
(2009) 03 RAJ CK 0080
In the Rajasthan High Court

G.B. Jain and Sons

APPELLANT

Vs

Shrimat Pandey and Others

RESPONDENT

Date of Decision : 09-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Contempt of Courts Act, 1971 — Section 12, 15, 2, 20
Criminal Procedure Code, 1973 (CrPC) — Section 133, 340, 482
Penal Code, 1860 (IPC) — Section 188

Citation : (2010) 1 RLW 552

Hon'ble Judges : D.N. Thanvi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deo Narayan Thanvi, J.—This protracted Contempt Petition filed long back in June, 1998, captioned as "Criminal Contempt", u/s 12 of the Contempt of Courts Act, hereinafter referred-to as "the Act", is still under adjudication as to whether disobedience of the order of this Court dt.23.06.1998 passed at 4.30 PM by the Vacation Judge of this Court at his residence in S.B. Cr. Misc. Stay Petition No. 340/98 (Misc. Petition No. 478/1998), amounts to Civil or Criminal Contempt.

2. Before narrating the brief facts as alleged in the Contempt Petition filed on 25.06.1998, it is apparent from the body of Contempt Petition that it was titled as S.B. Criminal Contempt Petition but on 05.04.1999, when the case came up before the learned Single Judge, learned Addl. Advocate General raised an objection that the caption of the petition is "Criminal Contempt", therefore, the matter should be heard only by the Division Bench. At this point, learned Counsel for the petitioner stated that it is a "Civil Contempt" and due to misconception, it has been stated as "Criminal Contempt". In view of the above arguments, the learned Single Judge deferred the matter for two days to first decide as to whether it is a "Civil Contempt" or "Criminal Contempt". Then the case was adjourned for one reason or the other. Ultimately, on 16.02.2009, learned Counsel Mr. M.S. Singhvi appearing on behalf of respondents submitted that this

petition has become infructuous, as the Division Bench has already decided one of the issue involved in this Cr. Misc. Contempt Petition in D.B. Cr. Contempt Petitions No. 26/98 and No. 39/96 on 13.01.2009. A copy of the said order was supplied to Mr. M.C. Bhoot, learned Counsel for the petitioner, to which Mr. Bhoot wanted time to verify and make submissions on 20.02.1999 and further submitted that unless the record of both these two D.B. Cr. Contempt Petition is called for, the proceedings of those Contempt Petitions cannot be referred in this Contempt Petition. Upon this, with the consent of both the parties, the record was ordered to be called for, to decide as to whether this is a "Civil Contempt" or "Criminal Contempt as well as this petition and the case was posted on 25.02.2009. Previous to that date, learned Counsel for the petitioner submitted an application for correction of the caption from "Criminal Contempt" to "Civil Contempt" alongwith the amended cause title. Reply to the same was also filed by the respondents showing the conduct of the petitioner in judicial proceedings in S.B.Civil Revision No. 114/04. On 02.03.2009, when the case was listed, disposal of this application for correction of caption was also kept open with the main petition. Accordingly, the arguments on the main petition alongwith the question as to whether it is a "Civil Contempt" or "Criminal Contempt" and the application for correction of the caption were heard at length.

3. The order of this Court passed in S.B. Cr. Misc. Stay Petition No. 340/98 in S.B. Cr. Misc. Petition No. 478/98 reads as under:

Issue notice to the respondents, returnable on 26th June, 1998. Be given Dasti for service.

In the meanwhile, status quo as it exists today be maintained.

4. The respondents in this Cr. Misc. Petition were two viz; State of Rajasthan through Collector Udaipur and Commissioner Municipal Council Udaipur, whereas the present Contempt Petition has been filed against four persons viz; (1) Shrimat Pandey, Collector, Udaipur; (2) Sumati Lal Bohra, Addl.Collector (City), Udaipur; (3) Bharat Singh, Addl.S.P. Udaipur; and (4) Inder Singh Solanki, Tehsildar, Girva, Distt.Udaipur.

5. In short, the facts of the present Contempt Petition are that on 7.9.1995, a conditional order was issued to the petitioner u/s 133 CrPC, whereby he was called upon to remove the amusement equipments commissioned at the places leased out/licensed to the petitioner by the Municipal Council. Petitioner while giving the background of other circumstances detailed in the main petition u/s 482 CrPC (478/98) as well as in S.B.Civil Writ Petitions No. 3184/95 and 1747/96, apprehended dismantling of his equipments under the garb of Section 133 CrPC despite orders from the various Courts referred in the above petitions, for which no detailed reference is required. Ultimately, the trial Court decided the proceedings u/s 133 CrPC on 15.06.1998 with a direction to remove the establishment/the entertainment park within 7 days i.e. by 22.06.1998, else, the case will be registered against him u/s 188 IPC and the SHO, Amba Mata shall

remove the equipments, confiscate them with the help of the Urban Improvement Trust for which the expenditure shall be recovered from the petitioner. Petitioner preferred a revision petition against it on 18.06.1998, which was admitted on 19.06.1998 by the learned Sessions Judge, who transferred the same to the ADJ No. 2, Udaipur. The case was fixed on 20.06.1998 for final hearing and after hearing the final arguments on 22.06.1998, the revision was dismissed against which the petitioner preferred the Cr.Misc. Petition being No. 478/98 and obtained the impugned stay order on 23.06.1998, the disobedience of which is under challenge in this Contempt Petition. It is also alleged in the Contempt Petition that prior to passing of this order, petitioner sent a detailed telegram to the authorities on 21.06.1998. In the Contempt Petition, it is also alleged that the respondents blatantly belied the following order of this Court passed in Writ Petition No. 3184/95 on 10.11.1995, whereby the conditional order u/s 133 CrPC was challenged:

In case, the proceedings are ultimately held against the petitioner and there is an imminent direction of dispossession, the petitioner would be granted breathing time to move the other appropriate forums available to him under the law.

6. On getting the certified copy, the petitioner filed the present Misc. Petition, obtained the stay order at the residence of the Vacation Judge on 23.06.1998 at 4.30 PM and sent a fax to respondent No. 1 i.e. the Collector Udaipur at 17.51 Hrs and also to U.I.T. at 17.55 Hrs. It is also pleaded in this contempt petition that Shri Hanuman Prasad Sharma, advocate and a representative of the petitioner Shri Gani Mohd. also went at the residence of respondent No. 1, where Sumatilal Bohra, respondent No. 2, was present, who read it and thereafter refused to receive it officially and returned the same. Their oral request was also declined. The P.A. of the respondent No. 1 i.e. the Collector, Udaipur was available at the residence was delivered the copy at 6 PM and he made an entry to that effect in the register. Both the representatives of the petitioner went at the site at 6.15 PM but none of the non-petitioners present on the site obliged the petitioner by respecting the order of this Court and bluntly declined to receive it. By reading and showing the stay order to them, added fuel to the fire and from 7 PM onwards, the activities were additionally intensified inasmuch as thereafter the respondents No. 1 and 2 reached at the site at 8.30 PM, commissioned additional labourers and machineries and destroyed equipments. This process continued upto 10.30 PM. However, further dismantling activities continued till late night by acting under vengeance. The incident was also reported in the press, the copies of which have been attached with the file, which according to the petitioner, supports his version. The copies of the notices were sent by fax on 26.06.1998 for appearance of the respondent No. 1 but the fax machine was switched off and later on somehow or the other, they were received. It is also alleged in the petition that these dismantling activities were undertaken in defiance of this Court's order by respondents No. 1 and 2 and just to wreak vengeance on account of filing criminal case against them and they are

guilty of wilful and deliberate disobedience of the stay order of this Court and in order to uphold the majesty and dignity of the order of this Court, stern action be taken against them with maximum punishment. Alongwith this petition, an affidavit of the petitioner has been filed vis a vis Annex.A, a copy of the telegram addressed to six persons dt.21.06.1998, Annex.B telegram dt.22.06.1998, Annex.C fax copy dt.23.06.1998 and Annex.D photostat copies of the news items.

7. Reply to the Contempt Petition has been filed jointly by the respondents No. 1 and 2 in which they have denied for having committed any contempt and have also stated at the outset that advertently or inadvertently, if any contempt has been committed by them, they tender unconditional apology. While admitting various orders passed in the proceedings as referred-to above, it has been stated that the final order u/s 133 CrPC was passed by the Addl.District Magistrate (City) Udaipur on 15.06.1998 and 7 days? time was granted to the petitioner to remove the equipments installed at the amusement park by 22.06.1998. The revision was also dismissed against this order by the ADJ No. 2, Udaipur and in compliance of the order, the SHO, PS, Amba Mata went on the spot by taking the aid of the UIT and seized the property at 12.30 PM and started dismantling the equipments fixed at the amusement park. It is stated in the reply that some person on behalf of the petitioner came at the residence of respondent No. 1 i.e. the Collector and delivered the message to the Security Guard at 6.30 PM, who in turn, delivered the same to one Shri Chauhan, LDC. Respondent No. 1 i.e. the Collector, Udaipur, who had left for inspection at 4 PM on the same day and was not available at the time the message was delivered. Therefore, Shri Chauhan read the message and immediately contacted the Addl.Collector, respondent No. 2, who in turn, directed the respondent No. 4 Inder Singh Solanki, Tehsildar, Girwa that the status quo be maintained and work be stayed and the order of this Court be complied with. Respondent No. 4 Tehsildar reached at the spot at 7 PM and informed the SHO, Amba Mata to comply with the order of this Court. The dismantled material was loaded in the trucks provided by the UIT and dumped in the compound of Municipal Council, Udaipur for safety. Despite complying with the directions contained in the judicial orders 15.06.1998 and 22.06.1998, petitioner has made wild and baseless allegations to gain the sympathy of this Court to hide his fault. They have denied that the respondents No. 1 and 2 ever visited the site and no deliberate, malicious and contemptuous act was done by them. Respondent No. 2 has also filed affidavit in support of his reply. Respondents No. 3 Bharat Singh, Addl.S.P. and respondent No. 4 Inder Singh Solanki, Tehsildar have submitted the reply to the extent of the facts relating to them, narrated by respondents No. 1 and 2 and have also filed their affidavits.

8. Thereafter, a rejoinder was filed by the petitioner in which it is stated that the respondent No. 1 has not filed affidavit in support of the reply and reply of all the respondents is ex facie false and by and large, repeated the same facts as stated in the main Contempt Petition. In the last, it is also stated that the action of the respondents in removing the equipments on 23.06.1998 by itself tantamounts to

criminal contempt in the light of the earlier order made by this Court for giving breathing time. It is also stated that the petitioner has been literally ruined and in such circumstances, tendering of apology is of no consequence, unless the status quo is restored, as it existed on 22.06.1998. Petitioner has also filed the affidavit in support of it alongwith additional affidavits of one Hanuman Prasad Sharma advocate, Gani Mohd., Ram Prakash, Vyanktesh, Ashok Kumar, Suryakant, Bhimanand and Kailash in which they have stated that the dismantling activity was going on at 10.30 PM, where respondents No. 1 and 2 were present. In addition, the copies of newspaper items of 24.06.1998 have also been filed. Thereafter, additional affidavit was filed by Shri Pandey, Collector in which he has supported the averments taken in the reply and clearly stated that he was not immediately available. His staff informed the Addl. Collector, respondent No. 2 with regard to the receipt of the fax message, who in turn, directed respondent No. 4 to comply with the directions of this Court. Accordingly, whatever material was dismantled till the time of receipt of the order, was also carried to the Municipal Council. The allegations have been emphatically denied by him in his additional affidavit. The similar affidavit has been filed by the respondent No. 2 Sumati Lal Bohra. Petitioner also submitted 11 documents alongwith his affidavit again on 16.11.1998 relating to the proceedings under the Rajasthan Municipalities Act and also by the District Magistrate, Udaipur in Case No. 76/95 etc. including the order of this Court passed in Civil Writ No. 1747/96 and the copy of the FIR Annex.9 filed against respondents No. 1 and 2 on 04.06.1998, log book, Commissioner's report etc.

9. A counter to the rejoinder was also filed by respondent No. 1 with the support of 15 documents marked as Annex.R1/1 to R1/15 relating to the log book, applications, licence, letters etc. They have also filed the affidavits of V.K. Singhvi, Yeshwant Singh Choudhary, Rooplal and Dhan Singh Rathore. Petitioner also moved an application with the affidavit of one Narayan Singh that Rooplal is not the same, whose affidavit has been filed by the respondents also alongwith the counter affidavit of one Rooplal S/o Nathu Meena so as to make out a case of enquiry u/s 340 CrPC.

10. On the basis of the petition and the documents filed by the petitioner, it is contended by Mr.M.C. Bhoot learned Counsel for the petitioner that the respondents have taken false pleas that they were not having knowledge of the order of this Court dt.23.06.1998, which was delivered to them at 6 PM and the work continued upto 3 AM as per the log book. The respondents also tried to obtain false affidavit of Rooplal whereas the affidavit filed by the petitioner is more genuine. The seizure memo is contrary to Commissioner's report. According to him, there is no specific denial with regard to the affidavits filed by the petitioner in the reply filed by respondent No. 2. The action of the respondent was in utter disregard of the order of this Court as well as the earlier orders. They were having malice with the petitioner, as they also initiated proceedings u/s 285 of the Rajasthan Municipalities Act. According to him, this Contempt Petition should be treated as a Civil Contempt punishable u/s 12 of the Act and

the order passed on 13.01.2009 by the Division Bench of this Court in Criminal Contempt is behind the back of the petitioner. It has been further argued by Mr. M.C. Bhoot that the log book filed by respondent No. 1 in 2005 cannot be looked into at this later stage. It is a manipulated document. The malice of the respondents is clear from the letter Annex.8 in which the reference of the discussion with the Collector has been given. The action being malafide and deliberate, the respondents should be adequately punished. In support of his contentions, he has also placed reliance on the case of State of Raj. v. Smt. Sohani Devi reported in 1999(1) RLW 269, dealing with breach of injunction order under Order 39 Rule 1 & 2 read with Section 151 CPC.

11. In reply, Mr. M.S. Singhvi, learned Counsel for the respondents has submitted that it is a case of Criminal Contempt in the light of the orders passed by the Division Bench, referred-to above, wherein allegations were similar to that of the present Contempt Petition. This Contempt Petition should be dismissed by virtue of Section 20 of the Act. According to the learned Counsel, petitioner to gain his profit out of the business, has falsely implicated the respondents in various litigations and this Court has observed so while deciding the above two D.B. Cr. Contempt Petitions, which were filed on 06.07.1998 i.e. just after the present Contempt Petition, wherein the same relief was sought. According to the learned Counsel, even if it is treated to be a Civil Contempt, then also, no case is made out as the activities were carried out prior to receipt of the order of this Court in compliance to the judicial order. According to him, the allegation of malice is also devoid of force because the proceeding of Section 285 of the Municipalities Act was initiated in the year 1985, when the respondent No. 1 was not posted there. While drawing the attention of the Court towards various orders filed with the reply, it is submitted that in this amusement park, there was a complaint that one girl died on account of accident, which was located to disturb the public road and the Superintendent of Police, Udaipur also wrote for the same. According to him, the orders of the Municipal Board were not signed by the Commissioner. They were simply signed by the Administrator, who was not competent to grant the licence etc. and to issue various corrigendum. He has further submitted that the news items are no evidence and if at all, this Court looks into it, there is no mention that the respondent No. 1 was present at the site as alleged in the petition and the affidavits are self contradictory to the rejoinder. It was the duty of the SHO to dismantle as per the direction in judicial proceedings but he has not been made party to the petition. The seizure memo was prepared at 12.30 PM and thereafter, dismantling started, which continued upto 6.30 or 7 PM, till stay was received. According to him, even if this Court comes to the conclusion that there is any technical disobedience of the orders of this Court in an interval of half to one hour, the answering respondents have sought unconditional apology, which may be accepted. In support of his contentions, he has relied on various authorities to strengthen his argument that there cannot be a contempt, unless it is wilful or deliberate disobedience.

12. Mr. N.M. Lodha, appearing on behalf of respondent No. 2, has submitted that

the Addl. Collector Sumatilal Bohra was not party in the main Misc. Petition and no notice was served on him and, therefore, he cannot be held liable for contempt but despite that, when he came to know from the clerk of the Collector, he immediately directed the Tehsildar to comply with the orders of this Court. According to him, this Contempt Petition has been filed to blackmail the officers, who were discharging their duties in a lawful manner to protect public cause.

13. Having bestowed deep consideration on the rival contentions put forth by the learned Counsel for the parties, it will be first appropriate to examine as to whether the present Criminal Contempt Petition filed u/s 12 of the Act is a Civil Contempt or Criminal Contempt, which is still kept open by the order of this Court dt. 05.04.1999 and also the application of the petitioner dt.24.02.2009 for correction of the caption from "Criminal" to "Civil" vis-a-vis the nature of the present petition.

14. Section 2 of the Act deals with the definition. Clause (a) of Section 2 defines "contempt of Court" which means either civil contempt or criminal contempt. Clauses (b) & (c) of Section 2 deals with "civil contempt" and "criminal contempt" respectively, which are as under:

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

(a) xxx

(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 representation, 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.

15. From the bare perusal of these clauses, it appears that any disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court is civil contempt, whereas any 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 or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding or obstructs the administration of justice in any manner, is a criminal contempt. If these definition clauses of the

Act are read in the light of the averments made in the present contempt petition, particularly with relief, it appears to be a case of disobedience of this Court's order dt. 23.06.1998 passed by the learned vacation Judge at 4.30 PM at Jodhpur residence which was in the form of the directions to the respondents at Udaipur arrayed in the S.B. Criminal Misc. Petition No. 478/98, being Civil Contempt. But in addition to this disobedience of the order of this Court dt. 23.06.1998, if the petition is read as a whole, there are certain more allegations. The relevant paras of the contempt petition are reproduced below:

7. xxx Since what had transpired in the learned trial Court and under what circumstances, the case was transferred by the learned sessions Judge and what was going on outside the Court, the petitioner could sense it all very well and hesitate to describe in the petition lest it might divert the attention of this Hon'ble Court and may possibly provide some handle to the other camp to start harassing the petitioner by filing another contempt against him.

8. xxx Therefore, on 21.06.1998 itself, a detailed telegram running into 3 closely typed pages was sent to all such various authorities at whose corner the petitioner could apprehend the dismantling of the establishment, including all the non-petitioners. A copy of the telegram is annexed herewith and marked as Annex. A.

10. That despite all apprehensions, the petitioner as a law abiding citizen believed in the observations of this Hon'ble Court dt. 10.11.1995 and falsely continued to have faith in the system and applied for certified copy of the order which was received by him in the late hours on 22.06.1998.

16. If the above referred allegations are looked into in the light of the definition of "criminal contempt" as defined in Clause (c) of Section 2 of the Act, it not only relates to scandalizing or lowering the authority of the Court but also in the nature of prejudicing the due course of judicial proceeding and interference or obstruction in the administration of justice, because para 7 as referred-to above, is nothing but it casts aspersion on the authority of the learned Sessions Judge, who transferred the case to the learned Addl. Sessions Judge. Further, para 8 relates to Annex.A of the petition, which is a three page telegram sent on 21.06.98, copies of the same were also endorsed to Hon'ble the Chief Justice and Judge concerned, who passed the order in Writ No. 1747/97 as well as to the Civil Judge in Civil Suit No. 181/98. Though this telegram dt.21.06.98 was with regard to the order to be passed on 22.06.1998 in the revision petition against the order u/s 133 CrPC, wherein the reminder of the earlier order about stay passed on 24.05.1996 by this Court, Annex.4 was also given. In the last para of this telegram, it is mentioned that if the order passed on 15.06.1998, wherein the time of 7 days was given to the petitioner to remove the amusement equipments, is given effect-to, then it will be a contempt of the order of this Court as well as of the Civil Court and in the last, it is stated that if the revision petition is dismissed, they would file appeal before the competent Court and till then, no dismantling activities should be carried out. In the endorsement,

apprehension of the expected order of succeeding day has been brought to the notice of the Hon?ble Chief Justice as well as the Judge concerned, who passed the order in Writ No. 1747/97. The contents of para 7 and reference of telegram in para 8 are nothing but are in the nature of prejudicing and interfering in the due course of judicial proceeding pending in the Court of ADJ No. 2, which was decided on 22.06.1998 against the petitioner and also administration of justice, being clearly within the purview of Sub Clauses (ii) and (iii) of Clause (c) of Section 2 of the Act. Likewise, the allegations in para 10 that the petitioner falsely continued to have faith in the system, is also in the form of scandalizing the authority of this Court as defined in Sub Clause (i) of Clause (c) of Section 2 of the Act. Therefore, from both the angles, the allegations in the Contempt Petition are designed to bring this petition as the "Criminal Contempt" as well as the "Civil Contempt", but the caption has been given as "Criminal Contempt".

17. When the objection was raised by the learned Addl. Advocate General that if it is the "Criminal Contempt", it should be placed before the Division Bench and this Court on 05.04.1999 kept this matter open for arguments then the learned Counsel for the petitioner submitted that due to misconception, it has been stated as the "Criminal Contempt" probably because the Cr. Misc. Petition was filed on 06.07.1998 i.e. prior to the objection. After 05.04.1999, the petitioner never tried to move an application for correction of caption but all of a sudden, when this case came up for arguments, then on 24.02.2009, an application for correction of the caption from "Criminal" to "Civil" has been moved, whereas Criminal Contempt Petitions No. 39/96 and 26/98 were dismissed by the Division Bench of this Court on 13.01.2009, wherein it was held that no urgency was shown nor a case was made out for initiation of Criminal Contempt against the respondents and, therefore, the matter was allowed to die down by keeping the same for more than a decade and at no point of time, the Court took cognizance for Criminal Contempt in terms of Section 15 of the Act. It was further observed in this order that neither these proceedings were initiated suo moto by the Court nor the petitioner filed these applications with consent in writing of the Advocate General as required u/s 15 of the Act. In this order, it has also been observed that it would not be discernible from the materials on record that it was an act of deliberation or with any ill motive the respondents had committed any breach of law or had violated the orders passed by the competent Courts and keeping in view the fact that the civil for damages was also filed, the petitions were dismissed with the finding that the petitioners had not made out any case of criminal contempt against the respondents.

18. I have gone through the contents of D.B. Cr. Contempt Petition No. 26/98, which was dismissed on 13.01.2009 by the Division Bench of this Court. From a bare reading of paras 42 and 43 of the said petition, it appears that reference of telegram, Annex.A as well as of the order passed by the Addl. Sessions Judge on 22.06.1998 and the stay order granted by this Court on 23.06.1998 has been given. It is also stated that a contempt petition has been filed in this Court for violation of the order dt.23.06.1998. In these two paras, there is no reference

that whether the present Contempt Petition, which is referred in para 43, is a Civil Contempt or a Criminal Contempt. It will not be worthwhile to mention as to why there was no reference of Civil or Criminal Contempt in the D.B.Cr.Contempt Petition No. 26/98 but suffice it to say that these two paras i.e. paras No. 42 and 43 had been adjudicated upon by the Division Bench of this Court in the said D.B.Criminal Contempt Petition on 13.01.2009, as discussed above and now this Court on the same facts cannot reopen it for adjudication, as the limitation for taking cognizance in the Criminal Contempt Petition is one year by virtue of Section 20 of the Act.

19. Normally, under sub-Rule (1) of Rule 324 of the Rules of High Court of Judicature for Rajasthan, 1952, when an application for taking proceedings in contempt of Court is presented before a Judge, the same is placed before the Hon'ble Chief Justice for orders but this sub-rule (1) is not applicable by virtue of sub-rule (2) which says that where the contempt consists in disobedience of a judicial order of the High Court, the Bench concerned may pass appropriate orders and the same need not be laid before the Hon'ble Chief Justice. Though the present matter is also covered in part under sub rule (2) of Rule 324 of the said Rules relating to disobedience of the order of this Court dt.23.06.1998 but it has been titled as S.B.Criminal Contempt, probably because of the paras 7,8 and 10 of this petition. In such a situation, Rule 324(2) of the said Rules is not attracted and the case has to be taken up u/s 15 of the Act for which the reference has been given by the Division Bench of this Court in the order dt.13.01.2009 passed in the above referred D.B.Cr.Contempt Petition. Provisions of the Rule 324 of the Rules cannot override Section 15 of the Act. Since no cognizance has been taken in this Criminal Contempt Petition for the last about 11 years and the issue, as referred above, involved in the present Contempt Petition, has been adjudicated upon, this Court cannot resort to sub-rule (2) of Rule 324 of the said Rules for disobedience of the order of this Court dt.23.06.1998, especially when the present Contempt Petition is coupled with the numerous allegations in the nature of Criminal Contempt, as discussed above by taking support from the latin maxim "Nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa", which means no one must be vexed twice, if it appears to the Court that it is for one and the same cause.

20. Even for the sake of argument, which now remains academic, if this Court goes into disobedience of the order, being of civil nature for which lengthy arguments have been advanced, suffice it to say that even the Civil Contempt is also not made out for the reasons stated hereinbelow.

21. Firstly, the impugned order dt.23.06.1998 was passed in S.B. Cr. Misc. Petition No. 478/98 in which there were only two respondents viz; State of Rajasthan through the Collector, Udaipur and Commissioner, Municipal Council, Udaipur, whereas in the present Contempt Petition, in addition to the Collector Shri Pandey, the Addl. Collector viz; Sumatilal Bohra, the Addl. S.P. viz; Bharat Singh and the Tehsildar Inder Singh Solanki have been made as party

respondents. As a broad proposition in the common course of nature as well as of law, contempt proceedings are initiated against those to whom the notice of Court has been given for compliance. When the notices were not given to respondents No. 2 to 4, impleading them as party respondents and as contemnors, is per se illegal. The Commissioner, Municipal Council, Udaipur, who was party respondent in the Misc. Petition No. 478/98 in which the impugned order has been passed on 23.06.1998, has not been even made party to the Contempt petition and the State of Rajasthan has been made party through the Collector, who is respondent No. 1 in the Contempt Petition. For the sake of argument, if it is believed that the respondent No. 2 Shri Bohra being Addl. Collector was also responsible in the absence of the Collector, then it is to be seen as to how far, his responsibility persists vis a vis the Addl. S.P. and the Tehsildar.

22. Learned Counsel for the petitioner has tried to establish the case of Civil Contempt on the basis of service of notice of Contempt Petition to the respondents by filing various affidavits, news items and other documents including the log book of the driver, who took the material in the mid night of 23.06.1998 till next day morning at 3 AM on 24.06.1998. It is an admitted position that the impugned order was passed on 23.06.1998 by the Vacation Judge of this Court at his residence at 4.30 PM and the same was communicated by fax to the respondent No. 1 i.e. the Collector, Udaipur as per the allegation in the petition at 17.51 Hrs i.e. at 5.51 PM and to the UIT at 17.55 Hrs i.e. at 5.55 PM and also delivered to the employee of the Collector at his residence, where respondent No. 2 i.e. Addl. Collector was present and he refused to receive the same. In this regard, if the reply is looked into, it is clearly stated that at 4 PM, the Collector left Udaipur and as per the log book filed by him long back in 2005 which is Annex.R.1/1, he visited Tehsil Kherwara at 4 PM and returned at 9 PM. This log book is signed by the Collector himself and is an official record, the reference of which has been given in the affidavit also filed by respondent No. 1 in his counter to the rejoinder in which he has also stated that the allegations are absolutely false. The log book filed by the petitioner on 23.06.1998 is also not supported by affidavit of any driver or authorized user. In this log book, the entry about the time of the most of the dates is blank and five trips of Sukhadia Circle to Municipality have been shown from 2 PM to 3 AM, the date has been erased and the driver is Madu but there is no affidavit of this driver. Even the Column of vehicle No. is also blank. Likewise in another log book of 23.06.1998, time has been erased and the signatory of the log book is some one else, who has not filed his affidavit. So far as the other affidavits are concerned, they have not been filed with the Contempt Petition but are of 09.07.1998. First affidavit is of Hanuman Prasad Sharma in which he stated that on 23.06.1998 at 6 PM, he went at the residence of the Collector, where Addl. Collector Shri Bohra met and thereafter a copy was given to him as well as to the PA to Collector, who made entry in the register and gave it to the Collector in his presence. If this affidavit is looked into in the light of para 15 of the Contempt Petition, it is nowhere

stated that PA delivered the copy to the Collector. The affidavit thus falsifies the version about the presence of the Collector in the light of the petition itself and there is every reason to believe that the Collector was not at the Headquarter on 23.06.1998 from 4 PM to 9 PM and as per his reply on getting the information, he ordered to stop the dismantling work. Rest of the affidavits are also of no consequence filed by the petitioner in the light of the above discussion because Gani Mohd., Vyanktesh, Suryakant and Kailash are the employees of the petitioner Firm and interested parties. Likewise, Ramprakash, Ashok Kumar and Bhimanand are the ?thelewalas? (hawkers), whose reference has neither been given in the Contempt Petition with regard to their presence nor they have produced any licence of hawking.

23. So far as the news items are concerned, firstly they are not admissible in the evidence as the affidavits of concerned correspondent have not been filed and secondly in these news items, it is nowhere stated that the Collector was present at his residence or at the site. Learned Counsel has much stressed on the affidavit of one Rooplal, another hawker and also moved an application for initiating proceedings u/s 340 CrPC but it is not specifically stated as to who presented this affidavit and for the sake of argument, if it is believed that this Rooplal S/o Nathu is not of Karakali, Salumbar, then there are two affidavits of this person from both sides. This Court cannot suo moto proceed u/s 340 CrPC on the application of the party, especially when there is a counter affidavit of one Laxman Singh, who says that Parthia alias Rooplal is working at his Stall. Further, it is doubtful as to how these hawkers can prove the identity of administrative or police authorities.

24. When the Collector was not present on the spot and rest of the respondents were not party to the Misc. Petition, wherein impugned order dt.23.06.1998 has been passed and if it is assumed for the moment that the order reached at the residence of the Collector by 6 PM, which the Collector says to be 7 PM, even then, it cannot be termed as wilful disobedience of the order of this Court because the petitioner was asked to remove the equipments from the Sukhadia Circle by order dt.15.06.1998 of ADM(City) and latest by 22.06.1998. He filed revision against that, which was dismissed on 22.06.1998 and on 23.06.1998, there was no stay order upto 6 PM before the respondents and they carried out the orders of the Court upto 7 PM. It is revealed from the affidavit of Sh.V.K.Singhvi, Executive Engineer, UIT and Yashwant Singh Choudhary in which it is clearly stated that the work was stopped on getting the order of this Court at the behest of directions of SHO, PS, Amba Mata and Tehsildar Shri Inder Singh Solanki. Further, from Annex.15, it is also revealed that the amusement instruments were seized on 23.06.1998 at 12.30 PM itself in the presence of Tehsildar Shri Inder Singh Solanki and Dhan Singh in compliance of the orders of the Court of ADM, Udaipur dt.15.06.1998 and of ADJ dt. 22.06.1998 and the work was stopped at 7 PM. This is an official document signed by the SHO, PS, Amba Mata alongwith the Tehsildar and one Yashwant Singh, who has also filed his affidavit. When amusement equipments were seized at 12.30 PM, the details

of which have been given in 6 pages being a document of the police station, there is no allegation that this document has been forged and, therefore, there is every reason to believe that the work was stopped at 7 PM and there was absolutely no defiance of the order of this Court dt.23.06.1998. Rather, the respondents acted in a bonafide manner because there is no substantial allegation against the respondents that they were having malice against the petitioner, except one FIR lodged against the respondents No. 1 and 2 on 04.06.1998. The proceedings u/s 285 of the Municipalities Act about which the argument has been made, were initiated by Dr.Ashok Singhvi in May, 1996, when the present respondent No. 1 Shri Pandey was not posted at Udaipur. Annex.R.1/2 to R.1/14, which are of the year 1993, also speaks that how the petitioner has tried to obtain the licence by getting it extended through various corrigendum but without going into the legality and propriety of these documents, suffice it to say that Annex.R.1/15 dt.22.07.93 is a letter written by Superintendent of Police, Udaipur to Administrator, Municipal Board, Udaipur itself speaks about the ingredients of nuisance defined u/s 133 CrPC in which it is stated that the amusement park installed at Sukhadia Circle is located at the National Highway No. 8, where large number of people assemble, thereby causing hurdle to the traffic and also danger to the life of ladies and small children and on being extended, there may be public agitation and in the last, it was requested to shift it at some other place. It is also argued that on account of this hindrance, there was one complaint about death of a child. Thus, the initiation of proceeding u/s 133 CrPC and u/s 285 of the Municipalities Act were undertaken against the petitioner prior to the posting of respondent No. 1 Shri Pandey as Collector, Udaipur, which clearly counters the allegation of malice. Accordingly, the petitioner has not been able to make out a case of Civil Contempt as well.

25. The contention of the learned Counsel for the petitioner that he was not given adequate opportunity to avail appropriate remedy after passing of the order, is also devoid of force, because the order was passed by the ADM for removal of the installations of amusement park on 15.06.1998 and he was given 7 days? time. He filed revision against that order and that too, was dismissed on stipulated seventh day i.e. on 22.06.1998 and on the next day, the proceedings were initiated in the morning and by 12.30 PM, amusement equipments were seized and the equipments lying on the road were shifted for the sake of argument little later, which cannot be termed as disobedience of the order of this Court. Seven days? time cannot be termed as an unreasonable time, but is surely a breathing time as observed in the order of this Court on 10.11.1995 in Writ Petition No. 3184/95. If the revision was dismissed on 22.06.1998, even then the petitioner was not prohibited from making an application for extension of time for a day or two to seek remedy by way of extra ordinary jurisdiction u/s 482 CrPC, but he preferred to send telegram, Annex. A on day earlier casting aspersion on the outcome of judicial order. This Court feels not to make out any inference on such conduct but to adjudicate the issue in hand, being paramount

function of a Judge.

26. Lastly, the respondents have tendered unconditional apology, which is not even required in the light of the facts of the present case, as they have acted with no malice and performed their duty and in the interest of the public at large. Public Cause is paramount in a democratic set up than permitting the profit gaining business like amusement park on a public road and that too, on national highway.

27. The power of contempt is to be exercised with great caution and reluctance. The judges' duty is to protect public justice, as they have no concern in a particular case in which the order has been passed because the punishment is not meted out as a balm to hurt mind. It has been repeatedly held by the Courts long ago that a welfare State is protected by its independent judiciary. If, on technicalities, the Court exercises its power of contempt, it may adversely affect its dignity, decency and decorum. While exercising such power, the Court should have regard to both considerations viz; the public good on the one hand and the dignity of the Court on the other. In the light of the facts and circumstances of the case, as discussed above, the present litigation which is going on for more than a decade, is the outcome of technicalities of a party on the one hand for getting individual benefit and the maintenance of public order on the other. If in maintaining the public order, the orders are strictly implemented and if the executive order hurts the individual gainer, it cannot be termed as an act of Civil or Criminal Contempt. The manner in which the petitioner has tried to approach this Court by invoking extra ordinary jurisdiction of this Court u/s 482 CrPC, when he failed to get the relief in the revision, shows that he was more conscious about contempt, rather than to get redressal of his grievance in a legitimate manner.

28. Consequently, the present Contempt Petition is neither "Civil" nor "Criminal" and the same is dismissed. The notices issued to the respondents No. 1 to 4 viz; (1) Shrimat Pandey, Collector, Udaipur; (2) Sumati Lal Bohra, Addl. Collector (City), Udaipur; (3) Bharat Singh, Addl. S.P. Udaipur; and (4) Inder Singh Solanki, Tehsildar, Girva, Distt. Udaipur, stand discharged.