

MAHIPAL SINGH RANA V. STATE OF UTTAR PRADESH

[(2016) 8 SCC 335 | MANU/SC/0730/2016]

F- FACTS-

Under the **19 section of the Contempt of Courts Act 1971** appeal was made and that is preferred against order of 02.12.2005 of the High Court of Judicature of Allahabad in which the HC found the plaintiff guilty of criminal indictment for intimidation and threatening a civil judge, Etah in his court on 04/16/2003 & 13.5.2003 and sentenced him to simple two months' imprisonment with a fine of Rs. 2,000/- and, in case of non-payment of the sanction, the applicant to suffer further 2 weeks' imprisonment. The High Court ordered bar council of uttar-pradesh to consider the facts contained in the complaint of the civil judge (Senior Division) Etah, e previous contempt referred to in the judgment and to initiate an appropriate proceeding against the plaintiff for professional negligence. Under the Rules of this Court, the contestant cannot appear in courts in the judgment of Etah, until you eliminate contempt. On January 27, 2006 this appeal was accepted by SC and that part of the contested sentence, which imposed the sentence, was suspended and the appellant was ordered not to enter the Court premises in Etah (U.P.). The notice was addressed to be issued to the Bar Association of the Supreme Court and the Council of the Bar Association of India. The matter was referred to the largest bench. Advocate General of India has been invited to assist the Court on this matter. On 6 March 2013, restriction of the applicant's entry into the court premises as per the ordinance of January 27, 2006, it was revoked. Therefore, the plaintiff was permission to enter the court premises. The aforementioned restriction has, however, been reinstated after. On 20 August 2015, the Attorney General was notified broader question whether on sentencing under the Contempt of Courts Act or otherwise another offense of moral turpitude could be allowed to a lawyer practice.

I- ISSUE-

- ✓ first issue is that if a case was formed through interference with the order issued by the High Court that convicts the applicant for criminal offense and sentences him a simple imprisonment for two months with a fine of Rs.2,000/- and more imprisonment for two weeks in absentia and the ban from appearing in trial courts at Etah
- ✓ Second issue is that whether convicted of criminal offense, the plaintiff may be entitled to practise

R- RELEVANT PROVISIONS

Our judicial system is enshrined in the Constitution with powers to dispense justice, including their constitution and jurisdictions, and with powers to establish its own rules. The Supreme Court has been described as a court of laws and has been given all powers including the powers to punish its contempt under **Article 129 of the Constitution**. The power to regulate, without prejudice to the provisions of any law of Parliament and with the approval of the President, has been conferred on the Court of Cassation pursuant to **Article 145 of the Constitution**. This Court, in examining its powers under article 129 read with art 142 of the Constitution on the subject of sentencing to imprisonment together with the suspension of the practice of lawyer, Rif; Supreme The case of the Court of Advocates of the Constitutional Court held that while in exercise of contempt of jurisdiction, this Court cannot take over the jurisdiction of disciplinary commission of the Council of the Order and belongs to the Council of the Order punish the lawyer by excluding him from the exercise or by suspending him license as can be justified on the basis of his being found guilty of contempt, if the Council of the Order fails to act, this Court could invoke yours power of appeal under **Section 38 of the Advocates Act**. In a given case, this court or the High Court may prevent the litigant's lawyer from appear before it or other courts until he is purged of contempt which is different from suspending or revoking the license or its forfeiture to practice.

As per the **24A of the advocate's act** which is there we find no reason to believe that the applicable entry level bar is canceled after registration. Given the subject of the provision, in this bar certainly operates also after registration. However, until a suitable the change is made, the bar is only operational for two years in terms of provision of law. In these circumstances, Section 24A which excludes a condemned person from being enrolled applies to a lawyer enrolled in the register of the Council of the Bar for a period of two years, if convicted of contempt. In addition to said disqualification, having regard to the ruling of this Court in R.K. Anand (unless a person purges himself of contempt or is authorized by the Court, conviction involves the exclusion of a lawyer from appearing in court also in absence of suspension or termination of the license to practice the profession. We, therefore, accept the indications of the High Court in paragraph 42 of the contested order cited above, according to which the applicant cannot appear before the courts of Etah District until he purges contempt of himself.

Case was referred that is **Former Capt Harish Uppal and Case R.K Anand** - this court found that a lawyer found guilty of contempt cannot be authorized to act or plead in any of the court until he purges himself of the contempt. The right to exercise which is there that is the kind referred to the right to appear and to lead cases in the court can be one of a kind. But the right to appear as well as conducting cases in court is a matter over which the court must have the upper hand supervisory power. Hence the court cannot be deprived of control or supervision of the court only because it may involve the right of a lawyer. Another case which was referred that is The

High Court of Allahabad in Prayag Das v. Civil Judge of Bulandshahr, here in this case the court said that the High Court which is there has the power that to regulate the appearance of lawyers in the courts. The term that is the right to practice and also the right to appear in courts is not synonymous. A lawyer can lead on chamber practice or even practice in courts in various other ways, for example drafting e deposit of briefs and vakalatnama for the execution of such acts. To this end his physical appearance in the courts may not be necessary at all. For regulatory purposes its appearance in court, the High Court should be the appropriate authority to enact rules and a correct interpretation of Section 34 (1) of the Advocates Act must be inferred that the High Court has the power to issue rules governing the appearance of lawyers and court proceedings. Obviously, the High Court is the only one appropriate authority to entrust with this responsibility. Case Pravin C Shah - In the Black's Law Dictionary the word "purge" is given as follows meaning: Purify, to delete. To cancel or exempt from any charge or imputation of fault or a contempt. It is absurd to suggest that if the sentenced person suffers a punishment or if he offers the amount of the fine imposed on him, the purge would be complete. We cannot therefore approve the thesis according to which simply being subjected to the sanction inflicted on a contemnor is sufficient to complete the process of purifying contempt, particularly in the event that contemnor is convicted of criminal outrage. The danger in agreeing to the saying that if a container is sentenced to a fine, he can pay it right away and keep committing contempt in the same court and then again pay fine and also persist with his contemptuous conduct. There must be something more to do to be purged of contempt when it comes to criminal contempt.

A- ANALYZING THE SITUATION BY APPLYING RULE OF FACTS OF CASE

In the present case, despite the leadership of the High Court for more than ten years, no it appears that the action was undertaken by the Council of the Order. On 27.01.06 notice was issued by the bar council of India and after all facts have been brought to the attention of the Bar Council of India, the aforementioned Bar Association Council also failed to take any action. In consideration of this failure of the Legal obligation of the Council of the State Bar Association of Uttar Pradesh and the Council of the Bar Association of India, this Court must exercise appellate jurisdiction under the Advocates Act in consideration of proven wrongdoing that requires disciplinary action. As noted above, this Court observed in the SCBA case that, if the Council of the Bar, despite the reference made to it, does not intervene, this Court can exercise his powers to punish the competitor for professional misconduct. Sufficient opportunities have already been given to the applicant in this regard. We may add that what is admissible for this Court by virtue of the statutory appellate power under the Section 38 of the Advocates Act is also admissible to a High Court under the article 226 of the Indian constitution of Establishment in appropriate cases in case of inaction of the Council of the order of the order after its attention has been invited to misconduct. Therefore, in addition to confirming the conviction and the sentence handed down

by the High Court al appellant, except for imprisonment, the appellant will automatically suffer the consequence of his sentence pursuant to art. 24A of the Advocates Act also applicable in the post-enrollment phase as already noted. Additionally, in exercising appellate jurisdiction under Section 38 of the Advocates Act, we determine that the applicant's license will be suspended for a further period of five years even him remain barred which is from appearing in any court of the Etah District even after five years, unless he purges himself of contempt in the manner established by this Court in the Bar Council of India and R.K. Anand and as indicated by the High Court. The applicant's conviction is justified and accepted; Sentence of imprisonment awarded to the applicant is annulled in view of his advanced age but sentenced to the fine and the conviction in absentia is confirmed. Further order that the applicant does not have be authorized to appear in Etah district courts until he purifies himself contempt is also sustained; Under section 24A of the Advocates Act, enrollment the applicant will be suspended for two years from the date of this order; Like a disciplinary sanction for ascertained negligence, the applicant's license will be remain suspended for a further five years

C- CONCLUSION

In relation to a regulatory mechanism, it is necessary to address the proliferation of bar associations from the Taluka level up to the top bodies also requires a regulatory mechanism that includes their recognition and control by the council of the bar. To this is added, of course, a particular attention to the control not only of lawyers, but also of the collective actions of the bar associations which have a local and even national impact on matters concerning judicial proceedings and as regards the organization of lawyers entering other fields of activity. To this end, sanctioning measures, the inclusion of other types of offenses and disciplinary control with its effective mechanism, both reformatory and deterrent, deserve to be introduced. This was necessary as the current law is gradually losing its effectiveness due to the lack of adequate powers. Standards of ethics and professional behavior, training of lawyers, and aspects of continuing legal education are also other areas that require passionate consideration. We ask the Law Commission of India to go into everything relevant aspects relating to the regulation of the legal profession in consultation with all interested parties in a short time. We hope that the Government of India will consider taking further appropriate measures pass in the light of the report of the Law Commission within the following six months. The central government can file an appropriate affidavit in this regard within one month of the deadline.