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SCANDALIZING THE COURTS – GROUNDS FOR CONTEMPT: CRITICAL ANALYSIS OF P N DUDA V. V P SHIV SHANKAR

AUTHORED BY - YAALESWAR

Introduction:

India is touted as one of the greatest democracies of the world. The supremacy of the Constitution is fortified and protected by an independent judiciary. Judicial institutions have always been the sentinel on qui vive especially the constitutional courts to the rights of the people of India. In this paradigm, what will happen if The Independent Judiciary becomes despotic? Rather than guarding the rights of the people, it abridges them. This article aims at answering this question.

Contempt of court is any action which aims at defying the authority of the court, which hampers the regular working of court and interferes with the process of imparting of justice. It may include any disrespect and disregard to any judge, or judicial court, or both.

In India, it is the Constitution which provides power to courts, for their administration of justice. Article 129, Supreme Court to be a court of record- the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215, High Court shall be a court of record-Every High Court shall be a court of record and shall have the powers of such a court including the power to punish for contempt of itself.

Article 142(2)- subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

The Contempt Of Court Act, 1971, defines two different types of contempt of **Civil contempt** defined under section, 2(b) as means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court; and the other is **Criminal contempt** defined under section, 2(c) as means the publication (whether by

words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

1. scandalizes, or tends to scandalize, or lowers or tends to lower the authority of, any court; or
2. prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
3. interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

There is a limitation period for initiating contempt of court proceeding, which is defined under section 20 of the Act that is within one year from the date on which the contempt is alleged to have been committed. Section 12 defined the punishment for contempt of court as, simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

CASE BRIEF:

P N Duda v. V P Shiv Shankar Equivalent citations:

- 1988 AIR 1208,
- 1988 SCR (3) 547

Bench: Mukharji, Sabyasachi (J)

Petitioner: P.N. DUDA

Respondent: P. SHIV SHANKAR & OTHERS

Date of Judgment: 15/04/1988

ACT

Contempt of Court Act, 1971 - Praying for initiation of proceedings for contempt of Supreme Court Under Section 15(1), (a) and (b) of Read with Rule 3(a) In **P.N. Duda v. P. Shiv Shanker**, (1988) 3 SCC 167 the respondent, Shri P. Shiv Shiv Shanker, who was a former judge of the High Court and was the Minister for Law, Justice and Company Affairs delivered a speech which was said to be contemptuous. A petition was filed by the petitioner P. N. Duda who was an advocate

but Court declined to initiate contempt proceedings. It was held that Shri P. Shiv Shanker was not guilty of contempt of Court.

Having held so, the Court went on to decide whether the petition could have been entertained on behalf of Shri Duda. In the said petition, Shri Duda had written a letter to the Attorney General seeking consent for initiating contempt proceedings against Shri P. Shiv Shanker. A copy of the said letter was also sent to the Solicitor General of India. While seeking consent, the petitioner had also stated that the Attorney General may be embarrassed to give consent for prosecution of the Law Minister and in view of the said allegations, the Attorney General felt that the credibility and authority of the office of the Attorney General was undermined and therefore did not deny or grant sanction for prosecution. The Court held that the petitioner could not move the Court for initiating contempt proceedings against the respondent without consent of the Attorney General and the Solicitor General.

The Supreme Court observed that the provision of contempt of court should not be used by judges to uphold their own dignity. In a free democracy, as India, ideas, criticisms about the judicial system or the judges should be welcomed, so long as criticisms do not impair or hamper the administration of justice. Disapproving of the tendency among judges to treat even technical violations or unintended acts as contempt, a bench headed by Justice R V Raveendran said:

It is possible that it is done to uphold the majesty of courts, and to command respect. But judges, like everyone else, will have to earn respect. They cannot demand respect by demonstration of power

FACTS OF THE CASE:

The facts of the Case involved that the Respondent No. 1, Shri P. Shivshankar, Minister of Law, Justice and Company Affairs at the relevant time, delivered a Speech at a Meeting of the Bar Council of Hyderabad.

It was alleged by Petitioner that in that Speech Respondent. No. 1 made Statements derogatory to the dignity of the Supreme Court, Attributing to the Court partiality towards affluent people and using extremely intemperate and undignified language, and that the speech contained slander cast on this court both in respect of the judges and the working of the Court.

The Attorney General and the Solicitor General of India were approached by Petitioner to give

their consent for initiating Contempt proceedings but they have declined to deal with this prayer of petitioner. He stated that he had approached the Attorney General for India and the Solicitor General of India to give their consent for initiating Contempt proceedings. The Attorney General and the Solicitor General having declined to deal with this prayer of the petitioner, an application for initiation of Contempt under section 15(1)(a) and (b) of the Act read with Explanation (1) and Rule 3(a), (b) and (c) of the contempt of Supreme Court Rules, 1975, was made, wherein Shri P. Shiv Shankar, the Attorney General, the Solicitor General were made parties. The Court issued notice.

In the meantime, Shri R.N. Trivedi, Advocate, filed an Application Claiming right to be impleaded as a party, stating that the Attorney General and The Solicitor General should not have been made parties to the Contempt Petition and that the alleged non-exercise of the jurisdiction by the Attorney-General and Solicitor General had not Constituted Contempt within the meaning of Section 2(c) of the Act.

The Court declined to initiate the Contempt proceeding, dismissed the petition and disposed of the application filed by Shri. R.N. Trivedi.

It is mentioned that any Criticism about the Judicial System or the Judges which hampers the administration of Justice or which erodes the faith in the objective approach of Judges and brings administration of justice into ridicule, must be prevented. Faith in the administration of Justice is one of the pillars through which democratic institution functions and sustains.

An Application for initiation of contempt under Section 15 (1), (a) and (b) of the Act read with Explanation (1) and Rule 3 (a), (b) and (c) of the Contempt of Supreme Court Rules, 1975 Was made, where in Shri P.shiv Shankar, The Attorney General and The Solicitor General were made parties.

The Respondent No. 1, filed an Affidavit in response to the notice issued by Court. He Stated that he had delivered the speech on the subject of accountability of the Legislature, Executive and the Judiciary and had made Comments on the accountability of the Three Organs and the theoretical implications Thereof.

He also Stated that he had intended no disrespect to any of the institution or its functionaries much

less the Supreme Court.

It was further Stated that the Contempt petition was not maintainable without the Consent of the Attorney General or The Solicitor General.

It is provided that in the free market place of Ideas, Criticism about the Judicial System or Judges should be welcomed, So long as such criticisms do not impair or hamper the administration of Justice.

In this Case, the court had examined the entire speech. Shri P.Shiv Shankar had examined the Class Composition of the Supreme Court. His view was that the Class Composition of any instrument indicated this predisposition, prejudices. This is inevitable. The intuition more subtle than major premise on which the decision will depend, is the pride the prejudice of a human instrument of a Judge through which objectively the Judge seeks to administer justice according to law.

It was pointed out by Sabyasachi Mukharji that there were passages in the Speech, which torn out of context might be liable to be misunderstood, by reading the speech as a whole and bearing in mind the selected audience to which it was addressed, his lordship agreed with Sabyasachi Mukharji, that no Contempt had been Committed.

ISSUES

- i. Whether the Attorney General and the Solicitor General could be made parties to the Contempt application.
- ii. Whether their action or inaction was justiciable at all in any proceeding.
- iii. Whether the speech made by Shri P. Shiv Shankar had amounted to Contempt of the Court or in other words whether the speech and the effect of bringing the Court into disrepute.

JUDGEMENT:

The Court pointed out that the administration of Justice and Judges are open to public Criticism and Public Scrutiny. Judges have their accountability to the Society and their accountability must be judged by their conscience and oath of their office that is to defend and uphold the constitution and the laws without fear and favour.

Any criticism about the Judicial System or the Judges which hampers the administration of Justice or which erodes the torn out of context might be liable to be misunderstood but by reading the speech as a whole and bearing in mind the select audience to which it was addressed, his Lordship agreed with Sabyasachi Mukharji, J., that no Contempt had been Committed.

The Affidavit of the Respondent should be accepted as its face value that the speech was only a theoretical dissertation and that he intended no disrespect to this Court or its functioning.

While discussing other issues the Court came into Conclusion that -

- a) This petition, if treated as one filed under Section 15(1) read c. with rule 3(a) is not in proper form and, if treated as one filed under rules 3(b) and 3(c), is not maintainable as it is not filed by the Attorney General/Solicitor General or by any person with his consent
- b) In either event the petitioner should not have added to the petition, respondents other than the person alleged to be guilty of contempt of court and their names should be deleted from the array of the parties.
- c) In this case, the Attorney General/Solicitor General refuses consent or declines to act, their decision is not judicially reviewable and petitioner's remedy is to approach the Court for action under rule 3(a).
- d) In this case, the Attorney General/Solicitor General acted properly in declining to deal with the petitioner's application either way; and
- e) The petition was nothing more than information under rule 3(a) on which this Court may or may not take suo mot action and there is no need to initiate proceedings against respondent No. 1 for contempt of court.

The Chief Justice agreed with the other two learned Judges in that decision that in those facts the proceedings should be dropped.

Krishna Iyer, J. in his judgment observed that the Court should act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack was calculated to obstruct or destroy the judicial process. The Court must harmonise the constitutional values of free criticism, and the need for a fearless curial process and its presiding functionary, the judge. To criticise a judge fairly albeit fiercely, is no crime but a necessary right. Where freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it. The Court must avoid confusion between personal protection of a

libelled judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt but latter is, although overlapping spaces abound. The fourth functional canon is that the Fourth Estate should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest court. The fifth normative guideline for the Judges to observe is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, and the sixth consideration is that if the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of law by fouling its sources and stream.

Therefore, The Petition Was Dismissed.

CONCLUSION:

In case of **P.N. Duda v. P. Shiv Shanker**, the Supreme Court observed that the judges cannot use the contempt jurisdiction for upholding their own dignity. Our country is the free marketplace of ideas and no one could be restricted to criticise the judicial system unless this criticism hampers the 'administration of justice'.

The major objective of the provision of contempt of court in any country is to provide a tool to the judiciary that can be used against such parties, lawyers and those people who obstruct in the proceedings of court. It is a very useful and important tool in the hands of judiciary, to ensure that the orders given by court in exercise of the power vested in them shall be obeyed and enforced.

If such a provision would not be with courts then, it would be a situation of right, without a mechanism to redress in case of breach of such right. Contempt of court is, mechanism of last resort, it is the sword in the hands of judiciary, to punish for noncompliance with its orders. There many been many instances, when the integrity and honor of the court has been disdained, and when the punishment for contempt of court was given by the judiciary.

Purpose, Extent & Scope, etc. of the Contempt Proceeding:

- 1) In order to be guilty of contempt an intention has to be there to act in violation of the Court's order, that is, to consciously defy the Court.

- 2) Court has to be restricted to the prayer made in application and its scope cannot be enlarged
- 3) this power has to be cautiously exercised- It may not be used as a tool for revenge; this discretion also may not be exercised on mere allegations.
- 4) The purpose of the Contempt of Courts Act is securing a feeling of confidence amongst people and for due and proper administration of justice, the power should be exercised with utmost care and caution and sparingly only in the larger interest of the society.
- 5) Law of contempt primarily, intended to maintain dignity of court. This jurisdiction is invoked when offending acts are intentional and/or motivated and/ or attempt has been made to earn small gains at the cost of hurting system of administration of justice.
- 6) Wilful conduct is the primacy and basic ingredient of the offence of contempt In India the higher judiciary has inherent powers of contempt. Purpose of the Contempt of Court, 1971 is to secure feeling of confidence of people in general and for due and proper administration of justice in the country. The Courts exercises contempt jurisdiction sparingly with care and caution. Still, the Contempt of Court law is very complex by its very nature.

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