

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Criminal Case No.478 of 2002

Order reserved on: 1-3-2017

Order delivered on: 9-3-2017

State of C.G.

---- Petitioner

Versus

S.K. Thakur

---- Respondent

For Petitioner: Mr. Rahul Tamaskar, Panel Lawyer.
For Respondent: Mr. B.D. Guru, Advocate.

Hon'ble the Acting Chief Justice and
Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

Sanjay K. Agrawal, J

1. This is reference made under Section 15 (2) of the Contempt of Courts Act, 1971 by the Additional Chief Judicial Magistrate, Bemetara to this Court for taking action for contempt against the respondent herein.
2. Brief facts of the reference are as under: -
3. On 7-9-2001, order for interim custody was passed by the Additional Chief Judicial Magistrate, Bemetara granting interim custody of the recovered vehicle in a crime registered by the police station concerned to Jamuna Prasad and actual memo was issued in favour of Jamuna Prasad on 22-9-2001 to the concerned police station / Station House Officer, Bemetara, to handover the possession of the vehicle to Jamuna Prasad. In the opinion of the Station House

Officer, the vehicle was further required to be sent to the Forensic Science Laboratory for chemical examination. The District Prosecution Officer made an application on 23-9-2001 for extension of time for delivery of vehicle to the said owner of the vehicle as directed by the court. Such an application was made before the Judicial Magistrate Second Class (on remand duty) of that court and the same was forwarded by the said Magistrate to the Additional Chief Judicial Magistrate, Bemetara for orders on that application. Ultimately, the Additional Chief Judicial Magistrate, Bemetara, on 1-10-2001 rejected the application for extension of time for delivery of said vehicle and upon rejection, the vehicle was ultimately handed-over to Jamuna Prasad, the vehicle owner, on 3-10-2001. In the meanwhile, on 24-9-2001, Jamuna Prasad filed an application that the vehicle is not being handed-over to him as directed by the court on 7-9-2001/22-9-2001 and in which notice for non-compliance of the court order was issued to the respondent herein and ultimately, finding non-compliance of the order dated 7-9-2001/22-9-2001, by order dated 9-10-2001, the matter has been sent to this Court for taking cognizance of the criminal contempt, under Section 15 (2) of the Contempt of Courts Act, 1971, for punishing the respondent / contemnor.

4. This Court issued notices to the respondent / contemnor and he is now represented through Mr. B.D. Guru, Advocate.
5. Mr. B.D. Guru, learned counsel appearing for the respondent / contemnor, submits that such non-compliance is not deliberate as the respondent had already moved an application before the court on 23-

9-2001 and when the application was rejected, the vehicle was ultimately handed-over to Jamuna Prasad on 3-10-2001 and as such, there is no willful disobedience of the order of the court and no such contempt is made. However, Mr. Guru submits that the respondent tenders his unconditional apology which may be accepted, as the action is not deliberate and he had already moved an application before the competent court for extension of time to comply the order.

6. I have heard Mr. Rahul Tamaskar, learned State counsel, as well as Mr. B.D. Guru, learned counsel for the respondent.
7. In order to decide the reference made by the learned Additional Chief Judicial Magistrate, it would be appropriate to notice the definition of the term “criminal contempt” as defined under clause (c) of Section 2 of the Contempt of Courts Act, 1971 which states as under: -

“(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

8. It would also be appropriate to notice Section 15 of the Contempt of Courts Act, 1971 which provides for cognizance of criminal contempt in other cases. Section 15 of the Act of 1971 reads as follows: -

“15. Cognizance of criminal contempt in other cases.

—(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 of 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.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.”

9. Sub-section (2) of Section 15 of the above quoted provision would show that the High Court may take action on its own motion or on a motion made by the Advocate-General or on a reference made to it by the subordinate Court.

10. Their Lordships of the Supreme Court in the matter of **S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow v. Vinay Chandra Misra**¹ while considering the scope of Section 15 (2) of the Act of 1971 and highlighting the object of prescribing the procedural modes of taking cognizance in Section 15 held that mode of taking *suo motu* cognizance of contempt of a subordinate court, should be resorted to sparingly where the contempt is of a grave and serious nature, and observed as under: -

“19. ... 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

1 (1981) 1 SCC 436

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 restored 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 petition, 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. The advice and opinion, in this connection, expressed by the Sanyal Committee is a pertinent reminder:

In the case of criminal contempt, not being contempt committed in the face of the Court, we are of the opinion that it would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate General in some categories of cases at least. ... the Advocate General may, also, move the court not only on his own motion but also at the instance of the court concerned. ...”

11. Likewise, in the matter of **Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and others**² the Supreme Court while reiterating the law laid down in **Vinay Chandra Misra's** case (supra) has considered the definition of contempt of court and what constitutes contempt of court, and held as under: -

“27. Under sub-section (1) the Supreme Court and High Court both have power to take cognizance of criminal contempt and it provides three modes for taking cognizance. The Supreme Court and the High Court both may take cognizance on its own motion or on the motion made by the Advocate General or any other person with the consent in writing of the Advocate General. Sub-section (2) provides that in case of any

2 (1991) 4 SCC 406

criminal contempt of 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, and in, relation to a Union territory, on a motion made by any officer as may be specified by the government. Thus [Section 15](#) prescribes modes for taking cognizance of criminal contempt by the High Court and Supreme Court, it is not a substantive provision conferring power or jurisdiction on the High Court or on the Supreme Court for taking action for the contempt of its subordinate courts. The whole object of prescribing procedural modes of taking cognizance in [Section 15](#) is to safeguard the valuable time of the High Court and the Supreme Court being wasted by frivolous complaints of contempt of court. [Section 15\(2\)](#) does not restrict the power of the High Court to take cognizance of the contempt of itself or of a subordinate court on its own motion although apparently the section does not say so. In [S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow v. Vinay Chandra Misra](#) (supra) this Court held that [Section 15](#) prescribed procedure for taking cognizance and it does not affect the High Court's suo moto power to take cognizance and punish for contempt of subordinate courts.

42. What constitutes contempt of court? The Common Law definition of contempt of court is: "An act or omission calculated to interfere with the due administration of justice." [Bowen L.J. in *Helmore v. Smith (No.2)*³]. The contempt of court as defined by the [Contempt of Courts Act, 1971](#) includes civil and criminal contempt. Criminal contempt as defined [in Section 2(c)] by the Act:

"means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which

- (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the

3 (1886) 35 Ch D 436, 455 : (1886) 31 Sol Jo 60

authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage." (Frankfurter, J. in *Offutt v. U.S.*⁴). The object and purpose of punishing contempt for interference with the administration of justice is not to safeguard or protect the dignity of the Judge or the Magistrate, but the purpose is to preserve the authority of the courts to ensure an ordered life in society. ..."

12. Recently, in the matter of **Biman Basu v. Kallol Guha Thakurta and another**⁵, the Supreme Court delineated the nature and scope of contempt of court and also noticed and relied upon **Vinay Chandra Misra's** case (supra) and held in paragraph 16 as under: -

"16. In the case of criminal contempt, other than a contempt referred to in [Section 14](#), the manner of taking cognizance has been provided for in [Section 15](#) of the Act. This Section, inter alia, provides that the action for contempt may be taken by the Supreme Court or the High Court on its own motion or on a motion made by (a) the Advocate General, or (b) any other person with the consent in writing of the Advocate General."

13. Applying the principles of law laid down in the afore-stated cases to the facts and circumstances of the present case, it is quite apparent that on 22-9-2001, memo was issued by the court to Bemetara Police Station headed by the respondent to handed-over the possession of the vehicle in question, but thereafter, an application was made for extension of time to comply the order dated 7-9-2001/22-9-2001 and upon rejection of that application on 1-10-2001, the vehicle was ultimately handed-over to Jamuna Prasad on 3-10-2001. Thus, the

4 {1954} 348 US 11, 14 : 99 L ed 11

5 (2010) 8 SCC 673

respondent has acted judicially by making the application seeking extension of time to give the vehicle in supurdnama so that the investigation required by sending the impugned vehicle to the FSL be completed. Such act on the part of the respondent cannot be held to be intended to interfere in the administration of justice, rather he acted in a manner so as to advance the course of the administration of justice.

14. In view of above-stated analysis, we are of the considered opinion that no criminal contempt is made out as defined under Section 2 (c) of the Contempt of Courts Act, 1971 against the respondent. It is not the case where the jurisdiction of contempt applying the parameters laid down by Their Lordships of the Supreme Court in **Vinay Chandra Misra's** case (supra) followed in **Delhi Judicial Service Association** (supra) can be invoked into as it has to be exercised cautiously in exceptional case and in most appropriate case as well.

15. Therefore, we hereby close the contempt proceeding and discharge the rule issued in this behalf.

16. The reference is answered accordingly.

Sd/-
(Pritinker Diwaker)
Acting Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge