

**(1999) 05 AHC CK 0226**

**Allahabad High Court**

**Case No:** Criminal Contempt Petition No. 73 of 1998

Surendra Kumar Sharma

APPELLANT

Vs

Sub-Inspector, Ram Darsh Ram

RESPONDENT

---

**Date of Decision:** May 17, 1999

**Acts Referred:**

- Contempt of Courts Act, 1971 - Section 15(1), 2

**Citation:** (2000) CriLJ 551 : (1999) 2 UPLBEC 1580

**Hon'ble Judges:** R.R.K. Trivedi, J; M.C. Jain, J

**Bench:** Division Bench

**Advocate:** Party in Person, for the Appellant; A.G.A., for the Respondent

**Final Decision:** Dismissed

---

### **Judgement**

M.C. Jain, J.

In this contempt petition counter and rejoinder affidavits have been exchanged. Mr. Bhagwati Prasad learned Counsel for the contemner has raised a preliminary objection that this contempt petition for initiating criminal proceedings for committing criminal contempt against the opposite party is not legally maintainable as there is no consent of the Advocate General as required u/s 15(1-b) of the Contempt of Court's Act, 1971 (hereinafter referred to as Act). The learned Counsel further submitted that the facts stated in the petition do not disclose that the criminal contempt has been committed and case, if established, at the most may amount civil contempt.

2. We have heard Sri Surendra Kumar Sharma, who has argued this case in person. He has submitted that a notice was issued by this Court on 21st August, 1998 to the opposite party, which means that the Court has taken action on its own motion, hence the consent of the learned Advocate General is not required and the present proceedings do not suffer from any legal infirmity. The second submission made by Sri Sharma is that as the notice was issued in August, 1998 and he has been

pursuing these proceedings and since then about eight months have passed as such it will not be proper to dismiss the petition on the technical grounds.

3. We have thoroughly considered the submissions made by both the sides. The order dated 21st August, 1998 by which a notice was issued to the opposite party reads as under

"Heard Sri Surendra Kumar Sharma, the petitioner who has appeared in person.

Let notice be issued to opposite party Ram Darash Ram, who was posted as Officer Incharge of Sahatbar Police Station, District Ballia during the relevant period to show cause by 22nd of September, 1998 why the proceedings in Criminal Contempt of Court will not be initiated against him. The notice will be served through the present Officer Incharge of Sahatbar Police Station, District Ballia.

The case will be listed on 22nd of September, 1998."

4. It cannot be denied that the action may be taken by the High Court on its own motion for committing a criminal contempt, on a motion made by the Advocate General and also at the instance of private person if he obtained consent in writing of the Advocate General, as required u/s 15(1-b) of the Act. Sri Sharma has submitted that the High Court has taken action on its own motion. We are not satisfied with this submission as it is clear from the order dated 21-8-1998 that the notice to opposite party was to show cause why the proceedings in the criminal contempt of Court may not be initiated. This Court has nowhere said that the Court is satisfied for taking action on its own motion. It was just a notice to the opposite party to come and show cause as to why the proceedings may not be initiated. In response to such a notice he could appear before the Court and satisfy the Court that the proceedings were not legally maintainable at the instance of applicant. So it cannot be said that once a notice has been issued it will be assumed that the Court has taken action on its own motion. For taking action on its own motion the Court's order must show that the Court was satisfied on the facts of the case for taking action at the instance of private person, though he had not obtained consent in writing of the Advocate General. The matter of contempt is always between the Court and the contemner, the third person normally has no say in the matter, except that he may bring necessary facts to the notice of the Court. In the present case we are satisfied that the present proceedings are not maintainable for committing criminal contempt in absence of consent in writing of the Advocate General.

5. Before parting with the case we may also make it clear that the applicant filed first application which was registered as contempt case No. 70 of 1998, which was dismissed on 10th August, 1998. Then he filed this second application on the same allegations. Precisely the allegations are that the opposite party filed a report on 22nd October, 1997 in the Court of Civil Judge (Judicial Magistrate), Ballia, that Civil Misc. Writ Petition No. 19464 of 1997 has been dismissed on 15-9-97. It has been

further stated that the Court gave several opportunities to the opposite party to file document to show that the writ petition No. 19464 of 1997 was dismissed, but he failed to file any document in pursuance of the order dated 27th October, 1997. The report submitted by him was incorrect and thus misled the Court and committed contempt.

6. In our opinion, the allegations made even if are accepted as correct, they do not disclose that alleged action of opposite party in not filing document in any way scandalised or lowered the authority of the Court or obstructed the free flow of administration of justice, which is necessary to be established for punishing for criminal contempt of Court. Thus on the merits also we are satisfied that no criminal contempt has been committed.

7. For the reasons stated above, this petition is rejected.