SUPREME COURT OF INDIA

PALLAV SHETH

Vs.

CUSTODIAN & ORS.

10/08/2001

(Brijesh Kumar, Ruma Pal)

Appeal (civil) 2106 of 2001
Appeal (civil) 2107 of 2001

JUDGMENT

KIRPAL, J.

These appeals by special leave are against the judgment of the Special Court constituted under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as 'the Special Court Act') whereby the Appellant has been held to have committed civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971 and sentenced to undergo simple imprisonment for a period of one month and a fine of Rs.2,000/-.

M/s Fairgrowth Financial Services Limited was notified on 2nd July, 1992 under the provisions of the Special Court Act. As a result thereof, all properties belonging to the said notified party stood automatically attached. The Custodian appointed under the Special Court Act filed Misc. Application No. 193 of 1993 and sought a decree for Rs. 50 crores on behalf of the notified party against Pallav Sheth, the Appellant herein. On 24th February, 1994 the Appellant submitted to a Consent Decree for a sum of Rs.51.49 crores which was to be paid in instalments. Rs. 2.00 crores were paid but thereafter the Appellant defaulted in the payment of further instalments.

The Custodian then moved an Execution Application No. 343 of 1994 and the Special Court there upon required the Appellant to disclose all his assets and at the same time by an interim order restrained him from alienating, encumbering, selling off or parting with possession or transferring in any manner whatsoever any of his assets movable and immovable including the Bank accounts. On an affidavit being filed by the Appellant declaring his assets, the Special Court on 24th August, 1994 passed further interim order of attachment of some of the assets mentioned therein.

On 11th November, 1997 the Income Tax Department conducted raids on Pallav Sheth. The newspaper reports indicated detection of assets belonging to Pallav Sheth by the Income Tax Department whereupon the Special Court directed the Custodian to ascertain from the Income Tax Department complete details of all the assets of Pallav Sheth. In response to a letter written by the Custodian, the Commissioner of Income Tax vide its letter of 5th May, 1998 informed that during the search operations, the Income Tax Department detected that Pallav Sheth was the de facto owner of five companies, namely, Anzug Plastics (P) Ltd., Magan Hotels (P) Limited, Klar Chemicals (P) Limited, Malika Foods (P) Limited and Jainam Securities (P) Limited. Pallav Sheth is further

reported to have admitted in the statements before the Income Tax Department by him and his wife that several cash deposits amounting to Rs. 2.81 crores made in the bank accounts of the aforesaid five companies were his undisclosed income. According to the Commissioner of Income Tax, the assets of these five companies belong to Pallav Sheth and these companies were to receive substantial amounts from other companies/individuals.

It was also stated by the Income Tax Department that Pallav Sheth had admitted that profits were earned from the activities of these companies in buying and selling of shares and bogus transactions of bill discountings were entered into to show loss, in order to offset the profits, and these monies were actually returned by cash and found their way into the bank accounts.

The Custodian then on 18th June, 1998 filed Misc. Application No. 276 of 1998 before the Special Court with a prayer that Pallav Sheth should be punished for committing contempt of the Special Court's order dated 24th August, 1994 as despite the said order he had set up benami companies and had transferred and/or alienated his property including cash inter alia with a view to defeat the decree passed against him. Though Pallav Sheth in his reply denied that the said five companies were his benami companies the Special Court directed issuance of the show cause notice to punish Pallav Sheth for contempt. It appears that Pallav Sheth filed an affidavit on 23rd July, 1999 to the effect that various statements made by him before the Income Tax Authorities were made without his understanding the full implications since he had been under the influence of strong medication. Affidavits were also filed by the aforesaid five companies in support of the stand of Pallav Sheth. It may here be noticed that by an order dated 29th October, 1999 the Special Court allowed amendment of the Miscellaneous Application No. 276 of 1998 permitting substitution of reference to the order dated 24th August, 1994 with order dated 3rd August, 1994. Ultimately by an order dated 31st January, 2001 the Special Court passed an order holding Pallav Sheth to be guilty of Contempt of Court and sentenced him to one month's simple imprisonment and imposed a fine of Rs.2,000/-. By a separate order dated 7th February, 2001, the Special Court dealt with the contention that its action was not barred by limitation as contemplated by Section 20 of the Contempt of Courts Act on the ground that this was a case of continuing wrong.

Along with this appeal by Pallav Sheth the aforesaid five companies also filed appeals. Mr. Venugopal appearing on behalf of Pallav Sheth restricted his arguments only to the issue of limitation under Section 20 of the Contempt of Courts Act, 1971 and he chose not to make any submissions on the merits of the issue. In other words, no arguments were addressed on the finding of the Special Court in relation to the aforesaid five companies and to its conclusion that Pallav Sheth had committed a Contempt of Court. As for the appeals filed by the five companies, the same were dismissed as withdrawn on 11th April, 2001. Therefore, the only question which survives for consideration in this appeal is whether in view of the provisions of Section 20 of the Contempt of Courts Act, 1971, the Special Court was prohibited from taking any action as, according to Mr. Venugopal, the Court had initiated proceedings of contempt after the expiry of a period of one year from the date on which the contempt was alleged to have been committed. It is the case of the Appellant that contempt, if any, was committed more than one year prior to the initiation of proceedings by the Special Court and Section 20 of the Contempt of Courts Act, 1971 prohibited the Court from taking any action at a belated stage.

Section 11-A of the Special Court Act provides that the Special Court shall have and exercise, the same jurisdiction powers and authority in respect of contempt of itself as a High Court has and may exercise for this purpose, the provisions of Contempt of Courts Act, 1971. It is clear from the said provision that the Special Court which is established under Section 5 of the Special Court Act and

has to consist of one or more sitting Judges of the High Court has the same power as the High Court in respect of contempt of itself. This power could be exercised in addition to the exercise of power under the provisions of Contempt of Courts Act, 1971. The implication of this clearly is that just as the High Court, being a Court of Record, has the power under Article 215 of the Constitution of India to punish for contempt of itself similarly, the Special Court consisting of a Judge of the High Court can also exercise that power available under Article 215.

On behalf of the Custodian, it was contended by Mr. Rustomjee that the power under Article 215 of the Constitution cannot be curbed or curtailed by Section 20 of the Contempt of Courts Act, 1971. He submitted that the power of the High Court to commit for contempt of itself contained in Article 215 of the Constitution cannot be abrogated, stultified or restricted by any other statutory provision including the Contempt of Courts Act, 1971. He contended that Section 20 can, at best, be regarded as providing for a period of limitation but it still cannot bind the High Court exercising inherent powers under Article 215 of the Constitution. In the alternative, it was submitted by Mr. Rustomjee that even if Section 20 was applicable proceedings are initiated by the filing of an application and the period of limitation will begin to run from the date of knowledge in cases where the contempt has been concealed by fraud or dishonest conduct of the contemner, like in the present case.

The Contempt of Courts Act, 1926 was the first piece of legislation which was enacted with a view to define and limit the powers of certain Courts in punishing for Contempt. This Act was enacted with a view to remove doubts about the powers of the High Court to punish for contempt and the doubts whether the High Court could punish for Contempt of Court subordinate to it were removed by Section 2 of the said Act. The Contempt of Courts Act, 1952 repealed the 1926 Act and made two significant departures from it. Firstly, the expression "High Court" was defined to include the Court of Judicial Commissioner, which had been excluded from the purview of the 1926 Act and, furthermore, the High Courts so defined were conferred with the jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, irrespective of whether the contempt was committed within or outside the local limits of jurisdiction and irrespective of whether the person alleged to be guilty of the contempt was within or outside such jurisdiction. Punishment for Contempt of Court was provided by Section 4, being that of simple imprisonment for a term which may extend to six months, or with a fine which may extend to Rs.2,000/-, or with both.

On 1st April, 1960 a Bill was introduced in the Lok Sabha to consolidate and amend the law relating to contempt of courts. A Committee under the Chairmanship of Mr. H.N.Sanyal, Additional Solicitor-General, was set up and it was required inter alia to examine the law relating to contempt of courts and to suggest amendments therein. On the submissions of the Sanyal Committee's report the Bill was referred to a Joint Committee of the Houses of Parliament. The said Joint Committee submitted its report to the Rajya Sabha on 23rd February, 1970 suggesting a few changes in the Bill which had been introduced. One of the changes suggested by the Committee was the insertion of Clause 20, which was new and corresponds to the present Section 20 of the Contempt of Courts Act, 1971. The Joint Committee Report in respect of this Clause 20 opined as follows:

"The Committee are of the opinion that contempt procedures by their very nature should be initiated and dealt with as early as possible. It was brought to the notice of the Committee that in some cases contempt proceedings had been initiated long after the alleged contempt had taken place. The Committee therefore consider it necessary and desirable that a period of limitation should be specified in respect of actions for contempt and have accordingly laid down in the new clause a period of one year at the expiration of which no proceedings for contempt should be initiated."

The Sanyal Committee's recommendation, which had formed the basis of the Contempt of Courts Bill that was referred to the Joint Select Committee, had not contained any provision of limitation in relation to taking any action for the contempt of courts, but after the report of the Joint Select Committee a new Clause was added which resulted in the incorporation of Section 20.

The Contempt of Courts Act, 1971 was enacted, as per the Preamble, with a view "to define and limit the powers of certain Courts in punishing Contempts of Courts and to regulate their procedure in relation thereto". It provides for action being taken in relation to civil as well as criminal contempt. It is not necessary, for the purpose of this case, to analyse various Sections of the Act in any great detail except to notice that Sections 3 to 7 of the Contempt of Courts Act, 1971 provides for what is not to be regarded as contempt. Section 8 specifies that nothing contained in the Act shall be construed as implying that any other valid defence in any proceedings for Contempt of Court ceases to be available merely by reason of the provisions of the 1971 Act. Section 9 makes it clear that the Act will not to be implied as enlarging the scope of contempt. Section 10 contains the power of the High Court to punish contempts of subordinate Courts, while Section 12 specifies the punishment which can be imposed for Contempt of Court and other related matters. Procedure to be followed where contempt is in the face of the Supreme Court or a High Court is provided in Section 14, while cognizance of criminal contempt in other cases is dealt with by Section 15. Section 15 has to be read with Section 17 which provides for procedure after cognizance has been taken under Section 15. A decision of the High Court to punish for contempt is made appealable under Section 19 of the Act.

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."

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 of Parliament including Section 20 of the 1971 Act.

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

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 (supra) 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-�-vis inherent powers of the High Court to punish for contempt. No reference is made in the judgment 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.

In Firm Ganpat Ram Rajkumar vs. Kalu Ram & Ors. 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:

"Another point was taken about limitation of this application under section 20 of the Act. S.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 3rd November, 1988 as appears from the affidavit in support of the application. The contempt considered, inter alia, of the act of not giving the possession by force of the order of the learned Sr. Sub-Judge, Narnaul dated 12th February, 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 s. 20 of the Act."

The abovementioned 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.

The power of this Court and the High Court under the Constitution for taking action for contempt of subordinate court came up for consideration in Delhi Judicial Service Association, Tis Hazari Court, Delhi vs. State of Gujarat and Others etc. . It referred to Sukhdev Singh Sodhi's case (supra) and held that even after codification of the law of contempt in India the High Courts 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 vs. State of Madras and by following the said decision observed as follows:

"... 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 on the High Court nor it could confer it afresh by virtue of its own authority".

Referring to the Contempt of Courts Act, 1971 it observed with relation of the powers of the High Court as follows:

"...Inherent powers of a superior Court of Record have remained unaffected even after codification of 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...."

The view in Delhi Judicial Service Association's case (supra) was reiterated and reaffirmed in the case of In re: Vinay Chandra Mishra 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 the Parliament or State Legislature. As observed in Income Tax Appellate Tribunal through President vs. V.K. Agarwal and Another at page 25 that the judgment in Vinay Chandra Mishra's case was partially set aside in Supreme Court Bar Association. vs. Union of India and Another on the question of power to suspend an advocate's licence under contempt jurisdiction, the observation in Vinay Chandra Mishra's case with regard to amplitude of the courts 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's case (supra) guilty of Contempt of Court as he had tried to influence or question the decision making process of the Income Tax Appellate Tribunal.

The applicability of the Limitation Act to Contempt of Courts Act, 1971 came up for consideration

in State of West Bengal and Others vs. Kartick Chandra Das and Others . In that case against a notice of contempt which had been issued by the Single Judge a Letters Patent Appeal were 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 page 344 as follows:

"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, Sections 4 to 24 of the Limitation Act stands attracted to Letters Patent appeal insofar as and to 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."

A Constitution Bench in the case of Supreme Court Bar Association's case (supra) while considering this Court's power to punish for contempt at page 421 observed as follows:

"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 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."

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:

"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."

In Dr L.P. Misra 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. This Court, dealing with this contention, observed as follows: "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 had 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."

In the case of Om Prakash Jaiswal vs. D.K.Mittal and Another a Division Bench of this Court was called upon to interpret Section 20 of the Contempt of Courts Act, 1971. In that case an undertaking had been given before the High Court on 19th December, 1986 that the Municipal Corporation would not demolish or disturb a construction till disposal of the writ petition. Despite this undertaking, demolition took place on 11th January, 1987. Soon thereafter the Appellant filed an application before the High Court seeking the initiation of proceedings under Section 12 of the Contempt of Courts Act, 1971. On 15th January, 1987 the High Court issued a show-cause notice to the opposite party as to why contempt proceedings should not be initiated against him for defiance of the Court's order dated 19th December, 1986. On 6th January, 1988, on a concession being made by the Advocate-General the High Court ordered that notices be issued to show-cause why the opposite party be not punished for disobeying the order dated 19th December, 1986. Subsequently, on 23rd November, 1989 the High Court came to the conclusion that issuing of a show-cause notice did not amount to initiation of proceedings and, therefore, the bar enacted by Section 20 of the Act was attracted and the application was liable to be rejected. This Court had to consider whether the order of 6th January, 1988 amounted to initiation of proceedings for contempt. Dealing with the question of initiation of proceedings the relevant observations of the judgment are as follows:

"14. In order to appreciate the exact connotation of the expression "initiate any proceedings for contempt" we may notice several situations or stages which may arise before the court dealing with contempt proceedings. These are: (i) (a) a private party may file or present an application or petition for initiating any proceedings for civil contempt; or (b) the court may receive a motion or reference from the Advocate General or with his consent in writing from any other person or a specified law officer or a court subordinate to the High Court; (ii) (a) the court may in routine issue notice to the person sought to be proceeded against; or (b) the court may issue notice to the respondent calling upon him to show cause why the proceedings for contempt be not initiated; (iii) the court may issue notice to the person sought to be proceeded against calling upon him to show cause why he be not punished for contempt.

15. In the cases contemplated by (i) or (ii) above, it cannot be said that any proceedings for contempt have been initiated. Filing of an application or petition for initiating proceedings for contempt or a mere receipt of such reference by the court does not amount to initiation of the proceedings by court. On receiving any such document, it is usual with the courts to commence some proceedings by employing an expression such as "admit", "rule", "issue notice" or "issue notice to show cause why proceedings for contempt be not initiated". In all such cases the notice is

issued either in routine or because the court has not yet felt satisfied that a case for initiating any proceedings for contempt has been made out and therefore the court calls upon the opposite party to admit or deny the allegations made or to collect more facts so as to satisfy itself if a case for initiating proceedings for contempt was made out. Such a notice is certainly anterior to initiation. The tenor of the notice is itself suggestive of the fact that in spite of having applied its mind to the allegations and the material placed before it the court was not satisfied of the need for initiating proceedings for contempt; it was still desirous of ascertaining facts or collecting further material whereon to formulate such opinion. It is only when the court has formed an opinion that a prima facie case for initiating proceedings for contempt is made out and that the respondents or the alleged contemners should be called upon to show cause why they should not be punished; then the court can be said to have initiated proceedings for contempt. It is the result of a conscious application of the mind of the court to the facts and the material before it. Such initiation of proceedings for contempt based on application of mind by the court to the facts of the case and the material before it must take place within a period of one year from the date on which the contempt is alleged to have been committed failing which the jurisdiction to initiate any proceedings for contempt is lost. The heading of Section 20 is "limitation for actions for contempt". Strictly speaking, this section does not provide limitation in the sense in which the term is understood in the Limitation Act. Section 5 of the Limitation Act also does not, therefore, apply. Section 20 strikes at the jurisdiction of the court to initiate any proceedings for contempt."

It was contended by Mr. Venugopal that Section 20 was mandatory and it imposes a prohibition on the Court in taking action once a period of one year had elapsed. He submitted that Section 20 of the Act nowhere mentions the filing of an application for initiating proceedings of contempt and, therefore, the provisions of Section 29(2) of the Limitation Act would have no application. Relying upon Baradakanta Mishra's case, he submitted that an action of contempt was between the Court and the alleged contemner and hence the date of filing of the petition was not relevant. He submitted that the judgment in Om Prakash Jaiswal's case (supra) had not been correctly decided to the extent that the judgment held that mere issuance of a show-cause notice was not the initiation of contempt proceedings by the Court. He, however, submitted that contempt proceedings are initiated within the meaning of Section 20 when the Court, on the application of mind, issued even a show-cause notice within a period of one year of the committal of alleged contempt.

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.

This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously.

The Contempt of Courts Act, 1971 inter alia provides for what is not to be regarded as contempt; it specifies in Section 12 the maximum punishment which can be imposed; procedure to be followed where contempt is in the face of the Supreme Court or in the High Court or cognizance of criminal contempt in other cases is provided by Sections 14 and 15; the procedure to be followed after taking cognizance is provided by Section 17; Section 18 provides that in every case of criminal contempt under Section 15 the same shall be heard and determined by a Bench of not less than two Judges; Section 19 gives the right of appeal from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt. There is no challenge to the validity of any of the provisions of the Contempt of Courts Act as being violative or in conflict with any provisions of the Constitution. Barring observations of this Court in the Supreme Court Bar Association's case (supra), where it did not express any opinion on the question whether maximum punishment fixed by the 1971 Act was binding on the Court, no doubt has been expressed about the validity of any provision of the 1971 Act. In exercise of its constitutional power this Court has, on the other hand, applied the provisions of the Act while exercising jurisdiction under Article 129 or 125 of the Constitution. In Sukhdev Singh Sodhi's case (supra) it recognised that the 1926 Act placed a limitation on the amount of punishment which could be imposed. Baradakanta Mishra's case was decided on the interpretation of Section 19 of the 1971 Act, namely, there was no right of appeal if the Court did not take action or initiate contempt proceedings. In the case of Firm Ganpat Ram Rajkumar's case (supra) the Court did not hold that Section 20 of the 1971 Act was inapplicable. It came to the conclusion that the application for initiating contempt proceedings (was within time and limitation had to be calculated) as for the purpose of limitation date of filing was relevant and furthermore that was a case of continuing wrong. In Kartick Chandra Das case (supra) the provisions of the Limitation Act were held to be applicable in dealing with application under Section 5 in connection with an appeal filed under Section 19 of the Limitation Act. A three-Judge Bench in Dr L.P.Misra's case (supra) observed that the procedure provided by the Contempt of Courts Act, 1971 had to be followed even in exercise of the jurisdiction under Article 215 of the Constitution. It would, therefore, follow that if Section 20 is so interpreted that it does not stultify the powers under Article 129 or Article 215 then, like other provisions of the Contempt of Courts Act relating to the extent of punishment which can be imposed, a reasonable period of limitation can also be provided.

The question which squarely arises is as to what is the meaning to be given to the expression "no court shall initiate any proceedings for contempt..." occurring in Section 20 of the 1971 Act. Section 20 deals not only with criminal contempt but also with civil contempt. It applies not only to the contempt committed in the face of the High Court or the Supreme Court but would also be applicable in the case of contempt of the subordinate court. The procedure which is to be followed in each of these cases is different.

As we have already noted, in the Bill which was presented to the Parliament after taking into consideration the recommendations of the Sanyal Committee there was no provision similar to Section 20 of the 1971 Act. It is only the Joint Parliamentary Committee which recommended the insertion of Clause 20 so as to provide for a period of limitation. There can be little doubt that Section 20, as framed, is not happily worded. The heading of the section, however, indicates what it was to provide for "Limitation for actions for contempt". The wording of the section are negative but it is clear that terminus ad quem is the initiation of proceedings for contempt. The question that arise as to how or when are the proceedings for contempt initiated.

In Webster's Third New International Dictionary the word "initiate" has inter alia been defined thus:

"to begin or set going: make a beginning of: perform or facilitate the first actions, steps, or stages

of"

In Shorter Oxford English Dictionary the word "initiate" is defined as:

"to begin, commence, enter upon, to introduce, set going, originates"

Under Section 23 of the Contempt of Courts Act, 1971 power has been given to this Court and to the High Courts to make rules not inconsistent with the provisions of the Act providing for any matter relating to its procedure. Our attention has been drawn to Rules framed under Section 23 by this Court as well as by the High Courts in India. All these Rules inter alia require, other than suo motu action is taken, petition or application being filed in Court it is then taken up for consideration. For example, relevant part of Rule 2 of the Calcutta High Court Contempt of Courts Rules, 1975 reads as follows:

"Rule 2. (1) Proceedings in connection with a Civil Contempt may be initiated-

(a) by a petition presented by a party or parties aggrieved; or (b) by the High Court on its own motion; or (c) on a reference made to the High Court by the subordinate courts as in the case of "Criminal Contempt".

(2) Proceedings in connection with a criminal contempt may be initiated- (a) on a motion of the High Court in respect of a contempt committed upon its own view under section 14 of the Act; or (b) on its own motion by the High Court under section 15(1) of the Act; or (c) on a motion founded on a petition presented by the Advocate-General under section 15(1)(a) of the Act; or (d) on a motion founded on a petition presented by any other person with the consent in writing of the Advocate-General under section 15(1)(b) of the Act; or (e) on a reference made to the High Court by the subordinate courts under section 15(2) of the Act, containing the following particulars: (a) a brief statement of the case; (b) the particulars of the contumacious acts; (c) name, address and other particulars of the respondents along with the copies of the papers relating to contumacious acts." The Rules so framed by all the Courts in India do show that proceedings are initiated inter alia with the filing of an application or a petition in that behalf. If, however, proceedings are not initiated by filing of an application within a period of one year from the date on which the contempt is alleged to have been committed then the Court shall not have jurisdiction to punish for contempt. If, on the other hand, proceedings are properly initiated by the filing of an application, in the case of civil contempt like the present before the Court within the period of limitation then the provisions of Section 20 will not stand in the way of the Court exercising its jurisdiction.

In the case of criminal contempt of 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 the Law Officer of the Central Government in the case of Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate-General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the Court the wilful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the Court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a Court was to take a suo motu action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing to the attention of the Court to the contempt having been committed. When the judicial procedure requires an application being filed either before the Court

or consent being sought by a person from the Advocate-General or a Law Officer it must logically follow that proceeding for contempt are initiated when the applications are made.

In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initiation. Similarly, in the case of a civil contempt filing of an application drawing the attention of the Court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.

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 a 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 litigant 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.

The decision in Om Prakash Jaiswal's case (supra), 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's case (supra) 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 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, dehors 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.

A question arose before a Full Bench of the Punjab & Haryana High Court in the case of Manjit Singh and Others vs. Darshan Singh and Others 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 vs. 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: "13. Once that is so, one must now proceed to analyse and construe S.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 S. 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 S. 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 S. 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 S. 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."

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. 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.

It was submitted on behalf of the Appellant that even if the provisions of Section 20 do not bar the 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.

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 5th May, 1998 from the Income Tax Authorities. It is soon thereafter that on 18th June, 1998 a petition was filed for initiating action in contempt and notice of issue by Special Court on 9th April, 1999. Section 29(2) of the Limitation Act, 1963 provides 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 and Others (supra) 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.

Section 17 of the Limitation Act, inter alia, provides that where, in the case of any suit or application for which a period of limitation is prescribed by the Act, the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of the defendant or his agent (Section 17(1)(b)) or where any document necessary to establish the right of the Plaintiff or Applicant has been fraudulently concealed from him (Section 17(1)(d)), the period of limitation shall not begin to run until the Plaintiff or Applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the Plaintiff or the Applicant first had the means of producing the concealed document or compelling its production. These provisions embody fundamental principles of justice and equity, viz, that a party should not be penalised for failing to adopt legal proceedings when the facts or material necessary for him to do so have been wilfully concealed from him and also that a party who has acted fraudulently should not gain the benefit of limitation running in his favour by virtue of such fraud.

The provisions of Section 17 of the Limitation Act are applicable in the present case. The fraud perpetuated by the Appellant was unearthed only on the Custodian receiving information from the Income Tax Department, vide their letter of 5th May, 1998. On becoming aware of the fraud application for initiating contempt proceedings was filed on 18th June, 1998, well within the period of limitation prescribed by Section 20. It is on this application that the Special Court by it's order of 9th April, 1999 directed the application to be treated as a show cause notice to the Appellant to punish him for contempt. In view of the abovestated facts and in the light of the discussion regarding the correct interpretation of Section 20 of the Contempt of Courts Act it follows that the action taken by the Special Court to punish the Appellant for contempt was valid. The Special Court

has only faulted in being unduly lenient in awarding the sentence. We do not think it is necessary, under the circumstances to examine the finding of the Special Court that this was a continuing wrong or contempt and, therefore, action for contempt was not barred by Section 20.

For the aforesaid reasons, these appeals are dismissed and the impugned judgment of the Special Court is affirmed. The Appellant will, within a week, surrender and serve out the sentence awarded to him by the Special Court.