

IN THE HIGH COURT OF BOMBAY AT GOA**PIL WRIT PETITION NO. 23 OF 2015**

TRAJANO D'MELLO. PETITIONER.

VERSUS

STATE OF GOA & ORS. RESPONDENTS.

Mr. Rohit Bras de Sa, Advocate for the petitioner.

Mr. D. Lawande, Government Advocate for the respondents.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 21 October 2015.

ORAL ORDER : (PER F.M. REIS, J.)

Heard Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioner and Mr. D. Lawande, learned Government Advocate appearing for the respondents.

2. The above PIL Writ Petition has been filed by the petitioner on the ground that the petitioner is a social activist and presently holding the post of Senior Vice-President of Nationalist Congress Party, Goa Unit and, as such, has been actively engaged in

taking various social issues with the State Government. It is further the contention of the petitioner that he has made out a case in the petition to initiate contempt proceedings in view of disobedience of the Judgment passed by this Court dated 20/12/1996 in Writ Petition No.347/1996 prohibiting bullfights and “*dhirios*” in the State of Goa. It is further the contention of the petitioner that despite of the said Judgment of this Court, the Honourable Chief Minister/Respondent No.5 and his Government are rendering indirect support for organizing such bullfights/*dhirios* in the State of Goa. It is further the contention of the petitioner that despite of specific directions in the said Judgment dated 20th December, 1996 in Writ Petition No. 347/1996 to the effect that no such bullfights or *dhirios* should be performed in the State of Goa, and the observations of the Apex Court in the Judgment reported in (2014) 7 SCC 547, in the case of ***Animal Welfare Board of India vs. A. Nagaraja and others***, the respondent No.5, in the local news papers has given a statement that he would legalize the bullfights/*dhirios* in the State of Goa. It is further his case that such a statement of the respondent No.5 amounts to contempt and, as such, proceedings should be initiated under the Contempt of Courts Act, against the respondent No.5.

3. Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioner has pointed out that the respondents have committed a criminal contempt in publicly making statement to the effect that they intend to legalize the bullfights which have been specifically prohibited by this Court in its Judgment dated 20th December, 1996 in Writ Petition No. 347/1996. The learned Counsel has further pointed out that the petitioner has also brought on record news paper cuttings to that effect and pointed out that the respondent No.5 and other Government Officials are supporting such activities, thereby disobeying the directions of this Court in the said Judgment. It is further pointed out that considering that the supremacy of Court is invaded by such activities of the respondents, it is just and proper, in order to uphold the dignity of the Court, to initiate proceedings for contempt of the Court under the Contempt of Courts Act. The learned Counsel further points out that even assuming that this Court finds that the proceedings for criminal contempt cannot be initiated, the above petition be treated for initiation of civil contempt in terms of the provisions of the Contempt of Courts Act.

4. On the other hand, Mr. D. Lawnade, learned Government Advocate appearing for the respondents has pointed out that the

allegations in the petition, *inter alia*, purport criminal contempt and it is well settled that no such proceedings can be initiated at the instance of a third party, in terms of Section 15(2) of the Contempt of Courts Act. The learned Counsel further points out that this view has been taken by a Diversion Bench of this Court, relying upon a Judgment of the Apex Court that such discretion cannot be exercised unless the provision of Section 15(2) of the Contempt of Courts Act is duly complied with. The learned Government Advocate has, however, pointed out that the respondents are not at all interested in disobeying any direction of this Court and, in fact, according to him, in case, such disobedience is pointed out, the concerned Officials shall take necessary immediate action in accordance with law. The learned Counsel, as such, points out that the petition be rejected.

5. We have considered the submissions of the learned Counsel and we have also gone through the records. On perusal of the allegations made in the petition, we find that the purported statements of the petitioner are that criminal contempt has been committed by the respondents. A Division Bench of this Court in Contempt Petition No.8 of 2014 dated 13th March, 2014 has taken a view that such an application, at the instance of a third party, cannot be entertained, by

relying upon a Judgment of the Apex Court. This Court, therein, has observed at para 3 and 6 thus :

“3. The learned Advocate for the petitioners has relied on the judgment in the case of **S. K. Sarkar V/s Vinay Chandra Misra** reported in **1981(1) SCC 436** and submitted that the suo motu cognizance of the criminal contempt can be taken by this Court as held in the above referred judgment. The controversy in the case of **S. K. Sarkar** referred to above was as to whether the High Court can take suo motu cognizance of contempt of a subordinate or inferior Court when it is not moved in either of the two modes mentioned in Section 15(2) of the Contempt of Courts Act, 1971. Section 15(1) and (2) of the Contempt of Courts Act reads as under :

“(1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing to the Advocate-General, [or]

[(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]

(2) In the case of any 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, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.”

While considering this issue, the Hon'ble Supreme Court has held that sub-section (2) of Section 15 of the Contempt of Courts Act, 1971 does not deprive the High Court of the power of taking cognizance of criminal contempt of a subordinate court on its own motion also. However, the Hon'ble Apex Court has specifically laid down that the High Court in its discretion may refuse to interfere in the petition filed by the third party or take cognizance on its own motion on the basis of the information supplied to it in the contempt petition which reads as under :

“Harmoniously construed, sub section (2) of Section 15 does not deprive the High Court of the power of taking cognizance of criminal contempt of a subordinate court, on its own motion, also. If the intention of the Legislature was to take away the power of the High Court to take suo motu cognizance of such contempt, there was no difficulty in saying so in unequivocal language, or by wording the sub-section in a negative form. We have, therefore, no hesitation in holding in agreement with the High Court, that sub-section (2) of Section 15, properly construed, does not restrict the power of the High Court to take cognizance of and punish contempt of a subordinate court, on its own motion. It is, however, to be noted that Section 15 does not specify the basis or the source of information on which the High Court can act on its own motion. If the High Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech,

without there being any reference from the subordinate court or the Advocate-General, it can be said to have taken cognizance on its own motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate-General, can the High Court refuse to entertain the same on the ground that it has been made without the consent in writing of the Advocate-General? It appears to us that the High Court, has, in such a situation, a discretion to refuse to entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to it in that petition. If the petitioner is a responsible member of the legal profession, it may act suo motu, more so, if the petitioner-advocate, as in the instant case, prays that the court should act suo motu. The whole object of prescribing these procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court or the Supreme Court from being wasted by frivolous complaints of contempt of court. If the High Court is prima facie satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act suo motu and commence the proceedings against the contemner. However, this mode of taking suo motu cognizance of contempt of a subordinate court, should be resorted to sparingly where the contempt concerned is of a grave and serious nature. Frequent use of this suo motu power on the information furnished by an incompetent petitioner, may render these procedural safeguards provided in sub-section (2), otiose. In such cases, the High Court may be well advised to avail of the advice and assistance of the Advocate-General before

initiating proceedings.”

6. It is held in the case of **P. N. Duda V/s P. Shiv Shankar and others** reported in **1988 AIR 1208** that the petition filed by the third party should not even be registered as contempt petition and should not be placed before the Bench on the judicial side, which reads thus :

“**53.** 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 chooses 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](#), [1971] Suppl. S.C.R. 76 and [Sarkar v. Misra](#), [1981] 2 S.C.R. 331); 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. In the present case, the petitioner alleges that he has failed in the latter two courses-this will be considered a little later-and has moved this "petition" praying that this Court should take suo motu action. The "petition" at this stage, constitutes nothing more than a mode of laying the relevant information before the Court for such action as the Court may deem fit and no proceedings can commence until and unless the Court considers the information before it and decides to initiate proceedings. Rules 3 and 4 of the Supreme Court (Contempt of Court) Rules also envisage a petition only

where the Attorney General or any other person, with his written consent, moves the Court. Rule 5 is clear that only a petition moved under Rule 3(b) and (c) is to be posted before the Court for preliminary hearing. The form of a criminal miscellaneous petition styling the informant as the petitioner and certain other persons as respondents is inappropriate for merely lodging the relevant information before the Court under Rule 3(a). It would seem that the proper title of such a proceeding should be " In re .. (the alleged contemner)" (see: Kar v. Chief Justice, [1962] 1 SCR 319 though that decision related to an appeal from an order of conviction for contempt by the High Court). The form in which this request has to be sought and considered in such cases has also been touched upon by the Delhi High Court in Anil Kumar Gupta v. K. Subba Rao, ILR 1974 Delhi 1. This case, at the outset, pointed out that the information had been erroneously numbered by the office of the Court as Criminal original No. 51 of 1978 and concluded with the following observations:

"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 u/s 15 of 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 before 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. The office to direct to strike off the information as "Criminal original No. 51 of 1973" and to file it"

I think that 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. However, a petition having been filed and similar petitions having perhaps been entertained earlier in several courts, I do not suggest that this petition should be dismissed on this ground.”

The Hon'ble Supreme Court had made observation regarding placing of the informations supplied in the form of “petition” before the Hon'ble Chief Justice of India on His administrative side based on the provisions of Rule 3 and Rule 4 of the Supreme Court (Contempt of Court) Rules, 1975. We have not been shown any such provisions in the Bombay High Court Appellate Side Rules, 1960. The submission made on behalf of the petitioners that the Registry/office be directed to place the “petition” before the Hon'ble Chief Justice is without any legal support and sanctity. Therefore, we are not agreeable to the submission as made on behalf of the petitioners. ...”

6. Taking note of the observations of this Court in the said Judgment, relying upon the Judgment of the Apex Court referred to therein, we find that the question of entertaining a contempt petition at the instance of a Third Party, would not arise unless the provisions of Section 15(2) of the Contempt of the Court Act are duly complied with.

7. The contention of Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioner to convert the above PIL Writ Petition

into a civil contempt petition, cannot be accepted. In a PIL Writ Petition, the Court can examine what is the public interest involved in the matter; whereas on perusal of the averments in the petition, we find that there is no material alleged therein to seek such an exercise.

8. Mr. S. S. Kantak, learned Senior Counsel appearing for the original petitioner in Writ Petition No. 347/1996 also brought to our notice that the original petitioner in that writ petition has filed an application for contempt and is pending consideration by this Court.

9. Apart from that, we make it very clear that we will not at all condone any laxity on the part of the concerned Officers in not complying with any directions issued by this Court and in case breach of such directions is brought to our notice, this Court will not hesitate to take appropriate action, in accordance with law. We, as such, record the contention of the learned Government Advocate that the directions issued by this Court will be duly complied with and the Authorities shall take necessary action to ensure that the directions are duly complied with by the concerned Officials.

10. With the above observations we, prima facie, find that no case is made out for any consideration of the above PIL Writ Petition. The petition stands, accordingly, rejected.

K.L. WADANE, J.

F.M. REIS, J.

ssm.