

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CONTR No. 2 of 2016

V.G.Tamaskar S/o Late Shri G.Y. Tamaskar Advocate, R/o 9/470 Arya Nagar, Mohan Nagar, Durg 491001 Tahsil And District Durg, Chhattisgarh., Chhattisgarh

---- Petitioner

Versus

1. Mr. Uttam Kumar Pandey U.K. Pandey (Uttam Pandey) Aged About 62 Years, S/o Late Shri B.P. Pandey Advocate, Chhattisgarh High Court Bar Chamber No. 101 Advocate Chambers High Court Advocates Chamber Bilaspur, Chhattisgarh, R/o House No.5 Sai Vihar, Yadunandan Nagar, Tifra Bilaspur Pin 495004 Tahsil And District Bilaspur, Chhattisgarh., Chhattisgarh
2. Formal Party- The Advocate, Advocate General High Court Of Chhattisgarh, High Court Premises, Bodri 495244 Tahsil Belha, District Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner : Shri V.G. Tamaskar, in person.

For Respondent No.2 : Smt. Fouzia Mirza, Addl. Advocate General

**D.B. :Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt. Justice Vimla Singh Kapoor**

C A V Order

(On Maintainability of the Petition)

09/08/2021

Per Manindra Mohan Shrivastava, J.

1. Petitioner, an Advocate, has filed this petition styled as "*Contempt Case (Criminal)*" against respondent who is also an Advocate on averments

made in the petition that on 5.5.2016 when the petitioner/complainant was sitting in a Court presided by learned Single Judge of this Court, the respondent -Advocate sat behind the complainant and kicked him from behind using abusive language (the abusive words are not being reproduced). It is further averred that the matter was reported to the Hon'ble Judge who was presiding over the Court regarding the conduct of the respondent- Advocate and he came forward stating that the petitioner/complainant had gone insane and he may be sent to mental asylum. According to the petitioner herein, the respondent was asked to sit in front row and, therefore, the petitioner had to leave the Court.

2. Making certain averments in paragraphs 4 & 5 of this petition, giving background of certain disputes, pendency of cases and making certain allegation of misconduct against respondent -Advocate, further averment made in the petition is that an application was made before respondent No.2, the Advocate General, for giving consent for initiation of criminal contempt against respondent -Advocate, but no reply has been received.
3. On the basis of aforesaid averments made in the petition, the petitioner has sought initiation of contempt proceedings stating that an Advocate is an officer of the Court and, therefore, use of abusive language and assault while the Court is in session amounts to gross criminal contempt.
4. During pendency of this petition, the application for grant of consent was, however, rejected by the learned Advocate General vide its order dated 10.5.2017, a copy of which has been brought on record as Annexure C-8. The original records of the proceedings drawn by learned Advocate General on the application of the applicant which culminated in passing of the order rejecting prayer for grant of consent have also been placed before this Court.

5. The petitioner appearing in person prayed this Court that even though no motion has been moved by the Advocate General and consent has not been granted by the Advocate General, criminal contempt may be initiated against the respondent in exercise of suo motu jurisdiction under Article 215 of the Constitution of India, by entertaining the present petition filed by the petitioner.
6. This Court is vested with constitutional jurisdiction under Article 215 of the Constitution of India to punish for contempt of Court. This constitutional jurisdiction to punish for contempt of Court can neither be abrogated nor stultified by any legislative exercise. However, the procedure prescribed by the Law is required to be followed in view of there being legislative enactment- the Contempt of Courts Act 1971 (for short "*Act of 1971*").
7. In the case of **Bal Thackrey Vs. Harish Pimpalkhute & Ors.** (2005) 1 SCC 254, it was held as under :-

"7. Every High Court besides powers under the Act has also the power to punish for contempt as provided in Article 215 of the Constitution. Repealing the Contempt of Courts Act, 1952, the Act was enacted, inter alia, providing definition of civil and criminal contempt and also providing for filtering of criminal contempt petitions. The Act lays down "contempt of court" to mean civil contempt or criminal contempt. We are concerned with criminal contempt. "Criminal contempt" is defined in Section 2(c) of the Act. It, inter alia, means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any

matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court. The procedure for initiating a proceeding of contempt when it is committed in the face of the Supreme Court or High Courts has been prescribed in Section 14 of the Act. 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 action for contempt may be taken on court's 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”.

x	x	x
x	x	x

10. Dealing with the nature and character of the power of the courts to deal with contempt in the case of Pritam Pal, v. High Court of Madhya Pradesh, this Court observed :

“15. 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 contemnor 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 of 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."

11. The nature and power of the Court in contempt jurisdiction is a relevant factor for determining the correctness of observations made in Duda's case (supra). Dealing with the requirement to follow the procedure prescribed by law while exercising powers under Article 215 of the Constitution to punish for contempt, it was

held by this Court in Dr. L.P. Misra v. State of U.P. [(1998) 7 SCC 379] that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. The exercise of jurisdiction under Article 215 of the Constitution is also governed by laws and the rules subject to the limitation that if such laws/rules stultify or abrogate the constitutional power then such laws/rules would not be valid. In L.P.Misra's case (supra) it was observed that the procedure prescribed by the Rules has to be followed even in exercise of jurisdiction under Article 215 of the Constitution. To the same effect are the observations in Pallav Sheth's case (supra)."

8. Section 15 of the Act of 1971 provides as below:-

"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 to 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.

Explanation.—In this section, the expression “Advocate-General” means—

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.”

9. Thus, a criminal contempt can be moved before this Court either by learned Advocate General or by a person with the consent of the Advocate General or this Court itself may suo motu initiate proceeding on the basis of information received by it.

10. Rules have been framed by this Court in exercise of powers under the

Law known as the High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007 wherein Rules 350, 351 provide for the manner in which the Court may proceed to deal with a case of criminal contempt. The aforesaid provisions are reproduced as below:-

“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.

351. (1) The Advocate General may make motion for initiation of criminal contempt in writing stating the allegation of facts constituting criminal case in accordance with Rule, 349.

(2) Any other person may also make motion for initiation of criminal contempt with the consent in writing of the Advocate General.

(3) Any information other than a motion under sub-rules (1) & (2) or a petition of motion made by a party shall, in the first instance be placed before the Chief Justice on administrative side for further direction, as may be considered proper by him.”

11. In the present case, when this petition was filed, petitioner's application

for grant of consent was pending before the learned Advocate General, but it came to be rejected during pendency of this case, copy of which has also been brought on record and this is also reflected from original records of proceedings drawn by learned Advocate General.

12. In the case of **P.N. Duda Vs. P. Shiv Shanker & Ors.** (1988) 3 SCC 167, Their Lordships in the Supreme Court held :-

“38.Refusal to give consent closes one channel of initiation of contempt. As mentioned hereinbefore there are three different channels, namely, (1) the Court taking cognizance on its own motion; (2) on the motion by the Attorney General or the Solicitor General; and (3) by any other person with the consent in writing of the Attorney General or the Solicitor General. In this case apparently the Attorney General and the Solicitor General have not moved on their own. The petitioner could not move in accordance with law without the consent of Attorney General and the Solicitor General though he has a right to move and the third is the court taking notice suo motu. But irrespective of that there was right granted to the citizen of the country to move a motion with the consent. In this case whether consent was to be given or not was not considered for the reasons stated by the Attorney General. Those reasons are linked up with the Court taking up the matter on its own motion. These are inter-linked. In that view of the matter these are justiciable and indeed it may be instructive to consider why this practice grew up of having the consent . This

was explained in *S. K. Sarkar v. V. C. Misra*, [1981] 2 S.C.R. 331 where Sarkaria, J. speaking for the Court observed at page 339 of the report that the whole object of prescribing these procedural modes of taking cognizance under section 15 of the Act was to safeguard the valuable time of the High Court or the Supreme Court being wasted by frivolous complaints of contempt of court. Frequent use of this suo motu power on the information furnished by an incompetent petition, may render these procedural safeguards provided in subsection (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. In this connection the Court referred to the observations of Sanyal Committee appointed to examine this question where it was observed:

"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 . . . "...

13. In a subsequent decision in the case of **Bal Thackery** (supra) also where a petition was filed before the Court for initiating criminal contempt proceedings against the respondent therein and there was no consent granted by the Advocate General, the legal position was examined in the light of earlier decisions. It was held as below:-

“16. The whole object of prescribing procedural mode of taking cognizance in Section 15 is to safeguard the valuable time of the court from being wasted by frivolous contempt petition. In J.R. Parashar's case (supra) it was observed that underlying rationale of clauses (a), (b) and (c) of Section 15 appears to be that when the court is not itself directly aware of the contumacious conduct, and the actions are alleged to have taken place outside its precincts, it is necessary to have the allegations screened by the prescribed authorities so that Court is not troubled with the frivolous matters. To the similar effect is the decision in S.R. Sarkar's case.

14. Having held so, Their Lordships held the contempt petition not maintainable recording following finding and observations:-

“20. It is well settled that the requirement of obtaining consent in writing of the Advocate-General for making motion by any person is mandatory. A motion under Section 15 not in conformity with the requirements of that Section is not maintainable. [State of Kerala v. M.S. Mani and Others [(2001) 8 SCC 82].

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x

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“22. A perusal of record including the notices issued to the appellant shows that the Court had not taken suo motu action against the appellant. In contempt petitions, there was no prayer for taking suo motu action for contempt against the appellant. The specific objection taken that though suo motu action could be taken under Section 15 of the Act on any information or newspaper but not on the basis of those contempt petitions which were filed in regular manner by private parties, was rejected by the High Court observing that being Court of Record it can evolve its own procedure, which means that the procedure should provide just and fair opportunity to the contemner to defend effectively and that the contemner has not expressed any prejudice or canvassed any grievance that he could not understand the charge involved in the proceeding which he had been called upon to defend. It is, however, not in dispute that the charge against the appellant was not framed.

23. In these matters, the question is not about compliance or non-compliance of the principles of natural justice by granting adequate opportunity to the appellant but is about compliance of the mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15 is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were under

Section 15 of the Act. From the material on record, it is not possible to accept the contention of the respondents that the Court had taken suo motu action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose consent of the Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take suo motu action in rare cases. In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions under Section 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as suo motu petitions. In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable.

24. As a result of aforesaid view, it is unnecessary to examine in the present case, the effect of non-compliance of the directions issued in Duda's case by placing the informative papers before the Chief Justice of the High Court."

15. In a subsequent decision in the case of **Pallav Sheth Vs. Custodian & Ors.** (2001) 7 SCC 549 also, though the Court was examining the issue of limitation for initiating contempt proceedings, it was held as below :

"30. 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.”

It was further held:-

“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 other cases initiation can only be by a party filing an application.”.....

16. Present is not a case where this Court has already taken suo motu cognizance on the basis of any information received by it to initiate contempt proceedings. Though many averments have been made in the

petition, it is the fact that no suo motu cognizance was taken by the Court where the incident as alleged in the petition is said to have taken place.

17. The basis for initiating contempt proceedings are the averments made in this petition. In this regard, in a recent judicial pronouncement of the Supreme Court in the case of **In Re :Vijay Kurle & Ors.** [suo motu Contempt Petition (Criminal) No.2 of 2019, dated 27.4.2020)] reported in AIR 2020 SC 3927, with reference to the facts stated in the case of **Biman Basu Vs. Kallol Guha Thakurta & Anr.** (2010) 8 SCC 673, the distinction where proceedings initiated suo motu and other proceedings was drawn as below:-

“33. The next contention of the alleged contemnors is that the proceedings in the present case are not suo motu proceedings and, therefore, should not have been entertained without the consent of the Attorney General or Solicitor General. The alleged contemnors have placed strong reliance on the judgment of this Court in the case of *Biman Basu v. Kallol Guha Thakurta & Another*. The issue in that case was whether the High Court had issued notice of contempt suo motu. In our view, that judgment has no applicability here. The facts of that case were that a contempt petition was filed by the respondents (in the Supreme Court) alleging that the appellant (in the Supreme Court) had made deliberate and willful derogatory, defamatory and filthy statements against a Judge of the Calcutta High Court. The Division Bench before whom the matter was placed passed the

following order:

"7. Heard.

After hearing Mr. Ali, learned counsel moving this petition and perusing the issue of Bartaman dated 5.10.2003, we are of the view that a rule be issued. Rule is made returnable on 7-11-2003.

This Court, however, makes it clear that the records of this case may be placed before the Hon'ble the Chief Justice for assignment of this rule for hearing before any Bench that the Hon'ble the Chief Justice may think fit and proper."

The main issue which arose before this Court was whether the contempt proceedings were initiated against the appellant therein suo motu by the High Court or by the respondents. Keeping in view the language of the order passed in the case it was held that this was not a case where the Court had taken suo motu action and therefore relying upon the judgments of this Court in the case of P.N. Duda (supra) and in Bal Thackrey v. Harish Pimpalkhute and Ors. it was held that the contempt petition could not have been filed without the consent of the Advocate General. The Court further held that from the record it was apparent that the respondent was always shown as the petitioner in the contempt petition and, therefore, there was nothing which

indicated that the proceedings had been initiated suo motu.

34. As far as the present case is concerned, the order passed by this Court clearly shows that this Court after taking note of the letter sent by the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society, the annexures attached to this letter and after specifically noting the prayers made in the complaints of Shri Vijay Kurle and Shri Rashid Khan Pathan along with the allegations made in both the complaints was of the view that the allegations levelled against the Members of the Bench were scandalous in nature and therefore, notice was issued to the alleged contemnors and against Shri Nedumpara who has since been discharged. The alleged contemnors are basically urging that the order does not use the word "suo motu". In our view, that would not make any difference. The relevant portion of the order dated 27.03.2019 reads as follows:

"Given the two complaints filed, it is clear that scandalous allegations have been made against the members of this Bench. We, therefore, issue notice of contempt to (1) Shri Vijay Kurle; (2) Shri Rashid Khan Pathan; (3) Shri Nilesh Ojha and (4) Shri Mathews Nedumpara to explain as to why they should not be punished for criminal contempt of the Supreme Court of India, returnable within two weeks from today."

When we read the aforesaid order as a whole, it is more than obvious that the Court itself took cognizance of the complaints and the documents thereto as well as the allegations levelled therein.

35. Contempt is basically a matter between the Court and the contemnor. Any person can inform the Court of the contempt committed. If he is to be arrayed as a party then the contempt will be in his name but when the Court does not array him as a party, the Court can on the basis of the information itself take suo motu notice of the contempt. In the present case, the Court on the basis of the information itself took suo motu note of the contempt and the matter was then placed before Hon'ble the Chief Justice for listing it before the appropriate Bench. The matter has been listed as a suo motu contempt petition right from the beginning and dealt with as such.

36. In Biman Basu's case (supra) the Court after referring to earlier decisions of this Court held as follows:

"25. It is true that any person may move the High Court for initiating proceedings for criminal contempt by placing the facts constituting the commission of criminal contempt to the notice of the Court. But once those facts are placed before the Court, it becomes a matter between the Court and the contemner. But such person filing an application

or petition does not become a complainant or petitioner in the proceeding. His duty ends with the facts being placed before the Court. The Court may in appropriate cases in its discretion require the private party or litigant moving the Court to render assistance during the course of the proceedings...”

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“28. In the case in hand, it is evident from the record, the respondents were continued to be shown as the petitioners in the contempt case before the High Court and participated throughout as if they were prosecuting the appellant. There is no order reflecting that the Court having taken note of the information made before it, initiated suo motu proceedings on the basis of such information furnished and required the respondents only to assist the Court till the disposal of the matter. On the contrary, the respondents are shown as the petitioners in the contempt case before the High Court. It is thus clear, it is the respondents who initiated the proceedings and continued the same but without the written consent of the Advocate General as is required in law. The proceedings, therefore, were clearly not maintainable.”

37. As pointed out above, in the present case the Bombay Bar Association and the Bombay Incorporated Law Society have never been shown as petitioners. The letter sent by the

President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society is not addressed to this Court to initiate contempt proceedings. The letters were addressed to the President of India, the Chief Justice of India and the Chief Justice of the High Court of Bombay and the prayer made therein was that the complaints by the Indian Bar Association and Human Rights Security Council should be rejected. There is no prayer for initiating contempt proceedings. These letters were placed in the office of the Judges of this Court and after taking note of the averments made therein they decided to issue notice of contempt. This is nothing but a suo motu action on reading the complaints and the letter of the President of the Bombay Bar Association and the President of the Bombay Incorporated Law Society and hence this cannot be termed to be a contempt petition requiring the consent of the Attorney General."

18. Applying the aforesaid observations and the principles applied herein-above and also taking into consideration the factual background and observations made by Their Lordships in the Supreme Court in the judgments which have been referred to herein-above, present is not a case where it can be said that contempt proceedings have been initiated by this Court suo motu. Rather, the petitioner has filed this petition which has been registered as Criminal Contempt Petition and listed before this Court.

19. However, the petitioner has prayed that this Court may take suo motu

cognizance and initiate contempt proceedings. But such a prayer can be examined only in accordance with provision of the Rules of this Court which have been quoted herein-above, mainly Rule 351 of the Rules of 2007.

20. Since present is a case where the petitioner is praying for initiating contempt proceedings suo motu and it being not a case where the motion has been moved either by learned Advocate General or any other person with the consent of Advocate General, as required under Rule 351 (3) of the Rules of 2007, the petition as filed by the petitioner could not be registered as Contempt Petition and placed on judicial side before this Court but it was first required to be placed before Hon'ble the Chief Justice on administrative side for further direction, as may be considered proper by him.

21. In the case of **P.N. Duda** (*supra*), Their Lordships in the Supreme Court approved the observations and directions of the Delhi High Court in the case of *Anil Kumar Gupta Vs. K. Subba Rao* [ILR (1974) 1 Del. 1], as below:-

"54. A conjoint perusal of the Act and rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the Court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing. There is no difficulty where the court or the Attorney-General choose to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the Court and request the Court to take action: (vide C.K. Daphtary v.

O.P. Gupta and Sarkar v. Misra he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move the Court. In the present case, the petitioner alleges that he has failed in the latter two courses-this will be considered a little later-and has moved this "petition" praying that this Court should take suo motu action. The "petition" at this stage, constitutes nothing more than a mode of laying the relevant information before the Court for such action as the Court may deem fit and no proceedings can commence until and unless the Court considers the information before it and decides to initiate proceedings. Rules 3 and 4 of the Supreme Court (Contempt of Court) Rules also envisage a petition only where the Attorney General or any other person, with his written consent, moves the Court. Rule 5 is clear that only a petition moved under Rule 3(b) and (c) is to be posted before the Court for preliminary hearing. The form of a criminal miscellaneous petition styling the informant as the petitioner and certain other persons as respondents is inappropriate for merely lodging the relevant information before the Court under Rule 3(a). It would seem that the proper title of such a proceeding should be " In re .. (the alleged contemner)" (see: Kar v. Chief Justice, [1962] 1 SCR 320 though that decision related to an appeal from an order of conviction for contempt by the High Court). The form in which this request has to be sought and considered in such cases has also been

touched upon by the Delhi High Court in Anil Kumar Gupta v. K. Subba Rao, ILR 1974 Delhi 1. This case, at the outset, pointed out that the information had been erroneously numbered by the office of the Court as Criminal Original No. 51 of 1978 and concluded with the following observations:

The office is to take note that in future if any information is lodged even in the form of a petition inviting this court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the information is not one of the persons named in section 15 of the said Act, it should not be styled as a petition and should not be placed before the judicial side. Such a petition should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the court whether to take any cognizance of the information. The office to direct to strike off the information as "Criminal Original No. 51 of 1973" and to file it.

I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts. However, a petition having been filed and similar petitions having perhaps been entertained earlier in several courts, I do not suggest that this petition should be dismissed on this ground."

22.The aforesaid observations were also noted with approval in the case of

Bal Thackrey (supra) as below:-

"4. In P.N.Duda v. P.Shiv Shanker & Ors. [(1988) 3 SCC 167] this Court approving the aforesaid observation of Delhi High Court directed as under:-

"...the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts."

5. Challenging the conviction of the appellant for offence under Section 15 of the Contempt of Courts Act, 1971 (for short 'the Act') it was, inter alia, contended that the directions in P.N.Duda's case (supra) were not followed by the High Court inasmuch as the informative papers styled as contempt petitions were not placed before the Chief Justice of the High Court for suo motu action and, therefore, the exercise was uncalled for and beyond legal sanctity. This aspect assumed significant importance because admittedly the contempt petitions were filed in the High Court without the consent of the Advocate-General and, therefore, not competent except when the court finds that the contempt action was taken by the court on its own motion. The two-judge Bench hearing the appeals expressed the view that the aforesaid directions approved by this Court in P.N.Duda's case are of far-reaching consequences. The Bench observed that the power under Section 15 of the Act to punish contemnors for contempt rests with the court and in Duda's case, they seem to have been denuded to rest with the Chief Justice on the

administrative side. Expressing doubts about the correctness of the observations made in *Duda's case*, and observing that the same require reconsideration, these appeals were directed to be referred for decision by a larger Bench. Under this background, these matters have been placed before us.”

Upon examination of the legal position, it was held :-

“17. In the light of the aforesaid, the procedure laid and directions issued in *Duda's case* are required to be appreciated also keeping in view the additional factor of the Chief Justice being the master of the roster. *In State of Rajasthan v. Prakash Chand and Others* [(1998) 1 SCC 1] it was held that it is the prerogative of the Chief Justice of the High Court to distribute business of the High Court both judicial and administrative. He alone has the right and power to decide how the Benches of the High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear as also to which Judges shall constitute a Division Bench and what work those Benches shall do.

18. The directions in *Duda's case* when seen and appreciated in the light of what we have noticed hereinbefore in respect of contempt action and the powers of the Chief Justice, it would be clear that the same prescribe the procedure to be followed by High Courts to ensure smooth working and streamlining of such contempt actions which are intended to be taken up by the court suo motu on its own motion. These directions have no effect of curtailing or

denuding the power of the High Court. It is also to be borne in mind that the frequent use of suo motu power on the basis of information furnished in a contempt petition otherwise incompetent under Section 15 of the Act may render the procedural safeguards of Advocate-General's consent nugatory. We are of the view that the directions given in *Duda's case* are legal and valid."

23.Indeed, the Rules of this Court, referred to herein-above, are in accord with the aforesaid observations and directions of Hon'ble Supreme Court.

24.Learned counsel for the petitioner has placed reliance upon decisions in the cases of **Amit Chanchal Jha Vs. Registrar, High Court of Delhi (2015) 13 SCC 288**, **Mahipal Singh Rana, Advocate Vs. State of Uttar Pradesh (2016) 8 SCC 335**, **In Re, Hon/ble Shri Justice C.S. Karnan (2017) 7 SCC 1**, **Rakesh Tiwari, Advocate Vs. Alok Pandey, Chief Judicial Magistrate (2019) 6 SCC 465**, **ABCD Vs. Union of India & Ors. (2020) 2 SCC 52**, **Yashwant Sinha &Ors. Vs. Central Bureau of Investigation(2020) 2 SCC 338** and **A.V. Amarnathan Vs. H.D. Kumarswamy 2007 Cr.L.J. 2313**.

25.The aforesaid decisions do not lay down, as proposition of law, that a petition filed by a person for initiating criminal contempt proceedings even when there is no consent granted by learned Advocate General has to be treated as suo motu proceedings. The principles applicable in the present case have been elaborately dealt with by us in series of decisions of the Hon'ble Supreme Court as above.

26.Since in the present petition, a prayer has been made for taking suo motu cognizance, instead of registering this petition as a Criminal Contempt Petition, the Registry was required to place it as application

without registering it as Contempt Petition, before Hon'ble the Chief Justice as required under Rule 351 (3) of the Rules of 2007, treating this petition and documents attached herewith as information within the meaning of the said Rule.

27. This petition, therefore, be de-registered and the matter may be placed before Hon'ble the Chief Justice on administrative side for further directions, as may be considered proper.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge