

**B.P.DAS, J & S.PANDA, J.**

SUO MOTU CONTR NO.2 OF 2010 (Decided on 24.12.2010).

**STATE**

..... Petitioner

.Vrs.

**ALEKH CHANDRA PHAI AND ANOTHER.**

.....Opp.party

**CONTEMPT OF COURTS ACT, 1971 (ACT NO.70 OF 1971) – SEC.14.**

For Appellant - ASC  
Opp.party - In Person

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Heard learned Additional Government Advocate for the petitioner-State and the contemnors in person.

The facts giving rise to this Suo Motu Contempt Proceeding are as follows :

In the night of 22/23.8.2010 at about 12.45 a.m. when Hon'ble Sri Justice P.K.Mohanty, a sitting Judge of this Court, was returning home by a car from Prime Nursing Home at Link road, Cuttack, where his uncle was under treatment, a police constable stopped the car to search at the Traffic Tower of Badambadi. When Hon'ble Justice P.K.Mohanty wanted to know the reason, Sri Alekh Chandra Pahi, Inspector in-Charge, Madhupatna Police Station immediately rushed in and getting annoyed shouted at top of his voice showing gestures in presence of the general public present. Even after some lawyers and journalists present there impressed upon the I.I.C. that the occupant of the car was Justice P.K.Mohanty of the High Court, Sri Pahi shouted loudly and answered in a very rough voice and made gestures and visual representations, which was not expected of him. Even after Justice Mohanty disclosed his identity, the police officer did not stop and continued with such behaviour. Thereafter, Justice Mohanty left the place. One Ranjan Kumar Naik, Assistant Sub-Inspector of Police, Badambadi Outpost, who was all along present with the I.I.C., never tried to prevent him from behaving in such a manner. As the action of such police officials amounts to tarnishing the image of Justice Mohanty and lowering the authority of this Court, this Court directed the Registry for initiation of proceeding under the Contempt of Courts Act against Sri Alekh Chandra Pahi, Inspector In-Charge, Madhupatna Police Station and Sri Ranjan Kumar Naik, Assistant Sub-Inspector of Police, Badambadi Outpost. Apart from that this Court also directed the Home Secretary and the D.G. & I.G. of Police of the State to make separate enquiry and file their independent reports regarding the performance of the I.I.C. at late hours of the night and general direction given to them in respect of their duties during night in dealing with public and the procedure followed by the police officers in detaining the citizens for the purpose of check up. On 23.8.2010, both the police officials appeared before this Court and were released on bail on their executing P.R bond of Rs.1000/- each and furnishing an undertaking to the effect that they will appear before this Court as and when required.

Thereafter, on 10.11.2010 both the contemnors appeared before the Court and filed their show cause affidavits and the Bench presided by Hon'ble Justice P.K.Mohanty passed orders for placing the matter before the Hon'ble Chief Justice for its assignment to an appropriate Bench. The Hon'ble Chief Justice thereafter assigned the matter to this Bench.

Initially, the contemnors-Sri Alekh Chandra Pahi and Sri Ranjan Kumar Nayak filed their show cause affidavits on 8.10.2010. Sri Pahi in his affidavit has taken a stand that on the fateful night of 22/23.8.2010, the night blocking was going on at Badambadi near the Traffic Tower with the help of A.S.I., R.K.Nayak of Badambadi Out-Post and some recruit constables. It is a fact that in that night the private vehicle occupied by the Hon'ble Justice was also checked by the recruit constables unintentionally just as a routine manner alike other vehicles without being aware about the presence of Hon'ble Justice. It is further stated therein that in absence of insignia, P.S.O. and Chauffeur in the car, he could not recognize the Hon'ble Justice sitting inside the car. Sri Pahi was at a distance of about 40 feet and immediately he was not in a position to know the factum of presence of Hon'ble Justice in the said vehicle or about the vehicle belonging to Hon'ble Justice Sri P.K.Mohanty. Further stand has been taken that since he had only joined at Madhupatna Police Station on 6.7.2010 few days prior to the alleged incident and had no opportunity to see the Hon'ble Justice earlier, he could not know the Hon'ble Justice who was inside the car. However, with regard to the allegation of getting annoyed, shouting at the top of voice, showing gestures, visual representations and showing improper behaviour to undermine the prestige of Hon'ble Justice, he submitted that to his utter misfortune he could not recognize the Hon'ble Justice inside the car. Without the knowledge regarding the presence of Hon'ble Justice, Sri Pahi politely replied to certain questions. He has begged unconditional apology for such unintentional and unfortunate momentary aberrations which have caused inconvenience to the Hon'ble Justice. By exhibiting such bona fide mistake, he never intended to undermine the prestige of Hon'ble Justice. He submitted that as a Police Officer for the last 25 years, he was associated with various courts and Hon'ble Judges within his service career and had never shown any misbehaviour to any court or Judge and he even does not have such audacity to misbehave with Hon'ble Justice, for which he has prayed to pardon him.

In the show cause affidavit filed by Ranjan Kumar Nayak, A.S.I. of Police, Badambadi Out Post, the following stands have been taken :-

- "A. That the humble contemnor had no previous knowledge about the identity of the Hon'ble Justice S.J.P.Mohanty of Orissa High Court.
- B. That the humble contemnor was about 10 to 12 feet away from the I.I.C., A.C.Pahi, for which the interaction with the Hon'ble Justice was not audible to the humble contemnor due to noising atmosphere.
- C. That as the humble contemnor is working as an A.S.I. (Too junior employee) in the police department, he did not venture to interfere in the matter of his immediate authority i.e. I.I.C., as a matter of discipline.
- D. That the role of the humble contemnor in the night of 22/23.8.2010 was not deliberate, motivated and calculated attempt to bring down the image of the judiciary in estimation of the general public or to impair the dignity of the Hon'ble Justice in any manner."

The allegations, as indicated above and the show cause affidavits so filed confirm the entire incident of stopping the vehicle of Justice Mohanty and searching the same. The fact of shouting loudly and answering in a rough voice and making gestures and visual representations are neither specifically denied nor admitted by the contemnors. In the first show cause affidavit, an attempt has been made to get rid of the culpability by saying that in absence of insignia, chauffeur and P.S.O. in the car, he could not recognize the Hon'ble Justice. A plea is taken that in absence of insignia, chauffeur and P.S.O. in the car, Sri Pahi could not recognize Justice Mohanty. We may pause here for a moment and visualize the circumstances under which Justice Mohanty was returning home at the late hour of the night. He had visited a nursing home at late hour of the night to attend his ailing uncle and at that hour of night nobody would expect that a Judge would accompany by a chauffeur or P.S.O. Further there is no embargo on the part of a Judge to move in a private car. The affidavit so filed read as a whole would indicate that as if the behaviour shown at the first instance to a sitting Judge was normal one, which usually shown to common man by the police officer. Had there been any insignia or anything to identify the Judge, the behaviour would have been better. Misbehaviour is a rule and expecting decent behaviour from a police officer is an exception. We may further make it clear that law does not permit to behave in an unbecoming and uncivilized manner to any common man, who requires the help and assistance of the police, which claims to be a so-called discipline force. The matter would have been ended there, were it been confined to checking of the vehicle, which Justice Mohanty has readily allowed. Behaviour of the officers in raising a loud voice and shouting at him in presence of the general public, even after Justice Mohanty disclosed his identity is uncalled for from the police officer. The conduct and the behaviour of this type of officers bring disrepute to the sincere, gentle and honest officers. Most of the time, the conduct of this type of officers goes un-noticed because general public dare not to bring this fact to the notice of the authorities, which encourages them. The plea taken in the first affidavit of the I.I.C. is also to cover up and justify the outrageous action. The Officer with this mindset should not be posted in police station, which is a sensitive place and he has to come in contact with the general public now and then.

In the second show cause affidavit filed by Sri Alekh Chandra Pahi on 19.11.2010, he has tried to demonstrate that the incident is unfortunate and not deliberate at all. The statements made in paragraph-7 are as follows :-

“7. That, it may be most humbly stated here that the aforesaid incident which had taken place on 22/23.8.2010 is an unfortunate and unintentional and not deliberate one and if at all even unknowingly I had acted in any manner so as to lower the image of the Hon'ble Justice or I had failed in discharging my duties if any on that day I would pray most humbly for a pardon from the Hon'ble Court in that regard.”

Bare reading of paragraph-C of the affidavit of Sri Ranjan Kumar Nayak, A.S.I. vis-à-vis the plea taken by the I.I.C., we find the role played by Sri Ranjan Kumar Nayak, A.S.I. is not free from blame. Instead of dissuading Sri Pahi, I.I.C., said Ranjan Kumar Nayak has continuously enjoyed the situation created by the I.I.C. Now a stand has been taken that he could not dissuade the I.I.C. as it would have been treated as indiscipline. This plea cannot be accepted as a Police Officer is supposed to know the distinction between legal act and illegal act. When this outrageous act is committed by the I.I.C. in presence of the A.S.I., his silence amounts to imply consent to the said act and in other

words, he has aided and abetted the offence. This shows the dark side of the police administration but all officers cannot be painted with same brush. There are large number of good officers, who have kept the head of the Police Department high for their honesty, integrity and public-friendly behaviour. From both the show cause affidavits filed, it is clear that the happening what has been narrated by Justice Mohanty has happened and now both the Officers have tendered the so-called unconditional apology alternatively taking various grounds justifying the action.

The word "Apology" means a regrettable acknowledgement of the offence necessarily implying a humble prayer to be excused for the work done. In the case of **Abdul Jabbar Taj vrs. R.K.Karanjia** (AIR 1970 Bombay 48), it is held that if an unreserved, unconditional and unqualified apology is not tendered immediately on the realization of the mistake committed but if after some discussion in the Courts and after getting a possible feeling that the matter may lead to grave consequence, an apology comes to be offered, it loses much of its grace. An apology should be evidence of real contriteness and manly consciousness of the wrong done, it ceases to be so if it is belated, and it becomes instead the cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head.

With the aforesaid background of facts, let us examine whether the contemnors are guilty of Contempt of Courts Act. The answer is yes and positive inasmuch as the aforesaid was the willful highhanded action of the contemnors towards a sitting Judge of the High Court. The utterance of the I.I.C. tends to lower the authority of this Court in the eye of public. Inasmuch as even after knowing the identity disclosed by Justice Mohanty, they have not shown any repentance and respect, rather the contemnor-Sri Alekh Chandra Pahi continued his unwarranted behaviour. The same is further fortified by the conduct of the contemnors in the affidavit filed in the Court at a belated stage justifying their action.

We are inclined to state here that the contemnors had appeared before this Court on 23.8.2010, on which date cognizance was taken and they were directed to show cause as to why they would not be held guilty of contempt of Court and suitably punished for having attempted to lower the authority of the Court. On the said date when the contemnors were first appeared, they could have filed their affidavits tendering apology or they could have at least apologized in the open Court itself. Instead of doing that, they filed the affidavits justifying their action and to cover up their culpability and Sri Alekh Chandra Pahi filed a second affidavit and the stand taken therein has been indicated in the foregoing paragraphs.

An apology by contemnor, in order to be a mitigating factor, must, among other things, be out-purring of a penitent heart moved by a genuine feeling of remorse and it must never be an apology or a convenient device to escape punishment. There cannot be both justification and apology, for they are incompatible. An apology is not a weapon to purge the guilt, it is merely meant to serve as an evidence of real contrition (See- **Surat Singh vrs. Des Raj Chowdhury, 1958 Delhi L.T.1**).

In **Re Hiren Bose** (AIR 1969 Cal-8, Page-1) a Special Bench of the Calcutta High Court observed "it is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrongdoer's power. Only then is it of any avail in a court of justice".

In **Laxmi Narayan Datta vrs. Meera Rani Dey, (1984 Cri. L.J-1033)** it has been held that the apologies tendered are of no avail if the same was done half-heartedly at the last moment, with the hope that the contemnors be excused of any acts of violation, if found guilty of the acts complained.

When apology is not a free and frank confession of their guilt indicating a penitent attitude on their part, but an attempt to justify their conduct under the cover of bona fides, a halting, hesitating and vacillating apology deserves to be rejected and thrown out (See-**State vrs. Krishna Madho**, AIR 1952 ALI. 86).

In this case, the contemnors have not tendered apology on the day when they appeared. The first affidavit filed by Sri Pahi is bereft of remorse because he has tried to justify his action by saying that as there was no insignia, chauffer or P.S.O. in the car, he could not recognize that an Hon'ble Judge was traveling in that car. The second affidavit was filed after deleting the aforesaid sentences at a belated stage. Alike the other contemnor has also in his affidavit hardly shown any repentance. So the prayer for acceptance of unconditional apology tendered by both the contemnors stands rejected.

However, considering the fact that the contemnors have not engaged any lawyer to conduct their case and they remained present in Court on each date fixed by this Court and taking a totality of the circumstances and the reports filed by the Home Secretary and Director General of Police including the outrageous incident into consideration, this Court at present does not propose to award the sentence on Sri Alekh Chandra Pahi, I.I.C. and defer it as we would like to further watch his conduct for a period of two years from today. Accordingly, we direct the contemnor-Sri Alekh Chandra Pahi, I.I.C., to furnish a personal bond to the Registrar (Judicial) of this Court in course of the day undertaking to maintain good conduct and not to repeat the act which he has committed. In case, he maintains orderly, good, decent and disciplined behaviour during the aforesaid period, then the rules shall stand discharged on expiry of two years. In case, he repeats such act, which will tantamount to Contempt, he shall be called upon to appear before this Court to receive the sentence.

So far as Sri Ranjan Kumar Nayak, A.S.I., is concerned, he is guilty of abetting and aiding the offence but instead of imprisoning or fining him, taking a lenient view, we admonish Sri Nayak to be more careful and decent in his behaviour towards the general public and not to repeat this type of act in future.

The Suo Motu CONTR is disposed of accordingly.

Application disposed of.