

IN RE: PERRY KANSAGRA

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(Suo-Motu Contempt Petition (Civil) No. 3 of 2021)

NOVEMBER 03, 2022

**[UDAY UMESH LALIT, CJI AND
PAMIDIGHANTAM SRI NARASIMHA, J.]**

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Sentence/Sentencing – Sentencing for contempt – Contemnor (PK) married ‘S’ (Indian citizen) – Initially they had stayed in Kenya but on returning to India their son was born – Son and ‘S’ stayed in India – A guardianship petition was filed by the contemnor before the District Court for declaration and legal guardianship of his son – Petition was allowed by the order of the Court – ‘S’ challenged the said order before the High Court – High Court affirmed the order of District Court – ‘S’ Challenged the decision of the High Court before Supreme Court – The Supreme Court affirmed the finding of the High Court and custody of son was given to contemnor – ‘S’ filed M.A complaining of total and absolute disobedience of Supreme Court’s orders – The Supreme Court passed the judgment and recalled its earlier orders and convicted the contemnor for civil and criminal contempt of Supreme Court – The instant proceeding is for imposition of sentence – Held: Facts of the case demonstrate that the contemnor had deliberately and with clear intention had committed act of contempt – Willful disobedience of the judgment, direction and order of Court coupled with willful breach of the undertaking given by the Court constitute civil contempt – Further, the act of contemnor lowers the authority of Court – The contemnor has interfered with the due course of judicial proceedings and obstructed the administration of justice which constitutes criminal contempt – Contemnor directed to be punished with simple imprisonment for a term of six months for civil contempt of Court for his acts of deliberate and willful disobedience of the orders passed by Supreme Court and to pay a fine of Rs. 12,50,000/- (Twelve Lakhs Fifty Thousand), in default he shall further undergo simple imprisonment for one month; b) Punished with simple imprisonment for a term of six months for criminal contempt of Court for obstructing the administration of Justice and lowering the authority of Supreme Court and to pay a fine of Rs. 12,50,000/- (Twelve Lakhs

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- A *Fifty Thousand*), in default he shall further undergo simple imprisonment for one month – Sentences to be served consecutively – Constitution of India – Art.129.

- B *Pallav Sheth v. Custodian and Others* (2001) 7 SCC 549 : [2001] 1 Suppl. SCR 387 ; *Re: Vijay Kurle and Ors.* (2020) SCC online SC 407; *Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors.* (2006) 3 SCC 374 : [2006] 2 SCR 1081 ; and *Afzal and Anr. v. State of Haryana and Ors.* (1996) 7 SCC 397 : 1996 (1) JT 328 ; *Subrata Roy Sahara v. Union of India and ors.* (2014) 8 SCC 470 : [2014] 12 SCR 573 ; *Supreme Court Bar Association v. Union of India and anr.* (1998) 4 SCC 409 : [1998] 2 SCR 795 – referred to.

Case Law Reference

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|---|-------------------------|-------------|---------|
| D | [2001] 1 Suppl. SCR 387 | Referred to | Para 12 |
| | [2006] 2 SCR 1081 | Referred to | Para 14 |
| | [2014] 12 SCR 573 | Referred to | Para 17 |
| | [1998] 2 SCR 795 | Referred to | Para 17 |
- E INHERENT JURISDICTION : Suo Moto Contempt Petition (Civil) No.3 of 2021.
- Petition filed for willful disobedience of Court's Order dated 07.10.2021 and 08.12.2020 in M.A. No.2140 of 2020 in C.A. No.3559 of 2020 passed by the Supreme Court of India.
- F Tushar Mehta, SG, Ms. Aishwarya Bhati, ASG, Ms. Sonia Mathur, Sr. Adv., Prosenjeet Banerjee, Ms. Nidhi Mohan Parashar, Ms. Mansi Sharma, Ms. Shreya Singhal, Vikrant Kumar, Nikhil Chandra Jaiswal, Ms. Pratiksha Mishra, Simarjeet Singh Saluja, Sudeshna Singh, Chaitanya Raj Wadera, Ms. Akriti Anand, Ms Astha Baderiya, Ms. Divik Mathur,
- G P. K. Manohar, Ms Shagun Thakur, Ms. Shivika Mehra, Ms. B.L. Shivani, Aman Sharma, Ms. Nidhi Mohan Parashar, Rajat Nair, Kanu Agrawal, Ms. Deepabali Datta, Navanjay Mahapatra, Arvind Kumar Sharma, Advts. for the appearing parties.

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The Judgment of the Court was delivered by

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PAMIDIGHANTAM SRI NARASIMHA, J.

1. This decision on Sentencing will be in continuation of our judgment dated 11.07.2022 by which Perry Kansagra (hereinafter referred to as the ‘contemnor’) was convicted for acts of civil as well as criminal contempt of this Court. For passing the consequential order of Sentence, we adjourned the case several times¹ and after being satisfied that sufficient opportunity was given to the contemnor, we proceeded to hear the learned Senior Counsel Ms. Sonia Mathur for Smriti Kansagra (wife of the contemnor and mother of their son Aditya) the Additional Solicitor General and reserved the case for orders. By this judgment, we will consider and pass appropriate orders of Sentence.

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2. The facts necessary for the disposal of this order may briefly be stated as under. The contemnor married Smriti, an Indian citizen, on 29.07.2007 in New Delhi. Initially, the couple stayed in Nairobi, Kenya but Smriti returned to India in 2009, and the couple was blessed with a son - Aditya, on 02.12.2009 in New Delhi. Except for a brief period, when the couple went to Kenya in 2012, Aditya always stayed with Smriti in Delhi. We may mention here itself that this position continued till the custody of Aditya was handed over to the contemnor for moving him to Kenya as per the orders of this Court. The subsequent incidents that led to the recall of the orders of this Court and the judgment of conviction for contempt are all part of the Court proceedings, which unfolded as follows.

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3. A Guardianship Petition No. 53 of 2012 was filed by the contemnor before the District Court, Saket, for declaration of legal guardianship. After the contest, the petition came to be allowed by order dated 12.01.2018. Smriti challenged the said order before the High Court of Delhi. By its judgment dated 25.02.2020, the High Court affirmed the decision of the District Court granting custody of Aditya to his father, the contemnor. By a separate order passed on the same date, the High Court recorded the willingness of the contemnor and his mother, holding an Indian passport, to ensure compliance with the order of the Family Court granting continued access and visitation rights to Smriti. The direction of the High Court that the contemnor shall also file an

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¹After the judgment dated 11.07.2002 the case was listed on 22.07.2022, 27.09.2022, 30.09.2022, 17.10.2022 and 21.10.2022.

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- A undertaking before the Indian Embassy that he would submit to the jurisdiction of the Indian Courts was complied with, and it is part of the court record.

4. Smriti challenged the decision of the High Court before this Court in Civil Appeal No. 3559 of 2020. The majority decision of this Court, while affirming the findings of the High Court, disposed of the Civil Appeal on 28.10.2020 with the following observations: -

- C “(a) To safeguard the rights and interest of Smriti, we have considered it necessary to direct Perry to obtain a mirror order from the concerned court in Nairobi, which would reflect the directions contained in this Judgment.

- D (b) Given the large number of cases arising from transnational parental abduction in inter-country marriages, the English courts have issued protective measures which take the form of undertakings, mirror orders, and safe harbour orders, since there is no accepted international mechanism to achieve protective measures. Such orders are passed to safeguard the interest of the child who is in transit from one jurisdiction to another. The courts have found mirror orders to be the most effective way of achieving protective measures.

- E (c) The primary jurisdiction is exercised by the court where the child has been ordinarily residing for a substantial period of time, and has conducted an elaborate enquiry on the issue of custody. The court may direct the parties to obtain a “mirror order” from the court where the custody of the child is being shifted. Such an order is ancillary or auxiliary in character, and supportive of the order passed by the court which has exercised primary jurisdiction over the custody of the child. In International Family Law, it is necessary that jurisdiction is exercised by only one court at a time. It would avoid a situation where conflicting orders may be passed by courts in two different jurisdictions on the same issue of custody of the minor child. These orders are passed keeping in mind the principle of comity of courts and public policy. The object of a mirror order is to safeguard the interest of the minor child in transit from one jurisdiction to another, and to ensure that both parents are equally bound in each State.

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The mirror order is passed to ensure that the courts of the country where the child is being shifted are aware of the arrangements which were made in the country where he had ordinarily been residing. Such an order would also safeguard the interest of the parent who is losing custody, so that the rights of visitation and temporary custody are not impaired.”

The Court, further directed as follows: -

“(a) We direct Perry Kansagra to obtain mirror order from the concerned court in Nairobi to reflect the directions contained in this judgement, within a period of 2 weeks from the date of this judgment. A copy of the Order passed by the court in Nairobi must be filed before this Court;

(b) After the mirror order is filed before this Court, Perry shall deposit a sum of INR 1 Crore in the Registry of this Court, which shall be kept in an interest-bearing fixed deposit account (on auto- renewal basis), for a period of two years to ensure compliance with the directions contained in this judgment.

If this Court is satisfied that Perry has discharged all his obligations in terms of the aforesaid directions of this Court, the aforesaid amount shall be returned with interest accrued, thereon to the respondent;

(c) Perry will apply and obtain a fresh Kenyan passport for Aditya, Smriti will provide full co- operation, and not cause any obstruction in this behalf;

(d) Within a week of the mirror order being filed before this Court, Smriti shall provide the Birth Certificate and the Transfer Certificate from Delhi Public School, to enable Perry to secure admission of Aditya to a School in Kenya;

(e) Smriti will be at liberty to engage with Aditya on a suitable video-conferencing platform for one hour over the weekends; further, Aditya is a liberty to speak to his mother as and when he desires to do so;

(f) Smriti would be provided with access and visitation rights for 50% once in a year during the annual vacations of Aditya, either in New Delhi or Kenya, wherever she likes, after due intimation to Perry;

- A (g) Perry will bear the cost of one trip in a year for a period of one week to Smriti and her mother to visit Aditya in Kenya during his vacations. The costs will cover the air fare and expenses for stay in Kenya;
- B (h) Smriti will not be entitled to take Aditya out of Nairobi, Kenya without the consent of Perry;
- (i) We direct Perry and Smriti to file Undertakings before this Court, stating that they would abide and comply with the directions passed by this Court without demur, within a period of one week from the date of this judgement.
- C 21. As an interim measure, we direct that till such time that Perry is granted full custody of the child, he will be entitled to unsupervised visitation with overnight access during weekends when he visits India, so that the studies of Aditya are not disturbed. Perry and his parents would be required to deposit their passports before the Registrar of this Court during such period of visitation. After the visitation is over, the passports shall be returned to them forthwith.
- D 22. This appeal shall be listed before the Court after a period of four weeks to ensure compliance with the aforesaid directions, and on being satisfied that all the afore-stated directions are duly complied with, the custody of Aditya Vikram Kansagra shall be handed over by his mother Smriti Kansagra to the father Perry Kansagra.”
- E 5. Taking note of certain specific requirements and also to ensure smooth transition of Aditya’s custody in favour of the contemnor, yet another order was passed on 08.12.2020 with the following directions: -
- F “A) Except for direction issued earlier in paragraph 20 of this Order, and matters accepted by the learned counsel for the respondent, no orders are called for in respect of any of the directions sought for by the appellant.
- G B) All the directions issued in paragraph 20 of the Judgment hold good, with the addition of the one issued in paragraph 20 of this Order.
- C) A further affidavit shall be filed by the respondent within three days of this Order, that he shall abide by this Order and the additional direction issued in paragraph 20 of this Order.
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D) The respondent is not required to obtain any fresh Mirror Order in respect of the aforesaid additional direction, before Aditya is taken to Kenya, and it shall be sufficient if an appropriate application to have this Order registered, in the same manner as the Judgment was registered, is preferred within two weeks of Aditya reaching Kenya, and the copy of such registration is thereafter filed in this Court at the earliest.

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E) After filing of the further affidavit as stated above, the respondent shall be at liberty to take Aditya to Kenya as directed earlier in the Judgment.”

6. After the above-referred orders dated 28.10.2020 and 08.12.2020, followed by custody of Aditya to the contemnor, what really transpired came to light with the filing of M.A. No. 1167 of 2012 by Smriti complaining of total and absolute disobedience of this Court's Orders.

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7. Having considered the matter in detail, this Court, by its judgment dated 07.10.2021, recalled its earlier orders dated 20.08.2020 and 08.12.2020. The relevant portion of the order is as under:-

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“34. The documents and the developments referred to hereinabove show:-

(i) Perry had given an unequivocal undertaking to the High Court that he would submit to the jurisdiction of the Indian Courts. He had also given a solemn undertaking to this Court that he would comply with the Order dated 28.10.2020 in addition to the Judgment dated 28.10.2020.

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(ii) In response to a specific submission raised in Miscellaneous Application No. 2140 of 2020 (quoted in paragraph 16 hereinabove), it was submitted by Perry that he had subjected himself to the jurisdiction of this Court. While dealing with the rival submissions in the Order dated 8.12.2020, this Court made it clear that the undertaking given by Perry to the High Court would continue to be operative, in addition to the undertaking given to this Court.

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(iii) The Judgment dated 28.10.2020 had called upon Perry to obtain a 'Mirror Order' from the concerned Court in Nairobi to reflect the directions contained in the Judgment

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- A *dated 28.10.2020. Thereafter, the Order dated 9.11.2020 passed by the High Court of Kenya at Nairobi along with the relevant application moved by Perry seeking registration of the Judgment dated 28.10.2020, was filed in this Court.*
- B *(iv) There was a dispute whether the registration granted vide order dated 9.11.2020 by the High Court of Kenya at Nairobi amounted to fulfilling the requirement of a “Mirror Order”. The submissions on the point were dealt with in paragraphs 8 and 9 of the Order dated 8.12.2020. The learned counsel appearing for Perry had relied upon the opinion given by M/*
- C *s. GMC Advocates which in turn had relied upon the decision of the High Court of Kenya at Nairobi in Re : Matter of I W P (Infant) [2013] eKLR to submit that the registration itself was a “Mirror Order” in compliance of the requirements of the Judgment dated 28.10.2020.*
- D *Relying on the submissions so advanced on behalf of Perry and in deference to the Order dated 9.11.2020 passed by the High Court of Kenya at Nairobi, in paragraph 10 of the Order dated 8.12.2020, this Court observed that the registration of the Judgment of this Court by the High Court of Kenya at Nairobi was sufficient compliance of the directions to obtain*
- E *a “Mirror Order” issued from a Competent Court in Kenya.*
- F *(v) The Judgment dated 28.10.2020 and the Order dated 8.12.2020 passed by this Court were thus premised on the submission that the Order dated 9.11.2020 passed by the High Court of Kenya at Nairobi while registering the Judgment dated 28.10.2020 passed by this Court was in fact the “Mirror Order”.*
- G *(vi) It now transpires that by a subsequent Order dated 21.5.2021, the High Court of Kenya at Nairobi in Paragraph 13 of its order observed that the judgment of this Court was not registrable and dismissed the Originating Summons dated 30.10.2020 filed by Perry.*
- H *(vii) At no stage Perry brought this development to the notice of this Court that the Originating Summons moved by him seeking registration of the Judgment dated 28.10.2020 passed by this Court was dismissed by the High Court of Kenya at*

Nairobi on 21.5.2021. Having submitted to the jurisdiction of the Indian Courts it was the bounden duty of Perry to keep this Court appraised of all the developments particularly when the “Mirror Order” was the fulcrum on the basis of which this Court handed over to him the custody of Aditya.

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(viii) This infraction gets more pronounced in the light of the stand taken in his Affidavit dated 5.8.2021 filed in this Court and referred to in Paragraph 22 hereinabove. In that affidavit Perry unequivocally stated that he had not even the remotest intention to disobey the Order passed by this Court including the Judgment dated 28.10.2020. Yet, something as basic and fundamental like the Order dated 21.05.2021 was not brought to the notice of this Court. Logically, Perry should have brought back Aditya to this country so that status quo ante could be restored and appropriate orders could thereafter be passed by this Court.

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(ix) Miscellaneous Application No. 1167 of 2021 filed by Smriti had annexed e-mails exchanged between her and Perry and prayed that Perry be directed to comply with directions regarding vacation access. In response, apart from stating that he had no intentions to disobey the orders passed by this Court, Perry voiced concern about sending Aditya to India. Being well aware of the conditions in this Country, a solution was devised by this Court in its Order dated 11.08.2021 and certain directions to facilitate the entry of Aditya into and his exit from India in a safe manner were issued. Pertinently on 11.08.2021, the attention of this Court was not invited to the fact that the Situational Report dated 09.08.2021 as referred to hereinabove was made or that the matter was being looked into by the concerned authorities in Kenya.

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(X) Despite clear directions issued in the Order dated 11.08.2021 Perry had not taken any steps to comply with the Order. As a matter of fact, by the time the matter was taken up for further hearing on 16.08.2021, Perry sought to withdraw the authorization in favour of the learned counsel who were all the while representing him before this Court.

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(XI) As disclosed in I.A. 100550 of 2021 week-end Skype meetings between Smriti and Aditya were not facilitated from

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- A *the week-end of 14.08.2021 and 15.08.2021. Perry also blocked all means of communications with Smriti. Though in law the learned advocates who had entered appearance on behalf of Perry would continue to represent him, notice was additionally directed to be served on Perry through Indian embassy of Nairobi.*
- B *(XII) In the light of the defiant attitude exhibited by Perry and his refusal to abide by the Orders passed by this court, ad-interim relief in terms of prayers (d)(e) and (f) made by Smriti in her I.A. No. 100550 of 2021 was granted by this Court vide its order dated 17.08.2021.*
- C *(XIII) Finally, Petition No. E301 of 2021 and - Notice of Motion were moved on behalf of Perry, filed in the High Court of Kenya at Nairobi on 26.08.2021. The stand taken by Perry in said Petition and Notice of Motion is that it would be humiliating to compel Aditya to take OCI Card; that wishes of Aditya were not ascertained by this Court; that there was no valid Mirror Order and that the orders passed by this Court were without jurisdiction. He has prayed for declaration that there existed no valid "Mirror Order" and in the circumstances the orders passed by this Court are incapable of compliance and/or enforcement.*
- D *35. These developments not only show the defiant and contumacious posture now adopted by Perry but prima facie support the submissions of Smriti made in Interim Applications referred to in paragraphs 25, 27, and 28 herein above. There appears to be concrete material and reason to believe that it was a well-planned conspiracy on part of Perry to persuade this Court to pass orders in his favour and allow him the custody of Aditya and then turn around and defy the Orders of this Court.*
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- G *36. It is fundamental that a party approaching the Court must come with clean hands, more so in child custody matters. Any fraudulent conduct based on which the custody of a minor is obtained under the orders of the Court, would negate and nullify the element of trust reposed by the Court in the concerned person. Wherever the custody of a minor is a matter*
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of dispute between the parents or the concerned parties, the primary custody of the minor, in parens patriae jurisdiction, is with the Court which may then hand over the custody to the person who in the eyes of the Court, would be the most suitable person. Any action initiated to obtain such custody from the Court with fraudulent conduct and design would be a fraud on the process of the Court.

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39. Though, at every juncture solemn undertakings were given by Perry to the High Court and this Court, such undertakings were not only flagrantly violated but a stand is now taken challenging the very jurisdiction of the Indian Courts, despite having submitted himself to the jurisdiction of the Indian Courts. Such conduct, prime facie, can certainly be said to be contumacious calling for an action in contempt jurisdiction. Moreover, the non- disclosure of material facts by Perry at the relevant junctures also shows that he approached the Indian Courts with unclean hands.

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40. It was only on the basis of the solemn undertakings given by Perry and the order dated 09.11.2020 passed by the High Court of Kenya at Nairobi which was projected to be a “Mirror Order” in compliance of the directions issued by this Court, that the custody of Aditya was directed to be handed over to Perry. Since the false and fraudulent representations made by Perry were the foundation, on the basis of which this Court was persuaded to handover custody of Aditya to him, it shall be the duty of this Court to nullify, in every way, the effect and impact of the orders which were obtained by playing fraud upon the Court. All the decisions referred to hereinabove point in that direction. This Court would therefore be well within its power and justified to recall all the orders and continue to assume jurisdiction to ensure that the situation as it prevailed prior to the passing of the orders by the Trial Court, the High Court and this Court, gets restored, whereafter appropriate decision can be taken in parens patriae jurisdiction.”

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Finally, the Court directed as under: -

“42. In the premises, we pass following directions:

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- A *(A) The Judgment dated 28.10.2020 and the Order dated 08.12.2020 passed by this Court are recalled.*
- B *(B) The Guardianship Petition No. 53 of 2012 filed by Perry in the District Court, Saket, New Delhi seeking permanent custody of Aditya and the resultant proceedings arising therefrom including MAT APP (F.C.) No. 30 of 2018 filed in the High Court, are dismissed.*
- C *(C) The Orders granting custody having been recalled, the custody of Aditya with Perry is declared to be illegal and ab initio void.*
- D *(D) Issue notice to Perry as to why proceedings in contempt jurisdiction be not initiated against him for having violated the solemn undertakings given to this Court, returnable on 16th November, 2021. The Registry is directed to register Suo Motu Contempt Case and proceed accordingly.*
- E *(E) The notice shall additionally be served through e-mail directed at the e-mail id used by Perry in communicating with Smriti. The details in that behalf shall be furnished to the Registry by Smriti within two days.*
- F *(F) The Central Bureau of Investigation, New Delhi through its Director is directed to initiate appropriate proceedings by registering criminal proceedings against Perry and to secure and entrust the custody of Aditya to Smriti.*
- G *(G) The Secretary, Ministry of External Affairs, Government of India, New Delhi and the Indian Embassy in Kenya are directed to ensure that all possible assistance and logistical support is extended to Smriti in securing the custody of Aditya.*
- H *(H) From and out of the amount of Rs. 1 crore deposited by Perry in this Court, at this stage, an amount of Rs. 25 lakhs be handed over to Smriti towards legal expense incurred or required to be incurred hereafter. Rest of the money shall continue to be kept in deposit with the Registry till further orders."*

8. On 25.01.2022, following the suo-moto notice for contempt of Court, this Court framed charges and issued notice to the contemnor.

- H The matter was adjourned from time to time to give further opportunities

to the contemnor. Finally, by its judgment dated 11.07.2022, this Court convicted the contemnor for having committed civil and criminal contempt of this Court's orders. The relevant portion of the order is as follows:

"15. It is thus well settled that a person who makes a false statement before the Court and makes an attempt to deceive the Court, interfered with the administration of justice and is guilty of contempt of Court. The extracted portion above clearly shows that in such circumstances, the Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court.

16. The essential features of the matter as culled out in paragraph 34 of the Order dated 07.10.2021 were relied upon to arrive at a prime facie observation that Perry was guilty of contempt of Court. Though notice was issued to Perry, no response has been tendered. We find that the material on record clearly shows violation on part of Perry. The observations made in paragraph 34 of the order dated 07.10.2021 were on the basis of record. Having considered the entirety of the matter, in our view, Perry is guilty of having committed criminal contempt of Court part from the contempt for violating express undertakings given to the Courts, including this Court. We accordingly hold Perry guilty under the Contempt of Courts Act, 1971.

17. Though the instant proceedings can be taken to logical conclusion and order of sentence can be awarded even in the absence of Perry, we give final opportunity to Perry to present himself before this Court on 22.07.2022 at 3.00 pm along with Aditya. He shall then have an opportunity to advance appropriate submissions on the issue of punishment to be awarded to him. It shall also be open to Perry to purge himself of contempt in which case a sympathetic view may be taken in the matter.

Let copy of this Order be served upon Perry through email ID used by him in serving process upon Smriti. Additionally, a copy shall be given to Mr. P.K. Manohar, learned Advocate."

A 9. It is in the above-referred background that the present proceedings for imposition of sentence are being taken up. These proceedings for sentence were spread over three months. During this period, the case was listed on 22.07.2022, 27.09.2022, 30.09.2022 and 17.10.2022. It was finally heard on 21.10.2022 when it was decided that sufficient opportunity had been granted to the contemnor to appear and explain his actions or to purge his conduct. However, he continued to be defiant & did not enter appearance personally or through counsel.

B 10. We heard Ms. Sonia Mathur, Sr. Advocate on behalf of Smriti Kansagra, and also heard Ms. Aishwarya Bhati, learned ASG, who assisted the Court as per our request on 30.09.2022. Having examined the merit in detail, we hold that:

C 10.1 The contemnor had given an unequivocal undertaking to the High Court that he would submit to the jurisdiction of the Indian Courts. In response to a submission raised in Miscellaneous Application No. 2140 of 2020, he specifically stated that he had subjected himself to the jurisdiction of this Court. In its Order dated 08.12.2020, this Court made it clear that the undertaking given by him to the High Court would continue to be operative in addition to the undertaking given to this Court. The contemnor blatantly breached the undertaking. This is a deliberate disobedience of Courts order.

D 10.2 The contemnor gave a solemn undertaking to this Court that he would comply with the judgment dated 28.10.2020 and the order dated 08.12.2020. However, he breached this undertaking also. It had become evident that the contemnor has, in his well-calculated and deliberate scheme of things, given assurances and undertakings to mislead the Courts in India, including this Court, when he had no intention to comply or abide by any of his assurances. The following acts would demonstrate that they are not only willful disobedience of the judgment of this Court but are calculated to obstruct the administration of Justice and interfere with the due course of judicial proceedings. They had the clear effect of lowering the authority of the Court.

F 10.3 The judgment dated 28.10.2020 called upon the contemnor to obtain a Mirror Order from the concerned Court in Nairobi to reflect the directions contained in the judgment dated 28.10.2020. Following this, the order dated 09.11.2020 passed by the High Court of Kenya at Nairobi along with the relevant application moved by the contemnor

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seeking registration of the judgment dated 28.10.2020, was filed in this Court. There was a dispute whether the registration granted vide order dated 09.11.2020 by the High Court of Kenya at Nairobi amounted to fulfilling the requirement of a Mirror Order. The counsel appearing for the contemnor relied upon the opinion given by M/s GMC Advocates which in turn had relied upon the decision of the High Court of Kenya at Nairobi in Re: Matter of I W P (Infant) [2013] eKLR to submit that the registration itself was a “Mirror Order” in compliance of the requirements of the Judgment dated 28.10.2020. Through submissions advanced on behalf of the contemnor based on the order dated 09.11.2020 passed by the High Court of Kenya at Nairobi, this Court was persuaded to believe that registration of the judgment of this Court by the High Court of Kenya at Nairobi was sufficient compliance of the directions to obtain a “Mirror Order”. It now transpires that the High Court of Kenya at Nairobi by its order dated 21.05.2021 held that the judgment of this Court was not registrable and dismissed the Originating Summons.

10.4 The proceedings and the order of the High Court of Kenya at Nairobi were suppressed. The contemnor deliberately and with the clear intention to defeat the judgment and order of this Court did not bring these facts to the notice of this Court. Having submitted to the jurisdiction of the Indian Courts it was the bounden duty of the contemnor to keep this Court apprised of all the developments particularly when the “Mirror Order” was the fulcrum on the basis of which this Court handed over to him the custody of Aditya. This act has clearly lowered the authority of this Court.

10.5 This infraction gets more pronounced in the light of the stand taken in his Affidavit dated 05.08.2021 filed in this Court, where the contemnor unequivocally stated that he had not even the remotest intention to disobey the Order passed by this Court including the Judgment dated 28.10.2020. These equivocal and contradictory acts clearly demonstrate that the contemnor was acting with a design and a clear intention to defeat the orders of this Court. He obstructed the course of Justice.

10.6 Being well aware of the procedure devised by this Court in its Order dated 11.08.2021 to facilitate the safe entry and exit of Aditya into India, the contemnor did not inform this Court about the fact that a Situational Report dated 09.08.2021 was made or that the concerned authorities were looking into the matter in Kenya. All these acts were done and contrary steps were taken even while the contemnor was

- A assuring this Court that he had no intention to disobey the orders passed by this Court. All this demonstrates a clear intention to mislead this Court.

10.7 Despite clear directions issued in the Order dated 11.08.2021 Perry had not taken any steps to comply with the Order. He failed to renew OCI and failed to have Aditya board the flight on 13.08.2021.

- B Weekend Skype meetings between Smriti and Aditya were not facilitated from the weekend of 14.08.2021. In total and complete disregard for all orders, the contemnor blocked all means of communication with Smriti.

- C 10.8 Though in law the learned advocates appearing on behalf of the contemnor would, as per our orders, continue to represent him, we have additionally directed that notice be served on him through Indian embassy of Nairobi. Contemnor has failed to appear since 16.08.2021 despite repeated directions. As a matter of fact, by the time the case was taken up for further hearing on 16.08.2021, the contemnor sought to withdraw the authorization in favour of the learned counsel who were all the while representing him before this Court. By this deliberate and well thought out actions, contemnor obstructed the administration of justice.

- E 10.9 In Petition No. E301 of 2021 and Notice of Motion before the High Court of Kenya at Nairobi on 26.08.2021, the contemnor submitted that it would be humiliating to compel Aditya to take OCI Card. He also stated that the wishes of Aditya were not ascertained by this Court. He further pleaded that there was no valid Mirror Order and that the orders passed by this Court were without jurisdiction. He specifically prayed for declaration that there existed no valid "Mirror Order" and in the circumstances the orders passed by this Court are incapable of compliance and/or enforcement. This is the most egregious part of the contumacious acts committed by the contemnor. The statements made by him were false, and in fact, being fully aware that these were false statements, he proceeded to invoke the jurisdiction of the Kenya High Court to hold that Judgments and Orders passed by Indian Courts were unenforceable.

- G 10.10 These developments show the defiant and contumacious posture now adopted by the contemnor. There is concrete material and reason to believe that it was a well-planned conspiracy on part of Perry to persuade this Court to pass orders in his favour and allow him the custody of Aditya and then turn around and defy the orders of this Court.

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11. Article 129 of the Constitution of India empowering this Court to punish for contempt of self is as follows: - A

“129. Supreme Court to be a court of record.-

The Supreme 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.” B

12. It is now well settled that the power of the Supreme Court to punish for contempt is not confined to the procedure under the Contempt of Courts Act². In *Pallav Sheth v. Custodian and Others*³, this Court held that: - C

“30. There can be no doubt that both this Court and High Courts are courts of record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute, can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215, there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt D E

² “12. Punishment for contempt of court.- F

(1) Save as otherwise expressly provided in this Act or in any other law, 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. G

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 sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.”

³ (2001) 7 SCC 549 H

A *jurisdiction under Article 129 or Article 215 of the Constitution.”*

13. The above said principle is followed in *Re: Vijay Kurlle and Ors.*⁴, where this Court reiterated the above referred principle and held as under: -

B *“38. The aforesaid finding clearly indicates that the Court held that any law which stultifies or abrogates the power of the Supreme Court under Article 129 of the Constitution or of the High Courts under Article 215 of the Constitution, could not be said to be validly enacted. It however, went on to hold*
C *that providing the quantum of punishment or a period of limitation would not mean that the powers of the Court under Article 129 have been stultified or abrogated. We are not going into the correctness or otherwise of this judgment but it is clear that this judgment only dealt with the issue whether the Parliament could fix a period of limitation to initiate the proceedings under the Act. Without commenting one way or the other on Pallav Seth’s case (supra) it is clear that the same has not dealt with the powers of this Court to issue suo motu notice of contempt.*

E *39. In view of the above discussion we are clearly of the view that the powers of the Supreme Court to initiate contempt are not in any manner limited by the provisions of the Act. This Court is vested with the constitutional powers to deal with the contempt. Section 15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated and this procedure provides that there are three ways of initiating a contempt - (i) suo motu (ii) on the motion by the Advocate General/Attorney General/Solicitor General and (iii) on the basis of a petition filed by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General. As far*
F *as suo motu petitions are concerned, there is no requirement for taking consent of anybody because the Court is exercising its inherent powers to issue notice for contempt. This is not only clear from the provisions of the Act but also clear from the Rules laid down by this Court.”*
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H ⁴ (2020) SCC online SC 407.

14. It is within the constitutional power of this Court to consider the contumacious acts of a contemnor and to punish him/her for the same. It is in exercise of such a power, unrestricted by the Contempt of Court Act that this Court had imposed a sentence of more than six months and also directed in some cases that the contemnor shall undergo rigorous imprisonment⁵.

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15. We are of the view that the contemnor had deliberately, and with a clear design, made it appear as if he was willing to comply with the Judgment and direction of the Indian Courts. The repeated statements and affidavits affirming to comply with the directions of this Court were given only to ensure that the custody of Aditya is given to him. We are of the clear opinion that the contemnor had no intention to comply with the directions of the Court even while he gave the undertaking, filed solemn affidavit or even instructed his lawyer to so represent on his behalf.

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16. The subsequent conduct of the contemnor after taking Aditya out of India leaves no doubt in our mind that the entire proceedings were conducted with the deliberate and mala-fide intention to mislead the Supreme Court in permitting the contemnor to shift Aditya out of India.

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17. This Court in *Subrata Roy Sahara v. Union of India and ors.*⁶ while articulating the powers under Article 129 held as follows: -

“19. ...It is therefore that Article 142 of the Constitution of India mandates that this Court

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“... in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India ...”.

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And it is also inter alia for the above enforcement, that Article 129 of the Constitution of India, vests in the Supreme Court the power, amongst other things, to enforce compliance with the Court directions. The Supreme Court has the jurisdiction and power to punish for its contempt. It is this dispensation

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⁵ *Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors.*, (2006) 3 SCC 374; and *Afal and Anr. v. State of Haryana and Ors.*, (1996) 7 SCC 397.

⁶ (2014) 8 SCC 470.

Also see: *Supreme Court Bar Association v. Union of India and anr.* (1998) 4 SCC 409, para 38.

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- A *which authorises the Supreme Court to enforce compliance with its orders. For, the power to punish would serve no purpose if the power to enforce compliance was lacking. It was, therefore, that this Court in Maninderjit Singh Bitta v. Union of India [(2012) 1 SCC 273 : (2012) 1 SCC (Civ) 88 : (2012) 1 SCC (Cri) 528 : (2012) 1 SCC (L&S) 83] with*
- B *reference to its contempt jurisdiction observed, thus : (SCC pp. 282-85, paras 26-27 & 34)*
- C *“26. It is also of some relevance to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result.*
- D *Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer T.N. Godavarman Thirumulpad (102) v. Ashok Khot [(2006) 5 SCC 1] , SCC p. 6, para 5)...*
- E *130 The scope of the instant contempt jurisdiction extends to punishing contemnors for violating the Court’s orders; punishing contemnors for disobeying the Court’s orders; punishing contemnors for breach of undertakings given to the Courts. It also extends to enforcement of the Court’s*
- F *orders. The contempt jurisdiction even extends to punishing those who scandalise (or lower the authority of) any court; punishing those who interfere in due course of judicial proceedings; and punishing those who obstruct the administration of justice”*
- G 18. We have already convicted Perry Kansagra for contempt. The above referred facts are mentioned only to demonstrate that the contemnor has deliberately and with a clear intention committed egregious acts of contempt. These acts constitute *willful disobedience of the judgment, direction and order of this Court coupled with willful breach of the undertaking given by the Court* which constitute civil
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contempt. The contemnor has falsely represented before the foreign jurisdiction that Indian Courts have not sought the consent of Aditya and that the decision of the Supreme Court of India is unenforceable. These acts clearly lower *the authority of this Court*. We have also indicated that the contemnor has interfered with the due course of judicial proceedings and *obstructed the administration of justice* which is a clear case of criminal contempt.

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19. In the circumstances and in order to mention the majesty of law, we must impose upon adequate punishment on the contemnor. We have also noted that the contemnor never showed any remorse or tender any apology for his conduct.

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20. For the reasons stated above, we direct that the contemnor be:

- a) Punished with simple imprisonment for a term of six months for civil contempt of Court for his acts of deliberate and willful disobedience of the orders passed by this Court and to pay a fine of Rs. 12,50,000/- (Twelve Lakhs Fifty Thousand), in default he shall further undergo simple imprisonment for one month.
- b) Punished with simple imprisonment for a term of six months for criminal contempt of Court for obstructing the administration of Justice and lowering the authority of this Court and to pay a fine of Rs. 12,50,000/- (Twelve Lakhs Fifty Thousand), in default he shall further undergo simple imprisonment for one month.

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21. In view of the egregious acts of civil as well as criminal contempt, we further direct that the sentences shall be served consecutively.

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22. We further direct that the total fine of Rs. 25,00,000/- (Twenty-Five Lakhs) as indicated above, to be deposited by the contemnor in the Registry of this Court within four weeks from today and the same shall be released to Smriti Kansagra upon an application filed by her.

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23. We also direct the Ministry of Home Affairs, Government of India to secure the presence of the contemnor to undergo the imprisonment imposed upon him. Needless to say, Government of India including the

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A Ministry of External Affairs and other agencies or instrumentalities shall carry out the directions issued by the Court with due diligence and utmost expediency. Compliance report shall be filed in the Registry of this Court by 09.12.2022.

24. We further direct the case to be listed for hearing for further
B orders on 15.12.2022.

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Directions issued.