

ITEM No. 1 B
(For Judgment)

Court No. 2

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 864-865 of 2012

AMIT CHANCHAL JHA

Appellant(s)

VERSUS

REGR. HIGH COURT OF DELHI

Respondent(s)

Date : 12/12/2014 This appeal was called on for judgment today.

For Appellant(s)

Mr.Vivek Singh, Adv.
Mr. Aseem Chandra, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Hon'ble Mr. Justice Adarsh Kumar Goel
pronounced Judgment of the Bench comprising Hon'ble
Mr. Justice T.S.Thakur, and His Lordship.

The appeals are dismissed in terms of the signed
reportable judgment.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master

(Signed reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.864-865 OF 2012

AMIT CHANCHAL JHA

...APPELLANT

VERSUS

REGISTRAR HIGH COURT OF DEHI

...RESPONDENT

J U D G M E N T

ADARSH KUMAR GOEL J.

1. These appeals have been preferred against the judgment and order dated 13th January, 2012 in Criminal Contempt No.1 of 2012 and order dated 16th January, 2012 in Criminal Miscellaneous No.753 of 2012 of the High Court of Delhi at New Delhi.

2. The appellant is an advocate practicing in Delhi High Court.

On 13th January, 2012 he allegedly abused a lady advocate (identity not being mentioned) during the judicial proceedings before an Additional District Judge, posted as Joint Registrar in the High Court. The Joint Registrar noticed that the lady lawyer was crying and she said that she was slapped by the appellant. The appellant also complained that he was also slapped. The Joint Registrar asked the lady advocate to sit in his

chamber so that normalcy could be restored. The matter was mentioned by a group of lawyers before the Acting Chief Justice. The matter was taken up by the Bench in chamber and the Joint Registrar produced the copy of proceedings recorded by him regarding the incident. However, the exact details of the incident are not mentioned in the order passed by the Bench on 13th January, 2012, in order to maintain decency. On being confronted, the appellant admitted the charge. He was informed that his conduct involved criminal contempt and asked as to why show cause notice be not issued to him. He stated that he did not wish to give any reply and was ready to face the punishment for the charge.

3. After due consideration, the Division Bench headed by the Acting Chief Justice held that the conduct of the appellant had caused interference with the judicial procedure and obstructed the administration of justice and was contumacious. The appellant appeared to be accustomed to use of brute force which was antithetic to the procedure established by law. Such incidents could lead the young advocates shying away from the court. Accordingly, the appellant was convicted for criminal contempt and was punished to undergo imprisonment for seven days and asked to do pro bono legal aid work for the inmates of the jail. He was debarred from appearing in any court in Delhi for three months and the matter was

directed to be reported to the Bar Council of India for taking appropriate action.

4. The appellant, thereafter, filed an application for recall of the order on the ground that the case did not fall in the definition of 'criminal contempt' under Section 2(c) of the Contempt of Courts Act, 1971. The altercation between the two lawyers had not taken place in the presence of the Joint Registrar and thus it was not a case of contempt in the face of the Court. Moreover, the action of the appellant was not willful as it was at the spur of the moment. The appellant was regretful and remorseful and had expressed regret without any loss of time. There was no chance of his repetition of the said act and he had not been issued notice to show cause against the punishment of debarment from the Court. He sought reconsideration of the order of imprisonment. The Bench did not find any merit in the application. It was held that the appellant had the standing of about seven years and he had admitted the incident and had stated that there was no need of issuing notice to him. The indecent behaviour of physical abuse of a lady advocate was undisputed. The incident was in the face of the court and during the judicial proceedings. If the plea of the appellant was to be accepted it will encourage litigants and their counsel to settle scores by use of force during the court

proceedings. The appellant was given due opportunity but he did not wish to file any reply and wanted the matter to be concluded. Moreover, he could have no explanation for his behaviour. Accordingly, the application was dismissed on 16th January, 2012.

5. The appellant thereafter, filed these appeals. The lady advocate was impleaded as a party to the proceedings.

6. The contention raised in the appeals is that the impugned order of conviction was not justified as no show cause notice was given and due procedure was not followed. Altercation took place on account of unreasonable behavior of the lady advocate in seeking adjournment and objecting to his presence along with the main counsel. The lady advocate scolded him and also slapped him and he slapped her back in a reflex reaction. Thereafter, she slapped him a number of times. The lady advocate falsely complained that the appellant had slapped her. She had slapped him first. The appellant offered unconditional apology as per suggestion of the Registrar after which he was again slapped. In the report of the Joint Registrar, the facts were not correctly mentioned. The appellant had also suffered swelling on his lips due to repeated slaps which was clear from the prescription of the dispensary of the High

Court. Thereafter, he was pushed hard by the counsel with whom the lady advocate was working and also abused. The appellant was informed to appear before the Court of the Chief Justice. He was advised by the members of the Bar and on the assurance of the senior members that since he was not in a normal state of mind, he should tender unconditional apology to defuse the matter reposing faith in the judiciary. The incident happened on the initiation of the lady lawyer who was solely accountable for the incident. The appellant could not put forward his version before the Chief Justice. The order of the Joint Registrar was not shown to him. Number of advocates supported the lady advocate and the appellant was not allowed to speak. He was shocked by the order of imprisonment passed against him in spite of his unconditional apology. He was informed that terms of settlement were going on but still he was taken into custody. Indecent behavior recorded in order dated 13th January, 2012 was not correct. Application for recall was made by his wife but her submissions were not noted by the Court and Order dated 16th January, 2012 was passed without even acknowledging the presence of the appellant's wife.

7. According to the appellant his unconditional apology was misconstrued and fair trial was denied to him. The High Court had fallen into grave error in ignoring the

principles of fair procedure on an erroneous assumption that the appellant had pleaded guilty, without verifying the veracity of the said assumption and without proof of admission of the charge in written form. There was no written complaint by the lady advocate. The allegations constituting contempt are required to be proved beyond reasonable doubt. The sentence was not suspended to enable him to take appropriate remedy. His mental condition in surcharged atmosphere was not properly assessed. The appellant had not voluntarily admitted anything. He was not given any legal assistance. It was wrongly observed that appellant had not disputed indecent behavior and physical abuse as the appellant was never informed or aware of the allegations and came to know of the same only from the order of the Court. Specific notice of debarment was required to be served on him. Power of *suo motu* contempt could be exercised rarely when the Court receives information from its own sources. In the present case, proceedings were at the instance of the complainant-lady advocate, represented by a team of lawyers. The proceedings were driven by personal enmity of senior associate of the lady advocate. The appellant was not allowed to file affidavit elaborating his defence. The appellant has also filed application for permission to file Annexures P4 to P8. Annexure P4 is a prescription from the dispensary and Annexures P5 to P8

are affidavits of advocates in support of the case of the appellant.

8. A counter affidavit has been filed by the lady advocate disputing the imputations concerning her. She has also mentioned details of the indecent assault of the appellant which we do not consider it appropriate to record. The appellant has filed a rejoinder affidavit reiterating the stand taken in the petition.

9. When the matter came up for hearing on 24th November, 2014, after some hearing on joint request by learned counsel for the parties, the matter was adjourned to 8th December, 2014. Thereafter affidavit dated 28th November, 2014 was filed in this Court on 2nd December, 2014 stating as follows :

"1. That I withdraw all the averments, allegations, statements etc. made against respondent No.2 in the present Criminal Appeal, Rejoinder Affidavit, Recall application dated 14.01.2012 filed in the Hon'ble High Court or any other application(s)/pleading(s).

2. That I hereby tender my unconditional and unqualified apology to this Hon'ble Court and to the Hon'ble High Court in respect of the incident that has occurred in the Hon'ble High Court on 13.01.2012.

3. That I hereby tender my unconditional and unqualified apology to the respondent No.2 in respect of the incident that has occurred in the Hon'ble High Court on 13.01.2012.

4. That the deponent most humbly prays that his apology is genuine and bonafide and may kindly be accepted by this

Hon'ble Court and the deponent may kindly be purged of the contempt."

10. An application has been filed by a lady advocate seeking direction to set up a Committee in accordance with the Vishakha Guidelines. An application for impleadment has also been filed by 68 lady advocates on the ground that issue concerned the female members of the bar.

11. We have heard Shri M.N. Krishnamani, Senior Advocate, Shri A. Sharan, Advocate appearing for the appellant and Shri Huzefa A. Ahmadi, Senior Advocate appearing for the lady advocate and perused the record.

12. Learned senior advocates appearing for the appellant have submitted that in view of affidavit tendering unqualified and unconditional apology by the appellant to the Court and to the lady advocate and withdrawal of allegations against the lady advocate, this Court may set aside the conviction of the appellant. He had already undergone imprisonment and the period of debarment from appearing in any courts in Delhi was already over. The Court may also set aside the direction to report the matter to the Bar Council of India for taking appropriate action as such direction was unnecessary.

13. Shri Ahmadi, learned senior advocate for the lady advocate, on the other hand, submitted that mere tendering of unconditional apology was not enough in a matter of this nature where dignity of the Court and of

the lady advocate was involved. It is not a case where conviction ought to be set aside. He, however, stated that at this stage it may not be necessary to refer the matter to the Bar Council of India as the matter has been dealt with by the Court in the course of considering the issue of criminal contempt. He submitted that this Court must dispel the impression that an advocate could commit a serious misconduct and then get away by mere tendering apology which in the circumstances could not be taken to be sincere.

14. We have given our anxious consideration to the sensitive issue raised before us in the matter.

15. We find substance in the submission of Shri Ahmadi that the apology tendered by the appellant is not sincere enough to be accepted so as to set aside the conviction. We have reproduced above the details of the proceedings from which it is evident that the stand of the appellant has been vacillating. He first made a statement before the Bench of the High Court on 13th January, 2012 admitting the change. He sought to partly withdraw the said stand by filing an application for recall. Thereafter, in his petition in this Court the appellant tried to contradict not only the lady advocate but also the High Court. Thereafter, when the case came up for hearing and on joint request of the counsel for the parties, the matter was adjourned, an affidavit has been

filed withdrawing all the allegations against Respondent No.2. He has however, not withdrawn the allegations against the High Court attributing incorrect recording of facts in the order of the the Bench and the Joint Registrar.

16. This Court has earlier acknowledged the falling standards of certain members of the Bar and it has become necessary to reiterate the said view on account of repeated instances which are being highlighted. In R.K. Anand vs. Registrar, Delhi High Court¹, this Court expressed its grave concern and dismay on the decline on ethical and professional standards among lawyers as follows:

"331. The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Public Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct.

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333. We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

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335. Here we must also observe that the Bar Council of India and the Bar Councils of the different States cannot escape their responsibility in this regard. Indeed the Bar Council(s) have very positively taken up a number of important issues concerning the administration of justice in the country. It has consistently fought to safeguard the interests of lawyers and it has done a lot of good work for their welfare. But on the issue of maintaining high professional standards and enforcing discipline among lawyers its performance hardly matches its achievements in other areas. It has not shown much concern even to see that lawyers should observe the statutory norms prescribed by the Council itself. We hope and trust that the Council will at least now sit up and pay proper attention to the restoration of the high professional standards among lawyers worthy of their position in the judicial system and in the society."

17. We may also recall the observations of this Court in
Sanjiv Datta, Dy. Secy., Ministry of Information &

*Broadcasting, In re*², that the legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. The honour as a legal profession has to be maintained by its members by their exemplary conduct both in and outside the Court. The lawyer has to conduct himself as a model for others in his profession as well as in private and public life. The society has right to expect from him ideal behavior. This Court observed :

"20. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it

with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more."

In Bar Council of Maharashtra vs. M.V.

Dabholkar³, it was observed :

"15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice

— social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but felt by the collective conscience of the practitioners as right:

"It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice, to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code which would drive irresponsible Judges from the profession. Without such a conscience, there should be no Judge" [Hastings, Hon John S. : *Judicial Ethics as it Relates to Participation in Money-Making Activities* — Conference on *Judicial Ethics*, p. 8. The School of Law, University of Chicago (1964)]."

—and, we may add, no lawyer. Such is the high, standard set for professional conduct as expounded by courts in this country and elsewhere."

18. We are conscious of the fact that the power of contempt should not be lightly initiated by the Court, particularly against a lawyer but the fact remains that

exercise of such power becomes necessary in the interest of public and also in the interest of due administration of justice. This aspect was considered in Pritam Pal vs. High Court of M.P.⁴, wherein reference was made to catena of decisions and it was observed:

"48. In *Morris v. Crown Office* [(1970) 1 ALL ER 1079] at page 1081, Lord Denning, M.R. said: (All ER p. 1081)

"The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society."

49. In the same case, Lord Justice Salmon spoke: (ALL ER p. 1087)

"The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented."

50. *Frankfurter, J. in Offutt v. U.S.* [348 US 11 (1954)] expressed his view as follows: (U.S. p. 14)

"It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage."

51. In *Jennison v. Baker* [(1972) 1 ALL ER 997] it is stated: (All ER p. 1006)

"The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope."

52. *Chinnappa Reddy, J. speaking for the bench in Advocate General, State of Bihar v. M.P. Khair Industries* [(1980) 3 SCC 311] citing those two decisions in the cases of *Offut* and *Jennison* stated thus: (SCC p. 315,

para 7)

"... 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. The public have an interest, an abiding and a real interest, and a 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 entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult or injury as the expression "Contempt of Court" may seem to suggest, 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."

19. As regards, the apology we may recall the observations of this Court in Pravin C. Shah vs. K.A. Mohd. Ali⁵ that :

"28. xxxxxx It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. Xxxxxx

29. This Court has held in M.Y. Shareef v. Hon'ble Judges of the Nagpur High Court [AIR (1955) SC 19] that

"an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness".
(AIR p. 23, para 10)

Ahmadi, J. (as the learned Chief Justice then was) in *M.B. Sanghi, Advocate v. High Court of Punjab and Haryana* [(1991) 3 SCC 600] while considering an apology tendered by an advocate in a contempt proceeding has stated thus: (SCC p. 603, para 2)

"And here is a member of the profession who has repeated his performance presumably because he was let off lightly on the first occasion. Soft justice is not the answer – not that the High Court has been harsh with him – what I mean is he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse – no regret – it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned Judge was lying – adding insult to injury – and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape."

30. A four-Judge Bench of this Court in *Mulk Raj v. State of Punjab* [(1972) 3 SCC 839] made the following observations which would throw considerable light on the question before us: (SCC p. 840, para 9)

"9. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace

apology is shorn of penitence. If apology is offered at a time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward. The High Court was right in not taking any notice of the appellant's expression of apology 'without any further word'. The High Court correctly said that acceptance of apology in the case would amount to allow the offender to go away with impunity after having committed gross contempt."

31. Thus a mere statement made by a contemnor before court that he apologises is hardly enough to amount to purging himself of the contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court the delinquent advocate would continue to be under the spell of the interdict contained in Rule 11 of the Rules.

32. Shri Sadrul Anam, learned counsel for the respondent Advocate submitted first, that the respondent has in fact apologised before this Court through the counsel engaged by him, and second is that when this Court observed that "this course should set everything at rest" it should be treated as the acknowledgement made by this Court that the contemnor has purged himself of the guilt.

33. We are unable to accept either of the said contentions. The observation that "this course should set everything at rest" in the judgment of this Court cannot be treated as anything beyond the scope of the plea made by the respondent in that case. That apart, this Court was certainly disinclined to accept the apology so tendered in this Court which

is clearly manifested from the outright repudiation of that apology when this Court said thus:

"We regretfully will not be able to accept his apology at this belated juncture, but would rather admonish the appellant for his conduct under our plenary powers under the Constitution, which we do hereby."

20. The above observations aptly apply to the present case.

21. In view of the above, we do not find any ground to interfere with the impugned orders except to set aside the direction to refer the matter to the Bar Council of India as such direction is unnecessary in view of the order which we have passed.

22. Subject to the above, the appeals are dismissed.

.....J.
[T.S. THAKUR]

.....J.
[ADARSH KUMAR GOEL]

NEW DELHI
DECEMBER 12, 2014