S. K. SARKAR, MEMBER, BOARD OF REVENUE, U.P., LUCKNOW

v.

VINAY CHANDRA MISRA

December 12, 1980

[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

Contempt of Courts Act 1971, *S.* 15(2)—*Scope of Contempt of Subordinate or inferior Court—Whether High Court can take* suo motu *cognizance of and punish.*

The Contempt of Courts Act, 1971 by section 15(2) empowers the High Court in the case of any criminal contempt of a subordinate court, to take cognizance on a reference made to it by the subordinate court, or on a motion made by the Advocate-General, or in relation to a Union Territory by the notified Law Officer.

In a proceeding under the U.P. Zamindari and Land Reforms Act 1950, the respondent-advocate, appeared as a counsel before the appellant who was a Member of the Board of Revenue to oppose the vacation of a stay order filed before the Board.

The respondent, in his petition to the High Court under the Contempt of Courts, 1971 alleged that in the course of arguments before the appellant in the aforesaid proceeding, the appellant got infuriated, lost his temper and abused him saying "Nalayak Gadhe Salle ko Jail Bhijwadunga; kis Idiot Ne Advocate Bana Diya Hai", and that thereby the appellant had committed contempt of his own Court as well as that of the High Court as provided in sections 15 and 16 of the Contempt of Courts Act which was punishable under section 12 of the said Act.

Before the High Court, the appellant raised a preliminary objection stating that the High Court was not competent to take cognizance of the alleged contempt without any reference from the subordinate Court or without a motion by the Advocate-General as envisaged by section 15(2) of the Act. The High Court rejected the preliminary objection and held that the application was maintainable.

In the appeal to this Court, on the question whether the High Court can take *suo motu* cognizance of contempt of subordinate/inferior Court when it is not moved in either of the two modes mentioned in section 15(2) of the Act.

HELD : 1. Sub-section (2) of section 15 of the Contempt of Courts Act 1971, does not restrict the power of the High Court to take cognizance of and punish contempt of a subordinate Court, on its own motion [339 A]

2. In the facts of the instant case the High Court has not acted improperly or illegally in taking *suo motu* cognizance, on the petition of the respondent-advocate. [340 C]

A 3. Articles 129 and 215 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. Parliament has, by virtue of Entry 77 of List I of the Seventh Schedule, and Entry 14 of List III of the Seventh Schedule, power to define and limit the power of the Courts in punishing contempt of Court and to regulate their procedure in relation thereto. [337 A-B]

Mohd. Ikram Hussain v. *The State of U.P.*, A.I.R. 1964 S.C. 1625 referred
B to.

4. Section 15 does not specify the basis or the sources of the 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 on 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
C 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, the High Court, has, 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*. [339B-E]

D 5. 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 contemner. 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. [339 F-G]

E 6. If the intention of the Legislature was to take away the power of the High Court to take *suo motu* cognizance of contempt, there was no difficulty in saying so in unequivocal language, or in wording sub-section (2) of section 15 in a negative form. [338 H; 339 A]

7. The whole object of prescribing procedural modes of taking cognizance in section 15 is to safeguard the valuable time of the High Court or of the
F Supreme Court from being wasted by frivolous complaints of contempt of court. [339 E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 294 of 1974.

From the Judgment and Order dated 10.4.1978 of the Allahabad
G High Court in Criminal Misc. Contempt Case No. 115/73.

O. P. Rana for the Appellant.

J. P. Goyal and *Pramod Swarup* for the Intervener.

The Judgment of the Court was delivered by

H SARKARIA, J. This appeal is directed against an order, dated April 10, 1974, of the High Court of Judicature at Allahabad in

Criminal Misc. Contempt Case No. 115 of 1973. It raises a question of law as to the jurisdiction and powers of a High Court to take action *suo motu* under Section 15 of the Contempt of Courts Act, 1971. The material facts giving rise to this appear are as follows:

Raj Narain alias Raja Sharma, Ram Narain, Tapesh Narain alias Trilok Narain and Hari Narain, respondents instituted Suit No. 89/168 under Section 209 of the U.P. Zamindari & Land Reforms Act (hereinafter referred to as the Act) for ejectment of eleven defendants.

Issue No. 6 framed in the case was referred under Section 331A of the Act to the Revenue Officer, Sub-Divisional Office, for seeking declaration under Section 143 or 144 of that Act, with regard to the question as to whether the land in suit was *abadi* land before the consolidation and even thereafter. The Revenue Officer by his order, dated September 3, 1970, dismissed the suit. Aggreived by the dismissal of their suit, the plaintiffs preferred an appeal before the Commissioner, Meerut, who, by his order dated April 29, 1972, allowed the appeal and decreed the suit with costs.

Against the decree of the Commissioner, the defendants preferred Revenue Second Appeal No. 226(2) of 1971-72 before the Revenue Board. Along with the petition of appeal, they made an application for stay of the execution of the ejectment decree. The Board of Revenue passed an order on June 12, 1972, staying the execution of the decree. The opposite party therein, moved an application for vacation of the ex-parte stay order. The application for vacation of stay order came up for hearing before the appellant, herein, in his capacity as Member of the Revenue Board, on October 23, 1973. The respondent, Shri Vinay Chandra Misra appeared as a counsel in that Court on behalf of the appellant therein, to oppose the vacation of the stay order. What happened thereafter on that day, according to the allegations in the petition and affidavit, dated October 23, 1973, of Shri V. C. Misra, Advocate filed before the High Court, was as follows:

> "That on the said date the opposite party (appellant herein) heard the counsel of the parties in the case and was pleased to confirm the stay order.
>
> 6. That even after passing of the order aforesaid the counsel of (the respondent in that appeal) addressed the Court (opposite party) further and during the course of his arguments, the opposite party (appellant herein) scored the order and vacated the stay order and threw the file for getting the signatures of the parties affixed on the same.

A 7. That on this, the deponent (Shri V. N. Mishra) requested the opposite party to hear him and when he resisted, the opposite party got infuriated, lost his temper and abused the applicant and ordered the Court peon to throw the deponent physically out of the Court....."

On the preceding facts, Shri Misra, on October 23, 1973, filed B a petition under the Contempt of Courts Act, 1971, against the appellant, herein, in the High Court of Judicature at Allahabad, alleging that since the facts stated in the petition and the affidavit, supporting it, show that the "opposite party (appellant herein) committed the contempt of his own Court as that of the High Court as C provided under Section 15/16 of the Contempt of Courts Act punishable under Section 12 of the said Act, he deserves to be punished for the same in order to save the dignity, decorum and honour of his Court and that of the Hon'ble High Court". Shri V. C. Misra further prayed that the High Court "be pleased to take *suo motu* action under Section 15(1) of the aforesaid Act against D the contemner-opposite party or be pleased to pass such other and further order as the Court deems fit."

In Annexure '1' to his petition, Shri V. N. Misra gave particulars of the alleged criminal conduct of the appellant and of the contemptuous words uttered by him. In that Annexure, he alleged, *inter alia,* that the appellant had used these abusive words in respect E of him (Shri Misra) "Nalayak Gadhe Sale ko Jail Bhijwadunga; Kis Idiot Ne Advocate Bana Diya Hai".

On receiving this petition, the High Court straight-away issued notice to the appellant, herein, to show cause why he be not proceeded against for committing contempt of Court. The appellant received this notice on November 5, 1973 and filed his reply sup- F ported by an affidavit dated November 8, 1973, in which he denied the allegations in the petition levelled by Shri V. C. Misra. The latter also filed a rejoinder affidavit dated December 10, 1973, in which he reiterated the allegations in his petition and in the Annexures thereto.

G A preliminary objection was taken by the appellant before the High Court, that the latter was not competent to take cognizance of the contempt alleged to have been commited in the petition moved by Shri Misra without any reference from the subordinate court or without a motion by the Advocate-General. Reliance in this connection was placed on sub-section (2) of Section 15 of the Act. The H High Court rejected this preliminary objection with these observations:

"Since Article 215 (of the Constitution) states that every High Court shall be a Court of Record and shall have all the

powers of such a Court, it follows that through that Article the Constitution preserved to the High Courts its power as a Court of Record to punish contempt of subordinate Courts. No doubt a special reference is made in Article 215 to the power of the High Court to punish contempt of itself. That has only been done to emphasise that particular power of the High Court. The aforesaid words do not exclude what the preceding part of Article 215 preserves to or confers on the High Court.....

The result of incorporating Article 215 in the Constitution is that the power of every High Court as a Court of Record to punish contempt of the subordinate courts now carries a constitutional sanction behind it and that the power cannot be done away with except through an amendment of the Constitution.

.. Section 2 of the 1926 Act and Section 3 of the 1952 Act do not confer any new power but recognise the power that a High Court already possesses as a Court of Record; it can be said that equal force about Section 10 of the 1971 Act that it does not confer any new jurisdiction in the High Court but only recognised the jurisdiction which was initially inherent in every High Court as a Court of Record and which now has the sanction of the Constitution behind it by virtue of Article 215.

If Section 15, sub-section (2) is interpreted to mean that a High Court cannot take cognizance of the contempt committed of a subordinate court, whether committed by the court itself or by a stranger, except in one of the modes specified therein it can lead to anomalous results. .....

"... Interpreting sub-section (2) of Section 15 in that manner would be inconsistent with Section 10 of the Act and shall be violative of the powers of this Court as a Court of Record, which powers now carry Constitutional sanction by virtue of Article 215 of the Constitution.

.. Section 10 of 1971 Act explicitly states that every High Court shall have and exercise the same jurisdiction, power and authority in accordance with the same procedure and practice in respect of the contempt of Courts subordinate to it as it has and exercises in respect of contempt of itself,...."

A Aggrieved by the order of the High Court rejecting the preliminary objection, the appellant has now come in appeal before us.

At the outset, a preliminary objection has been taken by Shri Goyal, learned counsel for the respondent, that under Section 19(1) of the Act, only a final order whereby the contemner is B punished is appealable; that since the impugned order is not such an order, this appeal is incompetent. In this connection Shri Goyal has referred to several decisions, including that in *Purshottam Das Goyal* v. *Hon'ble Mr. Justice B. S. Dhillon*(1), whereby it has been held that it could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every interlocutory C order passed in the proceedings initiated under Section 17 of the Act, by the High Court. An order or decision in order to be appealable under Section 19(1) of the Act, must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Reference has also been made to the decision of this Court in *V. C. Shukla* v. *State*(2).

D This objection of Shri Goyal has been rendered merely academic, because as a matter of abundant caution, the appellant herein has filed a petition for grant of special leave under Article 136 of the Constitution, also. The matter being important, the leave to appeal has been granted to him.

E The controversy in this appeal centres round the question, whether the High Court can 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 Act.

Before dealing with this contention, it is necessary to have a look F at the relevant provisions of the Constitution and the Act.

Article 215 of the Constitution provides :

> "Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

G Entry 14 of List III of the Seventh Schedule is to this effect : "Contempt of Court, but not including contempt of the Supreme Court." A provision analogous to Article 215 is Article 129 which preserves to the Supreme Court all the powers of a Court of Record including the power to punish for contempt of itself. Entry 77 of List I of the Seventh Schedule is relatable to Article 129.

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(1) [1978] 3 S.C.R. 510.
(2) A.I.R. 1980 S.C. 62

Articles 129 and 215 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. As pointed out by this Court in *Mohd. Ikram Hussain* v. *The State of U.P.*(1), there are no curbs on the power of the High Court to punish for contempt of itself except those contained in the Contempt of Courts Act. Articles 129 and 215 do not define as to what constitutes contempt of court. Parliament has, by virtue of the aforesaid Entries in List I and List III of the Seventh Schedule, power to define and limit the powers of the courts in punishing contempt of court and to regulate their procedure in relation thereto. Indeed, this is what is stated in the Preamble of the Act of 1971.

Section 2(c) of the Act defines "criminal contempt". Section 9 emphasises that "nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act". Section 10 runs as under :

> "Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself."

Then, there is a proviso which is not material for our purpose. The provision in Section 10 is but a replica of Section 3 of the 1952 Act. The phrase "courts subordinate to it" used in Section 10 is wide enough to include all courts which are *judicially* subordinate to the High Court, even though administrative control over them under Article 235 of the Constitution does not vest in the High Court. Under Article 227 of the Constitution the High Court has the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Court of Revenue Board, therefore, in the instant case, is a court "subordinate to the High Court" within the contemplation of Section 10 of the Act.

Section 14 provides for the procedure where contempt is committed in the face of the Supreme Court or a High Court. Section 15 is very material for our purpose. It provides in regard to cognizance of 'criminal contempt' in cases other than those falling under Section 14. The material portion of Section 15 reads thus :

> "(1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or

(1) A.I.R. 1964 S.C. 1625

A 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.

B (2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union Territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf..."

C The operation of sub-section (1) appears to be confined to cases of 'criminal contempt' of the Supreme Court or the High Court, itself. Criminal contempt of a subordinate court is dealt with in sub-section (2).

D A comparison between the two sub-sections would show that whereas in sub-section (1) one of the three alternative modes for taking cognizance, mentioned is "on its own motion", no such mode is expressly provided in sub-section (2). The only two modes of taking cognizance by the High Court mentioned in sub-section (2) are : (i) on a reference made to it by a subordinate court; or (ii) on a E motion made by the Advocate-General, or in relation to a Union Territory by the notified Law Officer. Does the omission in Section 15(2) of the mode of taking *suo motu* cognizance indicate a legislative intention to debar the High Court from taking cognizance in that mode of any criminal contempt of a subordinate court? If this question is F answered in the affirmative, then, such a construction of sub-section (2) will be inconsistent with Section 10 which makes the powers of the High Court to punish for contempt of a subordinate court, co-extensive and congruent with its power to punish for its own contempt, not only in regard to quantum or pre-requisites for punishment, but also in the matter of procedure and practice. Such a construc- G tion which will bring Section 15(2) in conflict with Section 10, has to be avoided, and the other interpretation which will be in harmony with Section 10 is to be accepted. Harmoneously construed, sub-section (2) of Section 15 does not deprive the High Court of the power of taking cognizance of criminal contempt of a subordinate court, on its own motion, also. If the intention of the Legislature H was to take away the power of the High Court to take *suo motu* cognizance of such contempt, there was no difficulty in saying so in unequivocal language, or by wording the sub-section in a negative

form. We have, therefore, no hesitation in holding in agreement with the High Court, that sub-section (2) of Section 15, properly construed, does not restrict the power of the High Court to take cognizance of and punish contempt of a subordinate court, on its own motion.

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 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. 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 it 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 contemner. 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. The advice and opinion, in this connection, expressed by the Sanyal Committee is a pertinent reminder. "In the case of criminal contempt, not being contempt committed in the face of the court, we are of the opinion that it would lighten the burden of the court, without in any way inter-

A fering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate-General in some categories of cases at least.....the Advocate-General may, also, move the Court not B only on his own motion but also at the instance of the court concerned."

In the peculiar circumstances of the instant case, we do not think that the High Court has acted improperly or illegally in taking *suo motu* cognizance, on the petition of the respondent-advocate.

C We, therefore, dismiss this appeal and send the case back to the High Court for further proceedings in accordance with law.

As a matter of caution, we would add that nothing in this judgment shall be construed as an observation relating to the merits of the allegation levelled by Shri V. C. Misra against the appellant.

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N.V.K. *Appeal dismissed.*