

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

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Date of Decision: 25.07.2013

+ W.P.(C) 4974/2012 & CM 6314/2013

UNITED SPORTS TRADERS (DELHI) PCT LTD. & ANR.

..... Petitioner

Through: Mr. Sanjay Jain with Ms. Sudha Bhadauria,
Advs.

versus

STANDING COUNSEL (CRIMINAL), GOVT. OF NCT OF DELHI

..... Respondents

Through: Mr. Sanjiv Sharma, Adv. for Noticees Mr.
Amit Kohli, Mr. Someer Kohli and Smt.
Usha Kohli

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court is aggrieved from the order dated 9.7.2012 passed by learned Standing Counsel (Criminal), Govt. of NCT of Delhi, whereby he declined request of the petitioners, seeking his consent, required under Section 15(2) of the Contempt of Court Act, for proceedings against Mr. Parminder Sachdev, the alleged contemnor no.1, Smt. Anju Sachdev, alleged contemnor no.2 and Alpine Modular Interior Private Limited, the alleged contemnor no.3. The case of the petitioners in nutshell is that the alleged contemnors made averments and statements which were false and dishonest to their knowledge, in a civil suit between the parties, thereby committed criminal contempt of a court subordinate to this Court. This is also the case of the petitioners that the alleged contemnor

concealed the true facts from the Court in the aforesaid civil suit, besides disobeying the order passed by the Court. The order, rejecting the consent, *inter alia*, reads as under:

“I have considered the submissions of learned counsel, perused the entire record placed before me. In my view provision 10 of the Contempt of Court Act, 1971 is relevant for the decision of the case. Criminal Contempt is not made out as the petitioner has remedy under section 340 Cr.P.C which can be available to him before the learned District Judge Court.

In my view giving false affidavit and deposing falsely during judicial proceedings, constitute various criminal offences punishable under IPC. Even the learned trial court has ample power to proceed under section 340 Cr.P.C against respondent *suo moto*.

Provision to section 10 of Contempt of Court Act 1971 provides:

“No High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence under IPC.”

Being aggrieved from the order passed by the Standing Counsel, the petitioner is before this Court seeking quashing of the communication dated 9.7.2012 whereby the requisite consent has been declined and a direction to the respondent to grant consent in terms of section 15 of the Contempt of Court Act. The alternative prayer made in this petition is to direct the respondent to file a criminal contempt petition which is annexed as Annexure C-2 to the writ petition before this Court. Yet another alternative prayer made in the writ petition is to direct respondents to place the matter before the Hon'ble Chief Justice of this Court on the administrative side for appropriate consideration and consequently *suo moto* cognizance for criminal contempt.

2. It would be seen from a perusal of the impugned communication dated 9.7.2012 that the learned Standing Counsel (Criminal) declined consent on the ground that the alleged contempt also constitutes offence punishable under the provisions of Indian Penal Code and consequently in view of the provisions contained in section 10 of the Contempt of Court Act, no criminal contempt as defined in the said Act is made out. He also took the view that the trial court has ample power to proceed against the alleged contemnors under section 340 of Criminal Procedure Code.

3. The proviso to Section 10 of the Contempt of Court Act provides that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

4. In **Bathina Ramakrishna Redddy versus State of Madras** [AIR 1952 SC 149], the question which came up for consideration before the Apex Court was as to whether proviso to section 10 of the aforesaid Act places embargo on the powers of the High Court to take cognizance of a contempt in all those cases where the acts alleged to constitute contempt are punishable under any of the provisions of the Indian Penal Code or only in those cases where such acts are punishable, as contempt, under the provisions of the Indian Penal Code. Rejecting the contention that the said embargo extends to all the cases where the acts constituting offence are punishable under the provisions of IPC irrespective of whether punishable as contempt or otherwise, the Court, *inter alia*, held as under:

“...According to Mr. Sinha, what the sub-section means is that if the act by which a party is alleged to have committed contempt of a subordinate court constitutes offence of any description whatsoever punishable under the Indian Penal Code, the High Court is precluded from taking

cognizance of it. It is said that in the present case the allegations made in the article in question amount to an offence of defamation as defined by section 499 of the Indian Penal Code and consequently the jurisdiction of the High Court is barred. Reliance is placed in support of this proposition upon the decision of the Nagpur High Court in *Kisan Krishna Ji v. Nagpur Conference of Society of St. Vincent de Paul*(1). This contention, though somewhat plausible at first sight, does not appear to us to be sound. In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only. in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say "where the act alleged to constitute such contempt is an offence".

What these cases are need not be exhaustively determined for purposes of the present case, but some light is undoubtedly thrown upon this matter by the provision of section 480 of the Criminal Procedure Code, which empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under sections 176, 178, 179, 180 or section 228 of the Indian Penal Code in the view or presence of the court. We are not prepared to say, as has been said by the Patna High Court in *Jnanendra prasad v. Gopal*(1), that the only section of the Indian Penal Code which deals with contempt committed against a court of justice or judicial officer is section 228. Offences under sections 175, 178, 179 and 180 may also, as section 480 of the Criminal Procedure Code shows, amount to contempt of court if the "public servant" referred to in these sections happens to be a judicial officer in a particular case.

It seems, therefore, that there are offences which are punishable as contempt under the Indian Penal Code and as subordinate courts can sufficiently vindicate their dignity under the provisions of criminal law in such cases the legislature deemed it proper to exclude them from the jurisdiction of the High Court under section 2(3) of the Contempt of Courts Act; but it would not be correct to say that the High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code."

5. The aforesaid view was reiterated by the Apex Court in State of Madhya Pradesh versus Revashankar [AIR 1959 SC 102], Waryam Singh and anr. versus Sadhu Singh [AIR 1972 SC 905], Daroga Singh and others versus B.K. Pandey [(2004) 5 SCC 26] and Arun Paswan, SI versus State of Bihar [(2004) 5 SCC 53]

6. Chapter X of Indian Penal Code, contains certain offences under the heading “Contempt of the Lawful Authority of Public Servants” and Section 172 to 190 are included in the said Chapter. All these offences are, therefore, punishable, as contempt, under IPC. Sections 176, 181, 182 of IPC read as under:

“176. Omission to give notice or information to public servant by person legally bound to give it.-- Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; 2[or, if the notice or information required to be given is required by an order passed under sub- section (1) of section 565 of the Code of Criminal Procedure, 1898 (5 of 1898), with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

181. False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.-- Whoever, being legally bound by an oath 3[or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath 3[or affirmation], makes, to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

182. 4[False information, with intent to cause public servant to use his lawful power to the injury of another person.-- Whoever gives to any

public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

7. In my view, the acts alleged by the petitioners, broadly fall into one or more of the above referred three sections and, therefore, if proved before the Competent Court, can be punished by the said Court, as contempt, under the above referred provisions contained in the Indian Penal Code. Therefore, I find no legal infirmity in the view taken by the learned Standing Counsel which would warrant interference by the Court in exercise of jurisdiction under Article 226 of the Constitution.

8. Assuming, however, that the allegations made against the alleged contemnors though punishable under the provisions of Indian Penal Code, are punishable other than as contempt i.e. under the provisions other than Sections 172 to 190 of IPC, considering the nature of the dispute between the parties and the nature of the allegations made against the alleged contemnors, I am of the view that such allegations do not require cognizance under Section 15 of the Contempt of Court Act and they can be better dealt with in a trial which a criminal court is required to conduct in accordance with the proceedings contained in the Code of Criminal Procedure. If the alleged contemnors are tried in a criminal court, the petitioners would be required to lead evidence to prove allegations made against the alleged contemnors, who will have the opportunity not only to cross examine the witnesses of the petitioners but also produce evidence in their defence. On the other hand, the proceedings under the Contempt of Court Act, 1971 being summary in nature, no full-fledged trial by the High Court is envisaged and the

alleged contemnors would have no opportunity to impeach the veracity of the allegations through the process of subjecting the witnesses to cross examination.

9. In **Bathina Ramakrishna Redddy versus State of Madras (supra)**, the appellant before the Court defamed a public servant imputing corruption to a Magistrate, calling him a bribe-taker and a broker in negotiation with corrupt practices. Certain specific instances were also cited. It was on these allegations that the Court upheld initiation of proceedings by the High Court in exercise of its power to punish any contemnor of the Subordinate Court.

In **State of Madhya Pradesh versus Revashankari (supra)**, the respondent before the Court had filed an application casting serious aspersions against the Magistrate one being that he had joined in conspiracy to implead him in a false case of theft and the other aspersion being of taking bribe. In **Waryam Singh and anr. (supra)**, the police officer was alleged to have arrested the complainant and his witnesses with an object to stifle the prosecution. In **Daroga Singh and others versus B.K. Pandey (supra)**, a Judge was assaulted in a court room in a very planned and calculated manner and thereafter in chamber by police officials not in uniform. In **Arun Paswan, SI versus State of Bihar (supra)**, abusing slogans against judiciary and District Judge were raised outside the Court room premises.

The allegations in the present case, however, are altogether emanating out of civil suit between the parties. Such allegations need to be adjudicated by way of a criminal trial and not in a summary proceeding initiated under the Contempt of Court Act, 1971. This is yet another reason the view taken by the learned Standing Counsel (Criminal) does not call for any interference by this Court.

10. In his compilation, the learned counsel for the petitioners has also referred to **S.K. Sarkar, Member Board of Revenue, U.P., Lucknow versus Vinay Chandra Misra** [(1981) 1 SCC 436], **Iqbal Singh Marwah and Anr. versus Meenakshi**

Marwah and anr.[(2005) 4 SCC 370, Dhananjay Sharma versus State of Haryana and others [(1995) 3 SCC 757] and Maninderjit Singh Bitta versus Unionn of India and others [(2012) 1 SCC 273]. However, none of these judgments help the petitioners once it is found that the acts attributable to the alleged contemnors are punishable as contempt under one or more of the provisions contained in Chapter X of Indian Penal Code.

11. A perusal of record shows that vide order dated 23.1.2013, this Court issued notice to the alleged contemnors Mr. Parminder Sachdev, no.1, Smt. Anju Sachdev and Alpine Modular Interior Private Limited. When the matter next came up for hearing on 6.3.2013, the learned counsel for the alleged contemnors stated that he had no difficulty in depositing the keys of the premises in question in the court and in fact they had already made an application for this purpose in the inter-pleader suit pending before the learned Civil Judge, New Delhi. Thereupon, the learned counsel for the petitioners stated that if the keys are handed over to the petitioner, he will seek appropriate instructions for withdrawal of all proceedings against the persons represented by the counsel. The key was thereafter deposited in the Court. The learned counsel for the petitioners states that he would withdraw the writ petition if the key is handed over to the petitioner. However, I find that CM 6314/2013 has been filed by three persons namely Mr. Amit Kohli, Mr. Someer Kohli and Smt. Usha Kohli seeking permission to carry on manufacturing activities on behalf of the petitioner company in the portion of the factory shall be surrendered by Mr. Parminder Sachdev before this Court in terms of the order dated 26.4.2013. Since there is dispute between the petitioners and the applicants in CM 6314/2013 as to who is lawfully entitled to the aforesaid keys, and it is not possible to adjudicate upon their respective claims in this writ petition, no order directing handing over the said keys to the petitioners can be passed. It is,

therefore, directed that the keys which were deposited in the Court be returned to the persons by whom it was deposited. The dispute as to who is lawfully entitled to the keys is left open to be decided by the Competent Court in appropriate proceedings. The persons who have deposited the keys if they are party to such proceedings would be duty bound to comply with the order of the Competent Court with respect to the keys which will be returned to them by the Registry of this Court. In case these persons do not come forward to take the keys back, they will continue to be retained in the Registry. If a Competent Court directs delivery of the said keys to someone, the Registry would abide by the direction.

In view of above, the writ petition as well as CM 6314/2013 are dismissed. There shall be no order as to costs.

V.K. JAIN, J

JULY 25, 2013/rd