

AMRIT NAHATA

v.

UNION OF INDIA

May 8, 1985

[D.A. DESAI, V. BALAKRISHNA ERADI AND R.B. MISRA, JJ.]

Contempt of Court Act, 1971, section 15—Contempt petition—Withdrawal when permissible.

The Petitioner filed a Writ Petition in this Court for a declaration that sections 3 and 6 of the Cinematograph Act, 1952 and Rule 23 and 25 of the Cinematograph (Censorship) Rules, 1958 were unconstitutional and invalid and for a writ of mandamus directing the respondents to certify his film 'Kissa Kurse Ka' for unrestricted public exhibition. This Court directed delivery within one week of the negatives and prints of the film to the Government for preserving the same in proper condition until the disposal of the Writ Petition. The Court further directed that the film 'Kissa Kurse Ka' be screened to be seen by five learned Judges to this Court. The film was not made available for screening as directed.

The Solicitor General of India moved Criminal Misc. Petition requesting the Court to take action against the five persons named in the petition under section 15 of the Contempt of Courts Act, 1971 on the ground that they were individually and severally guilty of wilful disobedience of the directions and order of this Court with regard to the preservation of the negatives and the prints of the film in proper condition until the disposal of the Writ Petition and that they have interfered with the due course of judicial proceedings and that their conduct was intended and calculated to interfere with and obstruct the administration of justice by causing the loss and disappearance of the film and preventing this Court from effectively dealing with the Writ Petition pending before it and judicially determining the issues arising therein.

Another Criminal Misc. Petition was also moved by the Solicitor General inviting this Court to hold that the aforesaid five persons also appear to have committed offences under section 120-B read with sections 199 and 193 of the Indian Penal Code and it was expedient in the interest of justice to file a criminal complaint against them.

In the meantime a substantive prosecution was launched against Shri Vidya Charan Shukla and late Shri Sanjay Gandhi for various offences, which ultimately ended in their acquittal.

The hearing of the two Criminal Misc. Petitions was postponed by this Court and after the acquittal of the two aforesaid persons a petition was filed

by the Union of India for withdrawal of both the Criminal Misc. Petitions.

Granting permission for withdrawal of petitions for initiating contempt proceedings as well as for filing the Criminal Complaint,

HELD 1. The petitioner who has moved an action for contempt is not entitled as a matter of right to withdraw the petition whenever it suits his purpose. Once the act, which *prima facie* shows that contempt of the Court has been committed, is brought to the notice of the Court, the Court has to decide whether the contempt has been committed or not or whether it is appropriate to take action or to drop the proceedings. The matter is primarily between the Court and the contemnor. [565 E-F]

2. While considering the request for withdrawal of the proceedings initiated for taking action for contempt of the Court, the Court would generally be guided by the broad facts of the case and more particularly whether respect for judicial process would be enhanced or dwindled by either granting or refusing to grant the request. There is a marked difference between a complaint made by an individual for wrong done to him and a petition moved before this Court inviting the Court to take notice of the fact that its contempt has been committed. The contempt is of the Court and not of the individual.

[565 A-B]

3. The power to commit for contempt of Court has to be exercised with the greatest caution. Neither too sensitive attitude nor an easy escape from performing the harsh duty would help in maintaining respect and decorum for the judicial process. [565 D]

In the instant case the reasons which have weighed with the Court to permit withdrawal of the petitions are: (i) failure to obey the interim order to preserve the film and to make the same available for exhibition as directed is referable to the writ petition filed by petitioner who himself at a latter date backed out and withdrew the petition and (ii) subsequently a full-fledged prosecution was launched which ended in conviction. The appeal was allowed and the accused acquitted holding that it was not proved to the satisfaction of the Court that the prints and negatives of the film were deliberately destroyed by the alleged contemnors. This is the finding of this Court which would have an impact on the petition for taking action for contempt on the allegation that the Court's order for preserving the prints and negatives of the film for screening was deliberately disobeyed. [565 H; 566 A-C]

CRIMINAL JURISDICTION : Criminal Miscellaneous Petition Nos. 8009 & 8010 of 1977.

In :— Writ Petition No. 595 of 1977.

(Under Article 32 of the Constitution of India)

Amrit Nahata Petitioner-in-person (not Present).

L.N. Sinha, Att. General, *R. Vasudevan*, *C.N. Murty*,
Miss A. Subhashini, *A.K. Srivastava*, *D. Bhandari* and *H.K. Puri* for
the Respondents.

The Judgment of the Court was delivered by

DESAI, J. The Union of India has moved this Court seeking
permission to withdraw Criminal Miscellaneous Petition Nos. 8009 &
8010/77 pending in this Court since 1977.

Criminal Miscellaneous Petition No. 8009 of 1977 was moved
by the Solicitor General of India requesting the court to take action
against the five persons whose names and addresses have been set
out in the petition u/s 15 of the Contempt of Courts Act, 1971 on
the ground that they were individually and severally guilty of wilful
disobedience to the directions and order of this Court with regard to
the preservation of the film 'Kissa Kurse Ka', negatives and the
prints in proper condition until the disposal of Writ Petition No.
595/77 and thereby they have interfered with the due course of
judicial proceedings and their conduct was intended and calculated to
interfere with and obstruct the administration of justice by causing
the loss and disappearance of film 'Kissa Kurse Ka' with a view to
disabling and preventing this court from effectively dealing with the
writ petition pending before it and judicially determining the issues
arising therein.

Criminal Miscellaneous Petition No. 8010/77 was also moved
by the Solicitor General of India inviting this Court to hold that
prima facie five persons whose names and addresses have been set
out in the petition appear to have committed offences under Sec.
120-B read with Secs. 199 and 193 of the Indian Penal Code and it
was expedient in the interest of justice to file a criminal complaint
against them. Broadly, it was alleged that the averments made in the
petition for taking action under the Contempt of Courts Act when
properly viewed would show that the persons mentioned in the
petition *prima facie* appear to have entered into a conspiracy to
intentionally give false evidence in any stage of a judicial proceeding
as also fabricated evidence for the aforesaid purpose and intentionally
made false statement and declaration which may in law be receivable
in evidence and thereby committed offences under Secs. 193 and 199
of the Indian Penal Code.

A It may be mentioned that Shri Amrit Nahata had filed a writ
petition in this Court praying for a declaration that Secs. 3 and 6 of
the Cinematograph Act, 1952 and Rule 23 and 25 of the Cinematograph
(Censorship Rules), 1958 were unconstitutional invalid and
B for a writ of mandamus directing the respondents in the writ petition
to certify his film 'Kissa Kurse Ka' for unrestricted public
exhibition. During the pendency of the writ petition this Court had
made an order on July 18, 1975 that the petitioner will deliver within
one week from the date of the order, negative and prints, if any, of
the film to the Government and the Government will preserve
negatives and prints, if any, in proper condition until the disposal
of the writ petition. During the course of the further proceedings
C on October 29, 1975, this Court made another order
directing that the film 'Kissa Kurse Ka' be screened on November
17, 1975 at 6 p.m. to be seen by five learned Judges of this Court.
This order led to practically a game of hide and seek but ultimately
the film was not made available for screening as directed by this
D Court.

In the meantime a substantive prosecution was launched against
Shri Vidya Charan Shukla, the then Minister of Information and
Broadcasting, Government of India and late Shri Sanjay Gandhi
for various offences. The case came up for trial before the learned
E Sessions Judge who convicted both the accused for various
offences and imposed several sentences on them. The matter was
carried in appeal to the Delhi High Court. In the meantime on
the enactment of Special Courts Act, 1979, a declaration u/s 5(1) of
the Special Courts Act was made with the result that the appeal stood
transferred to this Court. The two appeals were heard by this court
F and the judgment is reported in *V.C. Shukla v. State Delhi
Administration*⁽¹⁾. This Court acquitted both the accused holding
that the charge is not brought home to them.

G It may be mentioned that pending the prosecution before the
learned Sessions Judge, this Court postponed hearing of the petition
for taking action for contempt as well as the petition for filing a
criminal complaint against persons shown in both the petitions. After
the decisions in the afore-mentioned two appeals, the present petition
was filed requesting the Court to permit the Union of India to with-
H draw both the petitions.

(1) [1980] 3 S.C.R. 500.

While considering the request for withdrawal of the proceedings initiated for taking action for contempt of the Court, the Court would generally be guided by the broad facts of the case and more particularly whether respect for judicial process would be enhanced or dwindled by either granting or refusing to grant the request. There is a marked difference between a complaint made by an individual for wrong done to him and a petition moved before this court inviting the Court to take notice of the fact that its contempt has been committed. The contempt is of the court and not of the individual. Therefore, Sec. 15 of the Contempt of Courts Act, 1971 confers power on this Court as well as on the High Court to take *suo moto* action or on a motion made by amongst others, the Solicitor General. It is for the court to determine whether the act complained of tending to scandalise the Court if viewed with certain severity with a view to punishing the person would in the larger interest of the society enhance respect for the judicial process, or too sensitive attitude in such matter may even become counter-productive. The power to commit for contempt of court has to be exercised with the greatest caution. Neither too sensitive attitude nor an easy escape from performing the harsh duty would help in maintaining respect and decorum for the judicial process which is essential for establishing a Society based on rule of law. The Court is to steer clear between two extremes but it must be remembered that the petitioner who has moved for taking action in contempt is not entitled as a matter of right to withdraw the petition whenever it suits his purpose. Once the act, which *prima facie* shows that contempt of the court has been committed, is brought to the notice of the court it is the court which has to decide whether the contempt has been committed or not or whether it is appropriate to take action or at a later date whether to drop the proceedings. The matter is primarily between the court and the contemnor. It is for this reason that while we are inclined to grant request for withdrawal of petitions we consider it proper to give few reasons why we consider it proper at this stage to permit withdrawal of the two petitions.

The first important aspect that has considerably influenced our thinking is that the failure to obey the interim order of this Court to preserve the film and negatives and prints of the film 'Kissa Kursee Ka' and to make the same available for exhibition as directed by this Court is referable to the writ petition filed by Amirt Nahata who himself at a later date backed out and withdrew the petition. But that

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A itself is a circumstance of innocuous character. Subsequently a full-
edged prosecution was launched *inter alia* alleging that the prints and
negatives of film 'Kissa Kurse Ka, were deliberately destroyed with
a view not to make them available for screening before the Court as
directed by this Court. In this proceeding evidence was led on behalf
B of the prosecution and the case ended in a conviction. While allowing
the appeal this Court acquitted the accused holding that it is not
proved to the satisfaction of the court that the prints and negatives of
the film 'Kissa Kurse Ka' were deliberately destroyed by the alleged
contemnors. This is the finding recorded by a Bench of this Court.
It will have an impact on the petition for taking action for contempt
on the allegation that the court's order for preserving the prints and
C negatives of the film for screening was deliberately disobeyed.
Undoubtedly, the interim order had to be respected and obeyed. The
defence canvassed was that the negatives and prints of the film got
mixed up with other boxes and could not be traced and that defence
appears to have found favour with a Bench of this Court. This is the
D most important aspect which has a considerable bearing on the
question whether two petitions should be proceeded with or not.

E We must frankly say that the judgment of this Court in the
criminal case by itself is not decisive of the matter. Independent of
it, we would have been required to examine whether at the date the
court made the order, there was any attempt at deliberately flouting
the court's but that would be an attempt at flogging a carcass, and it
would be merely delving deep into an unsavoury past not very con-
ducive to judicial and judicious approach. And one of the alleged
contemnors has met a tragic end.

F We are keen to emphasise the fact that the change in climate
has no relevance and it must be said in fairness to Mr. L.N. Sinha,
the learned Attorney General of India who appeared at the hearing of
these petitions that he even once did not refer to it.

G Accordingly, having regard to all the aspects of the matters, we
are of the opinion that the prayer for withdrawal of the two petitions
should be granted. Both the petitions are disposed of as withdrawn.

H A.P.J.