

(2009) 11 JH CK 0072
Jharkhand High Court
Case No: None

Arun Kumar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Nov. 27, 2009

Acts Referred:

- Constitution of India, 1950 - Article 129, 142, 215
- Contempt of Courts Act, 1971 - Section 11, 12, 14, 15, 2

Citation: (2010) CriLJ 2219

Hon'ble Judges: R.R. Prasad, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.R. Prasad, J.

Heard learned counsel appearing for the petitioner and learned Counsel appearing for the State on the point of maintainability of this application.

2. Learned Counsel appearing for the petitioner submits that the instant criminal contempt petition has been filed under the provision of Section 2(c), 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India for initiating a proceeding under the Contempt of Courts Act against opposite parties No. 2 to 7 for making misleading statements deliberately and consciously in order to flout the orders passed by this Court and thereby they have interfered with the Administration of Justice and thus, prima facie, they seem to have committed a criminal contempt but the office has taken objection about the maintainability of this criminal contempt application as, according to office note, one civil contempt has been filed for non-compliance of the directions contained in the orders dated 21.7.2008 and 29.9.2008. That apart, in course of hearing, objection was taken about the maintainability of this contempt petition on the ground that the criminal contempt application has been filed without taking written consent of the Advocate

General but both the objections taken do not have any substance as the power of the High Court being the courts of record cannot be restricted and trammled by any ordinary legislation including the provisions of the Contempt of Courts Act as inherent power of the court is unfettered and is not subjected to any limitation.

3. In this respect learned Counsel has referred to a decision rendered in a case of *Ram Preeti Yadav v. Mahendra Pratap Yadav and others* (2007) 12 SCC 385 by the Hon"ble Supreme Court holding therein that apart from the provisions of the Contempt of Courts Act, this Court has a constitutional duty in terms of Article 129 as also Article 142 of the Constitution of India to issue such directions, as are necessary for the ends of justice.

4. Learned Counsel further submits that as this application has been filed u/s 2(c), 11 and 12 read with Article 215 of the Constitution of India and not u/s 15 of the Contempt of Courts Act, any requirement of having written consent of the Advocate General before filing of the contempt petition is not warranted and thus, the objection taken over the maintainability of the instant case is unsustainable. Learned Counsel in support of his submission also referred to a decision rendered in a case of [P.N. Dua Vs. P. Shiv Shanker and Others](#), .

5. There has been no denying of the fact that every High Court does have power to punish for contempt as provided in Article 215 of the Constitution. Besides that the High Court also derives power to punish for civil contempt as well as criminal contempt under the Contempt of Courts Act, 1971. Section 2(c) of the Act defines criminal contempt. It, inter-alia, 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 scandalizes or tends to scandalize or lowers or tends to lower the authority of any court. The procedure for initiating a proceeding of contempt when it is committed in the face of the Supreme Court or the High Courts has been prescribed in Section 14 of the Act. 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 action for contempt may be taken on court's 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.

6. The whole object of prescribing procedural mode of taking cognizance in Section 15 is to safeguard the valuable time of the court from being wasted by frivolous contempt petition.

7. In a case of [J.R. Parashar, Advocate and Others Vs. Prasant Bhushan, Advocate and Others](#), it was observed that the underlying rationale of Clauses (a), (b) and (c) of Section 15 appears to be that when the court is not itself directly aware of the

contumacious conduct, and the actions are alleged to have taken place outside its precincts, it is necessary to have the allegations screened by the prescribed authorities so that the court is not troubled with frivolous matters.

8. The question relating to exercise of jurisdiction under Article 215 of the Constitution is governed or not by laws and the rules came up for consideration before the Hon"ble Supreme Court in a case of [Dr. L.P. Misra Vs. State of U.P.](#), The Hon"ble Supreme Court did hold that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution but such jurisdiction has to be exercised in accordance with the procedure prescribed by law. The Court goes on further to hold that 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. Same proposition was reiterated in a case of [Pallav Sheth Vs. Custodian and Others](#), .

9. At this stage, I may refer to a decision rendered in a case of P.N. Duda v. P. Shiv Shanker (supra) wherein it has been held as under:

54. A conjoint perusal of the Act and Rules makes it clear 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. 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 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 the Court.

10. It be noted that direction issued and procedure laid down in Duda's case is applicable only to cases that are initiated suo motu by the court when some information is placed before it for suo moto action for contempt of courts but so far as instant case is concerned, it appears from perusal of the record, that no prayer has been made by the petitioner for taking suo moto action for contempt against the opposite parties, rather prayer is to issue notice to the opposite parties as to why proceeding under the contempt of courts be not initiated. Once such prayer has been made then the petitioner was required to observe the procedure laid down u/s 15 of the Act, in view of the decision rendered in a case of L.P. Misra (Dr.) v. State of U.P (supra). The same view has also been reiterated in a case of [Bal Thackrey Vs. Harish Pimpalkhute and Others](#), .

11. Thus, in absence of compliance of mandatory requirement of Section 15, the instant application is not maintainable and hence, it is dismissed.