CASE NO.:
Appeal (civil) 1632 of 1990

PETITIONER:
OM PRAKASH JAISWAL

Vs.

RESPONDENT:
D.K. MITTAL & ANR.

DATE OF JUDGMENT: 22/02/2000

BENCH:
R.C.Lahoti, K.T.Thomas

JUDGMENT:

R.C. Lahoti, J.

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This appeal is directed against an order dated 23.11.1989 passed by the High Court of Allahabad whereby proceedings under Section 12 of the Contempt of Courts Act, 1971 (hereinafter 'the Act', for short) have been directed to be dropped as barred by Section 20 of the Act.

We are not concerned with the merits of the allegations made by the appellant and denied by the respondents, constituting the gravamen of alleged contempt. We are concerned only with the question whether the bar created by Section 20 of the Act was attracted to the facts of the case or not.

It appears that the appellant was sought to be dispossessed by the Nagar Mahapalika, Allahabad and Allahabad Development Authority by demolishing and removing certain construction existing over a piece of land. The appellant filed a Civil Miscellaneous Writ

Petition No.20471 of 1986 before the High Court of Allahabad seeking a writ or direction commanding the respondents not to dispossess or interfere with the possession of the appellant. On 19.12.1986 Shri A.K. Mohiley, the learned counsel appearing on behalf of the respondents gave an undertaking before the Court in the following terms :

"Shri A.K. Mohiley, counsel for Nagar Mahapalika, Allahabad undertakes before us that the Nagar Mahapalika will not disturb or demolish the construction in question made by the petitioner till the disposal of the Writ Petition.

The undertaking is placed on record. The application accordingly dismissed."

According to the appellant, the employees of the respondents demolished the appellant's construction in the morning of 11.1.1987. The appellant moved an application before the Court seeking initiation of proceedings under Section 12 of the Act against the respondents. On 15.1.1987 the Court passed the following order :-

"Issue show cause notice to opposite parties as to why contempt proceedings should not be initiated against them for defiance of order dated 19.12.1986 passed by this court in civil writ petition no.20471 of 1988, O.P. Jaiswal Vs. Nagar Mahapalika and others. List it for orders on 4.2.87."

(underlining by us)

The respondents, i.e., the alleged contemners appeared before the Court and filed their reply. On 16.12.1987 when the matter came up for hearing before the Court, the Court passed the following order :-

"Apparently till now notice to show cause has been issued to the opposite parties as to why proceedings be not initiated. Manifestly the application would become non maintainable after 11.1.1988.

The learned Advocate General has very fairly conceded that in view of the matter having been heard on several dates the notices to show cause to the opposite parties as to why they should not be punished for disobeying the order of this court dated 19.12.1986 can be issued."

It appears that the abovesaid order, though it was dictated in the Court, was not signed by the presiding Judge. The attention of the Court having been invited to this fact, on 6.1.1988 the Court passed the following order:-

"6.1.1988 The case could not be taken up on the date fixed i.e. 5.1.1988. Learned Counsel for the opposite party, Shri Ashok Mohiley agrees that the notices be issued in view of statement earlier made by the learned Advocate General fairly conceding that the notices be issued to show cause why the OPs be not punished to disobeying the order dated 19.12.1986. Issue notice to the O.Ps. However, notices be not sent to the opposite parties as Shri Ashok Mohiley accepts them on their behalf. List for hearing on 28.1.1988.

Sd/- Judge."

(underlining by us)

On 23.11.1989 the High Court, without going into the merits of the allegations made, formed an opinion that mere issuing of notice for showing cause against did not amount to 'initiation of proceedings' under the Act and inasmuch as the proceedings were not initiated till then the bar enacted by Section 20 of the Act was attracted and therefore the application filed by the appellant was liable to the rejected.

The short question arising for decision is whether the order dated 6.1.1988 amounts to initiation of proceedings for contempt.

Section 20 of the Act reads as under:-

"20. 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."

The expression - 'initiate any proceedings for

contempt' is not defined in the Act. Words and Phrases,

(Permanent Edition) defines 'initiate' to mean -an

introductory step or action, a first move; beginning;

start, and 'to initiate' as meaning - to commence.

Black's Law Dictionary (Sixth Edition) defines

'initiate' to mean commence; start; originate;

introduce; inchoate. In Section 20, the word 'initiate'

qualifies 'any proceedings for contempt'. It is not the

initiation of just any proceedings; the proceedings

initiated have to be proceedings for contempt.

The expression was dealt with by this Court in

Baradakanta Mishra Vs. Mr.Justice Gatikrushna Misra, CJ

of the Orissa High Court AIR 1974 SC 2255. It was

held:-

"It is only when the court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminous a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court."

Several decisions of the High Courts dealing with

the meaning of the above said word 'initiate' in various

settings of facts were also brought to our notice.

However, we would like to mention only three Division

Bench decisions, namely, The Advocate General Vs. A.V.

Koteswara Rao - 1984 Cri. L.J. 1171 and Kishan Singh Vs.

Honourable Mr. T.Anjaiah, Chief Minister and others -

1985 Cri. L.J. 1428 by the Andhra Pradesh High Court and

Dineshbhai A. Parikh Vs. Kripalu Co-operative Housing

Society, Nagarvel, Ahmedabad and others - AIR 1980

Gujarat 194 by Gujarat High Court.

Following this Court's decision in Bardakanta

Mishra, in the two decisions abovesaid the Division

Benches of the Andhra Pradesh High Court speaking

through Jagannadha Rao, J.(as His Lordship then was)

stated that the word 'initiation' of contempt

proceedings has a distinct connotation and cannot be

equated with the mere presentation of the petition and

observed :-

"initiation of the contempt proceeding is the time when the Court applies its mind to the allegations in the petition and decides to direct, under S.17 the alleged contemners to show cause why he should not be punished."

In order to appreciate the exact connotation of

the expression 'initiate any proceedings for contempt'

we may notice several situations or stages which may

arise before the Court dealing with contempt

proceedings. These are :

(i) (a) a private party may file or present an

application or petition for initiating any

proceedings for civil contempt;

or

(b) the Court may receive a motion or

reference from the Advocate General or with his

consent in writing from any other person or a specified Law Officer or a Court subordinate to High Court;

(ii)(a) the Court may in routine issue notice to the person sought to be proceeded against;

or

(b) the Court may issue notice to the respondent calling upon him to show cause why the proceedings for contempt be not initiated;

(iii) the Court may issue notice to the person sought to be proceeded against calling upon him to show cause why he be not punished for contempt.

In the cases contemplated by (i) or (ii) above, it cannot be said that any proceedings for contempt have been initiated. Filing of an application or petition for initiating proceedings for contempt or a mere receipt of such reference by the Court does not amount to initiation of the proceedings by Court. On receiving any such document it is usual with the Courts to commence some proceedings by employing an expression such as 'admit', 'rule', 'issue notice' or 'issue notice to show cause why proceedings for contempt be not initiated'. In all such cases the notice is issued either in routine or because the Court has not yet felt satisfied that a case for initiating any proceedings for contempt has been made out and therefore the Court calls upon the opposite party to admit or deny the allegations made or to collect more facts so as to satisfy itself if a case for initiating the proceedings

for contempt was made out. Such a notice is certainly anterior to initiation. The tenor of the notice is itself suggestive of the fact that in spite of having applied its mind to the allegations and the material placed before it the Court was not satisfied of the need for initiating proceedings for contempt; it was still desirous of ascertaining facts or collecting further material whereon to formulate such opinion. It is only when the Court has formed an opinion that a prima facie case for initiating proceedings for contempt is made out and that the respondents or the alleged contemners should be called upon to show cause why they should not be punished then the Court can be said to have initiated proceedings for contempt. It is the result of a conscious application of the mind of the Court to the facts and the material before it. Such initiation of proceedings for contempt based on application of mind by the Court to the facts of the case and the material before it must take place within a period of one year from the date on which the contempt is alleged to have been committed failing which the jurisdiction to initiate any proceedings for contempt is lost. The heading of Section 20 is 'limitation for actions for contempt'. Strictly speaking, this section does not provide limitation in the sense in which the term is understood in the Limitation Act. Section 5 of the Limitation Act also does not, therefore, apply. Section 20 strikes at the jurisdiction of the Court to initiate

any proceedings for contempt.

A look at the concept of contempt and need for care and circumspection to be exercised before initiating proceedings for contempt would show the necessity for enacting Section 20 and devising therein the concept of 'initiation of proceedings for contempt'. Availability of an independent judiciary and an atmosphere wherein Judges may act independently and fearlessly is the source of existence of civilisation in society. The writ issued by the Court must be obeyed. It is the binding efficacy attaching with the commands of the Court and the respect for the orders of the Court which deter the aggrieved persons from taking the law in their own hands because they are assured of an efficacious civilised method of settlement of disputes being available to them wherein they shall be heard and their legitimate grievances redeemed. Any act or omission which undermines the dignity of the Court is therefore viewed with concern by the society and the Court treats it as an obligation to zealously guard against any onslaught on its dignity. In Re, Clements, Republic of Costa Rica V. Erlanger - (1876) 46 L.J. 37, 385, Sir George Jessel M.R. said :-

"It seems to me that this jurisdiction of committing for contempt, being practically arbitrary and unlimited, should be most jealously and carefully watched, and exercised; if I may say so, with the greatest reluctance and the greatest anxiety on the part of Judges, to see whether there is no other mode which is not open to the objection of arbitrariness and which can be brought to bear upon the subject. I say that a Judge should be most careful to see that the cause cannot be fairly prosecuted to a

hearing, unless this extreme mode of dealing with persons brought before him on accusations of contempt should be adopted. I have myself had on many occasions to consider this jurisdiction, and I have always thought that, necessary though it may be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights, that is if no other pertinent remedy can be found, probably that will be discovered after consideration to be the true measure of the exercise of the jurisdiction."

The jurisdiction to punish for contempt is summary but the consequences are serious. That is why the jurisdiction to initiate proceedings in contempt as also the jurisdiction to punish for contempt in spite of a case of contempt having been made out are both discretionary with the Court. Contempt generally and criminal contempt certainly is a matter between the Court and the alleged Contemnor. No one can compel or demand as of right initiation of proceedings for contempt. Certain principles have emerged. A jurisdiction in contempt shall be exercised only on a clear case having been made out. Mere technical contempt may not be taken note of. It is not personal glorification of a Judge in his office but an anxiety to maintain the efficacy of justice administration system effectively which dictates the conscience of a Judge to move or not to move in contempt jurisdiction. Often an apology is accepted and the felony condoned if the Judge feels convinced of the genuineness of the apology and the prestige of the Court having been restored. Source of initiation of contempt proceedings may be suo motu, on a Reference being made by the Advocate General or any other person with the consent in writing of the Advocate

General or on Reference made by a Subordinate Court in case of criminal contempt. A private party or a litigant may also invite the attention of the Court to such facts as may persuade the Court in initiating proceedings for contempt. However, such person filing an application or petition before the Court does not become a complainant or petitioner in the proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the Court. It is thereafter for the Court to act on such information or not to act though the private party or litigant moving the Court may at the discretion of the Court continue to render its assistance during the course of proceedings. That is why it has been held that an informant does not have a right of filing an appeal under Section 19 of the Act against an order refusing to initiate the contempt proceedings or disposing the application or petition filed for initiating such proceedings. He cannot be called an aggrieved party. In the case at hand the order which was passed on 15.1.1987 had called upon the respondents only to show cause why contempt proceedings be not initiated. After the cause was shown the Court was to make up its mind whether to initiate or not to initiate proceedings for contempt. It was not an initiation of proceedings. We will ignore the order dated 16.12.1987 as it was not signed. But the order dated 6.1.1988 issuing notices to the opposite parties to show cause why they be not punished for disobeying the order dated 9.12.1986, shows and it will be assumed that the Court had applied its

mind to the facts and material placed before it and had formed an opinion that a case for initiating proceedings for contempt was made out. Need for issuance of such notices was conceded to by the Advocate General as also by the counsel for the respondents. That is why it directed the respondents to be called upon to show cause why they be not punished for disobedience of the order of the Court. The proceedings were therefore initiated on 6.1.1988 and were within the limitation prescribed by Section 20 of the Act. The impugned order directing dropping of the proceedings is based on an erroneous view of Section 20 of the Act and hence is liable to be set aside.

The appeal is allowed, the impugned order is set aside. The proceedings are restored to the file of the High Court which shall hear the parties and then proceed ahead in accordance with law.

Before parting, we may make it clear that during the course of hearing we had asked the learned counsel for the parties about the result of the main writ petition wherein the undertaking was given on behalf of the respondents. The learned counsel for the parties were not duly instructed to assist this Court on this aspect. The findings arrived at by the Court in the main case, if the same has been disposed of, would have a material bearing on the discretion of the Court to proceed or not to proceed ahead with the proceedings

for

contempt. We leave that aspect to be taken care of by the High Court.