

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 7610/2007**

Reserved on : 5th May, 2010

Pronounced on: 24th May, 2010

V.L.S.FINANCE LIMITED & ANR.

..... Petitioners

Through: Mr. Aman Lekhi, Sr. Adv. with
Ms. Meenakshi Lekhi, Mr. Vishal
Balecha and Mr. Ashok Kumar,
Advocates.

VERSUS

HIGH COURT OF DELHI

....Respondent

Through: Mr. Viraj R.Datar and Mr. Chetan
Lokur, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

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JUDGMENT

VALMIKI J. MEHTA, J

1. The issue raised in the present petition by the petitioner is if the Law Officer as mentioned in Section 15 of the Contempt of Courts Act, 1971 (hereinafter referred as the Act or the said Act) refuses to grant permission to initiate action for criminal contempt, then, if a petition is filed thereafter in the court for seeking initiation of criminal contempt under the Act, is not such a petition bound to be listed on the

judicial side for hearing. Putting it differently, the petitioner contends that when a petition is filed seeking initiation of proceedings of criminal contempt, although permission is refused by the Law Officer under Section 15 of the Act, then such a petition cannot be treated only as an information to the court and the same has to be treated as a substantive petition which cannot be dealt with by this court on the administrative side.

2. The issue canvassed arises for determination because the petitioner had sought permission of the Law Officer under Section 15 for initiation of proceedings of criminal contempt against various persons on the ground that various repetitive petitions were being filed and they were basically initiated at the behest of one Mr. Satya Pal Gupta. It was alleged that the repeated criminal complaints filed by Mr. S.P.Gupta although through Mr. Sudesh Kohli and Mr. Vijay Kaushik and which complaints on identical facts constituted abuse of the process of court. It was sought to be contended that by filing successive proceedings on identical allegations, suppressing certain earlier orders and earlier proceedings made the repeat proceedings frivolous and vexatious, amounting not only to scandalising the authority of the court but also the same tended to interfere with the due course of judicial proceedings. On the Law Officer refusing permission under Section 15 of the Act for initiating proceedings for criminal contempt a petition was filed before this court under Article 215 of the Constitution of India read with Sections 2(c) and 15 of the Act, which petition was not placed for hearing on the judicial side but was treated by the respondent herein only as an information to the Chief Justice. Hon'ble the Chief Justice thereafter marked the papers to a learned Single Judge of this court for his

opinion and the learned Single Judge opined that no case of criminal contempt was made out. Accordingly, the petition was not placed on the judicial side and was rejected by the impugned order on the administrative side. The petitioner by means of this petition challenges the said impugned order dated 20.8.2007 and seeks quashing of the same.

3. The principal argument which was addressed by Mr. Aman Lekhi, learned senior counsel for the petitioner was that the procedure adopted by the High Court/respondent in treating the petition as only an information was defective inasmuch as there are no rules which have been framed. It was contended that the petition should have in fact been listed on the judicial side and not disposed of on the administrative side in view of the observations of Hon'ble Mr. Justice Sabyasachi Mukherjee, J in his concurring judgment in the case reported as *P.N.Duda Vs. P. Shiv Shankar* , 1988 (3) SCC 167. It was contended that the decisions of the Supreme Court in the case reported as *Bal Thackrey Vs. Harish Pimpalkhute*, AIR 2005 SC 396 would not apply inasmuch as the decision in the case of *Bal Thackrey* (supra) will only apply when contempt proceedings are *suo moto* initiated by the court. It was further contended that even in the case of *Anil Kumar Gupta Vs. K. Suba Rao ILR (1974) 1 Del 1 (DB)*, which case was approved by the Supreme Court in the *Bal Thackrey's* case was also a case with respect to *suo moto* initiation of contempt proceedings. Reliance was placed extensively on the judgment of Justice Sabyasachi Mukherjee in the case of *P.N.Duda* (supra) although the Supreme Court approved the views of the other learned Single Judge Ranganathan J, given in *P.N.Duda's* case. It was also sought to be argued that since there was ambiguity about the procedure and

the state of law, the petitioner should not be put at a disadvantage by holding that the contempt petition filed on refusing of the permission by the Law Officer under Section 15 of the Act should only be treated as an information. It was contended that if this was allowed, it would mean betrayal of substantive law by its subordination to complexity and would cause multiplicity of proceedings by forcing a petitioner first to file a writ petition seeking quashing of the decision of the Law Officer and only whereafter proceedings for criminal contempt could be initiated. Reference was made to *Conscientious Group Vs. Mohd.Yunus (1987) 3 SCC 89* to contend that no independent proceedings need to be filed to independently challenge the declining of the grant of consent by the Law Officer under Section 15 of the Act.

4. We are unable to agree with the arguments as raised by the learned senior counsel for the petitioner. This is for the reason that the matter is no longer *res integra*. The decision of the Supreme Court in the case of *Bal Thackrey* is given by a Division Bench of three judges and which specifically approved the ratio and observations of Ranganathan, J in the case of *P.N.Duda* and which in turn approved the procedure as laid down by a Division Bench of this court in the case of *Anil Kumar Gupta's* case.

5. Since the decision in *Bal Thackrey's* case refers to the cases of *Anil Kumar Gupta* and also the judgment of Ranganathan . J in the case of *P.N.Duda*, we may straight away refer to the relevant observations and the ratio of the Supreme Court in the *Bal Thackrey's* case which is indeed conclusive of the matter. It is not possible for this court to agree with the contention of the learned senior counsel for the petitioner that the Supreme Court has incorrectly appreciated the decision in

P.N.Duda's case and seemingly ignored the observations of Sabyasachi Mukherjee, J.

The relevant paragraphs of the decision in **Bal Thackrey's** case are as under:-

“3. The Delhi High Court in the case of *Anil Kumar Gupta v. K. Suba & Anr.* [ILR (1974) 1 Del 1] issued following directions:

“The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information.”

4. In *P.N. Duda v. P. Shiv Shanker & Ors.* [(1988) 3 SCC 167] this Court approving the aforesaid observation of the Delhi High Court directed as under:

“.....the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts.”

13. In *P.N. Duda case* (supra) it was held that:

“54. A conjoint perusal of the Act and Rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the Court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing. There is no difficulty where the Court or the Attorney General choose to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the Court and request the Court to take action (vide *C.K. Daphtary v. O.P. Gupta* and *Sarkar v. Misra*); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move the Court.”

14. The direction issued and procedure laid down in *Duda's case* is applicable only to cases that are initiated suo motu by the court when some information is placed before it for suo motu action for contempt of court.

15. A useful reference can also be made to some observations made in *J.R. Parashar, Advocate and others v. Prasant Bhushan Advocate and Others* [(2001) 6 SCC 735]. In that case noticing Rule 3 of the Rules to Regulate Proceedings for the Contempt of the Supreme Court, 1975 which like Section 15 of the Act provides that the Court may take action in cases of criminal contempt either (a) suo motu; or (b) on a petition made by the Attorney General or Solicitor General; or (c) on a petition made by any

person and in the case of a criminal contempt with consent in writing of the Attorney General or the Solicitor General as also Rule 5 which provides that only petitions under Rules 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice, it was observed that the matter could have been listed before the Court by the Registry as a petition for admission only if the Attorney General or Solicitor General had granted the consent. In that case, it was noticed that the Attorney General had specifically declined to deal with the matter and no request had been made to the Solicitor General to give his consent. The inference, therefore, is that the Registry should not have posted the said petition before the Court for preliminary hearing. Dealing with taking of suo motu cognizance in para 28 it was observed as under:

“ Of course, this Court could have taken suo motu cognizance had the petitioners prayed for it. They had not. Even if they had, it is doubtful whether the Court would have acted on the statements of the petitioners had the petitioners been candid enough to have disclosed that the police had refused to take cognizance of their complaint. In any event the power to act suo motu in matters which otherwise require the Attorney General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources, such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech or a document which would speak for itself. Otherwise sub-section (1) of Section 15 might be rendered otiose.”

17. In the light of the aforesaid, the procedure laid and directions issued in Duda's case are required to be appreciated also keeping in view the additional factor of the Chief Justice being the master of the roster. In *State of Rajasthan v. Prakash Chand and Others* [(1988) 1 SCC 1] it was held that it is the prerogative of the Chief Justice of the High Court to distribute business of the High Court both judicial and administrative. He alone has the right and power to decide how the Benches of the High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear as also to which Judges shall constitute a Division Bench and what work those Benches shall do.”

6. A conjoint reading of the aforesaid paras clearly show that the Supreme Court in *Bal Thackrey's* case has approved the procedure as laid down by a Division Bench of this court in *Anil Kumar Gupta's* case and as was followed by Ranganathan , J in *P.N.Duda's* case. The observations in para 15 reproduced above make the issue crystal clear that the Supreme Court approved the procedure in *Anil Kumar Gupta's* case by holding that only when the Law Officer grants permission, a petition which is

filed can be listed on the judicial side. Where the Law Officer declines the consent, the matter is placed before the court not as a petition on the judicial side but only taking the petition as information for possible *suo moto* cognizance by the court. The Supreme Court finally in para 18 concluded that the procedure of **Anil Kumar Gupta** as approved by Ranganathan, J in **P.N.Duda's** case should be followed by the High Courts to ensure smooth working and streamlining of the procedure for cognizance of cases pertaining to criminal contempt.

7. We therefore are of the clear view that the procedure as laid down in **Anil Kumar Gupta's** case and as reproduced in para 3 in the decision in **Bal Thackrey's** case above is the correct procedure that where the Law Officer declines consent and a contempt petition is filed in spite of the refusal, such a petition should not be treated as a petition and should not be placed for admission on the judicial side. Such a petition should only be treated as information to the court and should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the court whether to take any cognizance of the information or not.

8. We do not agree with the contention of Mr. Lekhi that the ratio in **Bal Thackrey's** case will not hold the field upholding the procedure as laid down in **Anil Kumar Gupta's** case on the ground that in the cases of **Anil Kumar** and also **Bal Thackrey**, proceedings were initiated *suo moto* by the court. The ratio of the judgment of the Supreme Court, the findings and observations are more than clear, which are general in nature, and in fact the Supreme Court in para 18 of the judgment agreed that the procedure as stated in **Anil Kumar Gupta's** case should be followed by

the High Courts to ensure smooth working and streamlining of such contempt actions which are though filed in the form of a petition to the High Court, are in fact only to be treated as an information to the court for any *suo moto* action which the High Court may seek to take.

9. We are further unable to appreciate the contention raised on behalf of the petitioner that there would be unnecessary multiplicity of proceedings or alleged prevailing of complexity over substantive law by declining to treat the petition on the judicial side, for the reason that the ratio of the judgment in ***Bal Thackrey's*** case clearly stares us in the face. The counsel for the respondent has conceded during the course of hearing that the decision of the Law Officer declining consent is justiciable by filing an independent Writ Petition. We agree with the stand of the respondent. It is not permissible to argue against the said ratio. Further, we do not agree that there is any ambiguity in the procedure and which has caused any prejudice to the petitioner. The judgment in the case of ***Anil Kumar Gupta*** (supra) has been followed for over 36 years by this court and it does not lie in the mouth of the petitioner to say that this procedure which is adopted as stated in ***Anil Kumar Gupta's case*** cannot be said to be a prescribed procedure.

10. One incidental issue we may mention with regard to limitation for filing of proceedings for initiating action for contempt. The period of limitation for initiating proceedings for contempt is a period of one year as per Section 20 of the Act. An issue arose as to what happens if the consent is declined and considerable time is spent till a writ petition is filed for quashing the decision of the Law Officer and only whereafter a petition can be filed for initiating action for contempt, and by which time

it is definitely possible that the period of one year for initiating contempt under Section 20 may have expired. Once again this issue has been pronounced upon by the Supreme Court in the case of *Pallav Sheth vs. Custodian and others*, (2001) 7 SCC 549 and in which the Supreme Court has clearly held that once any proceedings are initiated for contempt, which would include presenting of a petition to the Law Officer seeking permission, the period of limitation would stop running. The observations in paras 39 to 41 of the said judgment are relevant and which reproduced herein below.

“39. In the case of criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or the Law Officer of the Central Government in the case of a Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate-General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the court the wilful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a court was to take a suo motu action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing the attention of the court to the contempt having been committed. When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.

40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the court, a contemner cannot be made to suffer. Interpreting the

section in the manner canvassed by Mr Venugopal would mean that the court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of the contempt having been committed and the same having been brought to the notice of the court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigants as also by placing a pointless fetter on the part of the court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.”

11 We therefore, dismiss the petition and hold that once consent of the Law Officer is refused as required under Section 15 of the Act, then, it is necessary that an independent petition be filed for setting aside the decision of the Law Officer and it is not permissible to file a contempt petition straight away including seeking therein the relief of quashing of the administrative order declining taking of action for initiating criminal contempt proceedings and seek its listing on the judicial side for hearing. The procedure adopted by the respondent is correct that such petition can only be treated as an information to the court which is to be dealt with by the Chief Justice on the administrative side or to any Judge who is required to give the necessary opinion which is acted upon by the Hon’ble the Chief Justice.

12. The petition is therefore dismissed leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

MAY 24 , 2010
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SANJAY KISHAN KAUL, J.