**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 697 of 2006**

Vishram Singh Raghubanshi …Appellant

Versus

State of U.P. …Respondent



**J U D G M E N T**

**Dr. B.S. CHAUHAN, J.**

1. This appeal has been preferred under Section 19 of the Contempt of Courts Act, 1971, (hereinafter called the `Act 1971') arising out of impugned judgment and order dated 5.5.2006 passed by the Division Bench of the Allahabad High Court in Contempt of Court Case No. 13 of 1999.

2. **FACTS:**

A) Appellant is an advocate practising for last 30 years in the District Court, Etawah (U.P.). On 25.7.1998, he produced one Om Prakash for the purpose of surrender, impersonating him as Ram

Kishan S/o Ashrafi Lal who was wanted in a criminal case in the court of IInd ACJM, Etawah. There was some controversy regarding the genuineness of the person who came to surrender and therefore, the Presiding Officer of the Court raised certain issues. So, the appellant misbehaved with the said officer in the court and used abusive language.

B) The Presiding Officer of the court vide letter dated 28.9.1998 made a complaint against the appellant to the U.P. Bar Council and vide letter dated 27.10.1998 made a reference to the High Court for initiating contempt proceedings under Section 15 of the Act, 1971 against him. The High Court considered the matter and issued show cause notice on 5.5.1999 to the appellant. In response to the said notice, the appellant submitted his reply dated 24.5.1999, denying the allegations made against him, but, tendering an apology in the form of an affidavit stating that he was keeping the court in the highest esteem.

C) The Bar Council of U.P. dismissed the complaint referred by the Presiding Officer vide order dated 18.3.2001, but the Allahabad High Court did not consider it proper to accept the explanation submitted by the appellant or accept the apology tendered by him, rather, it framed the charges against the appellant on 27.9.2004. In

response to the same, the appellant again submitted an affidavit dated 18.10.2005 tendering an apology similar to one in the affidavit filed earlier.

D) The Division Bench of Allahabad High Court considered the matter on judicial side, giving full opportunity to the appellant to defend himself. The High Court ultimately held the appellant guilty of committing the contempt and sentenced him to undergo 3 months simple imprisonment with a fine of Rs.2,000/-. Hence this appeal.

3. This Court vide order dated 26.6.2006 suspended the operation of sentence and directed the appellant to deposit the fine of Rs. 2,000/- in this Court, which seems to have been deposited.

4. Shri Sanjeev Bhatnagar, learned counsel appearing for the appellant, has submitted that he would not be in a position to defend the contemptuous behaviour of the appellant but insisted that the appellant is aged and ailing person and had tendered absolute and unconditional apologies several times. Thus, the apology may be accepted and the sentence of three months simple imprisonment be quashed.

5. On the contrary, Shri R.K. Gupta, learned counsel appearing for the respondent, has vehemently opposed the prayer made by Shri Bhatnagar and contended that the appellant does not deserve any lenient treatment considering the language used by him to the Presiding Officer of the court and such a person does not deserve to remain in a noble profession. He further contended that the apology has not been tendered at the initial stage. The first apology was tendered only after receiving show cause notice dated 5.5.1999 from the High Court and under the pressure. More so, the language of the apology is not such which shows any kind of remorse by the appellant, thus, considering the gravity of the misbehaviour of the appellant, no interference is wanted. Therefore, the appeal is liable to be rejected.

6. We have considered the rival contentions made by learned counsel for the parties and perused the record.

7. Admittedly, the case of impersonification of the person to be surrendered is a serious one, however we are not concerned as to whether the appellant had any role in such impersonification, but being an officer of the court, if any issue had been raised in this regard either by the court or opposite counsel, it was the duty of the appellant

to satisfy the Court and establish the identity of the person concerned. The conduct of the appellant seems to have been in complete violation and in contravention of the "standard of professional conduct and etiquette" laid in Section 1 of Chapter 2 (Part-VI) of the Bar Council of India Rules which, inter-alia, provides that an advocate shall maintain towards the court a respectful attitude and protect the dignity of the judicial office. He shall use his best efforts to restrain and prevent his client from resorting to unfair practices etc. The advocate would conduct himself with dignity and self respect in the court etc. etc.

There may be a case, where a person is really aggrieved of misbehaviour/conduct or bias of a judicial officer. He definitely has a right to raise his grievance, but it should be before the appropriate forum and by resorting to the procedure prescribed for it. Under no circumstances, such a person can be permitted to become the law unto himself and proceed in a manner he wishes, for the reason that it would render the very existence of the system of administration of justice at a stake.

8. Before proceeding further with the case, it may be necessary to make reference to certain parts of the complaint lodged by the Presiding Officer to the High Court against the appellant:

(i) During the course of cross examination in a criminal case on 22.8.1998, the appellant was advised that he should ask questions peacefully to the witness on which the appellant stepped over dias of the court and tried to snatch the paper of statement from him and started abusing him that "Madarchod, Bahanchod, make reference of contempt to the High Court" and stepped out, abusing similarly from the court room.

(ii) In another incident on 25.7.1998, three accused persons namely, Ram Krishan, Ram Babu and Rampal surrendered before the court and filed an application no. 57Kha for cancellation for non-bailable warrants, and the whole proceeding was completed by him. Aforesaid three accused persons, namely, Ram Krishan and Ram Babu were real brothers and sons of Ashrafi Lal. On 30.7.1998 order was passed to release them on bail but before they could be released, it came to the knowledge of the court that right accused Ram Krishan son of Ashrafi Lal had surrendered and sent to jail. This fact was brought before the court by the mother of the person Om Prakash who was actually sent to jail on 1.8.1998, of which enquiry was done and after summoning from jail the person in the name of Ram Krishan stated in the court that his name was Om Prakash, son of Sh. Krishan Jatav. The complainant Bhaidayal was also summoned who also verified the above fact. Thereafter, an inquiry was conducted

by the Presiding Officer who found the involvement of the appellant in the above case of impersonification.

9. The High Court examined the complaint and the reply submitted by the appellant to show cause notice issued by the High Court. The High Court did not find the explanation worth acceptable and, thus, vide order dated 27.9.2004, framed charges against the appellant in respect of those allegations dated 22.8.1998 and 25.7.1998 respectively.

10. It is not the case of the appellant that he was not given full opportunity to defend himself or lead evidence in support of his case. The appellant has not chosen to defend himself on merit before the High Court, rather he merely tendered apology thrice. Even before us, Shri Sanjeev Bhatnagar, learned counsel for the appellant, has fairly conceded that the appellant had been insisting from the beginning to accept his apology and let him off. Mr. Bhatnagar's case has been that in the facts and circumstances of the case, particularly considering the age and ailment of the appellant, apology should be accepted and sentence of three months simple imprisonment be set aside.

11. It is settled principle of law that it is the seriousness of the irresponsible acts of the contemnor and degree of harm caused to the administration of justice, which would decisively determine whether the matter should be tried as a criminal contempt or not. (Vide: **The Aligarh Municipal Board & Ors. v. Ekka Tonga Mazdoor Union & Ors.**, AIR 1970 SC 1767).

12. The court has to examine whether the wrong is done to the judge personally or it is done to the public. The act will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. (See: **Brahma Prakash Sharma & Ors. v. The State of U.P.,** AIR 1954 SC 10; and **Perspective Publications (P.) Ltd. & Anr. v. The State of Maharashtra,** AIR 1971 SC 221).

13. In the case of **Delhi Judicial Service Association v. State of Gujarat & Ors.,** AIR 1991 SC 2176, this Court held that the power to punish for contempt is vested in the judges not for their personal protection only, but for the protection of public justice, whose interest

requires that decency and decorum is preserved in courts of justice. Those who have to discharge duty in a Court of Justice are protected by the law, and shielded in the discharge of their duties; any deliberate interference with the discharge of such duties either in court or outside the court by attacking the presiding officers of the court would amount to criminal contempt and the courts must take serious cognizance of such conduct.

14. In **E.M.Sankaran Namboodiripad v. T.Narayanan Nambiar,** AIR 1970 SC 2015, this Court observed that contempt of court has various kinds, e.g. insult to Judges; attacks upon them; comment on pending proceedings with a tendency to prejudice fair trial; obstruction to officers of Courts, witnesses or the parties; scandalising the Judges or the courts; conduct of a person which tends to bring the authority and administration of the law into disrespect or disregard. Such acts bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. In a given case, such a conduct be committed "in respect of the whole of the judiciary or judicial system".

The court rejected the argument that in particular circumstances conduct of the alleged contemnor may be protected by Article 19(1)(a) of the Constitution i.e. right to freedom of speech and

expression, observing that the words of the second clause, of the same provision bring any existing law into operation, thus provisions of the Act 1971 would come into play and each case is to be examined on its own facts and the decision must be reached in the context of what was done or said.

15. Thus, it is apparent that the contempt jurisdiction is to uphold majesty and dignity of the law courts and the image of such majesty in the minds of the public cannot be allowed to be distorted. Any action taken on contempt or punishment enforced is aimed at protection of the freedom of individuals and orderly and equal administration of laws and not for the purpose of providing immunity from criticism to the judges. The superior courts have a duty to protect the reputation of judicial officers of subordinate courts, taking note of the growing tendency of maligning the reputation of judicial officers by unscrupulous practising advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose. Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the Institution as a whole.

16. The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse. The Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. "Liberty of free expression is not to be confounded or confused with license to make unfounded allegations against any institution, much less the Judiciary". A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client maligning the reputation of judicial officers merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system, would cause a very serious damage to the Institution of judiciary. An Advocate in a profession should be diligent and his conduct should also be diligent and conform to the requirements of the law by which an Advocate plays a vital role in the preservation of society and justice system. Any violation of the principles of professional ethics by an Advocate is unfortunate and unacceptable. (Vide: **O.P. Sharma & Ors. v. High Court of Punjab & Haryana**, (2011) 5 SCALE 518).

17. This Court in **M.B. Sanghi v. High Court of Punjab & Haryana & Ors.,** (1991) 3 SCC 600, observed as under:

> "The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officer with impunity….It is high time that we realise that much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society".

18. This leads us to the question as to whether the facts and circumstances referred hereinabove warrant acceptance of apology tendered by the appellant.

The famous humorist P.G. Wodehouse in his work "The Man Upstairs (1914)" described apology :

> "The right sort of people do not want apologies, and the wrong sort take a mean advantage of them."

The apology means a regretful acknowledge or excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionable in sincerity. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment

19. Clause 1 of Section 12 and Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tempered at a belated stage if the accused makes it **bona fide.** There can be cases where the wisdom of rendering an apology dawns only at a later stage.

20. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which is in contempt of court. An apology can be accepted in case the conduct for which the apology is given is such that it can be "ignored without compromising the dignity of the court", or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as paper apology.

21. In **Re: Bal Thackeray, Editor Samna**, (1998) 8 SCC 660, this Court accepted the apology tendered by the contemnor as the

Court came to conclusion that apology was unconditional and it gave an expression of regret and realisation that mistake was genuine.

22. In **L.D. Jaikwal v. State of U.P.,** AIR 1984 SC 1374, the court noted that it cannot subscribe to the 'slap-say sorry- and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper poorer.

(See also: **T.N. Godavarman Thirumulpad v. Ashok Khot & Anr.**, AIR 2006 SC 2007)

So an apology should not be paper apology and expression of sorrow should come from the heart and not from the pen; for it is one thing to 'say' sorry-it is another to 'feel' sorry.

23. An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the “contrition which is the essence of the purging of a contempt”. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the Court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (Vide : **Mulkh Raj v. The State of Punjab,**

AIR 1972 SC 1197**; The Secretary, Hailakandi Bar Association v. State of Assam & Anr.,** AIR 1996 SC 1925**; C. Elumalai and Ors. v. A.G.L. Irudayaraj and Anr.,** AIR 2009 SC 2214; and **Ranveer Yadav v. State of Bihar,** (2010) 11 SCC 493).

24. In **Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr.,** AIR 1969 SC 189, this Court while dealing with a similar issue observed as under:

> "…..Of course, an apology must be offered and that too clearly and at the earliest opportunity. A person who offers a belated apology runs the risk that it may not be accepted for such an apology hardly shows the contrition which is the essence of the purging of a contempt. However, a man may have the courage of his convictions and may stake his on proving that he is not in contempt and may take the risk. In the present case the appellants ran the gauntlet of such risk and may be said to have fairly succeeded."

25. This Court has clearly laid down that apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology if tendered and lack penitence, regret or

contrition, does not deserve to be accepted. (Vide: **Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr.,** AIR 1974 SC 710; **The Bar Council of Maharashtra v. M.V. Dabholkar etc.,** AIR 1976 SC 242; **Asharam M. Jain v. A.T. Gupta & Ors**., AIR 1983 SC 1151; **Mohd. Zahir Khan v. Vijai Singh & Ors.,** AIR 1992 SC 642; In **Re: Sanjiv Datta**, (1995) 3 SCC 619; and **Patel Rajnikant Dhulabhai & Ors. v. Patel Chandrakant Dhulabhai & Ors.**, AIR 2008 SC 3016).

26. In the instant case, the appellant has tendered the apology on 24.5.1999 after receiving the show cause notice from the High Court as to why the proceedings for criminal contempt be not initiated against him. It may be necessary to make the reference to the said apology, the relevant part of which reads as under:

> "That from the above facts, it is evident that the **deponent has not shown any dis-regard nor abused the Presiding Officer**, learned Magistrate and so far as allegations against him regarding surrender of Om Prakash is the name of Ram Kishan are concerned, the deponent has no knowledge regarding fraud committed by Asharfi Lal in connivance with others and deponent cannot be blamed for any fraudulent act.
>
> **That notwithstanding mentioned in this affidavit**, the deponent tenders unconditional apology to Mr. S.C. Jain, IInd Addl. Chief Judicial Magistrate, Etawah **if** for any conduct of the deponent the feelings of Mr. S.C. Jain are hurt. The deponent shall do everything and protect the dignity of judiciary. (Emphasis added)

27. On 24.11.2005, the appellant has submitted an affidavit saying as under:

> "That the deponent expresses his unqualified remorse for the incident giving rise to the present contempt application. The deponent tenders his unconditional apology to this Hon'ble Court and to Shri Suresh Chandra Jain, the then A.C.J.M.-2 Etawah for the entire incident without any qualification or pre-condition. The deponent gives the following solemn undertaking that no such incident would occur in future. The deponent has immense respect for this Hon'ble Court and all other Courts of Law in the land.
>
> The deponent also expresses bona fide, genuine and heart-felt regret for the occurrence which the deponent consider a blot on him".

28. The High Court considered the case elaborately examining every issue microscopically and held that there was no reason to disbelieve the facts stated by the judicial officer against the contemnor/appellant, the facts were acceptable, and it was clearly proved that the contemnor was guilty of gross criminal contempt. The charges levelled against the appellant stood proved. A Judge has to discharge his duty and passes order in the manner as he thinks fit to the best of his capability under the facts and circumstances of the case before him. No litigant, far less an advocate, has any right to take the law in his own hands. The contemnor abused the Judge in most filthy

words unworthy of mouthing by an ordinary person and that is true without any justification for him ascending the dais during the course of the proceedings and then abusing the judicial officer in the words "Maaderchod, Bahanchod, High Court Ko Contempt Refer Kar". The courts certainly cannot be intimidated to seek the favourable orders. The appellant intimidated the presiding officer of the court hurling filthiest abuses and lowered the authority of the Court, which is tantamount to interfere with the due course of judicial proceedings. The charge which stood proved against the appellant could not be taken lightly and in such a fact-situation the apology tendered by him, being not bona fide, was not acceptable.

29. We have considered the facts and circumstances of the case. The show cause notice was given by the High Court on 5.5.1999. The appellant submitted his reply on 24.5.1999. The charges were framed against him on 27.9.2004 and in his first affidavit dated 18.10.2005, the appellant had denied all the allegations made against him. The so-called apology contained ifs and buts. Appellant is not even sure as to whether he has committed the criminal contempt of the court or whether the most filthy abuses could hurt the Presiding Officer.

Appellant has been of the view that the Officer was a robot and has no heart at all, thus incapable of having the feelings of being hurt.

The appellant filed second affidavit dated 24.11.2005 tendering apology. The apology has been tendered under pressure only after framing of the charges by the High Court in the Criminal Contempt when appellant realised that he could be punished. The apology was not tendered at the earliest opportunity, rather tendered belatedly just to escape the punishment for the grossest criminal contempt committed by him. The language used by the Advocate for a judicial officer where he practices regularly and earns his livelihood is such that any apology would fall short to meet the requirement of the statutory provisions. There has been no repent or remorse on the part of the appellant at an initial stage. Had it been so, instead of making grossest and scandalous allegations against the judicial officer, writing complaint against him to the Administrative Judge in the High Court of Allahabad, the appellant could have gone to the concerned judicial officer and tendered apology in open court.

The appellant instead of yielding to the court honestly and unconditionally, advanced a well guarded defence by referring to all the facts that led to the incident. Apology tendered by the appellant

gives an impression that the same was in the alternative and not a complete surrender before the law. Such attitude has a direct impact on the court's independence, dignity and decorum. In order to protect the administration of public justice, we must take action as his conduct and utterances cannot be ignored or pardoned. The appellant had no business to overawe the court.

Thus, we are of the view that the apology tendered by the appellant had neither been sincere nor bona fide and thus, not worth acceptance.

30. The appeal lacks merit and is, accordingly, dismissed. A copy of the judgment and order be sent to the Chief Judicial Magistrate, Etawah, for taking the appellant into custody and send him to the jail to serve out the sentence.

**…….....J.**
**(Dr. B.S. CHAUHAN)**

**…….....J.**
**(SWATANTER KUMAR)**

**New Delhi,**
**June 15, 2011**