

Introduction

This was the controversial case and leading case where there was causal link or connection between the two established lawyers was exposed while they were influencing the most important witness of the court, Sunil Kulkarni in the famous case of BMW hit-and-run, by the TV channel NDTV through sting operation. Senior advocate R.K Anand was held guilty for the criminal contempt of the court as he was suborning the court primary witness. Both the appellants were found guilty of criminal contempt of court but later on an appeal was filed by R.K Anand in the Supreme Court questioning the verdict of the High Court by mentioning that the punishment offered by the High Court was not adequate but the Supreme Court pronounced the Judgment and therefore R.K Anand was convicted of contempt of court and I.U Khan was let off but added that his conduct was improper.

Suborning the Court Witness or the Indian Justice System is an odious offence and one should be punished for the same.

Section 2 of Contempt of Court, 1971, defines Contempt of Court and under that Civil Contempt of Court and Criminal Contempt of Court.

Section 2(a) describes Contempt of Court as Civil Contempt or Criminal Contempt.

Section 2(b) describes Civil Contempt as willful disobedience or breach of Court's order, decree, judgement, discretion, writ or any other undertaking.

Section 2(c) describes Criminal Contempt which means publication in the form of words, spoken or written, or by signs or visual representations which tends to lower the reputation of the Court or interferes with the judgement of the Court.

This case deals with the Criminal Contempt of Court under Section 2(c) of the Contempt of Court Act, 1971.

Facts of the case

- This matter arose from a hit-and-run incident in which the defendant, Sanjiv Nanda, was driving a BMW car while intoxicated and at a high speed, crushed to death six men which included 3 policemen at the check post.

- This trial was meandering even after 8 years and then on 30th may 2007, a established English news channel- NDTV (New Delhi Television) telecasted a program in which it was shown that they had done a sting operation and in which it was shown that the primary witness of the case from the prosecution side, Sunil Kulkarni was shown interacting with R.K Anand (Senior Defense Counsel) and I.U Khan (Public Prosecutor). They negotiated with the witness to sell out in the favor of defense for a very high price.
- IU Khan was suspended from the case, and the Delhi Bar Council demanded an explanation and initiated an investigation into them.
- Suo Moto cognizance was taken by the Delhi High Court of the expose by the NDTV which was telecasted on their channel. Delhi high court asked for the tape of the recordings from the NDTV but the lawyers protested that the tape recordings which were given to the court were tampered with.
- After a year of proceeding, both the lawyers were found guilty under Article 215 of Indian Constitution by the Delhi High Court in August 2008 and were barred from practicing in the Delhi courts for the duration of four months and stripped of their seniority.
- R.K Anand filed an appeal under Article 132 of the Indian Constitution, with I.U Khan in the Hon'ble Supreme Court against the decision of the Delhi High Court. The Hon'ble Supreme Court upheld the decision of the Delhi High Court by letting off I.U Khan who was held guilty by the Delhi High Court but convicted R.K Anand as was done by the Delhi High Court.

Issues raised in the Case

The issues that were raised before the Hon'ble Supreme Court are as follows:

1. Whether the conviction of the two appellants for committing criminal contempt of court was justified and sustainable?
2. Whether the procedure adopted by the High Court in the contempt proceedings was fair and reasonable, causing no prejudice to the two appellants?
3. Whether it was open to the High Court to prohibit the appellants from appearing before the High Court and the courts subordinate to it for a specified period as one of the punishments for criminal contempt of court?

4. Whether in the facts and circumstances of the case the punishments awarded to the appellants could be said to be adequate and commensurate to their misdeeds?

ISSUE 1: It was held that the conviction of R.K Anand was justifiable and sustainable but the conviction of I.U Khan was not justifiable. RK Anand's appeal – RK Anand never questioned or doubted the authenticity or credibility of the sting recordings. R.K Anand kept on changing his statement when he was inquired regarding the sting recordings. In the facts and circumstances of the case, there was no provision of any formal proof of the sting recordings, and there was no violation of natural justice in that he was given copies of all the sting recordings along with their transcripts, and he was given the fullest opportunity to defend himself and explain his conduct. The court held the basis of conviction through sting recordings as it was right thing to do. The unavoidable conclusion is that RK Anand's conviction for contempt of court is proper, lawful, and legitimate, and that no intervention is needed.

IU Khan was referred to as 'Bade Sahab' in their conversation one of the members was Sunil Kulkarni when the sting operation was recorded. It was very significant to hold I.U Khan convicted of contempt of court by the Delhi High Court as in the recordings it was interpreted that 'Bade Sahab' was referred to I.U Khan. According to Delhi High Court it was interpreted that R.K Anand was considered as 'Bade Sahab' as was considered unjustified. It was the finding by the Delhi High Court that the conduct of I.U Khan and R.K Anand was improper and they went beyond the bounds of a prosecutor's and a defense attorney's reasonable professional behavior or conduct. It was held that the charge against I.U Khan was not satisfactorily established and there is a benefit of doubt granted.

ISSUE 2: High Court was found to be faulty as NDTV was not mentioned as contemnor at the time of initiation of the proceedings along with the appellants facing the charges of contempt; there would then have been no scope for the grievance had the HC put the NDTV on the complainant's seat.

ISSUE 3: Yes, the contention that was raised was that High court gave decision beyond its jurisdiction by suspending or revoking the advocate's license of which the High court doesn't have power as the power of punishing the advocate for professional misconduct lies with Bar Council of India as the procedure prescribed under the Advocate's Act, 1971. Their argument can be interpreted from the case of Ex. Capt. Harish Uppal vs. UOI where it was found that the revoking of Advocate's license is not the punishment for professional misconduct but the reason of suspension of Advocate's license was to maintain the dignity, decorum and orderly functions of Court's proceedings.

Their contention is also supported from the case of Supreme Court Bar Association vs. UOI in which the Constitution Bench observed that the High court or any other Court has power to prevent the contemnor Advocate from appearing in the court proceedings so as to purge him for the act of contempt. The court also added that by preventing an Advocate who is held guilty for contempt of court or professional misconduct, from attending the court proceedings is not only the sole way to maintain the decorum and orderly functions of the court but it may be pertinent for the court to preserve its purity of court proceedings and for the protection of the court.

ISSUE 4: It was found that the High court showed leniency on its part in meting out the punishment of misdeeds of R.K Anand as he adopted intimidatory tactics. As an appellant, R.K Anand attempted to bribe a witness in a criminal trial, but in the High Court his conduct was aggravated and no remorse for the gross misdemeanor. It was held with further notice that the conduct and actions of appellant R.K Anand that he should be kept away from the court proceedings. As how case notice was issued which further dealt that I.U Khan's conviction was set aside and the appeal filed by R.K Anand was dismissed as his punishment was further aggravated or enhanced till further notice issued to him. The court also discussed the standard of proof in contempt of court proceedings, pointing out that there is a distinction between a criminal trial and the manner of proof in a contempt case. The manner of proof was contended to be different in both the situations but the standard of proof of proving the facts beyond reasonable doubt was same in both the situations.

Arguments presented in the court by the parties

- R.K. Anand argued that NDTV should be charged with contempt of court because it broadcast its program on 30th May, 2007. The meaning of contempt jurisdiction and the burden of evidence in a criminal contempt case were then raised by contemnors. They also challenged the admissibility of the sting tapes, claiming that they were also untrustworthy.
- He also argued that under the Act this case should be dealt as quasi-criminal in nature, which requires the same level of evidence as it is required in a criminal trial to convict anyone charged with criminal contempt. Mr. Altaf Ahmed, R.K. Anand's learned lawyer, argued under Contempt of Court Act, that the appellant's conviction was based on evidence that were electronically documented and did not have the validity of the recording.

- He also argued that Sunil Kulkarni was also never brought before the court for formal evidence of electronic materials or cross-examination by the accused. The decision of the High Court was interpreted on the basis of the materials whose validity had not been established and whose veracity had not been checked via cross-examination.
- R.K Anand also claimed to the court that he was not given notice that he would be barred from court proceedings or from appearing in court as stated under section 12 of Contempt of Court, Act, 1971, for the charge of. After that, the court agreed with him and served him with a notice explaining why he should be barred from court hearings for a longer period of time due to Contempt of Court.
- I.U Khan objected in the Court that the conduct of the NDTV was indifferent and casual. He also argued that when the High Court issued notice it did not had one of the clips of the sting recordings and the material that was given to the defense was not exactly provided the same as the High Court had.

Summary of court decision and judgment

R.K Anand filed an appeal which was later rejected as to the fact because his punishment that was imposed on him was increased as per the judgment. He was given duration of eight-weeks for filing show- cause notice from the date of service of filing that notice. The appeal of R.K Anand was put after filing of the show-cause. As appeal of High Court was accepted by the Hon'ble Supreme Court where the charge of criminal contempt of court was set aside for I.U Khan. As for I.U Khan the duration of four months was completed which debarred him from appearing in the court proceedings and in the Delhi High Court. The order given by the High Court of punishment of fine was also set aside. Hon'ble Supreme Court in its decision gave order to those High Courts who have not framed the rules till now stated under the section 34 of Advocates Act, 1961, and gave the direction to do it immediately without any further extension for framing the rules as directed in the of the judgment.

Analysis of the Case

- As R.K Anand was debarred from engaging in the court proceedings and in the Delhi High Court. As stated under Article 145 of Indian Constitution and section 34 of Advocates Act, 1961, an Advocate does not have an absolute right of appearing in the Court proceedings. Similarly, section 34 of Advocates Act, empowers the High Court to frame rules regarding the Advocate to appear and engage in the court proceedings on the conditions of which an Advocate shall have the permission to appear in the Court proceedings and shall be allowed to

practice in the Courts. Under Article 145 of Indian Constitution the Hon'ble Supreme Court has been empowered to provide guidelines for rectifying the practicing of an Advocate in the court and the Hon'ble Supreme Court has the authority to make laws governing the function and protocol of the court.

- The Hon'ble Supreme Court determined that held before passing an order of preventing an Advocate from engaging in the court proceedings, the courts must clearly tell and give a notice beforehand of his alleged conduct and actions because of which he is charged with contempt of court and is not allowed to appear in the court proceedings and dealing with the criminal contempt before the punishment for the same.
- The person charged with criminal contempt is rarely given the opportunity to cross-examine the witnesses. The High Court denied R.K. Anand's request to cross-examine Poonam Agarwal. However, it is worth noting to what degree the values of expediency can take precedence over the interests of justice and truth-telling.
- Furthermore, the denial of the right to cross examine was based on the fact that the events in which both the parties were involved were already recorded on the CDs and microchips. It was determined that the statement of Poonam Agarwal will have no effect on the current situation. But it's worth noting that RK Anand was the one who doubted the CDs' authenticity at first. It was argued by RK Anand that the recordings in the CDs were interfered and he offered the Supreme Court to send these recordings as evidences to Central Forensic Science Laboratory to make sure that whether it is interfered or not.
- Therefore, it seems that different criteria were applied to determine the conviction of IU Khan and RK Anand respectively. Although RK Anand's attempt at bribing the witness must be condemned, a claim of partiality is viewed as analogous to casting doubt on the judges' credibility and challenging the judiciary's neutrality and independence. RK Anand must demonstrate why his sentence should not be increased. RK Anand has shown no remorse for his heinous crime, according to the Supreme Court, and the petition shows that he is not complying with the decision of the High Court. The Supreme Court's stance is consistent with their earlier statements on how a motivated request for recusal is likely to cause "hurt" to the judges.
- According to the ruling, RK Anand did initially accepted the video, which was broadcast on the NDTV, the news channel. This appears to have backfired on him, particularly because, as mooted in the judgement, IU Khan had argued that the recordings had been tampered from the beginning. The reality of the situation is that the judges might not have paid attention to the individuals' statements

recorded in the television interviews at first. Such findings have no effect on the decision of the court.

- It was also contended that if the court would have followed the Indian Evidence Act and Criminal Procedure Code then there are chances of no errors as occurred above. There's no compelling justification that a contempt of court charge should be subjected to a different standard of evidence than a criminal case. This is particularly true given that it is set in the same category as a criminal trial.

Conclusion

It can be concluded that R.K. Anand provided an opportunity for the Supreme Court to clarify the law governing sting operations for sub judice cases and the subsequent contempt proceedings under Contempt of Court, Act, 1971. Finally, the Hon'ble Supreme Court upheld the conviction of Anand on the same charge by the Delhi High Court. The Supreme Court, on the other hand, freed I U Khan, who had been convicted by the Delhi High Court. NDTV was applauded and finally added to the decision that an Advocate should understand its role by not demeaning the profession of an Advocate.