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R.K. GARG, ADVOCATE

v.

STATE OF HIMACHAL PRADESH

April 22, 1981

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[Y.V. CHANDRACHUD, C. J. AND A.P. SEN, J.]

Contempt of Courts Act 1971, Ss.2, 15 and 19—Advocate appearing in case—Throwing shoe at presiding Judge—Guilty of contempt of Court—Punished with imprisonment and fine.

C

Legal Profession—Professional ethics and cultured conduct—Results of violation of.

D

The appellant a practising Advocate appeared for the petitioner in a petition under the Rent Act. When the case was called out for hearing, the Judge noticed that the petitioner had not paid the process fee, as a result of which the summons could not be issued to the respondent. The Judge, proceeded to dismiss the petition under Order IX Rule 2 of the Civil Procedure Code. Taking umbrage at the dismissal of the petition the appellant hurled his shoe at the Judge which hit him on the shoulder. The Judge intending to proceed under Section 228 of the Penal Code issued a warrant of arrest against the appellant. The appellant evaded the warrant and successfully managed to prevent proceedings being taken by the Judge for the contempt of his Court. The Judge thereupon made a reference to the High Court under Section 15(2) of the Contempt of Courts Act, 1971.

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Before the High Court the appellant did not dispute that he hurled a shoe at the Judge. He explained his conduct by saying that he acted under an irresistible impulse generated by the provocative language used by the Judge. The High Court being satisfied, that the appellant was making a false allegation that the Judge had used abusive language against him and that he had given an untrue version of the very genesis of the incident, held the appellant guilty of contempt of Court and sentenced him to simple imprisonment for six months and a fine of Rs. 200/-.

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In the appeal to this Court it was pleaded that the appellant evidently lost his balance and whether or not there was any justification for it, he acted under the impulse of grave passion for which he had been sufficiently punished by the publicity which the incident had received and the notoriety which he had invited for himself and as the appellant was genuinely repentent for his conduct he should be enlarged on a mere admonition.

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Allowing the appeal in part,

HELD : 1. (i) The sentence of simple imprisonment for six months is reduced to a period of one month and the fine for Rs. 200/- is enhanced to Rs. 1000/-.

The fine if recovered shall be paid over to the Legal Aid Society functioning in the State. [540 G]

(ii) The appellant is guilty of conduct which is highly unbecoming of a practising lawyer. He hurled his shoe at the Judge in order to overawe him and to bully him into accepting his submission that the case should not be dismissed under Order IX Rule 2 C.P.C.. The appellant did his best or worst to see that the petition was not dismissed for non-payment of process fee and finding that the Judge was not willing to accept his argument, he took out his shoe in show of his physical prowess. [540 C]

(iii) The appellant's behaviour is condemned. It is most reprehensible remembering that, as a practising lawyer he is an officer of the Court. [540 D]

(iv) A long sentence of imprisonment is not imposed on the appellant since he has tendered an unconditional apology to this Court and to the trial Judge. The appellant is deeply regretful and genuinely contrite. He has suffered enough in mind and reputation and no greater purpose is going to be served by subjecting him to a long bodily suffering. [540 E, F]

2. (i) The argument of the appellant's counsel in the High Court that : "better part of discretion is to ignore it instead of fanning it. It is a *tussel between en legal profession and judiciary*", is as much to be regretted as the conduct of the appellant before the trial Judge. [541A-B]

(ii) The Bar and the Bench are an integral part of the mechanism which administers justice to the people. A discourteous Judge is like an ill-tuned instrument in the setting of a Court room. But Members of the Bar will do well to remember that flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive. [541 E, F]

CRIMINAL APPELLATE JURISDICTION : Contempt Appeal No. 19 of 1981.

From the judgment and order dated the 17th November, 1980 of the Himachal Pradesh High Court at Simla in Contempt Petition (Crl.) No. 7 of 1980.

V. M. Tarkunde, S. S. Ray, K. K. Venugopal, Dr. L. M. Singhvi, Kapil Sibbal, C. M. Nayar and L. K. Pandey for the Appellant.

L. N. Sinha, Attorney General for the Respondent (Registrar, High Court)

K. Parasaran, Soli. General and Miss A. Subhashini for the Respondent (State of H. P.)

A The Judgment of the Court was delivered by

B CHANDRACHUD, C. J. This is an appeal under sec. 19(1)b of the Contempt of Courts Act 1971, ("the Act"), against the judgment of the High Court of Himachal Pradesh dated November 17, 1980 in Contempt Case (Criminal) No. 7 of 1980, whereby the appellant was sentenced to simple imprisonment for six months and a fine of Rs. 200.

C The appellant practises as an Advocate at Solan which is a district place in the State of Himachal Pradesh. It appears that only one court generally sits at Solan which is that of the Senior Sub-Judge-cum-Chief Judicial Magistrate. The learned Judge, who presides over that Court, also exercises the powers of a Rent Controller and of the Court of Small Causes. On June 18, 1980, Shri Kuldip Chand Sud, who was the Presiding Officer of the Court, was hearing a petition under the Rent Act in which the petitioner was represented by the appellant. When the case was called out for hearing, the learned Judge noticed that the petitioner had not paid the process fee, as a result of which the summons could not be issued to the respondent. The Judge therefore proceeded to dismiss the petition under Order 9, Rule 2 of the Civil Procedure Code. Taking umbrage at the dismissal of the petition, the appellant hurled his shoe at the Judge which hit him on the shoulder. The Judge asked his **E** Orderly to take the appellant in custody but the appellant slipped away. The Judge evidently wanted to proceed under section 228 of the Penal Code for which purpose he issued a warrant of arrest against the appellant. The appellant successfully evaded the warrant and managed to prevent proceedings being taken by the Judge for the contempt of his court. The Judge then made a reference to the **F** High Court of Himachal Pradesh under section 15(2) of the Act. The High Court issued notice to the appellant enclosing therewith a copy of the reference made by the Judge.

G The appellant did not dispute in the High Court that he hurled a shoe at the Judge. He explained his conduct by saying that he acted under an irresistible impulse generated by the provocative language used by the Judge. The appellant's version is like this :

H On the previous date of hearing, the Judge had directed the appellant to pay fresh process fee and to supply the address of the respondent to the Rent Act petition. The appellant informed the Judge that he was unable to comply

with that order since the respondent had been admitted to a hospital and had since left the hospital. The house in which the respondent lived was locked. The Judge then declared that he proposed to take action under Order 9 Rule 2 of the Civil Procedure Code. The appellant asked the Judge to record his statement as to why he was unable to pay the process fee and supply the address of the respondent. Instead of recording the appellant's statement, the Judge remarked : "You rascal, I will set you right". The appellant protested at the abusive language used by the Judge, but the Judge retorted : "I repeat what I said". The appellant thereafter lost control over himself and under the "extreme heat of moment and passion, his hand fell on his shoe" which he threw towards the dais. Many persons were present in the court who witnessed the incident. After hurling the shoe at the dais, the appellant took off his coat and tie and told the court : "An unfortunate incident has happened. Do you want to take any action [against me ? I surrender". Upon this the Judge remarked : "You scoundrel get out of my court". The appellant thereafter left the court room.

The High Court had called for the comments of the Judge on the version of the appellant, from which it was satisfied that the appellant was making a false allegation that the Judge had used abusive language against him. The High Court also held that the appellant had given an untrue version of the very genesis of the incident since the Judge had not given any direction for furnishing the complete address of the respondent before him.

Many technical contentions were raised in the High Court, one of them being that section 10 of the Act was a bar to the High Court taking cognizance of the matter. It is unnecessary to go into that question or into various other matters raised in the High Court on behalf of the appellant since, Shri V. M. Tarkunde and Shri S. S. Ray who appear on behalf of the appellant, stated before us that the appellant did not desire to take a contentious attitude. It was stated on behalf of the appellant that he was prepared to tender an unconditional written apology to this Court and to produce evidence before us of his having tendered a similar apology to the trial court. Such apologies have been duly tendered.

Learned counsel appearing on behalf of the appellant appealed to us in all their persuasion that in view of the fact that the appellant

A was genuinely repentant for his conduct, he should be enlarged on a mere admonition. Counsel plead that the appellant evidently lost his balance and whether or not there was any justification for it, he acted under the impulse of grave passion for which he has been sufficiently punished by the publicity which the incident has received and the notoriety which he has invited for himself.

B We had made it clear to the learned counsel at the very time when they conveyed to us the willingness of the appellant to apologise that we offer no promise or inducement that if the appellant apologises we will take a lenient view of the matter. In our opinion the appellant is guilty of conduct which is highly unbecoming of a practising lawyer. He hurled his shoe at the Judge in order evidently to overawe him and to bully him into accepting his submission that the case should not be dismissed under Order 9 Rule 2, C.P.C. The appellant did his best or worst to see that the petition was not dismissed for non-payment of process fee and finding that the Judge was not willing to accept his argument, he took out his shoe in show of his physical prowess. We cannot adequately condemn the appellant's behaviour which strikes us as most reprehensible, remembering that, as a practising lawyer, he is an officer of the court. Such incidents can easily multiply considering the devaluation of respect for all authority, whether in law, education or politics.

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E We do not, however, propose to impose a long sentence of imprisonment on the appellant, since he has tendered an unconditional apology to this Court and to learned trial Judge. The appellant was present in our Court at the time when his appeal was argued and though, on such occasions, histrionics cannot entirely be ruled out, we did form an impression, backed by our small little experience of life and its affairs, that the appellant is deeply regretful and genuinely contrite. He has suffered enough in mind and reputation and no greater purpose is going to be served by subjecting him to a long bodily suffering. Accordingly, we reduce the sentence of six months to a period of one month, enhance the fine from Rs. 200 to Rs. 1000 and direct that the fine, if recovered, shall be paid over to a Legal Aid Society, if any, functioning in the State of Himachal Pradesh. The High Court will decide which society should get the money, if there is more than one such society, of which there is precious little likelihood. Order accordingly.

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H We will be failing in our duty if before parting with the case we did not draw attention to what the appellant's counsel Shri

Bhagirath Das said in the High Court during the course of his arguments. Shri Bhagirath Das told the learned Judges of the High Court :

“Better part of discretion is to ignore it instead of fanning it. It is *a tussel between legal profession and judiciary*”. (emphasis supplied since it must have been placed).

This part of the argument of the appellant's counsel in the High Court is as much to be regretted as the conduct of the appellant before the learned trial Judge. Discretion is undoubtedly the better part of valour but we did not know, until we read the argument advanced by the appellant's counsel in the High Court, that the better part of discretion is to ignore that a practising advocate had hurled a shoe at a Judge. We are also unable to understand how the High Court was “fanning” the incident by taking cognizance of it, which it was its clear duty to do. It makes sorry reading that “a tussel between legal profession and judiciary” should find its culmination in a member of that noble profession throwing a shoe at a Judge.

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.

All this, of course, is said without meaning any disrespect to Shri Bhagirath Das. Not he, but what he said, is the cause of this comment.

N.V.K.

Appeal partly allowed.