BIJAY KUMAR MAHANTY

v.

JADU @ RAM CHANDRA SAHOO

DECEMBER 13, 2002

[Y.K. SABHARWAL AND K.G. BALAKRISHNAN, JJ.]

Contempt of Courts Act, 1971; Section 19:

Officer-in-charge of Police Station arrested accused despite production of bail order—Contempt proceedings—High Court held the Police Officer guilty of contempt and sentenced him to civil imprisonment—On appeal, held: When Order of Court is flouted the litigant should not be left without remedy else not only individual would suffer but administration of justice would be brought into disrepute—Under the facts and circumstances of the case, High Court rightly held the Police Officer guilty of contempt.

Apology tendered by the errant police officer at belated stage—Acceptance of—Held: Apology was not sincere but was tendered merely to escape punishment—Hence not accepted.

Respondent had assaulted a police officer and a case was registered against him. Sessions Judge granted him bail and in spite of production of bail order by the respondent to the officer-in-charge of the concerned Police Station, respondent was arrested by the appellant a police officer and later on released by the Magistrate. On a reference by the Sessions Court, High Court initiated Contempt proceedings against the errant Police Officer and found him guilty of contempt and sentenced him to civil imprisonment for a period of 7 days. Hence this appeal by the Police Officer.

It was contended for the appellant that High Court's finding was based on probabilities and without production of any independent evidence; and that respondent did not produce copy of the bail order before appellant/SDO and SDPO.

Dismissing the appeal, the Court

HELD: 1.1. It is of paramount public interest that the people, after

A obtaining an order of the Court, should not feel helpless or without any remedy when such order is flouted. [92-D]

1.2. Rule of law is the foundation of democratic society. Judiciary is the guardian of the rule of law. If the orders of the Court are disobeyed with impunity by those who owe an obligation to the society to preserve
B the rule of law, not only would individual litigants suffer, the whole administration of justice would be brought into disrepute. [92-G]

1.3. The case against the appellant is required to be proved beyond reasonable doubt. The contempt proceedings under the Act are quasi
C criminal. The standard of proof required is that of criminal proceedings. Therefore, the charge has to be established beyond mreasonable doubt. [93-E]

1.4. In the instant case, the charge against the appellant was proved beyond reasonable doubt. The respondent was arrested at 7.30 a.m. from
D his residence. The only other person available at that time when the certified copy of the bail order was shown to the appellant was the mother of the respondent who was examined as a witness. The appellant crushed the order. Different persons have the tendency to use different language while narrating the same incident. It is of no consequence that the
E respondent at one stage stated that the bail order when produced was 'torn', at another stage stated that it was 'bundled' and with reference to that order, his mother used the word 'rubbed'. The said order was examined by the High Court before arriving at the finding that it bears marks of violence. The appellant admitted that as per his belief the respondent had been granted bail. If that was so, appellant would have
F given an opportunity to the respondent to produce that order instead of arresting him despite that belief. The appellant wanted to arrest the respondent any way. The case related to an alleged assault on a Police Officer of a Police Station of which the appellant was in-charge. [93-F-H; 94-A]

G

1.5. No fault can be found with the finding of the High Court that the act was a result of revenge which prompted the appellant to act against his belief that the respondent had been granted bail. [94-A]

Mrityunjoy Das and Anr. v. *Sayed Hasibur Rahaman and Ors.*, [2001]
H 3 SCC 739, relied on.

2. The respondent was deprived of his personal liberty despite grant of bail by the Sessions Judge. The appellant has tendered the apology only after lapse of nearly 12 years. The apology has to be sincere and not merely to escape the punishment. It is not a fit case where the apology tendered at this belated stage ought to be accepted. In a matter of this nature, where a Police Officer, disregarding the bail order, arrests a person because case against him is of alleged assault on a police official, mere sentence of fine would not meet the ends of justice. [94-C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 441 of 1993.

From the Judgment and Order dated 7.4.1993 of the Orissa High Court in Crl. No. M.C. 124 of 1992.

Raj Kumar Mehta, Ms. M. Sarada and Ms. Suman Kukreti for the Appellant.

Janaranjan Das, for the Respondent.

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. Police Officers are supposed to be the members of a disciplined force. It is of utmost importance to curb any tendency in them to flout orders of the Court. It is more so when flouting of order results in deprivation of personal liberty of an individual. If protectors of law, to take revenge, defy court orders they will have to be sternly dealt with and appropriate punishment inflicted also with a view to send a message across the board that such an act cannot be countenanced.

The appellant is a police officer. At the relevant time, i.e., on 13th November, 1990, he was the officer-in-charge of the police station in question. A police officer of that police station had reported that the respondent had assaulted him on 30th September, 1990 which was the immersion day of Goddess Durga while he was on duty and the respondent had been asked by him to give side to other image (Medha) to pass. A case was registered against the respondent.

Now, the admitted facts. In connection with the aforesaid case, the respondent was arrested by the appellant on 13th November, 1990 from his residence at 7.30 a.m. He was kept in Police Custody and was produced

A before the Magistrate on 14th November. The respondent in respect of this very case had been granted bail by the Sessions Judge on 6th November, 1990. The respondent had obtained certified copy of the order of bail on 7th November. The respondent was produced before the Magistrate on 14th November when his advocate produced a certified copy of the order of the Sessions Judge and, thus, he was released by the Magistrate.
B

The only controversy is whether the respondent had produced, before the appellant, the certified copy of the order of bail at the time of his arrest. According to the respondent, it was produced. In the proceedings of contempt that were initiated by the High Court, on receipt of reference from the Sessions C Judge, Cuttack, appellant denied that the copy of the bail order was produced before him. The High Court, on appreciation of evidence, held that copy of the bail order was produced before the appellant who arrested the respondent despite it. The appellant was held guilty of contempt and was sentenced for civil imprisonment for a period of seven days. Under these circumstances, this appeal has been filed under Section 19 of the Contempt of Courts Act, D 1971 (for short, the 'Act').

It is of paramount public interest that the people, after obtaining an order of the Court, should not feel helpless or without any remedy when such order is flouted.

E In *Advocate General, Bihar* v. *M.P. Khari Industries,* [1980] 3 SCC 311, this Court said that ".....It may be necessary to punish as a contempt a course of conduct, which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. F The public have an interest, an abiding and a real interest and vital stake in the effective and orderly administration of justice, because unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and so it is contempt of Court not in order to protect the dignity of the Court against 'Contempt of Court' may seem to suggest, G but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with."

The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. If the orders of the court are disobeyed H with impunity by those who owe an obligation to the society to preserve the

rule of law, not only would individual litigants suffer, the whole administration of justice would be brought into disrepute. A

The case against the appellant was held proved by the High Court on appreciation of evidence, perusal of the original record of the case files including the certified copy of the bail order that had been obtained and its condition. B

Mr. Mehta, learned counsel for the appellant, submits that the finding of guilt was returned against the appellant by the High Court without production of any independent evidence. The finding, it is contended, is based on probabilities when the requirement of law is that the charge of contempt shall be proved beyond any reasonable doubt. It was also contended that the appellant, while forwarding the respondent to the Magistrate, had mentioned at the end in his own hand that the respondent told him about the bail order having been passed by the learned Sessions Judge which shows his bona fides. The further contention is that the belief of the appellant that the respondent had been granted bail was of no consequence since it was his duty to arrest the respondent in connection with the case registered against him and he could not release the respondent merely acting on his belief. Further, it was submitted that the respondent did not produce the bail order before the SDO and SDPO who had come to the police station on tension being created after the arrest of the respondent. C D E

We have no difficulty in accepting the contention that the case against the appellant is required to be proved beyond reasonable doubt. The contempt proceedings under the Act are quasi criminal. The standard of proof required is that of criminal proceedings. Therefore, the charge has to be established beyond reasonable doubt (see *Mrityunjoy Das and Anr.* v. *Sayed Hasibur Rahaman and Ors.*, [2001] 3 SCC 739. F

We are, however, unable to accept the contention of the learned counsel that the charge against the appellant has not been proved beyond reasonable doubt. The respondent was arrested at 7.30 a.m. from his residence. The only other person available at that time when the certified copy of the bail order was shown to the appellant was the mother of the respondent who was examined as a witness. The appellant crushed the order. Different persons have the tendency to use different language while narrating the same incident. It is of no consequence that the respondent at one stage stated that the bail order when produced was 'torn', at another stage stated that it was 'bundled' and with reference to that order, his mother used the word 'rubbed'. The said G H

A order, as already noticed, was examined by the High Court before arriving at the finding that it bears marks of violence. The appellant admitted that as per his belief the respondent had been granted bail. If that was so, appellant would have given an opportunity to the respondent to produce that order instead of arresting him despite that belief. The appellant wanted to arrest the respondent any way. The case related to an alleged assault on a Police Officer
B of a Police Station of which the appellant was in-charge. No fault can be found with the finding of the High Court that the act was a result of revenge which prompted the appellant to act against his belief that the respondent had been granted bail and act against such a belief. There was tension as a result of the arrest of the respondent because he was arrested despite bail order.
C There was nothing to show that the respondent was produced before the SDO and SDPO when they visited the Police Station. It is nobody's case that those officers met the respondent. The High Court has rightly held the appellant guilty of contempt of court.

Learned counsel for the appellant contends that apology that has now
D been tendered by the appellant may be accepted. The incident relates to the year 1990. The respondent was deprived of his personal liberty despite grant of bail by the Sessions Judge. The appellant has tendered the apology only now after lapse of nearly 12 years. This appeal was admitted in the year 1993. The case has been on board for quite some time. The apology has been
E tendered only on 30th November, 2002. The apology has to be sincere and not merely to escape the punishment. In our view, it is not a fit case where the apology tendered at this belated stage ought to be accepted.

Lastly, it was contended that instead of imprisonment, fine be imposed on the appellant. In a matter of this nature, where a Police Officer, disregarding
F the bail order, arrests a person because case against him is of alleged assault on a police official, we do not think that mere sentence of fine would meet the ends of justice. No interference is called for in the judgment and order of the High Court.

The appeal is accordingly dismissed.

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S.K.S. Appeal dismissed.