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YATIN NARENDRA OZA

v.

KHEMCHAND RAJARAM KOSHTI & ORS.

(Criminal Appeal No. 841 of 2016)

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AUGUST 31, 2016

**[DIPAK MISRA AND C. NAGAPPAN, JJ.]**

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*Contempt of Courts Act, 1971 – Petition pertaining to unwarranted speeches rendered, letters written or statements given by appellant – High Court issued notice under the Act and directed him not to indulge in any kind of scandalous activity or hold official meeting and pass resolution – On appeal, held – Appellant tendered unconditional apology and undertook not to speak on the subject in issue in public except in court proceedings – Apology offered by appellant treated to be sincere – Accordingly he is exonerated.*

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*Advocates: Relationship between Bar and Bench – Necessitous conduct expected to sustain the majesty of the institution – Discussed – Professional /Legal ethics.*

**Disposing of the appeal, the Court**

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**HELD: 1.** The apology offered by the appellant and affidavits filed by him are treated to be sincere and accordingly he is exonerated. If the appellant speaks in the tenor he has spoken, that may tantamount to ex facie contempt of the Court. The appellant to constantly remind himself that the standing and dignity of the Court matter to the nation and also to the collective. [Paras 16,17] [762-C, E]

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*C. Ramachandran Iyer v. Justice A.M. Bhattacharjee* (1995) 5 SCC 457; 1995 (3) Suppl. SCR 319 ; *R.K. Garg v. State of H.P.* (1981) 3 SCC 166: 1981 (3) SCR 536 ; *Ministry of Information and Broadcasting, In re* (1995) 3 SCC 619 : 1995 (3) SCR 450; *O.P. Sharma and Ors. v. High Court of Punjab and Haryana* (2011) 6 SCC 86; 2011 (6) SCR 301; *Arun Kumar Yadav v. State of Uttar Pradesh* (2013) 14 SCC 127: 2013 (6) SCR 263 – referred to.

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Case Law Reference

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1995 (3) Suppl. SCR 319 referred to Para 2

1981 (3) SCR 536 referred to Para 10

1995 ( 3 ) SCR 450 referred to Para 11

2011 (6) SCR 301 referred to Para 12

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2013 (6) SCR 263 referred to Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 3491 of 2016.

From the Judgment and Order dated 27.04.2016 of the High Court  
of Gujarat, at Ahmedabad, in Criminal Misc. Application No. 10077 of  
2016.

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Kapil Sibal, Dr. Abhishek Manu Singhvi, Mihir Thakore, R. Oza,  
Sr. Advs., Apurva Kapadia, Purvish J. Malkan, Abhinav Ramkrishna,  
Advs. for the Appellant.

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Harin P. Rawal, K. K. Venugopal, Sr. Advs., Mohit Paul, Vikas  
Arora, Ms. Diksha Jhingan, Asim Pandya, Percy Kavina, Mahesh  
Agrawal, Ankur Saigal, Shashank Manish, E. C. Agrawala, Ms.  
Hemantika Wahi, Advs. for the Respondents.

The Judgment of the Court was delivered by

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**DIPAK MISRA, J.** 1. Leave granted.

2. The present appeal, by special leave, assails the order dated  
27.4.2016 passed by the Division Bench of the High Court of Gujarat at  
Ahmedabad in CRMP (Contempt of Court) No. 10077 of 2016 whereby  
it has, after referring to assertions made in the petition and reproducing  
certain paragraphs from *C. Ravichandran Iyer v. Justice A.M.  
Bhattacharjee*<sup>1</sup>, directed as follows:-

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“9. Let there be a notice under the Contempt of Courts Act  
returnable on 2.5.2016 to respondents. In the mean time and till  
the returnable date, the respondents are restrained from indulging  
in any scandalous activity or holding official meeting and passing  
resolution on the subject matter as it is expressly prohibited and  
could be said to be contemptuous as per decision of Supreme  
Court in case of *C. Ravichandran Iyer ( supra)*.”

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<sup>1</sup>(1995) 5 SCC 457

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A           3. When the matter was listed on 29.4.2016, this Court after hearing learned counsel for the parties, as the respondent no.1, who had initiated the contempt of court, had entered caveat, passed the following order:-

B                       “Having heard learned counsel for the petitioner, we are, as advised at present, not inclined to vary or modify the order passed by the High Court and, accordingly, we direct that the said order shall remain in force till 12.05.2016. However, we direct that the contempt proceedings before the High Court shall remain in abeyance till 12.05.2016.”

C           4. To appreciate the controversy, narration of facts, in brief, is necessary. As has been stated hereinbefore, the High Court entertained the application for contempt of court being moved by the 1st respondent, a member of the Gujarat High Court Advocates Association, the 3rd respondent (1995) 5 SCC 457 3 herein. The assertions that were made in the contempt petition basically pertain to unwarranted speeches rendered, letters written or the statements given by the appellant. The D           High Court, *prima facie*, formed the view that the language employed in the letter did tantamount to contempt. Be it stated, on the date the High Court took up the matter, the Bar Association was going to discuss and pass a resolution which, the High Court felt, was contemptuous in nature. Regard being had to the facts enumerated in the petition and the E           submissions put forth on behalf of the 1st respondent, who was the petitioner before the High Court, it issued notice under the Contempt of Courts Act, 1971 (for brevity, “the Act”) to the respondent/contemnor therein and directed him not to indulge in any kind of scandalous activity or holding official meeting and passing resolution on the subject matter as could be said to be contemptuous as per the verdict of this Court in C. F           *Ravichandran Iyer* (supra).

G           5. Be it noted, after the interim order was passed by this Court, the matter was adjourned on certain occasions and on the last occasion, Mr. Raval, learned senior counsel 4 appearing for the 1st respondent had drawn our attention to certain letters written by the appellant. At that stage, this Court noted that it may, in the ultimate eventuality, issue notice to the Bar Council of India.

H           6. With the passage of time, as is reflectible, monumental wisdom has dawned on the appellant and he has filed an affidavit on 25.08.2016. In various paragraphs of the said affidavit, as is manifest, he has unequivocally expressed his regret and rendered unconditional apology.

He has explicitly and unambiguously stated that on certain occasions, he might have spoken with emotion but his respect and regard for the institution is extremely high. It is also admitted by him that he was under the impression that he was making a genuine effort to protect the interest of the institution.

7. It is submitted by Mr. Sibal and Dr. Singhvi, learned senior counsel appearing for the appellant that when the appellant, a senior counsel practising in the High Court of Gujarat, has realized the mistake and tendered unconditional apology, the controversy should be given a decent burial. Mr. Raval, learned senior counsel appearing for the 1st respondent, *per contra*, would vehemently contend that the apology offered by the appellant is neither genuine nor honest and, therefore, this Court should not accept the same and the matter should be allowed to proceed as per the provisions contained in the Act. Elaborating the said submission, Mr. Raval would further urge that on an earlier occasion the appellant had given an undertaking not to indulge in this kind of activity but despite the same he has chosen to remain resolute in making such statements. The conduct of the appellant, Mr. Raval submits, with all the keenness at his command, does not call for exoneration.

8. Mr. Venugopal, learned senior counsel appearing for the 3rd respondent herein, Gujarat High Court Advocates Association has canvassed that the unconditional apology of the appellant is absolutely honest and indubitably sincere and, therefore, this Court, in its magnanimity, put the controversy to rest. Learned senior counsel would also submit that the Association shall not proceed with the resolution which was the subject matter of the Contempt Petition before the High Court and has travelled to this Court, in any manner whatsoever.

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.*<sup>2</sup> 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

<sup>2</sup> (1981) 3 SCC 166

A 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  
B 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.”

C 11. Stressing on the honour of the profession and the exemplary  
conduct expected, the Court in *Ministry of Information and  
Broadcasting, In re*<sup>3</sup> observed thus:-

D “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  
E 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.”

F 12. In the beginning of this decade, the Court in *O.P. Sharma  
and others v. High Court of Punjab & Haryana*<sup>4</sup> was constrained to  
say:-

G “... 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.

<sup>3</sup> (1995) 3 SCC 619

H <sup>4</sup> (2011) 6 SCC 86

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.”

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13. In *Arun Kumar Yadav v. State of Uttar Pradesh*<sup>5</sup>, 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:-

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“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 man’s 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.”

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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.

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15. Coming to the case at hand, after hearing learned 5 (2013) 14 SCC 127 9 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,

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<sup>5</sup> (2013) 14 SCC 127

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A 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 10 on the subject in question.

B 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  
C 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.

D 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 11 the nation  
E and also to the collective.

18. The appeal is accordingly disposed of and consequently the proceeding for contempt initiated by the High Court stands closed.

F Ankit Gyan

Appeal disposed of.