

**Court No. - 49**

**Case :-** CONTEMPT APPLICATION (CRIMINAL) No. - 18 of 2018

**Applicant :-** In-Re

**Opposite Party :-** Vikram Sharma (Clerk)

**Counsel for Applicant :-** A.G.A.,Sudhir Mehrotra

**Counsel for Opposite Party :-** Siya Ram Verma,A.K. Verma,Shadab Ali

**Hon'ble Suneet Kumar,J.**

**Hon'ble Umesh Chandra Sharma,J.**

Sri Akhilesh Kumar, Advocate, has put in appearance on behalf of the contemnor and filed an affidavit dated 04.04.2022 with a prayer to discharge the contemnor from the charge accepting unconditional apology. The contemnor is present in the Court.

Sri Sudhir Mehrotra, learned counsel appearing for the High Court submits that the contemnor has shown no respect or remorse for his conduct, the apology is not an unconditional apology. The conduct of the applicant is ex facie contemptuous and calls for punishment.

We have considered the rival contentions and perused the record.

The contempt proceedings was initiated against the contemnor on reference moved by the District Judge Bulandshahr, vide communication dated 23.05.2017, recommending transfer of the contemnor, a clerk of the civil court at Bulandshahr, to any other District and also to initiate contempt proceedings against him.

The contemnor dispatched a letter dated 15.12.2016. It is in the form:

Show Cause Notice

Versus

1. Sri Ali Zamin District Judge Bulandshahr,
2. Sri Narendra Modi, Prime Minister,

3. Sri Fakire Azam, Government of India, Delhi,
4. Hon'ble T.S. Thakur, Chief Justice of India, Supreme Court, Delhi.
5. Hon'ble Akhilesh Yadav, Chief Minister, Uttar Pradesh Government.
6. Hon'ble Dilip Bhoshle, Chief Justice, Allahabad.

In other words, communication is directed against the aforementioned dignitaries. The communication is duly signed by the contemnor and notes his address and mobile/phone number. The notice has been endorsed to the Local Intelligence Unit (LIU) for circulation to the Media and other responsible officers. Notice, inter alia, asserts that contemnor is citizen of India, presently working as clerk at the District Court, Bulandshahr. It is further stated that in the department, where the contemnor works is under the jurisdiction of law and the Constitution of India, therefore, the contemnor undertakes to highlight the exploitation, corruption, atrocity prevalent therein. Accordingly, contemnor is raising his voice so that it may be heard by the dishonest officers of the system; further, an attempt is being made to suppress the voice of the contemnor by such officers.

It is further alleged that the dishonest officers, judges, employees of the Judgeship on 3.4.2014 attempted on the life of the contemnor. The relevant allegations made in the above noted communication in the style 'Show Cause Notice' dispatched by the contemnor. The relevant portion is extracted:

*“मैं विक्रम शर्मा भारत का नागरिक हूँ, वर्तमान में जिला जज बुलन्दशहर में लिपिक के पद पर कार्यरत हूँ। मेरे विभाग में जिस पर संविधान की, कानूनी की, न्याय की, रक्षा का भार है, मैंने यह जानकर की आप सत्य और कानून की रक्षा करेंगे, इसलिए मैंने यहाँ पर चल रहे शोषण, भ्रष्टाचार, अन्याचार के खिलाफ आवाज उठानी शुरू की, जिससे आहत होकर आपके व्यवस्था के बेइमानों ने मेरी आवाज को कुचलने के लिए मुझ पर अनेकों प्राण घातक हमले कराये हैं, जिससे अपनी सत्य, न्याय, जान की रक्षा के लिए प्रार्थना पत्र रजिस्टर्ड डाक से भेजे हैं, जिसके सारे साक्ष्य मेरे पास हैं और आपके हैं। दिनांक 30.04.2014 को मेरे ऊपर समस्त बेईमान जजों, अधिकारियों, कर्मचारियों ने न्यायालय के कार्यालय में, थाने में, चिकित्सालय में प्राण घातक हमला कराया, जिसकी स्वीकारोक्ति के ही अपराधियों ने कर, सोशल मीडिया पर कर पुनः न्यायालय आने पर जान से मारने की धमकी दी है। जो आपकी शह के बिना होना सम्भव नहीं है। इस प्रकार आपने भारतीय संविधान व कानून के रक्षक होने के बाद उसकी हत्या करने की जघन्य अपराध किया है। जब कातिल ही मेरे मृत्यु संविधान*

के रक्षक बने बैठे हैं तो ऐसे में मेरा धर्म बनता है कि मैं अपने भारत प्राण अपने मूल अधिकार संविधान की अन्तेष्टि करने के लिए बाध्य हूँ। मेरे कत्ल हुए संविधान का मृत शरीर मुझे सौंपा जाये, जिससे उसकी मैं अन्तेष्टि विधि विधान से कर सकूँ। .....

That apart the contemnor showed utmost dis-respect to the judicial proceedings before this Court and put up an arrogant countenance through out the proceedings, which is reflected from the various orders duly noted in the order dated 03.02.2022. The order reads thus:

*“The order sheet reflects that on 24.05.2018 notice was issued to the contemnor on the Court being satisfied that the ingredients of criminal contempt, prima facie, is made out against the contemnor. On 30.07.2018, contemnor, a clerk of the civil court, Bulandshahar, did not comply the order; neither put in appearance despite notice being served upon him. Consequently, bailable warrant came to be issued against him. As is reflected from the order dated 26.09.2018, Sri S.R. Verma, learned counsel put in appearance for the contemnor and sought three weeks' time to file reply. Learned counsel/contemnor thereafter did not appear in the proceeding. Consequently, on 16.01.2019, non-bailable warrant was issued against the contemnor. Pursuant thereof, the contemnor was produced before this Court, he stated that he would contest the matter in person. Despite repeated request, the contemnor did not file any reply though he was produced before this Court from the District Jail. The contemnor was again produced before this Court on 17.07.2019 from the District Jail, Aligarh, in Case Crime No. 426 of 2017, Police Station Khurja Nagar, District Aligarh. He requested for further opportunity to file reply and place the material/documents in his defence.*

*This Court again on 23.10.2020 directed the contemnor to appear and submit his reply to the show cause notice. In the order dated 01.12.2020, the learned counsel appearing for the contemnor informed the Court that contemnor was released on bail. On request, further six weeks' time was granted to file objection, if any, to the show cause notice. However, the contemnor did not comply. Consequently, bailable warrant came to be issued on 28.01.2021. Thereafter, an application was filed to recall the bailable warrant.*

*The order sheet thereafter reflects that the learned counsel appearing for the contemnor was sending repeated illness slips. Again, non-bailable warrant came to be issued on 25.11.2021 against the contemnor. This Court, in its order dated 06.01.2022, noted that the contemnor is not traceable at the residence and address given in the appeal. The order dated 06.01.2022 reads thus:*

*"Vide office report dated 05.01.2022, information has been brought on record that the contemnor-Vikram Sharma is not traceable at the*

*residence and address given in this appeal. Shri Sudhir Mehrotra, learned counsel for the High Court informs that the contemnor was an employee of Bulandshahar Judgeship.*

*As such, we call upon the District Judge, Bulandshahar to trace out the residential record of the employee concerned, Vikram Sharma, and to ascertain his permanent residence and address noted in his official record and that address should be verified through the Chief Judicial Magistrate, Bulandshahar by taking appropriate measures and once the address is so located/known, entire information should be furnished within three weeks.*

*A copy of this order may be sent to the District Judge, Bulandshahar for ensuring compliance so that we may proceed further in this case.*

*Contention is that the contemnor is avoiding his presence and so non-bailable warrant was issued on 25.11.2021 but because of his absence from the residence he is not traceable and the case could not be proceeded further.*

*The warrant shall remain in force and it is directed to the Senior Superintendent of Police, Bulandshahar to do the needful in the meanwhile and to arrest and produce the contemnor before the Court on the next date of listing, if he is apprehended in the meanwhile.*

*Put up on 03.02.2022 in the additional cause list."*

*In this backdrop, the contemnor has neither appeared before the Senior Superintendent of Police, Bulandshahar, nor surrendered before the concerned court. He submits that he is present in the office of his newly engaged counsel at New Delhi. In other words, the above noted order has not been complied, contemnor is deliberately and willfully avoiding the Court proceedings.*

*Be that as it may, on request, it is directed that the contemnor (Vikram Sharma) shall surrender before the concerned court within 24 hours. Failing which, District Judge, Bulandshahar, is directed to adopt coercive measures against the contemnor, including proceedings under section 82/83 Cr.P.C. The contemnor shall be taken in custody and produced before this Court on the date fixed. The Senior Superintendent of Police, Bulandshahar, to ensure compliance.*

*Registry and the learned A.G.A. for the State to communicate the order.*

*List this case on 21.02.2022."*

Pursuant thereof, contemnor surrendered and was produced before this Court. In the Court, he attempted to intimidate the Court by raising his voice and stated that his life is in danger at Bulandshahar.

Accordingly, he was shifted to the Central Jail, Naini, Prayagraj. It is only thereafter the contemnor reluctantly responded to the notice to show cause.

The charge was framed against the contemnor on 03.03.2022.

The affidavit in response to the charge filed today by the contemnor tendering unconditional apology reads thus:

*“2(1). The Contemnor was taken into custody in the present proceedings on 05.02.2019, thereafter, since 11.02.2022 till date. In the affidavit filed today in paragraph 2 (1) in replied to the Charge. It is the Contemnor states that Contemnor never alleged allegation against the any of the judicial persons and he is a law abiding honest employee but in a conspiracy Contemnor's name was published as a representative of Indians without any basis due to jealousy and it is further stated here in that Contemnor never participated any of the political issue either in officer concern or party wise and he do his work on his best effort and efficiency and due to above reason there was no remark on his work sheet and he never take any type of bribe to any of the litigants and due to above reasons some persons were make enmity with him and send such type of letters as alleged on his name even then Contemnor tender his unconditional apology with folded hand and also declare that he will never participate as alleged allegation in his future.*

*2(2). The Contemnor states that the second charge are that his colleagues named in the letter were tortured and the same complaint was send to S.S.P. for legal action is baseless and in reply it is submitted with respectfully that Contemnor never send alleged letter to any of the authorities because all the employees who are cooperative and they have no litigation whatsoever amongst them even then if this Hon'ble Court or any persons or society heart in any manner by the act of Contemnor, he tender his unconditional apology with folded hand.”*

In this backdrop, the issue is as to whether the apology tendered by the contemnor is genuine and bonafide.

The apology means a regretful acknowledge or excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionably in sincere. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment.

Sub-section (1) of Section 12 of the Act and Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tempered at a belated stage if the accused makes it bona fide. A conduct which abuses and makes a mockery of the judicial process of the court is to be dealt with iron hands and no person can tinker with it to prevent, prejudice, obstructed or interfere with the administration of justice. There can be cases where the wisdom of rendering an apology dawns only at a later stage. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which tantamounts to contempt of court. An apology can be accepted in case where the conduct for which the apology is given is such that it can be “ignored without compromising the dignity of the court”, or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as “paper apology”.

An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the “contrition which is the essence of the purging of contempt”. Of course, an apology must be offered and that too clearly and at the earliest opportunity. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the Court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (Vide: **Debabrata Bandopadhyay and Others Versus The State of West Bengal and another**<sup>1</sup>, **Mulkh Raj versus**

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1. AIR 1969 SC 189

**The State of Punjab<sup>2</sup>, The Secretary, Hailakandi Bar Association versus State of Assam and another<sup>3</sup> and Elumalai versus A.G.L. Irudayaraj and Ranveer Yadav Versus State of Bihar<sup>4</sup>.**

The Supreme Court in **Bal Kishan Giri Versus State of Uttar Pradesh<sup>5</sup>**, held as follows:

*“19. This Court has clearly laid down that an apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted. (Vide: [Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr.](#), AIR 1974 SC 710; [The Bar Council of Maharashtra v. M.V. Dabholkar etc.](#), AIR 1976 SC 242; [Asharam M. Jain v. A.T. Gupta & Ors.](#), AIR 1983 SC 1151; [Mohd. Zahir Khan v. Vijai Singh & Ors.](#), AIR 1992 SC 642; [In Re: Sanjiv Datta](#), (1995) 3 SCC 619; [Patel Rajnikant Dhulabhai & Ors. v. Patel Chandrakant Dhulabhai & Ors.](#), AIR 2008 SC 3016; and [Vishram Singh Raghubanshi v. State of U.P.](#), AIR 2011 SC 2275).*

*20. That the power to punish for contempt is a rare species of judicial power which is by the very nature calls for exercise with great care and caution. Such power ought to be exercised only where “silence is no longer an option.” (See: [In re: S. Mulgaokar](#) AIR 1978 SC 727; [H.G. Rangangoud v. M/s State Trading Corporation of India Ltd. & Ors.](#), AIR 2012 SC 490; [Maninderjit Singh Bittav. Union of India & Ors.](#), (2012) 1 SCC 273; [T.C. Gupta & Anr. v. Hari Om Prakash & Ors.](#), (2013) 10 SCC 658; and [Arun Kumar Yadav v. State of U.P. through District Judge](#), (2013) 14 SCC 127) Power of courts to punish for contempt is to secure public respect and confidence in judicial process. Thus, it is a necessary incident to every court of justice.”*

In the circumstances, having regard to the proposition of law, we are of the opinion that the apology tendered by the contemnor is merely a camouflage to avoid the consequence of the contempt proceedings at this belated stage. This Court would have taken a lenient view had the

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2. AIR 1972 SC 1197

3. AIR 2009 SC 2214

4. (2010) 11 SCC 493)

5. (2014) 7 Supreme Court Cases 280

contemnor tendered sincere apology for his conduct at the outset when the proceedings were put in motion. However, the contemnor avoided the proceedings wilfully and deliberately, consequently, was taken in custody on two occasions after warrants were issued.

Having regard to the orders passed in the present proceedings we are convinced beyond reasonable doubt that the contemnor has no contrition nor remorse for his conduct. He has no respect for the authority of law and the Constitution of India, taking a lenient view in the matter would send a wrong signal. The conduct of the contemnor, a clerk of Judgeship at Bulandshahar, in dispatching the communication dated 15.12.2016 is an overt act to malign the constitutional dignitaries and to subvert the flow of justice. The allegations are wild and without basis. Accordingly, we hold the contemnor guilty of the charge. In consequence the contemnor is convicted for six months simple imprisonment and Rs. 1000/- fine is imposed, in default the contemnor shall undergo one month simple imprisonment.

The contemnor has already suffered incarceration for 20 months 20 days as on date. Accordingly, the period of punishment shall be set off against the incarceration suffered by the contemnor in the present proceedings. Contemnor shall be released forthwith upon deposit of fine.

Learned A.G.A. shall supply copy of this order to the Jail Superintendent, Central Jail, Naini, Prayagraj for compliance.

The Registry to supply a copy of this order to the District Judge, Bulandshahr.

The petition is consigned to record.

**Order Date :- 4.4.2022**

K.K. Maurya