
(2006) 11 BOM CK 0065

In the Bombay High Court

Case No : Appeal No. 334 of 2005 in Notice of Motion No. 3185 of 2004 in Suit No. 3121 of 2004

Gopal L. Raheja and Another

APPELLANT

Vs

Vijay B. Raheja and Others

RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 15

Citation : (2007) 1 ALLMR 138 : (2006) 6 BomCR 845

Hon'ble Judges : S.J. Vazifdar, J;S. Radhakrishnan, J

Bench : Division Bench

Advocate : Aspi Chinoy, Janak Dwarkadas, P.K.Samdhani, P.K.Shroff, Subodh Joshi, Radhika Pinzara and Prachi Khandge, instructed by Parimal K. Shroff and Co, for the Appellant; N.H. Seervai instructed by J. Sagar Associates for Respondent Nos. 1 to 4, I.M. Chagla Levy Pareira, S.V. Doijode and Minakshi Iyer, instructed by Doijode Associates for Respondent Nos. 5 to 7, D.J. Khambata instructed by Raval Shah and Co. for Respondent No. 8 and M.S. Doctor, instructed by S.R. Rawell and Co., for the Respondent

Judgement

S. Radhakrishnan, J.—We have been hearing the above Appeal. On 20th April, 2006, the learned Counsel appearing on behalf of Respondent Nos.1 to 4 sought to tender an affidavit of one Mrs. Tara Subramanyam, Senior Manager of Housing Development and Finance Corporation Ltd. (HDFC). When the same was sought to be tendered, it was found that it was a notarised affidavit. As such, the same was returned back to the learned Counsel so as to enable the said Mrs. Tara Subramanyam to file an affidavit duly sworn before this Court, as Mrs. Tara Subramanyam is residing in Bombay.

2. It is strongly contended by the learned Counsel for the Respondents that Mrs.Tara Subramanyam came to the office of this Court to affirm the said affidavit on 21st April, 2006. Appellant 1. Mr. Gopal Raheja had sought to obstruct the said lady Mrs. Tara Subramanyam from affirming her affidavit on

21st April, 2006 in the office of this Court. Therefore, the learned Counsel for Respondent Nos.1 to 4 contends that the above conduct and action of Appellant No.1 constitutes interference and obstruction in the Administration of Justice. In view thereof, Respondent Nos.1 to 4 have prayed to this Court for initiating "Suo Motu" proceeding for criminal contempt under the provisions of Contempt of Courts Act and under Article 215 of the Constitution of India. In that behalf, Respondent Nos.1, 2 and 3 and an Advocate working with J. Sagar Associates, Advocates for Respondent Nos.1 to 4 as well as the said lady Mrs. Tara Subramanyam, Senior Manager, HDFC have filed their respective affidavits. Appellant No. 1 also has filed his affidavit-in-reply in that behalf.

3. The learned Counsel appearing on behalf of Respondent Nos.1 to 4 contended that the above conduct of Appellant No. 1 in the office premises of the High Court amounted to serious interference and obstruction in the Administration of Justice as such, this Court ought to "Suo Motu" initiate action for Criminal Contempt against Appellant No. 1.

4. Mr. Aspi Chinoy, the learned Senior Counsel appearing on behalf of the Appellants pointed out to us the procedure with regard to initiation of such an action for Criminal Contempt "Suo Motu" by the Court. Mr. Chinoy, the learned Senior Counsel, initially relied on the judgment of the Hon'ble Supreme Court in the case of P.N. Dua Vs. P. Shiv Shanker and Others, , wherein this aspect has been dealt with in paragraph-54, which reads as under:

54. A Conjoint perusal of the Act and rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the Court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing. There is no difficulty where the Court or the Attorney General choose to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the Court and request the Court to take action : (vide C.K. Daphtary v. O.P.Gupta and Sarkar v. Misra); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move the Court. In the present case, the Petitioner alleges that he has failed in the latter two courses - this will be considered a little later - and has moved this "petition" praying that this Court should take suo motu action. The "petition" at this stage, constitutes nothing more than a mode of laying the relevant information before the Court for such action as the Court may deem fit and no proceedings can commence until and unless the Court considers the information before it and decides to initiate proceedings. Rules 3 and 4 of the Supreme Court (Contempt of Court) Rules also envisages a petition only where the Attorney General or any other person, with his written consent, moves the Court. Rule 5 is clear that only a petition moved under Rule 3(b) and (c) is to be posted before the Court for preliminary hearing. The form of a criminal miscellaneous petition styling the informant as the

petitioner and certain other persons as respondents is inappropriate for merely lodging the relevant information before the Court under Rule 3(a). It would seem that the proper title of such a proceeding should be "In re... (the alleged contemnor)" (see : Kar V. Chief Justice though that decision related to an appeal from an order of conviction for contempt by the High Court). The form in which this request has to be sought and considered in such cases has also been touched upon by the Delhi High Court in Anil Kumar Gupta V.K. Subba Rao. This case, at the outset, pointed out that the information had been erroneously numbered by the office of the Court as Criminal Original No. 51 of 1978 and concluded with the following observations:

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. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it."

I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and maybe adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts. However, a petition having been filed and similar petitions having perhaps been entertained earlier in several courts, I do not suggest that this petition should be dismissed on this ground.

5. Thereafter, Mr. Chinoy, the learned Senior Counsel referred to a recent judgment of the Hon"ble Supreme Court, in Bal Thackrey Vs. Harish Pimpalkhute and Others, . It may be noted here that on this very issue i.e. scope of initiating "Suo Motu" action for Criminal Contempt was the main issue before the said Three Judges Bench. It appears that the aforesaid matter i.e. Bal Thackrey v. Harish Pimpalkhute and Ors., was placed earlier before a Two Judges Bench. The Two Judges Bench, quoted the directions in the case of the Delhi High Court in the case of Anil Kumar Gupta Vs. K. Suba Rao and Another, , as under:

The office 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.

6. The two Judges Bench, in the above expressed the view that the aforesaid direction of Delhi High Court approved by the Supreme Court in P.N. Duda case are of far-reaching consequence. Hence, the Two Judges Bench had observed that the power u/s 15 of the Contempt of Courts Act to punish Contemnors for contempt rests with the Court and in P.N. Duda case, the said power seems to have been denuded and to rest with the Chief Justice on the administrative side. In view of the aforesaid doubts regarding the correctness, the above matter was placed before the Three Judges Bench, which considered the said issue in depth. The aforesaid judgment in Bal Thackrey (Supra) has elucidated the entire scope exhaustively, as under:

11. The nature and power of the Court in contempt jurisdiction is a relevant factor for determining the correctness of observations made in Duda case. 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 L.P. Misra (Dr.) v. State of U.P. that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution 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 case 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 case.

12. For determination of the issues involved, it would also be useful to note the observations made in the case of S.K. Sarkar, Member, Board of Revenue, U.P. v. Vinay Chandra Misra to the following effect : (SCC p.443, para 19)

...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 case it was held that :(SCC pp.200-01, para 54)

54. A Conjoint perusal of the Act and rules makes it clear that, so far as this

Court is concerned, action for contempt may be taken by the Court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing. There is no difficulty where the Court or the Attorney General choose to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the Court and request the Court to take action : (vide *C.K. Daphtary v. O.P.Gupta and Sarkar v. Misra*); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move the Court.

14. The direction issued and procedure laid down in *Duda* 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 *J.R. Parashar v. Prasant Bhusan*. In that case noticing Rule 3 of the Rules to Regulate Proceedings for the 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 the 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: (SCC p.745).

28. 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 petitions. In J.R.Parashar case it was observed that the underlying rationale of Clauses (a), (b) and (c) of Section 15(1) appears to be that when the Court is not itself directly aware of the contumacious conduct, and the actions are alleged to have taken place outside its precincts it is necessary to have the allegations screened by the prescribed authorities so that the Court is not troubled with frivolous matters. To similar effect is the decision in S.K. Sar case.

17. In the light of the aforesaid, the procedure laid and directions issued in Duda case are required to be appreciated also keeping in view the additional factor of the Chief Justice being the master of the roster. In State of Rajasthan v. Prakash Chand 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 which Judges shall constitute a Division Bench and what work those Benches shall do.

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

26. Before parting, it is necessary to direct framing of necessary rule or practice direction by the High Courts in terms of Duda case. Accordingly, we direct the Registrar General to send a copy of this judgment to the Registrars General of the High Courts so that wherever rule and/or practice direction on the lines suggested in Duda case has not been framed, the High Courts may now frame the same at their earliest convenience.

7. In the light of the above clear legal position, we direct the Prothonotary and Senior Master, High Court, Bombay to place the aforesaid affidavits of Respondent Nos.1 to 3, affidavits of Advocate Mr.Shah as well as Mrs.Tara Subramanyam and the affidavit in reply of Appellant No. 1 before the Hon''ble The Chief Justice for consideration.