

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

DIVISION BENCH

JUSTICE SHEEL NAGU
&
JUSTICE ANAND PATHAK

CONTEMPT PETITION CRIMINAL NO.05/2021

In Reference The State of Madhya Pradesh
Versus
Pankaj Mishra

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Shri MPS Raghuvanshi, learned Additional Advocate General and
Shri Rajesh Shukla, learned Dy.A.G. for State.
Shri J.P. Mishra, Shri P.S. Bhadoriya and Shri Dileep Awasthi, learned
counsel for respondent/contemnor.
Shri Pankaj Mishra -respondent present in person.

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Whether approved for reporting : Yes

Law laid down:

1. Bar and Bench share common platform for the cause of justice.
All other professions are guided by the spirit of Service and Integrity but this profession beside this spirit, also Primes Compassion, Mercy and above all Empathy. Therefore, this profession (Bar and Bench) like medical profession has distinction to heal and role of both the professions is not confined to Serve only, like other professions but their role go much beyond.

2. Relationship of Bar of Bench discussed. **Yatin Narendra Oza Vs. Khemchand Rajaram Koshthi, (2016) 6 SCC 236, D.P. Chadha Vs. Triyugi Narain Mishra and others, AIR 2001 SC 457, Mahabir Prasan Singh vs. M/s Jacks Aviation Private Ltd., AIR 1999 SC 287 and R.K. Garg, Advocate Vs. State of Himachal Pradesh, (1981) 3 SCC 166** discussed.

ORDER
{Delivered on 20th day of October, 2021}

Per Anand Pathak, J.:

1. Reference under Section 15(2) of The Contempt of Courts Act, 1971 received by this Court being sent by Judicial Magistrate First Class, Datia in respect of the conduct of respondent.
2. From the contents of reference and the documents/record appended thereto, it appear that a criminal case No.297/2016 (State Vs. Manoj Sahu and others) was going on before the concerned trial Court in which accused were facing charge of offence under Sections 452, 294, 323/34 and 506(part II) of IPC. On 10-02-2021 case was fixed for prosecution evidence. Complainant as prosecution witness Harimohan Tiwari was present and being examined. Respondent -Pankaj Mishra who is a practicing Advocate at District and Sessions Court, apparently appeared for complainant, although at the time of appearance he did not file Vakalatnama on behalf of complainant nor any application under Section 301 of Cr.P.C. was filed. It appears

from the record/proceedings that prosecution witness Harimohan Tiwari went out from courtroom for the time being during cross-examination which was taken note of by the trial Court and matter was kept after tea break.

3. After tea break when trial Court sought explanation of conduct of prosecution witness and asked the accused counsel for relevance of questions asked by him then counsel for the accused showed inclination to answer but sought moving of complainant counsel out of courtroom so that his defence may not be disclosed to the witness. Trial Court referred Section 165 of Evidence Act read with rule 193 of M.P. Criminal Court Rules and Orders and asked complainant and his counsel to move out from the courtroom. After discussion with counsel for accused/defence, complainant and his counsel were called back. This step infuriated counsel for the complainant (respondent herein) and he made following remarks:

“मुझे पंकज मिश्रा कहते हैं मेरा नाम नोट कर लीजिये। भविष्य में आपके लिए परेशानी हो जायेगी, आप ऐसी नौकरी नहीं कर पायेंगी।”

4. Thereafter, Court found conduct of respondent contemptuous and therefore, showed her intention to draw contempt proceedings against contemnor. Meanwhile prosecution witness submitted that he intends to get the case transferred to some other Court and refused to get himself cross-examined. At

this juncture, Judge of the trial Court adjourned the proceedings so that complainant may have a chance to get the case transferred. Matter was placed on 23-02-2021.

5. It further appears from the proceedings dt. 13-02-2021, complainant Harimohan Tiwari along with contemnor filed an application for early hearing before the trial Court which was allowed and matter was taken for hearing by which contemnor Pankaj Mishra filed an application under Section 301 of Cr.P.C. along with his Vakalatnama. Since no urgency was found by the trial Court, therefore, matter was placed on 23-02-2021. On next date i.e. 23-02-2021 trial Court allowed the application filed by the complainant under Section 301 of Cr.P.C. and allowed contemnor to appear on behalf of complainant and to assist public prosecutor.
6. It further appears that complainant filed an application under Section 410 of Cr.P.C. to the Court of Chief Judicial Magistrate, Datia and vide order dated 05-04-201 said application has been rejected by the CJM, Datia. Meanwhile, on 23-02-2021 accused filed an application purportedly under Section 317 of Cr.P.C. as he sought his attendance through his counsel. Complainant also sought time for cross-examination on some other date and matter was placed on 23-04-2021.
7. It further appears from the record that criminal case is still pending and trial is going on. Meanwhile instant reference has

been received by this Court and vide order dated 28-06-2021 notice was issued to the respondent so that he can file response in the matter.

8. An affidavit has been filed by the respondent Pankaj Mishra on 13-09-2021 and without trying to explain the event from his perspective at the outset he tendered unconditional apology. It is his submission that in respect of alleged incident mentioned in the order-sheet dated 10-02-2021, contemnor by filing his reply at the earliest, tendered unconditional apology before the Judicial Magistrate First Class, Datia (trial Court) and denied the occurrence of any such event. He also prayed for recalling of the observation mentioned in order-sheet dated 10-02-2021. He expressed his immense respect to this Court as well as all other Courts of law and expressed his commitment to do everything to protect the dignity of judiciary.
9. Learned counsel appearing for respondent -Pankaj Mishra as well as respondent himself expressed their unconditional apology over the incident occurred and they prayed for sympathetic consideration over the course of events. Respondent appeared more than apologetic and with folded hands he expressed remorse and apology for the event. According to him, he never meant to undermine the authority and majesty of the Court in any manner. He undertook not to repeat the same behavioural trait in future with a further

undertaking that he is ready to serve National/Social/ Environmental cause and to perform community service.

10. Learned Adll. AG/Dy. A.G. Appearing for the State referred the course of events and factual narration.
11. Heard learned counsel for the parties at length and perused the documents/proceedings available before this Court.
12. This is a case where contempt proceedings are to be seen from the vantage point of Bar and Bench relationship. Before delving upon the said issue it is apposite to look into the *Raison d^etre*” of their mutual existence. In one word, it is “Justice”. Just to elaborate the concept, we have to start with quote of French Writer Vauvenargues, when he says:-

“Emotions have taught mankind to Reason”

13. Here in adjudicatory context, “**Emotions**” is replaceable with the word “**Sensitivity**” and therefore, members of the Bar and Bench have to inculcate sensitivity to the cause of justice. Bottom line of this Cause of Justice can be summarized by saying that **every “F I L E” with same alphabets, contains a “L I F E”**.
14. Purpose of explanation is to bring home the Cause of Justice as supreme virtue in whole adjudicatory process because as referred above through Emotions (or Sensitivity) one can reach to Law, Legality and Interpretations. In other words, most pious manifestation of Law, Intellect and Interpretation is Justice

because Justice in all its forms is the End for which all other methods are Means only.

15. It is often said, Law is a Noble Profession and Bar and Bench are two wheels of the chariot of justice. In fact Bar is the genus from which species of Judges, Advocates, Senior Advocates and other Constitutional Legal Functionaries like Attorney General, Advocate General etc. evolve. Therefore, Bar and Bench share common platform for the cause of justice. All other professions are guided by the spirit of Service and Integrity but this profession beside this spirit, also primes Compassion, Mercy and above all Empathy. Therefore, this profession (Bar and Bench) like medical profession has distinction to heal and role of both the professions is not confined to Serve only, like other professions but their role go much beyond. Therefore, Legal and Medical Professionals are **Healers of Society**. Therefore, presence of emotions (sensitivity for the cause) guides the professionals to interpret the Law.

16. Apex Court time and again discussed the relationship of Bar and Bench before arriving the conclusion of accepting and rejecting the unconditional apology. One such guidance was given in the case of **Yatin Narendra Oza Vs. Khemchand Rajaram Koshthi, (2016) 6 SCC 236** in following manner:

“9. Before we express our opinion on the unconditional apology offered by the appellant and the regret expressed, we would like to refer to certain

authorities with regard to relationship between the Bar and the Bench and the necessitous conduct expected to sustain the majesty of the institution.

10. *In R.K. Garg v. State of H.P. (1981) 3 SCC 166 while observing about the legal profession, this Court observed:-*

"9. .. the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive."

11. *Stressing on the honour of the profession and the exemplary conduct expected, the Court in Ministry of Information and Broadcasting, In re (1995) 3 SCC 619 observed thus:-*

"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."

12. *In the beginning of this decade, the Court in O.P. Sharma and others v. High Court of Punjab & Haryana (2011) 6 SCC 86 was constrained to say:-*

".. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system."

13. *In Arun Kumar Yadav v. State of Uttar Pradesh (2013) 14 SCC 127 , a two-Judge Bench while emphasizing on the role of the Bar and the Bench and*

how they are treated as inextricable twins of the judicial system and the conduct shown by the appellant therein, had stated:-

"In the case at hand, we are absolutely convinced that apology or for that matter the unconditional apology was neither prompt nor genuine. The concept of mercy and compassion is ordinarily attracted keeping in view the infirmities of mans nature and the fragile conduct but in a court of law a counsel cannot always take shelter under the canopy of mercy, for the law has to reign supreme. The sanctity of law which is sustained through dignity of courts cannot be marred by errant behaviour by any counsel or litigant. Even a Judge is required to maintain the decorum and dignity of the court."

14. We have referred to the above authorities only to emphasise the necessity of dignified behavior, obedience to the norms of professional ethics and sustenance of decorum of the institution, for all combined stabilize the nobility of the profession and ensure the faith in the justice delivery system which is extremely dear to a civilized society.

15. Coming to the case at hand, after hearing learned counsel for the parties, we enquired from Mr. Sibal and Dr. Singhvi, learned senior counsel whether the appellant is present in Court and we got the answer in the affirmative. Be it stated, Mr. Raval, apart from being critical of the irresponsible proclivity of the appellant, has also expressed his anguish that he has been indulging in similar activities and giving interviews to the electronic media. In essence, the

submission of Mr. Raval is that habits are difficult to be comatosed. Regard being had to the said submissions, we required the appellant, Yatin Narendra Oza, who is present in Court, to file a further affidavit and for the said purpose we passed over the matter directing that it would be taken up at 12.30 p.m. When the matter was taken up at the stipulated time, the second affidavit was brought on record. The affidavit that has been filed today in addition to the affidavit that had already been filed on 25.08.2016, reiterates that the appellant tenders unconditional apology and undertakes that he shall not speak on the subject in issue in public except in court proceedings. On further hearing, it has been clarified that he shall neither speak nor give any kind of interview to either electronic or print media on the subject in question.

16. Taking note of the affidavits filed on the previous occasion and that of today, we are disposed to think that the appellant is repentant and the repentance is sincere; and the regret, honest. The tenor of the affidavits, as we perceive, is unmistakably relatable to expression of regret and unconditional apology. Centuries ago, Demosthenes, the famous Greek thinker had said articulation has to be sincere and honest. We treat the apology offered by Mr. Yatin Narendra Oza, who is present and filed the affidavits to be sincere and accordingly we exonerate him. Needless to say, if the appellant will speak in the tenor he has spoken, that may tantamount to ex facie contempt of the Court.

17. We possibly would have proceeded to state all is well that ends well, but we refrain from saying so as the unconditional apology remains on record and we

have taken cognizance of the repentance as we think the regret, the apology and repentance shall see the appellant in a different incarnation. We expect the appellant to constantly remind himself that the standing and dignity of the Court matter to the nation and also to the collective.”

17. Similarly, in the case of **D.P. Chadha Vs. Triyugi Narain Mishra and others**, AIR 2001 SC 457, the Apex Court has discussed the issue in following manner:

“It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In adversarial system it will be more appropriate to say __ while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of chariot. As a responsible officer of the court, as they are called __ and rightly, the counsel have an over all obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but over-zealousness and misguided enthusiasm have no place in the personality of a professional.

An advocate while discharging duty to his client, has a right to do every thing fearlessly and boldly that would advance the cause of his client.

After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.

A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.”

- 18. In the case of Mahabir Prasan Singh vs. M/s Jacks Aviation Private Ltd., AIR 1999 SC 287, the Apex Court held as under:**

“A lawyer is under obligation to do nothing that shall detract from the dignity of the Court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the court room.”

(Wervelle's Legal Ethics at p.182)

Of course, it is not a unilateral affair. There is a reciprocal duty for the court also to be courteous to the members of the Bar and to make every endeavour

for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore the aforesaid mutual respect is sine qua non for the efficient functioning of the solemn work carried on in courts of law. But that does not mean that any advocate or group of them can boycott the courts or any particular court and ask the court to desist from discharging judicial functions. At any rate, no advocate can ask the court to avoid a case on the ground that he does not want to appear in that court.”

- 19.** In the case of **R.K. Garg, Advocate Vs. State of Himachal Pradesh, (1981) 3 SCC 166**, the Apex Court held as under:

“Those who are informed of the question and think deeply upon it entertain no doubt that the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive.”

20. Preceding discussion made by this Court is just to reiterate the Spirit of Adjudication and the role of Bar and Bench in reaching to the cause of justice and unless both the wheels do not move in tandem then casualty is Justice and nothing else.
21. Magisterial Courts are the foundation on which whole edifice of Indian Judicial Architecture stands and for most of the litigants, it is the manifestation of Courts because very few reach High Court and Supreme Court. Majority of the litigants conceive their notions about Courts while observing Magisterial Courts only and not even have chance to witness proceedings before Sessions Court. Incidentally, Magistrates are usually young and are in the process of gaining experience, therefore, at times are being pressurized by some members of the Bar to act in a particular manner. It is also true that sometimes, some Magistrates react sharply and sometimes friction appears between the two. Therefore, it is the duty of the senior members of the Bar and/or Bar Association of that District to guide the members of the Bar about the nobility attached to the profession. On other side Principal District and Sessions Judge and Senior Judges are expected to guide young judges about nuances and dignity of profession. State Judicial Academy is also required to hold such sessions/discussions if possible, for such eventualities and for dispute resolution between the Bar and Bench so that dispute resolution between litigants can be

achieved for which Courts are established.

22. In the present factual context, case was proceeded smoothly till entry of respondent as counsel for complainant. Magisterial trial was pending for last 4 years and earlier case was handled by CJM. Thereafter, it was transferred to the Court of JMFC and it appears that in September, 2020 present incumbent took the charge of the case, when Corona was at its peak and Courts were partly functional (through video-conferencing). Therefore, from January onwards case gained some momentum. Ergo, Presiding Officer was not at any fault which is reflected from the proceedings. On other hand, counsel for complainant i.e. present respondent intervened the matter at the time when he did not possess even the Vakalatnama on behalf of complainant. If the matter is seen from the perspective of judgment of Apex Court as rendered in the case of **Rekha Morarka Vs. State of West Bengal, (2020) 2 SCC 474** complainant has very limited role to play. Nevertheless, respondent appeared on behalf of complainant.
23. In the present case, learned Judge is a female Judge and it is expected from the Bar members that they will appreciate the multitasking performed by a lady judge while taking care of her home, family as well as work front and therefore, more thoughtfulness and sensitivity is required in this regard.
24. Therefore, on visiting overall factual and legal contours, it

appears that learned JMFC rightly referred the matter for contempt. But at this juncture, respondent at the outset expressed unconditional apology. Before this Court respondent and his counsel did not try to defend his behaviour in any manner and only argument advanced by them was to grant respondent apology with the undertaking that he shall never repeat the misdemeanor in any Court of law as he learnt the lesson hard way and would mend his ways. Counsel for the respondent also reiterated the same prayer and referred contents of affidavit in which he has tendered apology in following manner:

“I, Pankaj Mishra S/o Shri S.C. Mishra, Aged 51 years, Occupation -Advocate, Resident of 240/19, Suresh Bhawan, Sanichara Pura Marg, Bara Bazaar Datia (M.P.), solemnly affirm on oath and state as under:

- (1) That, deponent vide affidavit dated 01-08-2021 has tendered unconditional and unqualified apology and further submits that his respect and regard for the institution is extremely high.*
- (2) That, on 10-02-2021 deponent along with his client and on his instructions was present before the court along with the Vakalatnama, however on the said date, time was not provided to tender the Vakalatnama, thereafter on 13-02-2021 deponent submitted an application for urgent hearing along with an application under Section 301 of Cr.P.C. In the said urgent hearing*

*application circumstances were mentioned due to which Vakalatnama could not be filed on 10-02-2021. The copy of the urgent application along with application under Section 301 of Cr.P.C. and Vakalatnama is enclosed and marked as **ANNEXURE R-2** collectively.*

- (4) That, it is humbly submitted that in respect of incident mentioned in the order sheet dated 10-02-2021, deponent by filing his reply at the earliest tendered unconditional apology Sushri Gunjan Gaur, Learned Judicial Magistrate First Class, Datia (M.P.) and also in Para 5 denied the occurrence of any event and prayed for recalling of the observation mentioned in order sheet dated 10-02-2021. The said reply is already annexed as ANNEXURE R-1 along with affidavit tendering unconditional apology dated 01-08-2021.*
- (5) That, the deponent further expressed 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 also to Sushri Gujan Gaur, Learned Judicial Magistrate First Class, Datia without any qualification or pre-condition. The deponent has immense respect for this Hon'ble Court and all other Courts of Law in the land.*
- (6) That, answering respondent shall do everything to protect the dignity of judiciary.”*

25. Counsel for the respondent as well as respondent also

undertakes to perform community service and to serve Environment/National/Social cause to purge his misdeeds, if any and to give him a chance for reclamation.

26. To err is human and to forgive is divine.

Keeping the said spirit into consideration as well as the fact that respondent apologized in categorical terms and it is in the interest of cause of justice that bonhomie be revived so that matter may proceed further without causing delay and friction.

27. Therefore, while advising the respondent for course correction, this Contempt Petition is disposed of with following directions:

- i- Respondent shall not indulge in any contemptuous act in future while committing misbehaviour and misconduct with any Judge of any Court of law and would not try to undermine the authority and majesty of the Court.
- ii- As per the undertaking he shall plant 20 saplings either in the District Court campus if space is available for plantation and if not then these saplings may be planted to any suitable place earmarked by the District Administration for plantation and shall take care of them till they grow into full fledged trees. It is expected from the respondent that he shall submit photographs by downloading the mobile application (App) prepared at the instance of High Court for monitoring the plantation through satellite/Geo- Tagging.

iii- It is expected that this unfortunate event would not leave any scar over the relationship of Bar and Bench at District Court, Datia and individuals connected with the proceedings either as Judge and Lawyer would come out as better individuals from this incident and would strive to become “**Healers of Society**” for cause of Justice.

28. Reference under consideration **stands disposed of** in above terms.

(Sheel Nagu)
Judge

(Anand Pathak)
Judge

Anil*

ANIL KUMAR
CHAURASIY
A

Digitally signed by ANIL KUMAR
CHAURASIYA
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