
(2002) 07 DEL CK 0169
In the Delhi High Court
Case No : Civil Writ No. 4001 of 1999

Shri S.K. Bhalla

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 08-07-2002

Acts Referred:

Constitution of India, 1950 — Article 215, 226, 227
Contempt of Courts Act, 1971 — Section 14, 15(1), 19

Citation : (2002) 07 DEL CK 0169

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Party in perso, for the Appellant; N.K. Kaul and V.R. Datar, for the Respondent

Judgement

Mukul Mudgal, J.—This writ petition challenges the impugned Order, passed by the Hon"ble the Acting Chief Justice on the Administrative Side on 18th May, 1999 in Crl. CP. No.6 of 1999, refusing to initiate Criminal Contempt proceedings against the contemnor.

2. The learned counsel for respondent No.2 has raised a preliminary objection based inter alias on a judgment of the Hon"ble Supreme Court in Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], to contend that criminal contempt is a matter between the contemnor and the Court and no one can insist as a matter of right on initiation of criminal contempt by the Court.

3. The sum and substance of the objection of the respondent No.2 is based upon Section 15(1) of the Contempt of Courts Act, 1971(hereinafter referred to as "Act") the relevant portion of which reads as under:

"15. Cognizance of criminal contempt in other cases.--(1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-

(a) the Advocate General, or

(b) any other person, with the consent in writing of the Advocate General, [or]

(c) in relation to the High Court for the union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer."

2. The respondent No.2 has submitted that the petitioner having brought to the notice of the Hon"ble Court the facts, which according to him constituted criminal contempt, has thereafter no locus to insist on initiation of any proceedings especially when it has been held by this Court on the Administrative Side that no contempt is made out. The learned counsel for respondent No.2, which is the Registrar, Delhi High Court has further sought to rely on the judgment of the Hon"ble Supreme Court in O.P. Jaiswal (supra) wherein it has been held that the criminal contempt is a matter between the contemnor and the Court and that no one can compel or demand as of right, initiation of proceedings for contempt.

3. The relevant portion of the said judgment in O.P. Jaiswal (supra) reads as under:

"The jurisdiction to punish for contempt is summary but the consequences are serious. That is why the jurisdiction to initiate proceedings in contempt as also the jurisdiction to punish for contempt in spite of case of contempt having been made out are both discretionary with the Court. Contempt generally and criminal contempt certainly is a matter between the Court and the alleged Contemnor, No one can compel or demand as of right initiation of proceedings for contempt. Certain principles have emerged. A jurisdiction in contempt shall be exercised only on a clear case having been made out. Mere technical contempt may not be taken note of. It is not personal glorification of a Judge in his office but an anxiety to maintain the efficacy of justice administration system effectively which dictates the conscience of a Judge to move or not to move in contempt jurisdiction. Often an apology is accepted and the felony condoned if the Judge feels convinced of the genuineness of the apology and the prestige of the court having been restored. Source of initiation of contempt proceedings being made be suo motu, on a Reference being made by the Advocate General or any other person with the consent in writing of the Advocate General or on Reference made by a Subordinate Court in case of criminal contempt. A private party of a litigant may also invite the attention of the Court to such facts as may persuade the Court in initiating proceedings for contempt. However, such person filing an application or petition before the Court does not become a complainant or petitioner in the proceedings. He is just an informer or relater .His duty ends with the facts being brought to the notice of the Court. It is thereafter for the Court to act on such information or not to act though the private party or litigant moving the Court may at the discretion of the Court continue to render its assistance during the course of proceedings. That is why it has been held that an informant does not have a right of filing an appeal u/s 19 of the Act against an

order refusing to initiate the contempt proceedings or disposing the application or petition filed for initiating such proceedings. He cannot be called an aggrieved party."

4. Based on the above judgment of the Hon"ble Supreme Court, the learned counsel for respondent No.2 has contended that the petitioner/informant having completed his duty by informing this Court, the facts which according to him, constituted criminal contempt, he cannot seek a writ of mandamus directing Hon"ble the Chief Justice to initiate suo moto contempt proceedings in view of the above position of law laid down by the Hon"ble Supreme Court.

5. The petitioner in reply has contended that the questions involved in the present writ petition filed by him are whether the order passed on the Administrative side by Hon"ble the Chief Justice in Criminal Contempt Petition No. 6/1999 is arbitrary and unreasonable without taking into account the judgment of the Hon"ble Supreme Court and whether or not the pendency of the second suit, filed by Shri Vinod Kumar Chopra and Ors. v. Sushil Kumar Bhalla and Ors, bearing No.88/99(Old)/Suit No. 393/99 (New), pending in the Court of Shri Daya Prakash, Civil Judge, Delhi is an act of the commission of contempt of court continuously by the respondents. The petitioner has also sought to raise many pleas on the merits of the disputes between the parties which in my view will not be relevant in case a finding is recorded in favor of the respondent No.2 on the preliminary objection, regarding the non-maintainability of the writ of mandamus, filed by the petitioner. In so far as the writ of mandamus is concerned, the petitioner has sought to rely upon the judgment of Hon"ble Supreme Court in Union of India and Others Vs. Dinesh Engineering Corporation and Another etc., . The relevant portion of the said Para 13 read as under:

".....Any decision be it a simple administrative decision or a policy decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution."

6. In reply to the averments made by respondent No.2 as to the objection of the maintainability of the writ petition, the petitioner has further sought to contend that this Court being a Court of record has inherent powers to rectify its own record by reviewing any order which is contrary to the law laid down by the Hon"ble Supreme Court and the provisions contained in Article 226 and 227 of the Constitution of India (hereinafter referred to as "the Constitution") are meant for the said purpose. The said powers read with Article 215 of the Constitution are overriding powers of the High Court for the purpose of doing real and substantial justice between the parties. The petitioner has further contended that the present writ petition is based only on the question whether the order passed by the Hon"ble Acting Chief Justice on Administrative Side can be reviewed on the Judicial Side particularly when the offence of Contempt of Court is a continuing offence and amounts to the worst type of abuse of process of law. He has also further contended that bringing to the notice of this Court the correct

position of law seeking the judicial review of an order passed on the Administrative Side is entirely different from that of the role assigned to a complainant for the initiation of the proceedings under the Contempt of Courts Act.

7. In so far as the judgment relied upon by the petitioner in *Union of India v. Dinesh Engineering Corporation* (supra) is concerned, it has been laid down that any decision whether simple, administrative one or a policy decision, if taken, without considering the relevant facts would be arbitrary and thus violate Article 14. However, I fail to see how that judgment would be relevant in challenging the refusal of exercise of contempt power, particularly, in light of the judgment of the Hon''ble Supreme Court in *O.P. Jaiswal's case* (supra). The Hon''ble Supreme Court in *O.P. Jaiswal's case* (supra) clearly held that an informant does not have even the right of appeal u/s 19 of the Act against an order refusing to initiate contempt proceedings or disposing of the application or petition filed for initiation of such proceedings and such an informant cannot be called an aggrieved party. In view of the fact that the petitioner does not have even the right of appeal and is not even an aggrieved party according to the position of law laid down by the *O.P. Jaiswal's case* (supra), he certainly cannot have a locus to file the writ of mandamus under Article 226 and 227 of the Constitution. Thus in my view, the above judgment in *Union of India v. Dinesh Engineering Corporation* (supra) cannot come to the assistance of the petitioner. The judgment governing the present case is the judgment of *O.P. Jaiswal* (supra) and taking into account the position of law laid down by Hon''ble Supreme Court, the preliminary objection raised by the respondent No.2 is upheld.

8. In this view of the matter, the preliminary objection, raised by respondent No.2 as to the non-maintainability of the writ petition succeeds and the writ petition is accordingly dismissed as not maintainable.