

Before K.S. Garewal and Jitendra Chauhan, JJ.

COURT ON ITS OWN MOTION,—Petitioner

versus

M. L. SHARMA,—Respondent

CrI. OCP No. 10 of 1983

24th September, 2008

Contempt of Courts Act, 1971—S.2(c)(iii) (a) and (b)-Advocates Act, 1961—Advocates failing to file appeals within time—Professional misconduct—Tampering with dates in certified copies of judgments to file time barred appeals—Though actual tampering by an Advocate but respondent abetting commission of offence—Sufficient material to show that respondent was privy to it as appeals were filed through respondent—No explanation for such misconduct—Amounted to commission of criminal contempt—Respondent cannot escape liability by putting the entire blame on another Advocate—It was his primary duty to examine certified copies to determine when limitation expired—By using an obviously tampered copy to file time barred appeals respondent cannot get off with a mere apology—Respondent held guilty of criminal contempt—Sentence of simple imprisonment for one month ordered.

Held, that the relationship between a lawyer and a client is a fiduciary relationship of confidence and trust. The client reposes confidence, good faith and trust in his lawyer and seeks his advice and protection in his litigation. Being in fiduciary relationship, the lawyer is expected to exercise a very high standard of care. He is expected to be loyal to his client and no gain or profit from his position as a fiduciary. A much higher standard of conduct is expected in a fiduciary relationship than what has been demonstrated by Shri Madan Lal Sharma, Advocate in this case.

(Para 24)

Further held, that Shri D.S. Sandhu and Shri Madan Lal Sharma were together engaged by the appellants to file and pursue appeals

against the awards of the Additional District Judge. The appellants had parted with fees and expenses within a few weeks of the pronouncement of the awards but the appeals were not filed within time. When the appellants pursued the advocates for answers they were put off on one pretext or the other, converted into footballs to be passed from one player to another, inspite of the fact that they had paid full fee and expenses in advance. No separate account of fees and expenses was produced before Inquiry Officer by either Shri D.S. Sandhu or Shri Madan Lal Sharma. It was professional misconduct on their part mixing their clients' money with their own. Every advocate is expected to keep two accounts of the money received from his client, one in respect of his professional charges and the other in respect of expenses incurred or to be incurred. Court fee is a heavy expense which appellants much incur when they file appeals. It is obvious that in the present case court fee was given to the advocate, the amount was retained by them instead of being immediately used for depositing court fees. No explanation is forthcoming and indeed there is no explanation which can be offered for such misconduct.

(Para 28)

Further held, that this was a case in which both Shri D.S. Sandhu and Shri Madan Lal Sharma had acted together. Shri D.S. Sandhu had done actual tampering but Shri Madan Lal Sharma had abetted the commission of the offence. There was sufficient material to show that he was privy to it. Furthermore, the appeals were filed through Shri Madan Lal Sharma on the basis of tampered certified copies. This amounted to commission of criminal contempt. Shri Madan Lal Sharma cannot escape liability by putting the entire blame on Shri Sandhu. It was his primary duty to first of all examine the certified copies to determine when the limitation expired. In the present case, it was clear from the certified copies that dates have been tampered with. Therefore, by using an obviously tampered copy to file time barred appeals, Shri Madan Lal Sharma cannot get off with a mere apology.

(Paras 29 and 30)

D. S. Brar, Advocate, *for the petitioner.*

R. S. Cheema, Senior Advocate, assisted by Jasdev Singh,
Advocate, *for the contemner-respondent.*

K.S. GAREWAL, J.

(1) Shri Madan Lal Sharma, Advocate, is the contemner before us to answer the contempt notice issued by the Hon'ble Single Judge on 28th February, 1983.

(2) This case raises certain fundamental issues of legal ethics, an advocate's duty towards his clients and how an advocate should deal with his clients' money entrusted to him for legal expenses. The other question is whether it is criminal contempt of court (interfering in the administration of justice) if the advocate changes the date of the judgment in the certified copy to bring the appeal within limitation.

(3) Additional District Judge, Chandigarh, had decided a bunch of references under Section 18 of the Land Acquisition Act on 4th January, 1980. The landowners Baljit Singh, Mokam Singh and Thath Singh were naturally interested in filing appeals before the High Court to challenge the award R.F. As 658, 659 and 660 of 1982 were filed by them on 16th December, 1981, through Shri Madan Lal Sharma, Advocate. Subsequently, applications for condonation of delay under Section 5 of the Limitation Act were filed in these appeals by Shri Ravinder Seth, Advocate, who superseded Shri Madan Lal Sharma, Advocate.

(4) The above applications came up before the Hon'ble Single Judge on 31st August, 1982 and it was found that the dates on the certified copies of the judgments supplied by the Additional District Judge had been tampered with, obviously to bring the appeals within the period of limitation. It is this act of tampering with the certified copies that is the subject matter of these proceedings.

(5) The Hon'ble Single Judge on 31st August, 1982 ordered District Judge (Vigilance), Haryana to hold an inquiry to find out the dates on which applications for copies had been filed, the dates when the copies were prepared and supplied. There was a further direction

that in case the District Judge came to the conclusion that there was tampering with the dates, he would not hesitate to get a criminal case registered.

(6) The conclusion reached by District Judge (Vigilance), Haryana in his report dated 31st Janaury, 1983 is as under :—

“Shri M.L. Sharma by filing the three R.F. As with tampered certified copies had attempted to beguile the Court thereby obstructing the interest of justice”.....”there is no indication that Shri M.L. Sharma was instrumental in effecting material alteration, but there is sufficient material to show that he has been a privy to it and therefore, liable for the abatement (sic) of the criminal offence committed by Shri D.S. Sandhu, Advocate. Shri M.L. Sharma has to reply to the charges of abatement (sic), namely under Sections 193/196/465/471 read with Section 109 I.P.C.”.....“It is *prima facie* clear that Shri M.L. Sharma, Advocate had tried to overreach and mislead the Court. His action has caused obstruction to the interest of justice and amounts to contempt of Court as well.”

The learned District Judge Vigilance also concluded that :

“tampering of dates in the certified copies had been effected in a very crude manner which is apparent to the naked eye.”

(7) Shri Madal Lal Sharma’s explanation in his affidavit dated 13th May, 1983 was that it had all been done by Shri D.S. Sandhu, Advocate, to whom payments had been made by the appellants for filing R.F. As. It was Shri Sandhu who had intentionally tampered with the documents. Shri Madan Lal Sharma also offered an unqualified apology. On 13th May, 1983 Hon’ble Single Judge was of the view that it would be proper to await the outcome of the criminal proceedings and the contempt petition was adjourned.

(8) On 17th September, 1984 the Hon’ble Division Bench, after referring to Court’s order dated 13th May, 1983, adjourned the contempt petition *sine die* to await the outcome of the criminal proceedings.

(9) The matter was again placed before the Hon'ble Division Bench on 17th March, 2006 but it was yet again adjourned *sine die* as the criminal proceedings were still pending.

(10) However, when the matter was placed before the Hon'ble Division Bench on 28th February, 2008, the learned counsel for Shri Madan Lal Sharma took time to file a fresh affidavit.

(11) Through Criminal Miscellaneous 37620 of 2008, filed under Section 482 Cr. P.C. certain subsequent events have been brought on the record alongwith an additional affidavit of Shri Madan Lal Sharma, Advocate. In his affidavit dated 17th July, 2008 reference has been made to the observations of District Judge (Vigilance). Furthermore, all the persons concerned with the case, namely, Shri D.S. Sandhu, Advocate, who was held responsible for forgery; Shri Ravinder Seth, Advocate who had represented the appellants after superseding, the contemner; the three appellants, were all dead. It was further stated that the criminal prosecution instituted against the contemner had been continuing for 25 years but had still not been concluded.

(12) The learned Senior Counsel appearing for Shri Madan Lal Sharma, Advocate, has pleaded for discharge of the rule on the ground that the main act of forgery was committed by Shri D.S. Sandhu, as found by the District Judge and not by Shri Sharma.

(13) The stage is now set for revisiting the primary facts of the case in order to determine whether Shri M.L. Sharma, Advocate, was responsible for interfering in the administration of justice and guilty of criminal contempt. A person who interferes or tends to interfere with, or obstructs or tends to obstruct administration of justice in any manner is guilty of criminal contempt of Court as defined in Section 2(c)(iii)(a) and (b) of the Contempt of Courts Act, 1971.

(14) This case relates to filing of three appeals on the basis of certified copies in which dates were changed to bring the appeals within limitation. Therefore, the version presented by the appellants in the appeals is of great importance.

(15) The appellants version is contained in their application under Section 5 of the Limitation Act Civil Misc. No. 745/C-1 of 1982 in R.F.A. No. 658 of 1982. It is stated therein that the awards were given on 4th and 20th January, 1980. Shri D.S. Sandhu had approached the appellants stating that he will file appeals in the High Court through Shri Sharma and asked the appellants to give him money and engage him for the purpose of the first appeals. Shri Sandhu contacted illiterate villagers and started collecting money. He assured them that he will get certified copies of the orders and file the appeals. He also assured the parties that in case the appeals were not successful he will file Letters Patent Appeals. He demanded fees for the Letters patent Appeals as well. Money for court fee for filing R.F.As as well expenses for getting certified copies and lawyer's fees were handed over on 20th January, 1980 in respect of one award. Thereafter another award was made on 19th March, 1980 and a week a later Shri D.S. Sandhu collected court fees and counsel fees from different clients including the appellants.

(16) The appellants kept contacting Shri Sandhu who kept assuring them that certified copies had not become available, the moment the same were available he will purchase the court fees and get the appeals filed before the High Court through Shri Madan Lal Sharma Advocate, who was his friend. The appellants kept inquiring from Shri Sandhu but got no reply. Ultimately there was an altercation between the appellants and Shri Sandhu. A large number of people assembled in the village. Shri Sandhu told the appellant that he had actually engaged Shri Madan Lal Sharma for filing the appeals and they should contact him.

(17) Appellants approached Shri Madan Lal Sharma who would neither confirm nor deny the facts as to whether any appeals had been filed or not. In the meantime, appeals filed by other land owners whose lands were adjacent to the appellants' land were decided. The appellants again approached Shri Sandhu who guided them to meet Shri Madan Lal Sharma but nothing was confirmed or denied by him. The appellants kept on shuttling between Shri Sandhu and Shri Madan Lal Sharma. Every time they were given the hope that the appeals were pending. An appeal of other appellants was decided on 9th December, 1981.

At this stage the appellants were convinced that their appeals had not been filed. They again approached Mr. Sandhu and in January, 1982 they approached Shri Madan Lal Sharma who told them the appeals had been filed and will be decided in due time. Shri Madan Lal Sharma also showed them a copy of the Regular First Appeal which was lying with him.

(18) The appellants came to know that all appeals pertaining to lands in their village Burail stood decided. When they approached Shri Madan Lal Sharma to know the reason for the delay in the decision of their appeals, he told them to approach Shri D.S. Sandhu and not to bother him, as the papers had not been handed over to him by the appellants but by Shri Sandhu. The appellants enquired in the High Court and learnt that only one appeal was filed by Shri Madan Lal Sharma on 16th December, 1981 and had been returned due to some objections, which was refiled on 31st May, 1982. On enquiry from the office the appellants came to know that the copy which was attached with the appeal was applied very late, there were some cuttings and the appeal was ultimately ordered to be returned.

(19) When the appellants approached Shri Madan Lal Sharma, he point blank refused to do anything in the matter and said that he had filed the appeal at the instance of Shri Sandhu, on the basis of the papers supplied by Shri Sandhu.

(20) The appellants stated in their above mentioned application that they were illiterate villagers and had been duped by Shri D.S. Sandhu, Advocate who took huge amounts to file appeals but never applied for certified copies in time and ultimately to cover his deficiency he fabricated the copy to overcome the objection of limitation.

(21) District Judge (Vigilance) examined Shri D.S. Sandhu as a witness. Shri Sandhu admitted that there had been tampering of the dates on the copies but he threw the blame on Shri Madan Lal Sharma to whom he had handed over the certified copies for filing appeals. The three appellants, Baljit Singh, Mokam Singh and Thath Singh, were also examined as witnesses. They stated that they had paid Rs. 9,000, Rs. 6,100 and Rs. 14,000, respectively, to Shri Sandhu

within a few days of the pronouncement of the award by the Additional District Judge, for the purpose of filing the appeals. When Shri Sandhu was asked regarding payment of fees, he admitted having received Rs. 6,100 from Mokam Singh for filing two appeals but he did not admit the receipt of payment from Baljit Singh stating that Baljit Singh had made the payment to Shri Madan Lal Sharma, Shri D.S. Sandhu admitted having received Rs. 14,000 from Thath Singh and further admitted that he had paid some amount to Shri Madan Lal Sharma and returned Rs. 4,500 to Thath Singh.

(22) When Shri Madan Lal Sharma was examined by the District Judge he admitted the fabrication and stated that the appeals had been filed on the basis of the certified copies which were attached with three R.F.As. Shri Ravinder Seth, Advocate, when examined put the blame on Shri D.S. Sandhu but denied that Shri Madan Lal Sharma had ever admitted before him that the dates have been tampered with.

(24) More than a quarter century later, the principal witnesses are all dead. Shri Madan Lal Sharma stands alone to answer the contempt charge.

(24) The relationship between a lawyer and a client is a fiduciary relationship of confidence and trust. The client reposes confidence, good faith and trust in his lawyer and seeks his advice and protection in his litigation. Being in fiduciary relationship, the lawyer is expected to exercise a very high standard of care. He is expected to be loyal to his client and no gain or profit from his position as a fiduciary. A much higher standard of conduct is expected in a fiduciary relationship than what has been demonstrated by Shri Madan Lal Sharma, Advocate, in this case.

(25) The Bar Council of India Rules framed under Advocates' Act, 1961 also lay down various duties that a advocate owes to his client. Very high standard of professional conduct has been imposed on advocates. Rule 25, 26 and 27 of Chapter II of Part VI are as under :—

“25. An advocate should keep accounts of the client's money entrusted to him, and the accounts should show the amounts

received from the client or on his behalf, the expenses incurred for him and the debits made on account of fees with respective dates and all other necessary particulars.

26. Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses and during the course of the proceedings, no advocates shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of expenses towards fees.

27. Where any amount is received or given to him on behalf of his client, the fact of such receipt must be intimated to the client, as early as possible.”

(26) During the entire proceedings neither Shri D.S. Sandhu nor Shri Madan Lal Sharma, Advocates, presented statements of accounts of fees and expenses received by them from the appellants in the three appeals. They did not disclose the amount they had charged as professional fees and the amount of expenses incurred.

(27) American Bar Association has also framed Model Rules of Professional Conduct for Lawyers (<http://www.abanet.org>). We would like to refer to Rules of client-lawyer relationship, particularly Rule 1.15 regarding safekeeping property which is reproduced as under :—

(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of (five years) after termination of the representation.

- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full account regarding such property.
- (c) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(28) We have been constrained to somewhat extend our judgment to cover the subject of professional ethics of advocates. In the present case Shri Sandhu and Shri Madan Lal Sharma were together engaged by the appellants to file and pursue appeals against the awards of the Additional District Judge. The appellants had parted with fees and expenses within a few weeks of the pronouncement of the awards but the appeals were not filed within time. When the appellants pursued the advocates for answers they were put off on one pretext or the other, converted into footballs to be passed from one player to another, in spite of the fact that they had paid full fee and expenses in advance. We observed earlier and would like to again repeat that no separate account

of fees and expenses was produced before Inquiry Officer by either Shri D.S. Sandhu or Shri Madan Lal Sharma. It was professional misconduct on their part, mixing their clients' money with their own. Every advocate is expected to keep two accounts of the money received from his client, one in respect of his professional charges and the other in respect of expenses incurred or to be incurred. Court fee is a heavy expense which appellants must incur when they file appeals. It is obvious that in the present case court fee was given to the advocate, the amount was retained by them instead of being immediately used for depositing court fees. No explanation is forthcoming and indeed there is no explanation which can be offered for such misconduct.

(29) Coming to the question of tampering with judicial record by changing the date of the judgment to bring the appeal within time, we would like to confirm the findings given by the learned District Judge (Vigilance) that this was a case in which both Shri D.S. Sandhu and Shri Madan Lal Sharma had acted together. Shri D.S. Sandhu had done actual tampering but Shri Madan Lal Sharma had abetted the commission of the offence. There was sufficient material to show that he was privy to it. Furthermore, the appeals were filed through Shri Madan Lal Sharma on the basis of tampered certified copies. This amounted to commission of criminal contempt.

(30) Shri Madan Lal Sharma cannot escape liability by putting the entire blame on Shri Sandhu. It was his primary duty to first of all examine the certified copies to determine when the limitation expired. In the present case it was clear from the certified copies that dates have been tampered with. Therefore, by using an obviously tampered copy, to file time barred appeals, Shri Madan Lal Sharma can not get off with a mere apology.

(31) It is 27 years since Shri Sandhu and Shri Madan Lal Sharma had committed the offending acts. They had done this to avoid the appeals from becoming barred by time although they had both been retained well within time. The appellants had engaged them a mere two weeks after the judgment was announced. It has also been established that they had both been paid their professional fees and expenses for the appeals, well in advance.

(32) The due did not act in time, therefore, they had to do some thing to bring the appeal within time. They could have filed an application for condonation of delay, which applications are usually considered liberally and often granted. But they adopted an illegal and unethical course, after much harassment of their clients, who had to fruitlessly run around trying to find out the fate of their appeals. The connected appeals of their co-villagers had all been decided and the compensation enhanced.

(33) Shri Sandhu and Shri Madan Lal Sharma were members of an honourable profession. They were expected to act honourably, observe professional ethics and follow a high standard of probity and conduct. But what did they do. They tampered with the judgment in order to bring the appeal against the judgment within time. Shri Sandhu was found by District Judge (Vigilance) to have committed the actual offence. Shri Madan Lal Sharma was his accomplice. This too was found by the District Judge. No Court can countenance contumacious conduct of the type Shri Sharma has been found guilty of.

(34) Shri Sandhu and Shri Madan Lal Sharma also inextricably mixed their clients money, meant for court fees and miscellaneous legal expenses, with their own funds. They were entitled to their professional fees but not to the expenses to be incurred in the litigation. Retention of their clients money over a long period without utilizing it for the purpose they had received it as agents and trustees is defalcation, and very serious professional misconduct.

(35) Criminal prosecution was launched against them but has not been taken to its lawful conclusion despite specific orders of the Supreme Court passed on 5th January, 2001 in SLP 1192 of 2000 entitled **Madan Lal Sharma versus Punjab & Haryana High Court**. This has also been reflected in the affidavit dated 17th July, 2008. Course of law in the present case seems to have led nowhere. Contempt proceedings were adjourned *sine die* to await the decision of the criminal case, but these proceedings must now be brought to an end. Shri Sandhu is dead, the appellants too are dead, their lawyer

Shri Ravinder Seth is also no more. And Shri Madan Lal Sharma has tendered an apology.

(36) The question to be considered by us is whether Sharma should be left off with an apology or held guilty of criminal contempt and awarded condign punishment.

(37) Shri Madan Lal Sharma has a lot to answer, particularly when he is the only survivor. Shri Sharma was to ensure proper attestation of documents which he was filing. This was his professional duty. Indeed Shri Sharma owed a duty to the Court and a duty to the client both of which he breached.

(38) Speaking of professional duties of advocates who represent landowners in land acquisition proceedings, solicit work and settle contingent fees Hon'ble Mr. Justice R. C. Lahoti, Chief Justice has observed in **Rajendra V. Pai versus Alex Fernades (1)** as under :—

“No doubt probity and high standards of ethics and morality in professional career, particularly of an advocate, must be maintained and cases of proved professional misconduct severally dealt with.....”

(39) In **State of Punjab versus Shiv Ram (2)**, speaking of professional ethics of doctors, Hon'ble Mr. Justice R.C. Lahoti, Chief Justice had emphasized the need for self regulation and observed as under :—

“Inherent in the concept of any profession is a code of conduct, containing basic ethics that underline the moral values that govern professional practice and is aimed at upholding its dignity..... It cannot be denied that black sheep have entered the profession and that the profession has been unable to isolate them effectively. The need for external regulation to supplement professional self-regulation is constantly growing.....”.

(1) (2002) 4 S.C.C. 212 = AIR 2002 S.C. 1808

(2) (2005) 7 S.C.C. 1 = AIR 2005 S.C. 3280

(40) Mens rea is not an essential ingredient for proving criminal contempt. The Supreme Court in **D.C. Saxena versus Hon'ble The Chief Justice of India (3)** laid down as under :—

“What is relevant is that the offending or affront act produces interference with or tendency to interfere with the course of justice. What is material is the effect or the tendency of the act conduct or the publication of the words, written spoken or by signs visible representation or otherwise and whether it scandalises or tends to scandalise or lowers or tends to lower the authority of the Court or prejudice or tends to prejudice or interfere with or obstruct the administration of justice in any other manner.”

(41) In **Chandra Shashi versus Anil Kumar Verma (4)**, the Supreme Court was considering whether an apology of the contemner, who had forged and fabricated documents in court, should be accepted ? It was held as under :—

“The polluters of judicial firmament are required to be well taken care of to maintain the sublimity of Court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned. Such persons are required to be properly dealt with, not only to punish them for wrong done, but also to deter other from indulging in similar acts which shake the faith of people in the system of administration of justice.”

(42) In **Rajendra Sail versus M.P. High Court Bar Assn. (5)**, apology for criminal contempt was rejected in the following words :—

“If a person committing gross contempt of court were to get the impression that he will get off lightly it would be a most unfortunate state of affairs. Sympathy in such a case would be totally misplaced, mercy having no meaning. His action calls for deterrent punishment so that it also serve as an

(3) (1996) 5 S.C.C. 216 = AIR 1996 S.C. 2481

(4) (1995) 1 S.C.C. 421

(5) (2005) 6 S.C.C. 109 = AIR 2005 S.C. 2473

example to others and there is no repetition of such contempt by any other person”.

(43) Supreme Court of India in **D.P. Chadha versus Triyugi Narain Mishra and others (6)** considered the question of professional misconduct by an advocate who had misled the court and connived with the opposite party to bring about the compromise without authority of his client and made following observations regarding legal practitioners :—

“It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system, it will be more appropriate to say that while the Judge holds the reins, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the judge holding the reins, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of the chariot. As responsible officers of the court, as they are called and rightly, the counsel have an overall obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional.

A counsel in his zeal to earn success for a client, need not step over the well-defined limits of propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.”

(44) It is in the light of the decisions of the Supreme Court and the conduct of the contemner that we are constrained to hold Shri Madan

Lal Sharma guilty of criminal contempt. We find no reason to accept the apology tendered by him. We have given an opportunity to the contemner to make submissions regarding sentence to be imposed on him.

(45) Shri R.S. Cheema, learned Senior Counsel, appearing for the contemner has drawn our attention to the provisions of the Contempt of Courts Act, 1971 and the Contempt of Court (Punjab and Haryana) Rules 1974 (hereinafter referred to as the '1974 Rules'). The contention of the learned Senior Counsel is that after show cause notice was issued to the contemner and he appeared before this Court, in response to the notice, the contemner was required to be served a charge-sheet and given an opportunity to answer the charge, lead evidence either through affidavit or witnesses, cross-examine the deponents who had filed affidavits in support of the charge.

(46) Rule 6(3) of the 1974 Rules states that every notice issued by the High Court shall be in the form appended to these rules and shall be accompanied by a copy of the motion petition or reference as the case may be, together with the copies of the affidavits, if any. In accordance with Rule 6(3), notice dated 13th March, 1983 was indeed served on Shri Madan Lal Sharma for 11th April, 1983 (actual). The notice was personally received by Shri Madan Lal Sharma on 8th April, 1983. Therefore, provision of Rule 6(3) of 1974 Rules have certainly been complied with in this case.

(47) It was then contended by the learned Senior Counsel that the present stage was the stage as envisaged by Rule 8(3) of the 1974 Rules. This sub rule provides as under :—

“(3) If such person refuses to plead or does not plead, or claims to be tried or the High Court does not convict him on his plea of guilty, it may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary.”

(48) Therefore, a formal charge has to be drawn up, served on the contemner and his plea of guilty or not guilty recorded. Thereafter, the matter was required to be considered either by recording evidence or on the basis of the affidavits.

(49) Reliance was placed on **Daroga Singh and others versus B.K. Pandey (7)**. In this case, a Court of Additional District and Sessions Judge in Bihar was attacked by a number of police officials. This act and conduct of the police officials was taken as a criminal contempt of court and the Hon'ble Supreme Court, while dealing with the case, observed as under :—

“It has repeatedly been held by this Court (Ref. 1995(2) SCC 584) that the procedure prescribed either under the Code of Criminal Procedure or under the Evidence Act is not attracted to the proceedings initiated under S. 15 of the Contempt of Courts Act. The High Court can deal with such matters summarily and adopt its own procedure. The only caution that has to be observed by the Court in exercising this inherent power of summary procedure is that the procedure followed must be fair and the contemnors are made aware of the charges levelled against them and given a fair and reasonable opportunity. Having regard to the fact that contempt proceedings are to be decided expeditiously in a summary the convictions have been recorded without extending the opportunity to the contemnors to cross-examine those who had deposed against them on affidavits. Though the procedure adopted in this case was summary but adequate safeguards were taken to protect the contemnors' interest. The contemnors were issued notices apprising them of the specific allegations made against them. They were given an opportunity to counter the allegations by filing their counter-affidavits and additional counter/supplementary affidavits as per their request. They were

also given opportunity to file affidavits of any other persons which they did. They were given opportunities to produce any other material in their defence which they did not do. Most of the contemnors had taken the plea that at the relevant time they were on duty in their respective Police Stations though in the same town. They also attached copies of station diaries and duty chart in support of their alibi. The High Court did not accept the plea of alibi as all these papers had been prepared by the contemnors themselves and none of the superior officer had supported such a plea. The evidence produced by the respondents was rejected in the face of the reports made by the Additional District and Sessions Judge, Director General of Police coupled with affidavits of Mr. Barai, the Additional District and Sessions Judge, two Court's officials and affidavits of some of the lawyers who had witnessed the occurrence.

31. The contempt proceedings have to be decided in a summary manner. The Judge has to remain in full control of the hearing of the case and immediate action is required to be taken to make it effective and deterrent. Immediate steps are required to be taken to restore order as early and quickly as possible. Dragging the proceedings unnecessarily would impede the speed and efficiency with which justice has to be administered. This Court while considering all these aspects held in *In Re : Vinay Chandra Mishra* (the alleged contemner), 1995(2) SCC 584, that the criminal contempt no doubt amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law in the country has always been summary. It was observed that the need was for taking speedy action and to put the Judge in full control of the hearing. It was emphasized that immediate steps were required to be taken to restore order in the Court proceedings as quickly as possible. To quote from the above referred to case.

“However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of natural justice. viz., nemo iudex in sua causa since the prosecution is not aimed at protecting the Judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the Court or a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does not provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in Court. So long as the contemner’s interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the Court is commended and not faulted.”

(50) The question to be considered in this case is whether any evidence has to be recorded or matter can be decided on the basis of the affidavits. The Hon'ble Supreme Court in para 31 quoted above, laid down that contempt proceedings have to be decided in a summary manner and the Judge has to remain in full control of the hearing of the case. Dragging the proceedings unnecessarily would impede the speed and efficiency with which justice has to be administered. The Court had relied on **Vinay Chandra Mishra (8)** which quotation has also been reproduced above.

(51) In the present case the contemner's version has been considered by us in detail. He filed affidavit in his defence on 13th May, 1983 and a second affidavit on 17th July, 2008. His conduct has also been gone into in great detail. We have already undertaken this exercise while considering whether apology should be accepted or not. The contemner got 25 long years to defend himself. We have come to the conclusion that in the interest of justice and to protect the administration of justice, the contemner cannot be forgiven.

(52) Shri Madan Lal Sharma is accordingly held guilty of criminal contempt. Section 12(1) of the Contempt of Court Act, 1971 provides punishment for contempt of court. Contemner can be punished for simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

(53) We hereby sentence Shri Madan Lal Sharma to simple imprisonment for one month. However, the sentence shall remain suspended for a period of 60 days in terms of Section 19 of the Contempt of Courts Act.

R.N.R.

(8) 1995 (2) S.C.C. 584