

(2003) 03 BOM CK 0013

In the Bombay High Court

Case No : Criminal Contempt Petition No. 10 of 1996

Ramrao Girhe and Others

APPELLANT

Vs

Dr. Shrikant Jichakar, M.L.C. and Others

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Constitution of India, 1950 — Article 129, 141, 215
Contempt of Courts Act, 1971 — Section 12, 15, 20
Criminal Procedure Code, 1973 (CrPC) — Section 195, 340

Citation : (2004) 106 BOMLR 155

Hon'ble Judges : R.M.S. Khandeparkar, J;P.S. Brahme, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard learned Advocate for the petitioners and learned Advocates for the respondent Nos. 4, 5, 6 and 7. None present for respondent Nos. 8 to 19 though served.

2. The grievance of the petitioner relates to non-compliance of the order of injunction passed by Trial Court on 3.2.1987, and interference in the administration of justice by producing fabricated orders of the Civil Court as well as that of the Apex Court before producing that before D.I.L.R. while in the course of execution of the decree of the Civil Court and thereby commission of acts amounting to Contempt of Court warranting punishment under the provisions of the Contempt of Courts Act as well as under Article 215 of the Constitution of India.

3. Few facts relevant for the decision in the matter are that the petitioner No. 1 filed a suit for partition against his two brothers namely Sadashiv and Gulabrao and the Civil Judge, Senior Division, Nagpur passed preliminary decree for partition on 30.4.1969. The appeal preferred by the respondent No. 2 alongwith his wife was dismissed by this Court and the Apex Court rejected the SLP against the same. Thereupon the respondent No. 3 filed a suit for declaration that the

preliminary decree obtained by the petitioner being nullity and having been obtained by practising fraud upon her. Meanwhile the petitioner took steps to obtain final decree in the said suit for partition. The respondent No. 2 filed an application for stay of execution proceedings for the preliminary decree. The same was filed on 19.8.1982 but was rejected by the Trial Court on 12.11.1982. The Civil Revision Application preferred against the same on 1st December, 1982, wherein the order of stay of proceedings in relation to final decree was obtained, was withdrawn on 26.6.1985. On 11.1.1982 petitioner No. 2 filed application for appointment of Commissioner in the final decree proceedings which was allowed by the Trial Court on 15.10.1985 and the Commissioner was appointed to effect the partition of the suit property in accordance with the decree for partition. The same was sought to be challenged by way of revision application by the respondent No. 2 and stay of further proceedings was obtained on 4.11.1985. However, the said Civil Revision Application was withdrawn on 24.2.1986. Thereupon, the respondent No. 3 and her husband executed sale deeds in favour of various persons, some of them being parties to the proceedings from the respondent No. 7 onwards. The petitioner No. 1 thereupon filed an application for injunction to restrain the respondents from disposing of the property, and same was filed on 18th December, 1986, wherein ad-interim order was passed in the nature of direction of maintain status quo. The petitioner also filed an application for direction to D.I.L.R. to proceed with the implementation of the partition decree. The application for injunction was disposed of by passing a favourable order to the petitioner by the Trial Court on 3.2.1987 thereby restraining respondents from disposing or alienating the suit property. On 24.11.1987 in the course of measurements being taken for effecting the partition, the respondent No. 6 on behalf of the respondent Nos. 2 and 3 produced an application dated 23.11.1987 signed by the original respondent No. 2 alongwith a document purported to be an order dated 13.2.1987 issued by the Civil Judge, Senior Division directing stay of the execution of the partition decree and accordingly execution of the decree was stayed. Thereafter, on 5.12.1987 petitioner No. 1 filed an application for direction to D.I.L.R. to proceed with the execution of partition decree and after hearing the same the Civil Judge, Senior Division by his order dated 6.2.1988 held that there was no order passed by the said Court on 13.2.1987 as was sought to be represented by respondent Nos. 2, 3 and 6 in the proceedings on 24.11.1987 before the D.I.L.R. and therefore, directed the D.I.L.R. to proceed with the execution of the decree. On 19.4.1988 respondent No. 2 filed an application alleging that the Court had in fact passed an order dated 13.2.1987 and the original records in that regard have been disappeared from the Court file and therefore, enquiry should be held. The petitioner No. 1 also filed an application for directing enquiry stating that alleged order dated 13.12.1987 was a fabricated one. It is further case of the petitioner that pursuant to the letter dated 24.6.1991 received from the Naib Tahsildar it was learnt that respondent No. 2 had produced some copies of the order dated 27.7.1990 allegedly passed by the Apex Court in SLP No. 8782/1990 staying the execution proceedings.

4. The contention of the petitioner is that the order dated 13.2.1987 stated to have been passed by the Civil Court as well as the order dated 27.2.1990 stated to have been passed by the Apex Court are both fabricated orders. The petitioners first time came to know about the fact that the order of the Civil Court was a fabricated order pursuant to the order dated 6.2.1988 passed by the Civil Court that the alleged order dated 13.2.1987 was never passed by the Civil Court. As regards the order of the Apex Court it is the contention that the petitioners came to know about the same to be a fabricated one pursuant to the enquiry made by them and it was revealed in the enquiry that in fact the SLP bearing No. 8782/1990 relates to the matter initiated at the instance of Canara Bank Panalud Branch v. Shrivastava Corporation and Anr. and not in relation to any matter alleged to have been instituted by Tulsabai original respondent No. 2. Besides that the SLP which was filed by respondent Tulsabai against the order in Civil Revision Application No. 512/1988 was already withdrawn on 28.2.1989. Whereas the order of the Apex Court which was said to be produced before the Tahsildar was dated 27.7.1990.

5. While contesting the complaint of the petitioner in relation to the commission of offence of the Contempt of Court, respondents have sought to raise the issue of bar of limitation, and therefore, before proceeding to consider the matter on merits, It is necessary to deal with the issue of bar of limitation.

6. The records apparently disclose the fact that as long back as on 6.2.1988 it was declared by the Civil Court that the order dated 13.2.1987 which was sought to be produced by the respondent Nos. 2, 3 and 6 on 24.11.1987 before the D.I.L.R. was never passed by the said Civil Court. Apparently, therefore, it was revealed to the petitioners on 6.2.1988 itself that the order dated 13.2.1987 was not a genuine order passed by the Court, but was produced by respondent Nos. 2, 3 and 6 only to mislead the D.I.L.R. and to obstruct the execution proceedings which were being carried out pursuant to the decree passed by the Trial Court. The complaint for initiating contempt proceedings was admittedly filed on 16.10.1989. Section 20 of the Contempt of Courts Act, 1971 prescribes period of one year as limitation for initiating the contempt proceedings from the date of cause of action. Considering the fact that on 6.2.1988 it was revealed to the petitioner about the alleged act of contempt on the part of the respondent, the petition which has been filed beyond period of one year therefrom, cannot be said to be within period of limitation prescribed u/s 20 of the Contempt of Courts Act. However, various contentions are sought to be raised in that regard by the learned advocate for the petitioners which are necessary to be dealt with before arriving at any conclusion on the point of bar of limitation.

7. Referring to the order dated 23.10.1989 passed by this Court in this petitions it was sought to be contended that the said order disclose issuance of Contempt Notice and suo motu exercise of powers under Article 215 of the Constitution of India and that though the limitation period is prescribed for exercise of powers u/s 12 or 15 of the Contempt of Courts Act, the restrictions imposed in relation to

exercise of powers under the Contempt of Courts Act cannot be read in Article 215 of the Constitution so as to restrict the constitutional powers of this Court to punish the person who is found to be guilty of commission of offence of Contempt of Court and that therefore, question of limitation does not arise at all in the case in hand. In that connection reliance is sought to be placed on the decision of learned Single Judge of this Court in *Pathan Nawabkhan Vs. Dr. Liyakatalikhan and Others*, and of the Apex Court in *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*, . Referring to the Appellate Side Rules framed under Chapter XXXIV in exercise of powers under Article 215 and the provisions of the Contempt of Courts Act, 1971. and hereinafter called as "the said rules" it was sought to be contended that the procedure in the matter of any contempt proceedings does not contemplate two stages of hearing-one at the admission and the second at final hearing, as is otherwise permissible in case of writ petitions or appeals. Considering the same and the provisions of Rules 8 and 9 of the said Rules framed regarding the contempt proceedings, the notice issued on 23rd October, 1989 is to be construed as the notice of contempt contemplated under the said provisions of Rules 8 and 9 of the said Rules and therefore it is too late for the respondents to contend about the bar of limitation. At the same time drawing attention to the decision of the Apex Court in the matter of *Dr. Subramanian Swamy Vs. Rama Krishna Hegde*, it is sought to be contended that the issue regarding the applicability of limitation in case of exercise of powers under Article 215 of the Constitution is still pending before the Apex Court having referred to the Constitution Bench, and therefore the matter relating to the bar of limitation raised by the respondents should await for the decision of the Constitution Bench of the Apex Court.

8. In view of the attention being drawn to the order of the Apex Court in the case of *Dr. Subramanian Swamy (Supra)*, it will be necessary to deal with the said submission regarding postponement of the hearing on the point of the bar of limitation, before proceeding with the matter.

9. In para No. 3 of the order in *Subramanian Swamy's* case it has been observed that :

In our opinion, the questions that arise for consideration in these matters are of general public importance which are required to be considered by a Constitution Bench.

Referring to these observations it is sought to be contended that various questions which arise for consideration in relation to which the Apex Court has directed the matter to be placed before the Constitution Bench, include the question regarding applicability of the period of limitation to the matters wherein the Court exercises powers under Article 215 of the Constitution. The contention is to be rejected being devoid of substance. Perusal of the order passed by the Apex Court in *Subramanian Swamy's* case will disclose that the questions which have arisen and are required to be considered by the Constitution Bench are : "Whether in absence of consent of Attorney General or Solicitor General suo

motu proceedings can be initiated against the alleged contemnor and whether the alleged contempt of a sitting Judge of Supreme Court in relation to the statutory functions discharged by him as a Commissioner cannot in law be regarded as a contempt of Supreme Court, and not in relation to whether the powers under Article 215 can be exercised ignoring the provisions of Section 20 of the Contempt of Courts Act, 1971 or whether bar u/s 20 of the Contempt of Courts Act is applicable or not in case of exercise of powers under Article 215 of the Constitution. No doubt the advocate who was appearing for the alleged contemnor had made a submission before the Apex Court to the effect that Section 20 of the Contempt of Courts Act would operate as bar against initiation of suo motu proceedings for contempt. However, the order of the Apex Court nowhere discloses that such an objection was essentially in relation to the powers under Article 215 of the Constitution and not in relation to those u/s 15 of the Contempt of Courts Act, It is pertinent to note that even u/s 15 of the Contempt of Courts Act, initiation of suo motu contempt proceedings is not prohibited. Therefore, there is no scope to presume that the questions which are stated to be of general public importance and therefore, required to be considered by the Constitution Bench would also include a question as to whether the suo motu proceedings under Article 215 can be initiated ignoring the provisions of Section 20 of the Contempt of Courts Act, in the absence of specific reference to such question in the said order, hence the contentions raised on behalf of the petitioners based on the decision of the Apex Court in Dr. Subramanian Swamy's case are to be rejected. It appears that it is a move to postpone the hearing of the matter after having heard, at length, the Counsels on both side.

10. The order dated 23.10.1989 passed by this Court in the present proceedings reads thus :

Issue notice before admission only to respondent No. 2 and respondent No. 3 returnable on 26.10.1989 who are reported to have transferred the property in disobedience of the order dated 3.2.1987 which is not stayed and have filed forged documents before the D.I.L.R.

According to the learned Advocates for the petitioner mere mention of "Notice before admission", will not render the said order to be simple notice of the proceedings to the respondents, but it will be a notice in the form and nature stipulated under Rules 8 and 9 of the said Rules and in that connection heavy reliance is placed in the decision of learned Single Judge in Pathan Nawabkhan's case.

11. In Pathan Nawabkhan's case the Court pursuant to the complaint filed by the appellant therein complaining about the non-compliance of the order of the School Tribunal had ordered issuance of notice. The order was passed on 6.8.1997 to the effect that "Notice". In that connection the learned Single Judge after taking note of the various provisions of the said Rules pertaining to the contempt proceedings, had observed that "Thus clearly indicates that the Court

can be said to have applied its mind to the facts of the case and only after having been satisfied, the order of "Notice" under Sub-rule (1) of Rule 8 of Rules is presumed to have been passed". Being so in Pathan Nawabkhan's case it was apparent that Court had ordered issuance of "Notice" after going through the complaint presented before the Court. It was not an order in the nature of "Notice before admission", as was passed in the case in hand. However, the learned Advocate for the petitioner by referring to paragraph 6 of the decision of the learned Single Judge in Pathan Nawabkhan's case has sought to be contended that there is no difference between the order directing issuance of "Notice" and order directing issuance "Notice before admission", Indeed paragraph 6 of the judgment in Pathan Nawabkhan's case reads thus :

6. Since the Division Bench of this Court has on 6.8.1997 issued "notice". I do not feel that there is any further necessity for hearing the matter for admission as this Court is of the view that there is no stage like "Notice before Admission" in the contempt, proceedings and further that once "notice" is issued, it clearly means that the matter is admitted for final hearing or we may say that, the Rule is issued in the matter. This Court is of the opinion that "Notice" issued is said to have been issued under Rule 8(1) of the Bombay High Court Appellate Side Rules (to regulate the proceedings for contempt under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971). Since but for "Notice" there is no other order provided under the Rules such as "notice before admission", the question of issuing again any further order of either "Rule" or "Admit" in the instant matter does not arise.

The above observations were made pursuant to the submissions made by Advocate appearing therein for the applicant that issuance of Rule was necessary, otherwise the provisions of Section 20 of the Contempt of Courts Act, 1971 would render the latter infructuous. We have no hesitation in agreeing with the learned Single Judge that in contempt proceedings there are no two stages-one like issuing of "Notice before Admission" and other like final hearing. However, that does not debar the Court from giving opportunity to the party for preliminary hearing, before making up its mind to proceed against the party for the Contempt of Court. It is always in the discretion of the Court to give opportunity to the parties for preliminary hearing and thereafter to proceed to hear the matter on merits. Merely because the procedure prescribed in the said Rules framed in relation to the contempt proceedings, does not provide for such preliminary hearing, the Court is not debarred from exercising its inherent powers to give an opportunity to the parties for preliminary hearing. Being so, there is no bar for issuance of the notice before admission even in contempt proceedings. It is always to be remembered that the Rules of procedure are meant to assist the Court to arrive at the truth and to enable the litigant to help the Court in arriving at the truth. Procedural law is always intended to facilitate and not to obstruct the course of substantive justice, ruled the Apex Court in *Harcharan Vs. State of Haryana*, . The Apex Court has also held that "The humanist rule that procedure should be the handmaid, not mistress, of legal

justice compels consideration of vesting a residuary power in Judges to act *ex debito Justitiae* where the tragic sequel otherwise would be wholly inequitable." (vide *Sushil Kumar Sen Vs. State of Bihar*,). A procedure adopted by affording preliminary hearing to the parties can by no stretch of imagination could be said to be resulting in miscarriage of justice or resulting in breach or the patent injustice to any of the parties. Being so, it is difficult to accept and agree with the contention that there is no difference between issuing of "Notice" and issuing of "Notice before admission". Besides, whether there is any difference in case of "notice" and that of "notice before admission" is to be determined by reference to the exercise of powers by the Court- while passing the said order and not by merely referring to the procedural provisions in the said rules. The rules regarding procedure to be followed for action either under Article 215 of the Constitution or under the provisions of the Contempt of Courts Act cannot take away the inherent power of this Court. Affording opportunity to put forth its say before taking the decision to proceed against such party for Contempt of Court, is nothing but an action in conformity with the basic principles of natural justice and may always be adhered to in cases where the materials placed before the Court by the complainant though may disclose *prima facie* case that may not be sufficient to constitute sufficient proof to hold the opponent to be guilty of Contempt of Court. Therefore, whether the Court should issue directly notice of contempt proceedings or should opt to issue notice before admission would depend upon facts of each case and absence of provision in the said rules in that regard will not prohibit the Court from issuing notice before admission.

12. The second limb of the argument is that nothing prevents the High Court from exercising *suo motu* powers under Article 215 for initiation of contempt proceedings and therefore, by issuing a notice before admission on 23.10.1989 the Court has taken cognizance of the act of the contempt of the Court on the part of the respondents and in that regard it is further sought to be contended that once *suo motu* powers are exercised under Article 215 question of applicability of provisions of Section 20 of the Contempt of Courts Act does not arise. Whether any period of limitation would apply for exercise of power under Article 215 need not be gone into in the case in hand, unless the order dated 23.10.1989 discloses exercise of such powers. As already seen above the order of 23.10.1989 has been issued pursuant to the complaint filed by the petitioner. It specifically refers to certain acts on the part of the respondent Nos. 2 and 3 brought to the notice of the Court by the petitioner by his complaint-one in relation to transfer of property in disobedience of the order dated 3.2.1987 and second filing of forged documents before the D.I.L.R. The knowledge about these two facts to the Court is not *de hors* the complaint by the petitioners. Neither the order refer to any incident which might have come to the notice of the Court independently of the complaint by the petitioner, nor the order *ex facie* discloses any exercise of *suo motu* powers for initiation of contempt proceedings, but it apparently discloses issuance of Notice before admission pursuant to the complaint by the petitioners. Being so, it is not possible to agree with the learned

Advocate for the petitioner that this Court had exercised suo motu powers either under Article 215 or u/s 15 of the Contempt of Courts Act, while issuing notice on 23.10.1989 but the exercise has been pursuant to and on the basis of the complaint filed by the petitioners.

13. The decision of the Apex Court in S.K. Sarkar's case was in relation to the point which arose before the Apex Court as to whether the High Court could take suo motu cognizance of contempt of a subordinate/inferior Court when it is not moved in either of the two modes mentioned in Section 15(2) of the Contempt of Courts Act. In that respect the Apex Court has observed that Articles 129 and 215 of the Constitution preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which include the power to punish the contempt of itself and it was further observed that Sub-section (2) of Section 15 properly construed, does not restrict the power of the High Court to take cognizance and punish for contempt of subordinate Court on its own motion. At the same time it was observed in paragraph 18 :

It is, however, to be noted that 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 news paper 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. If the petitioner is a responsible member of the legal profession, it may act suo motu. more so, if the petitioner-Advocate as in the instant case, prays that the Court should act suo motu. The whole object of prescribing these procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court or the Supreme Court from being wasted by frivolous complaints of Contempt of Court. If the High Court is prima facie satisfied that the information received by it regarding the commission of contempt of a subordinate Court is not frivolous, and the contempt alleged is not merely technical or trivial it may, in its discretion, act suo motu and commence the proceedings against the contemnor. However, this mode of taking suo motu cognizance of contempt of a subordinate Court, should be resorted to sparingly where the contempt concerned is of a grave and serious nature. Frequent use of this suo motu power on the information furnished by an incompetent petition, may render these procedural safeguards provided in Sub-section (2), otiose. In such cases, the High Court may be well advised to avail of the advice and assistance of the Advocate General before initiating proceedings.

Apparently, the ratio of the decision in S.K. Sarkar's case is that the powers of the High Court to take suo motu cognizance of contempt of subordinate or inferior Court is not in any manner controlled by the provisions of Section 15 of the Contempt of Courts Act, though such exercise of powers has to be resorted to sparingly and where the contempt concerned is of grave and of serious nature. The decision nowhere discusses about or lays down any rule relating to applicability or non-applicability of period of limitation for exercise of such powers. It is always to be remembered that a decision is what it decides and not what follows from it. Ratio of a decision is to be understood by considering facts of the case, the points raised for decision and the ruling thereon and no decision can be read as a statute. Any ruling in this regard if it required one can safely refer to the decision of the Apex Court in Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, . The Apex Court therein has ruled that :

What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding, it is only the principle laid down in the judgment that, is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after bearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what: was the point which had to be decided. No judgment can be read as if it is a statute.

Being so, the order dated 23.10.1989 cannot be held to be a suo motu exercise of powers under Articles 215 and therefore, proceedings are to be considered as having been initiated at the instance of the petitioner and are to be considered as to whether they are in compliance with the provisions of Section 15 read with Section 20 of the Contempt of Courts Act, 1971.

14. As already seen above as far as the order dated 13.2.1987 is concerned, it was made known to the petitioner on 6.2.1988 that it was not a genuine order but a fabricated one but the complaint in that regard for initiation of contempt proceedings was filed on 16.10.1989 i.e. beyond period of one year.

15. As far as the order pertaining to the Apex Court is concerned the same is dated 27.7.1990, but it stated to have been communicated to the petitioner by Tahsildar by letter dated 24.6.1991. It is the contention of the petitioner that on verification it was received to be a forged document, and the basis for such conclusion is the order of the Apex Court in the matter of Canara Bank Panalud Branch v. Shrivastava and Ors. The contention is that the SLP in which the order dated 27.7.1990 is said to have been passed, copy of which was produced before the Tahsildar, disclosed SLP No. 8782/1990, whereas on enquiry by the petitioner it was revealed that SLP No. 8782/1990 pertains to the matter filed by said Canara Bank v. Shrivastava and Ors. and that, therefore, the copy of the order produced by the respondents before the Tahsildar stated to have been passed by the Apex Court for stay was fabricated one and not genuine one. Undoubtedly, it was also stated that the SLP which was preferred against the order in Civil Revision Application No. 512/1988, was withdrawn on 28.2.1989.

16. There is no doubt that the order of the Apex Court which is stated to have been produced before the Naib Tahsildar was dated 27.9.1990 and the said fact apparently appears to have been brought to the notice of the petitioner only by letter dated 24.6.1991. No other source for the same is disclosed from the records. Undisputedly, the enquiry regarding the genuineness of the said order of the Apex Court was made by the petitioners subsequent to such intimation by the Tahsildar and only after obtaining the copy of the order of the Apex Court in the matter of Canara Bank Panalud Branch and Anr. v. Shrivastava and Anr. But at the same time it is clear that the copy of the order in Canara Bank matter was made available to the petitioners on 19.10.1991 and that is apparent from the copy of the said order placed on record which discloses the date of issuance of the certified copy on 19.10.1991. In the application filed by the petitioner there is no averment that the said copy was made available to the petitioner any time after the said date disclosed on the face of the order itself. In other words in the absence of any other averment disclosing exact date of knowledge about the fraud being played by the respondent by producing the copy of the alleged order of the Supreme Court, we have no other material to arrive at any finding except that the petitioner learnt about the alleged fraud on 19.10.1991. The application making grievance about such act however, was filed as late as on 1.9.1993. Apparently therefore, the complaint regarding the said act on the part of the respondent No. 2 was also made beyond period of one year from the date of the alleged act of offence of committing Contempt of Court. The records, therefore, disclose that there is delay in approaching the Court and the complaint regarding the alleged act of contempt on the part of the respondent in relation to the order of the Civil Court as well as that of the Apex Court has been made beyond period of one year from the date of knowledge of the acts of contempt committed by

respondent. Being so, considering the decision of the Apex Court in Pallav Sheth Vs. Custodian and Others, the act of initiation of the proceedings for Contempt of Court in relation to both the instances being beyond the period of one year, it is not possible to take cognizance thereof u/s 15 of the Contempt of Courts Act. Hence the objection regarding bar of limitation sought to be raised on behalf of respondents sustains and on that count alone the proceedings for Contempt of Court against the respondents are liable to be dropped and notices issued in that regard to be withdrawn.

17. It was also sought to be contended on behalf of the petitioners that considering the nature of the acts on the part of the respondent Nos. 2, 3 and 6 whereby there was no hesitation to mislead the Courts and officers acting in pursuance of the Court's order by producing document which were known to the respondents to be fraudulent and not genuine, it is a fit case for exercise of powers u/s 340(2) of the Code of Criminal Procedure Code, 1973. There can be no doubt that in exercise of powers u/s 340(2) this Court is empowered to initiate the proceedings in cases where the offences enumerated u/s 195(b) of the Criminal Procedure Code are brought to its notice. They would include the offence pertaining to giving or fabricating false evidence in judicial proceedings or giving or fabricating false evidence with intention to cause any person to be convicted for capital offence using as to any declaration known to be false, making false claim in a Court of justice, intentional answer or interruption to a public servant in any stage of judicial proceedings etc. Undoubtedly, by producing the orders which are known to the party to be not genuine orders of any Competent Authority and Courts, and thereby causing obstruction to D.I.L.R. from carrying out its obligation in terms of the orders for execution passed by Civil Court may amount to interruption to an officer appointed by the Court for executing its order, as also it may amount to fabricating false evidence in relation to the proceedings in a Court and therefore, there cannot be a dispute that this Court can exercise powers u/s 340 of the Code. However, in the case in hand the allegations regarding production of the orders which are stated to be fabricated is against respondent Nos. 2 and 3 who have already expired and the respondent No. 6 who happened to be an Advocate for the respondent Nos. 2 and 3 when the alleged order of the Civil Court was produced before the D.I.L.R. However, it has been brought to our notice by learned Advocate appearing for the respondent No. 6 that the said Advocate withdraw his appearance for the respondent Nos. 2 and 3 moment it was revealed to him that the order dated 13.2.1987 was a fabricated one. Apparently the materials on record are not sufficient to conclude prima facie about the involvement of the respondent No. 6 in the alleged act on the part of the respondent Nos. 2 and 3 in procuring and producing fraudulent copies of the orders of the Civil Court and Apex Court. Being so, as the allegations regarding production of forged document are restricted against respondent Nos. 2, 3 and 6 and as regards other respondents pertaining to violation of the order, in the facts and circumstances disclosed above, the question of exercise of powers u/s 340 of Criminal Procedure Code

does not arise. Observations regarding refusal to exercise powers u/s 340 of the Criminal Procedure Code would not preclude the petitioner from taking any other action if so available to the petitioner in relation to the alleged offence.

18. In the result, therefore, the complaint fails and hereby dismissed for the reasons stated above. Notices issued against respondents are withdrawn and proceedings are dropped and closed.