Bal Thackrey Vs Harish Pimpalkhute and Others

Court: Supreme Court of India

Date of Decision: Nov. 29, 2004

Acts Referred: Constitution of India, 1950 â€" Article 129, 215
Contempt of Courts Act, 1971 â€" Section 14, 15, 15(1), 2
Contempt of Courts Rules, 1980 â€" Rule 3, 5

Citation: (2005) 1 ACR 80 : AIR 2005 SC 396 : (2004) AIRSCW 6672 : (2005) 1 ALD(Cri) 417 : (2005) 1 ALT(Cri) 235 : (2005) 107 BOMLR 830 : (2005) CriLJ 659 : (2005) 3 GLR 2447 : (2004) 10 JT 244 : (2005) 1 KLT 67 : (2005) 1 MhLj 322 : (2004) 10 SCALE 37 : (2005) 1 S

Hon'ble Judges: Y. K. Sabharwal, J; Tarun Chatterjee, J; D. M. Dharmadhikari, J

Bench: Full Bench

Advocate: Sunil V. Manohar, Sandeep Parekh, P.H. Parekh, Sweety Manchanda and Shireen S.P. Singh, S.S. Shinde and Ravindra K. Adsure, Genera, for the Appellant;

Final Decision: Allowed

Judgement

Y.K. Sabharwal, J.
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 the other cases initiation can only be by a party filing an application.

271251 .

2. The main issue for determination in these appeals is whether contempt proceedings were initiated against the appellant suo motu by the court or

by respondents. First we may note the background under which these matters were referred to a larger Bench.

3. Delhi High Court in the case of Anil Kumar Gupta v. K. Suba Rao and Anr. ILR (1974) 1 Del.1 issued following directions :

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.

4. In 290891 , this Court approving the aforesaid observation of Delhi High Court directed as under:

...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.

5. Challenging the conviction of the appellant for offence u/s 15 of the Contempt of Courts Act, 1971 (for short "the Act") it was, inter alia,

contended that the directions in P.N. Duda''s case (supra) were not followed by the High Court inasmuch as the informative papers styled as

contempt petitions were not placed before the Chief Justice of the High Court for suo motu action and, therefore, the exercise was uncalled for and

beyond legal sanctity. This aspect assumed significant importance because admittedly the contempt petitions were filed in the High Court without

the consent of the Advocate-General and, therefore, not competent except when the court finds that the contempt action was taken by the court

on its own motion. The two-judge bench hearing the appeals expressed the view that the aforesaid directions approved by this Court in P.N.

Duda''s case are of far-reaching consequences. The Bench observed that the power u/s 15 of the Act to punish contemners for contempt rests

with the court and in Duda''s case, they seem to have been denuded to rest with the Chief Justice on the administrative side. Expressing doubts

about the correctness of the observations made in Duda''s case, and observing that the same require reconsideration, these appeals were directed

to be referred for decision by a larger Bench. Under this background, these matters have been placed before us.

6. For determination of the main issue in these appeals including the aforesaid aspect arising out of Duda''s case, it is necessary to briefly note the

object of the power of the Court to punish a person for contempt.

7. Every High Court besides powers under the Act has also the power to punish for contempt as provided in Article 215 of the Constitution of

India. Repealing the Contempt of Courts Act, 1952, the Act was enacted, inter alia, providing definition of civil and criminal contempt and also

providing for filtering of criminal contempt petitions. The Act laws down ''contempt of court'' to mean civil contempt or criminal contempt. We are

concerned with criminal contempt. ''Criminal contempt'' is defined in Section 2(c) of the Act. 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 High Court 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.

8. The contempt jurisdiction enables the Court to ensure proper administration of justice and maintenance of the rule of law. It is meant to ensure

that the courts are able to discharge their functions properly, unhampered and unsullied by wanton attacks on the system of administration of justice

or on officials who administer it, and to prevent willful defiance of orders of the court or undertakings given to the court 266346 .

9. In 289327 , it was held that ""The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type

of jurisdiction combining ""the jury, the judge and the hangman"" and it is so because the court is not adjudicating upon any claim between litigating

parties. 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 general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable

interference in the administration of justice.

10. Dealing with the nature and character of the power of the courts to deal with contempt in the case of 286386 , 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 in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the

Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate legislature

under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act of 1971, the contempt jurisdiction of the

Supreme Court and the High Court is given a constitutional foundation by declaring to be ''Courts of Record'' under Articles 129 and 215 of the

Constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of

constitutional amendment. In fact, Section 22 of the Act 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

11. The nature and power of the Court in contempt jurisdiction is a relevant factor for determining the correctness of observations made in Duda''s

case (supra). Dealing with the requirement to follow the procedure prescribed by law while exercising powers under Article 215 of the

Constitution to punish for contempt, it was held by this Court in 293558 , 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. In L.P. Misra''s case (supra) it was observed that the

procedure prescribed by the Rules has to be followed even in exercise of jurisdiction under Article 215 of the Constitution. To the same effect are

the observations in Pallav Sheth''s case (supra).

12. For determination of the issues involved, it would also be useful to note the observations made in the case of 292791 to the following effect:

Section 15 does not specify the basis or the source of information on which the High Court can act on its own motion. 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 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.

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

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 chooses 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 to the court.

14. The 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 motu action for contempt of court.

15. A useful reference can also be made to some observations made in 292655 . In that case noticing the Rule 3 of the Rules to regulate

proceedings for contempt of the Supreme Court, 1975 which like Section 15 of the Act provides that the Court may take action in cases of

criminal contempt either (a) suo motu; or (b) on a petition made by Attorney-General or Solicitor-General, or (c) on a petition made by any person

and in the case of a criminal contempt with consent in writing of the Attorney-General or the Solicitor-General as also Rule 5 which provides that

only petitions under Rules 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice, it was

observed that the matter could have been listed before the Court by the Registry as a petition for admission only if the Attorney-General or

Solicitor-General had granted the consent. In that case, it was noticed that the Attorney-General had specifically declined to deal with the matter

and no request had been made to the Solicitor-General to give his consent. The inference, therefore, is that the Registry should not have posted the

said petition before the Court for preliminary hearing. Dealing with taking of suo motu cognizance in para 28 it was observed as under:-

Of course, this Court could have taken suo motu cognizance had the petitioners prayed for it. They had not. Even if they had, it is doubtful

whether the Court would have acted on the statements of the petitioners had the petitioners been candid enough to have disclosed that the police

had refused to take cognizance of their complaint. 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 or a

document which would speak for itself. Otherwise Sub-section (1) of Section 15 might be rendered otiose

16. 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. In J.R. Parashar''s case (supra) it was observed that underlying rational 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 Court is not troubled with the

frivolous matters. To the similar effect is the decision in S.R. Sarkar''s case (supra).

17. 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 258518 , it was held that it is the prerogative of the Chief Justice of the High

Court to distribute business of the High Court both judicial and administrative. He alone has the right and power to decide how the Benches of the

High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear as also to which Judges shall constitute

a Division Bench and what work those Benches shall do.

18. The directions in Duda''s 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 u/s 15 of the Act may render the procedural safeguards of Advocate-General''s

consent nugatory. We are of the view that the directions given in Duda''s case are legal and valid.

19. Now, the question is whether in these matters the High Court initiated contempt action on its own motion or on motions made by the

respondents. It is not in dispute that the two contempt petitions (Contempt Petition No. 12 and Contempt Petition No. 13 of 1996) were filed in

the High Court against the appellant u/s 15 of the Act for having committed contempt of court as postulated u/s 2(c) of the Act for having made a

public speech. According to the petitions, the appellant scandalised the court 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. The applicant before the High Court, it seems clear from the averments made in the contempt petition was

in an opposite political camp. The petition was based on utterances made by appellant in public meetings held on 21st October, 1996.

20. 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 u/s 15 not in conformity with the requirements of that Section is not maintainable. 269630 .

21. In Contempt Petition No. 12 an application dated 22 nd October, 1996 was submitted to the Advocate-General along with proposed

contempt petition stating that the applicant wanted to file petition by 2nd December, 1996 and, therefore, the permission may be granted before

that date and further stating that if no answer is received from the Advocate-General it would be presumed that permission has been granted and

the applicant will proceed with the intended contempt proceedings. Such a course is not permissible u/s 15 of the Act. There is no question of any

presumption. In fact, Contempt Petition No. 12 was filed on 2nd December, without the consent of the Advocate-General. It further appears that

the application seeking permission of the Advocate-General was received by him on 26th November, 1996. It also appears that the Advocate-

General appeared before the Court on 3rd February, 1997 and stated that he can decide the question of consent within a reasonable time. The

impugned judgment holding appellant guilty of contempt and inflicting simple imprisonment for a period of one week and fine of Rs.2000/- was

passed on 7th February, 1997.

22. A perusal of record including the notices issued to the appellant shows that the Court had not taken suo motu action against the appellant. In

contempt petitions, there was no prayer for taking suo motu action for contempt against the appellant. The specific objection taken that though suo

motu action could be taken u/s 15 of the Act on any information or newspaper but not on the basis of those contempt petitions which were filed in

regular manner by private parties, was rejected by the High Court observing that being Court of Record it can evolve its own procedure, which

means that the procedure should provide just and fair opportunity to the contemner to defend effectively and that the contemner has not expressed

any prejudice or canvassed any grievance that he could not understand the charge involved in the proceeding which he had been called upon to

defend. It is, however, not in dispute that the charge against the appellant was not framed.

23. 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 mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15

is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were

u/s 15 of the Act. From the material on record, it is not possible to accept the contention of the respondents that the Court had taken suo motu

action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose consent of the

Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take suo motu action in rare cases.

In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions u/s 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.

24. 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.

25. For the foregoing reasons we set aside the impugned judgment and allow the appeals. Fine, if deposited by the appellant shall be refunded to

him.

26. Before parting, it is necessary to direct framing of necessary rule or practice direction by the High Courts in terms of Duda''s case.

Accordingly, we direct Registrar-General to send a copy of this judgment to the Registrar-Generals of the High Courts so that wherever rule

and/or practice direction on the line suggested in Duda''s case has not been framed, the High Courts may now frame the same at their earliest

convenience.