

**IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION**

INTERIM APPLICATION NOS. 48502, 48483, 48482 & 48484 OF 2020

IN

SUO MOTU CONTEMPT PETITION(CRIMINAL)NO. 2 OF 2019

RE : VIJAY KURLE & ORS.

Contemnor (s)

VERSUS

Respondent(s)

O R D E R

Interim Application No.48502 of 2020

This is an application filed by Contemnor No.3-Nilesh Ojha for recusal of one of (Deepak Gupta, J.). The only ground taken is that the Bench is in a hurry to decide the matter. The main Contempt Petition was heard at length and disposed of on 27.04.2020. After the judgment was pronounced, the case was fixed on 01.05.2020 for hearing the contemnors on sentence. The contemnors filed applications for recall of the judgment and, therefore, the matter was listed today. One of us (Deepak Gupta, J.) is to demit office on 06.05.2020 and, therefore, the matter had to be heard and we see no ground for one of us to recuse. The application is accordingly rejected.

Interim Application No. 48483 of 2020

This is an application for adjournment. We find no reason to adjourn the matter. The application is rejected.

Interim Application Nos. 48480, 48482 & 48484 of 2020

At the outset we may point out that we have heard Mr. Partha Sarkar, appearing for Respondent No.1 and Mr. Nilesh Ojha, Respondent No.3 in person in detail for more than half-an-hour. As far as Contemnor No.2-Rashid Khan Pathan is concerned, none appeared for him on the last occasion. Today, Mr. Ishwari Lal S. Aggarwal and Mr. Ghanshyam Upadhyay, advocates put appearance for him. It would be pertinent to point out that the registry had received a WhatsApp message from Mr. Ishwari Lal S. Aggarwal, that around 100 advocates would appear for Respondent No.2, and he wanted to know the limit for Video Conferencing. Later, he sent a list of 11 advocates appearing for Respondent No.2. Proper Video Conferencing communication was established with Mr. Ishwari Lal S. Aggarwal but he refused to argue the matter on merits and stated that the matter would be argued by Mr. Ghanshyam Upadhyay. Proper Video Conferencing communication could not established with Mr. Ghanshyam Upadhyay though he was visible, he was not audible. Therefore, communication was established with him through WhatsApp and he stated that there was no urgency in the matter and it should be listed after the lockdown over the COVID-19 pandemic is lifted. It is obvious that Contemnor No.2 in one way or the other is trying to delay the matter.

These three applications have been filed by all the three contemnors seeking recall of the judgment dated 27.04.2020. The main ground taken is that our judgment is contrary to the judgment rendered in *Bal Thackrey vs. Harish Pimpalkhute and Others*¹ and some other judgments. It is urged that the judgment is *per incuriam* and not as per the law laid down by this Court. It is also urged that notice could not have been issued by the Bench comprising of Hon. R.F. Nariman and Vineet Saran, JJ., and the matter should have been first dealt with by the Chief Justice on the administrative side. We have in our judgment dealt with all these contentions. A long hearing was given to the contemnors and after hearing them the judgment was reserved on 02.03.2020. Till 27.04.2020 when the judgment was pronounced no grievance was raised that the contemnors have not been given a proper hearing. We find that all the grounds raised in the three recall applications are virtually identical and in all the applications correctness of our judgment is questioned on many grounds. No recall application can lie on these grounds and the proper remedy for the contemnors is to file a review petition, if so advised. We, therefore, reject all the three recall applications as being not maintainable without expressing any opinion on the grounds raised therein. The contemnors if so advised, can file review petition in accordance with law.

Mr. Nilesh Ojha prayed that he may be granted liberty to file a writ petition. In our view no writ petition can lie to challenge our judgment and, therefore, this prayer is rejected.

¹ (2005) 1 SCC 254

As far as the application for recall is concerned, we have heard detailed arguments by Contemnor Nos. 1 and 3 and the application of Contemnor No.2 is virtually identical. We are therefore dismissing of all the three applications.

Sentence

Thereafter the contemnors through their counsel were asked to argue on sentence. All of them were not willing to argue on sentence on the ground that according to them our judgment was *per incuriam* and they had a right to challenge the same.

There is not an iota of remorse or any semblance of apology on behalf of the contemnors. Since they have not argued on sentence, we have to decide the sentence without assistance of the contemnors. In view of the scurrilous and scandalous allegations levelled against the judges of this Court and no remorse being shown by any of the contemnors we are of the considered view that they cannot be let off leniently. We have also held in our judgment that the complaints were sent by the contemnors with a view to intimidate the Judges who were yet to hear Shri Nedumpara on the question of punishment, so that no action against Shri Nedumpara is taken. Therefore, it is obvious that this is a concerted effort to virtually hold the Judiciary to ransom.

We, therefore, sentence all the three contemnors namely Vijay Kurle, Nilesh Ojha and Rashid Khan Pathan, to undergo simple imprisonment for a period of 3 months each with a fine of Rs. 2000/-. In default of payment of fine, each of the defaulting contemnors shall undergo further simple imprisonment for a period of 15 days.

Keeping in view the COVID-19 pandemic and the lockdown conditions we direct that this sentence shall come into force after 16 weeks from today when the contemnors should surrender before the Secretary General of this Court to undergo the imprisonment. Otherwise, warrants for their arrest shall be issued.

Suo Motu Contempt Petition (Criminal) No.2 of 2019 is disposed of in the aforesaid terms. Pending application(s), if any, shall stand disposed of.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

NEW DELHI
MAY 04, 2020