

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department]

Writ Petition No.1337-P/2023

Amjid Ali IHC, Incharge Police Post
Shahab Khel Badh Ber Peshawar.

Petitioner (s)

VERSUS

The State etc

Respondent (s)

For Petitioner (s) :-

Syed Abdul Fayaz, Advocate.

For Respondents :-

Mr. Umar Farooq, AAG.

Date of hearing:

22.02.2024

JUDGMENT

ISHTIAQ IBRAHIM, J.- Through this common judgment, we propose to decide the instant and the connected **Writ Petition No.1338-P of 2023**, both filed by Amjid Ali IHC (Incharge Police Post Shahab Khel), the petitioner, against the judgment(s) dated 28.03.2023, passed by learned Additional Sessions Judge-XVIII, Peshawar, whereby the petitioner was convicted under section 186 PPC and sentenced to undergo imprisonment till rising of the court and to pay rupees two hundred as fine.

2. Resume of facts forming the background of instant writ petitions are that one Taj Gul and Sadiq Ahmad, filed applications under section 491-A Cr.P.C. before the learned Additional Sessions Judge-XVIII Peshawar against SHO Police Station Badh Ber Peshawar and others for production of Mubasir Khan (brother of the

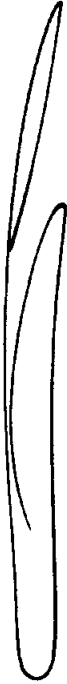
former) and Hamza Khan (son of the latter), before the learned ASJ-XVIII, who were allegedly illegally detained by SHO Police Station Badh Ber Peshawar. The learned ASJ-XVIII directed Bailiff of the court to visit Police Post Shahab Khel Badh Ber and recover the detenues. In compliance with the court order (*ibid*) when Bailif of the court visited the said Police Post, the petitioner who was serving as IHC there restrained him from inspection of the Police Post thereby flouting the court order, consequently, he was served with a notice to file reply as to why he shall not be proceeded under the law of contempt. The petitioner filed reply, however, the same being unsatisfactory, the learned ASJ-XVIII convicted and sentenced him vide orders dated 28.03.2023, hence, these writ petitions.

3. Main thrust of arguments of learned counsel for the petitioner was that subordinate courts lack jurisdiction to try the offence of contempt of court being the exclusive domain of the superior courts, therefore, conviction of the petitioner being coram non judice is liable to be set aside.

4. The worthy AAG while referring to section 4(3) of the Contempt of Court Ordinance, 2003 contended that learned trial court was within its competence to lay hands on the matter of contempt which was punishable under Pakistan Penal Code rather the jurisdiction of High Court

was ousted due to the bar contained in section 4(3) of the Ordinance *ibid*.

5. Since question of distinction of jurisdiction of superior courts and subordinate courts is involved in the matter, therefore, it would be advantageous to understand the scheme of contempt law. The definition of term "Contempt" has been provided under section 3 of the Contempt of Court Ordinance, 2003 which reads as follows:



"Whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey; or commits a willful breach of a valid undertaking given to a Court; or does anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a Court or scandalize a Judge in relation to, his office, or to disturb the order or decorum of a Court, is said to commit "contempt of Court". The contempt is of three types, namely, the "civil contempt", "criminal contempt" and "judicial contempt".

According to 17 CJS, (a complete statement of entire American Law is developed by all reported cases). Contempt has also been defined as a willful disregard or disobedience of a public authority. In its broad sense, a contempt is a disregard of, or disobedience of the rules or orders of a legislative or judicial body or interruption of

legislative or judicial body or interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto or to disturb its proceedings or to impair the respect due to such body (Peters vs Goodyear Tire & Rubber Company Cm. Pl. 76 NE 2d 412,13 CJ P4 Notes). In its restricted and more usual sense, the contempt comprehends a despising of an authority, justice or dignity of a court (Burtrum vs Smith 206 SW 2d, 558, 357, MO 134). It may be civil or criminal, direct or constructive and maybe defined as a disobedience to the court by acting in opposition to its authority, justice and dignity. The phrase "contempt of court" is generic, embracing within its legal signification, a variety of different acts. It is regulated by constitution and statutes but sometime supersede the common law. It signifies not only a willful disregard or disobedience of the court orders but such conduct as tends to bring the authority of a court and its administration of law into disrepute or in some manner to impede the due administration of justice.

6. Section 3 of the Contempt of Court Ordinance, 2003 classifies three types of contempt, namely, Civil Contempt, Criminal Contempt and Judicial Contempt. While clause (a) (b) & (c) of section 2 of the Ordinance, 2003 provide definition of all the three types of contempt in the following way:

(a) **"Civil contempt"** means the willful flouting or disregard of,---

- (i) An order, whether interim or final, a judgment or decree of a Court;
- (ii) A writ or order issued by a Court in the exercise of its Constitutional Jurisdiction;
- (iii) An undertaking given to, and recorded by, a Court;
- (iv) the process of a Court;

(b) **"Criminal contempt"** means the doing of any act with intent to, or having the effect of, obstructing the administration of justice;

(c) **"Judicial contempt"** means the canalization of a Court and includes personalized criticism of a Judge while holding office;

In general, again according to "CJS 17 Contempt", apart from civil and criminal contempt, in some jurisdiction statutes recognize and preserve the fundamental distinction between the two in substance but not in the name. The contempt may be direct or constructive. In addition to term constructive as an antithesis of direct the courts and statutes have used such word as indirect. The direct contempt is one which is committed in the presence of the court and the indirect are those which are committed outside the premises of the court, either a civil or criminal contempt may be direct or indirect. It is important to note, that formerly in the court of equity contempt were classified as ordinary and extra ordinary. Reference can be made to *US vs Anonymous CC21F761*.

A direct contempt of court has been defined as contempt committed in the presence of the court while it is in session. It takes place at the very presence of the

judge making all of the elements of the offence matters within his personal knowledge. It consists of any conduct which tends to embarrass or obstruct the court in the administration of justice or tends to bring the administration of law into disrepute. The acts occurring in judge's chamber when the court is not duly constituted or in session do not constitute contempt under a statute providing that disorderly contemptuous or insolent conduct towards a judge while holding a court shall constitute contempt. A constructive, indirect or consequential contempt is one committed outside the court; it is an act done at a distance which tends to belittle, degrade, obstruct, interrupt or embarrass the court and the administration of justice. The constructive contempt in legal definition is not an obstruction but it must subvert justice where judge has not full personal knowledge of every element of the contempt and its demonstration depends on the proof of facts of which the court would have no judicial notice, the contempt is held to be indirect. A doubt as to whether contemnor has been guilty of a direct or indirect contempt should be resolved in favor of constructive contempt especially where a criminal contempt is charged.

7. Common definition of criminal contempt is that it is the conduct that is directed against the dignity or authority of the court or a judge, acting judicially. It is an act obstructing the administration of justice which tends to bring the court of justice into disrepute or disrespect. It may arise in the cases of a criminal action in special proceedings or in civil and private litigations. Distinguishing from civil contempt, in general contempt of court for which punishment is inflicted for the primary purpose of vindicating the public authority are denominated criminal, while those in which enforcement of civil rights and remedies is the ultimate target of the punishments are denominated as civil contempt. The line of demarcation is between the acts constituting civil and criminal contempt is very indistinct. The confusion in attempts to classify civil and criminal contempt is due to the fact that there is contempt in which both elements appear. Contempt may be neither wholly civil nor altogether criminal, may partake of the characteristics of the both. The major factor in determining whether contempt is civil or criminal is the purpose for which the power is exercised. Contempt is civil when the punishment is whole remedial, serves only the purposes of complainant and is not intended chiefly as a deterrent to offences against the public. The polar concepts are

“(Punitive Vs Remedial”. Whether or not a fine or imprisonment imposed? is not a distinguishing test.

8. Civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of an opposing party therein and is therefore an offence against the party in whose behalf the violated order is made, if however, the contempt consists in doing a forbidden act injurious to the opposite party, the contempt may be considered criminal. Likewise, refusal to perform an act, the conduct demonstrated is derogatory to the authority or dignity of the court. There is no doctrine of anticipatory contempt.

9. After going through the basic concept and definitions in the foregoing discussion the relevant provisions of Constitution and statutes must be explained. Article 204 of the Constitution confers powers on the Supreme Court and High Courts of the Provinces to punish any person who commits contempt of the court and judges. It is also worth mentioning that powers of the superior courts are restricted to punish the contempt of superior courts exclusively but subsection (2) of section 4 of the Contempt of Court Ordinance, 2003 also confers powers on the respective High Courts to punish contempt committed in relation to any court subordinate to it. Contempt of Court Ordinance, 2003, regulates the powers and procedure of superior courts to punish the


contempt according to mandate of Article 204 of the Constitution and jurisdiction of subordinate courts is excluded. Meaning thereby that the offences covered under section 3 of the ordinance, 2003, are exclusively triable by the Superior Courts and jurisdiction of subordinate courts is excluded. However, under subsection (3) of section 4 which is a disabling clause, contempt of the subordinate courts which is punishable under the Pakistan Penal Code, the High Courts cannot assume the jurisdiction. It follows that in case of contempt of subordinate courts which are not punishable under the provisions of Pakistan Penal Code, it is for the High Court to try the contemnor. It is also worth mentioning that the contempt of Court Ordinance is a special law which prescribes its own mechanism for trial of contemnors which is not meant for proceedings before the subordinate courts. Rather for the subordinate courts the procedure has been laid down under sections 476 to 487 of the Criminal Procedure Code. Since there is no ambiguity with respect to applicability of contempt of court ordinance, 2003, that is the exclusive domain of superior courts but with only exception to the subsection (3) of section 4 of Ordinance, 2003. It is to be emphasized that the subordinate courts while proceeding with the trials of contemnors under the provisions of Criminal Procedure Code also must bear in mind the

guidelines provided under Volume III, Chapter 8, Part-A & B of the High Court Rules and Orders. In determining the jurisdiction of subordinate courts in dealing with contempt triable under subsection (3) *ibid*, pre-requisite of section 195 Cr.P.C shall be fulfilled.

10. Clauses (b) & (c) of subsection (1) of the section 195 Cr.P.C. have enlisted the list of offences under Pakistan Penal Code for trial of which procedure is prescribed under sections 476 to 487 Cr.P.C. The list of offences is tabulated as under:

S. 193	Giving or fabricating false evidence in a judicial proceeding. Giving or fabricating false evidence in any other case.
S. 194	Giving or fabricating false evidence with intent to cause any person to be convicted of capital offence. If innocent person be thereby convicted and executed.
S. 195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for 7 years or upwards.
S. 196	Using in a judicial proceeding evidence known to be false or fabricated.
S. 197	False statement made in any declaration which is by law receivable as evidence.
S. 200	Using as true any such declaration known to be false.
S. 205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.
S. 206	Fraudulent removal or concealment, etc. of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence or in execution of a decree.
S. 207	Claiming property without right, or practicing deception touching any right to it, to prevent its being taken as forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.

S. 208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.
S. 209	False claim in a Court of Justice.
S. 210	Fraudulently obtaining a decree for a sum not due or causing a decree to be executed after it has been satisfied.
S. 211	False charge of offence made with intent to injure. If offence charged be punishable with imprisonment for 7 years or upwards. If offence charged be capital, or punishable with transportation for life.
S. 228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.



11. It is also not out of context to mention here that according to clauses (b) & (c) of subsection (1) of section 195 Cr.P.C. only the offences against public justice and those relating to documents given in evidence are to be prosecuted by the subordinate courts. Needless to mention that other offences of contempt of lawful authority of public servants under sections 172 to 188 PPC to be dealt with under the ordinary procedure laid down for the trial of other criminal cases. Thus, a line of distinction has been drawn between the cases of contempt relating to courts and public servants. For trials of the former a special procedure has been envisaged under chapter XXXV of the Code of Criminal Procedure, however it must be kept into mind that the pre-condition of written complaint by the authority concerned for offences of both types of contempt and perjury is

common. Again, it is not to be over emphasized that the subordinate courts are required to adhere to the procedure prescribed in Chapter-XXXV of Code of Criminal Procedure, 1898 which contemplates special procedure in proceedings of offences affecting the administration of justice subject to pre-condition contained in section 195 Cr.P.C. and modus operandi under this chapter is further divided in two categories. The first category caters for the cases which either do not fall within the definition of direct contempt or in some cases though contempt is committed directly but the court chooses not to try the contemnor itself. For the first category of cases summary procedure of trials provided in chapter XXII is prescribed to the exclusion of subsection (2) of section 262 Cr.P.C. and quantum of punishment which court may impose is also provided under subsection (2) of section 476 Cr.P.C. In the latter category of cases only the offence under section 228 PPC is covered which is committed in presence of court. It is also relevant to mention that term "Court" covers civil, Revenue and Criminal court. In this category of cases the court trying the contemnor cannot pass sentence beyond fine of rupees 200 and in default whereof shall entail simple imprisonment of one month. If the court considers that the accused person should be imprisoned other than in default of payment of fine or that a fine exceeding rupees 200 should be imposed upon

him, then after recording the facts constituting the offence and statement of accused may forward the case to Magistrate having jurisdiction. Otherwise, a court in whose presence the contempt is committed may take the offender into custody and at any time before rising of the court on the same day may take cognizance of the offence and punish the contemnor there and then. However, record of the proceedings shall be maintained in the manner prescribed under section 481 Cr.P.C. Section 482 Cr.P.C. contemplates forwarding of cases to other courts when it is considered that the case should not be dealt with under section 480 Cr.P.C. In other cases, as discussed earlier the procedure prescribed under sections 476-A and 485 Cr.P.C. is to be adopted. It may not be over emphasized that cases relating to contempt of public servant under no stretch are covered under chapter XXXV of the Cr.P.C.. Section 484 Cr.P.C. also provides for discharge of offenders on tendering of apology but discretion will lie with the court in accepting or rejecting the apology. Another important feature of the procedure must not lose sight into determination of forums as courts and subordinate courts and categories of courts which may pass the sentence or to which appeal will lie. In this respect, provisions of section 476 Cr.P.C. are self-explanatory. Nevertheless for the purposes of proceedings the Registrar or Sub-Registrar appointed

under the Registration Act, 1908 are also covered within the definition of Civil Court within the meaning of section 480 and 482 Cr.P.C. as provided under section 483 Cr.P.C. The only exception to the proceedings under chapter XXXV is section 487 Cr.P.C. which for the sake of convenience and ready reference is reproduced below:-

S. 487. Certain Judges and Magistrates not to try offences referred to in Section 195 when committed before themselves: (1) Except as provided in Sections 476, 480 and 485 no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, shall try any person for any offence referred to in Section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice, as such Judge or Magistrate in the course of a judicial proceeding.

(2) [Omitted by Law Reforms Ordinance XII of 1972]

It is also pertinent to mention that there is no distinction of Civil, Criminal and Revenue Court with regard to trial of criminal contempt. So far as other civil contempt are concerned, these are to be dealt with under the relevant statutes and in no manner these have any relevance to the contempt enumerated in Contempt of Court Ordinance, 2003 or Cr.P.C. which may be differentiated from the other contempts except in cases of civil contempt of grave nature wherein a reference can be sent by the subordinate courts to the High Court.

12. It is cardinal principle of law that when law require a particular thing to be done in a particular manner, it shall be done in that particular manner and not otherwise. Keeping in view this principle, it is obligatory for the subordinate courts that in choosing of modus operandi for cognizance and trial of contempt matters they shall have complete knowledge and familiarity with the requirements of law particularly in assessing the gravity of the offence and selection of modus operandi. It is also to be kept in mind that while dealing with the contemnors any benign attitude can be construed upon the weakness of the courts. For guidance, wisdom can be drawn from the judgments of august Supreme Court of Pakistan in case of Irshad Ahmad vs The State (Reported in 1992 SCMR 1229), Case of Haji KhawarSaleem (Reported in 2000 SCMR 1856), case of Rab Nawaz vs The State (Reported in 2011 SCMR 1485), and case of State vs Abu Syed Muhammad Idrees Ali Sikandar (Reported in PLD 1965 SC 677). From Indian jurisdiction, AIR 1954 SC 102 may also be referred. The other relevant judgements are; 1971 PCr.LJ 621, 1991 PCr.LJ 2067, 1985 PCr.LJ 360, 1990 PCr.LJ 1736, 1995 PCr.LJ 1307, 2000 PCr.LJ 1329, 2008 YLR 459 and 2005 MLD 613.

13. Now coming to the factual and legal aspects the instant case, it is manifest from record that it was an

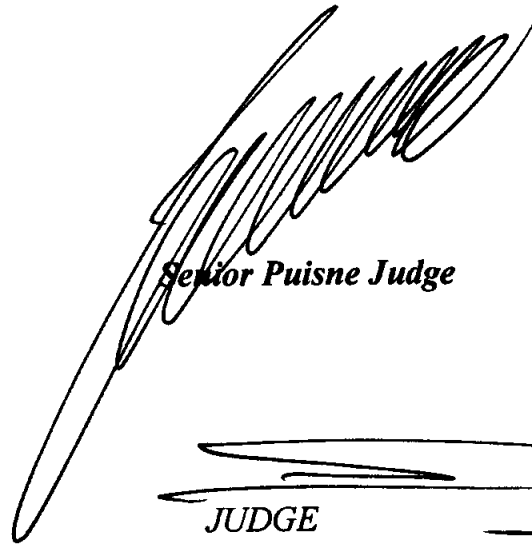
indirect contempt which was committed at a considerable distance from the court by the petitioner and under no canon of law the same was covered under section 228 PPC. It appears that the learned trial court was cognizant of its jurisdiction under subsection (3) of section 4 of the Ordinance, 2003 but at the same time it has misconceived the provisions of section 228 PPC which only provided for contempt committed in the presence of the court. The learned trial court also found the accused guilty of commission of offence under section 186 PPC and the provisions of said sections has also been reproduced in the impugned order which too was illegally proceeded under section 228 PPC despite being not amenable to section 476 Cr.P.C. Nevertheless, the learned trial court passed the sentence of imprisonment under section 228 PPC, in which only fine of rupees two hundred can be imposed and no sentence beyond fine can be passed. Thus, without moment's hesitation it can be held that the order of the learned trial court suffers from gross illegality and in utter disregard of the law on the subject. Hence, the same is not sustainable.

14. As necessary corollary to above, the judgment(s) of the learned trial court are hereby set aside and the matters are remanded back to the learned trial court with the direction to re-decide the same after strict adherence to the procedure discussed hereinabove. Parties are

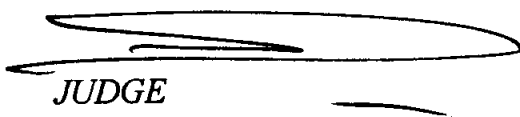
directed to appear before the learned Additional Sessions Judge-XVIII, Peshawar on 25.04.2024

15. The worthy Additional Registrar (Judicial) of this court shall send copy of this judgment to Sessions Judge of each District of the Khyber Pakhtunkhwa, who shall onward circulate its copy among the courts of his/her respective district.

Announced:
22.02.2024
M.Siraj Afridi CS



Senior Puisne Judge



JUDGE

DB of Hon'ble Mr. Justice Ishtiaq Ibrahim senior Puisne Judge:
And Hon'ble Mr. Justice SM Attique Shah