

(2018) 07 CAL CK 0138

In the Calcutta High Court

Case No : C.P.A.N.No.1685 of 2016, W.P.No.20225(W) of 2013

Murshid Alam

APPELLANT

Vs

Sudipta Chatterjee & Anr.

RESPONDENT

Date of Decision : 23-07-2018

Acts Referred:

Constitution of India, 1950 — Article 215

Citation : (2018) 07 CAL CK 0138

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Mohinoor Rahaman

Judgement

This is an application seeking rule in contempt under Article 215 of the Constitution of India. This is some surplusage in the cause title referring to rule

2(e) of Appendix 3 of the Appellate Side Rules. However, the said rules were made only under the provisions of Contempt of Courts Act, 1971 which

Act clearly shows that nothing contained therein shall derogate from the Constitutional powers of this court as superior court of record. Besides, under

Article 215 the existing powers and procedures of the Letters Patent of the High Court like ours shall continue unless they are duly altered by a

competent legislature by appropriate legislation. The Contempt of Courts Act does not amend Article 215 nor can it. Only the quantum of punishment

has been fixed by the ordinary statute.

In order to assist the court Mr Bikash Ranjan Bhattacharjee, learned senior advocate, was requested to act as amicus curiae. He enlightens this court

about the change in the practice innovated by this court under the above inherent powers. While statute merely provides for taking cognizance by

issuing a Rule which Appendix 3 of the Appellate Side rules continues to give effect to, there is nothing in either the Act 1971 or the rules made by our

High Court which mandates issuance of a notice before issuing a rule nisi.

He further submits that this procedure was evolved by this court under the inherent powers independent of the Act of 1971 but allowed the

respondents to come to their senses without the court having to draw the sword of contempt with its drastic consequences and give the alleged

contemnors a chance to comply with the order to show that their violation was not willful. Consequentially where a rule of procedure has been

evolved by the court and not expressly abrogated from by any statute made by the competent legislature, such procedure can be relaxed by the court

which evolved it in the ends of justice.

He further submits that alternatively the act of issuing a notice to the contemnors and asking them to file affidavits which is in effect as a rule nisi it

should be construed to be taking cognizance. Therefore, when notice has been issued to the alleged contemnors and they have been asked to file

affidavit-inopposition, this shows that the intention of the court has been to take cognizance of such acts after the prima facie satisfaction that willful

disobedience and/or deliberate violation has occurred. The court has asked the alleged contemnors to show cause by way of affidavit, and if no cause

is shown within the date fixed, the court should be at liberty to pass appropriate orders for contempt of court relating to the violation alleged.

As long as the application seeking rule in contempt has been made within one year from the date of the violation complained of and as in the present

case where the application was made on November 22, 2016 in relation to a violation which occurred on the expiry of twenty-one days from May 30,

2016 as appears from para.3 of the contempt application, the petitioner could not be said to be at fault for the delay of the court in issuing the notice

whose provenance I have discussed as above. Such notice was directed to be issued on April 6, 2017, still within one year from the date of the

violation. Therefore, the application is within the period of limitation referred to in *Pallav Seth v. Custodian* reported in AIR 2001 SC 2763.

Accordingly, I accept the submission of Mr Bhattacharya and hold that the present application for contempt is not only maintainable but also by issuing

a notice and directing filing of affidavits by the alleged contemnors cognizance

was taken within one year from the date of violation complained of by the applicant. Since the contempt application has been held to be maintainable but despite directions none has appeared for the alleged contemnors nor any affidavit has been filed, the acts of contempt now stand admitted.

Hence the contemnors shall be produced before this court in police custody, but without handcuffs, on July 30, 2018 by the appropriate police

authorities being in superior officer of the police, not below the rank of Deputy Commissioner, Bidhannagar Police Commissionerate in case of the

first contemner and the Deputy Superintendent of Police, Murshidabad in case of the second contemner at 10.30 a.m. and they shall attend the court

unless granted leave to depart. The Deputy Sheriff shall also be present at 10.30 a.m. on that date. For the present the contemnors shall be produced

in custody but without handcuffs. They shall attend for the purpose of making any submission they wish against the sentence which I may pass after

due consideration.

Let a copy of this order be served on the Government Pleader and each of the alleged contemnors through the officer in charge of the local police

station as also to the Commissioner of Police, Bidhannagar Police Commissionerate and the Superintendent of Police, Murshadabad such that they

cause compliance with this order. This shall be served at the cost of the petitioner. The police officers and the contemnors are to act on the plain copy

order issued from this court without insisting certified copy of this order. Copy of this order duly countersigned by the principal officer of this court be

given to the parties on usual undertaking.