

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Misc. Application No.79 of 2014

Present

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Munib Akhter
Mr. Justice Muhammad Ali Mazhar
Mr. Mustice Muhammad Sadiq Bhatti
Mr. Justice Salahuddin Panhwar

Date of hearing : 17.11.2014

Date of order : 17.11.2014

Complainants : Abid S. Zuberi and 50 others through M/s. Arshad Tayebaly, Abdul Hafeez Lakho, Syed Ghulam Shabbir Shah, Faisal Siddiqui, Abdur Rehman and Amanullah Khan, Advocates.

Versus

Respondents : M/s. Khawaja Shams-ul-Islam and Khawaja Saif-ul-Islam, advocates.

ORDER

Aqeel Ahmed Abbasi, J. This Full Bench has been constituted by the orders of the Hon'ble Chief Justice on the complaint dated 14.03.2014 signed by about fifty Advocates of this Court as well as of sub-ordinate Courts, supported by affidavits of about ten Advocates, addressed to the Hon'ble Chief Justice of Sindh High Court against M/s. Khawaja Shams-ul-Islam and Khawaja Saif-ul-Islam, Advocates, for their alleged contemptuous conduct in the Court Room of learned Single Judge of this Court on 14.03.2014 and disorderly conduct in the High Court Bar room, which has been forwarded by the Honorary Secretary, Sindh High Court Bar Association, Karachi, vide covering letter dated 15.03.2014 addressed to the Registrar, High Court of Sindh, Karachi. The matter was placed

before the Hon'ble Chief Justice by stating the relevant facts and orders were solicited from the Hon'ble Chief Justice on the following proposals:-

A. In view of the above, as directed, it is proposed that considering the serious allegations of misconduct raised against the concerned advocates, the complaint may be converted into Criminal Miscellaneous Application and the same may be placed before a Bench for further hearing.

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B. Any other order as deemed fit and proper may be passed.

2. On the aforesaid proposal, the Hon'ble Chief Justice has been pleased to convert the complaint into Criminal Miscellaneous Application with the direction to the office to register and number the application and to fix it before the Full Bench after notice to the Secretary, Sindh High Court Bar Association, Karachi. Accordingly, the matter was taken up for hearing by this Full Bench after notice to the Secretary, Sindh High Court Bar Association, Karachi, on 14.04.2014, when Mr. Asim Iqbal, the Secretary, Sindh High Court Bar Association submitted that since he has simply forward the complaint as Honorary Secretary, Sindh High Court Bar Association, Karachi, therefore, his name may not be mentioned in the title of instant CrI. Misc. Application and requested for suitable amendment in this regard as according to him, the Sindh High Court Bar Association, Karachi, has simply acted as the medium through which the complaint has been forwarded. In view of hereinabove contention of the Honorary Secretary, Sindh High Court Bar Association, Karachi, office was directed to change the title of instant proceedings to be read provisionally as "Proceedings in re: alleged incidents on 14.03.2014" . In view of some serious allegations as pointed out by the Secretary, Sindh High Court Bar Association in the Complaint and the Affidavits of the Advocates against M/s Khawaja Shams-ul-Islam and Khawaja Saif-ul-Islam, we deemed it appropriate to first issue notice of these proceedings to the respondents as well as A.G. Sindh, whereas, respondent M/s Khawaja Shams-ul-Islam and Khawaja Saif-ul-Islam, who were voluntarily present in Court, waived notice and claimed copies, which were supplied. However, Notice on the

listed applications including applications filed on behalf of respondents M/s Khawaja Shams-ul-Islam and Khawaja Saif-ul-Islam, was deferred. Thereafter, the matter was taken up for hearing on number of dates when Mr. Asim Iqbal, Honorary Secretary, Sindh High Court Bar Association, Karachi and M/s. Faisal Siddiqui, Abdul Hafeez Lakho, and Arshad Tayebaly, and Mr. Amanullah Khan, Advocates made their submissions on behalf of complainant(s). In order to avoid repetition of the submissions made by the learned counsel for the complainant(s) we would summarize their submissions in the following manner:-

3. Learned counsel for the complainant(s) have argued that through a written complaint, which has been duly signed by fifty Advocates along with affidavits of ten Advocates, including the eye witnesses of the incident, the Hon'ble Chief Justice has been apprised of two separate incidents, both of the same date i.e. 14.03.2014, whereas, first incident took place in the Court room of the learned Single Judge of this Court (Justice Nazar Akbar) in front of large number of Advocates and the litigant parties, which has been detailed in para 5 to 7 of the complaint, and the second incident took place around 1.00 p.m. on the same day at the Bar Room, Sindh High Court Bar Association, which has been detailed in para-9 of the complaint, which according to learned counsel for the complainant(s), reflect upon the contemptuous and disorderly behavior of the respondents M/s Khawaja Shams-ul-Islam and Khawaja Saif-ul-Islam, Advocates towards the Court and the Hon'ble learned Single Judge of this Court as well as gross misconduct towards the colleague Advocates of this Court, without any provocation hence amounts to misconduct and Contempt of Court.

4. Learned counsel for the complainant (s) after having readout the words attributed to the respondent Khawaja Shamsul Islam for having been uttered by him in open court and by referring to the provisions of Section 41 and 54 of Legal Practitioner and Bar Council Act, 1973 as well as the provisions of Section 3, 4, 6, 7, 9 11 and 17 of the Contempt of Court Ordinance, 2003, submitted that this Court by taking cognizance of the complaint and the material available on record may not only forward the complaint to the Provincial Bar Council for action in terms of Section 41 of the Legal Practitioner and Bar Council Act, 1973 against

the respondent by suspending their licence, but may also initiate the Contempt of Court proceedings against the alleged contemnors, who according to learned counsel for the complainant(s) have grossly misconducted themselves and tarnished the dignity, sanctity and honour of the learned Single Judge as well as of this Court by their disorderly and contemptuous conduct in the open Court in front of large number of Advocates and litigant parties. It has been further argued by the learned counsel for the complainant(s) that though, the first incident which took place in open Court has not been reported by the Honourable Judge himself to the Hon'ble Chief Justice for initiation of Contempt of Court proceedings against the alleged Contemnors, however, a written complaint has duly been forwarded by large number of Advocates, including eye witnesses of both the incidents, which complaint is duly supported by the affidavits of ten Advocates, which corroborates with the contents of the complaint by giving the entire detail of the gross misconduct and contemptuous behavior of the alleged Contemnors, which has been duly taken cognizance by the Hon'ble Chief Justice of this Court, who has been pleased to convert the said complaint into Criminal Misc. Application and has been further pleased to constitute this Full Bench for decision in this regard. Per learned counsel, from bare perusal of the contents of the complaint and the affidavits filed by the Advocates in this regard, it has emerged that the respondents i.e. alleged contemnors have grossly misconducted themselves by using abusive and contemptuous language against the Hon'ble Judge of this Court on the face of the Hon'ble Judge and in front of large number of Advocates and litigant parties, and have consciously made an attempt to ridicule and scandalize the Hon'ble Judge of this Court and have also obstructed the course of judicial proceedings and has thus committed Contempt of Court, including criminal contempt and judicial contempt as defined under the Contempt of Court Ordinance, 2003. In support of their contention, learned counsel for the complainant(s) have placed reliance in the cases of:

1. *Syed Masroor Ahsan and others vs. Ardeshir Cowasjee and others* PLD 1998 SC 823
2. *The State vs. Haji Dildar Ahmed, Advocate and another* PLD 1999 Lahore 156

3. *Shahid Orakzai vs. Pakistan Muslim League (Nawaz Group) and 8 others* 2000 SCMR 1969
4. *The State vs. Muhammad Anwar Cheema, Advocate* PLD 2006 Lahore 193
5. *Mst.Azra Sultana versus Ghulam Asghar Jatoi & another* [2011 P.Cr.L.J 434]
6. *Justice Hasnat Ahmed Khan and others vs. Federation of Pakistan/State* PLD 2011 SC 680
7. *Mian Abdul Waheed vs Addl.Sessions Judge, Lahore* [2011 P.Cr.L.J.438]

5. Conversely, the respondents M/s Khawaja Shams-ul-Islam and Khawaja Saif-ul-Islam, Advocates have voluntarily shown appearance waived notice of the proceedings and filed their written reply to the allegations as contained in the complaint, and submitted that they will appear in person without engaging a counsel. Mr. Khawaja Shamsul Islam Advocate while making submission on his behalf as well as on behalf of Mr. Khawaja Saiful Islam, raised an objection as to maintainability of instant proceedings on the ground that firstly, the allegations as contained in the complaint as well as in the Affidavits duly filed by the complainant (s) are false, frivolous and concocted, and secondly, on the ground that since no such incident took place, therefore, the matter has not been taken cognizance by the Honourable Single Judge of this Court in whose Court the alleged incident took place. Moreover, according to Mr.Shamsul Islam, since the alleged incident has not been taken cognizance by the Hon'ble Judge himself, who has not referred the matter to the Hon'ble Chief Justice for taking appropriate action in terms of Contempt of Court Ordinance, 2003, therefore, the complainant(s), who are admittedly, biased against the respondents and there is previous enmity between the parties, are not authorized to refer the matter relating to Contempt of Court to the Honourable Chief Justice, whereas, the allegations as contained in the complaint or in the affidavits are not supported by any material or evidence, hence, this Court may not be take cognizance of these frivolous and baseless allegations. It has been further contended that distorted version of both the incidents has been recorded in the complaint and affidavits, which contain false and frivolous allegations, whereas, the respondents themselves have brought the actual incident to the Notice of the Hon'ble Chief

Justice on the very date of incident, even before filing of the instant complaint on 15.03.2014 by the complainant(s) through Secretary, Sindh High Court Bar Association, Karachi. It is contended that since no order has been passed by Hon'ble Chief Justice on the complaint filed by the respondents, therefore, the respondents have filed such complaint in these proceedings through listed application, which contain the actual facts of the incident and will establish the falsity of the instant complaint. It has been further contended by Mr. Shamsul Islam that by initiating these frivolous proceedings, the complainant(s) who have made an assault upon the respondents to cause harm and injury to the respondents, have concocted a false story in order to preempt to avoid initiation of criminal proceedings and proceedings for gross professional misconduct against them by the respondents. It has been further contended that the Secretary, Sindh High Court Bar Association is not competent to forward the complaint without approval of the Managing Committee, as according to respondents, no Office Bearer of the Sindh High Court Bar Association is the signatory of the complaint. Mr. Shamsul Islam further contended that most of the complainants are from the same office of M/s. Abid S. Zuberi, the complainant in the instant case, and some of them are even not the members of the Sindh High Court Bar Association. Respondents further submitted that infact, there is no complaint in terms of Contempt of Court Ordinance 2003, whereas, through a letter addressed to Registrar, Sindh High Court, purported complaint has been attached. It has been further contended by the respondents that even from perusal of the contents of the complaint, it is evident that it contains the malicious and frivolous allegations against the respondents, which do not otherwise have any bearing or nexus with the alleged incident, which reflects that the complainants are bent upon to involve the respondents in false and frivolous proceedings in order to settle some account with the respondents, by abusing the process of Court. While, concluding the submissions, Mr. Shamsul Islam has submitted that no case of contempt of Court or misconduct by the respondents is made out, whereas, in view of contradictory versions of the complainant (s) as reflected in the complaint and in the affidavits filed alongwith the complaint,, the very allegations stand falsified and create serious doubt into the allegations,

therefore, in view of the decision of this Court as well as of the Hon'ble Supreme Court in such matters instant proceedings may be dismissed in limine. In support of his contention, Mr. Shamsul Islam has placed reliance in the following case laws:-

1. *Muhammad Iqbal Zafar vs. The State* 1977 SCMR 474
2. *Dr. Asif Hussain Jafri vs. K.B. Bhutto, Advocate* PLD 1990 Karachi 173
3. *West Pakistan Water and Power Development through its Chairman vs. Chairman, National Industrial Relations Commission* PLD 1979 SC 912
4. *American Life Insurance Company (Pakistan) Ltd. vs. Master Agha Jan Ahmed and another* 2011 CLD 350

Mr. Saiful Islam has adopted the submissions as advanced by Mr. Shamsul Islam.

6. Mr. Sibtain Mehmood, learned AAG present in Court on Notice, while concurring with the arguments of learned counsel for the complainants has contended that from perusal of the contents of the complaint duly signed by fifty Advocates and the affidavits filed by number of advocates, whereby, the two incidents, which took place in the Court room of a Hon'ble Judge of this Court and in the Bar room, prima-facie case of Contempt of Court and gross misconduct by the respondents has been made out, whereas, the Advocate General Office is willing to proceed against the alleged contemnors in accordance with law. It has been further contended by the learned AAG that since serious allegations have been leveled against the respondents by large number of Senior Advocates of the High Court Bar Association about the misconduct and contemptuous behavior of the respondents, in presence of eye witnesses in the open Court of Hon'ble Judge of this Court, as well as in the Bar Room of Sindh High Court Bar Association, whereas, a written complaint has been forwarded to the Hon'ble Chief Justice by such persons in terms of Contempt of Court Ordinance, 2003, who after having taken cognizance has placed the matter before this Full Bench for taking cognizance and to decide it in accordance with law, therefore, a show cause Notice may be issued to the alleged contemnors, whereafter, charge may be framed and the matter may be

proceeded against them in accordance with law. In support of his contention, learned AAG has placed reliance in the following case laws:-

1. *G.S. Gideon, Advocate vs. The State* PLD 1963 SC 1
2. *The State vs. Ashfaq Ahmed Sheikh* PLD 1967 Lahore 1231
3. *The State vs. Haji Dildar Ahmed, Advocate and another* PLD 1999 Lahore 156

7. We have heard the learned counsel for the complainant(s), the respondent(s) and learned AAG Sindh on the subject controversy, perused the contents of the complaint by the affidavits filed by the Advocates, the reply submitted by the respondents as well as the relevant provisions of Legal Practitioners and Bar Council Act, 1973, and the Contempt of Court Ordinance, 2003 with their assistance. Since the objection as to the nature of the instant proceedings and its maintainability has been raised by the respondents, we deemed it appropriate to examine this aspect of the matter before formally proceeding against the respondents on the allegations of contempt and misconduct by initiating the Contempt of Court under Contempt of Court Ordinance, 2003 read with Article 204 of the Constitution or/and by taking cognizance of the matter under Section 54 of the Legal Practitioner and Bar Council Act, 1973, by referring the matter to the Provincial Bar Council in terms of Section 41 of the Legal Practitioner and Bar Council Act, 1973, and have therefore, provided an opportunity to the counsel for the complainant(s) and the respondents to assist this Court on the subject.

8. We have examined the relevant provisions of Contempt of Court Ordinance, 2003 with particular reference to Section 2(b)(c)(f), Section 3, 4, 6, 7, 9, 11 and 17 in order to appreciate as to whether, the complaint of the Advocates of Sindh High Court brought to the notice of Hon'ble Chief Justice of this Court accompanied by affidavits of the Advocates, who are reportedly eye witnesses of the two incidents, which allegedly took place in the open Court of the Hon'ble Judge of this Court on 14.03.2014, in front of number of Advocates and the litigant parties, and in the Bar room of Sindh High Court Bar Association on the same date, has rightly been taken cognizance by the Hon'ble Chief Justice, who

has been pleased to constitute this Full Bench to examine the complaint and to decide the same in accordance with law. We have noted that instant matter is peculiar in the sense that admittedly, the Hon'ble Judge of this Court in whose Court the first alleged incident took place has neither taken cognizance of the alleged contemptuous misconduct by the respondents by initiating contempt of Court proceedings against them nor has referred the matter to the Hon'ble Chief Justice for taking appropriate action against the respondents under the Contempt of Court Ordinance, 2003 read with Article 204 of the Constitution of Islamic Republic of Pakistan, 1973. For this reason perhaps, the Hon'ble Chief Justice, instead of treating this complaint as Criminal Original Petition, converted the same into the Criminal Misc. Application and directed the office to place before this Full Bench for decision in accordance with law. We may observe that under the Contempt of Court Ordinance, 2003, the contempt of Court has been categorized into three categories (i) Civil Contempt (ii) Criminal Contempt and (iii) Judicial Contempt. From tentative perusal of the record of the instant case and the words spoken allegedly by the alleged contemnor for the Hon'ble Judge in open Court on the face of the Hon'ble Judge, it appears that the respondents have committed Contempt of Court, including criminal contempt of the Court and/or judicial contempt of Court. We have examined the provisions relating to criminal contempt as contained in Section 6, 7, 9 and 11 of the Contempt of Court Ordinance, 2003 and are of the tentative view that the alleged incident amounts to criminal contempt by means of either diverting the course of justice or having, intentionally or otherwise, the effect of obstructing the course of justice. In cases of criminal contempt, the cognizance can be taken under Section 7 of the Contempt of Court Ordinance, 2003 by a Superior Court either (i) Suo Moto or (ii) on the initiative by any person connected with the proceedings in which the alleged contempt has been committed or (iii) on the application of the law officer of a Provincial or Federal Government. Prima-facie, it appears that the cognizance in the instant matter can be taken by this Court as some of the complainant (s) are connected with the

proceedings in which the alleged contempt has been committed. We may also refer to provision of Section 9 of the Contempt of Court Ordinance, 2003, which defines personalized criticism of specific Judge or Judges, which may constitute judicial contempt in such case a complaint is to be made to the Hon'ble Chief Justice of the High Court, which in the instant matter has been made by the complainants, who are also reportedly eye witnesses of the alleged incident. Similarly, in terms of subsection (1) of Section 11 of the Contempt of Court Ordinance, 2003, this Court is authorized to take cognizance of judicial contempt on its own initiative, or **on information laid before it by any person**. We are of the view that though the Hon'ble Judge of this Court in whose Court the alleged contempt has been committed has not taken cognizance or initiated the contempt proceeding on his own initiative, however, such information has been laid by the complainants before the Hon'ble Chief Justice, who has forwarded the same to this Full Bench for a decision in accordance with law. Subsection 3 of Section 11 provides that the judicial contempt proceedings initiated by a Judge, **or relating to a Judge**, shall not be heard by the said Judge, but shall be referred to the Chief Justice, who may hear the same personally **or refer to some other Judge**, and, in a case in which the Judge himself is the Chief Justice, shall be referred to senior most Judge available for its disposal. Therefore, there seems no impediment, if the complaint about alleged contumacious conduct of respondents may be taken cognizance by this Full Bench, and the contempt of Court proceedings may be initiated by issuing them a Show Cause Notice as required in terms of Section 17(1) of the Contempt of Court Ordinance, 2003.

9. In view of hereinabove, M/s. Khawaja Shamsul Islam and Khawaja Saiful Islam, you both are hereby required to Show Cause as to why, in view of the allegations as contained in the complaint, and affidavits of the Advocates and the material available on record, you may not be charged of having committed criminal and for judicial contempt of Court in terms of Contempt of Court Ordinance, 2003, as well as for misconduct in terms of Section 54 read with Section 41 of the Legal Practitioners and Bar Council Act, 1973, you may Show Cause and submit your reply before the next date of hearing in writing either

personally or through duly appointed Advocate(s), however, may continue to attend the Court in person on each date unless your personal appearance is dispensed with by the order of this Court.

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