

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1489 of 2013

Mansoor Ansari

... **Petitioner**

-Versus-

The State of Jharkhand

... **Opposite Party**

PRESENT

HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Praveen Shankar Dayal, Advocate

For the State : Mr. Ashutosh Anand, A.A.G.-III

Mr. Sahbaj Akhtar, A.C. to A.A.G.-III

C.A.V. on 13.05.2024

Pronounced on 05.07.2024

A reference may be made to the orders dated 08.04.2024, 29.04.2024 and 06.05.2024 and those orders are quoted as follows:

"11/ 08.04.2024 The matter is pending since 2013 and by order dated 06.03.2024, the State was directed to take instruction with regard to investigation of the case and was also directed to file supplementary counter affidavit within two weeks, however, till date, the said supplementary counter affidavit is not filed.

2. Learned Spl.P.P. appearing for the State submits that he has already written a letter to the Superintendent of Police, Hazaribag and also to the Officer-in-Charge of Barkatha P.S., however, till date, instruction has not been received by him.

3. The above submission is the matter of concern as Superintendent of Police, Hazaribag and the concerned officer-in-charge, has not responded to the letter of Mr. Chatterjee, learned Spl.P.P. for the State, who has written the letter in light of the order of this court for filing the supplementary counter affidavit.

4. In that view of the matter, the Director General of Police, Jharkhand, Ranchi is directed to look into the matter and file the supplementary counter affidavit within two weeks.

5. Let this matter appear on 29.04.2024.

6. Interim order, granted earlier, shall remain in force till the next date of listing.

7. Let a copy of this order be communicated to the Director General of Police, Jharkhand, Ranchi for the needful."

"12/ 29.04.2024 Pursuant to the order dated 08.04.2024,

the Director General of Police, Jharkhand, Ranchi has filed the supplementary counter affidavit in the matter.

2. In Para-7 of the supplementary counter affidavit, it has been disclosed that it has been informed by the Superintendent of Police, Hazaribag that upon further investigation, supplementary chargesheet was submitted on 19.01.2016 against the petitioner and Md. Shane Raja, shown them to be absconder and found offence true against Munna Khan.

3. Annexure-C is the supplementary chargesheet, where in Column-14, it has been disclosed that the petitioner is on bail, however, in para-7 of the counter affidavit, disclosure has been made that the petitioner is absconding in the case. In the said supplementary chargesheet, in Column-13, nothing has been disclosed, which is meant for witnesses supporting the case of the prosecution. It appears that the Superintendent of Police, Hazaribagh has misguided the Director General of Police, Jharkhand, Ranchi and the Director General of Police, Jharkhand, Ranchi has filed the present supplementary counter affidavit.

4. In view of the above, prima facie, it appears that in a mechanical way, the affidavit has been filed before the court by none other than the Director General of Police, Jharkhand, Ranchi himself. As such, the Director General of Police, Jharkhand, Ranchi is directed to explain the above misappropriation in the supplementary chargesheet as well as the disclosure made in para-7 of the supplementary counter affidavit by way of filing further supplementary counter affidavit.

5. Let this matter appear on 06.05.2024.

6. It is open for the Director General of Police, Jharkhand, Ranchi to make explanation from the Superintendent of Police, Hazaribag, who is misleading the Director General of Police, Jharkhand, Ranchi.

7. Interim order, granted earlier, shall remain in force till the next date of listing.

8. Let a copy of this order be communicated to the Director General of Police, Jharkhand, Ranchi for the needful."

"13/06.05.2024 A reference may be made to the orders dated 08.04.2024 and 29.04.2024.

2. In the present case earlier Mr. Prabir Chattrjee, learned counsel was appearing on behalf of State. Today, Mr. Ashutosh Anand, learned A.A.G.-III has taken the command.

3. This Court was compelled to pass the order dated 08.04.2024 as by the order dated 06.03.2024 the State was directed to take instruction with regard to investigation of the case and was directed to file supplementary counter affidavit within two weeks, however, the supplementary

counter affidavit was not filed and it was informed by Mr. Chatterjee, the learned Special P.P. that he has wrote to the Superintendent of Police, Hazaribagh and in spite of that, no communication has been made to him and that was the occasion to direct the Director General of Police, Jharkhand, Ranchi to look into the matter and file affidavit and pursuant to that Director General of Police, Jharkhand has filed an affidavit which has been recorded in the order dated 29.04.2024. The reason of filing of further supplementary counter affidavit is disclosed in the order dated 29.04.2024 as Annexure-C to the supplementary charge sheet wherein at column 14 it has been disclosed that the petitioner is on bail, however, in paragraph no.7 of the counter affidavit a disclosure has been made that the petitioner is absconding in the case and in the column-13 nothing has been disclosed which is meant for witness supporting the case and due to that fact again Director General of Police, Jharkhand was directed to file supplementary counter affidavit and pursuant to that further supplementary counter affidavit has been filed by the Director General of Police, Jharkhand wherein in para-11 it has been stated that information was provided by the Superintendent of Police, Hazaribagh and it was further reviewed by Deputy Inspector General of Police, North Chhotanagpur, Hazaribagh. It has been further disclosed that urgent explanation was called from the Superintendent of Police, Hazaribagh by the Director General of Police, Jharkhand to the effect as to why such instruction was provided and it is further stated in paragraph no.13 that Superintendent of Police, Hazaribagh has intimated that it has occurred due to typographical error. Thus, it is crystal clear that false affidavit has been filed before this Court by the Director General of Police, Jharkhand at the instance of Superintendent of Police, Hazaribagh.

4. Further, today's affidavit is further misleading. In the supplementary charge sheet, at page no.18 annexed with the supplementary counter affidavit, it appears that another page is missing of the said supplementary charge sheet which further suggest that only to mislead this Court further false affidavit is filed by the Director General of Police, Jharkhand. In column no.13 it has been recorded earlier in the order dated 29.04.2024 nothing has been stated and what are the material in supplementary charge sheet is not there and again the present affidavit is filed which suggest that nothing is there against the petitioner. Thus, today the affidavit is further misleading.

5. This aspect of filing of false affidavit was the subject matter before the several High Courts as well as Hon'ble Supreme Court and it has been repeatedly emphasized that averments in the affidavit should be clear and specific and to the dismay of the Court it is not only vague but, highly unsatisfactory. The two officers of such high stature have

not cared to discharge their duty with responsibility. A very lame excuse is taken by Superintendent of Police, Hazaribagh that it was a typographical error and this matter is pending since 2013 before this Court. It is well settled that a person makes a false statement before Court and makes an attempt to deceive the Court, interferes with administration of justice and is guilty of contempt of Court. The Court not only has the inherent powers but it would be failing in its duty if alleged contemner is not dealt with a contempt jurisdiction for abusing process of Court. Prima facie, these two officers are in contempt of Court.

6. On repeated request of Mr. Ashutosh Anand, the learned A.A.G.- III, today this Court is not issuing the contempt notice upon these two officers and on his request, matter is being adjourned for a week and this aspect will be further considered on the next date of listing as both officers are under contempt of this Court.

7. Let this matter appear for further affidavit on behalf of the Director General of Police, Jharkhand, as well as Superintendent of Police, Hazaribagh which will be considered on the next date of listing and on the point of contempt.

8. Let this matter be listed on 13.05.2024.

9. Let this order be communicated to the Director General of Police, Jharkhand as well as Superintendent of Police, Hazaribagh.

10. Interim order passed earlier shall remain in force till the next date."

2. Pursuant to the order dated 06.05.2024, I.A. No.4983 of 2024 has been filed by the Director General of Police, Government of Jharkhand for withdrawal of the supplementary counter affidavits filed on behalf of him dated 26.04.2024 and 04.05.2024 respectively and I.A. No.4984 of 2024 has been filed for allowing the Director General of Police, Government of Jharkhand to file fresh consolidated supplementary counter affidavit in the matter. Supplementary counter affidavits dated 26.04.2024 and 04.05.2024 have been filed on behalf of the Director General of Police, Government of Jharkhand.

3. In I.A. No.4983 of 2024, it has been admitted that the mistake was done, however, ground has been taken that it has occurred bonafidely and

due to typographical error. Same ground was taken in earlier supplementary counter affidavit and when this Court vide order dated 06.05.2024 held that the Director General of Police, Jharkhand and Superintendent of Police, Hazaribag are in contempt, thereafter, the present I.As. have been filed which clearly suggests that it is an afterthought to save the skin of issuing the contempt proceeding. At the earlier point of time, it was not accepted and earlier they have tried to justify the action and after the order dated 06.05.2024, present I.As. have been filed.

4. Thus, the Court finds that the word 'apology' used in the said I.A. as well as supplementary counter affidavits is belated and it is without real contribution and rumors and it was merely tendered as a weapon of defence then it was tendered and no cogent ground has been taken and, as such, I.A. No.4983 of 2024 and I.A. No.4984 of 2024 are, hereby, rejected.

5. In the order dated 06.05.2024, this Court observed that prima facie, the Director General of Police, Jharkhand and Superintendent of Police, Hazaribag are in contempt of Court, however, the Court on that day, has not issued notice of contempt and further observed that this aspect will be considered on the next date.

6. The Court has gone through the judgment of the Hon'ble Division Bench of this Court dated 03.05.2024 in Contempt Case (Crl.) No.3 of 2021 passed in the case of ***Court on its own motion v. Mr. Rajiv Ranjan and Mr. Sachin Kumar***. In paragraph 21 of the said judgment of the Hon'ble Division Bench, it has been held that on the first day i.e. 13.08.2021, the words and utterances of the opposite parties in the Court

were not recorded and charge was not framed and put to the opposite parties even on 01.09.2021 and that was unfortunate, however, in that case after taking suo motu cognizance, the opposite parties were put on notice along with all the documents and the matter was sent to the Hon'ble Division Bench of this Court in light of Sections 15 and 18 of the Contempt of Courts Act.

7. It has been held in paragraph 27 of three Judges Bench of the Hon'ble Supreme Court in the case of ***Mahipal Singh Rana, Advocate v. State of Uttar Pradesh***, reported in ***(2016) 8 SCC 335*** and in paragraph 26 of the judgment passed by the Hon'ble Supreme Court in the case of ***In Re: Vinay Chandra Mishra (the alleged contemner)***, reported in ***(1995) 2 SCC 584*** that delay on the part of the Judge is not a ground and it is for the learned Judge to decide as to whether action should be taken under the Act or under any other law.

8. The Hon'ble Supreme Court in the case of ***Pritam Pal v. High Court of M.P.***, reported in ***1993 Suppl (1) SCC 529*** held that while exercising jurisdiction of contempt as a Court of Record under the Constitution, the Supreme Court and the High Courts are only required to follow a procedure which is fair and meet the essential requirements of natural justice i.e., that the contemner may be aware of the charge levelled against him and given a reasonable opportunity to defend himself. The Hon'ble Court rejected the argument that while exercising such constitutional jurisdiction, the Court's exercise of power could be vitiated on the ground of procedural irregularities relying upon Sections 15 and 17 of the Act, 1971 and observed

as under:

15. *Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act of 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be 'Courts of Record' under Articles 129 and 215 of the Constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971. The above position of law has been well settled by this Court in Sukhdev Singh Sodhi v. Chief Justice and Judges of the PEPSU High Court [(1953) 2 SCC 571 : 1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460] holding thus: (SCR p. 463)*

"In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate court, the Constitution vests these rights in every High Court, so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority."

16. *It has been further observed: (SCR pp. 463-64)*

"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.

30. *The special feature of the procedure to be followed in a contempt proceeding is the summary procedure which is recognized not only in India but also abroad.*

41. *The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested us a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See*

D.N. Taneja v, Bhajan Lal) and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, 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.

42. If we examine the facts of the present case in the backdrop of the proposition of law, the contentions raised by the appellant challenging the procedure followed by the High Court do not merit any consideration since the appellant has been served with a notice of contempt and thereafter permitted to go through the records and finally has been afforded a fair opportunity of putting forth his explanation for the charge levelled against him. Incidentally, we may say that the submission of the contemnor that the impugned order is vitiated on the ground of procedural irregularities and that Article 215 of the Constitution of India is to be read in conjunction with the provisions of Sections 15 and 17 of the Act of 1971, cannot be countenanced and it has to be summarily rejected as being devoid of any merit."

9. In the case of **Sahdeo @ Sahdeo Singh v. State of Uttar Pradesh and others**, reported in **(2010) 3 SCC 705**, it has been held

that the contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases.

10. Thus, it is well known that after cognizance only, charge can be framed.

11. In view of above three judgments of the Hon'ble Supreme Court and the judgment passed by the Hon'ble Division Bench of this Court in Contempt Case (Crl.) No.3 of 2021, this Court is facing difficulty in present case and as on earlier two dates, notice of contempt was not issued and if the Court is issuing notice today, the charge is required to be framed before notice itself or after cognizance and after appearance, the charge can be

framed and in criminal cases, after cognizance only, charges are being framed.

12. In view of the above, this Court in the present case is confronted with the situation i.e. (i) when in earlier two dates in the present case, the Court has not issued notice and now it can be issued or not? and (ii) further on the first date itself, charge is required to be framed along with notice or not? and (iii) this Court has initiated suo motu contempt in Contempt Case (Crl.) No. 3 of 2021, the procedure followed by this Court in that case was not accepted by the Hon'ble Division Bench and this Court do not want to proceed in haste as procedural defect is doubted by the Hon'ble Division Bench and clarification on that point is necessary before proceeding in the present matter as this Court is in a perplexed situation what procedure to be adopted in view of the judgment of the Hon'ble Division Bench in Contempt Case (Crl.) No.3 of 2021.

13. When a decision of a Coordinate Bench of the same High Court is brought to be notice of the Bench, it is to be respected and is binding subject to right of the Bench of such co-equal strength to take a different view and refer the question to the larger Bench, it is the only course of action open to a Bench of a co-equal strength and faced with previous decision taken by a Bench with same action.

14. Whether any judgment of the constitutional Court may be sent to the larger Bench or not, in this regard, a reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of ***Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel,***

reported in **1967 SCC OnLine SC 123**. Paragraph 10 of the said judgment reads as under:

"10. *The effect of a precedent of the Gujarat High Court fell to be considered indirectly in this case. Before Raju, J., it was urged -for the first time in the course of this litigation that in the absence of the sanction of the Charity Commissioner the Court sale was invalid. Counsel for the auction purchaser contended that this question was not raised before the District Court and that Court ,cannot be said to have acted illegally or with material irregularity in not deciding the question. Counsel for the auction purchaser relied upon two decisions in support of that proposition: Pinjare Karimbhai v. Shukla Hariprasad and Haridas v. Rataney. He urged that under the Bombay Reorganization Act, 1960, the jurisdiction of the Bombay High Court which originally extended over the territory now forming part of the State of Gujarat, ceased when a new High Court was set up in the State of Gujarat, but it was held by a Full Bench of the High Court of Gujarat in State of Gujarat v. Gordhandas that the decision of the Bombay High Court will be regarded as binding since the Gujarat High Court had inherited the jurisdiction. power and authority in respect of the territory of Gujarat. When pressed with the observations made in the two cases cited at the Bar, Raju, J., found an easy way out. He observed that the judgment of the Full Bench of the Gujarat High Court had "no existence in law". for in the absence of a provision in' the Constitution and the Charter Act of 1861, a Judge of a High Court had no Power to refer a case to a Full Bench for determination of a question of law arising before him, and a decision given on a reference "had no existence in law". The learned Judge also thought that if a Judge or a Division Bench of a Court makes a reference on a question of law to a Full Bench for decision, it Would in effect be assuming the jurisdiction which is vested by the Charter of the Court in the Chief justice of the High Court. In so observing the learned Judge completely misconceived the nature of a reference made by a Judge or a Bench of Judges to a larger Bench. when it appears to a Single Judge or a Division Bench that there are conflicting decisions of the same Court, or there are decisions of other High Courts in India which are strongly persuasive and take a view different from the view which prevails in his or their High Court, or that a question of law of importance arises in the trial of a case, the Judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with a request to form a special or Full Bench to hear and dispose of the case or the questions raised in the case. For making such a request to the Chief Justice, no authority of*

the Constitution or of the Charter of the High Court is needed, and by making such a request a Judge does not assume to himself the powers of the Chief Justice. A Single Judge does not by himself refer the matter to the Full Bench: he only requests the Chief Justice to constitute a Full Bench for hearing the matter. Such a Bench is constituted by the Chief Justice. The Chief Justice of a Court may as a rule, out of deference to the views expressed by his colleague, refer the case: that does not mean, however, that the source of the authority is in the order of reference. Again it would be impossible to hold that a judgment delivered by a Full Bench of a High Court after due consideration of the points before it is liable to be regarded as irrelevant by Judges of that Court on the ground of some alleged irregularity in the constitution of the Full Bench."

15. This Court does not want to proceed in the present matter distinguishing the judgment of the Hon'ble Division Bench in view of principle of judicial propriety demand as this Court is of the view that the Hon'ble Division Bench judgment is *per inquirium* which is not binding effect, however, due to judicial propriety, it will not be proper for this Court to proceed ignoring the judgment of the Hon'ble Division Bench in Contempt Case (Crl.) No.3 of 2021.

16. In view of the above, the judgment of the Hon'ble Division Bench in Contempt Case (Crl.) No.3 of 2021 in the case of ***Court on its own motion v. Mr. Rajiv Ranjan and Mr. Sachin Kumar*** is *prima facie* contradictory to the judgments passed by the Hon'ble Supreme Court in the cases of ***Mahipal Singh Rana, Advocate, Pritam Pal and Sahdeo @ Sahdeo Singh*** and ***Vinay Chandra Mishra (supra)***.

17. In view of the above, this Court, at present, is not proceeding further for initiation of contempt proceeding against the Director General of Police, Jharkhand and Superintendent of Police, Hazaribag and after having

the answer on this, the Court will proceed further under Contempt of Courts Act.

18. In view of the discussions made herein above, this Court is of the opinion that the judgment of the Hon'ble Division Bench of this Court in Contempt Case (Crl.) No.3 of 2021 in the case of ***Court on its own motion v. Mr. Rajiv Ranjan and Mr. Sachin Kumar*** is required to be reconsidered by the larger Bench, as such, following reference is being made for consideration by the larger Bench:

- (i) Whether on very first date of contemptuous act, the Court is required to take cognizance or in view of nature of jurisdiction under the Contempt of Courts Act, the Court is having the duty to move with circumspection and after being satisfied and after providing opportunity, cognizance can be taken and taking cognizance later on is unfortunate or not and is it necessary to record each and every word in the order as language, both on the Bench and in judgments must comport with judicial propriety? A reference may be made to the judgment passed in ***Chief Election Commissioner of India v. M.R. Vijayabhaskar and others***, reported in ***(2021) 9 SCC 770***.
- (ii) Whether on the very first date or on the date of taking cognizance, charge is to be framed and after notice/cognizance, charge can be framed on the first date of appearance and as per procedure of criminal law?
- (iii) When a contemner is put on notice along with all the

documents and only after appearance, he can be provided to go through all the documents and thereafter he is required to give full opportunity and after appearance, such procedure is not followed then only it can be held that procedure is not followed, whereas in that case, when suo motu cognizance was taken, the contemner were put on notice along with all documents?

- (iv) When a Single Judge of a constitutional Court taken suo motu cognizance of contempt and sent the matter to the Hon'ble Division Bench in light of Section 15 and 18 of the Contempt of Courts Act, can it be said merely a reference in light of Sub-section (2) of Section 15 of the Contempt of Courts Act, reference only by the learned Judges of the Civil Courts or others to the High Courts until the information is conveyed to the High Court through proper channel i.e., through the District and Sessions Judge, it cannot be taken to be a reference within the meaning of Sub-section (2) of Section 15 of the Contempt of Courts Act and the constitutional Court's Judge if taken cognizance, it cannot be said to be reference rather commenced the motion of contempt itself?
- (v) When in a case Advocate General is in contempt, procedure prescribed in Section 15 (1)(c) and Sub-section (3) of Section 15 of Contempt of Courts is required and is there any bar to exercise power of suo motu action? A reference may be made

to the judgment passed in the case of ***P.N. Duda v. P. Shivshankar and others***, reported in ***(1988) 3 SCC 167***.

19. In view of the judgment of the Hon'ble Division Bench of this Court in Contempt Case (Crl.) No.3 of 2021 in the case of ***Court on its own motion v. Mr. Rajiv Ranjan and Mr. Sachin Kumar*** and the judgments of the Hon'ble Supreme Court in the cases of ***Mahipal Singh Rana, Advocate, Pritam Pal and Sahdeo @ Sahdeo Singh*** and ***Vinay Chandra Mishra (supra)***, this Court is of the opinion that the judgment of the Hon'ble Division Bench in Contempt Case (Crl.) No.3 of 2021 is required consideration by the larger Bench and, therefore, this Court directs the Registry to place the judgment of the Division Bench in Contempt Case (Crl.) No.3 of 2021 along with this order to the Hon'ble Chief Justice of this Court.

20. The papers including the entire records of W.P.(Cr.) No.139 of 2021 as well as Contempt Case (Crl.) No.3 of 2021 may therefore be placed before Hon'ble the Chief Justice of High Court of Jharkhand for appropriate order.

21. Awaiting for outcome, the present matter is kept pending.

22. Interim order, granted earlier, shall remain in force.

(Sanjay Kumar Dwivedi, J.)

High Court of Jharkhand, Ranchi

Dated: the 5th day of July, 2024

Ajay/ A.F.R.