view that it is not necessary to proceed further with the matter. As observed by Lord Denning M.R. in *R. v. Commissioner of Police of the Metropolis, Ex. parte Blackburn, 1968(2) A.E.R. 319*, "It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise." In *Pratap Singh v. Gurbaksh Singh, AIR 1962 Supreme Court 1172*, it is observed thus : "Even if the action of the officers be considered to be improper, that would not justify holding them guilty of

contempt of Court when their action in no way prejudiced the trial of the suit. It is when the departmental action directly affects the course of the judicial proceeding that it can amount to interfering with the course of justice and consequently, to contempt of Court. If it does not do so, there can be no case of contempt of Court".

The Hon'ble Division Bench of Kerala High Court observed that a member of the public has no right to take photograph of the proceedings in a Court. The Court hall is a place of sanctity and the proceedings there are under the control of the Presiding Officer. A person may come and watch the proceeding. But further than that he has no right to take photograph or video tape of the proceedings. A reference to the decision in *R.v. Gray, 1900 (2) Q.B.36*, was made where it was so held:-

"The Court cannot authorise trials by newspapers and cannot endanger the rights of accused persons before the Courts. The power of the Courts to punish any publication calculated to obstruct and pervert the due course of justice and law is not restricted by the constitutional guarantee of liberty of the press, for liberty of the press is subordinate to the independence of the judiciary and the proper administration of justice.

It is the duty of the Courts to maintain the liberty of the press and the usefulness and efficiency of the Courts. A person has full liberty, for example, to twirl his walking stick in any way he pleases, but his liberty ends where his neighbour's nose begins. In the like manner, the liberty of the press ceases where a further exercise thereof would impede, embarrass or obstruct the Court in the discharge of its duties."

The Division Bench also made a reference of the decision in ***Leo Roy Frey vs. R.Prasad, 1958 CrLJ 1225*** where in C.J., Bhandari held as under:-

"The petitioner complains that the newspapers were not justified in taking or publishing the photographs of the car in which he and his companion happened to be travelling on that fateful day and that the publication of these photographs is likely to prejudice his trial in Court. A trial Court may forbid the taking or publication of photographs of a prisoner on trial and may punish a person for contempt when he takes or publishes photographs of a prisoner in the Court Room or when he is on his way to the Court room.

People cannot be allowed to take his photographs against his will when he is in custody and it is the duty of the Court to protect him against unauthorised invasions of his personal rights".

29. As such, we are of the considered opinion that there are prohibitions and restrictions even in the Model Rules for Live Streaming and Recording of the Court Proceedings, Model Rules of this High Court for Video Conferencing of the Courts. As such, despite there being various rights under the Right to Information Act, right to access the information through various modes provided on the web portal and various computer applications and with mobile applications, but unauthorized recording of the court proceedings without the permission of the court would amount to scandalizing the recorded data and would come within the definition of "Criminal Contempt" by under Section 2(c) of the Contempt of Courts Act, 1971.

30. As such, this reference is answered accordingly.

31. With regard to the act of the respondents, prima facie we find that the conduct of the contemnors was as such contemptuous. However, in view of the fact that they have tendered unconditional apology today in Court as well as in the affidavit filed by them and keeping in view that two of the respondent-contemnors were the employees of the third respondent-contemnor and have only accompanied the contemnor to watch the Court proceedings, having no personal interest, we do not feel that the matter should be further proceeded. However, the mobile phones which have been seized stands confiscated. The Computer Section shall delete all the data from the said phones and sell the same by way of auction. The sale proceeds be treated as fine and be deposited accordingly. The civil revision be listed for disposal as per roster.

32. We appreciate the efforts put in by Mr. Mittal appearing as Amicus Curiae who shall be paid Rs.10,000/- by the High Court Legal Services Authority for the efforts put in.

Disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

02.08.2023
Shivani Kaushik

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes/ No