

**Court No. - 44**

**Case :-** CONTEMPT APPLICATION (CRIMINAL) No. - 17 of 2010

**Petitioner :-** Ravi Kiran Jain Senior Advocate

**Respondent :-** Vinod Mehta Editor-In-Chief Outlook & Others

**Petitioner Counsel :-** R.K. Jain (In Person)

**Hon'ble Imtiyaz Murtaza,J.**

**Hon'ble Naheed Ara Moonis,J.**

The present petition has been preferred by the petitioner who is a Senior Advocate practising in this High Court praying for taking *suo motu* cognizance for punishing the respondents under the Contempt of Courts Act 1971 for their acts of scandalizing the Court by making reckless allegations against the Chief Justice of this Court, by imputing motives to him of having passed administrative orders for favouring Smt. Mayawati, Chief Minister of U.P. and making other pejorative allegations against the judiciary and in this manner they have lowered the authority of this Court, and also interfered with the due course of judicial proceedings.

The matter has its genesis in an article which appeared in the 4<sup>th</sup> October, 2010 issue of the weekly Magazine "Out Look" which has been published for the week of Sept 28-Oct 04, 2010. In this article the Chief Justice of this Court F.I. Rebello has been bracketed with certain High Court Judges, who have been aspersed upon to have detracted from the judicial propriety. The essential allegations which are said to be contemptuous, ascribe motives to the Chief Justice for taking away the case of sanction for prosecution from the Bench of Justice Pradeep Kant and Justice Shabihul Hasnain

in the Taj Corridor matter at the fag end of the hearing of the case after his meeting with the Chief Minister Sushri Mayawati, for conferring an advantage on her. There was no specific order taking away the case, and the administrative orders bifurcating Criminal PILs from Civil PILs, and holding that PILs seeking prosecution sanctions would be cognizable by the criminal PIL Bench which resulted in the case being taken away from the Bench, was regarded as a colourable exercise of power by Chief Justice Rebello.

The petitioner has also identified certain sentences from the Article which it is stated are derogatory to the judiciary and the Chief Justice in particular which are quoted below.

In para 5 it is mentioned that the cover page of the issue contains the title "The Six Black Sheep", relating to 6 past Chief Justices of India who have been described as black sheep. This cover story has been correlated with the present article.

In para 7, reference has been made to a Heading at page 38 "How to Lower The Bar" with the sub-heading "*The State High Courts are rife with cases of abuse of law and corruption*".

The offending/contemptuous part of the article has been quoted in para 11 which further being germane to the controversy involved, is excerpted below.

*"The rumour decibels in the corridors of our high courts have steadily gone up in the past few years. The issue, of course, is the moral and monetary corruption of those that sit in judgment in these highest courts. Proof may be a bit elusive but reputations have hit rock bottom. Indeed, there is no dearth of anecdotal tales in the bar councils on how some judges routinely dole out favours. The latest*

*controversy in this long list involves the chief justice of the Allahabad HC, Justice F.I. Rebello."*

In the Article, photographs of four Judges have been published at page nos 38-39 with brief resume of alleged anecdotes denigrating them. The first Judge mentioned is Justice Soumitra Sen, the second is Justice Nirmal Yadav, the third Judge mentioned is Chief Justice F.I Rebello and the fourth Judge is Justice Mehtab Singh Gill. Here we are concerned with certain general allegations which are said to be contemptuous in nature, against the third Judge i.e Chief Justice F.I Rebello. The brief anecdote related about him, mentioned below the photograph reads as under:

*"Passed order favouring Mayawati in the Taj Corridor case days after he met her, taking control of the case away from the Judges who had issued notice against the CM."*

The present petition on account of it being labelled as a contempt application was listed before the appropriate Bench dealing with contempt matters on 30.9.2010, but one of the judges in the Division Bench recused herself and the matter has been ordered to be laid/listed before the Bench presided over by one of us (Imtiyaz Murtaza, J) vide order of the Hon. Senior Judge dated 30.9.2010.

On the matter being called out, the petitioner restricted his arguments to prefatory submissions that the Court should initiate *suo motu* action in the matter in exercise of powers conferred under section 15(1) of the Contempt of Courts Act, 1971. In this connection it was pointed out that no rules have yet been framed

by the High Court in compliance of the directions of the Apex Court in *Bal Thackrey v. Harish Pimpalkhute (AIR 2005 SC 396)*. The relevant portion of the judgement on which emphasis has been laid by the learned counsel reads as follows:

*"25. Before parting, it is necessary to direct framing of necessary rule or practice direction by the High Courts in terms of Duda's case. Accordingly, we direct Registrar General to send a copy of this Judgment to the Registrar Generals of the High Courts so that wherever rule and/or practice direction on the line suggested in Duda's case has not been framed, the High Courts may now frame the same at their earliest convenience."*

We are informed by the Office that the matter was referred to the relevant Committee and it is still under consideration there. Be that as it may, it is worth noticing that the direction was issued as far back as in the year 2005.

Before proceeding further we must first take up the question whether we should initiate contempt proceedings against the respondents *suo motu*. or whether we should treat the petition as a contempt petition at the behest of the petitioner.

It is clear that the present contempt was initiated without the consent of the Advocate General. However, a question which arises, is whether even without the consent of the Advocate General, can this Court initiate contempt proceedings on its own motion, if it is satisfied that the allegations referred to in the petition brings the case within the relevant clauses defining criminal contempt in section 2 (c) of the Contempt of Courts Act, 1971.

In connection with the submission as aforesaid whether the petition should be treated as *suo motu*, suffice it to say that the

Apex Court in S.K.Sarkar v. Vinay Chand Misra AIR 1981 SC 723

has ruled as under:

"18. It is, however, to be noted that Section 15 does not specify the basis or the source of information on which the High Court can act on its own motion. If the High Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a news paper or hearing a public speech, without there being any reference from the subordinate court or the Advocate-General, it can be said to have taken cognizance on its own motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate-General, can the High Court refuse to entertain the same on the ground that it has been made without the consent in writing of the Advocate-General ? It appears to us that the High Court has, in such a situation, a discretion to refuse to entertain the petition or to take cognizance on its own motion on the basis of the information supplied to it in that petition. If the petitioner is a responsible member of the legal profession, it may act suo motu, more so, if the petitioner-advocate, as in the instant case, prays that the court should act suo motu. The whole object of prescribing these procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court or the Supreme Court from being wasted by frivolous complaints of contempt of Court. If the High Court is prima facie satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act suo motu and commence the proceedings against the contemner. However, this mode of taking suo motu cognizance of contempt of a subordinate court, should be resorted to sparingly where the contempt concerned is of a grave and serious nature. Frequent use of this suo motu power on the information furnished by an incompetent petition, may render these procedural safeguards provided in sub-section (2), otiose. In such cases, the High Court may be well advised to avail of the advice and assistance of the Advocate-General before initiating proceedings."

The Apex Court also referred to the advice and opinion of Sanyal Committee in which advice was expressed in the following terms.

"The advice and opinion, in this connection, expressed by the Sanyal Committee is a pertinent reminder : "In the case of criminal contempt, not being contempt committed in the face of the Court, we are of the opinion that it would lighten the burden of the court, without in any way interfering with the sanctity of the

administration of justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate-General in some categories of cases at least ..... the Advocate-General may, also, move the Court not only on his own motion but also at the instance of the Court concerned....."

In *Bal Thackrey v. Harish Pimpalkhute* (AIR 2005 SC 396), the observation of the Apex Court is quoted below.

*" 22. In these matters, the question is not about compliance or non-compliance of the principles of natural justice by granting adequate opportunity to the appellant but is about compliance of the mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15 is required to be followed even when a petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were under Section 15 of the Act. From the material on record, it is not possible to accept the contention of the respondents that the Court had taken suo motu action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose consent of the Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take suo motu action in rare cases. In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions under Section 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as suo motu petitions. In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable."*  
(Emphasis added)

It is thus clearly provided that even if the petition is preferred by a private person, the Court has jurisdiction to take *suo motu* cognizance of the matter in its contempt jurisdiction, if it considers it to be a fit case for taking cognizance. It is further clarified in the law report that such *suo motu* action may be taken only in rare cases. From the above reasoning it is clear, that even in the absence of a motion or consent in writing of the Advocate General,

*suo motu* action for contempt can be initiated by the Court, if it considers it to be a fit case.

Now the question arises whether the ingredients for initiating action under the Contempt of Courts Act are discernible and whether this case falls in the category of the rare cases where notice to show cause should be issued to the alleged contemnors.

An analysis of the article shows that the article appears to be a roving indictment of the Chief Justice of the Allahabad High Court and other Judges of this Court and other Courts, and the article appears to have arrived at a prejudged conclusion about the corruption in the judiciary in the High Courts and is peppered with such headings as "*The State High Courts are rife with cases of abuse of law and corruption*". or with lines such as "*The rumour decibels in the corridors of our high courts have steadily gone up in the past few years. The issue, of course, is the moral and monetary corruption of those that sit in judgement in these highest courts. Proof may be a bit elusive but reputations have hit rock bottom. Indeed, there is no dearth of anecdotal tales in the bar councils on how some judges routinely dole out favours. The latest controversy in this long list involves the chief justice of the Allahabad HC, Justice F.I. Rebello.*"

It would thus ex-facie appear that in a reckless and unfair manner without any opportunity to the Judges who are "held in the dock" by this article, i.e. Chief Justice Rebello, and Justices Soumitra Sen, Nirmal Yadav, M.S. Gill, their photographs have been posted

relying on “anecdotal” evidence gathered from bar councils, whose sources are left undisclosed. Under the photograph of Chief Justice Rebelló, it is mentioned , *“Passed order favouring Mayawati in the Taj Corridor case days after he met her, taking control of the case away from the Judges who had issued notice against the CM.”* Before making the suggestive imputation prejudging Chief Justice Rebelló as guilty of having transferred the case in an indirect manner to favour Chief Minister Mayawati as guilty no care has been made for examining the circumstances how the case was transferred.

We may also advert to the “Norms of Journalistic Conduct” 2005 Issued by the Press Council of India.

**Norm 2 Norm 2** relating to “Pre-publication and Verification” casts a duty on the editor to check with due care and attention as to its factual accuracy and authenticity of any report or article of public interest which makes imputations against a citizen, and to seek and publish the clarification of the individual or organization involved.

**Again Norm 3 (vi) reads:**

Where the impugned publication is manifestly injurious to the reputation of the complainant, the onus shall be on the respondent to show that it was true or to establish that it constituted fair comment made in good faith for public good.

**Norm 3(viii) reads:**

Publication of defamatory news by one paper does not give licence to others to publish news/ information reproducing or repeating the same.

### **3 (xii) reads: Public interest and Public Bodies**

As a custodian of public interest, the Press has a right to highlight cases of corruption and irregularities in public bodies but such material should be based on irrefutable evidence and published after due inquiries and verification from the concerned source and after obtaining the version of the person/ authority being commented upon. Newspapers should refrain from barbed, stinging and pungent language and ironical / satirical style of comment.

#### **12.(a) reads: Caution in criticising judicial acts**

i) Excepting where the court sits 'in-camera' or directs otherwise, it is open to a newspaper to report pending judicial proceedings, in a fair, accurate and reasonable manner. But it shall not publish anything :-

-which, in its direct and immediate effect, creates a substantial risk of obstructing, impeding or prejudicing seriously the due administration of justice; or

- is in the nature of a running commentary or debate, or records the paper's own findings, conjectures, reflection or comments on issues, sub judice and which may amount to abrogation to the newspaper the functions of the court; or

-regarding the personal character of the accused standing trial on a charge of committing a crime.

ii) Newspaper shall not as a matter of caution, publish or comment on evidence collected as a result of investigative journalism, when, after the accused is arrested and charged, the court becomes seized of the case:

Nor should they reveal, comment upon or evaluate a confession allegedly made by the accused.

lii) While newspapers may, in the public interest make reasonable criticism of a judicial act or the judgement of a court for public good; they shall not cast scurrilous aspersions on, or impute improper motives, or personal bias to the judge. Nor shall they scandalize the court or the judiciary as a whole, or make personal allegations of lack of ability or integrity against a judge.

iv) Newspaper shall, as a matter of caution, avoid unfair and unwarranted criticism which, by innuendo attributes to a judge extraneous consideration for performing an act in due course of his / her judicial functions, even if such criticism does not strictly amount to criminal Contempt of Court.

#### **b) Reporting News pertaining to Court Proceedings**

Before publishing a news item about court proceedings, it will be appropriate for the correspondent and editor to ascertain its genuineness and, correctness and authenticity from the records, so that the concerned person can be held guilty and accountable for furnishing incorrect facts or wrong information about the court proceedings.

In blatant disregard of the Press Council's '**Norms of Journalistic Conduct**' restraining the news paper from casting scurrilous aspersions on, or imputing improper motives, or personal bias to the judge, or making personal allegations of lack of ability or integrity against a judge, and from making allegations of corrupt practices, and irregularities, without verification and irrefutable evidence, and without putting its information to the concerned source, the acts of the

Newspaper concerned could amount to scandalising the court or the judiciary as a whole.

In this connection, a clarification issued by the Registrar dated 28.9.10 has been placed before us, from which it is eloquent that the administrative order was issued by the Chief Justice on 20.8.2010 conferring exclusive powers on a bench headed by Justice Pradeep Kant to hear cases of Civil PILs, and on Justice A. Mateen to hear Criminal PILs at the Lucknow bench of the Allahabad High Court, on a note put up by the registry at the Lucknow bench on July 23, 2010 based on a report of the Computer Section regarding the huge pendency of PIL matters and the need for bifurcation of such matters into two categories, Civil and Criminal. For Allahabad likewise exclusive powers for hearing Civil PILs has been reserved by the Chief Justice's bench while for PILs relating to criminal matters has been assigned to the Bench headed by one of us (I.Murtaza J) by an administrative circular of the Chief Justice dated 27.8.2010. The circular further envisages that the Chief Justice has directed that in the event it was not possible for the PIL (Civil) bench to take up the matters, the PIL (Civil) matters would be heard by a Bench hearing PIL (Criminal) matters, and *vice versa*, unless there be a specific order of the Chief Justice to the contrary. In the absence of both the aforesaid benches, the matters would be taken over by the Bench presided over by the Senior most judge.

In these circumstances, *prima facie*, it appears unfair to impute motives to the Chief Justice that he had taken away the case

relating to the sanction for prosecution of Smt. Mayawati in the Taj Corridor matter in an unfair manner from the bench of Justice Pradeep Kant, as the note clarifies that owing to the huge backlog of PIL matters, for administrative convenience, PIL matters have been bifurcated into two categories, with Civil PILs in Lucknow being taken up by a bench headed by Justice Pradeep Kant, and PILs relating to Criminal matters being heard by a bench headed by Justice A. Matin.

Significantly the article when referring to a complaint dated 23.9.10 made to the CJI by the "Committee for Judicial Accountability" itself admits that it is the absolute prerogative of the Chief Justice to assign a case to a particular bench or to withdraw the case from the bench. If the Chief Justice enjoys this plenary power, no substance would lie in a complaint as to why the case was transferred by a general administrative order and not by a specific order.

However, so far as the Taj Corridor case is concerned it needs to be clarified that even after the issuance of the Chief Justice's administrative circular dated 20.8.2010, the case (Anupma Singh v. CBI and others, C.M. Application No. 19884 of 2010 and connected matters rendered in Misc Writ Petition 2087 (M/B) of 2009), was heard by the Bench of Hon'ble Pradeep Kant J and Hon'ble Shabihul Hasnain J on 23.9.10 and a Miscellaneous matter was disposed of, and the Bench itself passed an order that the writ petition be posted for hearing in the next month before the

regular bench.

Thus, the further averment in the Complaint to the CJI, that it was only for this one case that the administrative order was passed, appears misleading, factually incorrect and irresponsible. Practically, all pending criminal PILs have been transferred to Benches headed by Justice A. Matin in Lucknow, and to a Bench headed by one of us (I. Murtaza J) in Allahabad.

The ruling of the Chief Justice that PILs relating to sanctions for prosecution under section 197 (1) Cr.P.C. or section 19 of the Prevention of Corruption Act also fall in the category of criminal matters and are to be heard by a bench hearing Criminal PILs cannot be legally faulted.

Yet another aspect worthy of notice here is that the Complaint to the CJI by the Committee for Judicial Accountability is dated 23rd Sept 2010 while the Magazine being for the week commencing from 28th Sept, 2010 had come on the stalls prior to 28th Sept 2010. According to the claim of Sri Ravi Kiran Jain, Senior Advocate, the aforesaid magazine was purchased by him from the market on 25th Sept 2010. There is nothing on record to show what was the mode of sending the complaint. The complaint sent on 23rd Sept 2010 cannot be processed for publication in the Magazine in the issue meant for the week 28th Sept to 4th Oct 2010. Also whereas no citizen can be prevented from making a confidential complaint to the CJI against a particular judge, but the swift leakage of such a complaint to the press in the circumstances

as outlined above which may be suggestive of some intrigue or collusion between the complainant and the publisher will be needed to be looked into at the time of hearing of this petition.

The article aforesaid is based on a complaint made to the Chief Justice of India and it contains the excerpts of the allegations made in the complaint. It remains to be seen whether the publication which insinuates the influence of the executive on the judiciary, and tries to cast aspersions regarding routine meetings of the head of the judiciary with the executive head of the State tends to create distrust in the popular mind and impairs the confidence of the people in the courts and further tends to create mistrust that the head of the State judiciary is not of the proper standard.

On consideration of the above facts, it would *ex-facie* appear that the ingredients of section 2 (C ) of the Contempt of Court Act, 1971 are disclosed and the alleged contemnors have made themselves liable to be prosecuted under Section 2 (C)of the Contempt of Court Act, 1971 punishable under section 12 of the said Act.

The article has been attributed to have been jointly processed for publication by Sugata Srinivasaraju in Bangalore, Smruti Koppikar in Mumbai, Chander Suta Dogra in Chandigarh, Saikat Datta and Chandrani Banerjee in Delhi who have been arrayed as respondents 5 to 9. Besides the above, Vinod Mehta, the Editor -in-Chief, Outlook, Maheshwar Peri Publisher, Outlook, Kirshna Prasad, Editor, Outlook and Bishwadeep Moitra, Executive Editor, Outlook have also been arrayed as respondents 1 to 4.

Let notice be issued to the respondents accordingly to appear in Court on 12.11.2010 at 10 am intimating that the Court has taken *suo motu* cognizance of the matter and to show cause why charges be not framed for making the contemptuous statements outlined above, which denigrate the Chief Justice and the Judiciary generally and tend to scandalize and lower the authority of this Court and to prejudice the due course of judicial proceedings. Let the case be put up before the Chief Justice for assigning a bench for regular hearing in the matter on the next and subsequent dates.

As we have held above it is directed that the name of the petitioner shall be deleted from the array of parties and the case should be treated as one where the Court has taken *suo motu* action in the matter, and described as RE: In the matter of contempt by the weekly magazine OUTLOOK.

Copy of the notice shall also be given to the Registrar General, Allahabad High Court and the Government Advocate.

**Order Date :- 11.10.2010**

MH