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Prashant Bhushan Case

Why in news?

The Supreme Court found that the two tweets by lawyer Prashant Bhushan amounts to serious contempt of court.

What were his tweets?

- One tweet was about the role of the last four Chief Justices of India.
- The other one was about the current CJI riding an expensive motorcycle while the court was in “lockdown”.

How did the court respond to the first tweet?

- The court held the tweet tends to give an impression that the SC has in the last six years played a role in the destruction of Indian democracy.
- It said that the tweet tends to shake the public confidence in the institution of judiciary.
- It said that the tweet undermines the dignity and authority of the institution of the SC and the CJI and directly affronts the majesty of law.

How did the court respond to the second tweet?

- The Bench held that this tweet was not against the CJI in his individual capacity but as the head of the judiciary.
- It took exception to the “lockdown” remark and said that from March 23 to August 4, its various Benches had 879 sittings.
- It noted that Bhushan himself not only appeared as a lawyer during this period but also challenged the FIR against him.
- The court refused to accept his tweet as written out of anguish.
- It said magnanimity cannot be stretched to such an extent that may amount to weakness in dealing with an attack on the very foundation of the institution of judiciary.

What is so worrying about this SC response?

- The court rejected the argument that the tweet was only a matter of opinion, although experts like former SC judges have said or written similar things.
- In 2018, the then senior-most SC judges had held a press conference to say that the credibility of the highest judiciary is at stake.
- They asserted that democracy would not survive as an independent judiciary is the hallmark of successful democracy.
- The SC had tolerated such a strong indictment of itself, and then CJI Justice Dipak Mishra.
- Now, it has chosen not to ignore tweets by a lawyer-activist.

What is Criminal contempt?

- Criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971 means any publication which
 1. Scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
 2. Prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings, or
 3. Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

What were the court's key arguments?

- **Actual Interference:** It rejected the argument that the tweet has not really interfered with administration of justice.
- It relied on Brahma Prakash Sharma (1953) verdict.
- This verdict had held that it is enough if a statement is likely, or tends in any way, to interfere with the proper administration of justice.
- The Bench also relied on C K Daphtary (1971) verdict.
- In this, the SC held that an attack on a judge in respect of a judgment or past conduct has adverse effect on the due administration of justice.
- It also said that this sort of attack has an inevitable effect of undermining the confidence of the public in the judiciary.
- **Scandalising Of Court:** The SC Bench cited Baradakanta Mishra (1974) verdict.
- In this verdict, the SC had held that scandalising of the court is a species of contempt, and a common form is vilification of the judge.
- The question the court has to ask is whether the vilification is of the judge as a judge, or as an individual.
- If the latter, the judge is left to his private remedies, and the court has no power to commit for contempt.
- The Bench held that fair criticism of judges, if made in good faith in public interest, is not contempt.

- But, how to ascertain the good faith is the million-dollar question.

How good faith could be ascertained?

- The Bench said that for ascertaining good faith and the public interest, the courts have to see all the surrounding circumstances.
- These circumstances should include the person responsible for comments, his knowledge in the field, and the intended purpose.

Is it different from previous rulings on contempt?

- There is nothing new in the judgment compared to earlier ones on the contempt law, several of which the Bench quoted.
- In a case involving Bhushan himself (**2001**), the SC had held that personal criticism of a judge does not amount to fair criticism.
- In **2006**, government brought in an amendment, which provides “truth” as defence provided it is bona fide and in public interest.
- The expression “scandalising the court” has not been defined.
- In **1988**, the SC held that a criticism of the court that doesn’t hamper the administration of justice cannot be punished as contempt.
- This raises the question whether a mere tweet can really obstruct the administration of justice.
- It also raises a question whether judicial dignity is so fragile that it would get lowered in mature Indian people’s eyes because of a lawyer’s opinion.

Why is the contempt law seen as problematic?

- The judge himself acts as prosecutor and victim, and starts with the presumption of guilt rather than innocence.
- Contempt proceedings are quasi-criminal and summary in nature.

Source: The Indian Express



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