

(1989) 11 CAL CK 0025

In the Calcutta High Court

Case No : Civil Orders No. 2423 (W) and 2424 (W) of 1987

Amar Sadhukhan

APPELLANT

Vs

Mrinal Kanti Chakraborti

RESPONDENT

Date of Decision : 22-11-1989

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1955 — Rule 7, 7(1)
Constitution of India, 1950 — Article 215, 226
Contempt of Courts Act, 1971 — Section 15(1), 15(2), 20
Limitation Act, 1963 — Section 2G, 5

Citation : (1995) 2 ILR (Cal) 520

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : R.N. Mitra, for the Appellant; Arun Prakash Chatterjee and L.C. Bihari for Respondents, Contemnors Nos. 1 and 2, for the Respondent

Judgement

Susanta Chatterji, J.—This case has a chequered background in deed. An application for contempt has been filed in Court on June 22, 1987, supported by an affidavit sworn by one Amar Sandhukhan. By order dated July 24, 1987, the application for contempt was entertained and upon consideration of the materials on record and after hearing the learned lawyer for the Petitioner and the Advocate for State there was a direction that the matter will come up for order on Friday next. On July 1, 1987, having heard the learned lawyers for the Petitioners, for the Municipality and for the State while the Chairman of the Baruipur Municipality and the Officer-in-Charge of Baruipur P.S. were present in Court and in view of the materials on record, Officer-in-Charge of Baruipur P.S. was directed to make an investigation and to submit a report within five days as to whether there is any obstructing wall for free egress and ingress to Baruipur Kancharibari Market and as to whether the walls have been raised after the order of this Court dated-February 26, 1987. Mr. Datta, learned Advocate appearing for the Baruipur Municipality, submitted that no walls have been raised under the order of the Chairman of the said Municipality. There was further direction that

the matter will appear on August 6, 1989. Pursuant to the orders of this Court, the Officer-in-Charge of Baruipur P.S. has filed a report and an opportunity has been given to the learned lawyers appearing for the respective parties to take the copies of the report for taking effective steps. The parties sought leave of the Court to file affidavits and opportunities were granted accordingly. Subsequently, an application for substitution was filed and the same was allowed. Thereafter, the matter was heard on merit. It appears from the application for contempt that the Petitioners, viz. Amar Sadhukhan and 22 others for self and on behalf of the tenants/shopkeepers/traders at different sheds in the newly extended Baruipur Kanchari Bazar have alleged inter alia that they filed two applications under Article 226 of the Constitution of India on February 11, 1987 and February 13, 1987, and after hearing the learned Advocates of the respective parties, this Court passed an ad interim orders of status quo on February 13, 1987, as regards the possession of the Petitioners at the market in question. It is a specific case of the Petitioners by filing the application for Contempt of Court that the Respondent/contemnors have deliberately violated the final order of this Court passed on March 26, 1987. It appears from the order dated February 26, 1987, that the Court observed that the question of recovery of possession against any person in unlawful occupation has got to be made in a manner as provided in law? It was made clear that taking advantage of the order dated February 17, 1987, as well as dated February 23, 1987, no new person and/or stranger should enter into the property and the Police will as a remain silent observer. It was made clear also that besides the Petitioners of the first and second petition as filed in a representative capacity, the actual traders at the site, will carry on their respective business until they are evicted in due process of law. For running of their respective businesses, the ingress and egress of the customers should not be restrained in any circuitous process to interfere with the running of the business. There is specific allegation that subsequently the said order was challenged in appeal and ultimately the appeal was not pursued and the order dated February 26, 1987, is still in force. There is further specific allegation that the order dated February 26, 1987, has been deliberately violated by raising walls and the egress and ingress of the traders and the customers have been obstructed. From the Police report, it transpires that since the Police force was engaged in pre-/and post-election law and order problem, they could not take any effective steps while the walls were raised preventing ingress and egress to the Petitioners as, traders and other customers. It is specifically stated that the walls have been raised after February 26, 1987.

2. The facts of the case are not disputed by the contemnors. There is no denial of the fact that the order dated February 26, 1987, passed by this Court remains in force and the Petitioners and the traders of the market in question cannot be evicted by show of force only. It is admitted by all that law does not permit anybody to raise the walls to violate the orders of the Court on February 26, 1987, in a circuitous process.

3. Various objections have, however, been taken as to the maintainability of the

petitions for contempt and seriously the bar of limitation has been raised.

4. Mr. Arun Prokash Chatterjee, learned Advocate appearing for the Contemnor No. 1, Sri Mrinal Kanti Chakraborti, the Chairman of Baruipur Municipality, has argued that Section 20 of Contempt of Court Act is a clear bar to consider the petitions for contempt on merit. No proceedings can be initiated after April 5, 1988. He has drawn the attention of the Court to the decision in Gulab Singh and Another Vs. The Principal, Sri Ramji Das, . It was found by the Division Bench of the Allahabad High Court that although the Petitioner bringing acts of contempt to the notice of the High Court within one month but the High Court did not initiate any proceedings within limitation of one year. The plea that the Petitioner ought not to be allowed to suffer for the mistake of Court is not available. In para. 6 of the said decision, it has been observed that the Petitioner has no right to have the Respondent punished for contempt. His only duty was to bring to the notice of the Court the facts of the alleged contempt and then it was entirely a matter between this Court and the Respondent. The Petitioner not having any right as such and none of his rights having been prejudiced if the Respondent is not punished for contempt, he cannot be heard to say that he should not be allowed to suffer for the mistake of the Court. The attention of the Court has also been drawn to another decision in Dineshbhai A. Parikh Vs. Kripalu Co-operative Housing Society, Nagarvel, Ahmedabad and Others, . It has been found as to what Section 20 of the Contempt of Courts Act, 1971, provides is not the period of limitation as it is ordinarily understood. But it is a condition precedent to the exercise of Court's power under that Act. It is wrong to say that it is a period of limitation in the context of which Section 5 of the Limitation Act, 1963, can be attracted or can be resorted to. Section 20 does not contemplate institution of a petition or an application by a private individual for taking action under the Act. It merely contemplates initiation of proceedings by a Court on its own motion or otherwise. Since there is no application or petition before the Court in such proceedings, the question of condoning delay does not arise. When the Court initiates contempt proceedings on its own motion, the question of condoning delay does not arise. It was further found that no contempt proceedings can be initiated by a Court after the expiry of a period of one year from the date of alleged commission of contempt. Action under Contempt of Courts Act, 1971, can be taken if the Court has applied its mind and initiated a proceeding by passing some order within a period of one year from the date of the alleged act of contempt. If an application for taking action under the Contempt of Courts Act, 1971, is filed within a period of one year from the date of alleged commission of contempt, but the Court has passed no order thereon before the expiry of one "year from the said date. Such application automatically fails and the jurisdiction of the Court is barred because the Court did not apply its mind to the complaint or information within a period of one year. It is this application of mind by the Court which amounts to initiation of proceedings within the meaning of Section 2G. The said decision of the Gujarat High Court mainly relied upon the decision of the Supreme Court in Baradakanta Mishra Vs. Justice Gatikrushna

Misra, Chief Justice of the Orissa High Court, . In para. 7 it was found by the Supreme Court that Section 20 prescribes a period of limitation by saying that no Court shall initiate any proceeding for contempt either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. It will be seen from these provisions that the scheme adopted by the legislature is that the Court may initiate a proceeding for contempt suo motu or on a motion made by the Advocate-General or any other person with the consent in writing of the Advocate-General or on a reference made by a subordinate Court. Where the Court initiates a proceeding for contempt suo motu, it assumes jurisdiction to punish for contempt and takes the first step in exercise of it. But what happens when a motion is made by the Advocate-General or any other person with the consent in writing of the Advocate-General or a reference is made by a subordinate Court. Does the Court enter upon the jurisdiction to punish for contempt and act in exercise of it when it considers such motion or reference for the purpose of deciding whether it should initiate a proceeding for contempt ? The motion or reference is only for the purpose of drawing the attention of the Court to the contempt alleged to have been committed and it is for the Court, on a consideration of such motion or reference, to decide, in exercise of its discretion, whether or not to initiate a proceeding for contempt. The Court may decline to take cognizance, and to initiate a proceeding for contempt either because in its opinion no contempt prima facie appears to have been committed or because, even if there is prima facie contempt it is not a fit case in which action should be taken against the alleged contemnor. The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemnor, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminus a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. The attention of the Court has also been drawn to *The State of Maharashtra v. J.V. Patil* (1976) 78 Bom. L.R. The date of initiation of contempt proceedings u/s 20 was considered. It was found that u/s 20 read with Section 15(1) of the Contempt of Courts Act, 1971, the date on which the matter is placed before the Division Bench of the High and on which the rule is granted is the date when contempt proceedings can be said to be initiated in the Court. Neither the date when reference is made by the Subordinate Court u/s 15(2) of the Act nor the date of the administrative order of the Administrative Judge can be said to be the beginning of the contempt proceedings. This point has also been considered in N.

Venkataramanappa v. D. K. Naikar and Anr. AIR 1978 Kar. 57. The Bench presided by V.S. Malimath J., as his Lordship then was, observed that Section 20 of Contempt of Courts Act, 1971, operates as an absolute bar to initiation of contempt proceedings whether suo motu or at the instance of complainant after expiry of one year's limitation. The starting point of limitation is the date on which contempt is alleged to have been committed and not date of /knowledge of complainant. It was held that although the allegations amounted to criminal contempt of gravest order, actions could not be taken on it after expiry of limitation either on the basis of complaint or suo motu by High Court. Another decision in State of Rajasthan Vs. Jamna Das Gangadas and Co. and etc. etc., was cited from the Bar. The power to punish for contempt under Article 215 must be exercised within the prescribed u/s 20 of the Contempt of Courts Act. The main thrust of the argument of Mr. Arun Prokash Chatterjee for the Contemnors No. 1 was that although the allegations made in the application for Contempt of Court may have its merit, but since no proceedings have been initiated within one year from the alleged act of offence of violation of the Court's order, the petition for contempt must fail. He has also submitted that no rule for contempt has been issued and no opportunities have been given to the contemnors to show cause why there will be no punishment and, as such, the opportunity of filing affidavits is not sufficient.

5. Mr. L.C. Bihani and other learned Advocates appearing for other contemnors had adopted the argument advanced by Mr. Chatterji.

6. Mr. Rabindra Nath Mitra, the learned Advocate appearing for the Petitioners, has drawn the attention of the Court, the decision in Tarak Nath Ghosh Vs. The Government of India, Ministry of Home Affairs and Others, as to the concept of initiating of proceedings, the Division Bench of the Patna High Court found that the expression "initiates any disciplinary proceedings" in Rule 7(1) of All India Services (Discipline and Appeal) Rules, 1955, which does not refer to the steps when the authorities have applied their minds to the initiation of the proceedings. They should mean as soon as the authorities are in possession of the facts which might justify any disciplinary proceeding against the officer, he would be equally liable to an order of suspension. If this view was taken of the meaning of these words in Rule 7(1), there would be hardly any distinction between a contemplated proceeding as provided for in the case of a member of the Central Services or the Railway Services and that in Rule 7. He has cited another decision in Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, . The Supreme Court observed that every abuse of the process of Court may not necessarily amount to Contempt of Court; abuse of the process of the Court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice is a Contempt of Court. It may be that certain minor abuses of the process of the Court may be suitably dealt with between the parties, by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial

process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice. Then because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so it is entrusted with the power to commit for contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but to project and to indicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.

It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage." The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope. There is another reference to the case in *Manjit Singh and Others Vs. Darshan Singh and Others*, . The Full Bench of Punjab & Haryana High Court found that in respect of limitation of actions for contempt u/s 20 the date when time begins to run or the terminus a quo is inflexibly fixed from the point on which the criminal contempt is alleged to have been committed. This follows from" the clear cut and plain grammatical construction of Section 20 itself. This part, on principle also the terminus of limitation has to be a fixed and precisely determinable one. It cannot be said that the terminus a quo is the date when the Court becomes aware of the commission of the contempt and not the actual date of commission of the contempt. A Court is not omniscient and it cannot become aware of all contempt? s blatantly committed until and unless they come to its notice suo motu or are so brought to its notice on motion. Therefore, the actual awareness of the Court of an act of criminal contempt would inevitably remain fortuitous circumstance. For limitation to run from a point of time so uncertain as the knowledge of the Court itself or when it is brought to its notice, would introduce a double element of uncertainty for the start of the point of limitation which would be contrary to sound principles of construction. On such a view, an action for criminal contempt can be visualized many years after its actual commission because factually it may be brought to the notice of the Court even after a decade. This, in essence, would frustrate the very purpose of the legislature in introducing a period of limitation. Also, the filing of a petition in Court or initiation or proceedings cannot possibly be the terminus a quo or the starting point of limitation. It can at best be the outer limit or the terminating point for the cognizance of criminal contempt. Indeed, after a petition has been filed or proceedings duly initiated hardly any question of limitation thereafter would arise.

7. With great anxieties this Court patiently heard the lengthy submissions made from the Bar in support of the case of the respective parties. There are three undisputed points, viz.:

(a) The order passed by this Court on 26.2.87 remains in force although an

appeal was preferred, the same was not pursued. The said order has clearly laid down that no person can be evicted except in a manner as provided in law. There will be no interference with the running of the business and egress and ingress of the traders and customers in any circuitous process to interfere with the running of the business.

(b) Admittedly, the walls have been raised to obstruct entry of the traders and customers to the market site after the order dated 26.2.87.

(c) Although the contemnors do not own the responsibility to raise the walls violating the orders of the Court but they oppose the removal of the walls.

8. From the records, it transpires that the application for contempt was filed on June 22, 1987. The date is well within the period of limitation. The same was moved on July 24, 1987. The date is well within the period of limitation as envisaged u/s 20 of the Contempt of Courts Act. This Court has taken cognizance of the petition for contempt and being satisfied with the materials on record applied its mind after hearing the learned lawyers of both sides, viz. for the Petitioners and the State and directed that the matter will appear for order on a subsequent date. This order dated July 24, 1987, is the starting point of the initiation of the proceedings. It is not in doubt that any application can be disposed of by passing a civil order instead of issuing a Rule. Pursuant to the order dated July 24, 1987, all the parties including the Contemnor No. 1 and the Contemnor No. 2 appeared on July 31, 1987, before this Court and having heard the learned lawyers of all the parties, this Court very much applied its mind to consider the allegations of the Petitioners and the denials of the contemnors and thereby directed the Officer-in-Charge of Baruipur P.S. to make an investigation and to submit a report within five days as to whether there is any obstructing wall for free ingress and ingress to Baruipur Kancharibari Market and as to whether the walls have been raised after the order of this Court dated February 26, 1987. The order dated July 24, 1987, and the order dated July 31, 1987, indicate clearly that the contempt proceedings were initiated and parties were given an opportunity to place on record the materials for the effective adjudication of the matter in dispute. The petition for contempt was filed within the one year-period of limitation from the alleged date of offence and the Court initiated the proceeding also well within the period of limitation as envisaged in Section 20 of the Contempt of Court Act. The decisions cited from the Bar as discussed above clearly indicate inter alia that irrespective of filing of the? petition the Court has to apply its mind and to initiate a proceeding. In the instant case, the facts are very much apparent and clear that a petition has been filed within time and proceeding has been initiated also in time. The question of bar of limitation as envisaged u/s 20 of the Contempt of Court Act has nothing to do. It has to be remembered also that there is no forum for execution of the order passed by the writ Court if there is non-compliance of the writ Court's order. The parties aggrieved have only remedy to come to the said Court to vindicate the justice by filing a petition for Contempt of Court. Although, no rule

has been issued, the parties have not been prejudiced in any manner. They have the fullest opportunities to file defences by filing affidavits. They cannot escape the responsibility of violating the Court's order by raising technical points of limitation only.

9. However, for the ends of justice and by way of abundant precaution, the contemnors are given another opportunity in a continuing proceedings which was initiated on July 24, 1987, to show cause within three weeks from date as to why they will not be punished for violating the Court's order dated February 26, 1987, to cause obstruction to the entry to Baruipur Kancharibari Market by raising obstructing walls for free ingress and egress of the traders and customers in the manner observed in the order dated February 26, 1987. But for the fitness of things and upon a clear finding that the walls have been raised in violating the order of this Court, the Petitioners are permitted to take steps to remove the obstructing walls upon notice to and in presence of the Officer-in-Charge, Baruipur P.S. He is directed specifically to render all necessary police help at the time of removal of the walls so that the contemnor No. 1 and/or his men and others do not oppose the steps for removal of the obstructing walls. The Officer-in-Charge, Baruipore P.S., will fix a date within 7(seven) days from the receipt of the notice by the Petitioners. Pray for stay is refused.

10. This order will govern both the matters CO. 2423-24(W) of 1987.