

In the High Court of Punjab and Haryana at Chandigarh

CROCP No. 11 of 2017
Reserved on 7.3.2018
Date of decision: 23.3.2018

Court on its own motion

versus

Mulkh Raj, ASI & Naresh Kumar SHO, P.S. Basti Bawa Khel, District Jalandhar

**CORAM: HON'BLE MR. JUSTICE M.M.S.BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. Preetinder Singh Ahluwalia, Advocate, *Amicus-Curaie*

GURVINDER SINGH GILL, J.

1. This reference was received from learned Additional District & Sessions Judge, Jalandhar for initiation of contempt proceedings against Inspector Naresh Kumar, SHO and ASI Mulkh Raj, Investigating Officer in FIR No. 93 dated 11.5.2017 under section 379-B and 411 of IPC and section 22 of the NDPS Act, P.S. Basti Bawa Khel, Jalandhar.
2. While considering a bail application on behalf of accused Sajjan Kumar and Lovely Kumar in above referred case, the learned Additional District and Sessions Judge came across few blank papers signed by the accused in the investigation file produced before the Court. The learned Judge impounded the file and issued notice to the accused/applicant Sajjan Kumar who, upon

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appearance, stated before the Court that he along with co-accused had been arrested by the police officers who threatened them to implicate them falsely and got several blank papers signed from them. Subsequently ASI Mulkh Raj, Investigating officer, made an application before the learned Judge, admitting his mistake and while apologising requested to be forgiven. The learned Judge, prima-facie finding the act of the police officers highly prejudicial to due course of judicial proceedings which tended to interfere with the same and obstructed the administration of justice, made the present reference for initiation of proceedings under Contempt of Courts Act 1971(hereinafter referred to as 'the Act'), vide letter dated 14.7.2017.

3. Upon perusal of the reference, following points for determination were spelt out in our order dated 3.11.2017:

“(1) Whether any irregularity, during the course of investigation, prior to the presentation of report under Section 173 (2) Cr.P.C and before taking cognizance of the offence, can be said to be a judicial proceeding in context to the provisions of Section 193 Cr.P.C. within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 defining “criminal contempt”.

(2) Whether the reference of learned Additional District and Sessions Judge, Jalandhar presuming that conduct of the investigating officer is prejudicial to the judicial proceedings pending before the Court, warrant initiation of proceedings of criminal contempt of Court.

(3) Whether the facts and circumstances of the present case contemplate the punishment of the contemnors for

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contempt of subordinate Court under Section 10 of the Contempt of Courts Act for punishing the contemnors as per Section 12 of the Contempt of Courts Act.”

4. Shri Preetinder Singh Ahluwalia, Advocate was appointed as Amicus Curiae to assist this Court. We have considered the report submitted by Sh. Preetinder Singh Ahluwalia, Advocate and also the submissions made by him. Each of the three points is being dealt with separately as under.

Point No. (1) :

5. In the present case the trial court was seized of a bail application under section 439 of Cr.P.C. and at that stage the prosecution had not filed any challan against the accused as the matter was still at the stage of investigation. Section 2(c) of Contempt of Courts Act visualises and defines a 'criminal contempt' in relation to something done during judicial proceedings. Section 2(c) of the Act for the sake of ready reference is reproduced below:

“2. Definitions .In this Act, unless the context otherwise requires, –

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (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;
- (d) xxx xxx xxx”

6. A bare perusal of the aforesaid definition shows that the Act visualises commission of criminal contempt in 3 different situations. While the situation contemplated in section 2(c)(i) and 2(c)(iii) does not strictly relate to any act committed during the course of judicial proceedings but section 2(c)(ii) pertains to an act done during the course of judicial proceedings. There being no ambiguity in this regard in the present case where alleged contemptuous act was done at a stage when the Court was seized of an application for bail, the controversy can be narrowed down to the question as to whether the proceedings of a bail application filed prior to filing of the challan i.e. prior to taking cognizance can be termed as 'judicial proceedings' within the meaning of the Act so as to attract the provisions of section 2(c)(ii) of the Act.
7. The said matter has been considered by two Full Benches of two predecessor Courts of this High Court namely Lahore High Court and PEPSU High Court where the argument that criminal contempt cannot be initiated till commencement of a criminal trial was out-rightly rejected.
8. The Lahore High Court in A.I.R. 1943 Lahore 329 In Re. Subramanyam, while considering the question as regards initiation of judicial proceedings held as follows :

"It is not necessary in the case of a criminal trial that the case should have been committed for trial, or even for him to have been brought before a Magistrate, provided that he had been arrested and was in custody. See ***Rex v. Parke, (1903) 2 KB 432 : (72 LJKB 839)*** and ***Rex v. Clarke, (1910)103 LT 636 : (27 TLR 32)***. Further, it now seems clear that the offence of contempt may be committed even if there is no proceeding or cause actually pending, provided that such proceedings or cause is

imminent and that the writer of the offending publication either knew it to be imminent or should have known that it was imminent."

9. The aforesaid judgement of Lahore High Court was followed by PEPSU High Court in AIR 1950 PEPSU 9 Crown vs. Brish Bhan, wherein it was held as under :

" 38. The theory that for purposes of contempt of Court no case can be regarded as sub judice until the trial or inquiry in the case has started in Court, if it once held good, exploded long ago. The question was considered in the Lahore Full Bench case "In re Subramanyam" : (A.I.R. 1943 Lahore 329 : 45 Cr LJ 445), and the following were the remarks made by Harries, C. J., with whom I agree :

"It is not necessary in the case of a criminal trial that the case should have been committed for trial, or even for him to have been brought before a Magistrate, provided that he had been arrested and was in custody; See ***Rex v. Parke, (1903) 2 KB 432 : (72 LJKB 839)*** and ***Rex v. Clarke, (1910)103 LT 636 : (27 TLR 32)***. Further, it now seems clear that the offence of contempt may be committed even if there is no proceeding or cause actually pending, provided that such proceedings or cause is imminent and that the writer of the offending publication either knew it to be imminent or should have known that it was imminent."

39. The learned Chief Justice then referred to the remarks made by Lord HeWett, C.J., in ***Rex v. Daily Mirror, (1927) 1 KB 845 : (96 LJKB 352)*** and the observations made in ***Tuljaram Rao v. Sir James Taylor, AIR 1939 Madras 257 : (40 Cr J 533 SB)***, and added :

"I respectfully agree with the opinion expressed in the Madras Full Bench case that proceedings need not actually be pending and that it is sufficient that proceedings are imminent to the knowledge of the person charged with the contempt."

10. The ratio of aforesaid judgements leaves no manner of doubt that the

proceedings of a bail application even at a stage when the challan has not been presented would be “*judicial proceedings*” within the ambit of section 2(c)(ii) of the Act.

11. Point no.(1) stands decided accordingly.

Point No. (2) :

12. The fact that the police file was found to contain certain blank papers bearing signatures of the accused shows that the investigating officer apparently intended to use the said signatures at some stage for fabricating a document purporting to be executed by the accused. There can possibly be no other reason or explanation for a police officer to obtain signatures of accused on blank papers. It is an apparent over-doing in zeal to see success of the case initiated at instance of the police, upon apprehension of accused found in possession of contraband. The investigating officer, having domain over the police file in respect of the case which he is investigating, cannot feign ignorance about the presence of the blank papers bearing signatures of accused in the police file. During course of investigation, the investigating officer would be required to prepare several documents such as consent memo, recovery memo, arrest memo, extra-judicial confession, disclosure statement etc., which are supposed to bear signatures of the accused. It is not uncommon to find that the accused in many cases take a plea that they had never executed such documents or that the police had obtained their signatures on blank documents. Bearing these facts in mind the one and the only inference that can be drawn is that investigating officer intended to use the signatures of the accused taken on blank papers to prepare some documents at a later stage.

13. No doubt the said blank documents had not been used when the same came to the notice of the learned Additional Sessions Judge, but obtaining signatures of accused on blank papers while the investigation is still going on, is an apparent attempt to fabricate false evidence and would *prima-facie* constitute an offence under section 192 of IPC punishable under section 195 of IPC read with section 511 of IPC. Section 192 and section 195 of IPC, for the sake of ready reference are reproduced below:

“192. Fabricating false evidence. -

Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

“195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment. -

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.”

14. While considering initiation of proceedings for criminal contempt of court, the provisions of Section 10 of the Act need to be borne in mind which for the sake of ready reference are reproduced below:

“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 (45 of 1860).”

15. A perusal of proviso to Section 10 of the Act shows that there is a statutory bar for initiating contempt proceedings when such contempt is punishable as an offence under provisions of IPC .
16. Thus, the material question would be as to whether the alleged contemptuous act which *prima-facie* is also an offence under IPC would warrant initiation of proceedings under the Act or as to in view of the bar contained in proviso to Section 10 of the Act, the jurisdiction of the High Court would be ousted.
17. To find answer to the said question, it needs to be ascertained as to whether the offence allegedly made out by the act of the police officials is an offence simplicitor under IPC or would by itself be an offence punishable as 'contempt' under provisions of IPC. Though a perusal of aforesaid proviso to section 10 of the Act would reveal that thrust is on words 'such contempt', but the word 'contempt' has not been explained or specifically referred as such as an offence in IPC. The posed question becomes rather tricky due to lack of definition of the word 'contempt' in IPC.
18. The said question came to be considered by a Constitution bench of Hon'ble

Supreme Court in 1952 AIR (SC) 149 Bathina Ramakrishna Reddy Vs. State of Madras. In the said case, a publisher of a weekly who had raised allegations that a certain Magistrate is corrupt had been held guilty by the High Court of having committed criminal contempt. In appeal filed before Hon'ble Supreme Court, a contention was raised on his behalf that since the alleged act of raising allegations of corruption would also constitute an offence of defamation under section 499 of IPC, the jurisdiction of Hon'ble the High Court to take cognizance under Contempt of Courts Act 1926 would be barred. Hon'ble the Supreme Court, while discussing the scope of the 'contempt' under Contempt of Courts Act 1926 in context of proviso to section 2(3) of Contempt of Courts Act 1926 (*para-materia to the proviso to section 10 of Contempt of Courts Act 1971*) drew distinction between the acts which can be tried as 'contempt' under Contempt of Courts Act 1926 and which can be tried as an offence under IPC. The relevant extracts from the said judgement are read as follows :

“ 8. So far as the first point is concerned, the determination of the question raised by the appellant would depend upon the proper interpretation to be put upon Section 2(3), Contempt of Courts Act which runs as follows :

"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."

According to Mr. Sinha, what the sub-section means is that if the act by which a party is alleged to have committed contempt of a subordinate Court constitutes offence of any description whatsoever punishable under the Indian Penal Code, the High Court is precluded from taking cognizance of it. It is said that in the present case the allegations made in the article in question amount to an offence of defamation as defined by

Section 499, Penal Code, and consequently the jurisdiction of the High Court is barred. Reliance is placed in support of this proposition upon the decision of the Nagpur High Court in *Kisan Krishna Ji v. Nagpur Conference of Society of St. Vincent de Paul*, AIR 1943 Nagpur 334. This contention, though somewhat plausible at first sight, does not appear to us to be sound. In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate Court are punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say "where the act alleged to constitute such contempt is an offence." It is argued that if such was the intention of the Legislature, it could have expressly said that the High Court's jurisdiction will be ousted only when the contempt is punishable as such under the Indian Penal Code. It seems to us that the reason for not using such language in the sub-section may be that the expression "contempt of Court" has not been used as description of any offence in the Indian Penal Code, though certain acts which would be punishable as contempt of Court in England, are made offences under it.

9. It may be pointed out in this connection that although the powers of the High Courts in India established under the Letters Patent to exercise jurisdiction as Superior Courts of Record in punishing contempt of their authority or processes have never been doubted, it was a controversial point prior to the passing of the Contempt of Courts Act, 1926, as to whether the High Court could, like the Court of King's Bench in England, punish contempt of Courts subordinate to it in exercise of its inherent jurisdiction. The doubt has been removed by Act XII [12] of 1926 which expressly declares the right of the High Court to protect Subordinate Courts against contempt, but subject to this restriction, that cases of contempt which have already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court. This seems to be the principle underlying Section 2(3), Contempt of Courts Act. What these cases are, need not be exhaustively determined for purposes of the present case, but some light is undoubtedly thrown upon this matter by the provision of Section 480, Criminal Procedure Code,

which empowers any civil, criminal or revenue Court to punish summarily a person who is found guilty of committing any offence under Sections 173, 178, 179, 180 or Section 228, Penal Code in the view or presence of the Court. We are not prepared to say, as has been said by the Patna High Court in *Juanendra Prasad v. Gopal*. 12 Pat. 172 that the only section of the Indian Penal Code which deals with contempt committed against a Court of justice or judicial officer is Section 228. Offences under Sections 175, 178, 179 and 180 may also, as Section 480, Criminal Procedure Code shows, amount to contempt of Court if the "public servant" referred to in these sections happens to be a judicial officer in a particular case. It is well known that the aim of the contempt proceeding is. "to deter men from offering any indignities to a Court of justice" and an essential feature of the proceeding is the exercise of a summary power by the Court itself in regard to the delinquent. In the cases mentioned in Section 480, Criminal Procedure Code, the Court has been expressly given summary powers to punish a person who is guilty of offending its dignity in the manner indicated in the section. The Court is competent also under Section 432, Criminal Procedure Code to forward any case of this description to a Magistrate having jurisdiction to try it, if it considers that the offender deserves a higher punishment than what can be inflicted under Section 480. Again the Court is entitled under Section 484, to discharge the offender on his submitting an apology, although it has already adjudged him to punishment under Section 480 or forward his case for trial under Section 482. The mode of purging contempt by tendering apology is a further characteristic of a contempt proceeding. It seems, therefore, that there are offences which are punishable as contempt under the Indian Penal Code and as subordinate Courts can sufficiently vindicate their dignity under the provisions of criminal law in such cases the legislature deemed it proper to exclude them from the jurisdiction of the High Court under Section 2(3), Contempt of Courts Act, but it would not be correct to say that the High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code."

19. The ratio of aforesaid judgement, in brief, is that the fact that the act

comprising contempt is also punishable as an offence other than offence in the nature of contempt would not oust jurisdiction of High Court. The necessary corollary would be that when provisions of IPC provide for dealing with such contempt, then resort should not ordinarily be had to proceedings under the Act by High Court. Hon'ble the Supreme Court while interpreting the scope of contempt proceedings has cautioned to exercise restraint while considering initiation of contempt proceedings. Hon'ble the Supreme Court in (2007)14 SCC 126 Rajesh Kumar Singh vs. High Court of Judicature of Madhya Pradesh, held as follows :

“20. This Court has repeatedly cautioned that the power to punish for contempt is not intended to be invoked or exercised routinely or mechanically, but with circumspection and restraint. Courts should not readily infer an intention to scandalise courts or lowering the authority of court unless such intention is clearly established. Nor should they exercise power to punish for contempt where mere question of propriety is involved. In *Rizwan-ul-Hasan v. State of U.P.* this Court reiterated the well-settled principle that jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. Of late, a perception that is slowly gaining ground among public is that sometimes, some Judges are showing over sensitiveness with a tendency to treat even technical violations or unintended acts as contempt. It is possible that it is done to uphold the majesty of courts, and to command respect. But Judges, like everyone else, will have to earn respect. They cannot demand respect by demonstration of 'power'.”

20. The learned referral Judge, in his reference stated as follows:

“In view of the mandate of law as contained under Section 2(c) of the Contempt of Courts Act 1971, the aforesaid act and conduct of the aforesaid Inspector Naresh Kumar, SHO and ASI Mulkh Raj Investigating

Officer, prima-facie appears to be highly prejudicial to the due course of judicial proceedings conducted before this Court and the same also tends to interfere with the judicial proceedings and also tends to obstruct the administration of justice”

21. As regards the observations of the referral Judge to the effect that the conduct of the investigating officer ASI Mulkh Raj and SHO Naresh Kumar is such which tends to obstruct the administration of justice, the same would be an offence under section 228 of IPC and the Court could proceed against the offender under provisions of Section 345 and 346 of Cr.P.C. and in case the offender tenders an apology, the Court, in accordance with provisions of section 348 of Cr.P.C., may in its discretion discharge the offender. As regards the opinion of the referral Judge that the conduct of the alleged offenders is such which prejudices or interferes or tends to interfere with due course of judicial proceedings the same would attract an offence under section 192 of IPC, punishable under section 195 of IPC for which procedure u/s 195 of Cr.P.C and 340 of Cr.P.C. would have to be resorted to.
22. Hon'ble the Supreme Court in Bathina Ramakrishna Reddy's case(supra), while discussing the jurisdiction of trial Courts, in context of offences of contempt held as follows :

“ We are not prepared to say, as has been said by the Patna High Court in ***Juanendra Prasad v. Gopal. 12 Pat. 172*** that the only section of the Indian Penal Code which deals with contempt committed against a Court of justice or judicial officer is Section 228. Offences under Sections 175, 178, 179 and 180 may also, as Section 480, Criminal Procedure Code shows, amount to contempt of Court if

the "public servant" referred to in these sections happens to be a judicial officer in a particular case.”

23. Hon'ble the Supreme Court, in the aforesaid case, being aware of the fact that the word “contempt” has not been defined in IPC, discussed about jurisdiction of the trial court pertaining to contempt proceedings and held that the cases of contempt in IPC are not limited only to those offences which fall under Section 228 of IPC but will include in its ambit offences under section 175, 178, 179 and 180 of IPC. While Section 228 pertains to cases of intentional insult or interruption to public servant conducting judicial proceedings, offences u/s 175, 178, 179 and 180 of IPC pertain to instances when a person bound or required to do something omits or refuses to do so. Section 192 read with 195 of IPC neither pertains to insult to public servant nor pertains to interruption of judicial proceedings but deals with cases where someone interferes with judicial proceedings by way of fabricating false evidence with an intention to procure conviction. Such interference, which otherwise qualifies to be termed as 'criminal contempt' as defined in Section 2(c)(iii) of the Act, is specifically made punishable as such under provisions of 195 of IPC and stringent punishment is provided. The present case is infact a case of an attempt to commit offence punishable under Section 195 of IPC. Hon'ble the Supreme Court in AIR 1953 SC 185 Rizwan-ul-Hasan v. State of U.P., reiterated the well-settled principle that jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. The present case being a case of an attempt to cause interference and no substantial interference having actually

taken place yet, it would not be appropriate to resort to proceedings under the Act, more particularly when the matter can be effectively dealt with under provisions of IPC. Point No. 2 is thus decided accordingly to the effect that the reference does not warrant initiation of proceedings for 'criminal contempt' of Court.

Point No. (3) :

24. The Preamble of the Act which reads as under suggests the purpose of legislation :

“ An Act to define and limit the powers of the certain Courts
in punishing Contempts of Courts and to regulate their
procedure in relation thereto. ”

The very purpose of the legislation is manifest in the aforesaid preamble wherein the words “*define and limit*”, while acknowledging the power of the Courts to punish contemnors, also limit its powers. The proviso to Section 10 of the Act is one such provision which ousts the jurisdiction of the High Court in certain cases for proceeding under the Act. A perusal of Section 2 of the Act, wherein “criminal contempt” has been defined, read with proviso to Section 10 of the Act would show that whenever any instance of challenge to the authority of the Courts comes to notice such contemnor can be taken to task. The underlying purpose of law of contempt is not only protection of the machinery of Justice but also the interest and confidence of the general public in the efficacy of such machinery. Unlike the cases of civil contempt where normally it is the aggrieved party which seeks initiation of contempt proceedings, in cases of criminal contempt the proceedings are generally

initiated *suo-moto* by the Court. Propriety and caution demands that before initiating *suo-moto* proceedings the Court should be circumspect in taking a decision in this regard.

25. In every case, Contempt would not be the omnibus remedy to uphold the dignity of the Courts. A cue is provided by proviso to section 10 of the Act. In Rizwan-ul-Hasan's case(supra), Hon'ble the Supreme Court reiterated that jurisdiction contempt is not to be invoked unless there is real prejudice which can be regarded as substantial interference with due course of justice. While we do not approve the wrong allegedly committed by the contemnors which *prima-facie* tantamounts to interference in judicial process, but every evil is not necessarily required to be dealt with by initiating contempt proceedings by the High Court. Any attempt made by a police officer to create evidence for this securing conviction is required to be deprecated and can not be tolerated but launching contempt proceedings when the same can also be effectively dealt with alternate provisions specifically provided for such conduct, should be avoided.
26. In view of the findings returned on Point no.2, wherein it has been held that initiation of proceedings for 'criminal contempt' of Courts is not warranted, Point no.3 is rendered redundant.
27. The reference stands decided accordingly.
28. We place on record our appreciation for the valuable assistance rendered to the Court by Sh. Preetinder Singh Ahluwalia, Advocate who appeared as *Amicus*

Curaie at our request.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

March 23, 2018
kamal

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No