

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.5474 of 2009

{Arising out of order dated 24-7-2009 of the learned Sub Divisional Magistrate (City), Raipur in Criminal Case No.1097/2006}

1. Reliance Communications Ltd.
2. Reliance Infratel Limited (A subsidiary company of Reliance Communications Ltd.)

Both 3rd Floor, Pujari Complex, Pachpedi Naka, Raipur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Urban Administration and Development Department, D.K.S. Bhawan, Raipur (C.G.)
2. Sub Divisional Magistrate, City, Raipur.
3. Kuber Grih Nirman Co-operative Samiti, through its President, Rohinipuram, Raipur.
4. Station House Officer, Police Station Dindayal Nagar, Raipur.
5. Municipal Corporation, Raipur through its Commissioner.

---- Respondents

For Petitioners: Mr. Sachin Singh Rajput, Advocate.

For Respondents No.1, 2 and 4 / State: -

Mr. Prasun Kumar Bhaduri, Govt. Advocate.

For Respondent No.3: Mr. B.P. Gupta, Advocate.

For Respondent No.5: Mr. Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/12/2017

1. Reliance Communications Limited, petitioner No.1 herein, is a company incorporated and registered under the Indian Companies Act and is also a telecom service provider and is a licensee under Section 4 of the Indian Telegraph Act. The Government of India has conferred the private telecommunication operators powers of

telegraph authority to the petitioner by notification dated 24-5-1999. The petitioner Company preferred an application before the Commissioner, Municipal Corporation, Raipur seeking permission to lay fiber optic cable within the Raipur municipal area for which a demand was raised which was deposited by the petitioner and necessary permission to lay down cable from Gol Chowk to Upadhyay Nagar crossing and from Gol Chowk to Tower Spot Complex was granted on 18-4-2006. On the strength of such sanction, the petitioner Company is said to have started laying cable which was objected by respondent No.3 herein claiming that the said area belongs to the Co-operative Society (respondent No.3) and they being owner of the said area and in possession of the same, had a right to object laying down of cable in the said area leading to filing of application by respondent No.3 Society before the Sub Divisional Magistrate (City), Raipur, under Section 145 of the Code of Criminal Procedure, 1973 in which preliminary order was passed on 10-5-2006 restraining the petitioners from further undertaking the work of laying down the cable. It is the case of respondent No.3 that despite order dated 10-5-2006, the petitioners continued with their work of laying down the cable wires and in fact, they have committed contempt of lawful authority of the court of Sub Divisional Magistrate by violating that order leading to filing of fresh application under Section 10 of the Contempt of Courts Act, 1971 (for short, 'the Act of 1971') read with Rules 5 and 7 of the Contempt of Court Proceedings Rules, 1980 in which reply was filed by the petitioners herein.

2. The Sub Divisional Magistrate by its impugned order dated 24-7-2009 clearly held that the order dated 10-5-2006 has been violated which

falls within the definition of civil contempt as defined in Section 2(a) of the Act of 1971 and held the petitioner Company guilty of contempt and directed the Station House Officer to seize the cable owned by the petitioner Company.

3. Feeling dissatisfied and aggrieved against the order of holding the petitioner Company guilty of contempt, this writ petition has been filed questioning the jurisdiction of the said authority and also challenging the preliminary order dated 10-5-2006.
4. Mr. Sachin Singh Rajput, learned counsel appearing for the petitioner, would vehemently submit that the court subordinate to the High Court is only entitled to refer the matter to this Court for contempt of their lawful authority under Section 10 of the Act of 1971 read with Rule 352 of the High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007 and the court subordinate to High Court including Sub Divisional Magistrate has no authority and jurisdiction to punish for contempt i.e. civil contempt under Section 2(a) of the Act of 1971 and also cannot direct for seizure of cable in its alleged contempt jurisdiction, therefore, the order of the Sub Divisional Magistrate exercising the power of contempt as well as the preliminary order passed by the Sub Divisional Magistrate deserves to be quashed.
5. Mr. Prasun Kumar Bhaduri, learned State counsel, would fairly bring to the notice of this Court a decision rendered by the Supreme Court in the matter of **S.K. Sarkar Member, Board of Revenue, U.P., Lucknow v. Vinay Chandra Misra**¹ to hold that all courts / tribunals subordinate to the High Court under Article 227 of the Constitution of India will be a court subordinate to the High Court within the

¹ AIR 1981 SC 723

contemplation of Section 10 of the Act of 1971. Therefore, the learned Magistrate could have referred the matter to this Court for proceeding further with the matter as per Rule 352 of the High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007.

6. Mr. B.P. Gupta, learned counsel appearing for respondent No.3, would support the impugned order and would submit that only a reference has been made for conducting enquiry and no order of punishment has been passed and only a finding has been given with reference to violation of the order dated 10-5-2006. He would further submit that the instant petition is not maintainable against the preliminary order dated 10-5-2006 and the remedy available to the petitioners was to file appropriate petition under the provisions of the Code of Criminal Procedure, 1973.
7. Mr. Pankaj Agrawal, learned counsel appearing for the Municipal Corporation, would support the impugned order.
8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the material available on record with utmost circumspection.
9. It is not in dispute that preliminary order was passed under Section 145 (1) of the CrPC by the learned Magistrate restraining the petitioners from further laying down the cable which is said to have been violated by the petitioners leading to filing of application for punishment under Section 10 of the Act of 1971 in which it is the stand of the petitioners that the work of laying down the cable has already been completed and the order has been complied with fully by the petitioner Company in its letter and spirit.
10. At this stage, it would be appropriate to notice the provision contained

in Section 10 of the Act of 1971 which reads as under: -

“10. Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself :

Provided 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, 1860 (45 of 1860).”

11. The aforesaid provision empowers this Court to punish contempt of subordinate courts functioning within the High Court's territorial jurisdiction as if the contempt committed was of the High Court itself.
12. Now, it would also be appropriate to notice the decision rendered by the Supreme Court in **S.K. Sarkar** (supra) in which Their Lordships of the Supreme Court have held that the phrase “courts subordinate to it” as used in Section 10 of the Act of 1971 is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them under Article 235 of the Constitution does not vest in the High Court and includes tribunals which are under control under Article 227 of the Constitution and held as under: -

“15. ... The provision in [Section 10](#) is but a replica of [Section 3](#) of the 1952 Act. The phrase "courts subordinate to it" used in [Section 10](#) is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them under [Article 235](#) of the Constitution does not vest in the High Court. Under [Article 227](#) of the Constitution the

High Court has the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Court of Revenue Board, therefore, in the instant case, is a court "subordinate to the High Court" within the contemplation of [Section 10](#) of the Act.

13. It is not in dispute that the Sub Divisional Magistrate is a court subordinate to the High Court. Rule 352 of the High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007 clearly provides that in case of Civil Contempt, the Court concerned shall make a reference to the High Court by following, as far as possible, the same procedure laid down for reference in case of Criminal Contempt. Rule 350 (1) and (2) of the said Rules of 2007 which provides for making reference states as under: -

“350. (1) Reference under Section 15(2) of the Act may be made by subordinate Courts either *suo motu* or on an application received by it.

(2) Before making a reference the subordinate Court shall conduct a preliminary enquiry by issuing a show cause notice accompanied by copies of relevant documents, if any, to the contemner and after receiving the reply, if any, of the show-cause notice the Subordinate Court shall write a concise reasoned order of reference indicating why contempt appears to have been committed.”

14. Therefore, the course available to the Sub Divisional Magistrate, if any, was to make reference to this Court under Section 10 of the Act of 1971 for holding the petitioners guilty of contempt and punishing them for contempt. But, in the instant case, the Sub Divisional Magistrate has recorded a finding that the petitioner Company is guilty of contempt under Section 2(a) of the Act of 1971 and further

directed the Station House Officer for seizure of cable which is in teeth of the provisions contained in Section 10 of the Act of 1971. The power to punish for contempt, undisputedly and concededly, lies to this Court (High Court) under Section 10 of the Act of 1971 and the power to hold guilty for contempt and punishing for contempt cannot be exercised by the Sub Divisional Magistrate which only lies with this Court. The court subordinate to the High Court is only entitled to make reference to the High Court under Section 10 of the Act of 1971 read with Rule 350(2) of the High Court of Chhattisgarh Rules, 2007. Likewise, seizure of cable in exercise of jurisdiction to make reference under Section 10 of the Act of 1971 is also unsustainable and bad in law and the preliminary order dated 10-5-2006 (Annexure P-11) is without jurisdiction.

15. For the foregoing reasons, the impugned order dated 24-7-2009 (Annexure P-1) passed by the learned Sub-Divisional Magistrate (City), Raipur is quashed. However, so far as the preliminary order Annexure P-11 dated 10-5-2006 is concerned, the petitioners are at liberty to question the same before the revisional court under the provisions of the Code of Criminal Procedure, 1973, as, undisputedly, revision lies against that order. However, respondent No.3 is at liberty to file appropriate application under Section 10 of the Act of 1971.

16. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge