IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Criminal Miscellaneous Jurisdiction)

Contempt Case (Crl.) No. 3 of 2021

Court on its own motion ..... **Petitioner**

-Versus-

1. Mr. Rajiv Ranjan
2. Mr. Sachin Kumar .....**Opposite Parties**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AMBUJ NATH

Amicus Curiae : Mr. Vijoy Pratap Singh, Sr. Advocate
Mr. Ramit Satender, Advocate

For the Opposite Parties : Mr. Umesh Prasad Singh, Sr. Advocate
Mr. Piyush Chitresh, Advocate
Mrs. Surabhi, Advocate
Mr. Ravi Prakash Mishra, Advocate

J U D G M E N T

CAV on 23rd January 2024 Pronounced on 3rd May 2024

Per, Shree Chandrashekhar, A.C. J.

The present criminal contempt proceeding has been registered against the Advocate General and Additional Advocate General, following the order passed by a learned Single Judge of this High Court while delivering the judgment in W.P(Cr.) No. 139 of 2021.

2. The writ petition was filed by Devanand Oraon for investigating the murder of his daughter Rupa Tirkey by the Central Bureau of Investigation in UD Case No. 09 of 2021. In the latter part of the judgment delivered on 1st September 2021, the writ Court narrated the incident that had happened in the Court on 13th August 2021 and formed a prima facie opinion that Mr. Rajiv Ranjan who is the Advocate General and Mr. Sachin Kumar who is the Additional Advocate General had committed criminal contempt of the Court.

3. On that day, the Advocate General informed the writ Court that the counsel for the writ petitioner was heard saying that “the matter was going to be allowed 200%”. That incident had happened on 11th August 2021 after the Court proceedings were over for the day. On 13th August 2021 which was the next date of hearing of the writ petition, the Advocate

General asked the Court not to hear the matter. This is also recorded in the order dated 13th August 2021 that Mr. Sachin Kumar supported the Advocate General. The writ Court took the incident seriously and asked the Advocate General to put his statement on the affidavit but he refused to do so. The writ Court therefore held that there was no need to recuse from hearing the case, on a mere statement made by him. However, the writ Court thought it proper to refer the matter to the Chief Justice for a decision on the administrative side.

4. After reassignment of the matter to the same Hon'ble Judge, the writ petition was listed for further hearing on 26th August 2021 and 31st August 2021. The judgment in W.P(Cr.) No. 139 of 2021 was delivered on 1st September 2021 directing the State Police to hand over the investigation of UD Case No. 09 of 2021 to the CBI. At this stage, the writ Court takes cognizance of the conduct of the Advocate General and Additional Advocate General in the Court on 13th August 2021. Before making a reference for registering a *suo motu* contempt proceeding against them, the writ Court made the following observations:

> "87. Now, the only option before the Court is to take suo motu cognizance of the conduct of two senior law officers of the State. In the case of P.N. Duda (supra), the Hon'ble Supreme Court considered the observation of Lord Denning in paragraph 15 of the said judgment, which is quoted herein below:
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> > "15. Lord Denning in Regina v. Commissioner of Police of the Metropolis, ex parte Blackburn observed as follows:
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> > "Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.
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> > It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.
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> > Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent

to the matter in hand. Silence is not an option when things are ill done."

88. If the Judges are fairly criticized for any judgment, we restrained ourselves. We did not interfere into any discussion and we happily accept fair criticism. On 13.08.2021, before passing any order the two law officers of the State scandalized the Court proceeding and the matter was sent before Hon'ble the Chief Justice on administrative side. The scene was created by Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II. The said I.A. was filed with service of an advance copy upon the office of the learned Advocate General, but till date no affidavit of apology on behalf of both the counsels have been filed, meaning thereby they have not realized what they have done on 13.08.2021. This is one aspect of the matter. On 26.08.2021, this Court asked Mr. P.A.S. Pati and Mr. Kaushik Sarkhel, learned counsel for the respondent-State about the said affidavit, in the blank way they straightway submitted that notice has not been issued. On 31.08.2021, the same thing was repeated by the Court to Mr. Kapil Sibal, learned Senior counsel as well as Mr. Arunabh Choudhary, who opposed I.A. on behalf of the Advocate General and Additional Advocate General. Had there been an unreserved, clean and immediate apology on behalf of those two senior law officers of the State, undoubtedly be given greater weight, but this has not been done that too on repeated request by the Court. Admittedly on 13.08.2021, the things happened is recorded in the order and the same has also been stated in I.A. No.4188 of 2021. This matter has been re-assigned to this Bench by the order of Hon'ble the Chief Justice. Not taking any action of criminal contempt on 13.08.2021 does not mean that it is implied to maintain silence. Nobody can be permitted to tarnish the image of the temple of justice. In the case in hand, Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II, who are senior law officers of the State undermined and tarnished the image of the Court. An Advocate has no wider protection than a layman when he commits an act which amounts to contempt of court which is not permissible. A reference may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Jaswant Singh v. Virender Singh, reported in 1995 Supp (1) SCC 384.

89. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. The foundation itself has been sought to be shaken by acts none other than two first law officer of the State. It is for this purpose that the courts are entrusted with extraordinary powers of punishing for contempt of court, those who indulge in acts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalising it. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. It has been observed by the Hon'ble Supreme Court in the case of Rajendra Sail v. M.P. High Court Bar Assn., reported in (2005) 6 SCC 109.

90. When a contempt is committed in the face of the High Court or the Supreme Court to scandalize or humiliate the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalizing the institution thereby lowering its dignity in the eyes of the public, which has been held by the Hon'ble Supreme Court in the case of Ram Niranjan Roy v. State of Bihar, reported in (2014) 12 SCC 11. Paragraph 16 of the said judgment is quoted herein below:

"16. Thus, when contempt is committed in the face of the High Court or the Supreme Court to scandalise or humiliate the Judge, instant action may be necessary. If the courts do not deal with such contempt with strong hand, that may result in scandalising the

institution thereby lowering its dignity in the eyes of the public. The courts exist for the people. The courts cherish the faith reposed in them by people. To prevent erosion of that faith, contempt committed in the face of the court need a strict treatment. The appellant, as observed by the High Court was not remorseful. He did not file any affidavit tendering apology nor did he orally tell the High Court that he was remorseful and he wanted to tender apology. Even in this Court he has not tendered apology. Therefore, since the contempt was gross and it was committed in the face of the High Court, the learned Judges had to take immediate action to maintain honour and dignity of the High Court. There was no question of giving the appellant any opportunity to make his defence. This submission of the appellant must, therefore, be rejected."

91. On repeated request by the Court, affidavit has not been filed. In view of refusal of filing the affidavit, they have not left any option and compel this Court to take suo motu action.

92. Both have sought and bullied the Court and behaved in the manner that the Court felt that they are trying to threaten it. This has been done in open Court in the presence of senior and junior counsels of the bar and as also in the presence of Mr. R.S. Mazumdar, learned Senior counsel and Mr. Rajiv Sinha, learned A.S.G.I. for the Union of India, who are the witnesses to entire incidents. It is necessary to see at outset that what implication and impression would such a conduct have on the senior and junior members of bar. The Court feels that the majesty of the Court would be at risk, if such a conduct is not checked at the stage of its budding. It has the potential of carrying the message across board that the courts can be manhandled to the desired ends of a litigator. This would ultimately result in lowering the authority of the institution and bears the possibility of creating anarchy of a system on the unfortunate date as has been submitted by Mr. Rajiv Sinha, learned A.S.G.I. appearing for the respondent-CBI yesterday with heavy heart submitted that he is witness of what has happened on that day and how the Court has been humiliated. He further submitted that he has not seen this in the history of Jharkhand High Court. In view thereof, the Court has been humiliated and with heavy heart, it is said that this is humiliation of not an individual Judge, but the entire institution, if it is not dealt with iron hands it may see progress and will jeopardise the administration of justice. The system in which the Judges can be bullied by the litigators to say that Justice will be done as will be matter of myth and will give rise to very nasty tendency of being more vocal in the Court then being a learned.

93. The Court having found that Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II have prima facie committed criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 and compel this Court to take suo motu action against them under Section 15 of the said Act.

94. In view of the above facts, following order is being passed:

(i) W.P. (Cr.) No.139 of 2021 is allowed in terms of paragraph no. 70 of this order and the same stands disposed of.

(ii) Office is directed to register suo motu motion as Suo Moto Contempt Proceedings in terms of Rule 389 and other relevant Rules of the High Court of Jharkhand Rules, 2001 and under Article 215 of the Constitution of India read with Section 15 of the Contempt of Courts Act, 1971 for the purpose of record.

(iii) Office is directed to issue notice under Section 17 of the Contempt of Courts Act to Mr. Rajiv Ranjan, learned Advocate General and Mr. Sachin Kumar, learned Additional Advocate General-II at their address as per the Contempt of Courts Act and High Court of

> Jharkhand Rules. Notice shall be accompanied by the entire record of this case including the disposed of I.As., this order and order dated 13.08.2021, to be made returnable on 05.10.2021.
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> (iv) Since every case of criminal contempt under Section 15, is required to be heard and determined by the Bench of not less than two Judges in terms of Section 18 of the said Act, office is directed to place the matter before Hon'ble the Chief Justice for necessary consideration."

5. Mr. Umesh Prasad Singh, the learned senior counsel appearing for the opposite parties challenged the reference for instituting this contempt proceeding on the ground that the order dated 1th September 2021 taking *suo motu* cognizance of the conduct of the opposite parties on a previous occasion in the Court was without jurisdiction, *non est* and *void ab initio*. The learned senior counsel submitted that the writ Court did not record the utterances made on 13th August 2021 much less the exact language and expressions used by the opposite parties, and no cognizance of their alleged contemptuous conduct was taken by the Court on the day when they asked the writ Court not to hear the matter. Per contra, Mr. Vijoy Pratap Singh, the learned *Amicus Curiae* would submit that the reference dated 1st September 2021 was necessary for maintaining the faith of the common man in the judiciary. The labeling of *suo motu* motion is not to be confused with the powers exercised by the writ Court which is clearly recorded in paragraph no.94 of the judgment that the contempt proceedings are initiated under Article 215 of the Constitution of India read with section 15 of the Contempt of Courts Act, 1971; and the same is further made clear by a direction to the Registry to issue notice to the proposed contemnors under section 17 of the Contempt of Courts Act.

6. The contempt jurisdiction is inherent in all Courts of record. Peacock, CJ, made a broad proposition in that: "there can be no doubt that every Court of record has the power of summarily punishing for contempt".[1] About a quarter a century thereafter, Lord Morris, J. rendered an opinion for the Judicial Committee that: "the power summarily to commit for contempt is considered necessary for the proper administration of justice".[2] This would evince no doubt that Article 215 of the Constitution

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1 Abdool & Mahtab, Re: (1867) 8 WR Cr 32, 33
2 McLeod v. St. Aubyn: 1899 AC 549

and the Contempt of Courts Act, 1971 recognize and preserve the pre-existing contempt jurisdiction and powers of the Court of record. The power under Article 215 of the Constitution is not restricted by any law and the only limitation on the exercise of this inherent power is that the procedure to be followed should be fair and that the contemnor should be made aware of the charge against him and given a reasonable opportunity to defend himself. In *"Sukhdev Singh Sodhi"*[3] the Hon'ble Supreme Court held that the High Court can deal with the contempt matters summarily and adopt its own procedure. The Hon'ble Supreme Court held as under:

> "24…The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that, the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. …"

7. The responsibility to maintain the rule of law lies equally on the members of the Bar. Any conduct designed to or suggestive of or creating unnecessary controversy in the Court would erode the public confidence in the judicial system and undermine the authority of the Court. Such attempts shall be construed as an intentional attempt to obstruct the course of justice and to deter the Court from performing its duty. The rules framed under section 49(1)(c) of the Bar Council of India Act, 1961 lay down that an advocate must conduct himself with dignity and not be servile. An advocate is therefore required to comfort himself, at all times, in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the bar, or for a member of the bar in his non-professional capacity may still be improper for an advocate. An advocate has to fearlessly uphold the interest of his client by all fair and honorable means without regard to any unpleasant consequences to himself or any other but he must exercise restraint in using intemperate language during arguments in the Court. In "*Brahma Prakash Sharma"*[4] the Hon'ble Supreme Court held that: "It will be an injury to the public if it tends to create an apprehension in the minds of the people

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[3] Sukhdev Singh Sodhi v. Hon'ble Chief Justice S. Teja Singh and the Hon'ble Judges of the Pepsu High Court at Patiala: (1953) 2 SCC 571: AIR 1954 SC 186

[4] Brahma Prakash Sharma v. State of U.P.: AIR 1954 SC 10

regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embracement in the mind of the Judge himself in the discharge of his judicial duty". The Hon'ble Supreme Court further observed that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by the reason of such defamatory statements, it is enough if it is likely, or tends in any way, to interfere with the proper administration of law.

8. This was the conduct of the opposite parties during the Court proceedings on 13th August 2021 in asking the Court not to hear the matter that has been considered contemptuous by the writ Court for initiating a proceeding of criminal contempt against them. As the recording in paragraph no. 77 of the writ Court's judgment indicates, the Advocate General informed the Court that after the Court proceedings were over on 11th August 2021 the counsel for the writ petitioner was heard saying that he was 200% sure that the matter was going to be allowed. On that day, the Court proceedings were conducted in virtual mode and the incident had happened after the rising of the Court for the day. The writ Court has recorded that after Mr. Rajiv Ranjan made the aforementioned statement, Mr. Sachin Kumar came online and vehemently submitted that this Court ought not to hear the matter and made submissions in such a language that ought not to have been used in the Court. In paragraph no. 92, the writ Court further recorded that the opposite parties bullied the Court and behaved in a manner that the Court felt they were trying to threaten the Court. The learned *Amicus* submitted that the dignity of the Court is required to be maintained in all situations and an advocate in no circumstances is expected to engage in a verbal brawl with the Court. Referring to the judgment in "*Prashant Bhushan, In re"*[5], the learned *Amicus* would submit that when the conduct of an advocate tends to bring the authority and administration of the law into disrespect or disregard, the same shall amount to scandalizing the Court and, therefore, the summary

[5] Prashant Bhushan, In re: (2021) 1 SCC 745

jurisdiction of this Court was required to be exercised to uphold the majesty of the law and of the administration of justice.

9. Quite contrary to the observations made by the writ Court, the opposite parties have taken a position that they were respectful to the Court and all that they intended was to inform the Court about the conduct of the counsel for the writ petitioner. The opposite parties have pleaded that the observations in the latter part of the judgment do not reflect the correct picture. They have produced on the record the exchange of words with the Court and other counsel/senior counsel appearing in the Court. Mr. Umesh Prasad Singh, the learned senior counsel for the opposite parties endeavored to demonstrate with reference to the statements made in I.A. No.4188 of 2021 that the so-called offending conduct of the opposite parties as recorded by the writ Court was not even supported by the writ petitioner who filed the said application.

10. The veracity of the statements made by the opposite parties on affidavit cannot be tested in the present proceeding. It is well settled that the facts and statements recorded in an order or a judgment by the Court are considered correct unless challenged by a party by applying to the Court soon after a copy of the order/judgment is made available to him. The statements of facts as to what transpired at the hearing recorded in the judgment of the Court are conclusive of the facts so stated and no one can contradict such statement by an affidavit or other evidence. The matters of judicial record are unquestionable and the only exception for correction of the record is that the aggrieved party files an application while the matter is still fresh in the mind of the Judge and calls attention of the Judge who made the record. On making of such an application, the Court can pass an appropriate order if the party moves it contending that the order does not correctly reflect the happenings in the Court. The judgment in W.P(Cr.) No. 139 of 2021 was delivered on 1st September 2021 and now it is too late for the opposite parties to contend that some facts recorded in the judgment do not correctly reflect the incident that had happened in the Court on 13th August 2021.

11. Mr. Umesh Prasad Singh, the learned senior counsel for the opposite parties next submitted that the conduct of the opposite parties as recorded in the order dated 13th August 2021 can only be seen to judge whether or not such conduct would amount to criminal contempt of the Court under section 2(c) of the Contempt of Courts Act, 1971. It is submitted that the direction in the judgment dated 1st September 2021 for instituting a criminal contempt proceeding has been passed in breach of natural justice and violates the right to reputation of the opposite parties guaranteed under Article 21 of the Constitution of India. It is submitted that the facts recorded in the judgment dated 1st September 2021 which were not mentioned in the Court's proceeding dated 13th August 2021 are liable to be ignored, even if true, and cannot be made the basis for holding that the opposite parties committed criminal contempt of the Court. The submission made at the Bar is that a request for recusal however unjustified that might have been cannot amount to contempt of the Court much less any criminal contempt. On the other hand, the learned *Amicus* submitted that the satisfaction recorded by the learned Single Judge who *prima facie* found the opposite parties committing criminal contempt is not open to challenge, and whether or not they committed criminal contempt of the Court should be decided by this Court. It is further submitted that the opposite parties who have appeared through *Vakalatnama* and filed their affidavits cannot be now heard of saying that the rules of natural justice were violated.

12. In the proceeding drawn on 13th August 2021, the writ Court recorded the objection taken by Mr. Rajiv Sinha who was appearing for the Central Bureau of Investigation that the manner in which the contemnors addressed the Court directly casts aspersions on the Court. On 13th August 2021, the writ Court recorded the happenings in the Court as under:

> "Heard Mr. Rajeev Kumar, learned counsel for the petitioner, Mr. Rajiv Ranjan, learned Advocate General for the respondent-State, Mr. R.S. Mazumdar, learned Senior counsel for the intervenor and Mr. Rajiv Sinha, learned A.S.G.I. for the respondent-CBI.
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> This criminal writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic.
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> On 17.06.2021, this matter was taken up and the State was directed to file the counter affidavit and the Court also directed to provide security to the parents of late Rupa Tirkey and the matter was fixed for 29.07.2021.

On 29.07.2021, the State sought four weeks' further time for filing the counter affidavit. The Court on that day directed the Director General of Police, Jharkhand, Ranchi and the Superintendent of Police, Sahebganj to produce entire records of UD Case No.09/2021 registered on 03.05.2021 in sealed cover, by the next date of listing and it was open to the State to file counter affidavit as well as response to one I.A., which has been filed for intervention in the matter.

Pursuant to the direction given by this Court vide order dated 29.07.2021, the documents of UD Case No.09/2021 and F.I.R. No.127/2021 was handed over to the Registry of this Court in sealed cover, which has been handed over by the Protocol of this Court to one of the staff of the undersigned and the same was directed to be kept on record vide order dated 09.08.2021.

On 11.08.2021, the learned counsel for the petitioner and the learned Advocate General have almost completed their arguments and the matter was adjourned for two days for further argument by rest of the counsels.

Today when the matter was taken up, at the outset Mr. Rajiv Ranjan, learned Advocate General submits that after end of the proceeding on 11.08.2021, learned counsel for the petitioner was saying that 200% the matter is going to be allowed. He submits that let this matter go out of list of this Court. The other State counsel Mr. Sachin Kumar, learned A.A.G.-II supported the arguments of the learned Advocate General.

When the Court asked the learned Advocate General to file the affidavit to that effect, he submits that he will not file the affidavit and said that what he orally submitted that is sufficient.

Mr. Rajiv Sinha, learned A.S.G.I. appearing for the respondent-CBI very fairly submits that this is not the way to address the Court and what has happened today that directly casts aspersion on the majesty of the Court. This should be stopped. This submission has been supported by Mr. R.S. Mazumdar, learned counsel appearing for the intervenor.

Merely on such submission of the learned Advocate General, the Court is not required to recuse from the case as nothing should come in the way of dispensation of justice or discharge of duty as a Judge and judicial decision-making. Reference in this regard may be made to the judgment rendered by the Hon'ble Supreme Court in the case of Indore Development Authority v. Manohar Lal and others, reported in (2020) 6 SCC 304. Paragraph 47 of the said judgment is quoted herein below:

> "47. Recusal is not to be forced by any litigant to choose a Bench. It is for the Judge to decide to recuse. The embarrassment of hearing the lengthy arguments for recusal should not be a compelling reason to recuse. The law laid down in various decisions has compelled me not to recuse from the case and to perform the duty irrespective of the consequences, as nothing should come in the way of dispensation of justice or discharge of duty as a Judge and judicial decision-making. There is no room for prejudice or bias. Justice has to be pure, untainted, uninfluenced by any factor, and even decision for recusal cannot be influenced by outside forces. However, if I recuse, it will be a dereliction of duty, injustice to the system, and to other Judges who are or to adorn the Bench(es) in the future. I have taken an informed decision after considering the nitty-gritty of the points at issue, and very importantly, my conscience. In my opinion, I would be committing a grave blunder by recusal in the circumstances, on the grounds prayed for, and posterity will not forgive me down the line for setting a bad precedent. It is only for the interest of the judiciary (which is supreme) and the system (which is nulli secundus) that has compelled me not to recuse."

> The Court only with a view to faith that the common man reposes in the judiciary sending this matter before Hon'ble the Chief Justice on administrative side.
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> In such a situation, this Court thinks it proper to place this matter before Hon'ble the Chief Justice on the administrative side for administrative decision.
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> Registry of this Court is directed to place this matter before Hon'ble the Chief Justice immediately."

13. The conduct of an advocate in the Court cannot be like that of "the man on the top of a Clapham Omnibus"[6] and he must maintain towards the Court a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the administration of justice. The learned Single Judge recorded that even on repeated requests by the Court the opposite parties did not seek an apology and, therefore, the Court had no other option but to take *suo motu* action. This observation of the learned Single Judge was emphasized by the learned senior counsel for the opposite parties to submit that the learned Single Judge himself was not of the view that the utterances made by the contemnors were contemptuous or intended to scandalize or lowering or tending to lower the authority of the High Court or that interfered or tended to interfere with or obstructed or tended to obstruct the administration of justice.

14. In *"R.S. Sujatha"*[7] the Hon'ble Supreme Court held that the Court is required to act with great circumspection as far as possible and in an unclear case the Court should not proceed in the matter. In "*Shri Baradakanta Mishra"*[8] the Hon'ble Supreme Court emphasized that the contempt jurisdiction should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt.

15. Section 14 of the Contempt of Courts Act lays down the procedure where contempt is in the face of the Supreme Court or a High Court. The power to punish for its contempt is inherent in every High Court and the exercise of this power is fettered with the only requirement in law that the procedure adopted by the High Court should be just, fair and

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[6] The phrase "the man on the Clapham Omnibus" represents a hypothetical ordinary manner introduced into English law during the Victorian era.

[7] R.S. Sujatha v. State of Karnataka: (2011) 5 SCC 689

[8] Shri Baradakanta Mishra v. Registrar of Orissa High Court: (1974) 1 SCC 374

reasonable. Section 15 no doubt provides that the High Court may take action on its own motion but then section 15 route can be followed only in cases other than a contempt referred to in section 14. Under section 2(c), criminal contempt is defined to mean the publication by spoken or written words or by signs or by visible representations or otherwise of any matter or the doing of any other act whatsoever which (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of any Court or (ii) prejudices or interferes or tends to interfere with the due course of any judicial proceeding or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner. The learned *Amicus* contended that this is not a requirement in law that the cognizance of the contemptuous conduct must be taken on the same day and, that, the proceedings on 13th August 2021 and thereafter reveal that there was no unreasonable delay in taking cognizance of the offending conduct of the opposite parties.

16. Even so, the High Court while exercising the powers under Article 215 of the Constitution of India is required to follow the procedure prescribed by law that is laid down in the Contempt of Courts Act and the rules framed by the High Court. In *"R.S. Sujatha"*[7] the Hon'ble Supreme Court held that the charges in a criminal contempt proceeding are required to be framed as per the statutory rules and the benefit of doubt should be extended to the contemnor. There can be no manner of doubt that the writ Court could have passed an order on 13th August 2021 taking cognizance of the conduct of the opposite parties after issuing a show-cause notice and allowing them to explain their conduct. But this mandatory requirement in law was not brought to the notice of the Court on account of which the reference dated 1st September 2021 has been rendered vulnerable.

17. The provisions in section 15 of the Contempt of Courts Act, 1971 lay down as under:

> **15. Cognizance of criminal contempt in other cases.—** (1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—
> (*a*) the Advocate-General, or
> (*b*) any other person, with the consent in writing of the Advocate General, or

(*c*) in relation to the High Court for the Union Territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

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

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

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

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

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

18. Sub-section (3) provides that every motion or reference made under this section shall specify the content of which the person charged is alleged to be guilty. The Rules framed by the High Court of Jharkhand under the Contempt of Courts Act, 1971 are provided under Rule 387 of the High Court of Jharkhand Rules. Under Rule 395, it is provided that the Court may in appropriate cases before initiating the proceeding for contempt against the contemnor issue notice to such contemnor directing him to show cause as to why a proceeding for the contempt is not initiated against him. The criminal contempt proceedings are quasi-criminal in nature and the burden and standard of proof required are the same as in a criminal case. Therefore, the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. This is common knowledge that the exercise of the powers under contempt jurisdiction ensues serious consequences and the Court exercising the contempt jurisdiction is required to record its satisfaction about the contumacious conduct. In *"Debabrata Bandopadbyay"*[9] the Hon'ble Supreme Court held that it is only when a clear case of contumacious conduct is not explainable that the contemnor should be punished.

[9] Debabrata Bandopadbyay v. State of W.B.: AIR 1969 SC 189

19. In *"J.R. Parashar"*[10] the Hon'ble Supreme Court held that the proceedings for contempt are quasi-criminal and therefore the contemnor must be intimated with sufficient particularity the acts for which the proceedings are initiated. In *"J.R. Parashar"*[10] the Hon'ble Supreme Court held as under:

> "22. The actual proceedings for contempt are quasi-criminal and summary in nature. Two consequences follow from this. First, the acts for which proceedings are intended to be launched must be intimated to the person against whom action is proposed to be taken with sufficient particularity so that the persons charged with having committed the offence can effectively defend themselves. It is for this reason Section 15 requires that every motion or reference made under this section must specify the contempt of which the person charged is alleged to be guilty. The second consequence which follows from the quasi-criminal nature of the proceeding is that if there is reasonable doubt on the existence of a state of facts, that doubt must be resolved in favour of the person or persons proceeded against. In addition, this Court has framed rules under, inter alia, Section 23 of the Act providing in detail for the procedure to be followed by the Court and its Registry on the one hand and the respondent complainant on the other."

20. We may also refer to "*Sahdeo"*[11] wherein the Hon'ble Supreme Court held that the contemnor is to be informed as to what is the charge he has to meet and therefore a specific charge has to be framed in precision. In *"Sahdeo"*[11] the Hon'ble Supreme Court held as under:

> "27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") and the Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory rules framed for the purpose."

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[10] J.R. Parashar v. Prasant Bhushan: (2001) 6 SCC 735
[11] Sahdeo v. State of U.P.: (2010) 3 SCC 705

21. Having examined the scope and ambit of sections 14 and 15 of the Contempt of Courts Act and inherent powers exercisable by the High Court under Article 215 of the Constitution of India, we do not accept the submission that taking cognizance of the past incident shall be *per se* without jurisdiction. We are however faced with a situation where the learned Single Judge did not record the words and utterances of the opposite parties in the Court on 13th August 2021; and, a charge was not framed and put to the opposite parties even on 1st September 2021. Just for the sake of fullness, we may record that no charge based on the facts recorded in the judgment dated 1st September 2021 can be framed now to proceed with the present criminal contempt proceeding. Furthermore, assuming that there was a charge framed against the opposite parties on the basis of the facts recorded in the aforesaid judgment because the words spoken by the opposite parties are not recorded in the judgment dated 1st September 2021 the present reference could not have been adjudicated and decided. Simply put, without framing a charge and affording an opportunity to the opposite parties to explain their conduct, a reference under section 17 of the Contempt of Courts Act for registering a criminal contempt proceeding against the opposite parties is not maintainable. The aforementioned reference against the opposite parties contravenes the provisions under sub-section (3) to section 15 of the Contempt of Courts Act and the rules of natural justice and therefore liable to be discharged.

22. Ordered accordingly.

23. Contempt Case (Crl.) No. 3 of 2021 is closed.

(Shree Chandrashekhar, A.C.J.)

(Ambuj Nath, J.)

(Ambuj Nath, J.)

Jharkhand High Court, Ranchi
Dated: 3rd May 2024
Amit/Tanuj
.A.F.R.