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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision:-22nd August, 2024.

+ **CONT.CAS.(CRL) 8/2015**

COURT ON ITS OWN MOTIONPetitioner

Through: Ms. Vrinda Grover, Amicus with Mr.
Sautik Banerjee and Ms. Devika
Tulsiyan, Advocates

versus

SANJAY RATHOD (ADVOCATE)Respondent

Through: Mr. Rakesh Tiku, Sr. Advocate with
Mr. Anil Kumar Varshneya and Mr.
Sandeep Kumar, Advocates.
Insp. Bharat Singh, Special Branch

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (ORAL)

1. This hearing has been done through hybrid mode.
2. A fresh traffic challan-case has resulted in these contempt proceedings, which has raised several legal issues.
3. A brief background of this case is that a traffic challan/complaint was received by the Id. Metropolitan Magistrate (Traffic), North-West, Karkardooma Court, Delhi on 15th October, 2015. The Court after observing that *prima facie* offences were made out, issued summons to the accused persons i.e. the driver and owner of the vehicle. On 30th October, 2015, the matter was adjourned by a day to 31st October, 2024 during the first half of the day. However, what transpired on 30th October, 2015 needs to be recorded in the language of the Id. Metropolitan Magistrate itself and is extracted



below:

“At 3:50 P.M.

At this stage, accused owner of the vehicle a/w one counsel has appeared. They have asked about the order in the challan of vehicle in question. They have been apprised that date has been given in the case for 31/10/15. Immediately, counsel has started shouting in the court and has started using filthy and abusive language against the Presiding Officer in the open court saying “aise kaise kar diya adjourn matter, aise kaise date de di, main kah rha hun abhi lo matter, order karo abhi,”

At this, I have asked the Counsel to furnish his details & he stated, “Vakalatnama dekh lo, laga hua hai challan ke sath, usi mein hai mera naam”. As per v/k attached with challan, his name is Sanjay Rathore, having Enrolment No. as D1941/09. The counsel has started making nuisance in the open court by shouting at high pitch to such an extent that it is even impossible to write orders further & I have to stop the Court work. It has been again made clear that matter has already been adjourned for tomorrow.”

At this, counsel has started thumping on table before dias, “Aise karo abhi matter transfer karo CMM ko, order karo abhi, main kah rha hun, kar order abhi”. Counsel has been asked to make app. application before appropriate authority for transfer of the matter. Immediately, cl. has started threatening the Presiding Officer in open Court that “main tumhari complaint karunga CMM ke pass, main high court jaunga kal hi khud, main dekhta hun tumhe, tum order karo, dasti do copy’ No app. for dasti copy has been made & counsel is continuously thumping on the table before dais to obstruct court work, to create pressure upon the presiding officer and to threaten me.

It is evident from smell of breathe of counsel during shouting that he is in drunken state, therefore, I have



asked the counsel to leave the court as he is completely drunk. On this, counsel has become more violent and aggressive and started threatening the Presiding Officer in open court “Mein kahin nahi jaunga, main dekhta hun kisme dum hai mujhe bahar nikalene ka, tum kah do or main chale jaun... Nahi jaunga bahar...”

Now the counsel has used so filthy & abusive language against the Presiding Officer in open court that it has insulted & outraged the modesty of female judicial officer & has also insulted the dignity of the court. The cl. is asked to give his particulars & to stop for breathe test but immediately, he ran away from the court.

Copy of the order be sent to Ld. District & Sessions Judge, NE/KKD Courts, Delhi, High Court of Delhi as well as to Bar Council of India for necessary intimation and action. Separate complaint to the police, High Court of Delhi & Ld. D & S Judge, NE/KKD Courts is also being forwarded.

Be put up for date fixed i.e. 31/10/15

At 4:40 pm

At this stage, when I have come to the chamber & one other judicial officer Sh. Achal Tyagi, Ld. MM/Shahdara, KKD Courts is also there & I am giving directions to the Court staff to get photocopies of this order, Sh. Mahesh Sharma, President of Bar Association, KKD Courts, Delhi along with 3 Counsels has come in my chamber. They have mentioned about the incident which has happened in open court during the proceedings of challan of vehicle No. UP 14 CT-0689, Circle SPC and they have requested to solve out the matter without any formal complaint and to settle matter by way of social method. They have been informed that necessary order has already been passed & complaint will be forwarded soon.

Be put upon for date fixed i.e. 31/10/15 ”

4. A perusal of the above order dated 30th October, 2015 passed by the



Id. Metropolitan Magistrate would show that the accused-owner of the vehicle had appeared before the Court along with Counsel who is now the Contemnor in the present case. They were apprised that the matter is adjourned and a date had been given in the matter. However, immediately thereafter, the Counsel/Contemnor started shouting in the Court and used abusive and filthy language. The order dated 30th October, 2015 extracted above captures some of the the language used by the Counsel/Contemnor and considering the said language which was used, a communication was sent by the Id. Metropolitan Magistrate to the worthy Registrar General of this Court on 31st October, 2015. The said case was then submitted before the Hon'ble the Chief Justice of this Court and vide order dated 16th November, 2015, the predecessor Bench had issued notice to the Counsel/Contemnor, who is the Respondent in the present petition.

5. The said petition has been taken up for hearing today.

6. In addition to the present proceedings, an FIR bearing No. 0885/2015 dated 31st October, 2015 was also registered under Sections 186/189/188/288/354-A/509/353 IPC in PS Farsh Bazar on the complaint of the Id. Metropolitan Magistrate (Traffic). Subsequently, the investigation was completed and a charge-sheet was filed on 8th December, 2016. During the proceedings, the accused had pleaded not-guilty and 9 witnesses have been examined on behalf of the prosecution. The Counsel/Contemnor, i.e., the Respondent himself gave evidence and another advocate was also produced on behalf of the defence.

7. The Trial Court, in the said matter *vide* judgement dated 28th September, 2019 held the accused, i.e., Respondent herein guilty and convicted him of offences under Sections 186/189/228/509/353 IPC. He has,



however, been acquitted under Sections 188 and 354-A IPC. The order on sentence was passed on 30th September, 2019 and the accused was accordingly sentenced. The relevant portion of the order dated 30th September, 2019 is extracted hereinunder:

“xxx xxx xxx

It is the -duty of the court to ensure protection of society by stamping out criminal tendencies, which can be achieved by imposing appropriate sentence having regard to the nature of offences and the manner in which it was executed or committed. The duty of the court extends to ensuring that the principle of proportionality in prescribing liability according to the culpability of the convict is duly followed.

Thus, the court is required to give due weightage to the facts and circumstance of the case, and also to consider the aggravating and mitigating factors, which are to be balanced before passing order on sentence.

The mitigating circumstances in the present case are that the convict has no previous conviction and convict is willing to keep away from anti-social activities in future.

The aggravating circumstances is that the alleged offence has been committed against a public servant during discharge of public function and against a woman. The offences have been committed inside a court room, by accused, who is an officer of the court and is supposed to only assist the court but is also supposed to maintain the dignity and decorum of the court. Therefore, commission of these serious offences by officer of the court despite the duties imposed upon him by Advocates Act, 1961, does not entitle convict to seek leniency from the court.



*In view of the above, convict Sanjay Rathore is sentenced to pay fine amount of Rs.500/- or in default SI of 15 days for offence punishable u/s. 188 IPC, fine amount of Rs.1,000/- or in default SI of one month for offence punishable u/s. 228 IPC, simple imprisonment for a period of three months and fine of Rs.1500/- or in default SI of 15 days for offence punishable u/s. 189 IPC, simple imprisonment for a period of three months and fine of Rs.1500/- or in default SI of 15 days for offence punishable u/s. 353 IPC and simple imprisonment for a period of 18 months i.e. one and a half year and fine of Rs.4,000/- or in default SI of one month for offence punishable u/s. 509 IPC. **Therefore, cumulatively convict Sanjay Rathore is sentenced to simple imprisonment for a period of two years and fine of Rs.8,500/-.** It is clarified that the sentence of simple imprisonment of convict Sanjay Rathore shall continue one after the other and not concurrently. Furthermore, in case fine amount is not deposited, then in default simple imprisonment shall also continue one after the other and not concurrently and shall start after completion of cumulative simple imprisonment of two years for the abovesaid offences.*

Copy of order on sentence be given free of cost to convict.”

(emphasis supplied)

8. The accused, i.e., Respondent herein has challenged the aforesaid judgment and order on sentence which was dismissed by the Appellate Court in *Crl. Appeal no. 206/2019* vide order dated 20th April, 2023. The appellate Court while dismissing the said appeal modified the order on sentence by including compensation amount of Rs. 50,000/- to be paid by the respondent. Thereafter, a revision petition has been filed by the Respondent which is stated to be pending. The sentence has, however, been suspended. The nominal roll was also called for from the concerned Jail Superintendent which



would show that as on 13th August, 2024, the Appellant has undergone a sentence of 5 months and 22 days.

9. On the last date of hearing i.e. 26th July, 2024, a legal issue was raised by Mr. Tiku, Id. Senior Counsel appearing for the Contemnor, i.e., Respondent herein that the present contempt petition cannot continue in view of the proviso to Section 10 of the Contempt of Courts Act. Counsels were accordingly requested to cite the laws and make their submissions on this issue. The relevant portion of the order dated 26th July, 2024 is extracted hereinunder for a ready reference:

“3. Mr. Tiku, Id. Sr. Counsel also submits that in view of the fact that the Contemner has been convicted, the proviso to Section 10 of The Contempt of Courts Act, 1971 would be triggered and the Court in the present contempt petition cannot proceed.

4. Ms. Vrinda Grover, Id. Amicus Curiae wishes to cite the case laws on this issue. Let both the parties file their respective copies of judgments.”

10. Ms. Vrinda Grover, Id. Counsel was appointed as the *Amicus* in this matter. Id. *Amicus* has taken the Court through the provisions of the Contempt of Courts Act and has also relied upon the following decisions of the Supreme Court:

- ***Bathina Ramakrishna Reddy vs. State of Madras [(1952) 1 SCC 154]***
- ***Daroga Singh and Others v. B.K. Pandey [(2004)5 SCC 26]***

11. It is her submission that the issue which has been raised in this petition in respect to the proviso of Section 10 of the Contempt of Courts Act, 1971 has been decided by the Supreme Court way back in 1952 in the decision in ***Bathina Ramakrishna Reddy (supra)*** where the corresponding Section 2(3) of the Contempt of Courts Act, 1926 was considered and the Court in



paragraphs 8 to 10 observes categorically that there would be a bar with regard to the jurisdiction of the High Court in such matters, only if the contempt itself is punishable under specific provisions of the Indian Penal Code and not where the acts merely amount to offences of other descriptions for which punishment has been provided in the Indian Penal Code.

12. The Id. Amicus thereafter relies upon the *Daroga Singh and Others (supra)* to argue that the decision in *Bathina Ramakrishna Reddy (supra)* has also been followed after the Contempt of Courts Act, 1971 has been enacted, specifically in the context of Section 10 of the Contempt of Courts Act, 1971 and Section 228 of the IPC.

13. Heard. Section 10 of the Contempt of Courts Act, 1971 reads:

“10. Power of High Court to punish contempts of subordinate Courts—

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).”

14. The submission on behalf of the Contemnor is that under the proviso of Section 10 of the Contempt of Courts Act, 1971 extracted above, if a criminal case is pursued and prosecution ensues for the same contempt, no petition for contempt can be entertained.

15. This question has been squarely answered in both the decisions cited by the Ld. Amicus. In *Bathina Ramakrishna Reddy vs. State of Madras*



(*supra*) the Supreme Court while deciding on the corresponding provision i.e. Section 2(3) of the Contempt of Courts Act, 1926, held that the jurisdiction of the High Court in such cases is only barred where the acts that constitute contempt of a subordinate Court are punishable as contempt under specific provisions of the Indian Penal Code and not where these acts amount to offences of other description for which punishment has been provided for in the Indian Penal Code. The relevant portion of the said judgment is extracted hereinunder:

“10. In our opinion, the sub-section referred to above excludes the jurisdiction of the High Court only in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Penal Code. This would be clear from the language of the sub-section which uses the words “where such contempt is an offence” and does not say “where the act alleged to constitute such contempt is an offence”. It is argued that if such was the intention of the legislature, it could have expressly said that the High Court's jurisdiction will be ousted only when the contempt is punishable as such under the Penal Code. It seems to us that the reason for not using such language in the sub-section may be that the expression “contempt of court” has not been used as description of any offence in the Penal Code, though certain acts which would be punishable as contempt of court in England, are made offences under it.”

16. In *Daroga Singh and Others v. B.K. Pandey (supra)* the Supreme Court further reiterated the law laid down in *Bathina Ramakrishna (supra)* with respect to Section 10 of the Contempt of Courts Act, 1971. In this case,



the contention of the Appellants therein was that the allegations of contempt made in the said case amounts to an offence under Section 228 of the Indian Penal Code and consequently, the jurisdiction of the High Court is barred. The Supreme Court did not find force in this contention and held that jurisdiction of the High Court to take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it is barred only in cases where the alleged acts that constitute contempt are punishable as contempt under specific provisions of the Indian Penal Code, but not where these acts merely amount to offences of other description for which punishment has been provided in the Indian Penal Code. The relevant portion of the judgment is extracted hereinunder:

*“20. According to the learned counsel appearing for the appellants, the proviso to Section 10 means that if the act by which a party is alleged to have committed contempt of a subordinate court constitutes offence of any description whatsoever punishable under the Penal Code, 1860, the High Court is precluded from taking cognisance of it. **According to them, in the present case the allegations made amount to an offence under Section 228 of the Penal Code, 1860 and consequently the jurisdiction of the High Court is barred.***

*21. **We do not find any force in this submission.** The point raised is concluded against the appellants by a judgment of the Constitution Bench of this Court in *Bathina Ramakrishna Reddy v. State of Madras* [(1952) 1 SCC 154 : AIR 1952 SC 149 : 1952 SCR 425 : 1952 Cri LJ 832] . In that case, sub-section (3) of Section 2 of the Contempt of Courts Act, 1926 which is similar to the proviso to Section 10 of the Act was under consideration. Section 2(3) of the Contempt of Courts Act, 1926 provided that no High Court shall take cognisance of a contempt alleged to have been committed in respect of a court subordinate to it where*



such contempt is an offence punishable under the Penal Code, 1860. Interpreting this section, it was held that sub-section (3) excluded the jurisdiction of the High Court to take cognisance of a contempt alleged to have been committed in respect of a court subordinate to it only in cases where the acts alleged to constitute contempt are punishable as contempt under specific provisions of the Penal Code, 1860, but not where these acts merely amount to offences of other description for which punishment has been provided in the Penal Code, 1860.”

17. A perusal of the above decisions would show that this very submission has been rejected by the Supreme Court, which has held that the jurisdiction of a Court dealing with the Contempt is quite broad compared even to the provisions of the IPC under which the contemnor can be prosecuted. It has also been held that since the contempt itself is not punishable under the IPC and it is only other offences, that may be committed due to the conduct of the Contemnor that are punishable, the bar would not apply. Thus, the legal issue raised by Mr. Tiku, Id. Senior Counsel stands settled and no further adjudication of the same would be required.

18. The question now arises as to whether conduct of the Contemnor, i.e., Respondent herein, constitutes criminal contempt. A perusal of the language used by the Respondent-Contemnor *qua* the Judicial Officer would leave no iota of doubt that it would fall in the definition of criminal contempt as defined under the Contempt of Courts Act. The language used by the Contemnor in fact has scandalised the Court and such conduct also leads to interference in the administration of justice. The words spoken are foul and abusive. Moreover, considering the fact that the Judicial Officer presiding the Court was a lady Judicial Officer and the manner in which the Contemnor, i.e.,



Respondent herein, has addressed the said Judicial Officer is completely unacceptable. Appearing before a Court in a drunken state is also unpardonable. The same is contempt on the face of the Court. Thus, this Court has no doubt in holding that the Respondent is guilty of criminal contempt.

19. The decision cited by Mr. Tiku in *Court on its own motion vs. Randhir Jain 2012 SCC Online Del 5915* would not be applicable in this case, as the said judgement is distinguishable considering the nature of the allegations in the said case with respect to the language used by the contemnor therein.

20. The Court is in fact inclined to punish the Respondent for criminal contempt. However, on these very allegations and happenings, since the Respondent has already served a sentence of over 5 months in FIR no. 0885/2015, further sentence is not imposed on the Respondent. The period already undergone by the respondent herein is held as the punishment for the present criminal contempt.

21. The contempt petition is accordingly disposed of in these terms. All pending application(s), if any, also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

AUGUST 22, 2024

Rahul/rks/Pc