

Non-Reportable

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION**

M.A. No.1434 of 2020

In

Misc. Application Diary No.15272 of 2020

In

Suo Moto Contempt Petition (Criminal) No.2 of 2019

Rashid Khan Pathan

..... Applicant

AND

IN THE MATTER OF:

IN RE: Vijay Kurle & Ors.

.... Respondent(s)

O R D E R

1. By a judgment dated 27.04.2020, the Appellant herein Sh. Rashid Khan Pathan and two others, Sh. Vijay Kurle and Sh. Nilesh Ojha were held guilty of contempt for making scurrilous and scandalous allegations against the Judges of this Court. On 01.05.2020, the matter was listed for hearing the contemnors on the sentence. On that day this Court was informed that applications for recall of the judgment dated 27.04.2020 were filed. Anyhow, the matter could not be heard on 01.05.2020 due to technical

reasons as connection could not be established with one of the contemnors or his counsel. After hearing the contemnors regarding the sentence on 04.05.2020, this Court found that there was no remorse or any semblance of apology shown by them. The three contemnors were sentenced to undergo a simple imprisonment for a period of three months with a fine of Rs.2,000/-. In view of the Covid-19 pandemic and the lockdown conditions, this Court directed that the sentence shall come into force after sixteen weeks from 04.05.2020. The contemnors were directed to surrender before the Secretary General of this Court to undergo the imprisonment.

2. An application filed by the contemnor No.3 - Sh. Nilesh Ojha for recusal of Justice Deepak Gupta was rejected on the same day i.e. on 04.05.2020. Interim Application Nos. 48480, 48482 and 48484 of 2020 were filed by the contemnors seeking recall of the judgment dated 27.04.2020. This Court was of the opinion that the recall applications were not maintainable and the only proper remedy available to the contemnors is to file a Review Petition. In such view of the matter, this Court

dismissed the applications for recall of the judgment dated 27.04.2020 by giving liberty to the contemnors to file a Review Petition, if they so desired. The prayer made by Sh. Nilesh Ojha that he may be granted liberty to file a Writ Petition was also rejected by this Court by holding that a writ petition is not maintainable against the judgment dated 27.04.2020.

3. The Appellant herein filed an application for recall of the order dated 04.05.2020. By relying upon the judgments of this Court, the Registrar (Administration) by an order dated 07.08.2020 lodged the application as 'it did not deserve to be received for registration'. The above appeal is preferred by Sh. Rashid Khan Pathan against the said order of the Registrar (Administration) dated 07.08.2020.

4. Sh. Paratho Sorkar, learned counsel appearing for the Appellant submitted that the judgment dated 27.04.2020 is without jurisdiction. Therefore, application for recall is maintainable. He submitted that this Court in ***A.R. Antulay v. R.S. Nayak***¹ clearly held that the formality of Review Application should not be insisted upon and this

¹ (1988) 2 SCC 602

Court should correct the errors in exercise of its inherent jurisdiction, especially in matters of violation of fundamental rights. Mr. Sorkar argued that the judgment dated 27.04.2020 has been impliedly overruled by a larger bench of this Court in ***Suo Motu Contempt Petition (Crl.) No.1 of 2020***².

5. The order passed by the Registrar (Administration) lodging the application filed for recall of the order dated 04.05.2020 was mainly challenged on the ground that the judgment of this Court dated 27.04.2020 is without jurisdiction and, therefore, this Court should not insist on filing an application for review. In such circumstances, the Appellant contended that an application for recall is maintainable. Reliance was placed on a judgment of this Court in ***New India Assurance Co. Ltd. v. Krishna Kumar Pandey***³ in support of the contention that an application for recall is maintainable when the order is passed without jurisdiction. The Respondent in the said case was convicted for an offence punishable under Section 498-A of the Indian Penal Code, 1860 (IPC) and

² In Re: Prashant Bhushan & Anr, *Suo Motu Contempt Petition (Crl) No. 1 of 2020*
³ 2019 SCC OnLine SC 1786

was sentenced to rigorous imprisonment for one year. The appeal filed by him was dismissed by the Sessions Court against which he filed a Revision Petition under Section 397 Cr. P.C. before the High Court. The Revision Petition was partly allowed by the High Court and the sentence was reduced to the period already undergone. The High Court also held that the conviction shall not affect the service career of the Respondent adversely. The Appellant filed an application for correction of the order passed in the Revision Petition which was dismissed. The Respondent-Employee submitted before the High Court that the order cannot be modified. The High Court accepted the submission of the Respondent-Employee in that case and dismissed the application against which the Appellant approached this Court. This Court was of the opinion that the High Court acted in excess of its jurisdiction in holding that the conviction shall not affect the service career of the Respondent therein. By referring to an earlier judgment of this Court in ***State of Punjab v. Davinder Pal Singh Bhullar***⁴ it was held that inherent power of the High Court under Section 482 Cr. P.C. was available to pass suitable

⁴ (2011) 14 SCC 770

orders where an order is passed without jurisdiction or in violation of the principles of natural justice. The said judgment has no application to the facts of this case. By no stretch of imagination can it be said that the order dated 04.05.2020 suffers from the vice of lack of jurisdiction.

6. Yet another ground raised in the appeal is that an application for recall is maintainable when principles of natural justice are violated. A perusal of the order dated 04.05.2020 discloses that the Appellant and the other contemnors were heard before the applications were dismissed. Therefore, the contention of the Appellant is without any substance.

7. As we are concerned only with an application filed to recall the order dated 04.05.2020 it is not necessary to examine the submission made by Mr. Sorkar that the judgment dated 27.04.2020 has been impliedly overruled by a later judgment of this Court in ***Prashant Bhushan's*** case (supra). We are in agreement with the order passed by the Registrar (**Administration**) holding the application

for recall of the order dated 04.05.2020 is not maintainable.

8. This Court in *Delhi Admn. v. Gurdip Singh Uban*⁵ deprecated the practice of filing of applications for “clarification”, “modification” or “recall” of final judgments or orders. It was held in the said judgment that a party cannot be permitted to circumvent or bypass the circulation procedure provided in the provision pertaining to Review and indirectly obtain a hearing in the open Court by filing an application for modification or recall. Such an application deserves to be dismissed with costs. While lodging the application for recall, the Registrar (Administration) relied upon another judgment of this Court in *A. P. S. R. T. C. v. Abdul Karim*⁶ in which it was held that applications for clarification, which are in essence and substance seeking the review of an order of the Court, are impermissible and amounted to an undesirable practice which do not deserve any consideration by the Court.

9. In a country governed by the rule of law, finality of the judgment is absolutely imperative and great sanctity is

⁵ (2000) 7 SCC 296

⁶ C.A. 7797/2003

attached to the finality of the judgment. Permitting the parties to reopen the concluded judgments of this Court by filing repeated interlocutory applications is clearly an abuse of the process of law and would have far-reaching adverse impact on the administration of justice⁷.

10. Repeated filing of applications which are not maintainable amounts to abuse of process of law. O. Chinappa Reddy, J. in ***Advocate General, State of Bihar v. M.P. Khair Industries***⁸ was of the opinion that abuse of process of Courts amounts to criminal contempt. In the said case, the Respondent was accused of filing repeated applications and obstructing the administration of justice which interfered with the due course of judicial proceedings.

11. Repeated filing of applications can also result in a direction that no further applications shall be received by the Registry of this Court in respect of the litigation (See: ***Ila Vipin Pandya (2) v. Smita Ambalal Patel***⁹).

12. In ***Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar***¹⁰, D.Y. Chandrachud J, speaking for a three-

⁷ *Indian Council for Enviro-Legal Action v. Union of India*, (2011) 8 SCC 161

⁸ (1980) 3 SCC 311

⁹ (2007) 6 SCC 750

¹⁰ (2017) 5 SCC 496

Judge bench held that Courts are obligated to act firmly in dealing with abuse of process, and impose exemplary costs when necessary. Chandrachud J. held:

“13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system—this Court not being an exception—are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalises such behaviour. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of

frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.”

13. The application for recall of an order by which an earlier application for recall of the judgment was dismissed is not maintainable. The only remedy open to the Appellant was to have filed a Review Petition as suggested by this Court in the order dated 04.05.2020. We are of the considered view that the application for recall of the order dated 04.05.2020 is an abuse of process of Court. Therefore, we are constrained to dismiss the Appeal with exemplary costs of Rs.25,000/- (Rupees Twenty-Five Thousand Only). If the Appellant continues to file such repetitive applications in this litigation which are not maintainable, he will be visited with deterrent actions referred above such as initiation of criminal contempt proceedings or a direction to the Registry that no further applications in this litigation will be received.

.....J.
[L. NAGESWARA RAO]

.....J.
[ANIRUDDHA BOSE]

**New Delhi,
September 03, 2020.**