

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : May 29, 2015

+ CONT. CASE (CRL.) No.12/2014

COURT ON ITS OWN MOTION

...Petitioner

Through:

Versus

Deepak Khosla

.....Respondent/Contemnor

Through: In person.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I. S. MEHTA

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JUDGMENT

KAILASH GAMBHIR, J.

1. By way of CM No. 16860/2013 moved by the respondent under Section 151 CPC, the respondent sought modification of the order dated 24th April, 2012 passed by the Division Bench comprising of Sanjiv Khanna, J. and R.V. Easwar, J., (as he then was) in LPA No. 16/2012. Another application was preferred by the respondent under the same provision seeking clarification of the order dated 24th April, 2012 passed by the said Division Bench being CM No. 2392/2013. Several other applications being CM Nos. 16365/2013, 16366/2013 and 16367/2013 were preferred by the respondent which were taken up for consideration

on 11th October, 2013. While addressing arguments on these applications, Mr. Deepak Khosla, referred to the Bench comprising of Sanjiv Khanna, J. and R.V. Easwar, J.(as he then was) as ‘Dedh Bench’.

2. Recording the said expression used by Mr. Deepak Khosla, the order dated 11th October, 2013 noted that this Court will take a view on the said expression used by Mr. Deepak Khosla for describing the Division Bench comprising of Sanjeev Khanna, J and R.V. Easwer, J. as ‘Dedh Bench’ at the time of final disposal of CM APPL. No.2392/2013 and CM APPL Nos.16860/13. Arguments on CM Nos. 16860/2013 and 2392/2013 were heard and concluded by both sides on 14th March, 2014 and the orders were reserved by the Court on these applications.

3. By a detailed order passed by this Court vide order dated 28th March, 2014, both the applications moved by the respondent were dismissed and by the same order, the Division Bench also directed initiation of suo motu contempt proceedings against the respondent. For better appreciation the relevant portion of the order dated 28.03.2014 is reproduced as under:-

“Since in our view the applicant has committed contempt of court in describing the Division Bench consisting of Sanjeev Khanna, J., and one of us (R.V. Easwar, J.) as “Dedh Bench” – a prima facie contemptuous remark calculated to denigrate the dignity of this court – we issue show-cause notice to Mr. Deepak

Khosla, the applicant herein, as to why proceedings should not be initiated against him for committing contempt of court.”

4. Since suo motu contempt proceedings were directed against the respondent, by the said order passed by the Division Bench, direction was given to the registry to register the said contempt proceedings and assign a fresh contempt case number.

5. While giving direction to the registry to register the said contempt case, inadvertently, alongwith the word ‘contempt’ the expression ‘civil’ was used instead of ‘criminal’. However, the registry had registered the case in the category of ‘criminal contempt’. The respondent failed to file a reply to the said contempt petition within a period of fifteen days as was granted to him.

6. Vide CM No. 7217/2014, the respondent sought enlargement of time to file reply to the contempt petition and acceding to his request, he was granted four weeks’ time to file a reply in the contempt petition, by order dated 25th April, 2014. Vide order dated 25th April, 2014 passed in LPA No. 16/2012, the Division Bench disposed of various other applications preferred by the respondent. After the orders were passed on various applications moved by the respondent, the respondent impudently stated that the kind of ‘beautiful orders’ that have been passed by the

court on that date, the Bench should recuse itself from further dealing with his matters. The respondent also stated that he would be filing a formal application to make a request to this Bench to recuse them from dealing with these matters. Taking note of the said expression used by the respondent on 25th April, 2014, the Court observed that the respondent has all the liberty to move an application which he so wishes, but certainly the kind of expressions he is in the habit of using and his tone and tenor for the court is highly disparaging, and contemptuous in nature. The Court also held that the expressions used by the respondent itself on that date were highly derogatory and that the same shall be taken into consideration at the time of taking a final view in the contempt proceedings. The relevant part of the order is reproduced as under:-

“After dismissal of the applications moved by the appellant, the appellant audaciously stated that the kind of ‘beautiful orders’ this court has passed today, this Bench should recuse itself to further deal with his matters.

Mr. Deepak Khosla further states that he would be filing a formal application to make a request to this Bench to recuse from dealing with his matters. The appellant has every liberty to move an application, which he so wishes, but certainly the kind of expressions he is in habit of using and his entire tone and tenor for the court are highly disparaging and contemptuous in nature. Earlier also, the appellant had the audacity to address the Division Bench as a ‘dedh bench’ and for which suo motu contempt proceedings were initiated against him. Today again, the expressions used by him are highly derogatory and this conduct of the appellant using the aforesaid unwarranted expressions, during the course of judicial proceedings, shall be

taken into consideration at the time of taking final view in the said contempt petition.

It is ordered accordingly.”

7. The respondent failed to file reply to the contempt petition within the said extended period of four weeks and vide CM No. 9982/2014 again sought time and date to file reply in the contempt petition registered as Contempt Case (C) No. 229/2014. On 30th May, 2014, while passing an order in CM No. 9982/2014, the Court observed that there was no justifiable ground warranting any extension of time, yet in the interest of justice, further period of eight weeks was granted to the respondent to file his reply to the contempt petition and the next date of hearing fixed as 11th July, 2014, was also changed as per the request made by the respondent and the matter was directed to be listed on 22nd August, 2014.

8. On 22nd August, 2014, nobody appeared on behalf of the respondent and the reply to the contempt petition was also not filed by the respondent despite grant of extended period of eight weeks. Therefore, the right of the respondent to file reply to the contempt petition was closed and the matter was adjourned to 20th November, 2014.

9. On 20th November, 2014, the respondent had caused his appearance in the matter but expressed some personal difficulty to appear in the post lunch session and therefore, the matter was accordingly

adjourned at his request to 27th November, 2014 for final hearing. On 27th November, 2014 again an adjournment was sought by the respondent and entertaining his request, the matter was adjourned to 28th November, 2014. On 28th November, 2014, Mr. Deepak Khosla, for the first time made a submission that this Court vide order dated 28th March, 2014, had given a direction to the registry to list the contempt proceedings under the category of civil contempt and not as a criminal contempt, and accordingly, a direction be given for listing this matter before the learned Single Judge dealing with the civil contempt cases. Clarifying the said position, the Court made it explicitly clear that the contempt proceedings directed against the respondent are indubitably in the nature of ‘Criminal Contempt’ and should not be termed as a ‘Civil Contempt’ as the expressions used by the respondent were in the face of the Court and use of such kind of expressions in the face of the Court would not fall under Section 2(b) but under Section 2(c) of the Contempt of Court Act, 1971. Rectifying the said mistake crept in the order dated 28th March, 2014, the Court directed the registry to register the said proceedings in the category of “Criminal Contempt” read with Article 215 of the Constitution of India. The respondent was also granted a fresh opportunity to file his

reply to the criminal contempt proceedings within a period of six weeks. This fresh opportunity was granted to the respondent so that the respondent may not have a grievance that he was not given a fresh opportunity to file a reply after rectification of the said mistake.

10. Even after the grant of fresh opportunity, the respondent chose not to file reply to the contempt petition. The Roster Bench dealing with the criminal contempt petition at the relevant time comprised of Sanjiv Khanna, J. and Ashutosh Kumar, J (RV Easwer to check) and since Sanjiv Khanna, J had recused himself to hear any matters from the respondent any further, the said criminal contempt petition was listed before the Division Bench-V comprising of Justice S.Ravindra Bhat and Justice R.K. Gauba on 16th January, 2015.

11. By order dated 16th January, 2015, the Division Bench-V took a view that since the behaviour and conduct of the respondent in the present case facially involves consideration of issues of contempt in the face of the Court, the Bench or at least the concerned members of the Bench who were available at the time and also available now should be hearing the proceedings and passing such orders as are appropriate, therefore, this

contempt matter may be listed before an appropriate Bench on 30th January, 2015, subject to the orders of the Hon'ble the Chief Justice.

12. On 30th January, 2015, the matter came up before the present Bench when the respondent had appeared in person and took an objection against this Bench to hear the contempt petition on the ground that the same Bench which had initiated the contempt proceedings, cannot hear the matter. The respondent also took an objection that this Bench cannot give a direction to close his right to file reply and decision to even this effect could only be taken by the Roster Bench. Adjourning the matter for final hearing in the contempt proceedings on 11th March, 2015, while closing the right of the respondent to file any reply, the Court also gave liberty to the respondent to address his arguments in support of his objection with regard to the jurisdiction of this Bench.

13. On the adjourned date i.e. 11th March, 2015, the respondent again took an adjournment in the matter and accordingly, the matter was adjourned to 19th March, 2015 for final hearing.

14. On 19th March, 2015, the respondent had appeared in person and instead of addressing final arguments in the contempt petition, he had

raised certain preliminary objections. The said preliminary objections are set out as under:-

“A. Under Section 14(2) of the Contempt of Courts Act, 1971, the Court which had initiated the contempt proceedings cannot try him for the suo moto contempt proceedings rather it should be heard and decided by any other roster bench.

B. He cannot be proceeded solely by the Contempt of Courts Act in the absence of rules framed by this Court and any decision by the Court in the contempt case in the absence of the rules would be in violation of the fundamental rights of the respondent as have been granted under Article 21 of the Constitution of India.

C. This contempt proceedings can continue only after the disposal of CM No. 17483/2013 which was filed by him in LPA No. 16/2012 wherein he gave necessary clarifications with regard to the said expression of ‘Dedh Bench’ and the same has yet not been decided by this Court.

D. The respondent being a practising Advocate, has to be tried for contempt proceedings by a Full Bench of this Court in terms of Volume V, Chapter 3, Part B Rule 2(1) of the High Court Rules.”

15. On the above said preliminary objections, the respondent has submitted his written submission besides addressing oral arguments. Let us now deal with the said preliminary objections raised by the respondent in the above sequence:-

A. Under Section 14(2) of the Contempt of Courts Act, 1971, this Court cannot hear the present contempt proceedings as it is the Bench which had issued the contempt notice against him and therefore, the matter may be placed before the Roster Bench:

16. On this preliminary objection, the contention raised by the respondent was that since the present contempt alleged to have been

committed by him was in the face of the Court, therefore under Section 14(2) of the Contempt of Courts Act, 1971, such contempt proceedings cannot be heard by the Bench before whom the contempt is alleged to have been committed but shall be heard and tried by some other Bench. In support of his arguments, the respondent placed reliance on the following judgments:-

1. *Dr. L.P. Misra v. State of U.P.*, AIR 1998 SC 3337
2. *High Court of judicature at Allahabad v. Raj Kishore*, AIR 1997 SCC 1186
3. *Mohd. Ikram Hussain v. State of U.P.* AIR 1964 SC 1625
4. *Pallav Seth v. the Custodian*, AIR 2001 SC 2763(I)

B. He cannot be proceeded under the Contempt of Courts Act itself in the absence of rules framed by this Court and any decision by the Court in the contempt case in the absence of the rules would be in violation of the fundamental rights of the respondent as have been granted under Article 21 of the Constitution of India:-

17. The respondent has raised an objection that since no rules under the Contempt of Courts Act, 1971 have so far been framed and promulgated by the Legislative Assembly of the State of NCT of Delhi, no proceedings for criminal contempt under the Contempt of Courts Act 1971 should be allowed against the respondent, as the same would be in

patent violation of his fundamental right explicitly guaranteed under Article 21 of the Constitution of India.

18. As per the respondent, it is the mandate of Article 21 of the Constitution of India that no person shall be deprived of his life or liberty except according to the procedure established by law and presently, there being no codified procedure that governs contempt proceedings in the High Court of Delhi, the same shall not deprive the respondent of his fundamental rights. Therefore, the High Court of Delhi has no right to continue with any kind of proceedings that may affect the life and liberty of any person. The respondent thus urged that this Court may adjourn the proceedings *sine die* and the same can commence once the duly promulgated rules of procedure under the Contempt of Courts Act are emplaced.

C. He is a practising Advocate, and has to be tried for contempt proceedings by a Full Bench of this Court in terms of Volume V, Chapter 3, Part B Rule 2(1) of the High Court Rules:-

19. The contention raised by the respondent is that he is a practising Advocate and therefore, the present matter should be listed before the Full Bench. As per the respondent, this is the existing practice which has been adopted by this Court in many other cases involving advocates. The

respondent also submits that the adherence to this practice is in the light of Rule 2(1) set out in Volume V of the High Court Rules (Rules relating to proceedings in the High Court of Delhi), Chapter 3 Part B, Rule 2(1).

20. The respondent further submits that this rule applies to proceedings under the 'Legal Practitioners' Act, 1879 and hence, the spirit of this rule continues to apply even by this Court today under the contempt proceedings involving advocates.

21. The respondent thus urged that the matter may be referred to Hon'ble the Chief Justice for constituting a Full Bench to try the contempt proceedings against him.

D. CM No. 17483/2013 which was filed by him in LPA No. 16/2012 wherein he gave the necessary clarification with regard to the said expression of 'Dedh Bench' has not yet been decided by this Court:-

22. The contention of the respondent on the above objection is that the said contempt proceedings can continue against him only after the disposal of CM No.17483 / 2013 dated 25th October, 2013 in LPA No. 16/2012. As per the respondent, if this application filed by him was allowed then the very foundation and substratum of these contempt proceedings would collapse on itself, in a heap.

23. In addition to the said preliminary objections raised by the respondent, the respondent has also taken an exception to the subsequent incorporation of Article 215 of the Constitution of India by the Bench comprising of myself (Kailash Gambhir, J.) and Najmi Waziri, J which was an act that is patently coram non *judice*, since this bench has no jurisdiction to act in the matter. The other ground to attack with regard to Article 215 is that the said Article confers no additional power on this Court beyond the four corners of provisions of Contempt of Courts Act, 1971.

24. We have heard Mr. Deepak Khosla. It would be appropriate to deal with the afore-stated preliminary objections raised by the respondent in the same *seriatim*.

25. Dealing with the first preliminary objection, it is beyond doubt that on 11th October, 2013 while addressing arguments on CM Nos. 16860/2013 and 2392/2013 for modification/ clarification of order dated 24th April, 2012, the respondent had used the expression ‘Dedh Bench’ which was referred to the Division Bench comprising of Sanjiv Khanna, J and R.V. Easwar, J.(as he then was). The said expression used by the respondent, for one of the member of the Division Bench, was in his

presence and on the very face of the court. The Court in such a situation, being a Court of Record, could have held the respondent guilty of contempt and awarded an instant punishment on the same very day. The other option was to give him a fair opportunity and know his stand as to why he had used such kind of expression for a Sitting Judge that too in his presence and on the face of the court. The Court thought of adopting the second course. In fact, the Court took a view that an appropriate decision on this aspect shall be taken at the time of deciding CM No. 16860/2013 and 2392/2013 in LPA 16/2012 filed by the respondent. Accordingly, when the said two applications were decided by the Bench by an order dated 28th March, 2014, this Court directed initiation of suo motu contempt proceedings against the respondent for using such kind of expressions for a member of the Bench, particularly R.V. Easwer, J. (as he then was) who had decided LPA No. 16/2012 vide order dated 24th April, 2012.

26. Articles 129 and 215 of the Constitution of India declare the Supreme Court and High Courts of the country as a Court of Record having all the powers of such a court including power to punish for its contempt. These Articles are reproduced as under:-

“Article 129. Supreme Court to be a court of record The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

Article 215. High Courts to be courts of record Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

27. One of the earliest cases wherein this extra-ordinary and special power of the High Court to institute proceedings for contempt of court and to punish the contemnors wherever necessary was the case of ***Sukhdev Singh Sodhi v. The Chief Justice and Judges of The Pepsu High Court*** reported in ***[1954]1SCR454*** wherein the Court held as under:-

*" In 1950 came the Constitution of India and article 215 states that -
"Every High Court shall be a court of record and shall have all the powers such a court including the power to punish for contempt of itself."*

Here again, whatever this is a fresh conferral of power or a continuation of existing powers hardly matters because whichever way it is viewed the jurisdiction is a special one and so is outside the purview of the Criminal Procedure Code.

The Contempt of Courts Act, 1926, was repealed by Act XXXII of 1952. Section 3 of the new Act is similar to section 2 of the old and, far from conferring a new jurisdiction, assumes, as did the old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction, powers and authority "in accordance with the same procedure and practice." These words are new and would be inappropriate if the Criminal Procedure Code

applied. In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate court, the Constitution vests these rights in every High Court, so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. It is true section 5 expands the ambit of the authority beyond what was till then considered to be possible but it does not confer a new jurisdiction. It merely widens the scope of an existing jurisdiction of a very special kind.

On reflection it will be apparent that the Code could not be called in aid in such cases, for if the Code applies it must apply in its entirety and in that event how could such proceedings be instituted ? The maximum punishment is now limited to six months' simple imprisonment or a fine of Rs. 2,000 or both because of the 1952 Act. Therefore, under the second schedule to the Code contempt would be triable by a Magistrate and not by a High Court and the procedure would have to be a summons procedure. That would take away the right of a High Court to deal with the matter summarily and punish, a right which was well established by the case law up to 1945 and which no subsequent legislation has attempted to remove. So also section 556 could not apply, nor would the rule which prohibits a judge from importing his own knowledge of the facts into the case. We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council re Pollard L.R. 2 P.C. 106 at 120. and was followed in India and in Burma re Vallabhdas (I.L.R. 27 Bom. 394.) and Ebrahim Mamoojee Parekh v. King Emperor I.L.R. 4 Rang. 257 at 259-261.). In our view that is still the law.

If the Code of Criminal Procedure does not apply, then there is no other power which we can exercise. The Constitution gives every High Court the right and the power to punish a contempt of itself. If we were to order a transfer to another court in this case we would be depriving Pepsu High Court of the right which is so vested in it. We have no more power to do that than has a legislature. As for transfer from one Judge to another, there again there is no original jurisdiction which we can exercise. It is not a fundamental right and so article 32 has no application and there is no other law to which recourse can be had. This petition is therefore incompetent and must be dismissed.

We wish however to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally. It is otherwise when the attack is not directed against him personally. We do not lay down any general because there may be cases where that is impossible, as for example in a court where there is only one judge or two and both are attacked. Other cases may also arise where it is more convenient and proper for the judge to deal with the matter himself, as for example in a contempt in facie curio. All we can say is that this must be left to the good sense of the judges themselves who, we are confident, will comport themselves with that dispassionate dignity and decorum which befits their high office and will bear in mind the often quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by judges who have no personal interest or concern in his case."

28. In another authoritative pronouncement of the Hon'ble Supreme Court in the case of ***Pritam Pal v High Court of Madhya Pradesh*** reported in ***1992 SCR (2) 864***, the Hon'ble Supreme Court while dealing with the case of the appellant who made some serious allegations against two Judges of the High Court who dealt with his writ petition, took cognizance of his contemptuous conduct, notice was issued against him as to why he should not be punished for committing contempt of court. In the said matter also, the appellant had raised various preliminary objections, one of them being that the procedure followed by the High Court was contrary to rules framed under it. Dealing with this preliminary

objection, the Hon'ble Supreme Court in the following para held as under:-

“Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemner to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate Legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be ‘Courts of Record’ under Articles 129 and 215 of the constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971.”

29. Reiterating the said principle that jurisdiction contemplated by Articles 129 and 215 of the Constitution of India is inalienable and the same cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution, the Apex Court in the case of **T.**

Sudhakar Prasad v Govt of A.P reported in **(2001) 1 SCC 516** held as under:-

“Articles 129 and 215 of the Constitution of India declare Supreme Court and every High Court to be a Court of Record having all the powers of such a court including the power to punish for contempt of itself. These articles do not confer any new jurisdiction or status on the Supreme Court and the High Courts. They merely recognise a pre-existing situation that the Supreme Court and the High Courts are courts of record and by virtue of being courts of record have inherent jurisdiction to punish for contempt of themselves. Such inherent power to punish for contempt is summary. It is not governed or limited by any rules of procedure excepting the principles of natural justice. The jurisdiction contemplated by Articles 129 and 215 is inalienable. It cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. The provisions of the Contempt of Courts Act, 1971 are in addition to and not in derogation of Articles 129 and 215 of the Constitution. The provisions of Contempt of Courts Act, 1971 cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said two Articles.”

30. Another decision of the Hon’ble Supreme Court which has bearing in the facts of the instant case is that of ***Dr. L.P. Misra vs. State of U.P.*** reported in ***AIR 1998 SC 3337***. In the facts of this case, the alleged contemnors had committed contempt in the face of the Court and taking a note of the contumacious conduct of the appellants therein, the Court exercised its powers under Article 215 of the Constitution of India and held them guilty of committing contempt and sentenced them with

imprisonment for one month and fine of Rs. 1000/- each. The said order was assailed before the Hon'ble Supreme Court and one of the grounds raised by the appellant was that the Court did not follow the procedure as prescribed under Section 14 of the Contempt of Courts Act, 1971 before passing the order of contempt on the same day i.e. without even issuing show cause notice to explain their alleged contemptuous conduct. The Hon'ble Supreme Court while recognizing the power of the High Court to exercise its jurisdiction as a Court of record, under Article 215 of the Constitution of India, held that such jurisdiction has to be in accordance with the procedure prescribed by law. For ready reference, the relevant paragraph of the said judgment is reproduced hereinbelow:-

“9. After hearing learned counsel for the parties and after going through the materials placed on record, we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. It is in these circumstances, the impugned order cannot be sustained.”

31. In the case of ***Pallav Sheth vs. Custodian & Ors.***, reported in ***AIR 2001 SC 2763***, the Hon'ble Supreme Court had the occasion to deal with the powers of the Supreme Court and High Courts under the Constitution of India and under the Contempt of Courts Act, 1971 for taking action for

contempt of subordinate courts. The following paras would be relevant to the controversy in hand:-

“31. There can be no doubt that both this Court and High Courts are Courts of Record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215 there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution.

32. This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously.

33. The Contempt of Courts Act, 1971 inter alia provides for what is not to be regarded as contempt; it specifies in Section 12 the maximum punishment which can be imposed; procedure to be followed where contempt is in the face of the Supreme Court or in the High Court or cognizance of criminal contempt in other cases is provided by Sections 14 and 15; the procedure to be followed after taking cognizance is provided by Section 17; Section 18 provides that in every case of criminal contempt under Section 15 the same shall be heard

and determined by a Bench of not less than two Judges; Section 19 gives the right of appeal from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt. There is no challenge to the validity of any of the provisions of the Contempt of Courts Act as being violative or in conflict with any provisions of the Constitution. Barring observations of this Court in the Supreme Court Bar Association's case (supra), where it did not express any opinion on the question whether maximum punishment fixed by the 1971 Act was binding on the Court, no doubt has been expressed about the validity of any provision of the 1971 Act. In exercise of its constitutional power this Court has, on the other hand, applied the provisions of the Act while exercising jurisdiction under Article 129 or 125 of the Constitution. In Sukhdev Singh Sodhi's case (supra) it recognised that the 1926 Act placed a limitation on the amount of punishment which could be imposed. Baradakanta Mishra's case was decided on the interpretation of Section 19 of the 1971 Act, namely, there was no right of appeal if the Court did not take action or initiate contempt proceedings. In the case of Firm Ganpat Ram Rajkumar's case (supra) the Court did not hold that Section 20 of the 1971 Act was inapplicable. It came to the conclusion that the application for initiating contempt proceedings (was within time and limitation had to be calculated) as for the purpose of limitation date of filing was relevant and furthermore that was a case of continuing wrong. In Kartick Chandra Das case (supra) the provisions of the Limitation Act were held to be applicable in dealing with application under Section 5 in connection with an appeal filed under Section 19 of the Limitation Act. A three-Judge Bench in Dr L.P.Misra's case (supra) observed that the procedure provided by the Contempt of Courts Act, 1971 had to be followed even in exercise of the jurisdiction under Article 215 of the Constitution. It would, therefore, follow that if Section 20 is so interpreted that it does not stultify the powers under Article 129 or Article 215 then, like other provisions of the Contempt of Courts Act relating to the extent of punishment which can be imposed, a reasonable period of limitation can also be provided.”

32. We may also usefully refer to the decision of the Apex Court in *Leila David v. State of Maharashtra & Ors.* reported in *AIR 2010 SC 862* wherein the Court dealt with the contemptuous conduct of one of the writ petitioners who had thrown a footwear at the Judges and after recording the entire incident which had occurred in the sight of the Hon'ble Judges and the other persons present in Court including the then Law Officers, the Court held that such behaviour of the writ petitioner is contemptuous in the face of the Court. The Court further held that since the writ petitioner stood by what she had done in Court and in the light of such admission, the resort to of summary procedure cannot be faulted and the Court held her guilty of criminal contempt and inflicted punishment of three months imprisonment on them.

33. The said course of action which was directed at the instance of one of the Judges of the Bench, did not meet the approval of the other learned Judge, who by a separate order, observed that the writ petitioner could not have been punished for contempt without due compliance with the provisions of Section 14(1) (a), (b), (c) and (d) of Contempt of Courts Act, 1971. His Lordship was also of the view that the Court's power under Article 142 was not meant to circumvent the statutory

requirements. This difference of opinion by one of the learned Judges of the same Bench led to the constitution of Bench of three Judges by Hon'ble the Chief Justice to deal with the case of the alleged contemnors therein.

34. The then Attorney General who appeared before the Bench supported the view taken by his Lordship Dr. Justice Arijit Pasayat and submitted that Section 14 of the Contempt of Courts Act, 1971, did not preclude the Court from deciding the contempt matter summarily when such contempt was committed in the face of the Court. The learned Attorney General submitted that while Section 14 provides a procedure to be normally followed so as to give the contemnors an opportunity of showing cause against the action proposed to be taken, in cases of instant nature where the incident had taken place within the precincts of the Court room and within the sight of all present therein, including the Hon'ble Judges who constituted the Bench, there could be little justification in going through the procedure prescribed in Section 14 in order to establish that the alleged contemnors had, in fact, committed contempt of Court.

35. The Full Bench agreeing with the view of his Lordship Dr. Justice Arijit Pasayat and with the submissions canvassed by the learned Attorney General, upheld the sentence as was imposed upon on the said contemnors and they were directed to be taken into custody forthwith to serve out the remaining sentence. The relevant paras of the said judgment are as follows:-

“17. As far as the suo motu proceedings for contempt are concerned, we are of the view that Dr. Justice Arijit Pasayat was well within his jurisdiction in passing a summary order, having regard to the provisions of Articles 129 and 142 of the Constitution of India. Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and wilful contumacious incident takes place in front of their eyes and the public at large, including Senior Law Officers, such as the Attorney General for India who was then the Solicitor General of India. While, as pointed out by Mr. Justice Ganguly, it is a statutory requirement and a salutary principle that a person should not be condemned unheard, particularly in a case relating to contempt of Court involving a summary procedure, and should be given an opportunity of showing cause against the action proposed to be taken against him/her, there are exceptional circumstances in which such a procedure may be discarded as being redundant. The incident which took place in the court room presided over by Dr. Justice Pasayat was within the confines of the court room and was witnessed by a large number of people and the throwing of the footwear was also admitted by Dr. Sarita Parikh, who without expressing any regret for her conduct stood by what she had done and was supported by the other contemnors. In the light of such admission, the summary procedure followed by Dr. Justice Pasayat cannot be faulted.

18. Section 14 of the Contempt of Courts Act, 1971, deals with contempt in the face of the Supreme Court or the High Court. The expression "Contempt in the face of the Supreme Court" has been interpreted to mean an incident taking place within the sight of the learned Judges and others present at the time of the incident, who had witnessed such incident. In re: Nand Lal Balwani [(1999) 2 SCC 743], it was held that where an Advocate shouted slogans and hurled a shoe towards the Court causing interference with judicial proceedings and did not even tender an apology, he would be liable for contempt in the face of the Court. It was observed by the Bench of three Judges which heard the matter that law does not give a lawyer, unsatisfied with the result of any litigation, licence to permit himself the liberty of causing disrespect to the Court or attempting, in any manner, to lower the dignity of the Court. It was also observed that Courts could not be intimidated into passing favourable orders. Consequently, on account of his contumacious conduct, this Court sentenced the contemnor to suffer four months simple imprisonment and to pay a fine of Rs.2,000/-. In another decision of this Court in [Charan Lal Sahu v. Union of India](#) and another [(1988) 3 SCC 255], a petition filed by an experienced advocate of this Court by way of a public interest litigation was couched in unsavory language and an intentional attempt was made to indulge in mudslinging against the advocates, the Supreme Court and other constitutional institutions. Many of the allegations made by him were likely to lower the prestige of the Supreme Court. It was also alleged that the Supreme Court had become a constitutional liability without having control over the illegal acts of the Government. This Court held that the pleadings in the writ petition gave the impression that they were clearly intended to denigrate the Supreme Court in the esteem of the people of India. In the facts of the case, the petitioner therein was prima facie held to be guilty of contempt of Court.

19. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the

incident itself. This is necessary for the dignity and majesty of the Courts to be maintained. When an object, such as footwear, is thrown at the Presiding Officer in a Court proceeding, the object is not to merely scandalize or humiliate the Judge, but to scandalize the institution itself and thereby lower its dignity in the eyes of the public. In the instant case, after being given an opportunity to explain their conduct, not only have the contemnors shown no remorse for their unseemly behaviour, but they have gone even further by filing a fresh writ petition in which apart from repeating the scandalous remarks made earlier, certain new dimensions in the use of unseemly and intemperate language have been resorted to further denigrate and scandalize and over-awe the Court. This is one of such cases where no leniency can be shown as the contemnors have taken the liberal attitude shown to them by the Court as licence for indulging in indecorous behaviour and making scandalous allegations not only against the judiciary, but those holding the highest positions in the country. The writ proceedings have been taken in gross abuse of the process of Court, with the deliberate and wilful intention of lowering the image and dignity not only of the Court and the judiciary, but to vilify the highest constitutional functionaries.

20. In such circumstances, while agreeing with the procedure adopted by Dr. Justice Pasayat in the facts of this case, we are not inclined to interfere with the sentence which has been imposed on the contemnors. The order dated 20th March, 2009, granting bail to the contemnors is hereby recalled. The Secretary General is directed to take the contemnors into custody forthwith and to arrange to have them sent to the appropriate jail to serve out the sentence."

36. In a recent decision of ***Ram Niranjana Roy v State of Bihar, 2014(4)SCALE428***, the Hon'ble Supreme Court while dealing with the appellant who appeared in person and taking note of his condescending behaviour in the High Court, was directed to be taken into custody by the

Court Officer and was sent to jail for punishment for one day. Aggrieved by the said order of the High Court, he had approached the Hon'ble Supreme Court and one of the contentions raised by the appellant was that no opportunity was given to him as contemplated under Section 14 of the Contempt of Courts Act, 1971. The Hon'ble Supreme Court after referring to many of its previous decisions, in the following paras, held as under:-

“Thus, when a contempt is committed in the face of the High Court or the Supreme Court to scandalize or humiliate the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalizing the institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, contempts committed in the face of the court need a strict treatment. The appellant, as observed by the High Court was not remorseful. He did not file any affidavit tendering apology nor did he orally tell the High Court that he was remorseful and he wanted to tender apology. Even in this Court he has not tendered apology. Therefore, since the contempt was gross and it was committed in the face of the High Court, learned Judges had to take immediate action to maintain honour and dignity of the High Court. There was no question of giving the appellant any opportunity to make his defence. This submission of the appellant must, therefore, be rejected.”

37. From the cornucopia of various decisions given by the Hon'ble Supreme Court and the decisions cited above, there remains no doubt that Articles 129 and 215 of the constitution of India declare Supreme Court

and High Court to be a Court of Record having all the powers of such a court that includes the power to punish for contempt of court. The contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be 'Courts of Record' under Articles 129 and 215 of the constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment and its power to punish for the Contempt of Court are independent of the statutory law of contempt enacted by the Parliament. These judgments have also recognized the supremacy of these Courts with regard to their jurisdiction to take cognizance of the contempt as well as to award punishment and to this extent, powers of these Courts are absolute and supreme and no provision of Contempt of Courts Act, 1971 or any other statute can abrogate or stultify the contempt jurisdiction vested with the Supreme Court and High Courts under Article 129 and 215 of the Constitution.

38. Insofar as the procedure for holding any person guilty of contempt and on the quantum of punishment to be awarded for Contempt of Court whether *suo motu* or otherwise, necessarily the provisions of the Contempt of Courts Act, 1971 are the only guide, as there is no other

legislation enacted by the Parliament providing a separate procedure or punishment for contempt of the Supreme Court and High Courts under Articles 129 and 215 of the Constitution.

39. The provisions of the Contempt of Courts Act, 1971 are in addition and not in derogation of Articles 129 and 215 of the Constitution and provisions of this Act cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said two Articles.

40. Another legal principle which clearly emerges from the above discussion is that so far as any person who commits contempt in the face of the Court and, if the Court instantly takes cognizance of the contemptuous conduct of such a person, and holds the person guilty of contempt, then in such a case, the grant of opportunity or issuance of show cause notice before committing the person for contempt may not be necessary. This is what the Hon'ble Supreme Court has observed in ***Ram Niranjan's case (supra)*** saying that when a contempt is committed in the face of this High Court or the Hon'ble Supreme Court to scandalize or humiliate the Judge, instant action may be necessary and if the Courts do not deal with such contempt with strong hands that may result in scandalizing the institution thereby lowering its dignity in the eyes of the

public. It further held that to prevent erosion of the faith of the people, contempt committed in the face of the court needs an ascetic treatment and the learned Judges have to take the immediate action to maintain honour and dignity of the Court. Thus, there is no limit or fetters on the power of the High Court to hold any person guilty of contempt and to punish him instantaneously if the contempt committed is in the face of the Court and in the opinion of the Court, if the same is of a serious nature warranting immediate action without even giving an opportunity to the alleged contemnor to put forth his defence.

41. Certainly, it would be for the Court to take such a view depending upon the facts of each case. This course of action is also in the fortitude of section 14 of the Contempt of Courts Act, 1971. The only difference is that in Section 14 of the Contempt of Courts Act, 1971, wherever it appears to the Hon'ble Supreme Court or this court, upon its own view, that if a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible. But when the High Court exercises its power contemplated

under Article 215 of the Constitution, then it may award the punishment in terms of Section 12 of the Contempt of Courts Act, 1971.

42. Now adverting back to the facts of the present case, this Court did not hold the respondent guilty of contempt for using the said expression 'Dedh Bench' on the same day and therefore, there was no instant action taken by the Court to take cognizance of the alleged contumacious conduct of the respondent. The Court rather held that at the time of deciding CM Nos. CM Nos. 16365/2013, 16366/2013 and 16367/2013 on 11th October, 2013 the Court will take a view on such kind of expressions used by the respondent during the course of addressing final arguments. It is only vide order dated 28th March, 2014, suo motu contempt proceedings were initiated against the respondent.

43. Resorting to the procedure prescribed under Section 14 of the Contempt of Courts Act, 1971, the respondent was given an opportunity to file the reply to the contempt notice and as already stated above, he failed to file any reply despite grant of several opportunities. We cannot be oblivious to Section 14(2) of Contempt of Courts Act, 1971 especially when an oral prayer has been made by the respondent to have the present contempt proceedings to be tried against him by some Bench other than

the Bench in whose presence, the offence is alleged to have been committed. For better appreciation, Section 14 of the Contempt of Courts Act, 1971 is reproduced hereunder:-

“14. Procedure where contempt is in the face of the Supreme Court or a High Court.—

(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall— —(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—”

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to

have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court: Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid."

44. It is a cardinal principle of law that justice should not only be done but also seem to have been done. Although it is not the wish or prerogative of a litigant as to which Bench will decide his case as this is a prerogative of the Chief Justice of a High Court to decide the Bench and

accordingly place any matter before a particular bench. Although, wherever any contempt is committed in the face of the Court, then the same Court may be in a better position to take a view on the misconduct of such person. However, at the same time, the litigant facing a contempt, if carries any such feeling that any particular Judge or Bench has a bias towards him then certainly he can exercise his right under Section 14(2) of the Contempt of Courts Act, 1971 to be tried against by a Judge other than the Judge in whose presence or hearing, the alleged contempt has been committed. This however will depend on the facts of each case and the nature of misconduct subject to the exception that is , if the offence committed by a contemnor is of a serious nature warranting an instant action by the Court then this course of action may not be available to him.

45. Thus so far as the first objection is concerned, we are in agreement with the contention raised by the Petitioner. However at the same time we are of the view, that it is not for the litigant to decide which bench shall take cognizance unless and until there appears to be a reasonable apprehension of bias. In view of the aforesaid discussion, we deem it

appropriate to place this matter before Hon'ble the Chief Justice for placing it before the appropriate bench.

46. Coming to the second objection raised by the respondent that he cannot be proceeded under the Contempt of Courts Act, 1971 in the absence of rules framed by this Court and any decision by this Court in a contempt case in the absence of rules would be in violation of the Fundamental Rights of the respondent guaranteed under Article 21 of the Constitution of India. Pertinently, the Contempt of Courts Act, was brought on the statute book in the year 1971 and the purpose of this enactment was to keep the administration of justice pure and unsullied. This piece of legislation is quite comprehensive in nature and provides inbuilt mechanism to protect personal liberty and fundamental rights of the citizen. This is evident from the very dawn of the statute which starts as '*An Act to define and limit the powers of certain courts in punishing Contempts of Courts and to regulate their procedure in relation thereto.*'

47. On bare perusal of various sections of the Contempt of Courts Act, 1971 one can notice that the same are procedural in nature. The heading of Section 14 of the Contempt of Courts Act, 1971 is "*Procedure where contempt is in the face of the Supreme Court or a High Court*". The

heading of Section 17 of the Contempt of Courts Act 1971, is also along these lines, which is “Procedure after cognizance”. It is because of the inbuilt mechanism of the statute perhaps it was never felt that in the absence of the rules, the provisions of the Act cannot be invoked, enforced and implemented. We are not suggesting here that the rules should not be framed but certainly the statute has strided well in the absence of the rules for the past about 34 years. We thus find no force in the objection raised by the respondent that in the absence of the rules, action against him cannot be taken under the provisions of the Contempt of Courts Act, 1971. We also cannot lose sight of the fact that the contempt proceedings have also been directed against the respondent under Article 215 of the Constitution and as already discussed above, the powers of the High Court under Article 215 of the Constitution to punish in contempt for itself are supreme and absolute.

48. It is also an undeniable fact that the respondent has been given due opportunity of hearing to defend himself in the said contempt proceedings and therefore, the respondent cannot complain denial of adequate opportunity or violation of principles of natural justice. In this

background his rights as are guaranteed under Article 21 of the Constitution of India have been duly taken care of.

49. Moving onto the other objection raised by the respondent that CM No. 17483/2013 was filed by him in LPA No. 16/2012 wherein he made the necessary clarification with regard to the use of said expression “Dedh Bench” and if that CM is allowed, then the very foundation and substratum of this contempt proceedings would collapse in heat. This objection raised by the respondent is also not tenable. The said application purported to have been filed by the respondent was not pressed by the respondent at any stage of the proceedings and now at the stage of final hearing of the contempt proceedings, we cannot allow him to take shelter under the said CM. In any event of the matter, the respondent was granted number of opportunities to file replies to the contempt proceedings but he failed to do so which means that the respondent did not prefer to offer any explanation to the use of the said expression “Dedh Bench” while addressing his arguments in support of his pending applications. Mere filing of an application by the respondent is thus hardly of any consequence.

50. So far as the objection D is concerned, since we have already directed that the matter be placed before Hon'ble the Chief Justice in terms of Section 14 (2) of the Contempt of Courts Act, 1971 for assigning the same to the appropriate Bench, therefore, we deem it fit that the Hon'ble Chief Justice may take a view on this objection raised by the respondent herein.

51. Since we have taken a decision not to try these contempt proceedings, therefore, we refrain from commenting any further. In the light of the above discussion and taking into consideration the facts of the present case, we accordingly direct the matter to be placed before Hon'ble the Chief Justice for placing this matter before the appropriate bench for the necessary directions.

52. With the above direction, the present petition stands disposed of. It is ordered accordingly.

KAILASH GAMBHIR, J.

I. S. MEHTA, J.

MAY 29, 2015/pkb