

The Jammu and Kashmir Contempt of Courts Act, 1997

JAMMU & KASHMIR

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Act 25 of 1997

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The Jammu and Kashmir Contempt of Courts Act, 1997 Act No. 25 of 1997 An Act to define and limit the power of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto. Be it enacted by the Jammu and Kashmir State Legislature in the Forty Eight Year of the Republic of India as follows.:-

1. Short title and extent.

(1) This Act may be called the Jammu and Kashmir Contempts of Courts Act, 1997. (2) It extends to the whole of the Jammu and Kashmir State.

2. Definitions.

- In this Act, unless the context otherwise requires, -(a) "Contempt of Court" means Civil Contempt or Criminal Contempt ; (b) "Civil Contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of court or wilful breach of undertaking given to a court ; (c) "Criminal Contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which - (i) scandalizes or tends to scandalize or lowers or tends to lower the authority of any court ; or (ii) prejudices or interferes or tends to interfere with, the due course of any judicial proceeding, or (iii) interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner ; (d) "High Court" means the High Court of the State of Jammu and Kashmir".

3. Innocent publication and distribution of matter not contempt.

(1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words spoken or written or by signs or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending. (2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court. (3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1), if at the time of distribution he had no reasonable ground for believing that it contained or was likely to contain any such matter as aforesaid : Provided that this sub-section shall not apply in respect of the distribution of—(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules, contained in section 3 of the Press and Registration of Books Act, 1867 (25 of 1867) ; (ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in section 5 of the said Act. Explanation. - For the purposes of this section, a judicial proceeding—(a) is said to be pending—(A) In the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise ; (B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1973 or any other law—(i) where it relates to the Commission of an offence, when the charge sheet or challan is filed, or when the court issues summons or warrant, as the case may be against the accused ; and (ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and in the case of civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is preferred, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired ; (b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree or order or sentence passed therein are pending.

4. Fair and accurate report of judicial proceeding not contempt.

- Subject to the provisions contained in section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

5. Fair criticism of judicial act not contempt.

- A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.

6. Complaint against Presiding Officers of Subordinate Court when not contempt.

- A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the Presiding Officer of any Subordinate Court to-(a)any other subordinate court, or(b)the High Court, to which it is subordinate.Explanation. - In this section "Subordinate Court" means any court subordinate to the High Court.

7. Publication of information relating to proceedings in chambers or in camera not contempt except in certain cases.

(1)Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceedings before any court sitting in chambers or in camera except to the following cases, that is to say,-(a)where the publication is contrary to the provisions of any enactment for the time being in force ;(b)where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published ;(c)where the court sits in chambers or in camera for reasons connected with public order or the security of the State, the publication of information relating to these proceedings ;(d)where the information relates to the secret process, discovery or invention which is an issue in the proceedings.(2)Without prejudice to the provisions contained in sub-section (1), a person shall not be guilty of contempt of court for publishing the text or a fair and accurate summary of the whole or any part, of an order made by the court sitting in chambers or in camera, unless the court has expressly prohibited the publication thereof on grounds of public policy, or for reasons connected with public order or the security of the State, or on the ground that it contains information relating to a secret process, discovery or invention or in exercise of any power vested in it.

8. Other defences not affected.

- Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt of court has ceased to be available merely by reason of the provisions of this Act.

9. Act not to imply enlargement of scope of contempt.

- 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.

10. Power of the High Court to punish contempts of subordinate courts.

- The 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 :Provided that the High Court shall not take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Ranbir Penal Code, Samvat 1989.

11. Power of High Court to try offences committed or offenders found outside jurisdiction.

- The High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.

12. Punishment for contempt of court.

(1)Save as otherwise expressly provided in this Act or in any other law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both :Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.Explanation. - An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.(2)Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in subsection (1) for any contempt either in respect of itself or for a court subordinate.(3)Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.(4)Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person :Provided that nothing contained in this sub-section shall render any such person liable to such punishment, if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.(5)Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced with leave of the court, by the detention in civil prison of such Director, Manager, Secretary or other officer.Explanation. - or purposes of sub-sections (4) and (5),-(a)"Company" means any body corporate and includes a firm or other association of individuals ; and(b)"director" in relation to a firm, means a partner in the firm.

13. Contempts not punishable in certain cases.

- Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

14. Procedure where contempt is in the face of the High Court.

(1) Where it is alleged, or appears to the High Court upon its own view that a person has been guilty of any contempt committed in its presence or, hearing, the court may cause such person to be detained in custody and at any time before the rising of the court, on the same day, or as early as possible; thereafter, shall-(a) cause him to be informed in writing of the contempt with which he is charged ;(b) afford him an opportunity to make his defence to the charge ;(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge ; and (d) make such order for the punishment or discharge of such person as may be just. (2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section (1) applies, whether orally or in writing to have the charge against him tried by some judge other than the judge or judges in whose presence or hearing the offence is alleged to have been committed, and the court is of the opinion that it is practicable to do so and that in the interests of proper administration of justice, the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof. (3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a judge other than the judge or judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the judge or judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case. (4) Pending the determination; of the charge, the court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify : Provided that he shall be released on bail, if a bond for such sum of money as the court thinks sufficient, is executed with or without sureties conditioned that person charged shall attend at the time and place mentioned in the Bond and shall continue to so attend until otherwise directed by the Court : Provided further that the court may, if it thinks fit, instead of taking bail a person of such discharge him on his executing a bond without sureties for evidence, as aforesaid.

15. Cognizance of criminal contempt in other cases.

(1) In the case of criminal contempt other than a contempt referred to in section 14, the High Court may take action on its own motion or of a motion made by-(a) the Advocate General ; or (b) any other person, with the consent in writing of the Advocate General. (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 action made by the Advocate General. (3) Every motion or reference made under this

section shall specify the exempt of which the person charged is alleged to be guilty.Explanation. - In this section, the expression "Advocate General" means Advocate General of the State.

16. Contempt by Judge, Magistrate or any other person acting judicially.

(1)Subject to the provisions of any law for the time being in force, Judge, Magistrate or other person acting judicially shall also be liable for contempt of his own court or of any other court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.(2)Nothing in this section shall apply to any observation or remarks by a Judge, Magistrate or other persons acting judicially, regarding the subordinate court in an appeal or revision pending before such Judge, Magistrate or other person against the order or judgment of the subordinate court.

17. Procedure after cognizance.

(1)Notice of every proceeding under section 15 shall be served personally on the person charged, unless the court for reasons to be recorded directs otherwise.(2)The notice shall be accompanied,-(a)in the case of proceedings commenced on a motion by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded ; and(b)in the case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.(3)The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.(4)Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, Samvat 1989, for the attachment of property in execution of a decree for payment of money, and, if, after such attachment the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.(5)Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.

18. Hearing of cases of criminal contempt to be by benches.

- Every case of criminal contempt under section 15 shall be heard and determined by a bench of not less than two judges.

19. Appeal.

(1)An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt,-(a)where the order or decision is that of a single judge to a bench of not less than two judges of the court ;(b)where the order of decision is that of a bench, to the Supreme Court.(2)Pending any appeal, the Appellate Court may order that-(a)the execution of

the punishment or order appealed against be suspended ; -(b)if the appellant is in confinement, he be released on bail ; and(c)the appeal be heard notwithstanding that the appellant has not purged his contempt.(3)Where any person aggrieved by any order against, which an appeal may be filed satisfies the High Court that he intends to prefer an appeal High Court may also exercise all or any of the powers conferred by sub-section (2).(4)An appeal under sub-section (1) shall be filed-(a)in the case of an appeal to a Bench of the High Court within thirty days ;(b)in the case of an appeal to the Supreme Court, within sixty days from the date of the order appealed against.

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.

21. Act not to apply to Panchayats or other Village Courts.

- Nothing contained in this Act shall apply in relation to contempt of panchayats or other village courts by whatever name known for the administration of justice established under any law.

22. Act to be in addition to, and not in derogation of other laws relating to contempt.

- The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law relating to contempt of courts.

23. Power of the High Court to make rules.

- The High Court may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure.