Manjit Singh And Ors. vs Darshan Singh And Ors. on 20 May, 1983

Equivalent citations: 1984CRILJ301

JUDGMENT

S.S. Sandhawalia, C.J.

1. The true termini for the determination of the limitation prescribed by Section 20 for proceedings under the Contempt of Courts Act, 1971 is the significant and somewhat intricate question necessitating this reference to the Pull Bench.

2. The five petitioners had preferred an application under Section 15 of the Contempt of Courts Act, 1971(hereinafter called 'the Act') before the Advocate General, Punjab on Feb. 27, 1981 for securing his consent in order to institute an action of criminal contempt against the three respondents-police officials. The alleged contempt inter alia was said to be committed by the filing of false affidavits by the three respondents on Dec 17, 1980 in an earlier habeas corpus matter in Criminal Writ No. 163 of 1980, (Manjit Singh v. Darshan Singh, D. S. P.) decided on January 19, 1981. However, it was not till July 2, 1982 that the learned Advocate General, Punjab accorded his consent to the filing of a contempt petition against the respondents. After securing a copy of the said order, the present petition for contempt was instituted in this Court on July 21, 1982. When the matter came up for hearing before the Division Bench, an objection was surprisingly raised by the Assistant Advocate: General, Punjab himself that the contempt petition was barred by time having been instituted in Court beyond a period of one year from the date of the filing of the false affidavits on Dec. 17, 1980 and was, therefore, hit by Section 20 of the Act. Primary reliance for this objection was placed on two Division Bench judgments in Hari Nandan Agrawal v. S. N. Pandita and Gulab Singh v. The Principal, Sri Ramji Das . Expressing some disagreement with the view in the said authorities and also because of the significance of the question, the matter was referred for a decision by the larger Bench.

3. Herein particularly the answers to the questions arising for determination must turn on the peculiar and somewhat imprecise language of Section 20 of the Act which is in the following terms:-

> 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.
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> It is axiomatic and indeed was not seriously disputed before us that the limitation prescreened in Section 20 of the Act is applicable both in the field of civil as also of criminal contempt However, we are primarily concerned with the issue of criminal

contempt. Now barring the somewhat unusual case of contempt in facie curiam expressly provided for in Section 14 of the Act, the succeeding Section 15 introduces certain pre-requisites for the cognizance of criminal contempt. An analysis of this section would indicate that such contempt may be taken cognizance of:

(i) on the Court's own motion;

(ii) on the motion of the Advocate General;

(iii) on a motion made by any other person with the consent in writing of the Advocate General; and,

(iv) on a reference by a subordinate Court. It is evident Chat in the case of criminal contempt at the instance of the ordinary litigant, pre-requisite is the written consent of the Advocate General before the High Court can take cognizance thereof, Consequently, proceedings have first to commence before the Advocate General for satisfying (him and securing his content under Section 15(1)(b) of the Act.

4. With the aforesaid background of Section 15 a broad analysis of Section 20 would indicate that it seeks to prescribe both terminus a quo and terminus ad quern for any proceedings for contempt to be commenced under the. Act Logically, one must first consider the starting point or the terminus a quo visualised and prescribed by Section 20 of the Act. Before us, two rival dates were canvassed in this context and these may be precisely noticed as under:

(i) the date of the alleged commission of criminal contempt;

(ii) the date when the commission of such contempt comes to the notice of the Court either suo motu or on motion.

5. It appears to me that on the unequivocal language of Section 20 itself as also on principle, the date when time begins to run or the terminus a quo here is inflexibly fixed from the point on which the criminal contempt is alleged to have been committed. This follows from the clear cut and plain grammatical construction of Section 20' itself. This apart, on principle also the terminus of limitation has to be a fixed and precisely determinable one.

6. However, within this jurisdiction two discordant notes appear to have been struck which necessarily call for notice at the threshold. In Sudesh Kumar v. Jai Narain (1974) 76 Pun LR 23, learned single Judge has taken the view that the terminus a quo is not the date of the commission of criminal contempt but when the Court becomes aware thereof. With the greatest deference, this view does not commend itself to me. Obviously, a Court is not omniscient and it cannot become aware of all contempts blatantly committed until and unless they come to its notice suo motu or are so brought to its notice on motion. Therefore, the actual awareness of the Court of an act of criminal contempt would inevitably remain a fortuitous circumstance. For limitation to run from a point of time so uncertain as the knowledge of the Court itself or when it is brought to its notice would in my

view introduce a double element of uncertainty for the start of the point of limitation which would be contrary to sound principles of construction. On such a view, an action for criminal contempt can be visualised many years after its actual commission because factually it may be brought to the notice of the Court even after a decade. This, in essence, would frustrate the very purpose of the legislature in introducing a period of limitation. The report of the Sanyal Committee which preceded the enactment of the Contempt of Courts Act, 1971, would indicate that one of the clear cut purposes was that the extraordinary jurisdiction to punish for contempt was not to be exercised in stale cases. Reference to the judgment in Sudesh Kumar v. Jai Narain (1974) 76 Pun LR 23, would indicate that on this point the matter was not adequately canvassed before the Bench and has been briefly disposed of as one of first impression. This view has been in terms dissented from by the Division Bench in Rajah v. M. S. P. Rajesh 1980 Ker LT 802. With the greatest respect, it must be held the Sudesh Kumar's case (supra) does not lay down the law correctly and is hereby overruled.

7. The view in Sudesh Kumar's case (supra) has been later expressly followed by a learned single Judge in Bhupinder Kumar v. Pritam Singh 1977 Pun LJ (Cri) 201. Therein, it was further observed that the period of limitation starts from the date when the proceedings for contempt are initiated in Court and in the case of a motion by a party, from the date when a petition is filed in Court. With respect, the error that seems to have crept in here is that the filing of a petition in Court or initiation of proceedings cannot possibly be the terminus a quo or the starting point of limitation. It can at best be the outer limit or the terminating point for the cognizance of criminal contempt. Indeed, after a petition has been filed or proceedings duly initiated hardly any question of limitation thereafter would arise. With the greatest deference, for the reasons mentioned above with regard to Sudesh Kumar's case 1974-76 Pun LR 23(supra), this judgment also does not lay down sound law and is hereby overruled.

8. To conclude on this aspect, I would hold on the specific language of the statute, on principle, and on the weight of precedent that terminus a quo or the starting point for limitation to run under Section 20 of the Act, is the date on which the contempt is alleged to have been committed.

9. Having held as above, one may now proceed to determine the terminus ad quem or the terminating point for the limitation under Section 20 of the Act. Herein again, four termini falls for consideration:

(i) the date on which the actual notice of contempt is issued by the Court;

(ii) the date on which the Advocate General moves the motion under Section 15(1)(a);

(iii) the date on which a subordinate Court makes a reference of criminal contempt under Section 15(2) of the Act and,

(iv) the date on which any other person prefers an application to the Advocate General, for his consent under Section 15(1)(b) of the Act.

One may straightway come to the core of the controversy. The learned Assistant Advocate General, basing himself on precedent, had canvassed that the sole terminus ad quem herein is the date of the actual issuance of notice of criminal contempt by the Court and the other three termini aforesaid are wholly irrelevant to the issue. Undoubtedly, this view has found favour in Hari Nandan Agrawal v. S.N. Pandita and Gulab Singh v. The Principal Sri Ramji Das ; Dineshbhai A. Parikh v. Kripalu Co-operative Housing Society, Nagarvel, Ahmedabad ; and State of Maharashtra v. J.V. Patil (1976) 78 Bom LR 116. However, an analysis of these judgments would show that this view is rested primarily, if not wholly, on an inference from a brief observation in Baradakanta Mishra v. Mr. Justice Gatikrushna Misra, C.J. of the Orissa High Court , and not on any larger principle or independent rationale. With the deepest deference, it appears to me that Baradakanta Mishra's case (supra) does not lay down any such inflexible proposition and indeed a close analysis thereof may indicate a contrary result.

10. In Baradakanta Mishra's case 1975 Cri LJ 1(SC) (supra), a Full Bench of the Orissa High Court AIR 1974 Orissa 1 had dismissed a motion of contempt instituted by the appellant against the Chief Justice and other Hon'ble Judges of the Orissa High Court on the grounds that no contempt of Court was made out and further that the appellant had not obtained the consent, in writing, of the Advocate General under Section 15(1) of the Act to move the Court. The appellant then preferred an appeal under Section 19(1) of the Act to the Supreme Court- The Additional Solicitor General raised a preliminary objection that such an. appeal was not maintainable, which was upheld by the Court and the appeal dismissed. Bhagwati, J. speaking for the Bench at the very outset noticed that the said appeal was being disposed of on this preliminary point. It is thus plain that the focal and the sole point before their Lordships was the interpretation of "exercise of its jurisdiction to punish for contempt" by the High Court as employed in Section 19(1) of the Act. The only question debated and adjudicated therefore, was whether the High Court assumes jurisdiction to punish for contempt only on the issuance of a notice by it or prior thereto as well. In para 4 of the report, their Lordships highlighted that the only interesting question was the true interpretation of the language of Sub-section (1) of Section 19 of the Act. It was in this context alone, they held that the High Court assumed jurisdiction to punish for contempt only from the time of issuing notice and proceedings earlier thereto were preliminary in nature. Consequently, a mere refusal to issue notice by the High Court of Orissa was not appealable as of right under Section 19(1) of the Act. It is, therefore, manifest that no question of limitation even remotely arose. Resultantly, no question of interpreting or applying Section 20 was at all in issue. It bears repetition that the only question was whether the appeal against the refusal to issue notice of contempt by the High Court was maintainable under Section 19(1) of the Act as of right to the Supreme Court or not. This alone was adjudicated and having been held against the appellant, the appeal was dismissed on this primary ground. It is thus obvious that the ratio of the judgment is confined to this question alone.

11. Equally significant it is that the word 'initiate' finds no place or mention in Section 19 even remotely and did not come up for any construction or interpretation. Therefore, to hold that their Lordships in any way have construed or interpreted Section 20 of the Act in this case, appears to my mind untenable. It was only a passing observation after a detailed discussion on Section 19(1) of the Act and the preceding sections that their Lordships made a cryptic reference to the following Section 20 of the Act. It is a hallowed rule ever since the celebrated observations of Lord Halsbury in Quinn

v. Leathern 1901 AC 495, that a case is only an authority for what it actually decides and cannot be quoted for a proposition that may even seem to follow logically therefrom. The dangers of any such use of precedent were highlighted in State of Orissa v. Sudhaansu Sekhar Misra (after expressly approving and quoting extensively from Quinn v. Leathem's case (supra)), in these terms:-

> ...It is not a profitable task to extract a sentence here and there from a judgment and to build upon it....
>
> Indeed the concluding part of para 7 of the report in Baradakanta Mishra's case 1975 Cri LJ 1(SC) (supra), seems to indicate that their Lordships had set their face against any inflexible bar where the High Court declines to issue notice or the Advocate General perversely refuses consent. It was observed that remedy even by way of Special Leave was always open and the Supreme Court could set aside any refusal to take action for contempt against the alleged contemner if larger interest of administration of justice so requires. If any meaning or content is to be given to these observations, it; would necessarily follow that the time for limitation cannot keep on running despite the institution of motion before the High Court or an application before the Advocate General, for seeking his consent.

12. I, am therefore, inclined to hold that Baradakanta Mishra's case 1975 Cri LJ 1(SC) (supra) is no warrant for the proposition that the issuance of a notice of criminal contempt by the High Court is the sole terminus ad quern for determining limitation under Section 20 of the Act.

13. Once that is so, one must now proceed to analyse and construe Section 20 independently. A plain reading thereof would indicate that the legislature drew a clear line of distinction betwixt proceedings for contempt initiated by the Court on its own motion, and those not so done. Suo motu action by the High Court is thus clearly a class by itself. Consequently the statute in express terms refers to these two classes separately, namely, any proceedings for contempt on Court's own motion, and proceedings for contempt initiated "otherwise". The use of the word 'otherwise' is significant and indeed provides the clue to the true interpretation of Section 20. Therefore, initiation of contempt proceedings otherwise than on Court's own motion would include within its sweep a motion by the Advocate General, a reference by a subordinate Court to the High Court to take action for contempt and an application before the Advocate General seeking his consent by any other person under Section 15 and lastly in cases of civil contempt the motion by a private litigant directly in the Court.

14. It is manifest from the above that dictions for contempt are divisible into two distinct and clear-cut classes. Firstly, those on the Court's own motion itself. Secondly, those which are instituted otherwise than on the Court's own motion. Necessarily Section 20 had to visualise and provide for both these distinct classes for the purposes of limitation. It seems to be plain that the somewhat peculiar language employed in this provision for prescribing the limitation was necessitated because of these two distinct methods of proceedings for contempt. It is because of the primary power to punish for contempt on its own motion vested in the superior judiciary both by the Constitution and under the Act that Section 20 had to begin with the phrase "no Court shall initiate any proceeding

for contempt...". When read analytically and disjunctively, Section 20 can be aptly recast as -

No Court shall initiate any proceedings for contempt either on its own motion; and No Court shall initiate any proceedings for contempt otherwise.

after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

15. When so read, it would follow that so far as initiating any proceeding for contempt on its own motion is concerned, this has to be necessarily done by the issuance of a notice by the Court itself. However, so far as initiation otherwise (than on its own motion) is concerned this in the context of criminal contempt has to be so done by the prescribed modes of taking cognizance spelt out in Sub-sections (1) and (2) of Section 15 of the Act. The two classes of action being distinct and separate a fortiori the mode of initiation in one does not and indeed cannot apply mutatis mutandis in the other.

16. With the aforesaid larger conspectus of Section 20 of the Act, one may now proceed to seek the true import of the word 'initiate' as employed therein. Its ordinary dictionary meanings are as under:

> In Webster's Third New International Dictionary -
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> Initiate: To begin or set going; make a beginning of; perform or facilitate the first actions, steps or stages of.
>
> In Shorter Oxford English Dictionary -
>
> Initiate: To begin, commence, enter upon; to introduce, set going, originates.
>
> That being the plain meaning of the word 'initiate' one has to necessarily construe the same in Section 20 in the light of Section 15 which prescribes the methodology of taking cognizance of criminal contempt apart from that in facie curiam in Section 14. Can it be said that when a dignitary of the level of the Advocate General files a motion in the High Court in accordance with the rules he still would not initiate, or begin, commence, or take the first step for the contempt proceedings ? To (hold that this would not amount to even initiation and it would be so only when the matter is heard and the Court after applying its mind actually directs the issuance of the notice, does not appear to me as sound either on principle or on the language employed in the statute. Similarly when a responsible District Judge makes a reference for criminal contempt of the subordinate Court expressly provided for under Section 15(2), can one still hold that he does not initiate the proceedings thereby? Similarly, where a litigant presents a petition before the Advocate General for getting his consent in writing which is a pre-condition for the High Court to take cognizance at his instance under Section 15(1)(b) would he not be initiating the proceedings for criminal

contempt. Though we are focusing ourselves primarily on criminal contempt, the analogy of civil contempt is equally apt. If a litigant actually presents a petition in the High Court Registry under the rules for civil contempt, then the Court's action in entertaining such a petition would obviously be a beginning; a commencement or an entering upon and consequently initiating the proceedings of civil contempt. Whether such a petition later fails or succeeds is another matter but to hold that till a decision for issuing notice thereon is made there will not even be initiation of proceedings, appears to me as unwarranted. On a true meaning of the word 'initiate' it has to be held that beginning the action prescribed for taking cognizance for criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initation.

16-A. I believe that the aforesaid construction placed by me is not only possible but appears to be the one most reasonable in view of the, somewhat peculiar (and if one may say so) an imprecisely drafted provision of Section 20 of the Act. However, the sound canon of construction is that an interpretation which leads to anomalous and sometimes absurd results causing grave hardship to the parties (has to be avoided. It was not disputed before us that in cases where the litigant has with the utmost expedition either moved the Court or the Advocate General for the grant of consent, the matter would be out of his hands and it is then for the Court to either issue notice or for the Advocate General to grant or refuse consent. The honest and the well-meaning litigant having instituted the proceedings cannot thereafter dictate its pace and if inevitably the period of one year from the date of the commission is crossed either because of the tardy process of the Court or to the inaction of the Advocate General (for which no blame whatsoever may attach to him) he cannot be irretrievably prejudiced thereby. It is a hallowed and well-accepted dictum that the action of the Court should not harm or prejudice the litigant. A construction which cannot but lead to this very result has to be avoided and if I may say so at all costs. This aspect was projected before the Bench in Gulab Singh's case AIR 1975 All 366(supra) but was brushed aside on the ground that the litigant has no legal right as such to have the contemner punished. That is indeed so but it seems to have been missed that on such a construction even the power of the. Court to punish is rendered impotent even though it may be fully convinced of the blatant nature of a criminal contempt. It is not a$ if the mere plea of the litigant to seek relief against the contemner is lost, but the Court which is the sentinal of its own dignity becomes equally barred from taking any action against the same. Looking at it from any angle, the hypertechanical view that the mere passage of time - even after the litigant has moved the Court, or the Advocate General has preferred a motion or a petition has been moved before him for his written consent or a subordinate Court has made a reference--would irretrievably prejudice the parties and bar the Court's own power to punish appears to me as against all principles. I would consequently tilt for a construction which avoids such an anomaly and if I may say so needless hardship both as regards the litigant as also by placing a pointless fetter on the power of the

Court to punish for its contempt.

17. Indeed the facts of the case in hand poetically highlight the hardship and injustice which might ensue if an overly strip gent view of the matter is taken. Herein the petitioners had moved the Advocate General for his consent within a month and a half of the decision of the original habeas corpus petition and a little over two months from the alleged commission of the contempt by the filing of the false affidavit on Dec. 17 1980. Their case was not found without merit and the Advocate General did grant consent but long after the period of one year had elapsed, that is, on July 2, 1982. The petitioners made no default in moving the Court thereafter and the said petition was duly entertained. It was admitted on all hands that the writ petitioners were herein not guilty of any default whatsoever. Similarly in Gulab Singh's case it would appear that the delay was entirely due to inaction on the part of the High Court and the Division Bench itself noticed that it was an unfortunate result that notice could not be issued by the Court till more than one year and three months of its having been moved. If an enlightened construction can avoid these obviously unfortunate results it may well be the Court's duty to do so.

18. Inevitably one must now advert to precedent taking a contrary view. A perusal of the judgment in Hari Nandan Agrawal's case would indicate that the matter was treated as one of first impression and briefly disposed of in the single paragraph 25 of the report. It is plain that (he issue was neither fully and exhaustively canvassed nor eruditely adjudicated upon. In Gulab Singh's case the Division Bench relied entirely on Baradakanta Mishra's case 1975 Cri LJ 1(SC) (supra) for coming to its conclusion. There does not appear to be any independent rationale or discussion of the issue. I have already attempted to show at some length that Baradakanta Mishra's case (supra) is no warrant for such a proposition. Again the Division Bench in Dineshbhai A. Parikh v. Kripalu Co-operative Housing Society , placed primary reliance on Baradakanta Mishra's case and Gulab Singh's case (supra), and followed tine, view in Gulab Singh's case. With the greatest respect and in view of the detailed reasons given in the earlier part of this judgment I would, with deference, wish to record my dissent from the aforesaid judgments. I may mention that N. Venkataramanappa v. D.K. Naikar , is plainly distinguishable because the contempt petition was held to have been filed in Court well-nigh three years after the alleged commission of the offence. Consequently in this judgment there is no discussion or adjudication on the point as to when proceedings are deemed to be initiated.

19. To finally conclude it must be held that the terminus a quo for limitation begins under Section 20 of the Act on the date on which the contempt is alleged to have been committed. The terminus ad quem in case of criminal contempt would necessarily vary and be related to the modes of taking cognizance thereof provided for in Section 15. In cases where it is initiated on the Court's own motion it would necessarily be from the issuance of the notice for contempt by the Court. In case of a motion by the Advocate General under Section 15(1)(a), the proceedings would initiate from the date of the filing of such a motion in the High Court Where any other person moves the Advocate General for his consent in writing as prescribed in Section 15(1)(b), the initiation of proceedings would be with effect from the date of such application. Lastly, in cases of criminal contempt of a subordinate Court on a reference made by it the proceedings must be deemed to be initiated from the date when such reference is made.

20. Now applying the above, it would be plain that the present petition for contempt is clearly within the period of limitation of one year prescribed by Section 20. This meaningful issue having been decided in favour of the petitioners, the case would now go back to the Division Bench for adjudication on merits.

P.C. Jain, J.

21. I agree.

S.C. Mital, J.

22. I agree.