

# IN THE HIGH COURT OF SIKKIM




## ORDER SHEET


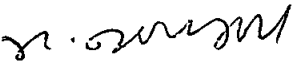

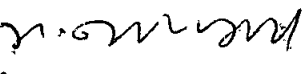
Contempt Case (Crl.).....No. 11 of ~~199~~ 2000.

State of Sikkim.....Petitioner/Appellant

Versus

Tashi Gyaltsen.....Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	29.11.2000	<p>Present: Mr. S. P. Wangdi, Advocate General, with Mr. Karma Thinlay, Assistant Government Advocate.</p> <p style="text-align: center;">In Civil Misc. Application No. 254 of 2000 in R.F.A. No. 35 of 2000, the contemnor, Tashi Gyalsten, as General Attorney of the applicant, Chogyal Miwang Wangchuk Namgyal, inter alia, stated:-</p> <p style="margin-left: 40px;">“6. The applicant submits that whilst, having regard to the facts, circumstances and submissions contained in the Revision Petition the Revision ought to have been entertained and disposed of by this Hon'ble Court in exercise of its overall Revisional/Appellate/inherent/Constitutional jurisdiction. ....”</p> <p>Prima facie, the aforesaid extract scandalises, or tends to scandalise, and lowers or tends to lower the authority of this court which amounts to criminal contempt within the meaning of section 2(c) of the Contempt of Courts Act, 1971.</p> <p>Issue notice to the contemnor, Tashi Gyalsten in Form I of the Rules framed under section 23 of the Contempt of Courts Act, 1971 to regulate contempt proceedings for 21.02.2001.</p> <p>The learned Advocate General shall conduct prosecution as provided in Rule 184 of the aforesaid Rules.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">               (Anup Deb)              Judge         </div> <div style="text-align: center;">               (Ripusudan Dayal)              Chief Justice         </div> </div>	<p style="text-align: center;">Office Note as to action (if any) taken on Order</p> <p style="text-align: center;">In R.F.A. No.35 of 2000, the following order has been passed by the Hon'ble Chief Justice sitting singly on 27-11-2000</p> <p style="text-align: center;"><b>"CMA No.254/2000.</b></p> <p style="text-align: center;">It seems that the application contains contemptuous allegations. Be placed before the D.B. for consideration as to whether Sri Tashi Gyaltsen who has signed the application should be proceeded against for having committed criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 on 29-11-2000."</p> <p style="text-align: center;">So the matter be listed before D.B. on 29-11-2000.</p> <div style="text-align: right; margin-top: 10px;">               29/11/2000         </div>

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
2.	21-2-2001	<p><b>Present:</b> Mr. S.P. Wangdi, Advocate General with Mr. Karma Thinlay, Asstt. Govt. Advocate for the State.</p> <p>Mr. T.B. Thapa, Advocate for the Contemnor along with the Contemnor, Tashi Gyaltzen.</p> <p>---</p> <p>Unconditional apology has been tendered. The same be kept on record.</p> <p>Heard arguments. Judgment reserved.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">               (Anup Deb)              Judge              21-2-2001.           </div> <div style="text-align: center;">               (R. Dayal)              Chief Justice              21-2-2001.           </div> </div>	
3.	1-3-2001	<p><b>Present:</b> Mr. S.P. Wangdi, Advocate General with Mr. Karma Thinlay, Asstt. Govt. Advocate for the State.</p> <p>Mr. Tashi Gyaltzen, Contemnor with Mr. T.B. Thapa, Advocate for the Contemnor.</p> <p>---</p> <p>Judgment delivered. Simple imprisonment of seven days awarded but the same has been suspended subject to giving an undertaking within ten days.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">               (Anup Deb)              Judge              1-3-2001.           </div> <div style="text-align: center;">               (R. Dayal)              Chief Justice              1-3-2001.           </div> </div>	<p><i>Sh. T. A. Thapa, Advocate for Contemnor Tashi Gyaltzen, 16 let's change.</i></p> <p><i>As Under Sheriff's Office Today with affidavit.</i></p> <p><i>Chy 08/2001.</i></p>

**IN THE HIGH COURT OF SIKKIM**

Contempt Case (Crl.) No. 11 of 2000

*Date of Decision : 1<sup>st</sup> March, 2001.*

State of Sikkim ..... Petitioner

*Versus*

Tashi Gyaltzen ..... Contemnor

***Coram :***

**The Hon'ble Mr. Justice Ripusudan Dayal, Chief Justice.  
The Hon'ble Mr. Justice Anup Deb, Judge.**

Present : Mr. S.P. Wangdi, Advocate General with  
Mr. Karma Thinlay, Assistant Govt. Advocate  
for the State.

Mr. T.B. Thapa, Advocate for the contemnor  
along with the contemnor, Shri Tashi Gyaltzen.

**ORDER**

**Dayal, C.J.**

Notice was issued to the contemnor, Shri Tashi Gyaltzen, by this court on its own motion for having made the following statement in Civil Misc. Application No. 254/2000 in RFA No. 35 of 2000 as General Attorney of the applicant, Chogyal Miwang Wangchuk Namgyal :

“6. The applicant submits that whilst having regard to the facts, circumstances and submissions contained in the Revision Petition the Revision ought to have been entertained and disposed of by this Hon'ble Court in exercise of its overall Revisional/ Appellate/ inherent / Constitutional jurisdiction.....”

*M. Wangdi*

since the court was, prima facie, of the view that the aforesaid extract scandalizes, or tends to scandalize, and lowers or tends to lower the authority of this court which amounts to criminal contempt within the meaning of section 2(c) of the Contempt of Courts Act, 1971. In compliance with the notice, the contemnor has appeared and has tendered unconditional apology. Shri T.B. Thapa who has appeared for him has pressed for the acceptance of the apology. We enquired of him as to the circumstances in which the averment extracted above came to be made. The learned counsel pleaded that it was he who had drafted the application. Thereupon, we asked him why no such averment was made in the application tendering unconditional apology or anywhere else on the record and if he is responsible for the averment, an application should be filed making such averment. But no such application has been filed. These are the relevant circumstances which require consideration.

2. Judicial process must run its even course in the interest of the administration of justice which is the foundation of civilized society. Litigants as also the counsel must pay deferential respect to the court and scrupulously observe the decorum of the courtroom. The Supreme Court in Ramon Services Pvt. Ltd. v. Subhash Kapoor and others (2001) 1 SCC 118, extracted the following from Warvelle's Legal Ethics, at p. 182 in paragraph 28 :

“A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.”

If a litigant tells the court that the same very court ought to have dealt with the matter at an earlier stage in a manner otherwise than it has been dealt with, decorum of the court is bound to be spoilt with the attendant consequence of obstruction to the

*M. S. Srinivasan*

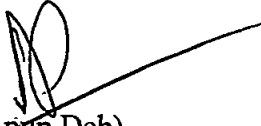
administration of justice. It is well known to every legal practitioner and every experienced litigant that they are required to plead the grounds both of fact and law which would be relevant to the grant of relief sought by them. It is not open to them to comment upon the manner in which the same very court had dealt with the matter at an earlier stage. The comment that the Revision Petition filed by the contemnor ought to have been entertained and disposed of by this court in exercise of its overall Revisional/Appellate/Inherent/Constitutional jurisdiction was wholly irrelevant to the relief of condonation of delay in filing the appeal and amounted to scandalizing the court, as it meant that the order of the court was not sustainable in law. To say so, even when the party knows that such a comment was wholly uncalled for, not being relevant to the relief claimed and tended to obstruct the administration of justice by vitiating the court atmosphere, amounts to contempt of court. The motive for making such a statement cannot be innocent. It may be to manifest his capacity to be a nuisance to the court to get relief according to his wishes. Neither the contemnor nor his counsel has put the record straight by giving in writing the circumstances in which the aforesaid statement came to be made on the record. At the same time, we do not see any reason for not believing the statement of Shri T.B. Thapa that he had drafted the application. Shri Thapa ought to have been careful in drafting the application and ought not to have made any averment which tends to scandalize or lower the authority of the court. The contemnor who appears as General Attorney is also conversant with the court procedure as it is not unoften that he appears in the court cases as General Attorney. Making allegations amounting to contempt simply because he could not get an order according to his wishes, cannot be left lightly.

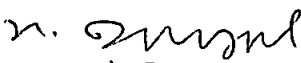
3. In the result, we hold that the aforesaid extract tends to scandalize and lower the authority of the court and also to obstruct the administration of justice

*m. m. m.*

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and amounts to criminal contempt within the meaning of Section 2 ( c ) of the Contempt of Courts Ac, 1971 and sentence the contemnor Shri Tashi Gyaltzen to simple imprisonment for seven days. However, we suspend the sentence awarded to him for three years subject to his furnishing an undertaking within ten days, on affidavit, that he will not indulge in similar act or any other act amounting to contempt, civil or criminal, within that period, failing which he shall be arrested to serve out the sentence awarded to him. In case he furnishes the undertaking and commits breach thereof within the aforesaid period, he shall be taken into custody to serve out the sentence awarded to him apart from any other action for which he may be liable. In case he does not commit any breach of the undertaking within the period of three years, the sentence awarded to him shall stand remitted.

  
(Anup Deb)  
Judge

  
1.3.2001  
(Ripusudan Dayal)  
Chief Justice