

Mahipal Singh Rana v. State of U.P.

(2016) 8 SCC 335

Anil R. Dave, Kurian Joseph, Adarsh Kumar Goel , JJ

Facts/Background

- This appeal under S. 19 of the Contempt of Courts Act, 1971 is preferred against order dated 02.12.2005 of the High Court of Judicature at Allahabad wherein the HC found the appellant guilty of Criminal Contempt for intimidating and threatening a Civil Judge (Senior Division), Etah in his Court on 16.4.2003 and 13.5.2003 and sentenced him to simple imprisonment of **two months with a fine of Rs. 2,000/-** and in default of payment of the fine, the appellant to undergo further imprisonment of 2 weeks
- The High Court further directed the **Bar Council of Uttar Pradesh** to consider the facts contained in the complaint of the Civil Judge (Senior Division) Etah, and **earlier contempt** referred to in the judgement and **to initiate appropriate proceedings against the appellant for professional misconduct**
- Under the Rules of this Court, the contemnor shall not be permitted to appear in courts in the Judgeship at Etah, until he purges the contempt.

Contd.

- Proceedings before the Supreme Court;-
- On 27th January, 2006, this appeal was admitted by SC and that part of the impugned judgment, which imposed the sentence, was stayed and the appellant was directed not to enter the Court premises at Etah (U.P.). Notice was directed to be issued to the Supreme Court Bar Association as well as to the Bar Council of India. The matter was referred to the larger Bench. Learned Solicitor General of India was requested to assist the Court in the matter
- On 6th March, 2013 restriction on entry of the appellant into the court premises as per order dated 27th January, 2006 was withdrawn. Thereby, the appellant was permitted to enter the court premises. The said restriction was, however, restored later. On 20th August, 2015, notice was issued to the Attorney General on the larger question whether on conviction under the Contempt of Courts Act or any other offence **involving moral turpitude** an advocate could be permitted to practise
- Refer to fact and findings of the High Court –Pg. 300-304 of the case material

Issue

- Whether a case has been made out for interference with the order passed by the High Court convicting the appellant for criminal contempt and sentencing him to simple imprisonment for two months with a fine of Rs.2,000/- and further imprisonment for two weeks in default and debarring him from appearing in courts in judgeship at Etah
- Whether on conviction for criminal contempt, the appellant can be allowed to practise

Key aspects

- Finding of facts on conviction for criminal contempt
- Court's jurisdiction vis a vis statutory powers of the Bar Councils
- Right to practice and Right to appear/plead in Court-Genus Specie relationship
- **Purging of contempt**
 - Re: Sanjiv Dutta & Ors. case, it was observed that the members of legal profession are required to maintain exemplary conduct in and outside of the Court.
 - Re: Bar Council of Maharashtra versus M.V. Dabholkar case -the vital role of the lawyer in administration of justice.
 - Re: Jaswant Singh versus Virender Singh, it was observed : “. An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court”
 - Raising the Bar for the Legal Profession- published in the Hindu newspaper dated 15th September, 2012, Dr. N.R.Madhava Menon
- Offence involving moral turpitude-Section 24A
- Directions for reform of the law

Finding of facts on conviction for criminal contempt

- “no error has been committed by the High Court while coming to the conclusion that the appellant had committed contempt of Court under the provisions of the Act.... we have no doubt about the fact that the appellant did appear before the Court and used the language which was contemptuous in nature”
- There is no merit in the contention of the appellant that there was delay on the part of the complainant Judge in sending the reference and he could have tried the appellant under Section 228 of the Indian Penal Code and the procedure prescribed under CrPc. It is for the learned judge to decide as to whether action should be taken under the Act or under any other law.
- “The High Court has rightly convicted the appellant under the Act after having come to a conclusion that denial of the incidents and allegations of malafides against the complainant Judge had been made by the appellant to save himself from the consequences of contempt proceedings. The appellant had refused to tender apology for his conduct. His affidavit in support of stay vacation/modification and supplementary affidavit did not show any remorse and he had justified himself again and again, which also shows that he had no regards for the majesty of law.”
- “...It is a well settled proposition of law that in deciding whether contempt is serious enough to merit imprisonment, the Court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate. In the case at hand, the High Court has rightly held that the appellant was guilty of criminal contempt. We are however, inclined to set aside the sentence for imprisonment in view of advance age of the appellant and also in the light of our further direction.”

Courts jurisdiction vis a vis statutory powers of the Bar Councils

- This Court, while examining its powers under Article 129 read with Article 142 of the Constitution with regard to awarding sentence of imprisonment together with suspension of his practice as an Advocate, **Ref; Supreme Court Bar Association case** the Constitution Bench held that while in exercise of contempt jurisdiction, this Court cannot take over jurisdiction of disciplinary committee of the Bar Council and it is for the Bar Council to punish the advocate by debarring him from practice or suspending his licence as may be warranted on the basis of his having been found guilty of contempt, if the Bar Council fails to take action, this Court could invoke its appellate power under Section 38 of the Advocates Act. In a given case, this court or the High Court can prevent the contemnor advocate from appearing before it or other courts till he purges himself of the contempt which is different from suspending or revoking the licence or debarring him to practise.

Right to practice and Right to appear/plead in Court-Genus Specie relationship

- Ref: **Pravin C. Shah case, Ex Capt Harish Uppal case and R.K Anand case**- “this Court held that an advocate found guilty of contempt cannot be allowed to act or plead in any court till he purges himself of contempt.... The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate”
- Ref: **Allahabad High Court in Prayag Das v. Civil Judge, Bulandshahr {AIR 1974 All 133}** – “The High Court has a power to regulate the appearance of advocates in courts. The right to practise and the right to appear in courts are not synonymous. An advocate may carry on chamber practice or even practise in courts in various other ways, e.g., drafting and filing of pleadings and vakalatnama for performing those acts. For that purpose his physical appearance in courts may not at all be necessary. For the purpose of regulating his appearance in courts the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of advocates and proceedings inside the courts. Obviously, the High Court is the only appropriate authority to be entrusted with this responsibility”

Purging of contempt

- Ref: **Pravin C Shah** case -In Black's Law Dictionary the word "purge" is given the following meaning: "To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt." It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.
- "We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said ... is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt"
- "...Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt."

Section 24A of the Advocates Act

- “...we do not find any reason to hold that the bar applicable at the entry level is wiped out after the enrolment. Having regard to the object of the provision, the said bar certainly operates post enrolment also. However, till a suitable amendment is made, the bar is operative only for two years in terms of the statutory provision.
- In these circumstances, Section 24A which debars a convicted person from being enrolled applies to an advocate on the rolls of the Bar Council for a period of two years, if convicted for contempt.
- In addition to the said disqualification, in view judgment of this Court in R.K. Anand (unless a person purges himself of contempt or is permitted by the Court, conviction results in debarring an advocate from appearing in court even in absence of suspension or termination of the licence to practice. We, therefore, uphold the directions of the High Court in para 42 of the impugned order quoted above to the effect that the appellant shall not be permitted to appear in courts of District Etah until he purges himself of contempt.”

Held

- “In the present case, in spite of direction of the High Court as long back as more than ten years, no action is shown to have been taken by the Bar Council. Notice was issued by this Court to the Bar Council of India on 27.01.06 and after all the facts having been brought to the notice of the Bar Council of India, the said Bar Council has also failed to take any action. In view of such failure of the statutory obligation of the Bar Council of the State of Uttar Pradesh as well as the Bar Council of India, this Court has to exercise appellate jurisdiction under the Advocates Act in view of proved misconduct calling for disciplinary action. As already observed, in SCBA case this Court observed that where the Bar Council fails to take action inspite of reference made to it, this Court can exercise suomotu powers for punishing the contemnor for professional misconduct. The appellant has already been given sufficient opportunity in this regard.
- We may add that what is permissible for this Court by virtue of statutory appellate power under Section 38 of the Advocates Act is also permissible to a High Court under Article 226 of the Constitution in appropriate cases on failure of the Bar Council to take action after its attention is invited to the misconduct.
- Thus, apart from upholding the conviction and sentence awarded by the High Court to the appellant, except for the imprisonment, the appellant will suffer automatic consequence of his conviction under Section 24A of the Advocates Act which is applicable at the post enrolment stage also as already observed.
- Further, in exercise of appellate jurisdiction under Section 38 of the Advocates Act, we direct that the licence of the appellant will stand suspended for a further period of five years. He will also remain debarred from appearing in any court in District Etah even after five years unless he purges himself of contempt in the manner laid down by this Court in Bar Council of India case and R.K. Anand case and as directed by the High Court.

Contd..

- Conviction of the appellant is justified and is upheld; Sentence of imprisonment awarded to the appellant is set aside in view of his advanced age but sentence of fine and default sentence are upheld. Further direction that the appellant shall not be permitted to appear in courts in District Etah until he purges himself of contempt is also upheld; Under Section 24A of the Advocates Act, the enrolment of the appellant will stand suspended for two years from the date of this order; As a disciplinary measure for proved misconduct, the licence of the appellant will remain suspended for further five years."

Directions to reform Law

- “.. While this appeal will stand disposed of in the manner indicated above, we do feel it necessary to say something further in continuation of repeated observations earlier made... Legal profession being the most important component of justice delivery system, it must continue to perform its significant role and regulatory mechanism and should not be seen to be wanting in taking prompt action against any malpractice. We have noticed the inaction of the Bar Council of Uttar Pradesh as well as the Bar Council of India inspite of direction in the impugned order of the High Court and inspite of notice to the Bar Council of India by this Court. We have also noticed the failure of all concerned to advert to the observations made by the Gujarat High Court 33 years ago. Thus there appears to be urgent need to review the provisions of the Advocates Act dealing with regulatory mechanism for the legal profession and other incidental issues, in consultation with all concerned..... In view of above, we request the Law Commission of India to go into all relevant aspects relating to regulation of legal profession in consultation with all concerned at an early date. We hope the Government of India will consider taking further appropriate steps in the light of report of the Law Commission within six months thereafter. The Central Government may file an appropriate affidavit in this regard within one month after expiry of one year.
-To consider any further direction in the light of developments that may take place, put up the matter for further consideration one month after expiry of the period of one year.”