

LEGALFOXES LAW TIMES

CONTEMPT OF COURT- CASE COMMENTARY ON PRASHANT BHUSAN'S CASE

BY MUSKAN SIHAG AND MRIDULA SHARMA

BACKGROUND OF CONTEMPT

Mr. Prashant Bhushan is one of the most prominent leading legal activist in India. He is recognised for his excellency in his command over the law and taking on the Public issues to the court. Mr. Bhushan is associated to various organization which includes the Centre for Public Interest Litigation (CPIL), Transparency International (India) and People's Union for Civil Liberties (PUCL). Mr. Bhushan is also the convenor of the Working Committee of the Campaign for Judicial Accountability and Judicial Reforms.

Mr. Bhushan have been in controversies many times for raising his voice over the mal-practices being used in the legal fraternity in India and rise of delay of justice in India. In 2009 a *suo motto* cognizance was taken against him for alleging 'corruption' in judiciary in a controversial interview in 'TEHELKA MAGZINE' alleging then Hon'ble CJI Mr. Justice S.H. Kapadia and Mr. Justice K.G. Balakrishnan.

Origin:

In England when King Henry IV was in rule Sir William Gascoigne (then Chief Justice of England) used the term contempt of court against then Prince Of Wales (who later became 'Henry V'). it was the first time contempt of court was used.

In India contempt of court is relatively new; in 1867 Peacock C.J laid down the rule for contempt of court for the Courts of Record, In **Re Abdool and Mehtab**, in following words as:

“There can be no doubt that every Court of Record has the power of summarily punishing for Contempt.”

Legal Remembrance Vs. Matilal Ghose & Ors¹ it was aforementioned that the power to punish while issuing contempt is unlimited, uncontrolled, and arbitrary, and therefore, should be exercised with the greatest caution and thoughtfulness; the objective of this power is not give any haphazard judgment but save the integrity and morality of the system. Thus this power merits this description and it must be realised when it is understood that there is no limit to the imprisonment that may be inflicted or the fine that may be imposed save the Court's unfettered discretion, and that the subject is protected by no right of general appeal.

Sukhdev Singh Sodhi Vs. The Chief Justice S. Teja Singh & Judges of The Pepsu High Court² in this case the issue of contempt was very broadly discussed, question was raised on to whether Supreme Court can transfer any contempt case ongoing in one High court to another High court and the matter must not be heard by the two judges who were named. But the case was transferred because it was an offence under contempt of court and Supreme court can exercise its power of ‘special jurisdiction’ as may be defined in section 41 of Indian Penal code as ‘special law’. The two terms were taken into consideration as same and the petition was thus dismissed.

In 1960, the then government introduced a bill with the main objective to consolidate and amend the laws in relation to Contempt of Court. While observing this that the law on this subject was

¹ 1914 I.L.R. 41 Cal. 173

² 1954 AIR 186, 1954 SCR 454

undefined, uncertain and unsatisfactory, the government appointed a special committee in the year 1961 under the Chairmanship of Shri H. N. Sanyal called as the Sanyal Committee.

The Sanyal Committee assessed the laws in relation to Contempt of Court in general and also the procedure for such proceedings including the punishment. The committee submitted its first report in 1963, which laid down the outline for court and the power of court in punishing for contempt. It also provided procedure in relation to it. The committee made special reference of criminal contempt and provided special procedures which needs to be followed in case of criminal contempt. This bill was then examined by the Joint Select Committee of the Houses of Parliament, few suggestions were put forward by the committee: one was in respect of the period of limitation for initiating Contempt proceedings. Herein after the 1952 Act was therefore *repealed* and *replaced*, new Act namely The Contempt of Courts Act, 1971³

With coming of this act Contempt was bifurcated into two broad Categories namely :

1. Civil Contempt;
2. Criminal Contempt.

FACTS-

On August 14, 2020 noted Advocate and activist Prashant Bhushan was held guilty for contempt of court by the supreme court for two tweets made by him on 27th June 2020 and 29th June 2020.

The two tweets were:

1. On 27 June, he wrote: “When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs”.

³ 70 of 1971

2. On 29 June, he shared an image of CJI Arvind Bobde with caption- “ CJI rides a 50 lack motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in lockdown mode denying citizens their fundamental right to access justice!”

The bench of Justice Arun Mishra, B.R. Gavai and Krishna Murari apprehended

that these tweets were based on “distorted facts” and make up a “scurrilous/malicious.. attack” on the ‘ENTIRE SUPREME COURT’.

The court asked him to submit an unconditional apology by 24th august 2020.

Justice Arun Mishra said, "There is no person on Earth who cannot commit a mistake. You may do hundreds good things but that doesn't give you a license to do 10 crimes. Whatever has been done is done. But we want the person concerned to have a sense of remorse".

While Prashant Bhushan replied with “My tweets need to be seen as an attempt for working for the betterment of the institution. My tweets, I consider, was discharge of my highest duty. Apologising would also be dereliction of my duty. I do not ask for mercy. I do not appeal for magnanimity. I cheerfully submit to any punishment that court may impose." Mr. Bhushan said that this was an unreasonable restriction on his freedom of speech and was infringing his right to speech and refused to apologise to the court.

On 31st august the supreme court held him guilty of contempt of court and the punishment was given of 1 rupee. In default of payment of fine by September 15 or he has to undergo imprisonment of three months and will face a practice ban of three years. The said payment was made by the potential offender.

- Does contempt of court violate the freedom of speech under article 19?

Article 19(2) of Indian constitution clearly states that no speech or expression shall affect contempt of court or defamation. A reasonable restriction has been put of the freedom of speech and expression which is clearly rational. To sketch a line between reasonable and unreasonable restriction, the law must only criminalize speech that reaches a level of incitement and is linked proximately to public disorder.

CRITICAL APPRAISAL –

While the punishment was awarded of one rupee, the alternative punishment provided if he fails to make payment was of 3 months imprisonment and ban on practice for 3 years. The balance between the two punishments given by the courts is nowhere justified. This clearly indicated that the judgment was made to create a deterrence effect, that is to avoid such happenings in future.

In the case of **P. N. Duda v. V. P. Shiv Shankar and others**⁴, Supreme court perceived that judges cannot use the contempt jurisdiction for safeguarding their own dignity. Our state is a free marketplace of ideas and no one could be restricted to criticise the judicial system unless this criticism encumbers the ‘administration of justice’. While in this case the potential offender was held guilty as his tweets were malicious attack on the judiciary. If such was the case, then fine of one rupee cannot be justifies to a malicious and scandalous attack on the entire supreme court and judiciary.

In the case of **Indirect Tax practitioner’s Association v. R. K. Jain**⁵, Supreme Court observed, that the defence of truth in contempt case can be permitted to the accused person if two conditions are fulfilled:

- (1) - If it is in the interest of public
- (2) - The request for invoking the said defence is bonafide, as provided in the section 13 of the Contempt of Court Act, 1971. If we try and put the two said conditions in the given case then :

Firstly, from 23.3.2020 till 4.8.2020, various benches of the Court have been sitting on a regular basis and discharging their duties through video conferencing. The allegation made by

⁴ 1988 AIR 1208

⁵ CRL NO.9 OF 2009

the accused in his second tweet saying that keeping the supreme court in lockdown mode and denying citizens their fundamental right to justice stands groundless.

Secondly, when questions were raised on the last 4 CJI's on destroying democracy, no such evidence was provided by the accused on the statement made by him. This brings us to the conclusion that no bona fide intention was there which could be of public interest. If such bona fide intentions were to be there, the accused must have made statements only with evidence beyond reasonable doubt.

In a similar case of Justice Karnan⁶, when he accused 20 judges for corruption in 2017, he was punished with imprisonment for 6 months. While a writ petition was made to Supreme court by him, it was rejected on the ground that judicial proceedings of the Supreme court are not amenable to writ jurisdiction under Article 32 of the Indian Constitution. And thus he was the first sitting High Court judge to be sentenced to Jail. The questions raised in both Justice Karnan's case and Mr. Bhushan's case were quite similar yet the gravity of judgment passed is completely opposite and remote.

CONCLUSION



The Judgement passed in the matter of Mr. Prashant Bushan, the Hon'ble Supreme Court came up with a Judgment which has the only intention to stop the criticism which is occurring against the Supreme Court. The Tweets Of Mr. Prashant Bhushan were not Contemptuous but just only a criticism of the proceedings of the Hon'ble Supreme Court and under Article 19 which states and gives Citizens of India to express their views on any matter be it regarding to Hon'ble Supreme Court or even against its judgements and also the Hon'ble Supreme Court is adopting different yardstick on the Judgement supra while passing punishment order by using its discretion. Penalty order against Mr. Prashant Bhushan for Re.1 and failing its compliance which would lead to imprisonment of three months and also would face a practice ban of three years. In this judgement there can be seen an unusual difference in the Monetary penalty imposed and if not complied to the same would lead to a major punishment in comparison to the

⁶ W.P.(C) 6278/2017

monetary penalty. The monetary penalty or imprisonment or ban of his practice should always be equal, as by having this unequal gap makes it a show of mockery in the public which leads to loss of faith in the public. The punishment for Mr. Prashant Bhushan of three months of imprisonment and banning him from practice is itself not justifiable on looking to the involvement of Mr. Prashant Bhushan in legal fraternity which shows that the Mr. Bhushan has been involved in cases which are major issues for interest of the public and this was an attempt to somehow stop him from raising such large issues in the interest of public.

The unusual difference in monetary penalty and imprisonment gives a sense that Hon'ble Supreme Court is attempting through his case to create a deterrence that no other person should rather oppose the might of the Hon'ble Supreme Court, these acts lead to wrong loss of faith among the common people, as they might feel that courts are not working at its full potential as they might be internal wrong doings inside the legal fraternity.

The suggestion we want to suggest that if Hon'ble Supreme Court finds that there is a Contempt and if it is proven in the court then the Hon'ble Court should have specifically given the reason of contempt in this judgement and realising that the court gave the punishment of Re.1 to Mr. Prashant Bhushan and if not complied to would lead to imprisonment of three months and also three year ban from practicing the unusual degree of punishment given in here brings about a thought of confusion among public in large, only if the Hon'ble Supreme Court would had given a specific reason to this unusual difference, the reason of the punishment is very important when such a matter is involved as these type of matters involve high involvement of Indian and foreign media and it could lead to bad image of the Hon'ble Supreme Court. Hence, the Hon'ble Supreme Court should in every new contempt cases may add these following suggestions as these cases always act as a precedence to new cases in future and might lead to wrong judgements for a few people who were may be innocent.

