

Court No. - 43

Case :- CONTEMPT APPLICATION (CRIMINAL) No. - 17 of 2024

Applicant :- Arun Mishra

Opposite Party :- Honble Mrs Justice Sunita Agrawal, The Then Puine Judge Of This High Court Of Judicature At Allahabad

Counsel for Applicant :- In Person

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Dr. Gautam Chowdhary,J.

Lay before another Bench of which one of us (Ashwani Kumar Mishra, J.) is not a member after obtaining necessary orders from Hon'ble The Chief Justice.

Order Date :- 3.9.2024

Mustaqeem.

Court No. - 47

Case :- CONTEMPT APPLICATION (CRIMINAL) No. - 17 of 2024

Applicant :- Arun Mishra

**Opposite Party :- Honble Mrs Justice Sunita Agrawal, The Then
Paine Judge Of This High Court Of Judicature At Allahabad**

Counsel for Applicant :- In Person

Hon'ble Rajiv Gupta,J.

Hon'ble Surendra Singh-I,J.

1. Heard Sri Arun Mishra, the applicant in person.
2. Arguments concluded. Order reserved.

Order Date :- 12.9.2024

Akbar

Order reserved on: 12.09.2024
Order delivered on: 21.09.2024

Neutral Citation No. 2024:AHC:153945-DB

Court No. - 47

Case :- CONTEMPT APPLICATION (CRIMINAL) No. - 17 of 2024

Applicant:- Arun Mishra

**Respondent :- Honble Mrs Justice Sunita Agrawal, The Then
Puisse Judge Of This High Court Of Judicature At Allahabad**

Counsel for Applicant :- In person

Hon'ble Rajiv Gupta, J.

Hon'ble Surendra Singh-I, J.

(Delivered by Hon'ble Rajiv Gupta, J.)

1. Heard Shri Arun Mishra, applicant in person and perused the material available on record.

2. The instant Contempt Application (Criminal) under Section 15(1)(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as "Act") has been filed by an Advocate with the prayer to initiate criminal contempt proceedings against a Judge of this Court Hon'ble Mrs. Justice Sunita Agrawal (hereinafter referred to as "opposite party").

3. The applicant has submitted that he is a practising Advocate of this Court and had preferred a Writ- C No. 20930 of 2020 (Satish Chandra and Another Vs. Union of India and 4 Others). The said writ petition was heard by the Bench comprising of Hon'ble Mrs. Sunita Agarwal, J. and Hon'ble Mr. Jayant Banerji, J. After hearing the counsel for the petitioner, the Court vide order dated 07.12.2020 was pleased to dismiss the said writ petition being wholly misconceived with a cost of Rs.15,000/-, which was to be deposited by the petitioner within a period of two weeks before

the Registrar General of this Court (Annexure-1 to this Contempt Application).

4. The applicant next submitted that aforesaid order dated 07.12.2020 was passed by the Division Bench presided over by the opposite party without hearing his arguments and a cost of Rs.15,000/- was also slapped upon the petitioner.

5. The applicant next drawn the attention of this Court to Chapter I Rule 7(vi) of The Allahabad High Court Rules, 1952 (hereinafter referred to as "Rules"), which provides that the Court must ensure that its process is not abused and in order to prevent abuse of process of Court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty-bound to impose heavy costs.

6. The applicant next submitted that the "cases of serious abuse of the Court" though has not been quantified, yet the cost of Rs.15,000/- was imposed upon the petitioner, which is bad in law.

7. The applicant next submitted that being aggrieved and dissatisfied by the aforesaid order dated 07.12.2020 passed by the Division Bench presided over by the opposite party, he made a complaint to the In-House Committee of the Hon'ble Supreme Court of India on 12.12.2020 highlighting the impropriety of the order passed by the Division Bench.

8. The applicant next submitted that being aggrieved and dissatisfied by the manner, in which, aforesaid order dated 07.12.2020 was passed by the Division Bench presided over by the opposite party against the petitioner, tantamounts to criminal contempt of her own Court, as such, the applicant raised the entire

episode by moving an application before the Office of Advocate General, U.P., High Court, Allahabad, for grant of consent in writing to initiate the criminal contempt proceedings against the opposite party under Section 15(1)(b) of the Act, however, the said application for grant of consent for initiating criminal contempt proceedings against the opposite party remained pending and no order granting or refusing the consent in writing, was passed by the Advocate General, though the application in prescribed format supported by an affidavit was also submitted on 15.01.2021.

9. The applicant further submitted that a complaint in regard to aforesaid order dated 07.12.2020 was also made before His Excellency The President of India on 01.03.2021, consequent to which, he was intimated by the Secretariat of *Rashtrapati Bhawan* that the matter has been referred to Law and Justice Department, New Delhi.

10. The applicant next submitted that pursuant to the aforesaid exercise undertaken by him, the Division Bench presided over by the opposite party stopped hearing the petitions preferred by him and started releasing the matter to be heard by some other Bench nominated by the Hon'ble The Chief Justice.

11. To buttress his submissions, the applicant has drawn the attention of this Court to an order dated 23.06.2021 passed in Writ-C No. 11639 of 2021 (Pawan Kumar Kesari Vs. State of U.P. and 2 Others), wherein following order has been passed :-

“Case :- WRIT - C No. - 11639 of 2021

Petitioner :- Pawan Kumar Kesari

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Arun Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Mrs. Sadhna Rani (Thakur),J.

Let this matter be posted before a Bench of which one of us (Sunita Agarwal, J.) is not a member, after obtaining nomination from Hon'ble the Chief Justice.

Order Date :- 23.6.2021”

12. The applicant further drew the attention of this Court to another order dated 27.07.2021 passed in Writ- C No. 16596 of 2021 (Rishi Chawla Vs. State of U.P. and 2 Others), in which, the applicant was the counsel for the petitioner, wherein following order has been passed :-

“Case :- WRIT - C No. - 16596 of 2021

Petitioner :- Rishi Chawla

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Arun Mishra

Counsel for Respondent :- C.S.C., Ajay Singh, Narendra Kumar Tiwari

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Mrs. Sadhna Rani (Thakur),J.

List this case as fresh before another Bench of which one of us (Mrs. Sunita Agarwal, J.) is not a member after obtaining nomination from Hon'ble the Chief Justice.

Order Date :- 27.7.2021”

13. The applicant further drew the attention of this Court to another order dated 19.08.2021 passed in Writ- C No. 16381 of

2021 (Rohit Kumar Keshari Vs. State of U.P. and Another), in which also, the applicant was the counsel for the petitioner, wherein following order has been passed :-

“Case :- WRIT - C No. - 16381 of 2021

Petitioner :- Rohit Kumar Keshari

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Arun Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Deepak Verma,J.

Lay before another bench of which one of us (Sunita Agarwal, J.) is not a member after taking nomination from the Hon'ble Chief Justice.

Order Date :- 19.8.2021”

14. The applicant next submitted that subsequently thereafter, opposite party started hearing the writ petitions filed by him and passed an order dated 09.11.2021 in Writ- C No. 22625 of 2021 (Arun Mishra Vs. Union of India and Another), which was filed by him in person and yet another order was also passed on 28.09.2022 in Writ- C No. 26752 of 2022 (Javed Ahmed Khan Vs. U.P. Financial Corporation and Another), in which, he appeared as counsel for the petitioner.

15. The applicant again drew the attention of this Court to an order dated 23.02.2021 passed in Writ- C No. 24094 of 2020 (Anil Shukla Vs. Union of India and Another), in which, he was the counsel for the petitioner, wherein following order has been passed:-

“Case :- WRIT - C No. - 24094 of 2020
Petitioner :- Anil Shukla
Respondent :- Union Of India And Another
Counsel for Petitioner :- Arun Mishra
Counsel for Respondent :- A.S.G.I.

Hon'ble Mrs. Sunita Agarwal,J.
Hon'ble Deepak Verma,J.

No one appears to press the writ petition.

Dismissed for want of prosecution.

Order Date :- 23.2.2021”

16. The applicant next submitted that though for his non-appearance, the aforesaid petition, in which, he was the counsel for the petitioner, was dismissed for want of prosecution, however, on the same day, in other writ petitions, where counsel for the petitioners have not put in their appearance, the cases have been adjourned and fixed for another date.

17. To buttress his arguments, the applicant drew the attention of this Court to an order dated 23.02.2021 passed in Writ-C No. 22729 of 2020 (Geeta Shukla Vs. District Magistrate, Allahabad and 2 Others), wherein following order has been passed:-

“Case :- WRIT - C No. - 22729 of 2020
Petitioner :- Geeta Shukla
Respondent :- District Magistrate, Allahabad And 2 Others
Counsel for Petitioner :- Raj Kumar Tiwari
Counsel for Respondent :- C.S.C., Archana Singh, Satish Chaturvedi

Hon'ble Mrs. Sunita Agarwal,J.
Hon'ble Deepak Verma,J.

No one has put in appearance on behalf of the petitioner.

Ms. Manjima Singh, holding brief of Ms. Archana Singh, learned counsel appearing for the respondent no.3 is present.

Put up this case on 03.03.2021 in the additional cause list.

Order Date :- 23.2.2021”

18. The applicant also drew the attention of this Court to yet another order dated 23.02.2021 passed in Writ-C No. 22791 of 2020 (M/S Swastik Agro Industries and Another Vs. State of U.P. and 5 Others), wherein following order has been passed :-

“Case :- WRIT - C No. - 22791 of 2020

Petitioner :- M/S Swastik Agro Industries And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Mamta Singh

Counsel for Respondent :- C.S.C., Satya Nisth Dwivedi

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Deepak Verma,J.

No one has put in appearance to press the petition.

Put up this case on 04.03.2021 in the additional cause list.

Order Date :- 23.2.2021”

19. The applicant, by placing implicit reliance upon the aforesaid orders, submitted that on the same day, though the cases of other counsels were not dismissed for want of prosecution and fixed for another date, yet his case was dismissed on the ground of non-prosecution. The aforesaid order was purposely passed in a biased manner with oblique motives just to harass and damage him, which infact tantamounts to contempt of her own Court.

20. The applicant next submitted that though immediately after passing of the order dated 07.12.2020 by the Division Bench presided over by the opposite party, he approached the Office of

Advocate General, Uttar Pradesh for grant of written consent to initiate criminal contempt proceedings against the opposite party under Section 15(1)(b) of the Act, however, his application remained pending for more than three years but no orders were passed by learned Advocate General. Consequently, he preferred a Writ- C No. 14901 of 2024 (Arun Mishra Vs. Advocate General, Uttar Pradesh, Allahabad) before this Court with the following prayers :-

“(i). Issue writ, order or direction in nature of Mandamus commanding sole respondent to decide the application (Annexure-7) for consent under Section 15(3)(b) of the Act, 1971 pending before him since 07.12.2020.

“(ii). Issue any other order or direction, which this Hon’ble Court may deem fit and proper under the circumstances of the case.”

21. The applicant next submitted that after receiving the notice of Writ- C No. 14901 of 2024 (Arun Mishra Vs. Advocate General, Uttar Pradesh, Allahabad), the Office of Advocate General sent a notice to the deponent fixing the date on 02.05.2024 for hearing the matter for grant of consent under Section 15(1)(b) of the Act. On the said date, the matter was partly heard and the next date was fixed for final hearing on 07.05.2024, on which date too, the matter was further heard and on conclusion of the arguments, the order was reserved.

22. The applicant next submitted that after conclusion of the hearing, an order dated 07.05.2024 was passed by the learned Advocate General, U.P., rejecting his application for grant of consent under Section 15(1)(b) of the Act.

23. Being aggrieved and dissatisfied by the aforesaid order dated 07.05.2024 passed by learned Advocate General, the

applicant preferred a writ petition before this Court being Writ-C No. 17851 of 2024 (Arun Mishra Vs. Advocate General) and appeared in-person. The said writ petition was heard by the Division Bench comprising of Hon'ble Mr. Shekhar B. Sharaf, J. and Hon'ble Mr. Manjive Shukla, J. and the Division Bench, after hearing the counsel in-person, had dismissed the said writ petition as not maintainable vide its order dated 15.07.2024.

24. The applicant next submitted that pursuant to the dismissal of the aforesaid writ petition, he has preferred instant Contempt Application (Criminal) under Section 15(1)(b) of the Act with the prayer to initiate criminal contempt proceedings against the opposite party, on the grounds referred herein-above.

25. To buttress his arguments, the applicant has placed reliance upon the decision of Hon'ble Apex Court passed in the case of ***Mary Pushpam Vs. Telvi Curusumary and Others reported in (2024) 3 SCC 224.***

26. Upon hearing the applicant and perusal of the record placed by him, we find that the aforesaid orders referred to by the applicant has been passed by the Division Bench presided over by the opposite party in exercise of its judicial discretion and based on the facts and circumstances of each case, which does not in any way tantamount to contempt of her own Court, for which, the applicant proposes to initiate the criminal contempt proceedings that too only against the opposite party.

27. It is further germane to point out here that tracing the history of criminal contempt proceedings that too against the Judges of Supreme Court and High Court, the Full Bench of Patna High Court in a case reported in ***AIR (1986) PAT 65, Shri Harish***

Chandra Mishra and Others Vs. Hon'ble Mr. Justice S. Ali Ahmad has observed in Paragraph No. 3, which is as under :-

“3. It was essential to preserve the discipline, while administering justice, was realised centuries ago when Anglo Saxon Laws developed the concept of contempt of court and for punishment therefor. The acts which tend to obstruct the course of justice really threaten the very administration of justice. By several pronouncements such acts which tend to obstruct or interfere with the course of justice were identified and were grouped into 'civil contempt' and 'criminal contempt'. However, for a long time they were never defined leaving it to the courts to give their verdict whether under particular set of circumstances any such offence has been committed or not. Even in India in the earlier two Acts of the years 1926 and 1952 relating to Contempt of Courts the expression 'contempt of court' was not defined. However, in the Contempt of Courts Act, 1971 (hereinafter to be referred to as 'the Act') the Parliament has purported to define 'civil contempt' and 'criminal contempt' separately. The Act has also introduced several new provisions under different sections, including prescribing the procedure for initiating proceedings for contempt.”

28. To be precise, criminal contempt has been defined in Section 2(c) of the Contempt of Courts Act, 1971, which reads :-

“2.(c) “criminal contempt” 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 :-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.”

29. Section 15(1)(a)(b) of the Act lays down the procedure for taking cognizance of criminal contempt in other cases, which reads as under :-

“15. Cognizance of criminal contempt in other cases.

(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by —

(a) the Advocate General or

(b) any other person, with the consent in writing to the Advocate General.”

30. On a plain reading in respect of criminal contempt, the Supreme Court or High Court may take action on its own motion or on a motion made by the Advocate General or another person with the consent of Advocate General in writing.

31. Admittedly, the instant criminal contempt application has not been filed by the Advocate General nor with his consent in writing, rather, the Advocate General vide his order dated 07.05.2024 has rejected the applicant's application for consent in writing, which order has also been affirmed by the Division Bench of this Court in Writ- C No. 17851 of 2024 (Arun Mishra Vs. Advocate General) vide order dated 15.07.2024.

32. As a matter of fact, the whole object of prescribing procedural mode of taking cognizance under Section 15 of the Act is to safeguard the valuable time of the Court from being wasted by the frivolous contempt petitions filed under the Act.

33. Section 15(1) of the Act requires that the motion should be made by the Advocate General or a person with the consent in writing of the Advocate General. It is for mere purpose of ensuring that the High Court is not flooded with frivolous motions but receives only motions of substance. The Advocate General has been entrusted with that function by virtue of his legal training, experience and the responsibility presumed in the holder of that Office.

34. The framers of the Act consciously wanted to put a bar on the power of private individuals, while charging any person for having committed criminal contempt of the Court with an object to curtail vexatious petition for settling personal score being filed by persons, who are purporting to uphold the majesty and dignity of the Court.

35. A criminal contempt is primarily a matter between the Court and the contemner and not a matter between a citizen and the contemner. Every citizen has no unfettered right in this respect because in some cases, he may act more out of personal prestige and vendetta than out of motive to uphold the dignity of Court. In order to safeguard such a situation, the framers of the Act thought it that a restriction should be imposed on such applications being filed directly and required them to be filed with the written consent of the Advocate General, who holds a constitutional position and can scrutinize any such application before coming to Court.

36. It is well neigh settled that contempt jurisdiction enjoyed by the Courts is only for the purpose of upholding the majesty of the judicial system that exists. While exercising this power, the Courts must not be hyper sensitive or swung by the emotions, but

must act judiciously as held by the Hon'ble Apex Court in the case of ***Chairman, West Bengal, Administrative Tribunal and Another Vs. Sk. Monobbor Hossain and Another, reported in (2012) 3 SCC 534.***

37. In the backdrop of the aforesaid facts and circumstances discussed above and in view of the settled principles of law, we are of the considered opinion that by no stretch of imagination, it can not be said that the act and conduct of the opposite party in passing the orders referred to herein-above, falls within the domain of "Criminal Contempt" as defined in the Act.

38. The decision relied upon by the applicant is clearly distinguishable on facts and is not applicable at all to the instant controversy.

39. We therefore have no hesitation to hold that the present criminal contempt application is not only frivolous but is also vexatious. In the interest of proper functioning of this Institution, such applications should be discouraged by all means. More so, when the litigant happens to be an Advocate from whom the Court is entitled to expect certain degree of responsibility and restraint as an Officer of the Court.

40. The present Criminal Contempt Application, being wholly misconceived, frivolous, irresponsible and merit-less, is liable to be rejected outrightly and is accordingly **rejected**.

Order Date:- 21.09.2024

Nadim