

**SUPREME COURT OF INDIA**

Biman Basu

Vs.

Kallol Guha Thakurta

Crl.A.No.607 of 2005

(B. Sudershan Reddy and Surinder Singh Nijjar JJ.)

25.08.2010

**JUDGEMENT**

**B. SUDERSHAN REDDY, J.**

1. This appeal preferred under Section 19(1) of the [Contempt of Courts Act, 1971](#) is directed against the judgment dated 31st March, 2005 of the High Court of Calcutta in C.P.A.N. No. 1535 of 2003 whereby the appellant has been held to have committed criminal contempt as defined in Section 2(c) of the Contempt of Courts Act, 1971 and sentenced to undergo simple imprisonment for a period of three days and to pay a fine of Rs.10,000/-.

2. The origin of the proceedings is traceable to an incident that had taken place on 24th September, 2003 when some of the Judges of the Calcutta High Court while on their way to the High Court were 'detained' by a police officer so as to allow a procession of adivasis to pass by who were out to press their demand for recognition of Shanthali as one of the Scheduled language under the Constitution of India. Justice Amitava Lala of that Court felt the procession caused enormous disruption not only to the "official business of the Court" but also "the people at large". The learned

Judge issued suo-motu rule of contempt upon Deputy Commissioner of Police (Traffic) and other police officers. As is evident from the order dated 29th September, 2003, the learned Judge felt humiliated as the police officers refused to make necessary arrangements for the free movement of his car so that he could reach the Court on time. The learned Judge was of the opinion that the "Court does not mean Court room but movement of the Judge even outside, at least when he is moving to discharge his official functions". It is under those circumstances that the learned Judge thought it fit that it was high time to issue suo-motu rule of contempt upon the appropriate public authorities to show cause. The learned Judge in the said contempt proceedings initiated by him suo-motu issued as many as twelve directions/guidelines with respect to traffic regulations and holding of processions/meetings in the city of Kolkata. We wish to say no more on this aspect of the matter since the directions so issued by the learned Judge are stated to be under the consideration in appeal before a Division Bench of the High Court.

3. The appellant herein is alleged to have not only criticized the order but also made certain adverse comments against the Judge who passed the said order. These comments were widely reported and published in various newspapers on 5.10.2003. In the meanwhile, a Division Bench of the Calcutta High Court stayed all the directions issued by the learned Single Judge on 29th September, 2003 in the contempt proceedings concerning the regulation of traffic and processions/public meetings. The respondents in this appeal moved a contempt petition in the High Court on 13th October, 2003 with a prayer to initiate appropriate contempt proceedings against the appellant for making deliberate and willful derogatory, defamatory and filthy statements against Justice Amitava Lala which were widely published in the newspapers and electronic media. In their petition, the respondents pleaded that the derogatory, defamatory and contumacious statements and remarks made by the appellant constitute a straight and direct attack upon a sitting High Court Judge and the same has not only lowered the dignity of the sitting High Court Judge but also total judicial system of the country. They have accordingly prayed to initiate contempt proceedings against the appellants "under Sections 2(a), 2(b), 2(c) and 2(d) or any other applicable Sections of the Contempt of Courts Act, 1971 and to put him behind the bars and also to saddle him with fine...". They have also prayed for award of costs and other incidental charges in connection with the contempt application. The contempt petition was duly supported by an affidavit as required and solemnly affirmed by the first respondent. In the affidavit, it is specifically stated that the statements, comments and averments made in paragraph Nos. 1 to 4, 6 and 8 are true to his knowledge.

4. A Division Bench of the Calcutta High Court vide its order dated 17th October, 2003 passed the following order:

"Heard.

After hearing Mr. Ali, learned counsel moving this petition and perusing the issue of Bartaman dated 5th October, 2003, we are of the view that a Rule be issued. Rule is made returnable on 7th of November, 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".

5. This order was followed by rule requiring the appellant herein to show cause why he should not be committed to prison or otherwise penalized or dealt with for making "deliberate and willful derogatory, defamatory and filthy statements against a sitting Judge of this Court Hon'ble Justice Amitava Lala, as well making such derogatory, defamatory and filthy languages (sic) remarks and statements in front (sic) of the Press, Electronic Media and open meeting regarding the order dated 29th September, 2003 passed by Justice Amitava Lala." The appellant was required to be personally present on 7th November, 2003 before the Court. The appellant was accordingly served with the contempt petition together with all annexures and enclosures including the affidavit of the first respondent filed in support of the contempt petition.

6. The appellant accordingly appeared before the Court along with his counsel on 7th November, 2003 and filed a brief affidavit in opposition inter alia stating that he has got great respect to the dignity and majesty of the Court and that he has never meant to show any disrespect to the High Court or to any of the Judges of the Court and that if his act or conduct reflected any disrespect, the same was inadvertent and unintentional. He accordingly expressed his regret for such "unintentional error". The appellant also raised the issue of maintainability of the contempt petition since the motion was moved without the consent in writing of the Advocate General. The Court vide its order dated 7th November, 2003 expressly kept open the question of maintainability of the petition.

Thereafter, various TV news channels and editors of newspapers were added as parties to the contempt proceedings. The High Court after hearing the parties passed the impugned judgment. Hence this appeal.

7. We have heard Shri K.K. Venugopal and Dr. Shri Rajiv Dhawan, learned senior counsel for the appellant and none appeared on behalf of the respondents. We have, however, considered the written submissions of the first respondent which were filed into the Court after completion of the hearing of the matter.

8. The Division Bench judgment has been divided into mainly five parts viz., (i) maintainability (ii) free speech and contempt (iii) standard of proof (iv) fair comment and contempt (v) evidence in the present case. The finding of the Division Bench on the maintainability is that the contempt petition was maintainable as suo-motu action has been taken by the Court to initiate contempt proceedings. Since the whole question centers around the maintainability of the application, it may be necessary to notice the view taken by the High Court in its own words:

"In the instant case, having regard to the nature of the complaint made in the petition along with the newspaper reports which were also referred to in the High Court's order dated 17th October, 2003 while issuing the Rule coupled with the fact that one of the petitioners was an Advocate of this Court and the petition contained an averment to take action suo-motu, this Court records that it took the action suo-motu. Therefore, the objection about the maintainability of the proceedings is not sustainable".

9. The main issue that arises for our consideration and determination in this appeal is whether contempt proceedings were initiated against the appellant suo-motu by the Court or by the respondents? The Contempt of Courts Act, 1971 as enacted by the Parliament is an Act to define and limit the powers of certain Courts in punishing for the contempt of Courts and to regulate their procedure in relation thereto. The Statement of Objects and Reasons clearly explains the reasons as to how it was felt that the existing law relating to contempt of Courts was somewhat uncertain, undefined and unsatisfactory.

The jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen, namely, the right to personal liberty and the right to freedom of expression. It was, therefore, considered advisable to have the entire law on the subject scrutinized by a Special Committee. Accordingly, a Committee was set up in 1961 under the Chairmanship of late Shri H.N. Sanyal, the then Additional Solicitor General. The Committee made a comprehensive examination of the law and problems relating to contempt of Court in the light of the position obtaining in our own country and various foreign countries. The recommendations which the Committee made took note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of Courts and interests of administration of justice. The recommendations of the Committee have been generally accepted by Government after considering the views expressed on those recommendations by the State Governments, the Supreme Court and the High Courts.

10. The Act, inter alia, defines criminal contempt and also provides for the procedure of taking cognizance thereof.

The Act defines that "Contempt of Court means Civil contempt or Criminal contempt". In the present case, we are concerned with the criminal contempt. Criminal contempt is defined in Section 2(c) of the Contempt of Courts Act, 1971 and it says, "criminal contempt 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 (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of any Court; or (ii) prejudices, or interferes or tends to interfere with the due course of any judicial proceeding; or (iii) interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner". 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 the action for

contempt may be taken by the Supreme Court or the High Court on its 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.

11. The question that arises in the present case is whether the High Court can entertain a contempt petition filed by a private person without the consent in writing of the Advocate General? For determination of this issue, it will be relevant to note the observations of the Sanyal Committee, whose recommendations were taken into consideration for enacting the Act. The Committee 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. . .the Advocate-General may, also, move the court not only on his own motion but also at the instance of the court concerned. . . ."

Vinay Chandra Misra<sup>1</sup> this Court, approvingly referred to the recommendations of the Committee and observed:

"If the High Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate court or the Advocate-General, it can be said to have taken cognizance on its own 1 (1981) 1 SCC 436 motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate-General, can the High Court refuse to entertain the same on the ground that it has been made without the consent in writing of the Advocate-General? It appears to us that the High Court, has, in such a situation, a discretion to refuse to entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to it in that petition. If the petitioner is a responsible member of the legal profession, it may act suo motu, more so, if the petitioner-advocate, as in the instant case, prays that the court should act suo motu. The whole object of prescribing these procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court or the Supreme Court from being wasted by frivolous complaints of contempt of court. If the High Court is prima facie satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act suo motu and commence the proceedings against the contemner. However, this mode of taking suo motu cognizance of contempt of a subordinate court, should be resorted to sparingly where the contempt concerned is of a grave and serious nature. Frequent use of this suo motu power

on the information furnished by an incompetent petition, may render these procedural safeguards provided in sub-section (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".

2 (2001) 8 SCC 82 "The requirement of consent of the Advocate- General/Attorney-General/Solicitor-General where any person other than the said law officers makes motion in the case of a criminal contempt in a High Court or Supreme Court, as the case may be, is not a mere formality; it has a salutary purpose.

The said law officers being the highest law officers at the level of the State/Centre as also the officers of the courts are vitally interested in the purity of the administration of justice and in preserving the dignity of the courts. They are expected to examine whether the averments in the proposed motion of a criminal contempt are made vindicating public interest or personal vendetta and accord or decline consent postulated in the said provision. Further, cases found to be vexatious, malicious or motivated by personal vendetta and not in public interest will get filtered at that level. If a motion of criminal contempt in the High Court/Supreme Court is not accompanied by the written consent of the aforementioned law officers, the very purpose of the requirement of prior consent will be frustrated. For a valid motion compliance with the requirements of Section 15 of the Act is mandatory. A motion under Section 15 not in conformity with the provisions of Section 15, is not maintainable".

14. In M.S. Mani (supra), the consent of the learned Attorney General was obtained after filing of the contempt petition. This Court held that the motion to take action against the respondents therein was not made with the consent of the learned Attorney General or Solicitor General and therefore is incompetent. This Court observed: "Subsequent obtaining of the consent, in our view, does not cure the initial defect so as to convert the incompetent motion into a maintainable petition".

that in terms of Section 15(1) and Rule 3(c), a petition for contempt will not be maintainable by a private person without the written consent of the Attorney General or the Solicitor General. One cannot get over the objection to the maintainability of a petition without such consent merely by the device of adding the Attorney General and Solicitor General as respondents to the petition. In Paragraph 54 of the Judgment, it is explained 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. This Court further observed:

"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 3 (1988) 3 SCC 167 information in his possession before the court and request the court to take action: (vide C.K. Daphtary v. O.P. Gupta, (1971) 1 SCC 626 and Sarkar v. Misra, (1981) 1 SCC 436); 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".

held:

"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".

17. It is settled law that the High Courts even while exercising their powers under Article 215 of the Constitution to punish for contempt, the procedure prescribed by law is required to be followed (See L.P. Custodian<sup>6</sup>). The High Court in the present case relied on Gupta<sup>7</sup> wherein this Court overruled the objection raised on behalf of the alleged contemnor that the contempt petition filed in the Supreme Court without the consent of the Attorney General was not maintainable. The decision was rendered prior to the Act coming into force. There was no provision of law at the relevant time which prevented the Courts from entertaining a petition filed by interested persons even without the prior consent in writing of the Attorney General or the Advocate General, as the case may be.

18. The High Court in the present case rested its conclusion relying on averments made in the petition stating that "even a suo motu contempt proceedings may be initiated"

at the instance of the petitioners "on going through the 5 (1998) 7 SCC 379 6 (2001) 7 SCC 549 7 (1971) 1 SCC 626 newspapers". Be it noted that there is no prayer in the contempt petition filed by the respondents to initiate suo motu proceedings. We are unable to sustain the finding of the High Court in this regard for the same is not supported by any material available on record. The order

dated 17th October, 2003 and the Rule issued in clear and categorical terms reflects that law was set in motion exclusively based on the averments made in the petition and the affidavit of verification filed in support of the petition and the arguments of the counsel. There is nothing on record suggesting that the contents of the petition were treated as information placed before the Court for initiating the contempt proceedings suo motu by the Court. The contents of the petition of the respondents, their affidavit of verification dated 13th October, 2003, the exhibits and annexures to the said petition and the arguments of the counsel alone constituted the foundation, based on which the law was set in motion.

The petition itself is not styled as any piece of information that was placed before the court for its consideration. It is not a case where the High Court refused to entertain the petition and took cognizance on its own motion on the basis of the information supplied to it in the petition. The record does not bear any such proceedings of the Court.

Had it been so, the respondents would have been nowhere in the picture. 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 contemnor. 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. In D.N. contempt is a matter between the Court and the alleged contemnor. Any person who moves the machinery of the Court for contempt only brings to the notice of the court 8 (1988) 3 SCC 26 certain facts constituting contempt of Court. After furnishing such information he may still assist the Court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the Court and the contemnor". Thus the person bringing the facts constituting contempt to the notice of the Court can never be a party to the lis nor can join the proceedings as a petitioner. Similar is the view taken by this Court in State Court held that the jurisdiction to initiate proceedings for contempt as also the jurisdiction to punish for contempt in spite of a case of contempt having been made out are both discretionary with the Court. "Contempt generally and criminal contempt certainly is a matter between the Court and the alleged contemnor". No one can compel or demand as of right initiation of proceedings for contempt.

Certain principles have emerged. It is further observed:

"Source of initiation of contempt proceedings may be suo 9 (1996) 4 SCC 411 10 (2000) 3 SCC 171 motu, on a reference being made by the Advocate General or any other person with the consent in writing of the Advocate General or on reference made by a subordinate Court in case of criminal contempt. A private party or a litigant may also invite the attention of the Court to such facts as may persuade the Court in initiating proceedings for contempt. However, such person filing an application or petition before the Court does not become a complainant or petitioner in the

proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the Court. It is thereafter for the Court to act on such information or not to act though the private party or litigant moving the Court may at the discretion of the Court continue to render its assistance during the course of proceedings. (emphasis supplied) 20. 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, 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.

21. In what manner the suo motu power may be exercised in appropriate cases is dealt with by this Court in *J.R. Parashar V. Prasant Bhushan*<sup>11</sup> in which it is observed:

"In any event the power to act suo motu in matters which otherwise require the Attorney- General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources, such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech 11 (2001) 6 SCC 735 or a document which would speak for itself.

Otherwise sub-section (1) of Section 15 might be rendered otiose."

22. While dealing with the importance of the procedure for taking cognizance of criminal contempt other than a contempt referred to in Section 14 of the Act, this Court in *Bal Thackrey* (supra) observed:

"The directions in *Duda* 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 the Advocate General's consent nugatory. We are of the view that the directions given in *Duda* case are legal and valid."

23. In exercise of the powers conferred by Section 23 of the [Contempt of Courts Act, 1971](#) and by Article 215 of the Constitution of India and other enabling powers in that behalf, the High Court of Calcutta made the rules to regulate the proceedings for contempt of itself or of a Court subordinate to it under the Act. The rules are known as Calcutta High Court Contempt of Court Rules, 1975. The rules, inter alia, provide that proceedings in a criminal contempt may be initiated (a) on its own motion by the High Court under Section 15(1) of the Act; or (b) on a motion founded on a petition presented by the Advocate General under Section 15(a) of the Act; or (c) 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. Every such petition shall contain full particulars of the material upon which the petition is grounded and the prayer to the petition and distinctly state the particular contumacious conduct alleged for which the rule is prayed for and shall be signed and dated by the petitioner or his duly authorized agent and every such petition shall be verified by the solemn affirmation made by the petitioner or by a person or persons having cognizance of facts stated and shall state clearly whether the statements are based on knowledge, information and belief or on record. Rule 19 of the rules enables the Court either to issue Rule Nisi or summarily reject the petition or make such order thereupon as thought fit and the Rule Nisi shall be drawn up as far as may be in the model form in Form No.1, Appendix I. Rule 20 provides that where the Rule is issued by the Court on its own motion or on a motion made by the Advocate General under Section 15, the Rule Nisi shall be drawn up, as far as may be in the model Form No. 2, Appendix I. It is fairly well settled that Schedules, Forms and Appendix form part of the statutes and or the rules as the case may be.

24. In the present case, Rule Nisi has been issued under the orders of the High Court in Form No. 1 and not in Form No.2. Had it been a proceeding initiated by the Court on its own motion, the Rule Nisi would have been issued in the model Form No.2, Appendix I. It is clearly evident from the record that the Court did not set the law in motion on its own accord. In the present case, the petitioner No.1 before the High Court is a practicing advocate and argued his case in person. So far as petitioner No.2 is concerned, he was represented by more than one lawyer. We have meticulously examined the contempt petition in which there was no prayer for taking suo motu action against the appellants. The proceedings before the High Court were initiated by the respondents by filing contempt petition under Section 15. The petition was vigorously pursued and argued as private petition. From the material available on record including the impugned judgment, it is impossible to accept the view taken by the High Court that the Court had taken suo motu action. Even in this Court, the respondents entered their appearance through their counsel who did not turn up but elaborate written submissions were submitted by the first respondent.

25. For all the aforesaid reasons, we hold that the petition to take action against the appellant under Section 15 without the written consent of the learned Advocate General was not maintainable in law.

26. For the view we have taken as regards the maintainability of the petition itself, we are not required to go into the merits of the case.

27. The impugned judgment is accordingly set aside. The appeal is allowed.