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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 21.08.2023
Judgment pronounced on: 07.11.2023

\+ **CONT.CAS(C) 1163/2023 & CM APPL. Nos. 42695-42696/2023**

VIJAY KUMAR AGARWAL ..... Petitioner

Through: Petitioner-in-person

versus

PARVEEN SINGH AND ORS .....Respondents

Through: Mr. Abhinav Singh, Mr. RyatDiwedi, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. This petition seeks initiation of contempt proceedings against respondents no. 1, 2 and 3 arising out of the order dated 22.07.2023 in CS DJ No. 833/2019 alleging that there is wilful and malafide refusal to follow, disobey and evade the law laid down with respect to giving primacy and precedence to the perjury application over the civil suit in accordance to *M.S Sherrif v State of Madras, AIR 1954 SC 397 and Syed Askari Ali Augustine Imam v State (Delhi Administration), AIR 2009 SC 3232.*

2. In the present case, respondent no. 1 is the learned ADJ who heard the arguments and passed the said order. Respondent no. 2 is the counsel representing respondent no. 3 before the District Court and respondent no. 3 was the private respondent in the civil suit filed by the petitioner.

3. The brief facts of the case are that the petitioner filed a civil suit no. 1742 of 1997 (new number CS No. 186 of 2009, and renumbered as CS No. 833 of 2019) for possession of immovable property, namely Plot No. B-15, Acharya Niketan, Mayur Vihar Phase-I, Delhi, admeasuring 433.5 sq. yds. (65'x60') against respondent no. 3 before this court. However, on account of enhancement of pecuniary jurisdiction, the suit was transferred before the learned TizHazari Courts. The petitioner had also filed for mesne profits.

4. The respondent no. 3 filed a written statement on 13.04.1998 in the civil suit alleging to be the 'original owner' of the suit property. In support of his submission, respondent no. 3 on 25.09.2009 filed documents including an unregistered GPA, Agreement and Receipt dated 17.11.1978 executed by one Mr. Ulfat in favour of one Mr. Jitan and an unregistered GPA, Agreement and Receipt dated 15.07.1985 executed by the said Mr. Jitan in favour of the respondent no. 3.

5. On 28.01.1993, the petitioner lodged a complaint against the respondent no. 3 and FIR no. 57/93 u/s 448,420,468, 471 IPC was registered. It is stated that the original documents dated 17.11.1978 are currently in police custody for investigation of the afore-mentioned FIR, pending before CMM Karkardooma Courts, Delhi.

6. The respondent no. 3 had also filed Civil Suit No. 1318 of 1993 titled *Pratap Singh v. Vijay Kumar, IAS and Ors*, which was decided

vide judgment dated 25.10.2008 wherein a decree of permanent injunction was passed in favour of respondent no.3. It is stated that by the petitioner that in the judgement it has been categorically held that "*there is an inherent defect in the title of the predecessor in interest of respondent no. 3*" as there was no document to show how Mr. Ulfat acquired the property and through what document the suit property was transferred in the name of Mr. Jitan."

7. The petitioner has filed an application dated 29.05.2023 praying for declaration against the judgment dated 25.10.2008 being declared as null and void.

8. The suit filed by the petitioner was dismissed in default on 14.05.2012 and the petitioner filed a Miscellaneous Application No. 14/2012 (later renumbered as Miscellaneous Application No. 60817/2016) for restoration on the ground that the next date of hearing was wrongly recorded in the order as 14.05.2012 and the correct date was 15.05.2012, on which date the petitioner was present.

9. The respondent no. 3 filed a reply to the said application on 01.10.2012 opposing the restoration of the suit on the ground that the petitioner is a habitual offender as the suit was dismissed earlier on various occasions and therefore the petitioner is guilty of not pursuing the case diligently.

10. In the said reply, it was stated that the case of the petitioner has been dismissed on 7-8 occasions. This according to the petitioner was a false averment. The petitioner hence filed Perjury Application No. 811 of 2019 against the respondent no. 3 before the District Court.

11. During the pendency of the same, the petitioner failed to appear on 09.07.2016 and sought an adjournment due to viral fever. On the opposition of the counsel for respondent no. 3 that the petitioner has been taking adjournments for the last four years, a last and final opportunity was given to the petitioner for arguments subject to cost of Rs. 5000/-.

12. The petitioner on 05.08.2016 filed an application for waiver of costs imposed and another perjury application against respondent no. 3 for the alleging that the petitioner has been taking adjournments for past 4 years and that he was not pursuing the matter.

13. By the order dated 20.08.2019, the civil suit of the petitioner was restored subject to the cost of Rs. 5000/-.

14. The petitioner filed another application for waiver of cost imposed on 20.08.2019.

15. The petitioner filed another perjury application dated 08.11.2021 on the basis of the judgment dated 25.10.2008 in civil suit no. 1318 of 1993 wherein the court had observed that there is a defect in the title of the predecessor in interest of respondent no. 3.

16. In addition, on 08.11.2021 the petitioner filed an application seeking primacy and precedence to the perjury application no. 811 of 2019.

17. On 10.02.2022, the perjury applications were directed to come up for consideration of the court on 19.05.2022. However, the same were not taken up on the said date and the matter was adjourned for payment of cost by the petitioner and for further proceedings.

18. The petitioner filed Misc Application No. 434 of 222 for modification of order dated 19.05.2022 to give primacy and precedence to the perjury applications. The court vide order dated 30.07.2022 issued notice.

19. The respondent no. 3 on 30.11.2022 challenged the orders dated 10.02.2022 and 19.05.2022 before this court through CM(M) No. 3 of 2023 on the ground that the suit has been dismissed in default on many occasions and that the cost of Rs. 5,000/- for restoration has still not been paid by the petitioner. The said CM(M) has now been dismissed as withdrawn.

20. The civil suit came up for hearing on 05.07.2023 and the learned trial court fixed the matter for cross-examination of PW-1 on 22.07.2023 in view of the fact that the matter was pending for over 25 years and it was at the stage of PE and examination in chief of PW-1. The order of 05.07.023 reads as under:-

> "....*However, ld. Proxy counsel has been informed that the court does not have VC facility and request in this regard has already been sent to the concerned branch. Be that as it may, a perusal of the record reveals that the matter is more than 25 years old. A perusal of the record further reveals that the suit has been dismissed in default for many times and has been restored many times. Lastly the application for restoration of suit was moved in the year 2012 and finally the same was allowed in the year 2019. Since then, no effective proceedings have taken place as many miscellaneous contempt applications have been moved. Being the very old matter, the court is of the opinion that this matter has to be proceeded on a swift pace and on merits.*
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> *A perusal of the record further reveals that when the matter was dismissed in default in the year 2012, the matter was at the stage*

of PE and examination in chief of PW 1 has already been filed. Put up for cross examination of PW1 on 22.07.2023."

21. On 22.07.2023, the petitioner appeared and informed the court that he wanted to move an application for modification of the order dated 05.07.2023 as the order suffered from grave factual errors. He stated that prior to examination:(i) he wanted to prove and exhibit documents, and also (ii) prayed removal the observations that the suit was dismissed many times.

22. The learned Trial Court vide order dated 22.07.2023 dismissed the suit under section 35B of CPC on account of non-payment of cost which was found to be a pre-condition for restoration of the suit. The order reads as under:-

"*....The plaintiff intends to move two applications. He submits that the he wants to file an application for correction in the order sheet dated 05.07.2023 and has not filed any affidavit in support of the same because he is suffering from neurological conditions and cannot get the affidavit attested and hence he also intends to file an application for exempting him from attestation of affidavit.*

The court has observed that these are detailed application which have been typed on a computer and print out has been taken and has informed the plaintiff that there is no provision for exempting the attestation of affidavit and as he has been able to come to the court and he can very well get the affidavit attested.

At this stage, he has submitted that the court should decide his application. The court has told the plaintiff that it is in his own interest that the matter should be decided swiftly and he should not insist on such trivial issue and asked him whether he wants the matter to be decided swiftly or not. The plaintiff has become very angry and agitated and while angrily pointing fingers at me,

he stated that he has running for justice for 30 years and the court is playing rhetorics and the court should listen to him rather than sermonise him. I asked him to first calm down and then make submissions. The plaintiff has become more angry and stated that the court is not following course of justice as ***it is not hearing him****. Seeing that he has becomes more agitated he has been directed to remove himself from the court, calm down and come back again around 11 am when the matter shall be called again. He refuses to do so and thus in a very firm manner he is again asked to remove himself from the court. He has now removed himself from the court.*

Put up at 11:30 am.

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The matter has been called again.

Now the plaintiff is appearing alone. The plaintiff has filed application for correction of order dated 05.07.2023 supported by an affidavit and has not filed the application seeking exemption from attestation of affidavit. The present application, it is submitted that in order dated 05.07.2023 whereby the matter was listed for cross examination of PW-1 for today, there are factual manifest and grave of errors, mistakes and omission. It is contended that the matter was listed for his cross examination whereas the marking of the document of the plaintiff has not been completed and thus, if the plaintiff is asked to have himself cross examined without marking of the exhibits on the documents, it will cause grave prejudice to him. The second mistake according to him is that in the order dated 05.07.2023 accidentally and inadvertently it is recorded that the suit has been dismissed in default many times and restored may times. It is submitted that prior to 28.02.2012, the suit was dismissed in default only once and this observation is completely inconsistent and repugnant with the record of the case. He has reasonable apprehension that this observation may be prejudicial to his claims, rights and

interests and there is a strong likelihood of miscarriage of justice as this issue is the subject matter of pending perjury application number 811/2019. Then many judgments of Hon'ble Supreme Court have been cited.

After going through the application, I have made it clear to the plaintiff that listing the matter for cross examination of PW-1 does not mean that he would be not allowed to mark exhibits on the documents and before his cross examination starts he can very well mark the exhibits and there is no specific requirements of any correction in the order. He however submits that the court should not be egoistic and when he submits that this is the wrong fact, the court needs to record the necessary correction. However, I find that there is no requirement of any correction when he has been told that the exhibits can be marked before the cross examination starts.

With regard to the second contention that prior to 28.12.2012, the suit was dismissed in default only once and the court has wrongly recorded that the suit was dismissed many times and restored may times. I find that this submission of the plaintiff supported by a sworn affidavit, is absolutely incorrect. The record reveals that for the first time, the suit was dismissed in default on 22.01.1999. Thereafter there is again a dismissal order of Hon'ble Mr. Justice K.S. Gupta dated 26.07.2014. Then on 08.08.2001, an IA was dismissed for non prosecution by Honble Justice V.S. Aggarwal, which was probably for restoration of the suit. Then the suit was again dismissed in default on 08.11.2005. Thereafter, an application for restoration of suit was also dismissed in default which was restored by my Ld. Predecessor vide order dated 26.03.2009 and the suit was restored vide order dated 30.08.2009. This suit again came to be dismissed by my Ld. Predecessor vide order dated 14.05.2012. Therefore, there is no requirement of the correction in the order dated 05.07.2023 where it was recorded that the suit has been

dismissed many times and restored may times. Application at hand is dismissed.

At this stage, counsel for the defendants submits that before the matter can proceed for recording of evidence on behalf of the plaintiff a cost of Rs.5,000/-, which was imposed for restoration of the suit vide order dated 20.08.2019, should be paid. He has submitted that this was the pre-condition for the restoration of the suit, therefore, the plaintiff cannot be allowed to proceed further without payment of cost of Rs.5,000/-.

The submission of the counsel for defendant is found to be supported by the record. The court has asked the plaintiff to pay the cost and the plaintiff has started stating that he has suffering from many years and this is not the way, the plaintiff is stopped by me and told the question was only regarding payment of cost. He has again become angry and agitated and said that the court must first specify whether it is going to give him a patient hearing or not and the court cannot be allowed to interfere when he is speaking. I have responded by stating that this is not the stage to start telling the background as today the matter has already been on for long time without anything fruitful happening and therefore he should inform the court whether he will pay the cost or not. The plaintiff has responded by stating that he is not going to pay the cost as the court is stopped from asking for payment of cost because in the order dated 05.07.2023, the court had not mentioned that he was required to pay the cost. The law of estoppal applies and the court can not ask him to pay the cost. He further states that in equity also, he has not required to pay the cost. On being asked that does it mean that he will not pay the cost, he stated that he will not pay the cost and he is leaving the court.

Therefore, the plaintiff has refused to pay the cost and refused comply with the order dated 20.08.2019. The payment of cost of Rs.5,000/- was a pre condition for restoration of the suit and

proceeding further with the suit. The plaintiff has refused to pay the cost and he has not fulfilled the condition of restoration as imposed vide order dated 20.08.2019. The suit is accordingly dismissed for non compliance of condition and under Section 35 B of CPC…"

23. Hence, the present contempt petition.

24. The petitioner submits that respondent no. 1 disregarded the judicial principles and law that primacy and precedence had to be given to the pending perjury applicationsover the civil suit. He relies on the following judgments:

a. *M.S. SHERIFF v STATE OF MADRAS, AIR 1954 SC 397:*

"15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim

to trust. This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.…"

b. *SYED ASKARI HADI ALI AUGUSTINE IMAM v STATE (DELHI ADMINISTRATION), AIR 2009 SC 3232:*

"22. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions. We may notice a few of them."

25. Further, the petitioner submits that Section 35B of CPC does not contemplate or require dismissal of suit as the automatic consequence of non-payment of costs. He states that the action of respondent no. 1 for dismissing the suit for non-payment of cost without deciding the application for waiver of said cost is in violation of the principle of natural justice, thereby resulting in the application becoming infructuous. He relies on the judgment of the Hon'ble Supreme Court in *Manohar Singh v. D.S. Sharma*, (2010) 1 SCC 53, the operative portion reads as under:

"*7. Section 35-B CPC deals with costs for causing delay. Relevant portion of the said section is extracted below:*

"35-B. Costs for causing delay.—(1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—

(a) fails to take the step which he was required by or under this Code to take on that date, or

(b) obtains an adjournment for taking such step or for producing evidence or on any other ground, the court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of—

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(b) the defence by the defendant, where the defendant was ordered to pay such costs."

Section 35-B provides that if costs are levied on the plaintiff for causing delay, payment of such costs on the next hearing date shall be a condition precedent to the further prosecution of the suit by the plaintiff. Similarly, if costs are levied on the defendant for causing delay, payment of such costs on the next date of hearing shall be a condition precedent to the further prosecution of the defence of the suit by the defendant.

8. This takes us to the meaning of the words "further prosecution of the suit" and "further prosecution of the defence". If the legislature intended that the suit should be dismissed in the event of non-payment of costs by the plaintiff, or that the defence should be struck off and the suit should be decreed in the event of non-payment of costs by the defendant, the legislature would have said so. On the other hand, the legislature stated in the Rule that payment of costs on the next date shall be a condition precedent to

the further prosecution of the suit by the plaintiff (where the plaintiff was ordered to pay such costs), and a condition precedent to the further prosecution of the defence by the defendant (where the defendant was ordered to pay such costs). This would mean that if the costs levied were not paid by the party on whom it is levied, such defaulting party is prohibited from any further participation in the suit. In other words, he ceases to have any further right to participate in the suit and he will not be permitted to let in any further evidence or address arguments. The other party will of course be permitted to place his evidence and address arguments, and the court will then decide the matter in accordance with law. We therefore reject the contention of the respondents that Section 35-B contemplates or requires dismissal of the suit as an automatic consequence of non-payment of costs by the plaintiff.

9. We may also refer to an incidental issue. When Section 35-B states that payment of such costs on the date next following the date of the order shall be a condition precedent for further prosecution, it clearly indicates that when the costs are levied, it should be paid on the next date of hearing and if it is not paid, the consequences mentioned therein shall follow. But the said provision will not come in the way of the court, in its discretion in extending the time for such payment, in exercise of its general power to extend time under Section 148 CPC. Having regard to the scheme and object of Section 35-B, it is needless to say that such extension can be only in exceptional circumstances and by subjecting the defaulting party to further terms. No party can routinely be given extension of time for payment of costs, having regard to the fact that such costs under Section 35-B were itself levied for causing delay.

26. The petitioner also relies upon section 16 of the Contempt of Courts Act, 1971, the same is reproduced as under:-

> *"**16. Contempt by judge, magistrate or other person acting judicially.—**(1) Subject to the provisions of any law for the time being in force, a judge, magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.*
> *(2) Nothing in this section shall apply to any observations or remarks made by a judge, magistrate or other person acting judicially, regarding a subordinate court in an appeal or revision pending before such judge, magistrate or other person against the order or judgment of the subordinate court."*

27. The petitioner submits that unlike respondent no. 3, there is no defect in his title and he has valid documents in his favour.

28. I have heard the arguments led on behalf of the parties and perused the material on record.

29. At the outset, it is pertinent to mention that the petitioner is not challenging the order dated 22.07.2023 on merits in an appeal/revision or under Article 227 of the Constitution of India, 1950 but is seeking initiation of contempt proceedings against respondents no. 1, 2 and 3 for the passing of the said order.

30. The law with respect to impleading the judicial officer is well settled. Section 1 of the Judicial Officers Protection Act, 1850 reads as under:-

> *"**1.Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.**—No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any*

Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same."

31. Section 3 of the Judge (Protection) Act, 1985 reads as under:-

"***3. Additional protection to Judges.****—(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.*

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

32. The learned ADJ appreciated the factual matrix of suit and dismissed the same on account of non-payment of cost. In case, the petitioner is aggrieved by the said order the petitioner is free to avail his remedies as may be available in law to challenge the said order.

33. The act of the petitioner seeking initiation of contempt proceedings against the learned ADJ is improper and needs to be deterred. The Hon'ble Supreme Court in *Krishna Prasad Verma (D) Thr. LRs. v. State of Bihar and Ors.,* (2019) 10 SCC 640 observed that it is important to ensure the independence and sovereignty of the district judiciary and action should not be taken against judicial officers only because allegedly wrong orders were passed. The operative portion reads as under-:

> "*In a country, which follows the Rule of Law, independence of the judiciary is sacrosanct. There can be no Rule of Law, there can be no democracy unless there is a strong, fearless and independent judiciary. This independence and fearlessness is not only expected at the level of the Superior Courts but also from the District judiciary.*
>
> *2. Most litigants only come in contact with the District judiciary. They cannot afford to come to the High Court or the Supreme Court. For them the last word is the word of the Magistrate or at best the Sessions Judge. Therefore, it is equally important, if not more important, that the judiciary at the District Level and at the Taluka level is absolutely honest, fearless and free from any pressure and is able to decide cases only on the basis of the facts on file, uninfluenced by any pressure from any quarters whatsoever.*
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> *3. Article 235 of the Constitution of India vests control of the subordinate Courts upon the High Courts. The High Courts exercise disciplinary powers over the subordinate Courts. In a*

series of judgments, this Court has held that the High Courts are also the protectors and guardians of the judges falling within their administrative control. Time and time again, this Court has laid down the criteria on which actions should be taken against judicial officers. Repeatedly, this Court has cautioned the High Courts that action should not be taken against judicial officers only because wrong orders are passed. To err is human and not one of us, who has held judicial office, can claim that we have never passed a wrong order…"

34. The petitioner has criticised the exercise of the judicial duty by the learned ADJ in his individual capacity. It is a settled principle in law that the tendency to obstruct the administration of justice or the tendency to challenge/scandalise the majesty of justice would amount to criminal contempt. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Prashant Bhushan, In re (Contempt Matter), (2021)* 1 SCC 745:-

"*55. This Court further observed thus : (D.C. Saxena case [D.C. Saxena v. Chief Justice of India, (1996) 5 SCC 216] , SCC p. 247, para 40)*

"40. Scandalising the court, therefore, would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a Judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the Judge as a Judge, in other words,

imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a Judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or generation or production of tendency bringing the Judge or judiciary into contempt. Section 2(c) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the Judge or court into contempt or tends to lower the authority of the court would also be contempt of the court."

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56. It could thus be seen, that it has been held by this Court, that hostile criticism of Judges as Judges or judiciary would amount to scandalising the court. It has been held, that any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the Judge as a Judge brings the court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. This Court further observed, that any caricature of a Judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It has been held, that imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the court and would be contempt of the court. It has been held, that the gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. This Court held, that Section 2(c) of the Act defines "criminal contempt" in wider articulation. It has been held, that a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt.

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58. The observations of the Constitution Bench reiterate the legal position that the contempt jurisdiction, which is a special jurisdiction has to be exercised sparingly and with caution, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised, when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt

jurisdiction is to uphold the majesty and dignity of the courts of law. This jurisdiction is not to be exercised to protect the dignity of an individual Judge, but to protect the administration of justice from being maligned. It is reiterated, that in the general interest of the community, it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It has been reiterated, that no such act can be permitted, which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

……

61. It could thus be seen, that it is well settled that a citizen while exercising right under Article 19(1) is entitled to make a fair criticism of a Judge, judiciary and its functioning. However, the right under Article 19(1) is subject to restriction under clause (2) of Article 19. An attempt has to be made to properly balance the right under Article 19(1) and the reasonable restriction under clause (2) of Article 19. If a citizen while exercising his right under Article 19(1) exceeds the limits and makes a statement, which tends to scandalise the Judges and institution of administration of justice, such an action would come in the ambit of contempt of court. If a citizen makes a statement which tends to undermine the dignity and authority of this Court, the same would come in the ambit of "criminal contempt". When such a statement tends to shake the public confidence in the judicial institutions, the same would also come within the ambit of "criminal contempt".

35. The courts are constitutional institutions that preserve and secure the rights and liberties of each citizen of this country with the utmost vigilance and caution. The conduct of the petitioner to pursue contempt proceedings against a judge of the district court on the ground that his grievances have not been duly addressed is severely misguided and

should be deterred. The Constitution of India, 1950 and the legal framework of the country provide adequate safeguards to challenge the decision taken by a court. However, unavailing of such liberties and pursuing contempt against a Judge in an individual capacity is an unmitigated attack on the majesty and honesty of the courts. Further, the petitioner has attempted to make use of the contempt proceedings to seek an explanation from the learned ADJ for the decision taken by him. In case, such petitions are entertained, the learned judge,who is a party by name, will have to file a reply giving explanations and reasoning for his decision. This is impermissible. Reliance is placed upon *KhanapuramGandaiah v. Administrative Officer*, (2010) 2 SCC 1, the operative portion reads as under:-

> "*11. A Judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a Judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the Judge had come to a particular decision or conclusion. A Judge is not bound to explain later on for what reasons he had come to such a conclusion.*"
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> (*emphasis supplied*)

36. A judge may be guilty of contempt of court if there is material to show gross and intentional misuse of judicial process, corruption or intentional insubordination. I see no such grounds made out in the present case. Reliance is placed upon *S.S. Roy v. State of Orissa,* 1954 SCC OnLine SC 29, the operative portion reads as under:-

"The appellant in this case, who was at the material time a 1st Class Magistrate of Cuttack, has been found, by the High Court of Orissa, to be guilty of contempt of the Court of the Additional Munsif of that place, by reason of his making an order, under Section 144 of the Cr PC, by which a civil court peon was restrained from executing a warrant of arrest issued by the said Additional Munsif in connection with the execution of a money decree against one HrudanandaSahu. The High Court has held that in purporting to make the order under Section 144 of the Cr PC, the appellant misconceived his powers and did exercise a jurisdiction not vested in him by law. The High Court has also found that no circumstances existed which would justify the Magistrate in passing an order of that nature under Section 144 of the Cr PC. These findings are, in our opinion, well supported by the materials on the record and cannot possibly be challenged. The learned Judges of the High Court, however, have expressly exonerated the appellant from the charge of being influenced by any extraneous consideration of dishonest motive in making the order. All that has been found against him is that he acted in a negligent manner and without proper care and attention. In our opinion, on the facts found by the High Court, the appellant could not possibly be found guilty of contempt of court and punished accordingly. As has been said by the Privy Council in Barton v. Field, (1843) 4 Moo PCC 273, it is not sufficient in such cases for the purpose of visiting a Judicial Officer with the penal consequences of proceeding in contempt, simply because he committed an error of judgment or the order passed by him is in excess of authority vested in him. The error must be a wilful error proceeding from improper or corrupt motives in order that he may be punished for contempt of Court. On the facts found, the appellant can certainly be said to have acted without proper care and caution but there is nothing on the record to suggest any wilful culpability on his part and it has

been expressly held by the learned Judges of the High Court that he was not actuated by any corrupt or dishonest motive. In these circumstances, we think that the order passed by the High Court cannot be supported. The appeal is accordingly allowed, the judgment of the High Court is set aside and the fine, if paid by the appellant, will be remitted."

(emphasis supplied)

37. In addition, in my view the petitioner has exceeded the limits of fair criticism, however, I am refraining from initiation of contempt action against the petitioner since the petitioner has stated that he is suffering from neurological issues. The petitioner is warned against misusing and abusing processes of the Contempt of Courts Act, 1971.

38. The petitioner has also impleaded respondent no. 2 as an alleged contemnor, i.e the learned counsel representing respondent no. 3 before the district court. The learned counsel was acting in his professional capacity and cannot be impleaded in the contempt proceedings in his personal capacity.

39. The scope of judicial independence is inclusive of the independence of the bar so that lawyers are able to carry out their professional duties in a secure and unprejudiced environment. Reliance is placed upon *R. Muthukrishnan v. High Court of Madras*, (2019) 16 SCC 407, the operative portion reads as under:

"15. The Advocates Act has been enacted pursuant to the recommendations of the All India Bar Committee made in 1953 after taking into account the recommendations of the Law Commission on the subject of the reforms of judicial administration. The main features of the Bill for the enactment of the Act include the creation of autonomous Bar Council, one for

the whole of India and one for each State. The Act has been enacted to amend and consolidate the law relating to the legal practitioners and to provide for the constitution of the Bar Council and an All India Bar.

16. The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature of duties to be performed and its impact on the society. The independence of the Bar and autonomy of the Bar Council has been ensured statutorily in order to preserve the very democracy itself and to ensure that judiciary remains strong. Where the Bar has not performed the duty independently and has become a sycophant that ultimately results in the denigrating of the judicial system and judiciary itself. There cannot be existence of a strong judicial system without an independent Bar."

40. The petitioner has impleaded the learned counsel of respondent no. 3 on the ground that there is misconduct by respondent no. 2. However, it is a settled principle in law that the contempt jurisdiction must be used sparingly and that it cannot be used to bypass the procedural law as established in the Advocate Act, 1961 with regard to any alleged professional misconduct. Reliance is placed upon *Supreme Court Bar Assn. v. Union of India*, (1998) 4 SCC 409, the operation portion reads as under:-

"*42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the*

majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court.

….

***57.** In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by*

suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.

58. *After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct" has been conferred on the State Bar Council concerned and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his "professional misconduct". Since the suspension or revocation of licence of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the charge is established against the advocate in a manner prescribed by the Act and the Rules framed thereunder."*

41. In these circumstances, I am of the view that respondent no. 2 cannot be held guilty of contempt of court as alleged by the petitioner.

42. Further, with regard to respondent no. 3, there is no enforceable direction in the order dated 22.07.2023 of which contempt can be alleged. What appears from the material on record and allegations so raised by the petitioner is that he is aggrieved by the order dated 22.07.2023 itself and is not alleging any wilful disobedience of the order and hence there is no contempt by respondent no. 3. Moreover, since the order is not impugned in appeal/revision before me, I need not dwell on the merits of the case.

43. In this view, the petition is dismissed with liberty to the petitioner to avail his remedies as may be available in law against the order dated 22.07.2023.

JASMEET SINGH, J

NOVEMBER 07, 2023

Click here to check corrigendum, if any