

A

## ARUN KSHETRAPAL

v.

REGISTRAR, HIGH COURT, JABALPUR &amp; ANR.

August 4, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

B

*Contempt of Court Act (Act No. 70 of 1971), 1971—Ss. 2(b), 10 and 12(1) read with Article 215, Constitution of India—Remitting the punishment awarded after accepting the apology tendered by the contemnor and ordering him to pay the cost of paper books, whether valid—Whether endorsing to the Registrar a copy of the wireless message, addressed to the State counsel, for information only amounts to contempt.*

C

Pursuant to telegraphic information dated 5 August 1975 received from the Advocate General, Madhya Pradesh, communicating the directions of the Jabalpur Bench of the High Court of Madhya Pradesh dated 1 August 1975, for the production of a detenu held under s. 3(1)(a) of the MISA 1971 in the court on 8 August 1975; the appellant, a district Magistrate, instructed the Superintendent, Central Jail, Raipur, to send the detenu to Jabalpur under strong guard for his production before the High Court on 8 August 1975. The detenu was duly produced in court on 8 August 1975.

D

While seeking a clarification from the Home Secretary, on the order passed by the State Government under s. 268, Criminal Procedure Code, which was gazetted on 1 August 1975, as to whether the detenu under the MISA is to be produced before the High Court in connection with the *habeas corpus* petition, the appellant also spoke to the Government advocate and the Advocate-General about the notification. Since they desired the copy of the notification, the appellant despatched a wireless message to Advocate-General as follows :

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"In the light of the above notification, he was requested to request the court not to insist on the production of VBT as there is strong possibility of disturbance of public order if VBT is taken out from jail. Kindly inform the Government regarding the action taken."

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A copy of the wireless message was endorsed to the respondent by way of abundant caution. Viewing this as amounting to an expression by the appellant of his inability to obey the order of the court on account of the notification issued by the State Government published in the official gazette on 1 August 1975, the High Court, in exercise of the powers of the court under Art. 215 of the Constitution read with s. 10 of the Contempt of Court Act (Act No. 70 of 1971) ordered the appellant to show cause why he should not be committed for contempt, for which the appellant submitted his reply in the form of an affidavit pleading for the discharge of *rule nisi* on the ground that no contempt of court was committed and that the wireless message to the Advocate-General did not constitute a contempt of court. The High Court found the appellant guilty for contempt by holding that the appellant had sent the wireless message dated 6 August 1975 without waiting for the reply from the State Government regarding the clarification of its notification, and convicted the appellant and sentenced him to suffer imprisonment till the rising of the court under s. 4 of the Contempt of Court Act 1971 and to pay a fine of Rs. 100/-. The High Court, however, accepted the apology of the appellant for the purpose of remitting the punishment under the proviso to s. 12(1) of the Act and remitted the sentence and ordered the appellant to pay the paper book costs and to bear his own costs. Hence the appeal under s. 19(1)(b) of the Act.

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Accepting the appeal to this Court,

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HELD : The order of the High Court cannot be sustained in view of the tender of apology by the appellant as well as the production of the detenu. [102 D]

All these features, namely, referring to the Home Secretary for clarification of the notification dated 1 August 1975, sending a copy of the said notification:

to the Advocate-General, directing the Superintendent, Central Jail, to produce the detenu before the court and the detenu, in fact, having been produced before the High Court—indicate that the appellant throughout acted in a careful and responsible manner and took all steps in good faith. [101 B-CF]

HELD FURTHER : In the instant case, the appellant from the beginning gave directions for production of the detenu. The wireless message was not addressed to the court, but to the Advocate-General, only to apprise him of the notification sent by the State Government so that a request may be made to the court not to insist on the production of the detenu in the interest of public order. The copy thereof to the Registrar is for information only. The absence of reference to the telephonic talk in the affidavit does not mean that no such talk in fact took place. The appellant tendered apology with grace and not as a coward. The appellant at no stage interfered with any order of the High Court. The appellant never showed any disobedience. On the contrary, the appellant acted in obedience to the order of the High Court. [101 F, G-H, 102 A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 21 of 1976.

(From the judgment and Order dated 20-8-1975 of the High Court of Madhya Pradesh in Misc. Criminal Case No. 1010/75).

*B. Sen, Mrs. A. K. Verma, J. B. Dadachanji, O. C. Mathur and R. Narain*, for the appellant.

*Nemo*, for the respondents.

The Judgment of the Court was delivered by

RAY, C.J.—This is an appeal under section 19(1)(b) of the Contempt of Courts Act, 1971 referred to as the Act against the order dated 20 August, 1975 of the High Court at Jabalpur convicting the appellant and sentencing him to suffer imprisonment till the rising of the Court under section 4 of the Act and to pay a fine of Rs. 100/-. The High Court however accepted the apology of the appellant for the purpose of remitting the punishment under the proviso to section 12(1) of the Act and remitted the sentence and ordered the appellant to pay the paper book costs and to bear his own costs.

The appellant is a District Magistrate of District Rajnandgaon in Madhya Pradesh.

A detenu Vidya Bhushan Thakur challenged in the High Court by way of a habeas corpus petition the validity of his detention order passed by the appellant under section 3(1)(a) of the Maintenance of Internal Security Act, 1971.

On 1 August, 1975 the High Court directed the production of the detenu in court on 8 August, 1975.

On 5 August, 1975 the appellant received a telegram from the office of the Advocate General, Madhya Pradesh intimating the appellant the order of the High Court to produce the detenu Vidya Bhushan Thakur before the High Court on 8 August, 1975 in connection with the habeas corpus petition.

Immediately on receipt of the telegram from the office of the Advocate General the appellant communicated the same to the Superintendent, Central Jail, Raipur directing him to send the detenu to

**A** Jabalpur under strong guard for his production before the High Court on 8 August, 1975. The order was communicated to the Superintendent, Central Jail Raipur on the same day and accordingly the Superintendent, sent the detenu on 6 August, 1975 at 5.35 p.m. to Jabalpur and thereafter the detenu was duly produced in Court on 8 August, 1975.

**B** The State Government had passed an order under section 268 of the Criminal Procedure Code which was published in the Official Gazette on 1 August, 1975. The appellant referred the matter to the Home Secretary for clarification of the notification *vide* a wireless message dated 6 August, 1975 as to whether the detenus under the Maintenance of Internal Security Act are to be produced before the High Court in connection with the habeas corpus petitions. The appellant also spoke to the Government Advocate on 6 August 1975 and brought to his notice the above notification of the State Government. **C** The Government Advocate informed the appellant on telephone that neither the Advocate General nor the High Court had so far received a copy of the said notification. The appellant then informed the Government Advocate that he would be sending a copy of the said notification by wireless for information. **D** The appellant despatched the wireless message to the Government Advocate at Advocate General's address quoting the notification as received from the Government.

The wireless message quoted the notification and the request of the appellant to the Advocate General was as follows :—

**E** "In the light of above Government Notification he was requested to request the Court not to insist on the production of Vidya Bhushan Thakur as there is strong possibility of disturbance of public order if Vidya Bhushan Thakur is taken out from jail. Kindly inform the Government regarding the action taken."

**F** On 6 August, 1975 after the telephonic conversation with the Government Advocate, the appellant again directed the Superintendent, Central Jail, Raipur to produce the detenu before the High Court on the date of hearing and informed the Advocate General that the detenu would be produced before the High Court and the detenu was in fact produced before the Court.

**G** The High Court took the view that the wireless message dated 6 August, 1975 addressed to the Advocate General with a copy to the Registrar of the High Court amounted to an expression by the appellant of his inability to obey the order of the Court on account of the notification issued by the State Government published in the Official Gazette on 1 August, 1975. The High Court ordered the appellant to show cause why he should not be committed for contempt in exercise of the powers of the Court under Article 215 of the Constitution read with section 10 of the Act.

**H** The appellant appeared before the High Court on 13 August, 1975. The case was adjourned to 14 August, 1975 to enable the filing of a reply which was submitted in the form of an affidavit together with some enclosures. The appellant pleaded for the discharge of *Rule*

*Nisi* on the ground that no contempt of court was committed and that wireless message to the Advocate General did not constitute a contempt of court. A

The High Court by order dated 20 August, 1975 found the appellant guilty of contempt by holding that the appellant had sent the wireless message dated 6 August, 1975 without waiting for reply from the State Government regarding the clarification of its Notification. B

The appellant on 6 August, 1975 referred to the Home Secretary for clarification of the notification dated 1 August, 1975. The appellant sent a copy of the notification to the Advocate General. The appellant also directed the Superintendent, Central Jail, Raipur to produce the detenu before the Court. The detenu in fact was produced before the High Court. All these features indicate that the appellant throughout acted in a careful and responsible manner. C

The reply of the Government to the clarification asked for by the appellant on 6 August, 1975 was received on 8 August, 1975, that is to say two days after the wireless message had been sent to the Advocate General. The clarification message of the Government reached the appellant in the afternoon of 8 August, 1975, viz., the date on which the detenu was to have been produced in court. The State Government in the note clarifying the position informed the appellant that in case the appellant was advised to produce the detenu before the High Court and if the High Court insisted on such production the High Court should be informed well before the date on which the detenu is to be produced by an affidavit sworn by an officer in charge that there is danger to public order if the detenu is produced. It appears that the appellant had acted just as the Government clarification suggested. D

The appellant gave the notification to the Advocate General because the latter did not have it and asked for it. The appellant asked for clarification from the State Government as to the notification because of the situation in which he was placed. The appellant sent instructions to the Superintendent, Central Jail, Raipur to produce the detenu. The detenu was produced before the High Court. The appellant took all steps in good faith. The appellant from the beginning gave directions for production of the detenu. E

The High Court held that the affidavit of the appellant contained no reference to the telephonic talk with the Advocate General pursuant to which a telegram had been sent and therefore it was a false affidavit. The High Court also held that sending a copy of the wireless message addressed to the Advocate General to the Registrar of the High Court for information amounted to an attempt to interfere with the order of the High Court. F

The appellant sent a copy of the wireless message addressed to the Advocate General to the Registrar for information only. The appellant took all steps to produce the detenu even before the receipt of the clarification or advice by the State Government for production of the detenu before the High Court. The appellant sent the wireless message to the Advocate General only to apprise him of the notification sent by the State Government. The appellant sent that information inasmuch G

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**A** as the Government Advocate had informed the appellant that neither the Advocate General nor the High Court was aware of the said notification issued by the State Government. The appellant requested the Advocate General to request the Court not to insist on the production having regard to the public order which request was consistent with the direction of the State Government.

**B** The absence of reference to the telephonic talk in the affidavit does not mean that no such talk in fact took place. The appellant produced the telephone bill as well as the letter of the Advocate General to show that there was in fact a telephonic conversation. The appellant communicated to the Advocate General in the discharge of his official duties the notification issued by the Government. The appellant requested the Advocate General to request the High Court not to insist on the production. The wireless message was not addressed to the Court.

**C** The original addressee was the Advocate General. A copy was sent to the Registrar for information that such a telegram had been sent to the Advocate General.

The appellant tendered apology with grace and not as a coward. The appellant produced the detenu. The appellant at no stage interfered with any order of the High Court. The appellant never showed any disobedience. On the contrary the appellant acted in obedience to the order of the High Court.

**D**

The High Court accepted the apology for the limited purpose of remitting the punishment. The order of the High Court cannot be sustained in view of the tender of apology by the appellant as well as the production of the detenu. The appeal is accepted. The judgment and order of the High Court are set aside.

S.R.

*Appeal allowed.*