

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

CONT.P.NO.1462 OF 2019

R.Manikandan

... Petitioner

Vs

Pradeep Yadav, I.A.S.
Government of Tamil Nadu,
Education Department,
Secretariat,
Chennai - 600 009.

... Respondent

Prayer : Contempt petition has been filed under section 11 of the Contempt of Courts Act to punish the respondent for his willful disobedience in not complying with the order dated 22.07.2015 passed by this Court in W.P.No.21944 of 2015.

For Petitioner : Mr.S.Mani

For Respondent : Mr.P. Raja
Government Advocate

ORDER

The Non compliance of the order dated 22.07.2015 in W.P.No.21944 of 2015 is the subject matter of the instant contempt petition. This Court by an order directed the respondent to consider the representation dated 10.10.2013 for regularisation of the petitioner within a period of twelve weeks from the date of receipt of a copy of this

order.

2. The order was passed in July 2015. But the instant contempt petition has been filed on 29.01.2019.

3. The Hon'ble Supreme Court in Pallav Sheth v. Custodian reported in 2001 7SCC 549 has stated the provisions as follows;

15. Sections 20 and 22, with which we are concerned in the present case, read as follows:

"20. Limitation for actions for contempt - No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

22. Act to be in addition to, and not in derogation of, other laws relating to contempt.- 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."

16. Learned Counsel for the parties have drawn our attention to various decisions of this Court in support of their respective

contentions. While the effort of both Mr. Venugopal and Mr. Bobde on behalf of the appellant was that even in exercise of the power under Article 215 of the Constitution the provisions of Section 20 of the Contempt of Courts Act, 1971 prohibited any action being taken for contempt if a period of one year had elapsed, as was contended in the present case, Mr. Rustomjee submitted that the constitutional power contained under Article 215 could not in any way be stultified or curtailed by any Act or Parliament including Section 20 of the 1971 Act.

17. It will be appropriate to refer to some of the decisions which have a bearing on the point in issue in the present case.

18. In *Sukhdev Singh Sodhi vs. The Chief Justice and Judges of the Pepsu High Court* this Court was concerned with the issue whether this Court could transfer contempt proceedings from Pepsu High Court to any other High Court. For transfer reliance had been placed on Section 527 of the Criminal Procedure Code. While holding that Section 527 did not apply in case where a High Court has initiated proceedings for contempt of itself, it was held that even the Contempt of Courts Act, 1952 recognised the existence of a right to punish for contempt in every High Court and this right is vested in it in the High Court by the Constitution. This Court referred to Article 215 of the Constitution and observed

that so far as contempt of a High Court itself is concerned, the Constitution vests this right in every High Court and no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. It, accordingly, came to the conclusion that the Code of Criminal Procedure did not apply in matters of contempt triable by the High Court which could deal with it summarily and adopt its own procedure which had to be fair and that the contemner was to be made aware of the charge against him and given a fair and reasonable opportunity to defend himself. Reliance was placed by Mr. Venugopal on a decision in *Baradakanta Mishra vs. Mr. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court and it was contended that it was held in this case that Section 20 of the Contempt of Courts Act, 1971 provided a period of limitation by saying that no Court shall initiate any proceeding for contempt either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In *Baradakanta Mishra's* case the Appellant had filed an application before the High Court for initiating contempt proceedings against the Chief Justice and other Judges in their personal capacity. A Full Bench of three Judges were of the opinion that no Contempt of Court had been committed and the application was rejected. The Appellant then purported to avail the right of appeal under Section 19(1)

of the Act and filed an appeal in this Court. A preliminary objection was taken by the State against the maintainability of the appeal on the ground that where the High Court had not initiated proceedings and had refused to take action, no appeal as of right would lie under Section 19(1). This was the only issue which arose for consideration of this Court in Baradakanta Mishra's case and this Court upheld the preliminary objection and held that no appeal under Section 19(1) was maintainable. It is no doubt true that during the course of discussion reference was made to Sections 15, 17 and 20 of the Contempt of Courts Act, 1971 but this Court was in that case not called upon to consider the effect of the provisions of the Contempt of Courts Act vis-à-vis inherent powers of the High Court to punish for contempt. No reference is made in the judgement to Article 129 or Article 215 of the Constitution. Furthermore interpretation of Section 20 was not an issue and no question of limitation arose therein. Under the circumstances, we hold that the observations made by this Court with reference to Section 20 were in the nature of obiter dicta and not binding on this Court in the present case. In any case, Baradakanta Mishra's case decision does not specifically deal with the question as to when or how proceedings for contempt are initiated for the purposes of Section 20 and nor has it considered the applicability of the provisions of the Limitation Act, to which we shall presently refer.

19. In *Firm Ganpat Ram Rajkumar v. Kalu Ram* where an order of this court ordering delivering of premises had not been complied with, an application was filed for initiation of contempt proceedings. A contention was raised on behalf of the alleged contemner based on Section 20 of the Contempt of Courts Act, 1971. Dealing with this contention, this Court observed as follows (SCC p.423, para 7)

"7. Another point was taken about limitation of this application under Section 20 of the Act. Section 20 states that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In this case, the present application was filed on or about 3-11-1988 as appears from the affidavit in support of the application. The contempt consisted, inter alia, of the act of not giving the possession by for of the order of the learned Senior Sub-Judge, Narnaul dated 12-2-1988.

Therefore, the application was well within the period of one year. Failure to give possession, if it amounts to a contempt in a situation of this nature is a continuing wrong. There was no scope for application of Section 20 of the Act."

20. The above mentioned observations indicate that the contention based on Section 20 was not accepted for two reasons firstly, that the application for initiating action for contempt was filed within one year of the date when the contempt was alleged to have been committed and secondly, failure to give possession amounted to continuing wrong and, therefore, there was no scope for application of Section 20 of the Act. This case is important for the reason that the Court regarded the filing of the application for initiating contempt proceedings as the relevant date from the point of view of limitation.

21. The power of this Court and the High Court under the Constitution for taking action for contempt of a subordinate court came up for consideration in Delhi Judicial Service Assn. v. State of Gujarat. It referred to Sukhdev Singh Sodhi case and held that even after condification of the law of contempt in

India the High Court's jurisdiction as the court of record to initiate proceedings and take seisin of the matter remained unaffected by the Contempt of Courts Act. It also referred to *R.L.Kapur v.State of MaDras* and by following the said decision observed as follows; (SCC p.442, para 25).

"The Court further held that in view of article 215 of the Constitution, no law made by a legislature could take away the jurisdiction conferred n the High Court nor it could confer it afresh by virtue of its own authority."

22. Referring to the Contempt of Courts Act, 1971 it observed with relation to the powers of the High Court as follows: (SCC p.443, para 26)

"Inherent powers of a superior cout of record have remained unaffected even after condification of WEB COPY contempt law. The Contempt of Courts Act, 1971 was enacted to define and limit the powers of Courts in punishing contempts of Courts and to regulate their procedure in relation thereto. Section 2 of the act defines contempt of court including criminal

contempt. Sections 5, 6, 7, 8 and 9 specify matters which do not amount to contempt and the defence which may be taken. Section 10 relates to the power of High Court to punish for contempt of subordinate courts. Section 10 like Section 2 of 1926 Act and Section 3 of 1952 Act reiterates and reaffirms the jurisdiction and power of a High Court in respect of its own contempt and of subordinate courts. The act does not confer any new jurisdiction instead it reaffirms the High Court's power and jurisdiction for taking action for the contempt of itself as well as of its subordinate courts."

23. The view in Delhi Judicial Service Assn. Case was reiterated and reaffirmed in the case of Vinay chandra Mishra, Inre and it was held that the amplitude and power of this court to punish for contempt could not be curtailed by the law made by Parliament or the State Legislature. As observed in Income Tax Appellate Tribunal v. V.K. Agarwal at p.25 that the judgment in Vinay chandra Mishra case was

partially set aside in *Supreme Court Bar Assn. v. Union of India* on the question of power to suspend an advocate's licence under contempt jurisdiction, the observation in *Vinay chandra Mishra* case with regard to amplitude of the court's power under Article 129 not being curtailed by a law made by the Central or a State Legislature remained unaffected. It was in exercise of the powers under Article 129 that this Court held the respondent in *V.K. Agarwal* case guilty of contempt of court as he had tried to influence or question the decision making process of the Income Tax Appellate Tribunal.

24. The applicability of the Limitation act to the Contempt of Courts act, 1971 came up for consideration in *State of W.B. v. Kartick Chandra Das*. In that case against a notice of contempt which had been issued by the Single Judge, a letters patent appeal was filed under Section 19 of the contempt of courts Act which was dismissed on the ground that the delay was not condonable as Section 5 of the Limitation Act did not apply. While reversing this decision of the Calcutta High Court, this court observed at p.344 as follow: (SCC para 7)

"7. In consequence, by operation of Section 29(2) read with Section 3 of the Limitation Act, limitation stands prescribed as a special law under Section 19 of the

Contempt of Courts Act and limitation in filing letters patent appeal stands attracted. In consequence, Section 4 to 24 of the Limitation Act stand attracted to letters patent appeal insofar as and the extent to which they are not expressly excluded either by special or local law. Since the rules made on the appellate side, either for entertaining the appeals under clause 15 of the Letters Patent or appeals arising under the contempt of courts, had not expressly excluded, Section 5 of the Limitation Act becomes applicable. We hold that section 5 of the Limitation Act does apply to the appeals filed against the order of the learned Single Judge for the enforcement by way of a contempt. The High Court, therefore, was not right in holding that section 5 of the Limitation Act does not apply. The delay stands condoned. Since the High court had not dealt with the matter on merits, we decline to express any opinion on merits. The

case stands remitted to the Division Bench for decision on merits."

25. A Constitution Bench in supreme Court Bar Assn. Case while considering this Court's power to punish for contempt at p.421 observed as follows; (SCC para 21)

"21. It is, thus seen that the power of this court in respect of investigation or punishment of any contempt including contempt of itself, is expressly made 'subject to the provisions of any law made in this behalf by Parliament' by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that inherent jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and /or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the

case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme court with regard to investigation and punishment of contempt of itself, (we shall refer to section 15 of the Contempt of Courts act, 1971, later on) and this court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under under Articles 129 and 142 (2) of the Constitution of India."

"24. Thus, under the existing legislation dealing with contempt of court, the High courts and Chief Courts were vested with the power to try a person for committing contempt of court and to punish him for established contempt.

The legislation itself prescribed the nature and type, as well as the extent of, punishment which could be imposed on a contemner by the High Courts or the Chief Courts. The second proviso to Section 4 of the 1952 Act (Supra) expressly restricted the powers of the courts not to 'impose any sentence in excess

of what is specified in the section' for any contempt either of itself or of a court subordinate to it." (SCC p.423, para 24)

26. Referring to the powers of the High Court under Article 215 to impose punishment with reference to Contempt of Courts Act, 1971 at page 428, the Court held as follows: (SCC para 37)

"37. The nature and types of punishment which a court of record can impose in a case of established contempt under the common law have now been specifically incorporated in the Contempt of Courts Act, 1971 insofar as the High Courts are concerned and therefore to the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed."

27. In *L.P. Misra (Dr) vs. State of U.P.* a contention was raised that while exercising powers

under Article 215 in punishing the Appellant therein for Contempt of the High Court the procedure contemplated by Section 14 of the Contempt of Courts Act, 1971 had not been followed. The Court, dealing with this contention, observed as follows: (SCC p.382, para 12)

"12. 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 has 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."

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost

diligence and because of the inaction on the part of the court, a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr.Venugopal would mean that the court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of the contempt having been committed and the same having been brought to the notice of the court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigants as also by placing a pointless fetter on the part of the court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and /or Article 215. Such a rigid interpretation must therefore be avoided.

42. The decision in Om Prakash Jaiswal case to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the court formed the prima facie opinion that contempt has been committed and issued notice to the

contemner to show cause why it should not be punished, is taking too narrow a view of | Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instance, in a case where a contempt of a subordinate court is committed, a report is prepared whether on an application to court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a High Court can take further action under Section 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in Om Prakash Jaiswal case is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate General for permission to initiate contempt proceedings is regarded as initiation by the Court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the

Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution.

43. A question arose before a Full Bench of the Punjab & Haryana High Court in the case of *Manjit Singh v. Darshan Singh* with regard to the application of Section 20 to the proceedings of criminal contempt. After coming to the conclusion that on the language of Section 20 the date when time begins to run is fixed from the point on which the criminal contempt is alleged to have been committed the Court had to decide the terminating point or the terminus ad quem for the limitation under Section 20 of the Act. Four possibilities which fell for consideration in this regard were: (i) the date on which the actual notice of contempt is issued by the Court; (ii) the date on which the Advocate General moves the motion under Section 15(1)(a); (iii) the date on which a subordinate Court makes a reference of the criminal contempt under Section 15(2) of the Act and, (iv) the date on which any other person prefers an application to the Advocate-General for his consent under Section 15(1)(b) of the Act. On behalf of the State, the contention raised before the Full Bench was that the sole terminus ad quem was the date of the actual issuance of

the notice of criminal contempt by the Court and reliance in this behalf was *inter alia* placed on the above mentioned decision of this Court in Baradakanta Mishra's case. The Full Bench, in our opinion, rightly came to the conclusion that the sole question which arose for consideration in Baradakanta Mishra's case related to the interpretation of Section 19 of the Act and no question of interpreting or applying Section 20 was at all in issue. Following the dictum of Lord Halsbury in *Quinn v. Leathem* that a case is only an authority for what it actually decides and cannot be quoted for a proposition that may even seem to follow logically therefrom, the Full Bench correctly observed that Baradakanta Mishra's case was no warrant for the proposition that the issuance of a notice of criminal contempt by the High Court is the sole *terminus ad quem* for determining limitation under Section 20 of the Act. The Court then proceeded to observe in paras 13 and 19 as follows: (Cri LJ pp.305-06 & 308)

"13. Once that is so, one must now proceed to analyse and construe Section 20 independently. A plain reading thereof would indicate that the legislature drew a clear line of distinction betwixt proceedings for contempt initiated by the Court on its own motion, and

those not so done. Suo motu action by the High Court is thus clearly a class by itself. Consequently the statute in express terms refers to these two classes separately, namely, any proceedings for contempt on Court's own motion, and proceedings for contempt initiated "otherwise". The use of the word 'otherwise' is significant and indeed provides the clue to be the true interpretation of Sec. 20. Therefore, initiation of contempt proceedings otherwise than on Court's own motion would include within its sweep a motion by the Advocate General, a reference by a subordinate Court to the High Court to take action for contempt and an application before the Advocate General seeking his consent by any other person under Section 15 and lastly in cases of civil contempt the motion by a private litigant directly in the Court.

"19. To finally conclude it must be held that the terminus a quo for

limitation begins under Section 20 of the Act on the date on which the contempt is alleged to have been committed. The terminus ad quem in case of criminal contempt would necessarily vary and be related to the modes of taking cognizance thereof provided for in Section 15. In cases where it is initiated on the Court's own motion it would necessarily be from the issuance of the notice for contempt by the Court. In case of a motion by the Advocate General under Section 15(1)(a), the proceedings would initiate from the date of the filing of such a motion in the High Court. Where any other person moves the Advocate General for his consent in writing as prescribed in Section 15(1)(b), the initiation of proceedings would be with effect from the date of such application. Lastly, in cases of criminal contempt of a subordinate Court on a reference made by it the proceedings must be deemed to

be initiated from the date when such reference is made."

44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.

45. It was submitted on behalf of the appellant that even if the provisions of Section 20 do not bar High Court from taking action if proceedings are initiated by the filing of an application within a period of one year of the contempt having been committed, in the present case the period of limitation must be regarded as having expired long before the filing of the application by the Custodian and, therefore, no action on such an application could be taken by the Court.

46. The record discloses that the Custodian received information of the appellant having committed contempt by taking over benami concerns, transferring funds to these concerns and operating their accounts clandestinely only from a letter dated 5-5-1998 from the Income Tax Authorities. It is soon thereafter that on 18-6-1998, a petition was filed for initiating action in contempt and notice issued by the Special Court on 9-4-1999. Section 29(2) of the Limitation Act, 1963 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply insofar as, and to the extent to which, they are not expressly excluded by such special or local law. This Court in the case of Kartick Chandra Das has held that by virtue of Section 29(2) read with Section 3 of the Limitation Act, limitation stands prescribed as a special law under Section 19 of the Contempt of Courts Act, 1971 and in consequence thereof the provisions of Sections 4 to 24 of the Limitation Act stand attracted.

4. The contempt petition is barred by time.
Accordingly the contempt petition is dismissed.

SD/-
ASSISTANT REGISTRAR (COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2019.

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