

Court No. - 39

Case :- CONTEMPT APPLICATION (CRIMINAL) No. - 15 of 2022

Applicant :- In Re

Opposite Party :- Sri Shubham Kumar Advocate

Counsel for Applicant :- Sou Moto, Ashish Mishra

Counsel for Opposite Party :- Ashok Kumar Upadhyay

With

Case :- CONTEMPT APPLICATION (CRIMINAL) No. - 14 of 2022

Applicant :- In Re

Opposite Party :- Subhash Kumar Advocate

Counsel for Applicant :- Sou Moto, Ashish Mishra

Counsel for Opposite Party :- Ashok Kumar Upadhyay

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Rajendra Kumar-IV, J.

1. The present contempt proceeding has arisen upon the Reference made by the then Additional Principal Judge Family Court No. 1, Aligarh on a written complaint dated 09.05.2022. Connected reference has also similarly arisen. Thus one reference is against the litigant Subhash Kumar and other against his lawyer Shubham Kumar. Relationship of father and son exists between litigant and his lawyer.

2. The said complaint has been forwarded to this Court by the then learned Additional Principal Judge, Family Court No. 1, Aligarh vide communication dated 25.07.2022. The Reference were registered after following the due procedure.

3. Upon Reference being thus entertained, notices were issued to both Subhash Kumar in Contempt Application (Criminal) No. 14 of 2022. Similar notice was also issued to Shubham Kumar in Contempt Application (Criminal) No. 15 of 2022.

4. Since, the contempt proceedings came to be drawn up with respect to six cases, all involving the said Subhash Kumar and

since the entire transaction took place on the same date, we have chosen to deal with the two explanations by this common order.

5. The allegation against Subhash Kumar is of having misbehaved in the court of the learned Additional Principal Judge, Family Court No. 1, Aligarh at about 11:30 a.m. on 09.05.2022 while that court was in the process of hearing another case being Case No. 273 - 2019 (Suman vs. Vinod).

6. Perusal of the complaint reveals that in the forenoon session, the said Subhash Kumar misbehaved inside the court hall and started shouting about his matter being not called out. When asked to wait, he refused and continued his unruly behaviour. Despite being warned, he continued to misbehave as has led to contempt proceeding being drawn. It is on that allegation of having thus obstructed the judicial proceedings that the criminal contempt has arisen against him. In respect to Shubham Kumar, the learned Additional Principal Judge Family Court No. 1, Aligarh has complained that in the afternoon session, he caused disruption of hearing in Case No. 957 - 2016 (Mithelesh Kumar vs. Rajesh), on the date 09.05.2022. He is accused of having offered unruly and loud behaviour and of threatening the court by seeking transfer of proceedings. On being required to act in a civilized manner, he is described to have refused to abide by that advise given by the court and to have insisted to continue to speak in the same manner. He is further, alleged to have stated that in any case his father 70 years old man may never have misbehaved with the court. Obviously, the reference to his father may have occurred with respect to what had happened (in the forenoon session), at an earlier point of time in the course of proceeding in Case No. 277 - 2019 (Suman vs. Vinod).

7. Not stopping at that, the said Shubham Kumar is described to have shouted in loud voice that he is a practitioner of the Allahabad High Court and that he knows how to deal with petty courts. At that stage he is also alleged to have threatened to lodge a complaint against the Presiding Officer. Despite repeated reprimand, he continued to use un-parliamentary language and continued to obstruct the judicial proceeding that were otherwise continuing.

8. Today, both Subhash Kumar and Shubham Kumar have appeared in person. While they had earlier engaged Sri Ashok Kumar Upadhyay as their counsel, first Shubham Kumar has insisted that parties do not require the assistance of lawyer and that they will be defending themselves. In that Shubham Kumar has led the explanation. After that explanation was over, we had required Subhash Kumar to take a stand. First, he adopted the explanation and submissions advanced by his son Shubham Kumar. Later, both stated that another opportunity may be given to Subhash Kumar to be represented through lawyer. It may be noted that request was made after about an hour of hearing. On a query made, if the contemnors were seeking forgiveness. Both, first stated 'Yes'. However, when questioned for what, the answer was ridiculous to say the least as they both stated "जो हमने करा नहीं". Subhash Kumar also stated, his son may be pardoned as he is a young advocate.

9. As to the occurrence, Subhash Kumar has also denied that such occurrence took place. He would submit that he is a retired employee of district judgeship and has utmost respect for the same.

10. Both Subhash Kumar and Shubham Kumar have explained and tried to convince the Court that they have utmost regard for the institution and its procedures and that consciously they have not

committed any act as may amount to contempt. However, as to apology, their stand (as noted above), has been ridiculous, to say the least in face of the facts recorded on the order sheet by the learned Additional Principal Judge, Family Court in the case record of the relevant case and in face of the in-disputable fact that Subham Kumar kept pressing for audience of the court during the post lunch session by filing at least two applications one marked by him, filed at 3:00 p.m. and other marked by him, filed at 3:30 p.m. Thus, it cannot be disputed that he had continued to interject the proceeding before the learned court below for no justifiable cause.

11. It is his own case that the matter in which he had been engaged (that of his father) had not been called out during the post lunch session. Therefore, it is inexplicable why he would have persisted to make queries with the reader of the Court or why he would have continued to make one application or the other to the learned court below.

12. Court proceedings are formal proceedings which must be allowed to be conducted in a dignified manner without undue disruptions. Any grievance that any litigant or lawyer may have may be addressed in due course. Any order that may be passed by a court to which any lawyer or litigant may have a grievance may be addressed by filing appropriate application or appeal or by making appropriate mention at the appropriate time.

13. However, these commonly enforced practices may take a back seat in an emotionally charged atmosphere. What more catastrophic or precipitative ingredient could have existed than a son (lawyer) appearing for his father (litigant) that too in a matrimonial case with his (lawyer's) mother! It cannot be for

Courts to advise lawyers to choose their clients. It has always been left to the wisdom of the learned members of the bar. The basic learning that any member of the bar imbibes at the initial years of practice tell him to not appear for his blood relatives. However this wisdom and nuance has not touched Subham Kumar by a mile. He not only took up the matter of his father but that too against his mother thereby, by his act, he became a party to the dispute itself. It indeed would be sad if statutory law were to provide for restrains on whose brief to take and whose not. Yet, the father - son duo before us would appear to take no less. Thats the tragic part of this case.

14. Considering the entirety of the facts, we find that the present is not a case that the Court may have the luxury to deal with, in the present state of its over burdened board. To voice our opinion differently, we may note that in a matter such as this where the lawyer and the litigant both claimed (though not convincingly), utmost regard for the Court but their behavior and conduct is found wholly unacceptable and objectionable, we say, enough time has been wasted over those who are already wasted.

15. As to the lack of apology, it is not for the Court to extract from any litigant or his lawyer or to force them to tender such an apology by way of terms. Courts exist and will continue to exist to deliver justice to those in need despite such indiscretions committed by persons such as the contemnors. We do not have time to take our gaze away from the cause of justice and to devote the same to punish the contemnors as per the rules of law. Our time would be better utilized and is needed to address the cry for justice by genuine litigants. It does not merit to be wasted on the jesters and/or deviant lawyer and litigant that these contemnors are. They are far too less deserving of that. Thus, such contemnors

may some times waste Courts' time yet, they may be allowed to get away, in the interest of the other, genuine litigants and meaty matters.

16. Not wanting to waste even a further moment of work on such a litigant and lawyer and leaving it to them to introspect (if they are capable), what conduct they may offer to Courts in future to which they orally state to have faith in and for whom they state to have utmost respect, we consign the present proceedings, at this stage itself. However, should any further conduct be offered either by Subhash Kumar or Shubham Kumar in any other court or any other case, we impose a condition in this order itself that by way of explanation that may be called in such other proceeding a copy of this order will be annexed by them to disclose to that Court, their previous conduct.

17. We also make it clear that we have refused to exercise our jurisdiction and have not absolved either Subhash Kumar and Shubham Kumar of their conduct. It is only on account of wastage of time that we seek to prevent, we choose not to give them any further audience. They are thoroughly undeserving of that. Thus consigned.

18. We also record that we have found the conduct of Ms. Garima Singh, the then learned Additional Principal Judge, Family Court No. 1, Aligarh to be unblemished. The Officer had done all to ensure that the decorum of the court was maintained and better sense prevail on the two contemnors before us. Accordingly, the application under Section 340 read with 195 Cr.P.C. is rejected as meritless and scandalous.

19. Let a copy of this order be communicated to the Bar Council of Uttar Pradesh for its due consideration and appropriate counseling

to Shubham Kumar.

Order Date :- 12.10.2023/Manoj

(Rajendra Kumar-IV, J.) (S.D. Singh, J.)