

MAHESHWAR PERI & OTHERS

v.

HIGH COURT OF JUDICATURE AT ALLAHABAD THROUGH
REGISTRAR GENERAL

(Criminal Appeal No. 549 of 2016)

JUNE 30, 2016

[KURIAN JOSEPH AND ROHINTON FALI NARIMAN, JJ.]

Contempt of Courts Act, 1971 – s. 20 – Suo motu initiation of contempt proceedings – Period of limitation – Publication of article authored by the third appellant in a magazine wherein names of judges allegedly involved in the case incorporated – Application by advocate before the High Court for initiating contempt proceedings on its own motion since the article caused insult to the higher judiciary – Petition placed before the Single Judge and thereafter, the Chief Justice – Four years later matter listed before the Division Bench of the High Court – High Court initiated suo motu action, and name of the petitioner was not to be shown in the cause list – On appeal, held: Article having been published in 2008 and the High Court having initiated the suo motu action only in 2015, the same is hit by the limitation of one year – Action u/s. 15 was initiated suo motu by the High Court – It was said that the name of the petitioner is not to be shown in the cause list – Apparently, it can only be suo motu because the application filed by the advocates, is without the consent in writing of the Advocate General – Only application other than by the Advocate General, contemplated u/s. 15, is the motion made by any person with the consent in writing of the Advocate General – Constitution of India – Arts.129 and 215.

Allowing the appeal, the Court

HELD: 1.1 The criminal contempt of a court subordinate to High Court can be initiated either *suo motu* or on a motion made by the Advocate General. The *suo motu* action is set in motion on a Reference made to it by the subordinate court. In view of the process involved in making the Reference by the subordinate court, in **Pallav Sheth* case, it has been held that the Reference

- A is the starting point of the process of initiation of the action for contempt. Unless a court was to take *suo motu* action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing the attention of the court to the contempt having been committed.
- B The application is the motion provided under Section 15 of the Contempt of Courts Act, 1971. Such a motion, by any person other than Advocate General, can be made only with the consent in writing of the Advocate General. In other words, any other application made by a person without the consent of the Advocate General, is not an application in the eyes of law. [Para 14] [218-H; 219-A-C]

- 1.2 The High Court is clear in its mind that the action under Section 15 of the Act is initiated *suo motu* by the High Court. To make it abundantly clear in the impugned order, it is said that the name of the petitioner is not to be shown in the cause list.
- D Apparently, it can only be *suo motu* because the application filed by the advocates, and which is referred to in the impugned order, is without the consent in writing of the Advocate General. The only application other than by the Advocate General, contemplated under Section 15 of the Act, is the motion made by
- E any person with the consent in writing of the Advocate General. Being a jurisdiction which, when exercised, is fraught with serious consequences, the Parliament has thought it justifiably fit to provide for such safeguards. Thus, the impugned article, having been published on 10.11.2008 and the High Court having initiated the *suo motu* action only on 28.04.2015, the same is hit by the
- F limitation of one year prescribed under the Act. [Para 16] [219-G-H; 220-A]]

**Pallav Sheth v. Custodian and Others* (2001) 7 SCC 549: 2001 (1) Suppl. SCR 387 – referred to.

Case Law Reference

- G 2001 (1) Suppl. SCR 387 referred to Para 14
- CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 549 of 2016.
- From the Judgment and Order dated 28.04.2015 of the High Court of Judicature at Allahabad in Contempt Application (Criminal) No. 21 of
- H 2008.

A. J. Bhambhani, Sr. Adv., Ms. Sumita Hazarika, Adv. for the Appellants. A

Sunny Choudhary, Adv. for the Respondent.

The Judgment of the Court was delivered by

KURIAN, J. 1. Leave granted. B

2. What is the period of limitation for *suo motu* initiation of contempt proceedings, is the short question for consideration in this case.

3. The Outlook Magazine, in its 10.11.2008 edition, published an article authored by the third appellant, which mainly dealt with the infamous Provident Fund Scam. The names of the Judges, who are allegedly involved in the case, were published. C

4. On 18.11.2008, one Mr. Manoj Kumar Srivastava and Mr. Veer Singh, Advocates practicing in the High Court of Allahabad, filed Miscellaneous Application No. 21 of 2008 with the following prayer:

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to proceed for initiating Criminal Contempt proceedings on its own motion against aforesaid opposite parties and they be punished accordingly under Article 215 of the Constitution of India and or to pass any other order which this Hon’ble Court may deem fit and proper.” D E

5. According to them, the article “has caused great insult to the Higher Judiciary. The remarks are derogatory and have lowered the authority of the Higher Judiciary.” Learned Counsel appearing for the respondent/High Court of Allahabad submits that the petition was placed before a Single Judge of the High Court, and thereafter, before the Chief Justice. It appears, for about four years, nothing happened in the matter until it was listed before the Division Bench of the High Court leading to the impugned order dated 28.04.2015. It was held in the impugned order that: F

“... The publication dated 10.11.2008 at page 56, 57, 58, 59 as mentioned above has caused great insult to the higher Judiciary. The remarks are derogatory and lower the authority of the higher Judiciary. Hence, it is a fit case to take ‘suo motu’ action by this Court. Accordingly, we take ‘suo motu’ action. Hence the name of the petitioner is not to be shown in the cause list.” G H

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 the Law Officer of the Central Government in the case of a Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate-General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the court the wilful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a court was to take a suo motu action, the proceeding under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing the attention of the court to the contempt having been committed. When the judicial procedure requires an application being filed either before the court or consent being sought by a person from the Advocate-General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.

40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding such initiation. Similarly, in the case of a civil contempt, filing of an application drawing the attention of the court is necessary for further steps to be taken under the Contempt of Courts Act, 1971."

11. We are afraid, the contentions advanced by the learned Counsel for the appellants cannot be appreciated. Be it an action initiated for contempt under Article 129 of the Constitution of India by the Supreme Court or under Article 215 of the Constitution of India by the High Court, it is now settled law that the prosecution procedure should be in consonance with the Act, as held by this Court in Pallav Sheth case (supra).

12. And thus, the dispute boils down to the question of limitation only.

- A 13. Under the Act, the action for contempt is taken by only two courts, either the Supreme Court or the High Court. The procedure is prescribed under Section 15 of the Act, which reads as follows:

“**15. Cognizance of criminal contempt in other cases.—(1)**

- B 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 to (*sic* of) the Advocate-General, or

- C (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.

- D (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.

- E (3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression “Advocate-General” means—

- F (a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

- G (c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.”

- H 14. Criminal Contempt of court subordinate to High Court can be initiated either *suo motu* or on a motion made by the Advocate General. The *suo motu* action is set in motion on a Reference made to it by the

subordinate court. In view of the process involved in making the Reference by the subordinate court, in Pallav Sheth case (supra), it has been held that the Reference is the starting point of the process of initiation of the action for contempt. That is why in paragraph-39, which we have extracted above, it has been clearly held that ... “unless a court was to take *suo motu* action, the proceeding under The Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing the attention of the court to the contempt having been committed. “The application is the motion provided under Section 15 of The Contempt of Courts Act, 1971. Such a motion, by any person other than Advocate General, can be made only with the consent in writing of the Advocate General. In other words, any other application made by a person without the consent of the Advocate General, is not an application in the eyes of law.”

15. This aspect has been succinctly discussed and subtly distinguished in paragraph-44 of the Pallav Sheth case (supra). To quote paragraph-44:

“44. Action for contempt is divisible into two categories, namely, that initiated *suo motu* by the court and that instituted otherwise than on the court’s own motion. The mode of initiation in each case would necessarily be different. While in the case of *suo motu* proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice *suo motu*, within a period of one year from the date on which the contempt is alleged to have been committed.”

16. Coming to the factual matrix of the present case, the High Court is clear in its mind that the action under Section 15 of the Act is initiated *suo motu* by the High Court. To make it abundantly clear in the impugned order, it is said that the name of the petitioner is not to be shown in the cause list. Apparently, it can only be *suo motu* because the application filed by the advocates, and which is referred to in the impugned order, is without the consent in writing of the Advocate General. The only application other than by the Advocate General, contemplated under Section 15 of the Act, is the motion made by any person with the consent in writing of the Advocate General. Being a jurisdiction which, when

A exercised, is fraught with serious consequences, the Parliament has thought it justifiably fit to provide for such safeguards. Thus, the impugned article, having been published on 10.11.2008 and the High Court having initiated the *suo motu* action only on 28.04.2015, the same is hit by the limitation of one year prescribed under the Act.

B 17. In that view of the matter, it has become unnecessary for us to deal with the submissions on merits as to whether the contents of the article would constitute criminal contempt or not.

18. Accordingly, the appeal is allowed and the impugned order is set aside.

C Nidhi Jain

Appeal allowed.