

(1996) 07 BOM CK 0081

Bombay High Court

Case No: Contempt Petition No. 5 of 1996

Manubhai Pragji Vashi

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision: July 22, 1996

Acts Referred:

- Constitution of India, 1950 - Article 129, 142, 215
- Contempt of Courts Act, 1971 - Section 10, 14, 2, 23

Citation: (1997) 1 BomCR 35 : (1996) CriLJ 3910 : (1996) 2 MhLj 615

Hon'ble Judges: R.M. Lodha, J

Bench: Single Bench

Advocate: M.P. Vashi, for the Appellant; C.J. Sawant, Advocate-General, for the Respondent

Judgement

1. Mr. C.J. Sawant, Advocate-General has raised preliminary objection about the jurisdiction of this court in this contempt petition. He submits that in the contempt petition, the grievance of the Petitioner is that Respondents be punished for gross, wilful and deliberate contempt committed by them by not complying with the judgment of the Supreme Court delivered on 16-8-95 (reported in AIR1995 SCW 3701 and according to Mr. Sawant, learned Advocate-General, this court has no jurisdiction to examine whether the order of the Supreme Court delivered on 16-8-95 (reported in AIR1995 SCW 3701) has been complied with or not. In other words the objection of the learned Advocate-General is that the High Court cannot invoke its jurisdiction under Article 215 of the Constitution of India or under the provisions of the Contempt of Courts Act, 1971 for the civil contempt of order or judgment or the direction of the Supreme Court.

2. Confronted with this preliminary objection raised by the Advocate-General, on the other hand Mr. M. P. Vashi who is Petitioner in person strenuously argues that the Contempt of Courts Act, 1971 does not expressly bar the invocation of jurisdiction

by the High Court if the judgment, order or direction of the Apex Court has been wilfully or deliberately disobeyed. Referring to the definition of "civil contempt" occurring in Section 2(b) of the Contempt of Courts Act, 1971 Mr. Vashi would submit that civil contempt means wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court and according to him that court may be any court inferior or superior to the High Court and, therefore, this court has jurisdiction to examine whether the judgment passed by the Apex Court on 16-8-95 in Civil Appeal Nos. 7373 and 7374 of 1995, *State of Maharashtra v. Manubhai Pragji Vashi*, (reported in AIR1995 SCW 3701) has been complied or not.

3. The question is of considerable importance and has to be answered in the light of the provisions of the Constitution of India, Contempt of Courts Act, 1971, and, rules framed thereunder by this court as well as by the Supreme Court. Article 129 of the Constitution of India provides that Supreme Court shall be court of records and shall have all the power of such a court including the power to punish for contempt of itself.

4. As regards the High Court to be a court of record Article 215 makes a provision that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

5. The Contempt of Courts Act, 1971 which has come into force with effect from 24-12-1971 defines and limits the powers of certain courts in punishing contempt of courts and regulates the procedure in relation thereto. Section 2 of the Act deals with the definitions "contempt of court", "civil contempt", "criminal contempt", "High Court", amongst others, and, the said definitions read thus -

"Section 2. Definitions. - In this Act, unless the context otherwise requires, -

(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c) "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;

(d) "High Court" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.

6. Power of High Court to punish contempts of subordinate courts is made available in Section 10 which reads thus -

"Section 10 - Power of High Court to punish contempts of subordinate courts. - Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself :

Provided that no High Court shall take cognizance of contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, 1960 (45 of 1860)."

7. Section 14 of the Contempts of Courts Act, 1971 provides for the procedure where contempt is on the face of the Supreme Court or High Court. Section 23 enables Supreme Court or as the case may be any High Court to make rules not inconsistent with the provisions of the Act, providing for any matter relating to its procedure.

8. The High Court is a court of record as provided under Article 215 of the Constitution of India and it provides further that High Court shall have all the powers of such court including the power to punish for contempt of itself. The expression "itself" occurring in Article 215 is not without any significance and signifies the power of High Court to punish for contempt of itself and in that expression power to punish for other court of record or Supreme Court cannot be read into. As regards power of High Court to punish for contempt of subordinate courts, such power is derived by the High Court under Contempt of Courts Act and not under Article 215. The power of Supreme Court becomes different and its position stands on different pedestal ,though Article 129 of Constitution also uses expression "itself" when such power of contempt is exercised by Supreme Court for the contempt of High Court with aid of Article 142 of Constitution of India. It, therefore, cannot be said that the power given to the High Court to punish for contempt of itself shall include the power to punish for contempt of the Supreme Court which is a Court of record and has power of such court including the power to punish for contempt of itself. The fact that the legislature has extended the power of the High Court to punish contempts of subordinate courts expressly u/s 10 of Contempt of Courts Act, the said provision by necessary implication excludes the power of the High Court to punish contempt of other superior court. Further, High Court has been empowered to exercise the same jurisdiction and authority in accordance with the same procedure and practice in respect of contempt of courts subordinate to it as it exercises in respect of contempt of itself and that makes the legislature's intention very clear that High Court has power to punish for contempts of itself as well as to punish for contempts of courts subordinate to it. The expression "courts subordinate to High Court" would obviously mean courts

subordinate to the High Court in the hierarchy of courts established for the purpose of administration of justice, but at the same time the power of the High Court to punish contempts of the Supreme Court cannot be read either in Article 215 or in any of the provisions of the Contempt of Courts Act, 1971. The expression "court" occurring in Sec. 2(b) or "any court" occurring in Sec. 2(c) cannot include the power of the High Court to punish for the "civil contempt" or "criminal contempt" of the Supreme Court.

9. The rules framed by this Court under the Contempt of Courts Act, 1971 and called the Contempt of Courts (Bombay High Court) Rules, 1971 also leads to reach the conclusion that the said rules have been framed for the contempt of this court and/or the contempt of the subordinate courts.

10. In [Advocate-General, Andhra Pradesh, Hyderabad Vs. V. Ramana Rao](#), the question was whether the High Court had no jurisdiction either under the Constitution or under the Contempt of Courts Act, 1952 to deal with the alleged contempt of the Supreme Court, and, I am fortified by the view of the Division Bench of Andhra Pradesh High Court in aforesaid case wherein it has been held that the High Court does not possess such power. The Andhra Pradesh High Court held thus (Para 4) -

"4. The main contention advanced before us by the respondent's learned counsel with reference to this passage is that this Court has no jurisdiction to go into it for the purpose of ascertaining whether or not it constitutes contempt of Court. The argument is that this Court has no jurisdiction either under the Constitution or under the Contempt of Courts Act, 1952, to deal with alleged contempt of the Supreme Court. We think this argument is well-founded. We should therefore refrain from dealing with the said passage in these proceedings and eschew it altogether from our minds in considering the merits of this contempt case. In other words, we propose to devote our attention only to the other passages which are alleged to constitute contempt of the High Court, the Subordinate Courts and the Election Tribunal. What the respondent has said regarding the Supreme Court can thus be kept completely out of our minds in the present proceedings."

11. Though the said judgment related to a "criminal contempt" under Sec. 2(c) of the Contempt of Courts Act, 1971 read with Article 215, and, Mr. Vashi the Petitioner in person sought to distinguish the said judgment by urging that the principles of exercise of jurisdiction for criminal contempt shall have no bearing and application to the "civil contempt" but in my view, the distinction drawn by Mr. M. P. Vashi is superficial and not of any substance and the legal position remains the same as regards the lack of jurisdiction of High Court for the civil contempt as well as the criminal (contempt) of the Apex Court, and, in my view for the reasons stated above, I have no hesitation to hold that the High Court has no jurisdiction to invoke its power under the Contempt of Courts Act, 1971 for the alleged civil contempt of order, judgment or direction of the Apex Court.

12. For the foregoing reasons, the preliminary objection raised by Advocate-General prevails.

13. Consequently, notices issued to the contemnors are discharged. Contempt petition is dismissed.

14. Petition dismissed.