

(1974) 08 BOM CK 0019
In the Bombay High Court
Case No : Criminal Reference No. 124 of 1973

The State of Maharashtra

APPELLANT

Vs

J.V. Patil

RESPONDENT

Date of Decision : 22-08-1974

Acts Referred:

Bombay Police Act, 1951 — Section 124
Contempt of Courts Act, 1971 — Section 15, 2, 20
Criminal Procedure Code, 1973 (CrPC) — Section 169, 428, 54
Penal Code, 1860 (IPC) — Section 341, 342, 361, 504

Citation : (1976) 78 BOMLR 116

Hon'ble Judges : Sapre, J;Bhole, J

Bench : Division Bench

Judgement

Bhole, J.—This reference has been made by the Judicial Magistrate, First Class, Kandhar, District Nanded alleging that Police Sub-Inspector J.V. Patil of Kandhar Police Station, Deputy Superintendent of Police Takalkar, who was in charge of the said Police Station and Police Constable Pundlik have committed contempt of Court. The reference was made by him on May 5, 1973. It had to go to the District and Sessions Judge, Nanded and the learned District Judge gave his opinion by his letter dated September 26, 1973 and sent the papers to this Court. The matter then came up before our learned brother Deshpande J., Administrative Judge and he directed to place the matter before the Division Bench for taking action under the provisions of Section 2(i) of the Contempt of Courts Act, 1971 against J.V. Patil, Police Sub-Inspector, Takalkar, Deputy Superintendent of Police and Pundlik, Police Constable for non-compliance of the Court's orders from time to time and for their acts of undermining, scandalizing, prejudicing and interfering etc. with the administration of justice. It is because of the administrative direction of the learned Administrative Judge that the matter was placed before the Division Bench consisting of Deshpande and Aggarwal JJ. Our learned brothers issued a rule and ordered the matter to be expedited on November 22, 1973. It is in this way that the matter has come up before us for

hearing first on July 17, 1974. At that time we had directed both the State as well as the opponents to produce all the affidavits as well as all the documents and other papers that they want to, for the purpose of disposing of this reference finally. The parties filed all the documents and affidavits and the matter, therefore, came up for hearing before us.

2. The complaint of Mr. D.L. Agarwal, Judicial Magistrate, First Class, Kandhar by his letter dated May 5, 1973 against the opponents is that he received a report from Kandhar Police Station in Crime No. 8 of 1973, after he was posted at Kandhar on June 22, 1972, that time be extended to submit a charge-sheet because the investigation was not completed. Time was granted and the matter came up before the Magistrate from time to time on July 4, 1972, July 17, 1972 and lastly on July 31, 1972. On that date he found that no request for extension of time was made after June 22, 1972 and also found that no charge-sheet was submitted against the accused although he was in jail. He, therefore, directed the Police to produce the case diaries in respect of the investigation carried out till then. "When he perused the case diaries, after they were submitted to him, he found opponent No. 1 Sub-Inspector J.V. Patil mentioning on May 18, 1972 that there was no evidence against the accused and recommending the release of the accused u/s 169 of the Criminal Procedure Code. He also found opponent No. 1 mentioning on May 22, 1972 that he should request for "A" final summary meaning thereby that there was no evidence against the accused. The Court in the background of the contents of the case diaries on the other hand found that opponent No. 1 demanded extension of time for submitting the charge-sheet on June 22, 1972. It is because of these circumstances that the Magistrate was of the opinion that the accused was detained from May 9, 1972 onwards without any reasonable or proper cause and that therefore the detention was illegal. In that view of the matter, therefore he issued a Show Cause Notice on August 1, 1972 to opponent No. 1 Sub-Inspector Patil demanding explanation for dereliction of duty resulting in the wrongful detention of the accused. He also wanted to know why an action in accordance with law should not be taken against him. He was, therefore, asked to be present before the Court on August 3, 1972. According to the Magistrate the show cause notice was received by opponent No. 1 on August 1, 1972 but he did not submit any explanation on August 3, 1972 as directed by him. He did not also attend the Court. According to the learned Magistrate opponent No. 1 had not submitted any explanation whatsoever later on.

3. The second complaint against opponent No. 1 is that he had not executed the distress warrants issued by the Magistrate in Criminal Case No. 16 of 1972 u/s 428 of the Criminal Procedure Code. It was issued on June 13, 1972. "The case was posted for hearing on different dates for the return, of warrant duly executed but the same was not returned. A letter was then issued to opponent No. 1 to return the said warrant duly executed and also submit an explanation as to why the warrant was not returned to the Court. He was asked to return the warrant by August 23, 1972 but neither the warrant was returned nor any

explanation was given by opponent No. 1 although he was repeatedly asked afterwards to submit an explanation on September 4, 1972. However, he received a letter from opponent No. 1 through a Police Constable informing that the warrant was already returned under a registered letter dated August 30, 1972 but the Magistrate says that this explanation was false because no registered letter was received by the Court. Therefore a show cause notice was again issued to opponent No. 1 on September 5, 1972 and the opponent was asked to remain present before the Court. He appeared before the Magistrate on September 7, 1972 and gave a report in writing saying that the warrant was returned by him on July 17, 1972 and that the same warrant was again issued to him for service on August 8, 1972. The Magistrate says that this report is a false report. It is in this way according to the Magistrate that opponent No. 1 has again committed contempt of this Court by disobeying his directions to appear before him and explain to him the reasons why the distress warrant was not executed.

4. Yet a third complaint of the Magistrate is with reference to Criminal Case No. 48 of 1972 wherein accused Madhav was granted police custody remand on August 4, 1972 till August 8, 1972. According to him he waited for the arrival of the accused on August 8, 1972 because the advocate for the accused had filed an application for grant of bail but the accused was- not produced before the Court till 5.30 p.m. He was produced at his residence at 5.45 p.m. by a Constable and on inquiry he learnt that opponent No. 1 had directed the Constable to produce the accused before the Magistrate only after 5p.m. According to Magistrate opponent No. 1 did so because he did not want the accused to be released by the Court on that day. It is in these circumstances that the Magistrate again issued a notice to opponent No. 1 requiring him to be present before him on August 9, 1972 to show cause as to why the accused was detained at the Police Station on August 8, 1972 and that he should explain as to why he directed the Police Constable to produce the accused before him only after 5 p.m. The said show cause notice still remained to be replied by opponent No. 1 in spite" of the service of the said notice. The complaint of the Magistrate is that he could not decide the bail application because the accused was produced late and it is in this way that opponent No. 1 has committed contempt of the Court.

5. The fourth grievance against opponent No. 1 is with reference to Criminal Case No. 246 of 1972 in which accused Gangaram was said to have been arrested u/s 54 of the Criminal Procedure Code on the ground that he had committed theft of a she-goat. The accused was remanded to magisterial custody on August 13, 1972 at the request of opponent No. 1 and the case was posted on August 26, 1972. The Magistrate says that opponent No. 1 did not submit any report on August "26, 1972 and he therefore passed an order that the investigating officer should remain present before him along with the case diaries on August 28, 1972. Inspite of the service of this order neither the investigating officer nor the Police Sub-Inspector remained present. They also did

not submit any report whatsoever. Because according to the Magistrate this was a deliberate failure on the part of opponent No. 1, therefore he again issued a show cause notice to him on August 29, 1972 to remain present before the Court on August 30, 1972 along with the case diaries, inasmuch as non-submission of the case diaries and the report resulted in unwarranted detention of the accused. Opponent No. 1 did not come to Court on August 30, 1972 and did not also submit any explanation. He did not also bring the case diaries on September 5, 1972. Opponent No. 1 however submitted N.C. report dated August 31, 1972 u/s 124 of the Bombay Police Act. The Magistrate, therefore, released the accused on bail on September 5, 1972. The complaint of the Magistrate, therefore is that opponent No. 1 has been flouting the orders passed by him from time to time and that it is in this way that he committed contempt of Court.

6. The complaint of the Magistrate against opponent No. 2 Takalkar, who is the Deputy Superintendent of Police in that division, is that he had investigated into the offence alleged to have been committed by the Magistrate on August 29, 1972 under Sections 342, 341, 361 and 504, Indian Penal Code against opponent No. 3 Pundlik and registered by opponent No. 1. It is alleged by the Magistrate that although after the investigation he has arrived at a conclusion that it is a "C" summary case, yet it was not submitted before the Court quickly. On the other hand, the submission of the case papers for grant of "C" summary was considerably delayed by opponent No. 2. It is further his complaint against the Deputy Superintendent of Police that he had an occasion to appear before the Magistrate on December 11, 1972 in another case and that after his evidence was over, he went to his Chamber and in a suppressed tone and manner suggested to the Magistrate that in case he did not make a favourable report in favour of Police Sub-Inspector Chowdhari against whom a case was going on, the case registered by opponent No. 1 against the Magistrate would not be finalised. The Magistrate says that opponent No. 2 went to his Chamber with intent and purpose of illegally influencing him to make a report in favour of Police Sub-Inspector Chowdhari against whom there was an inquiry about using third degree methods against an accused.

7. The complaint of the Magistrate against opponent No. 3 is that he had filed a false complaint against him in order to coerce him and to stop him from taking any action against Police Sub-Inspector opponent No. 1 although he went on. deliberately flouting the Court's order. The case against the Magistrate registered by opponent No. 1 is that on August 29, 1972 when opponent No. 3 went and delivered a wireless message to the Clerk of the Court and returned to the Police Station, he was called by the Court Police Constable sent by the Magistrate and abused and detained by the Court in the room of the Clerk of the Court. It is further the complaint of the Magistrate that opponent No. 1 met his clerks Apte and Komawar in the evening on August 29, 1972 while they were returning to their houses and told them that since the Magistrate is in the habit of issuing notices after notices from time to time, he has also powers to register an offence against anybody including the Magistrate. The Magistrate, therefore, says that all

this was done with intent to undermine the dignity of the Court knowing fully well that the facts alleged in the First Information given by opponent No. 3 did not constitute any offence.

8. After tendering an unconditional apology in the event of this Court finding that some wrong had been committed by him, opponent No. 1 has replied to the allegations of the Magistrate. He has also pleaded that initiation of the contempt proceedings is barred by time u/s 20 of the Contempt of Courts Act, 1971 because they were initiated more than one year after the alleged incidents of contempt.

9. The reply of opponent No. 1 to the first allegation against him is that the notice which was issued to him was not served on him at all; that it was served at the Police Station on Police Constable Dasharath on August 3, 1972 and therefore it was not possible for him to remain present in Court on August 3, 1972. There was, therefore, no intention on his part to disobey the direction of the Magistrate. His further explanation is that the Head Constable, who is generally present in Court, had applied for extension of time for remand in usual course, had not seen the case diary before asking for extension of time. It is his defence that the accused was not in illegal custody because he was also involved in another case, in which a proper remand was taken.

10. About the second complaint in respect of Case No. 16 of 1972 and the non-execution of the distress warrant opponent No. 1 says that the warrant received by him was not endorsed to be returned within a particular period; that it "was handed over by him to Police Head Constable Govindrao for necessary action and execution; that the execution had not to be done by him but had to be done by Govindrao and that therefore all the papers received by him from the Court were delivered to Govindrao for necessary action. According to him Govindrao's report is dated July 7, 1972 and the warrant was returned to the Court on July 17, 1972 and it was again sent back to the Police Station on August 9, 1972 for execution. A report was also sent by Govindrao to the Court under registered post on August 11, 1972 because his report was not accepted by the Court when he went there. The final report of Govindrao appears to be that the warrant could not be executed because the person against whom it was to be executed was absent though his father was present. It is, therefore, the defence of opponent No. 1 that he did not flout the direction of the Magistrate and that he did not deliberately try to see that the warrant was not executed.

11. Opponent No. 1's reply to the third allegation is that he did not ask the Court Constable to take the accused to the Magistrate after the Court hours to his residence. On the other hand his case is that the Police Constable Khan who had gone and told the Court that he presented the accused after 5 p.m. at the instance of opponent No. 1 reported to him (opponent No. 1) that he told the Magistrate that the P.S.I, told him that he should take the accused after that afternoon. About the notice which is said to have been issued by the Magistrate the opponent says that it was received at his Police Station on August 9, 1972 at

17.50 hours; that it was impossible for him to appear before the learned Magistrate on August 9, 1972 at 11 a.m. on that day. Moreover, he says that he did attend the Court on August 10, 1972 and explained to the Magistrate about late receipt of the notice by him and also that he did not instruct the Police Constable to take the accused late to the Magistrate. According to him no bail application was only by the advocate for release of the said accused but it was only an application seeking permission of the Magistrate for obtaining signature of the accused.

12. The opponent explains the fourth allegation of the Magistrate regarding Case No. 246 of 1972 saying that everything regarding the remand in a cognizable case is done by the Police Station Officer and not by him. According to him he appeared before the learned Magistrate in response to his notice on August 30, 1972 and tendered his oral explanation and said that no diary was maintained in respect of Section 54, Criminal Procedure Code or in any case under the Bombay Police Act and that he was present not only in connection with Case No. 246 of 1972 but also in another murder case that day. He, therefore, says that he has not committed any contempt of Court.

13. Opponent No. 2 explains that he did not go to the Chamber of the learned Magistrate on February 11, 1972 after the evidence in another case and that he had no talk with him in the chamber at all. He emphatically denies the allegation that he went to the chamber of the Magistrate with intention and purpose of illegally influencing the Magistrate to make a report in favour of P.S.I. Chowdhari against whom the accused had complained of third degree methods. He denied having any kind of talk with the Magistrate in Chamber. He has also filed an affidavit for this purpose of Police Prosecutor Nandedkar who was conducting the case in the Magistrate's Court on that day. In respect of the allegation that he had deliberately delayed submitting the case papers for "C" summary in the case in which the Magistrate was involved the opponent explains that he had investigated the said case between September 1, 1972 to September 9, 1972. He finished it by September 26, 1972 and recommended for "C" summary. The case papers left his hand and he was, therefore, no more concerned with the papers after that. The delay according to him is because the papers were sent to Deputy Inspector General of Police, Aurangabad through Superintendent of Police, Nanded on November 22, 1972 and thereafter to the Inspector General of Police on March 6, 1972. The papers remained with the Inspector General of Police till December 28, 1973 and was returned to the Superintendent of Police, Nanded through the Deputy Inspector General of Police, Aurangabad. The Deputy Inspector General of Police agreed that the case should be classed as "C" summary. There is a letter by the Superintendent of Police, Nanded to the District Judge on December 21, 1973, in which he has informed the District Judge that the Investigating Officer has found that the case against the Magistrate should be classed as "C" summary. Opponent No. 2, therefore, says that he is not responsible for any delay in submitting the papers for grant of "0" summary to the Court. He has also tendered an unconditional apology in the

alternative to this Court for contempt of Court, if any on his part.

14. The explanation of opponent No. 3 is that what is stated in the complaint against the Magistrate on August 29, 1972 was true and correct; that a Police wireless message from taluka Degloor had to be conveyed to the Court of Judicial Magistrate of Kandhar. He was asked to deliver the wireless message to the Clerk of the Court; that he had delivered it accordingly and returned to the Police Station; that after he returned the Court Constable came and called him saying that the Magistrate was calling him and that when he appeared before the Magistrate in Chamber, he started firing him saying that he ought to have conveyed the message to him (Magistrate) instead of to the office clerk; that he started abusing him and asked him to wait in the Court premises that the Court constable took him to the Court room of the, Clerk of the Court and detained him there till 5 p.m. and that it was on account of all these circumstances that he went and lodged his complaint.

15. Mr. Kanade, the learned advocate for the opponents, after arguing out the ease of all the opponents invited our attention to Section 20 of the Contempt of Courts Act, 1971 (hereinafter called the Act). Section 20 is as follows:

20. Limitation for actions for contempt. No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged, to have been committed.

16. It is significant to remember that this limitation clause has come into existence for the first time in 1971 Act and was not included in the old Act of 1952. Section 15 of the Act deals with the cognizance of criminal contempt in other cases. It provides that 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. It also provides that the High Court may also take action on a reference made to it by the subordinate Court and that every motion or reference made u/s 15 shall specify the contempt for which a person charged is alleged to be guilty. Evidently, therefore, the High Court alone can take action in contempt proceedings even if there is contempt of the subordinate Court. That can be done on a reference made to it by the subordinate Court. We are dealing with such a contempt matter on a reference by the Judicial Magistrate, First Class, Kandhar. Now Mr. Kanade contends here that the contempt incidents had taken place on account of the show cause notices so far as opponent No. 1 is concerned and on account of the complaint against the Magistrate in so far as opponent No. 2 is concerned. The first show cause notice issued by the learned Magistrate against opponent No. 1 is dated August 1, 1972 and the second show cause notice is dated September 5, 1972 and the third show cause notice is dated August 8, 1972 and the fourth is dated August 29, 1972. The complaint filed by opponent No. 3 at the Police Station and registered by opponent No. 1 is dated August 29, 1972. The Magistrate's complaint is that opponent No. 1 had flouted the

directions to appear before the Court and answer the show cause notice within two-three days. It is the contention of Mr. Kanade that all the incidents took place on a date more than one year before the initiation of the action by the High Court. If that is so, then he says that this Court cannot initiate contempt proceedings because this is done after the expiry of the period of one year from the date on which contempt is alleged to have been committed. On the other hand Mr. Hudlikar, the learned Assistant Government Pleader, says that initiation of the Proceedings for contempt is well within time because the date of initiation of contempt proceedings is the date on which the Magistrate has written the letter to the High Court. That date May 9, 1973 is the date on which, according to Mr. Hudlikar, contempt proceedings were initiated and that is well within time i.e. within year after the date on which contempt is alleged to have been committed. It is, however, difficult for us to accept the contention of Mr. Hudlikar because the proceedings for contempt in our view cannot be said to have been initiated when the subordinate Court refers a certain matter which in its opinion is contempt but can be said to have been initiated only when cognizance is taken of the contempt by this Court after the decision of the Administrative Judge that action should be taken under the Contempt of Courts Act. In so far as the facts of our case are concerned, the matter was placed before the Administrative Judge in this Court on November 9, 1973 and the learned Judge directed to place the matter before the Division Bench for taking action under the provisions of the Act and it is in this way that the matter came to be placed before the Division Bench of this Court on November 22, 1973 when a rule was granted and the matter was ordered to be expedited. Evidently therefore the proceedings for contempt were only initiated when it was regularly placed before the Division Bench of the High Court on November 22, 1973 and not even when the Administrative Judge passed the order that the proceedings should be arranged to be initiated before this Court. If a proceeding for contempt has to be taken in a Court of law, it has to be commenced in the High Court with proper jurisdiction. Initiation of such proceedings therefore can take place only when the matter is placed before the Court according to law and a matter cannot be said to have been initiated merely because the subordinate Court thinks that contempt has been committed and that the contempt proceedings may be taken. The subordinate Court generally sends papers for such orders of the High Court as may be fit. The Administrative Judge of High Court has to decide whether the matter is worth being placed before the High Court for initiating proceedings for contempt. If the Administrative Judge thinks that the matter does not on merit deserve to be initiated as contempt proceedings, he can direct that nothing more can be done. A reference by the subordinate Court or the administrative order of the Administrative Judge of this Court cannot therefore be said to be the beginning of contempt proceedings. The only date when the contempt proceedings can be said to have been initiated will be the date on which the matter is placed before the Division Bench of this Court to hear the contempt proceedings according to law and pass the necessary orders. In that view of the matter, therefore, we are not inclined to agree with the construction of Section

20 of the Act as tried to be suggested by Mr. Hudlikar.

17. This interpretation of ours of Section 20 can also be looked into from another angle. Section 20 provides that no Court shall initiate and proceedings for contempt either on its own motion or otherwise after expiry of the period of one year from the date on which contempt is alleged to have been committed.

18. In other words if the stages after the contempt which is alleged to have been committed are taken into consideration, the first stage is of either the reference by the subordinate Court or the motion made by the Advocate-General or other motion as provided in Section 15; the second stage will be initiation of the proceedings for contempt either by a Bench of High Court or by the Supreme Court, who alone has jurisdiction to initiate proceedings for contempt. Therefore, the intention of Parliament in providing limitation for action for contempt u/s 20 is clearly expressed and that intention is that no Court shall initiate any proceedings for contempt on a reference made to it by the subordinate Court or on a motion made by the Advocate-General after expiry of period of one year from the date on which the contempt is alleged to have been committed. Therefore, there is first a reference made to the High Court by the subordinate Court or a motion made by the Advocate-General. In the case of a reference by a subordinate Court, it is first administratively ordered to be placed before a Division Bench of High Court and it will then be for the Division Bench, who alone has jurisdiction to initiate proceedings for contempt after 4 reference and to decide whether the contemnor is guilty or not. Therefore the date on which the matter was placed before the Division Bench of this Court and on which date the rule was granted will be the date when contempt proceedings can be said to have been initiated in Court. It will thus be clear that the date envisaged by Section 20 is the date on which this Court had initiated proceedings for contempt and in the instant case it is November 22, 1973 on which date I if the Division Bench of this Court has granted rule in the contempt proceedings.

19. We will, therefore, have to see whether the contempt proceedings have been initiated within the period of limitation. We have now to see whether the proceedings have been initiated within one year from the date on which the contempt is alleged to have been committed or whether it was after the expiry of the period of one year from such date. In so far as the contempt which is alleged to have been committed by opponent No. 1, we have to look into the show cause notices issued by the Magistrate, which are said to have been flouted deliberately by opponent No. 1. The show cause notice as regards the first incident is dated August 1, 1972; the second is dated August 5, 1972; third is dated August 29, 1972 and the fourth and the last is dated August 29, 1972. Instead of immediately informing the High Court about the contempt alleged to have been committed by the Police Officers, the Magistrate took nearly nine months to inform the High Court through the District Judge. The letter of the Magistrate to the Registrar of this Court is dated May 5, 1973 and there is no explanation on record as to why the Magistrate has delayed bringing to the notice of the High

Court the contempt alleged to have been committed by the opponents. The matter was placed, before the Division Bench on November 22, 1973 after it came through the District Judge and Administrative Judge. Therefore, initiation of the contempt proceedings by this Court was clearly beyond one year from the date on which the contempt is alleged to have been committed. If that is so, then this Court u/s 20 of the Act cannot take cognizance of the alleged contempt against opponent No. 1.

20. In so far the alleged contempt which is said to have been committed by opponent No. 1 on account of his registering complaint against the Magistrate on August 29, 1972 and also on account of the alleged talk by him with the two clerks of the Magistrate threatening that he could arrange to file a complaint against the Magistrate because he was in the habit of issuing notices; after notices to him, is also dated August 29, 1972. We do not know whether the two clerks concerned had reported to the Magistrate immediately but we do find their affidavits given as late as on May 4, 1973 i.e. a day earlier than the day on which the Magistrate had written the letter to this Court. This date August 29, 1972 also therefore is a date which is beyond the period of one year from the date on which this Court has initiated these proceedings for contempt. If that is so, then it will be difficult for us to take cognizance of contempt proceedings against opponent No. 1.

21. The contempt against opponent No. 3 is on account of his complaint against the Magistrate on August 29, 1972 and this is also beyond one year of the initiation of proceedings and out of limitation.

22. Contempt of Court proceedings are summary in nature and this is essential since the prestige of Courts cannot be held in suspense by prolonged proceedings. For the same reason expedition of the matter of taking action is also enjoined because undue delay in taking action will rob justice of the action. Though there was no hard and fast rule at first as to the time within which contempt matters have to be brought to the notice of the Court, the requirement now is that the matter must be brought to the notice of the Court within one year. We will now therefore, have to see whether the initiation of proceedings is within the period of limitation and whether the delay in initiating the proceedings was explained. There is no good explanation on record. Therefore the contempt is barred by limitation.

23. The only contempt then which is alleged to have been committed by opponent No. 2 remains. The complaint of the Magistrate is that on December 11, 1972 opponent No. 2 Takalkar, who is Deputy Superintendent of Police, had an occasion to appear before him as a witness in an inquiry into the alleged ill-treatment of an accused in Crime No. 69 of 1972. After Takalkar's evidence was over, the Magistrate says, he came to his chamber with intent and purpose of illegally influencing him to make a report in favour of Police Sub-Inspector Chowdhari against whom accused Manikrao had complained of third degree methods. The Deputy Superintendent of Police is alleged to have suggested to

the Magistrate in a suppressed tone and manner that in case he did not make a favourable report, the case registered by opponent No. 1 against the Magistrate on August 29, 1972 would not be finalised. The Magistrate is said to have given a suitable reply to him and said that such influencing him will have to be reported to the proper authority. The Magistrate suspected that it was because of this threat that the opponent had not submitted any report in connection with the offence registered against him inspite of several reminders and the directions by the Deputy Inspector General of Police. The Magistrate's complaint is that the Deputy Superintendent of Police came to a finding after the inquiry into the complaint against the Magistrate that this was a case in which "C" summary should be asked to be granted but the Deputy Superintendent of Police did not approach the Court after this finding or submitted any case papers for the grant of "C" summary in the matter. The Magistrate says that it is in this way that opponent No. 2 has undermined the authority and dignity of the Court.

24. Because the alleged meeting of opponent, No. 2 with the Magistrate is within one year before initiation of contempt proceedings in this Court, it is within limitation. What are the facts on this contempt? Opponent No. 2 denies the allegations of the Magistrate. His say is that he was asked by the Superintendent of Police to investigate the complaint against the Magistrate by opponent No. 3 and that he did this investigation between September 1, 1972 to September 9, 1972 and finished the investigation by September 26, 1972. It is his say that he had recommended for "C" summary and that he had nothing to do after the papers were sent away by him on September 26, 1972. It is, therefore, his contention that he cannot be blamed if the papers were submitted late in Court for grant of "C" summary. According to him, therefore, he could not have threatened the Magistrate on December 11, 1972, when there were no papers whatsoever of his case with him. He denies having met the Magistrate in his chamber and also denies having threatened him as alleged by him. On the other hand he says that the Magistrate being aware of the fact that he (Deputy Superintendent of Police) was making the investigation into his case asked him in the open Court after his evidence was recorded, casually as to what had happened about the investigation, of his case. The Deputy Superintendent of Police replied in the open Court that it was merely a misunderstanding on the part of the Police Constable and that the papers were lying with the superior officers. After this conversation in the open Court the Magistrate left the Court and he had no occasion or reason to approach the Magistrate in his chamber. His say is also supported by Police Prosecutor Nandedkar, who conducted the case in which the Deputy Superintendent of Police was appearing as a witness in the Magistrate's Court. Nandedkar supports him in all material particulars and says that he sent for the Deputy Superintendent of Police after the case reached hearing at about 2-30 p.m. and that he appeared in Court. His evidence was recorded by the Magistrate and that it was closed at about 3-30 p.m. The Police Prosecutor was present in the Court hall at that time. The Magistrate after the evidence of Deputy Superintendent of Police was over asked him in the open

Court as to what had happened about the investigation in his personal case. The Deputy Superintendent of Police said in the presence of the Police Prosecutor that there was some misunderstanding on the part of the Police Constable and that the papers were sent to the superior officers. The Deputy Superintendent of Police thereafter left the Court because his evidence was closed and that he did not come to the Court thereafter. The Police Prosecutor says that there was no meeting whatsoever between Takalkar and the Magistrate in his chamber. The Police Prosecutor was present in Court on December 11, 1972 till after 5-30 p.m. and that Takalkar was not in Court after 3-30 p.m. on that day. The Police Prosecutor says that the Magistrate had examined two more witnesses Deshmukh and Bhojraj and that he had also taken up another case in which the Police Prosecutor had to appear. After the closing of the work the Magistrate left the Court some where at about 5-30 p.m. and the Police Prosecutor also left the Court after Court hours.

25. The first infirmity in this alleged act of contempt is that in spite of the alleged threat by the Deputy Superintendent of Police to the Magistrate on December 11, 1972 the Magistrate did not take any action whatsoever until June 9, 1973. In the ordinary course of conduct he would have done it as promptly as it would have been possible for him. The second infirmity is that the case papers had already left the hands of the Deputy Superintendent of Police on September 26, 1972 though he is alleged to have threatened the Magistrate on December 11, 1972. We have got ample record to show that the investigation case papers were sent to the D.I.G. Aurangabad through Superintendent of Police, Nanded on November 22, 1972. The Assistant I.G.P.'s letter to the Superintendent of Police is dated November 2, 1973, in which he had asked him to send the case file to I.G.P. The papers were sent to the I.G.P. on March 6, 1973. The papers appear to have been sent by the Inspector General of the Police to D.I.G. Aurangabad on April 18, 1973, It was only on December 15, 1973 by a letter that the I.G. had agreed in his D.O. letter dated December 15, 1973 that the case should be classified as "C" summary; but in the midst of all this correspondence and "delay is an important letter dated February 21, 1973 by the Superintendent of Police to the District Judge, wherein he had mentioned that the investigating officer's finding is that the case should be classed as "C" summary. Evidently, therefore, this correspondence shows that the investigating officer namely opponent No. 2 had already classed the case as "C" summary and after finding so sent the Papers to the higher authorities on September 26, 1972. On December 11, 1972 therefore in the ordinary course the Deputy Superintendent of Police could not have threatened the Magistrate. At any rate in view of the infirmities, which we have mentioned above and also in view of the affidavit filed by the Police Prosecutor, it would be difficult for us to conclusively find that the Deputy Superintendent of Police, opponent No. 2 had committed the alleged contempt. He could not, then be said to have delayed submission of the case papers to the Court with a view to undermine the dignity of the Magistrate. It was not his fault because the delay was not on his account." On the other hand the delay appears

to be on account of the papers having gone to the higher authorities. In this view of the matter, therefore, we cannot hold opponent No. 2 responsible.

26. Opponent No. 2 has also in the alternative tendered an unconditional apology to this Court for the alleged contempt of Court and prayed that his apology be accepted.

27. The contempt proceedings against opponent Nos. 1 and 3 are barred by limitation. The contempt against opponent No. 2 is not proved.

28. In the result, therefore, we discharge the rule granted in this reference.

29. We think that the High Court should bring to the notice of all subordinate Courts Section 20 of the Contempt of Courts Act, 1971 and direct them to refer contempt matters as early as possible to this Court.