

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/MISC. CIVIL APPLICATION NO.1911 of 2016

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AJAY RAYDHANBHAI KUMBHARWADIYA (BORICHA)

Versus

STATE OF GUJARAT & 6 other(s)

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Appearance:

MR I H SYED, SENIOR ADVOCATE WITH MR JAYPRAKASH UMOT WITH MR PRITHU PARIMAL WITH MR VISHRUT BHANDARI for Applicant No1
MR MITESH AMIN, PUBLIC PROSECUTOR WITH MS VRUNDA SHAH, AGP for the Opponent(s) No. 1,7

MR S I NANAVATI, SENIOR ADVOCATE WITH MR PRATIK Y JASANI(5325) for the Opponent(s) No. 2

MR DIPEN K DAVE(3296) for the Opponent(s) No. 3

MR JAL UNWALA, SENIOR ADVOCATE WITH MR JIGAR G GADHAVI(5613) for the Opponent(s) No. 4,5

MR PAWAN A BAROT(6455) for the Opponent(s) No. 6

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 05/07/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. We have heard the learned Senior Advocates appearing for the respective parties at length.

2. **RULE.** Learned advocates appear and waive service of notice of rule on behalf of the respective respondents.

3. Initially, by the order dated 27.01.2022, the Coordinate Bench has passed an order as under : -

"1. Learned counsel for the complainant submits that the matter is settled and they intended to report. The same could not be done on account of complainant being in judicial custody at Bharuch.

2. We are not impressed by the said argument and as such, we having already heard learned advocates for the parties, we are of the considered view that this is a fit case for framing of the charge. List on 1st February 2022 for framing of the charge. On said date, contemner shall be present in virtual Court."

4. Thus, it was observed that *“it was a fit case for framing charge”*. Thereafter, the matter was again heard on 09.02.2022 by the Coordinate Bench on the issue of maintainability of the contempt petition and by a comprehensive order, the earlier order was reiterated and in paragraph No.5, it was directed as *“the Registry to list this matter for framing of charge/s as against the accused on 23.2.2022.”*

5. The aforesaid order dated 09.02.2022 was assailed by the respondents by filing Special Leave Petition (C) No.3885 of 2022 before the Apex Court and vide order dated 22.04.2022, the Apex Court has dismissed the SLP by passing the following order:

“We are not inclined to interfere with the impugned order. The Special Leave Petition is accordingly dismissed. Pending applications stand disposed of.”

6. Thereafter again on 30.06.2023, the Court had given an opportunity for the learned Senior Advocates appearing on behalf of the respective parties since the learned Senior Advocates appearing for the respondents had raised various submissions with regard to the maintainability of the present contempt petition.

7. By the judgment and order passed by this Court on 30.06.2023, the said submissions of the learned Senior Advocates with regard to the maintainability of the present contempt petition was rejected. As noticed in the said judgment and order dated 30.06.2023, prior to passing of such

order, in the order dated 09.02.2022, the Coordinate Bench had also examined the issue with regard to the non-maintainability of the present contempt petition.

8. Thereafter, the respondent Nos.4 to 6 have tendered affidavits expressing unconditional apology. Learned Senior Advocate Mr.Unwala, had invited the attention of this Court to the unconditional apology and has urged that the same may be considered at this stage.

9. Today, learned Senior Advocate Mr.Nanavati, while placing reliance on the judgments in the cases of Mansa Ram Zade vs. M/s.Hindusthan Steel Ltd. and Ors., AIR 1971 Cal 178, Video Movies by Propr : Haji Rasheed Mahamad vs. Ramanujam Madras and Ors., 1984 S.C.C. Online Mad 241, State of Punjab vs. Raninder Singh and Anr. (2008) 1 S.C.C. Court Cases 564, T.C. Gupta and Anr. vs. Hariom Prakash and Ors., (2013) 10 SCC 658 and finally on the decision of Mohmed Juned Shamsuddin Saiyed and Ors. vs. K.C. Kapoor, Principal Secretary and Ors., 2006 S.C.C. Online Guj. 189, has submitted that at this stage, the unconditional apology of the respondent No.2 may be accepted. He has also referred earlier affidavit tendering unconditional apology as well as subsequent affidavit also. The first affidavit dated 11.08.2016 was tendered, by Commissioner of Police, Rajkot City on behalf of the respondent No.2, and the subsequent affidavit is filed by the respondent No.2 himself on 28.02.2022. Learned Senior Advocate Mr.Nanavati, has further submitted that in case, the Court is not inclined to accept his apology, at this stage, liberty may be reserved in favour of the respondent No.2 to again put

forward his submissions with regard to accepting of the unconditional apologies.

10. Learned Senior Advocate Mr.Syed, appearing for the petitioner, while placing reliance on Section 12 of the Contempt of Courts Act, 1971 (hereinafter referred as “the Act”), has submitted that the unconditional apology can be accepted after framing of the charge(s) and at the time of imposition of punishment. It is further submitted that the Proviso of Section 12 of the Act, itself says that the accused may be discharged or the punishment accorded may be remitted to an apology being made to the satisfaction of the Court. He has further submitted that looking to the seriousness of the offence and the blatant disregard to the rule of law by the respondents, the submissions advanced by the respective learned Senior Advocates appearing for the respondents may be considered with regard to the acceptance of apology at the appropriate stage after the framing of charge.

11. As noted hereinabove, the Coordinate Bench of this Court has already expressed its opinion with regard to framing of charges against the respondents Nos.2 to 6 vide orders 27.01.2022 and 09.02.2022. The order dated 09.02.2022 was assailed before the Supreme Court and accordingly, the SLP has also been dismissed.

12. At this stage, it would be apposite to refer to the provisions of Section 12 of the Act, which is as under : -

“12. Punishment for contempt of court.—

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: —(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both\:" Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person: Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer. Explanation.—For the purposes of sub-sections (4) and (5),—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(d) "director", in relation to a firm, means a partner in the firm."

13. As noted hereinabove, Section 12 of the Contempt of Courts Act, carries the caption punishment for Contempt of Court.

14. A bare perusal of the provisions of Section 12 of the Act would reveal that the Court, while examining the proceedings under the Contempt of Courts Act, may punish the contemnor with simple imprisonment for term, which may extend to six months or with fine which may extend to Rs.2,000/- or with both. The Proviso to Section 12 of the Act stipulates that provided that the accused may be "discharged" or the punishment awarded may be remitted on apology being made to the satisfaction of the Court. In the order dated 30.06.2023, after considering the submissions advanced by learned Senior Advocate Mr.Sudhir Nanavati, it was also recorded in paragraph No.20 that apology will be considered at the appropriate stage. Looking to the seriousness of the allegations levelled by the complainant against the respondent nos.2 to 6, and in wake of the earlier orders passed by this Court, we are not inclined to close the proceedings at this stage by accepting the apology. Thus, the apology, which is tendered by the concerned respondents, will be considered at the relevant stage, at an appropriate time, after framing of charges. For the time being, we have not expressed any opinion in this regard. The allegations levelled by the complainant against the respondent Nos.2 to 6 are very serious in nature and this Court, at this stage, would like to frame charges against the respondent Nos.2, 3, 4, 5 and 6.

15. We may also refer to Rules 12 and 13 of the Contempt of Court (Gujarat High Court) Rules, 1984, which prescribe procedure after cognizance. Rule 12 prescribes preliminary hearing and notice to be issued to the contemnor. Rule 13(a) imposes issuance of Notice in prescribed Form No.1 annexed to the Rules. Form no.1 mentions to state briefly the nature of contempt. We have perused the Notice issued by the Registry in Form No.1. A perusal of the same reveals that while issuing the notice, the Registry has failed to mention the nature of contempt, since it is silent about violation of the guidelines issued by the Supreme Court in the case of Aarnesh Kumar Vs. State of Bihar, (2014) 8 S.C.C. 273 and in the case of D.K.Basu vs. State of West Bengal, (1997) 1 S.C.C. 416.

16. We frame the charges as under : -

(A) Respondent No.3 - Shri M.J.Dhandhal, Police Sub-Inspector, Respondent No.4 - Shri V.S.Lamba, Police Sub-Inspector and Respondent No.6 - Shri Pradumansinh Zala, Police Constable, serving at Bhaktinagar Police Station, Rajkot have brutally assaulted / beaten the complainant by sticks on 21.06.2016 after 21:25 hours in the Bhaktinagar Police Station, Rajkot and the complainant thereafter was paraded and beaten in full public view and was also forced to do sit-ups.

(B) Respondent No.3 - Shri M.J.Dhandhal, Police Sub-Inspector, over and above what is stated above, forced the complainant to consume liquor in order to justify illegal detention and registered an F.I.R. under the Gujarat Prohibition

Act being FIR being CR-I No.81 of 2016 dated 21.06.2016 at 23:55 hours.

(C) That at 17:30 hours on 22.06.2016, the complainant was mercilessly beaten after he was released on bail for the offence of prohibition at 17:30 hours by respondent No.2 - Shri B.T.Gohil, Respondent No.4 - Shri V.S.Lamba, Respondent No.5 - Shri Jaydubha Parmar and Respondent No.6 - Shri Pradumansinh Zala. He was paraded in public and was taken to Trishul Chowk and was beaten again by sticks and respondent No.5 - Shri Jayubha Parmar and another police official caught hold of the complainant and he was beaten in full public.

(D) The complainant was shown arrested at 21:30 hours in connection with first F.I.R. being C.R.-I No.96 of 2016 for the offences punishable under Sections 143, 144, 147, 148, 447 and 427 of the Indian Penal Code, registered at 03:00 hours dated 19.06.2016, for which, he was released on bail on 19.06.2016 in the evening hours. The complainant has been illegally detained for more than 24 hours by arresting him at 20 hrs., though he was in the custody.

17. Thus, you all respondent Nos.2 - Shri B.T.Gohil, respondent No.3 - Shri M.J.Dhandhal, respondent No.4 - Shri V.S. Lamba, respondent No.5 - Shri Jayubha Parmar and respondent No.6 - Shri Pradumansinh Zala by committing the aforesaid acts, have violated the law enunciated by the Supreme Court in the case of law enunciated by the Apex Court in the cases of **Aarnesh Kumar (supra)** and **D.K.Basu (supra)** and hence, why you should not be punished under the

provisions of Section 2(b) read with Section 12 of the Contempt of Courts Act, 1971.

18. Though, we have extensively heard the learned advocates appearing for the respective respondents and they have also filed the affidavits explaining the alleged act/conduct, and the involvement of the complainant in various offences, but still, in order to give them further opportunity to refute the charges as framed above, the matter is kept for hearing on **13.07.2023**.

19. It is further clarified that since we have already afforded an opportunity to the respondent Nos.2 to 6 to rebut the charges, as narrated hereinabove and to justify their action, the State Government is directed, for the present, not to take any action against the respondent Nos.2 to 6, in view of the charges having been framed against them.

20. It is further clarified that the issue of acceptance of the apology tendered by the respective respondents, is still kept open and as recorded in the order dated 30.06.2023, the same will be considered at the appropriate stage.

(A. S. SUPEHIA, J)

(M. R. MENGDEY, J)

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