
BAL THACKREY VS HARISH PIMPALKHUTE & ORS ON 29 NOVEMBER, 2004

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COURT: Criminal Appeal No. 149-150 of 1997 before Hon'ble Supreme Court of India.

HON'BLE JUDGES/CORAM: Y.K. Sabharwal, D.M. Dharmadhikari & Tarun Chatterjee.

PARTIES INVOLVED: Bal Thackrey (Appellant) and Harish Pimpalkhute & Ors. (Respondent).

DATE OF DECISION: November 29, 2004.

TOPIC: Article 215 of The Constitution of India and Section 15 of The Contempt of Courts Act, 1971.

I. PROCEDURAL HISTORY

The High Court of Bombay convicted one Bal Thackrey (hereinafter referred to as the 'appellant') for the offence of that an offence under Section 2(c) of The Contempt of Courts Act, 1989 and whether his conviction as well as sentence was passed in accordance with the Section 15 of the said Act by the High Court. Hence the matter arose before the present court via grant of Special appeal.

II. MATERIAL FACTS

The two contempt petitions (Contempt Petition No.12 and Contempt Petition No.13 of 1996) were filed in the High Court against the appellant under Section 15 of the Act for having committed contempt of court as postulated under Section 2(c) of the Act for having made a public speech. According to the petitions, the appellant Shri Bal Thackrey scandalised the court on 21st October 1996 at a Dasera rally at Shivaji Park, Mumbai when he made a statement, which precisely contains that,

“He (Shri Bal Thackeray) was reported by someone that a Judge demanded rupees thirty-five lakhs for delivering a judgment in his favour.”

or at least the offending speech had the tendency to scandalise or lower the authority of the Court.

The contempt petitions were filed without obtaining the consent of the Advocate-General. In one of the petitions consent had not even been sought for and besides the prayer for holding the appellant guilty of contempt, further prayers were also made for suitable inquiry being made in the allegations made by the appellant in the speech and for issue of directions to him to appear before Court and reveal the truth and for prosecuting him.

In the result the Hon’ble High Court held respondent Shri Bal Thackeray, in Criminal Contempt Petition No. 12/96 and respondent Shri Vijay Jawaharlal Darda in Criminal Contempt Petition No. 13/96 guilty for committing contempt of Court.

The appellant, on the other hand, contended that the disputes relating to the petitions filed before the Hon’ble High Court for the contempt were even not maintainable and that, the impugned judgement passed was completely invalid as it was passed without following the necessary procedure mentioned under Section 15 of the Contempt of Courts Act, 1971.

The high court held the appellant guilty of contempt and passed the judgement on 7th February, 1997 by convicting him with simple imprisonment for one week and a fine of Rs. 2000.

The appellant then filed the present appeals.

III. ISSUE INVOLVED

The matter before this court is limited over the question of whether the judgement passed by the Hon’ble High Court of Bombay for the said offence committed by the petitioner is maintainable and valid.

IV. ARGUMENTS

The Hon’ble Supreme Court observed that the contempt shall be divided within two categories, namely, the one initiated suo motu by the Court and the other that is instituted otherwise than on the court's own motion and there is necessary difference in mode of initiation in each of these case. “While in the case of suo motu proceedings, it is the Court itself which must initiate

by issuing a notice, in the other cases initiation can only be by a party filing an application”. *Pallav Sheth v. Custodian and Others*¹.

The issue here is to determine whether the contempt proceedings were initiated against the appellant suo motu by the court or by respondents.

The Apex Court had earlier in *P.N.Duda v. P.Shiv Shanker & Ors.*² approved the observations made by Delhi High Court in the case of *Anil Kumar Gupta v. K.Suba Rao & Anr.*³ that, “*The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information.*”

And Said that,

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

It was argued from the appellant by challenging the conviction under Section 15 of the Contempt of Courts Act, 1971 and it was contended that the directions given in *P.N.Duda's* case were not followed by the High Court for contempt petitions as they were not placed before the Chief Justice of the High Court for suo motu action, hence making it invalid. The Hon’ble Court considered the issue raised as significantly important because it is evident that the contempt petitions were filed in the High Court without the consent of the Advocate-General and if the Court has not suo motu acted upon it then the petitions will become incompetent to be maintained. The two-judge bench was concerned about the far-reaching consequences of directions approved in *P.N. Duda's* case are of far-reaching consequences.

V. JUDGEMENT

Keeping in mind about the fact in issue, the court tried to highlight the object behind the power

¹ 1(2001) 7 SCC 549

² (1988) 3 SCC 167

³ ILR (1974) 1 Del.1

of the Court to punish a person for contempt in these appeals as well as the provisions laid down in Duda's case. The High Courts have the unconditional power vested in them by virtue of Article 215 of the Constitution of India along with the addition provisions of the Contempt of Courts Act, 1971 as stated under Section 22 of the said act.

The Contempt of Courts Act, 1952, was repealed and subsequently the newer Act of 1971 came into force, which defined the contempt as civil and criminal contempt. Here the issue is related to criminal contempt which is described under Section 2(c) of the Act which says,

“criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) scandalises or tends to scandalise, 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”*

And the procedures for initiating the proceeding when contempt is committed in the face of the Supreme Court or High Court has been given under Section 14 of the Act as well as in case of criminal contempt otherwise as referred to in Section 14 the procedure and manner of taking cognizance has been prescribed in Section 15 of the Act. Here the issue is in relation with Section 15 which says,

15. Cognizance of criminal contempt in other cases.—*(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by— (a) the Advocate-General, or*

(b) any other person, with the consent in writing of the Advocate-General

The Court also draws its attention towards various cases decided previously:

- In Commissioner, Agra v. Rohtas Singh⁴, it was held that,

⁴ (1998) 1 SCC 349

“Contempt jurisdiction enables the Court to ensure proper administration of justice and maintenance of the rule of law”

- In Supreme Court Bar Association v. Union of India & Anr.⁵, it was said that,
“The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law” and *“This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned”*.
- In the case of Pritam Pal, v. High Court of Madhya Pradesh, Jabalpur Through Registrar⁶, this Court observed:
“15. Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the procedure has now been prescribed by Section 15 of the Act” as well as pointed out that *“Section 22 of the Act, in fact lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971.”*
- In Dr. L.P. Misra v. State of U.P.⁷, it was held 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. The exercise of jurisdiction under Article 215 of the Constitution is also governed by laws and the rules subject to the limitation that if such laws/rules stultify or abrogate the constitutional power then such laws/rules would not be valid” and that *“The procedure prescribed by the Rules has to be followed even in exercise of jurisdiction under Article 215 of the Constitution and to the same effect are the observations in Pallav Sheth's case”*.
- In S.K.Sarkar, Member, Board of Revenue, U.P., Lucknow v. Vinay Chandra Misra⁸,

⁵ (1998) 4 SCC 409

⁶ (1993) Supp. (1) SCC 529

⁷ (1998) 7 SCC 379

⁸ (1981) 1 SCC 436

the court held to the following effect:

"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."

- In P.N.Duda's case (supra), it was pointed that,

"But when a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the court and request the court to take action (vide C. K. Daphtary v. O. P. Gupta and Sarkar v. Misra); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move to the court."

It is then decided that the direction issued and procedure laid down in Duda's case is applicable only to those cases that are initiated suo motu by the Court when some information is placed before it for suo motu action for contempt of court.

- In J.R.Parashar, Advocate, and Others v. Prasant Bhushan, Advocate and Others⁹, it was observed that,

"It is necessary to have the allegations screened by the prescribed authorities so that Court is not troubled with the frivolous matters".

The objective behind prescribing the procedural mode of taking cognizance in Section 15 is to avoid frivolous contempt petitions and to safeguard the valuable time of the court from being wasted.

- In S.R.Sarkar's case (supra) it court also said:

"In the light of the aforesaid, the procedure laid and directions issued in Duda's case are required to be appreciated also keeping in view the additional factor of the Chief Justice being the master of the roster".

- In State of Rajasthan v. Prakash Chand and Others¹⁰, it was held that,

⁹ (2001) 6 SCC 735

¹⁰ (1998) 1 SCC 1

“It is the prerogative of the Chief Justice of the High Court to distribute business of the High Court both judicial and administrative”.

- In State of Kerala v. M.S.Mani and Others¹¹, it was observed that,

“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”.

At last, on the basis of perusal of record including the notices issued to the appellant it can be concluded that the Court had not taken any suo motu action against the appellant and there was not even the prayer for taking suo motu action for contempt against the appellant in contempt petitions as well as here, the question is not about compliance or non-compliance of the principles of natural justice whether the appellant was granted the adequate opportunity but the necessary compliance of the mandatory requirements of Section 15 of the Act. And therefore it was held that,

“In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions under Section 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as suo motu petitions. In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable. As a result of aforesaid view, it is unnecessary to examine in the present case, the effect of non-compliance of the directions issued in Duda's case by placing the informative papers before the Chief Justice of the High Court”.

VI. HELD

The Appeal of the accused is therefore accepted and the Hon'ble Court set aside the impugned judgment along with fines.

VII. EVALUATION

The Apex Court concluded that there is necessary procedure that has to be followed mentioned under Section 15 even when the petition is filed by a party under Article 215 of the Constitution,

“In these matters, the question is not about compliance or non-compliance of the principles of natural justice by granting adequate opportunity to the appellant but is about compliance of the

¹¹ (2001) 8 SCC 82

mandatory requirements of Section 15 of the Act”.

And that it cannot accept the contention of the respondents that suo motu cognizance has been taken by the Court and that this power is rarely used in these cases.

It was therefore held that the petitions were not maintainable as there is absence of compliance of mandatory requirement of Section 15, and it is unnecessary to examine the directions issued in Duda's case with the present case and their compliance.

Author's Views

There are 3 components of every democracy namely the Legislation, Executive and Judiciary and the function of each of them is essential for the proper administration of the country and even one them is disturbed then there will be chaos all around the nation. The makers of ‘The Constitution’ have clearly defined the powers inherited in them and the procedure to protect these institution in every way possible in order to keep them free from any influence of outside forces.

Contempt is one such situation where a protection is given to the Judiciary through Articles 129 and 215 of the Constitution of India which vests the powers into the Supreme Court and High Courts respectively to take the necessary action regarding their contempt in order to maintain the repute and honour of the Judicial System.

“The contempt of court jurisdiction is exercised not to protect the dignity of an individual judge but to protect the administration of justice from being maligned”. There can be little dispute over this observation made by a Constitution Bench of the Supreme Court in Supreme Court Bar Association vs. Union of India & anr.¹².

There is huge amount of faith among the people regarding the Judiciary and they think even if at point in their life they have been cheated by the system there is always hope from the Judicial System that they will eventually get the justice.

In every case there will always be one aggrieved party who will not get satisfied with the decision of any of the Courts but the faith shall be developed in general public about their judgements that it had taken the best possible way to deliver justice and there is not any special objective or motive behind it to save some people to face the conviction.

¹² (1998) 4 SCC 409.

There shall be created a pleasant environment where there must not be any hindrance to the Article 19 as well as the idea of Criticism as they are necessary for every democracy and the foundations our vast institutions are not so weak that they can be easily shaken up by any statement made and the powers conferred by the Constitution be used in the matters of contempt very rarely.

But when it seems that there is a feeling of despair being blossoming within the people and it is essential to take some harsh steps in order to restore and maintain the faith of the people into Judiciary, then at that moment also the institutions shall not step back at that moment.