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M.V. JAYARAJAN

v.

HIGH COURT OF KERALA & ANR.
(CRIMINAL APPEAL No. 2099 OF 2011)

JANUARY 30, 2015.

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[VIKRAMAJIT SEN AND C. NAGAPPAN, JJ.]

Contempt of Courts Act, 1971 – s.12 – Criminal contempt – Contempt petition before High Court – Alleging that the contemnor, in a public meeting, while criticizing a judgment passed by a Division Bench of the High Court used abusive language against the judges – High Court found the contemnor guilty – On appeal, held: The contemnor has rightly been held guilty – The contents of his speech show that it was not a mere criticism of the judgment, but the contemnor by using abusive words against the Judges had intended to lower the dignity of the Court, to obstruct and impede its functioning – The right of freedom of speech and expression postulates a temperate and reasoned criticism and not vitriolic, slanderous or abusive one – However, the sentence of six months imprisonment is reduced to four weeks imprisonment – Constitution of India, 1950 – Art. 19(1)(a).

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Disposing of the appeal, the Court

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HELD: The right of freedom of speech of expression postulates a temperate and reasoned criticism and not a vitriolic, slanderous or abusive one; this right of free speech certainly does not extend to inciting the public directly or insidiously to disobey Court Orders. The remedy is provided by way of an appeal to the Division Bench, which was taken recourse to. On perusal of the translations of the speech, there is no doubt that the appellants intended to lower the dignity of Court, to

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obstruct and impede its functioning and not merely to criticise its pronouncement which was not to his liking. His conduct leaves him unquestionably guilty of the offence of Contempt of Courts, calling for him to be punished for his illegal act. He has shown no remorse or contrition for his conduct. Instead, he has vainly etymologised the Sanskrit origin of the word 'sumbhan', fully aware of the fact that in its slang, especially to the rural and rustic persons he was addressing, it conveyed a strong abuse. Judges expect, nay invite, an informed and genuine discussion or criticism of judgments, but to incite a relatively illiterate audience against the Judiciary, is not to be ignored. It was, not the Petitioner's province, as exercising his freedom of speech, to advise that "if those judges have any self respect, they should resign and quit their offices". Nevertheless, while affirming the impugned Judgment, the sentence of six months imprisonment is reduced to that of simple imprisonment for a period of four weeks. [para 9 and10] [561-E-H; 562-A-C]

P.N. Duda v. P. Shiv Shanker 1988 (3) SCC 167; *Re. S Mulgaokar* 1978 (3) SCR 162 = 1978 (3) SCC 339 and *R v. Metropolitan Police Commissioner, Ex-parte Blackburn* 1968 (2) All ER 319(CA) – referred to.

Case law reference:

1988 (3) SCC 167 referred to para 4

1978 (3) SCR 162 referred to para 4

1968 (2) All ER 319(CA) referred to para 4

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2099 of 2011.

From the Judgment and Order dated 08.11.2011 of the High Court of Kerala at Eranakulam in Contempt Case (Criminal) No. 2 of 2010.

A Shekhar Naphade, Shubhangi Tuli, P. V. Dinesh for the Appellant.

V. Giri, Ramesh Babu M. R. Mukti Chowdhary, T. G. Narayanan Nair, K. N. Madhsoodhanan for the Respondents.

B The Judgment of the Court was delivered by.

VIKRAMAJIT SEN, J. 1. This Appeal lays siege to the decision of the Division Bench of the High Court of Kerala at Ernakulam, which found the Petitioner guilty of having committed criminal contempt punishable under Section 12 of the Contempt of Courts Act, 1971, and sentenced him to simple imprisonment for six months and to pay a fine of Rs.2000/-.

D 2. The facts leading to these events is that another Division Bench of the High Court of Kerala had, by Orders dated 23.6.2010, banned the holding of meetings on public roads and road margins in the State with the object of ensuring accident-free and uninterrupted traffic along such public roads. Although not relevant for the present purposes, these Orders were confirmed subsequently; a Review Petition was dismissed and the Special Leave Petition was also rejected by this Court. E Meanwhile, on 26.6.2010, the Appellant delivered a speech in a public meeting at Kannur, Kerala allegedly convened in connection with a *hartal* organised to protest against the hike F in petroleum prices, which was widely reported by the media. A translation of the speech as appearing in local City News reads as follows:-

G "When the Court verdicts go against the country and the people, those verdicts have only the value of grass. From now on, what worth do the judges who pronounced the verdict have? Today disregarding the verdict of those Judges and flouting their judgments, people throughout the length and breadth of Kerala are organizing public meetings and rallies. Why should those Judges sit in glass H

houses and pass verdicts any more? If they have any self respect they should resign and step down from their office. The judiciary can attain greatness only when judgments acceptable to the country and obeyed by the people are passed. Today even the judiciary is ashamed. If the Executive exceeds its limits the judiciary is there to save. Judges are to interpret the laws and interpret the intention of the Legislature which had made the laws and pass orders accordingly. Unfortunately, what some idiots (fools) occupying our seat of justice say is nothing else. Actually speaking they themselves make laws and they themselves issue orders. This is not conducive to a democratic country. This is what they should correct. Today is the day on which the verdict of two senior Judges of Kerala High Court has been given only the value of grass.”

AsiaNet news reported the speech as follows:-

“Today disregarding the verdict of those Judges and flouting their judgments, people throughout the length and breadth of Kerala are organizing public meetings and rallies. Why should those Judges sit in glass houses and pass verdicts any more? If they have any self respect they should resign and step down from their office. The judiciary can attain greatness only when judgments acceptable to the country and obeyed by the people are passed. Today judiciary is the refuge. If the Legislature exceeds its limits there is the judiciary which comes to the rescue. But if the judiciary exceeds its limits who will tether the judiciary. In a democracy people are the supreme. Judges are to interpret the laws and interpret the intention of the Legislature which had made the laws and pass orders accordingly. Unfortunately, what some idiots (fools) occupying our seat of justice say is nothing else.”

IndiaVision News also carried this speech, which translated reads thus:-

A “When the Court verdicts go against the country and
the people, those verdicts have only the value of grass.
Now on, what worth do the judges who pronounced the
verdict have? Today disregarding the verdict of those
B Judges and flouting their judgments, people throughout the
length and breadth of Kerala are organizing public
meetings and rallies. Why should those Judges sit in glass
houses and pass verdicts any more? If they have any self
respect they should resign and step down from their office.
C Unfortunately, what some idiots (fools) occupying our seat
of justice say is nothing else. Actually speaking they
themselves make laws and they themselves issue orders.
This is not conducive to a democratic country. This is what
they should correct”.

D 3. In his reply affidavit filed in the High Court in the
Contempt proceedings the Appellant has asseverated, *inter*
alia, as follows:-

E “4. It is true that I have made a speech referring to Annexure
V judgment passed by this Honourable Court, prohibiting
holding of meetings on public roads and road margins. It
was not a prepared speech, but one delivered extempore.
The allegations that by making the said speech, I have
committed contempt of this Honourable Court, by using,
during the course of the speech, certain words for which
F distorted meanings have been given in the petition, is
absolutely incorrect and without any basis. In this
connection I may submit that I am a person who believes
in the Rule of Law and the supremacy of the Constitution.
I have firm faith and unquestionable loyalty to the
Constitution and the institutions created under it. I have
G great respect and adoration for the judiciary and the
Honourable Judges. I have always obeyed the verdicts of
Courts and have never once defied its authority, or will ever
I do it. The media has reported distorted versions of the
speech I made referring to Annexure V judgment and give
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wide publicity to it taking certain words used by me in the speech out of context and providing their own interpretation and meaning to those with ulterior motives and designs. I have criticized the judgment as to its impracticability and difficulty of implementation. It was in a Public Interest Litigation filed by a Transport Operator, seeking to prevent conduct of public meetings in the PWD road in front of Alwaye Railway Station that this Honourable court has rendered the judgment prohibiting the holding of meeting on public roads and road margins throughout the State. As a Social and Political Worker, I felt that the above judgment has been passed without considering the vital factual and legal aspects involved and that it may adversely affect the legal rights of the Public including their Fundamental Right of freedom of speech and expression and to assemble peacefully, guaranteed to them under Article 19 of the Constitution. In my speech I have used the words commonly used by the villagers of North Malabar to convey my message to the audience and they have also understood the same in the sense those words usually carry with them. There is no meaning to those words as given and interpreted by the persons who have preferred the contempt petitions before this Honourable court seeking to initiate action against this deponent under the Contempt of Courts Act.

5. Annexure V judgment of this Honourable Court was rendered without considering the Public Interest or the contentions of the parties, affected thereby, including the Government. The Court has gone beyond the issues before it which it was called upon to decide. The general declaration issued, prohibiting the conduct of meetings on the road margins was far exceeding the relief sought for in the writ petition. It has been the practice followed in this country and in this State even from the pre-independence period to hold meetings on the road margins. If the conduct of such meetings is likely to create any law and order situation, or hindrance to the traffic, the police

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A and other statutory authorities are clothed with power to control such meetings by resorting to the provisions under the Police Act and other similar laws. The Executive Magistrate has power to control, restrict and prohibit the conduct of such meetings by invoking the provisions of Sec. 144 of the Criminal Procedure Code. Thus, under law without infringing the freedom of movement of the public at large, meetings could be convened on the road margins.

6. The criticism made by me against the judgment was with honest intention and bonafide purpose and by way of expressing of my opinion in respect of the same to the public. As a public worker, I thought it was my bounden duty to make such criticism when the judiciary has failed to consider properly the issue involved while rendering the above judgment. In so doing, I have never intended to demean any of the Judges of this Honourable Court or the authority of this Honourable Court. The Fundamental Freedom of speech and expression guaranteed (sic) by the Constitution is no less important than the freedom of judgment to move freely throughout the Territory of India. In the judgment the Honourable Court has only considered the freedom of persons to move freely, without bestowing such anxious consideration to the freedom of speech and expression as also of the freedom to assemble peacefully guaranteed (sic) to the citizens by the Constitution with equal force. For that reason, according to me, the Judgment was not in consonance with the constitutional scheme. I thought, I should bring this infirmity to the notice of the General Public. My speech was only to highlight the above.

7. The words in question used by me in the speech, specifically referred to in the Contempt Petition drawing it out of contest, are those prevalent in the area and characteristic of the assemblage to which I spoke. The speech was one made in protest against the hiking of prices of Essential Commodities and the audience was largely constituted of the poor sections of the society, the common man of the area. The

words particularly referred to in the contempt petition have no specific or definite meaning and the sense it carries is according to its ordinary usage. That being so, those words taken out of context and given a meaning that suits the intention of the petitioner in the contempt of court petition, may not be made the basis for initiating contempt proceedings against me. Since the above judgment was practically impossible of implementation, there were public meetings held on the road side on the day subsequent to the judgment also in several places in the State and that was the reason for me to say that the above judgment was rejected by the public. In doing so, I have never challenged the authority of this Honourable court or made any disparaging remarks demeaning any of the Honourable Judges of this Honourable Court. Therefore, considering that the speech made by me was in a particular context and the language used was one apposite to the issue and the nature of the audience, there is no justification in picking up one or two words used in the speech out of context and raising the allegation of contempt of court against me based on the incorrect and fanciful meanings attributed to those words, without considering the entire speech as a whole and the context in which such a speech was made. In this connection it is pertinent to note that the petitioner has not produced the entire text of the speech made by me along with the Contempt Petition and it is a well established principle of law that in order to decide whether there is contempt or not reading of the speech as a whole is necessary. Since words torn out of context from it may be liable to be misunderstood.

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13. Sumbhan is a word used in Malayalam without any specific or definite meaning. As distinct from a "word" with a definite meaning in a language, there are "usages" in every language which have different shades of meaning with varying connotations depending on the occasions in which it is used as also the regions, sections of people, circumstances, etc in

A relation to which it is used. The word "Sumbhan", is such a
usuages which is understood in different senses and
connotations in different parts of the State and depending on
the class of people who uses the same. Even inspite of such
variations, it is submitted that the word "Sumbhan" can never
B be understood as having the meaning attributed to it in the
contempt petition namely "idiot" or "fool".

14. I hail from Cannanore District, in the Northern part of
the Kerala State. The impugned speech I was making to a
village population at Kannur, a considerable section of which
C cannot claim even to be moderately educated. "Sumbhan", is
a word widely used by the people in the area to refer to a person
who had said or expressed something or acted in any particular
way without properly considering the various aspects of a
matter intensively, in all its aspects, or evaluating or taking into
D consideration, the likely consequences that may ensure thereby,
in a hasty and casual manner, even if he be a person highly
reputed and accepted by all as an intelligent and
knowledgeable person. In such a situation by referring to the
Honourable Judges who have issued the judgments in
E question, to the people who were at a loss to understand the
logic and reason of the disapproval of a right which for them
was an integral part of their legal right which they have been
enjoying all through the past, and as old as the memory of the
existing generations goes as "Sumbhan", I was only conveying
F to them and carrying home to them the idea that those Judges,
while passing the judgment have not properly considered the
issue involved in all its aspects nor have they comprehended
the attendant circumstances or the resultant consequences
thereof.

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21 Having regard to the above, it is humbly submitted that,
this Honourable Court may be pleased to see that the
charges levelled against me in the above Contempt of

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Courts Case are not sustainable in law and accordingly it is prayed that accepting this reply affidavit, the Contempt of court proceedings initiated against me may kindly be dropped.”

The Appellant has also relied on Article 19(1) (b), 19(1) (a) and 19(1)(d) and 19(3) of the Constitution. He has deposed that he considered his duty “to speak to the people evaluating the same and expressing my views regarding the impact and the adverse consequences it will make on the social and political life of this country and its people, as also the interference and the intrusions it will make on the rights, including the fundamental rights guaranteed to the citizens of this country by the Constitution I may submit in my speech I have not made consciously or otherwise any disparaging or disrespectful statements or remarks against any of the Hon’ble Judges of this Court.” As regards the use of the word ‘sumbhan’ or ‘sumbhanmar’, the Appellant has taken the stand that the word implied that “those Judges, while passing the judgment have not properly considered the issues involved in all its aspects nor have they comprehended the attendant circumstances or the resultant consequences thereof.”

4. In the said affidavit, the Appellant has quoted decisions of this Court in P.N. Duda v. P.Shiv Shanker 1988 (3) SCC 167; Re- S Mulgaokar 1978 (3) SCC 339 and R v. Metropolitan Police Commissioner, Ex-parte Blackburn 1968 (2) All ER 319(CA). We are in respectful agreement with all the observations made in these judgments.

5. On 15.11.2011, the Appeal was taken on Board and admitted. A direction was passed that the Appellant be released on bail but that the fine should be deposited within one week. By that time, as per the submissions made by the learned senior counsel appearing for the Appellant had suffered incarceration for one week.

6. Learned Senior Counsel for the Appellant has drawn our

A attention to certain expressions used in the impugned Judgment, which we unhesitatingly and unequivocally find to be inappropriate when used by the Judge in an Order or judgment. Since we have expressed our opinion we shall adjure from even mentioning the explanation offered on behalf of the Bench as

B elucidation in the backdrop of the syntax. The sentence passed comprehensively does all the speaking. The endeavour of the learned Senior Counsel is to persuade us that these words had been employed by the Judges because they were prejudiced against the Appellant, and that prejudice has resulted in

C imposing the impugned sentence in its total and complete severity. The said observations do not impact upon the character of the words used by the Appellant in his public speech, since they occur after the event.

7. Learned Senior Counsel has not addressed any

D arguments or given any extenuating explanation with regard to his utterance that if the Judges have any self respect they should step down from their office. We are also unable to accept the meaning sought to be given to the word 'sumbhan'/'sumbhanmar' since our inquiries reveal that they are pejorative

E or insulting epithets/abuses akin to calling a person a fool or idiot. The Appellant indubitably has exercised his freedom of speech insofar as he has dissected the Judgment and argued that it was contrary to law. He may also be excused in saying that Judges live in glass houses, and that the judgment's worth

F is less than grass, since this is his perception. But it is not open to the Appellant or any person to employ abusive and pejorative language to the authors of a judgment and call upon them to resign and step down from their office if they have any self respect. The Appellant should have kept in mind the words of

G Lord Denning, in the Judgment upon which he has relied, that those that criticise a judgment must remember that from the nature of the Judge's office, he cannot reply to their criticism. In the case in hand, the Appellant had his remedy in the form of a Special Leave Petition to this Court, which he has

H exercised albeit without success. The speech was made within

a couple of days of the passing of the ad interim injunction; no empirical evidence was referred to by the Appellant, nor has any been presented thereafter, to support his utterance that the Judgment/Order was being opposed by the public at large. Hence we see these parts of the speech as intending to scandalize and lower the dignity of the Court, and as an intentional and calculated obstruction in the administration of justice. This requires to be roundly repulsed and combated.

8. Learned Senior Counsel appearing for the Respondent State has in his brief submission highlighted the fact that at no stage has the Appellant tendered an apology. We have given an opportunity to learned Senior Counsel for the Appellant to elucidate this position but he has categorically stated that he has instructions that the Appellant does not intend to apologise for any of his statements.

9. The Appellant is an advocate and also an ex-member of the Legislative Assembly. He is fully aware that our Constitution is premised on the separation of powers which enjoin the Executive, the Legislature and the Judiciary to perform their duties within the Constitutional framework. He is fully aware that while he has the right of freedom of speech of expression, this postulates a temperate and reasoned criticism and not a vitriolic, slanderous or abusive one; this right of free speech certainly does not extend to inciting the public directly or insidiously to disobey Court Orders. The remedy is provided by way of an appeal to the Division Bench, which was taken recourse to. Having perused the translations of his speech, we are left in no manner of doubt that he intended to lower the dignity of Court, to obstruct and impede its functioning and not merely to criticise its pronouncement which was not to his liking. His conduct leaves him unquestionably guilty of the offence of Contempt of Courts, calling for him to be punished for his illegal act. He has shown no remorse or contrition for his conduct. Instead, he has vainly etymologised the Sanskrit origin of 'sumbhan', fully aware of the fact that in its slang, especially to

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- A the rural and rustic persons he was addressing, it conveyed a strong abuse. Judges expect, nay invite, an informed and genuine discussion or criticism of judgments, but to incite a relatively illiterate audience against the Judiciary, is not to be ignored. It was, not the Petitioner's province, as exercising his
- B freedom of speech, to advise that "if those judges have any self respect, they should resign and quit their offices".

C 10. The impugned Judgment has correctly and condignly committed the Appellant for committing contempt of Court and ordered his incarceration. Nevertheless, while affirming the impugned Judgment, we reduce the sentence of six months imprisonment to that of simple imprisonment for a period of four weeks.

D 11. The Appeal is disposed of in the above terms. We desist from imposing costs.

Kalpana K. Tripathy

Appeal disposed of.