

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1645 OF 2019
(@ out of SLP (Cr1.) No.2448/2019)

DHEERAJ KUMAR DUBEY

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal questions the final Order dated 1.3.2019 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow dismissing Contempt Application No. 121930 of 2016 in Cr1.Misc. Application No. 5450 of 2015.

Criminal Miscellaneous Application No.5450 of 2015 preferred under Section 482 Cr.P.C. had come up before a Single Judge of the High Court who passed the following order on 28.9.2016:

"Heard the learned counsel for the applicant and learned A.G.A. The learned counsel for opposite party no.2 is absent.

This matter was mentioned by learned counsel for opposite party No.2 in the morning and it was submitted that the opposite party No.2 desires that the matter should not be heard by this Bench. When questioned about the reasons behind the feeling of the opposite party to that effect, the learned counsel for opposite party No.2 submitted

that some such rumors were going on "in the corridors of the Court", as made it undesirable for this Bench, to take up the matter.

When asked as to what were the 'rumors' which were supposed to be going on 'in the corridors of the court", the learned Advocate submitted that she had instructions from her clients that the matter may not be proceeded with before this Bench. Since the Counsel for the applicant was not present at that time, the learned Advocate for the opposite Party No.2 was asked to make these submissions, in his presence.

When the matter was called out again, learned counsel for the opposite Party No.2 submitted that the counsel appearing for the applicant is one, who comes from Mumbai. According to her, since earlier a Member of the local Bar was appearing in this matter and since now a legal practitioner from Mumbai is appearing, there is suspicion in the mind of opposite party No.2.

Apparently, emphasis of the counsel for opposite party No.2 on the counsel of the applicant being from Mumbai is because of the fact that I too come from the State of Maharashtra.

The matter was then kept back by making it clear that it would be called out at 3:30 P.M. and the submissions of the learned Counsel for the opposite party No.2 would be noted and dealt with after hearing the learned counsel for the applicant and the learned A.G.A.

However, at 3:30P.M., the learned counsel for opposite party No.2 is absent, though she was specifically told that the matter would be called out at 3:30 P.M.

When the matter was called out yesterday, instead of answering the queries put by this Court to ascertain the nature of dispute involved, for the purpose of estimating the time that would be required to hear the matter and for deciding whether to take it up for hearing or not, learned counsel for opposite party No.2 was merely saying that 'she would explain everything on the next date, i.e., today'. Today, this is what has happened.

Learned counsel for the petitioners, under these circumstances submits that such type of a submission has been made by learned counsel for opposite party No.2, only to drag on the matter further.

However, as it is, there is no time to take up the matter. Under the circumstances, the hearing of this

petition is being adjourned.

There is every reason to believe that such type of submission viz:- 'of the Counsel being from Mumbai'- has been made only to avoid the hearing taking place. Only on the basis of the counsel for the applicant being from Mumbai, and I also coming from the Bombay High Court, it was not proper to suggest, that the matter should not be taken up by this Bench. I had asked the learned counsel for the opposite party No.2 twice, as to whether there was anything else or any other reason for the request that the matter ought to be taken up by this Bench, but the learned Counsel did not say anything except that these were 'the instructions of her client'.

Advocates owe a duty not only to their client but also to the Court. It was the duty of the learned counsel to consider whether such submission was justified, and whether there was any basis for the supposed apprehension of her client. Moreover the sorry of "rumors in the corridors of the Court" was given up when the details thereof were asked.

There is no time to hear the matter and it would be adjourned in any case. The improper conduct of learned Counsel for opposite party No.2 be, however, brought to the notice of Bar Council of Uttar Pradesh for such action as the Bar Council of Uttar Pradesh may think fit and proper in the circumstances.

List on 10.11.2016.

Interim order shall continue to remain in force till then."

It appears that said counsel for opposite party No.2 preferred Special Appeal No.511 of 2016 before the High Court which was disposed of by the Division Bench on 30.11.2016 as under:-

"Heard learned counsel for the appellant.

The appeal in our opinion, is not maintainable under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 against the impugned order."

The matter was not carried forward by said counsel for opposite party No.2 and the order passed on 28.9.2016 and the observations made therein as regards the conduct of said counsel for opposite party No.2 became final.

Thereafter, CrI. Misc. Application No.121930 of 2016 was moved by the appellant seeking action against alleged contemnor Rajesh Kumar Dubey who was arrayed as Respondent No.2 in the contempt application.

It was asserted in the contempt application:-

"..

(5) That, the Respondent No.2/Contemnor has instructed his counsel not to proceed with the matter before this Hon'ble Bench of the High Court on the ground that some rumors are going on "in the corridors of the court" that the Respondent No.2/Contemnor will not get any justice before this Hon'ble Bench as the counsel who is appearing in the matter, is from Mumbai hence the respondent/contemnor has apprehension that he will not get justice before this Hon'ble Court on 28.9.2016.

(6) That, this Hon'ble Court has tried to know the correct basis of the corridors rumors but the Respondent No.2/contemnor failed to elaborate the basis of the above said allegations and the matter was not taken up for hearing and the respondent No.2/Contemnor achieved his desired goal to drag the above said matter further without any basis.

...

(11) That, the applicant respectfully submits that "Rule of Law" is the basic rule of governance of any civilized democratic polity. Our Constitutional scheme is based upon the concept of Rule of Law which we have adopted and given to ourselves. Everyone, whether individually or collectively is unquestionably under the supremacy of law. Whoever the person may be, however, high he or she is, no-one is above the law notwithstanding how powerful and how

rich he or she may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country."

Criminal Miscellaneous Application No.121930 of 2016 came up before the High Court on 1.3.2019 when a Single Judge of the High Court did not find any ground to initiate contempt proceedings and dismissed the contempt application in limine. The order passed by the Single Judge is presently under challenge before this Court.

While issuing notice on 3.4.2019, this Court passed following order:

"Criminal Misc. Petition No.51311 of 2019 has been filed by the petitioner for seeking following relief:

"Allow this application and implead Ms. Ranjana Agnihotri as contesting Respondent No.3 in present Special Leave Petition and order accordingly."

Application for impleadment is allowed.

Issue notice, returnable in three weeks.

Dasti in addition.

The respondents are at liberty to file additional affidavits in reply by 20.04.2019.

List on 22.04.2019."

The respondents thereafter appeared in the proceedings and have filed affidavits in the present proceedings as under:

(A) On 9.7.2019, Mr. Rajesh Kr. Dubey filed an affidavit in reply in response to the allegations made in the special leave

petition. Pararaphs 6, 6.1 to 6.3 of the affidavit are as under:

"6. The answering respondent seeks to submit the following before this Court:-

6.1 The answering respondent did not convey any such scurrilous or contumacious instructions to his advocate i.e. the respondent No.3 herein.

6.2 The answering respondent never had the occasion of any court hearing in his entire life before the Ld. Judge. He had no information or any clue about the identity of the Ld. Judge who was seized of the said matter in the Hon'ble High Court. The answering respondent was not even present in Lucknow/High Court on the given day i.e. 28.9.2016. A perusal of the said order dated 28.9.2016 would reveal that the first reason given by the Respondent No.3, to request the Hon'ble Court not to proceed with he said hearing was "rumours in the corridors of the court". The answering respondent who is the small time businessman in Mumbai, has no means or any information regarding any alleged and purported rumours that may be prevalent in the corridors of the Hon'ble High Court at Lucknow.

6.3 In addition to the above and without prejudice thereto, the answering respondent submits that the events that transpired in the court room on 28.9.2016 have caused unnecessary and unfair embarrassment to Hon'ble Mr.Justice A.M. Thipsy (since retd.). The answering respondent wishes to place on record, for the kind acceptance of this Hon'ble Court, his unqualified and unconditional apology for the unfair embarrassment caused to his Lordship. The answering respondent also wishes to place on record, that he has the highest regard and respect for his Lordship and is extremely apologetic for the embarrassment that his Lordship had to face on account of the improper submissions made by his advocate i.e. respondent No.3 herein. Consequently, it is most respectfully prayed that the answering respondent be deleted/discharged from the instant SLP."

(B) On 12.7.2019, one more affidavit was sworn in by said Rajesh Kr. Dubey in which it was asserted:-

"4. That, I engaged Ms. Ranjana Agnihotri, Advocate as his counsel in both the cases before Hon'ble High Court,

she worked hard prepared and filed a counter affidavit giving all the details supplied by me. She had thoroughly prepared the case for final hearing.

5. That, I was usually attending the case on the basis fixed in the Hon'ble High Court. I came to know that the case was fixed for final hearing on 26.9.2016. I along with Sri Ram Murat, advocate came to Lucknow from Mumbai to attend the case and were present in Court on 26.9.2016 and 27.9.2016.

6. That it is relevant to mention that the Hon'ble High Court vide order dated 29.08.2016 had fixed 26.09.2016 for hearing on 26.09.2016 the case was listed in the Court Hon'ble Mr. Justice Abhay Mahadev Thipsay.

7. That the Hon'ble Judge was also taking up fresh matters. On 26.09.2016 a Ld. Advocate who had not filed his vakalatnama and was not a designated senior advocate made mention before the Court at the time of rising the court at about 3.55 p.m. for taking up the matter. The Hon'ble High Court without hearing the matter passed an order to list the case as 'partly heard'.

8. That after rising of the court at 4.00p.m. on 27.09.2016 the counsel coming from Mumbai in corridor of the court told Dheeraj Dubey and Karamraj Dubey (the Petitioners in 482 petition) that he had go case partly heard and now there was nothing to worry.

9. That Shri Ram Kripal the clerk of advocate Ms. Ranjana Agnihotri was also standing along with others and he had also heard said fact himself. I asked him to communicate this fact to the counsel for taking appropriate steps.

10. That on 28.09.2016 my Counsel the Ms. Ranana Agnihotri made request before the Hon'ble High Court in very humbly and guarded language on the basis of facts communicated to her. She had no intentions to lower down the prestige of the court rather such request was made in good faith so maintain the dignity of the Court.

11. That the petitioner is dragging my counsel Ms. Ranjana Agnihotri in the present matter because Ranjana Agnihotri was my counsel in all my Civil and Criminal matters pending before Hon'ble High Court. The petitioner has lost all the cases after detailed reply was filed by Ranjana Agnihotri on my behalf. That is the First Appeal No.916 of 2010, cause title Karam Raj Dubey vs. Civil Judge Faizabad, in this case the Deponent is O.P. No.2, the

other First Appeal No.46 of 2011 Karam Raj Dubey vs. Rajesh Dubey, in this case the deponent is O.P. No.1.”

(C) Thereafter another counter affidavit is sought to be filed in the proceedings seeking leave of the Court to withdraw the earlier counter affidavit dated 9.7.2019. The affidavit filed on 16.7.2019 now asserted :

“7. That the answering respondent seeks to submit the following facts before this Hon’ble Court:-

7.1 The deponent was usually attending the case on the dates fixed in the Hon’ble High Court. I came to know that the case was fixed for final hearing on 26.9.2016. I along with Sri Ram Murat, advocate came to Lucknow from Mumbai to attend the case and were present in Court on 26.9.2016 and 27.9.2016.

7.2 It is relevant to mention that the Hon’ble High Court vide order dated 29.8.2016 had fixed 26.9.2016 for hearing. On 26.9.2016 the case was listed in the Court of Hon’ble Mr. Justice Abhay Mahadev Thipsay.

7.3 The Hon’ble Judge was also taking up fresh matters. On 26.9.2016, Ld. Advocate who had not filed his vakalatnama and was not a designated senior advocate made mention before the Court at the time of rising the court at about 3.55 P.M. for taking up the matter. The Hon’ble High Court without hearing the matter passed an order to list the case as ‘partly heard’.

7.4 After rising of the court at 4:00P.M. on 27.9.2016, the counsel coming from Mumbai in corridor of the Court told Dheeraj Dubey and Karamraj Dubey (the petitioners in 482 petition) that he had got case partly heard and now there was nothing to worry.

7.5 Shri Ram Kripal the clerk of advocate Ms. Ranjana Agrnihotri was also standing along with others and he had also heard said fact himself. I asked him to communicate this fact to the counsel for taking appropriate steps.

7.6 On 28.9.2016 my counsel Ms. Ranjana Agnihotri made request before the Hon’ble Court in very humbly and guarded language on the basis of facts communicated to her. She

had no intentions to lower down the prestige of the court rather such request was made in good faith to maintain the dignity of the Court.

8. That it is further submitted that the Hon'ble High Court has been pleased to dismiss the CrI. Misc. Case No.6861 of 2013 and 5450 of 2015 vide order dated 4.4.2019. Typed copy of the judgment dated 4.4.2019 passed by High Court of Judicature at Allahabad in CrI. Case No.6861/2013 is annexed here to and marked as Annexure A/1 page 51-61.

9. That the petitioner herein who has been unsuccessful before the Hon'ble High Court and who is an accused in an FIR, is now seeking to deflect the attention of the Hon'ble Court from the said FIR to the events that transpired before the Hon'ble High Court on 28.9.2016, with a view to create a probably counter-blast and litigation pressure on the respondent herein."

(D) Respondent No.3 Ms. Ranjana Agnihotri has filed an affidavit in reply on 13.7.2019 with following assertions:

"11. That on 27.9.2016, the case was called at 3:55 P.M. on the request of advocate coming from Mumbai. I requested the Court to take up the case on the next date as I had returned only two hours before. Then the Court fixed the case on 28.9.2016.

12. That in the evening of 27.9.2016 my clerk Shri Ram Kripal Singh told me that the Advocate coming from Mumbai in corridor of the Court told Dheeraj Dubey and Karamraj Dubey that he had got the case partly heard and now there was nothing to worry.

13. That after being informed about the facts and circumstances and in the manner the case was proceeding since last few days, I thought it is in the interest of justice to submit before the Court very humbly in a polite language for not taking up the case.

14. That Shri Rajesh Kr. Dubey has given me an affidavit duly sworn in before Notary on 12.07.2019 at Lucknow stating the facts relating to present controversy. A notarized affidavit dated 12.07.2019 given by Shri Rajesh Kr. Dubey is annexed hereto and marked as Annexure R-2.

15. That on 28.9.2016, I made a request before the Hon'ble Judge to recuse from the case without narrating any fact and in most guarded language.

16. That I had no intention to lower down the dignity of the Court and I did not say anything against the Hon'ble Judge. I felt as advocate to communicate the Hon'ble High Court about the feeling of the litigant to inspire confidence of the litigating party in majesty of the Court."

Reading of the affidavits and the stand taken by the respondent Nos. 2 & 3 in the present matter leaves much to be desired. The least that is required to be done in the matter is to take the contempt application filed by the present appellant to the logical conclusion. We are not at this stage expressing any opinion on the stand taken by respondents 2 & 3 lest it may prejudice their cause but in our considered view, the matter definitely requires consideration.

The record indicates that on an earlier occasion, the conduct of the respondent No.3 was also subject matter of critical analysis which is evident from the order dated 3.12.2018 passed by High Court in Misc. Bench No. 3077/2008. The High Court had an occasion to observe as under:

"This is a glaring case where an unscrupulous litigant who is also an advocate has tried all efforts to ensure that the matter may not be heard by a Bench which had expressed its reservations about the maintainability of the petition, so that the matter may be carried to some other Court, where the party may have a chance to get some favourable orders or to continue Bench hunting, till such time a favourable one is found. The petitioners are enjoying the interim order for the last more than ten years. Their entire attempt is to somehow keep the case

pending, by hook or by crook.

We record our displeasure, concern and discontentment with regard to the conduct of Ms. Ranjana Agnihotri, advocate. Her very conduct of deleting the conversation (audio clip), telling lies after lies, itself shows that the entire conversation had been concocted and was only an attempt to get the matter released from this Bench. She is a lawyer and part of the judicial system. Still she did not realize the effect and aftermath of her conduct by making an orchestrated attempt of maligning the Judges of the Bench. She has a standing of 22 years but still she had the courage and audacity to try all efforts to, somehow or the other, get the matter released from this Bench which had expressed an adverse opinion in the matter.

We have recorded the entire episode, as we feel that it should come on record, so that neither Ms. Ranjana Agnihotri, advocate nor any other lawyer, who are part of the system, try to play truant and mischief with the system, bringing it a bad name and an attempt to lower the majesty of the Court by falsely maligning the Judges."

Before we part, we must also note that both respondents 2 & 3 have tendered unconditional apology but the stand taken by them does not entitle them at this juncture to any benefit of acceptance of such unconditional apology.

We, therefore, allow this appeal, set aside the order passed by the High Court and restore the contempt application to the file of the High Court to be considered afresh on merits.

The name of Ms. Ranjana Agnihotri shall stand added as respondent No.3 in said Contempt Application as alleged contemnor.

It is made clear that the contempt application shall be heard without being influenced by any of the observations made in this order. Whatever observations we have made, are only from the stand

point to consider whether the order dismissing the contempt application was called for or not. The contempt application shall be considered purely on its own merits.

Since the matter has been engaging the attention of the Courts for a while, we request the High Court to dispose of the contempt application as early as possible and in order to facilitate such disposal, we direct the alleged contemnors to appear before the High Court on 2.12.2019.

The appeal is allowed in aforesaid terms.

.....J.
(UDAY UMESH LALIT)

.....J.
(INDU MALHOTRA)

.....J.
(SANJIV KHANNA)

New Delhi
November 5, 2019.

ITEM NO.4

COURT NO.7

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 2448/2019

(Arising out of impugned final judgment and order dated 01-03-2019 in CRLMA No. 121930/2016 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

DHEERAJ KUMAR DUBEY

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

IA No. 104172/2019 - APPLICATION FOR PERMISSION
IA No. 42642/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT)

Date : 05-11-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s) Mr. Manoj K. Mishra, AOR
Mr. Sandeep Kr. Dwivedi, Adv.
Ms. Jyoti Mishra, Adv.
Mr. Sukumar, adv.

For Respondent(s)
Mr. Rohit K. Singh, AOR

Mr. Smarhar Singh, AOR

Mr. Hari Shankar Jain, Adv.
Mr. Ankur S. Kulkarni, AOR
Mr. Pankaj Kumar Verma, Adv.
Ms. Vaishnavi Ranjana, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, shall also stand disposed of.

(INDU MARWAH)
COURT MASTER

(DIPTI KHURANA)
COURT MASTER (NSH)

((signed order is placed on the file)