

[113] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP No.2190 of 2021

Date of Decision : 17.01.2022

Rajesh Khandelwal

...Petitioner

versus

Kanwar Pal and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Ankur Sidhar, Advocate for the petitioner.
Mr. Pawan Kumar Longia, DAG, Haryana.

B.S. Walia, J. (VC)

[1] Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

[2] Prayer in the petition under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, is for initiating proceedings against the respondents for intentional, willful and deliberate disobedience of judgment / directions dated 13.04.2009 of Hon'ble the Supreme Court in Writ Petition (Civil) No.483 of 2004 in case titled as 'Avinash Mehrotra versus Union of India and others'.

[3] In view of the decision of Hon'ble the Supreme Court in 'M/s Rajureshwar and Associates versus State of Maharashtra', 2013(2) RCR (Civil) 972 as well as in 'Vitusah Oberoi and others versus Court of Its Own Motion', 2017(2) SCC 314 query was put to learned counsel for the petitioner to address arguments on the maintainability of the instant petition before the High Court. Relevant extract of the aforementioned

Relevant extract of the decision in M/s Rajureshwar and Associates versus State of Maharashtra, 2013(2) RCR (Civil) 972 :-

“ 4. Having perused the reasons in the light of the submission of the counsel for the petitioner, we find no infirmity in the view taken by the High Court as it cannot be disputed that the judgment and order passed by a particular Court, especially the Supreme Court if alleged not to have been complied, will have to be taken care of and addressed by the Court which passed the order sought to be complied. The petitioner, therefore, wrongly approached the High Court for initiating contempt proceedings and the same has rightly not been entertained. Challenge to the said order by this special leave petition, therefore, is not fit to be entertained; hence the special leave petition is dismissed. ”

Likewise, relevant extract of the decision of Hon'ble the Supreme Court in 'Vitusah Oberoi and others versus Court of Its Own Motion', 2017(2) SCC 314 is as under:-

“ 10. There is, from a plain reading of the above, nothing in the Contempt of Courts Act, 1971 or in Article 215 of the Constitution which can be said to empower the High Court to initiate proceedings suo-motu or otherwise for the contempt of a superior Court like the Supreme Court of India. As a matter of fact, the Supreme Court under Article 129 and High Court under Article 215 of the Constitution are both declared to be Courts of Record. One of the recognised attributes of a court of record is the power to punish for its contempt and the contempt of courts subordinate to it. That is precisely why Articles 129 and 215, while declaring the Supreme Court and the High Courts as Courts of Record, recognise the power vested in them to punish for their own contempt. The use of the expression

"including" in the said provisions is explanatory in character. It signifies that the Supreme Court and the High Courts shall, as Courts of Records, exercise all such powers as are otherwise available to them including the power to punish for their own contempt. Whether or not the power to punish for contempt of a subordinate court was an attribute of a court of record fell for consideration of this Court in Delhi Judicial Service Association v. State of Gujarat (1991) 4 SCC 406. The argument there was that the Supreme Court could not initiate contempt proceedings based on an incident that involved a subordinate court like a Chief Judicial Magistrate working in the State of Gujarat. That contention was examined and rejected by this Court. It was held that the language employed in Article 129 indicated that the Supreme Court is a Court of Record and was entitled not only to punish for its own contempt but to do all that which is within the powers of a Court of Record. This Court held that since the Constitution has designed the Supreme Court as a Court of Record, Article 129 thereof recognises the existing inherent power of a Court of Record in its full plenitude including the power to punish for its own contempt and the contempt of its subordinate. The Court said:

"29. Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself (emphasis supplied). The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression "including the power to punish for contempt of itself." The Article confers

power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression "including." The expression "including" has been interpreted by courts, to extend and widen the scope of power. The plain language of the Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since, the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression "including" was deliberately inserted in the Article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdiction of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very back bone of administration of justice. The subordinate courts administer justice at the grass root level, their

protection is necessary to preserve the confidence of people in the efficacy of Courts and to ensure unsullied flow of justice at its base level."

11. The power to punish for contempt vested in a Court of Record under Article 215 does not, however, extend to punishing for the contempt of a superior court. Such a power has never been recognised as an attribute of a court of record nor has the same been specifically conferred upon the High Courts under Article 215. A priori if the power to punish under Article 215 is limited to the contempt of the High Court or courts subordinate to the High Court as appears to us to be the position, there was no way the High Court could justify invoking that power to punish for the contempt of a superior court. That is particularly so when the superior court's power to punish for its contempt has been in no uncertain terms recognised by Article 129 of the Constitution. The availability of the power under Article 129 and its plenitude is yet another reason why Article 215 could never have been intended to empower the High Courts to punish for the contempt of the Supreme Court. The logic is simple. If Supreme Court does not, despite the availability of the power vested in it, invoke the same to punish for its contempt, there is no question of a Court subordinate to the Supreme Court doing so. Viewed from any angle, the order passed by the High Court appears to us to be without jurisdiction, hence, liable to be set aside. "

[4] Learned counsel for the petitioner has also not been able to show maintainability of the instant petition before the High Court in the light of aforementioned judgments of Hon'ble the Supreme Court or that any liberty was granted by Hon'ble the Supreme Court for taking out

Court for non-compliance of its orders. Faced with the aforementioned position, learned counsel prays for permission to withdraw the instant petition with liberty to the petitioner to take out appropriate proceedings in accordance with law for seeking redress of his grievances otherwise than by way of the instant petition before this Court

[5] Accordingly, in view of the decisions of Hon'ble the Supreme Court as referred to above, the instant petition for alleged violation of orders of Hon'ble the Supreme Court in 'Avinash Mehrotra's case (supra)' is held to be not maintainable before this Court. Accordingly, the contempt petition is *disposed of* as such while granting liberty to the petitioner to take out appropriate proceedings in accordance with law for seeking redress of his grievances otherwise than by way of the instant petition before this Court.

(B.S. Walia)
Judge

17.01.2022
'Rajneesh'

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>