

J.P.P. 2/2024

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"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 30TH DAY OF JANUARY 2025 / 10TH MAGHA, 1946

JPP NO. 2 OF 2024

PETITIONER:

SUO MOTU
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031.

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 2 UNION OF INDIA,
REPRESENTED BY THE HOME SECRETARY,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK,
NEW DELHI, PIN - 110001.

BY ADVOCATE GENERAL SRI. K. GOPALAKRISHNA KURUP,
BY SENIOR GOVERNMENT PLEADER SRI. V.MANU.

THIS JUDICIAL PRACTICE AND PROCEDURE HAVING COME UP
FOR ADMISSION ON 30.01.2025, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

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“C.R.”

ORDERDated this the 30th day of January, 2025.Nitin Jamdar, C. J.

This *suo motu* petition is placed before us on the judicial side by the Registry under the roster assignment “*suo motu* matters in judicial practice and procedure” in view of the order dated 25 July 2024 passed by the Division Bench of this Court in Cont. Case (C) No. 551 of 2024 and connected cases.

2. The Division Bench highlighted the delays in listing contempt cases, restoration petitions, time extension petitions, etc., when one among the Judges of the Division Bench retires, when the Judge who passed the order/judgment while sitting in Single retires or when both the Judges of the Division Bench are part of different Benches as per the Roster. We have passed a separate order regarding Restoration Petitions (MJC) and time extension petitions.

3. Presently, in this Court, Contempt Petitions are being placed before the same Bench or Judge who passed the original order. The Registry has highlighted that following such a procedure causes delays and the constitution of a special bench outside the Roster, thereby affecting the regular functioning of the court.

4. According to us, such a procedure is not warranted. No Rule mandates such a procedure. The order of a Judge or a Bench of this

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Court constitutes the order of the High Court. Breach and defiance thereof can amount to civil contempt. Civil contempt is defined under Section 2(b) of the Contempt of Courts Act, 1971, as under:

“civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ, or other process of a court, or wilful breach of an undertaking given to a court.”

Civil contempt thus encompasses wilful disobedience to any judgment, decree, direction, order, writ, or other process of a court or wilful breach of an undertaking given to a court.

5. In civil contempt cases, the reference is to the court and not a specific Judge or Bench. This legal position is settled by the Hon'ble Supreme Court in the case of *High Court of Judicature at Allahabad through its Registrar v. Raj Kishore and Others*¹. The learned Advocate General placed this decision on record in the written note. In this case, an appeal was filed before the Hon'ble Supreme Court by the High Court of Judicature at Allahabad against the judgment of the Division Bench of the High Court of Allahabad. By the impugned judgment, the Division Bench had set aside the Rule which directed hearing of a petition alleging civil contempt by a learned judge to whom such work was assigned by the Chief Justice, who was other than the judge or judges who had passed the concerned order. The Division Bench took the view that once a Bench of the High Court has passed an order or direction, the breach of which is complained of by the aggrieved party,

¹ (1997) 3 SCC 11



the same bench must hear the contempt petition. The appeal filed by the High Court was allowed by the Hon'ble Supreme Court. The Hon'ble Supreme Court observed that this view was erroneous. Allowing the appeal, the Hon'ble Supreme Court held as under:

“7. As per the aforesaid provisions of the Act the High Court can take suitable action in connection with civil contempt committed by the contemnor so far as the contempt is alleged to be in connection with any order passed by the High Court in exercise of its jurisdiction. The contempt alleged is the contempt of the High Court as such and not necessarily the contempt of only a particular Judge who might have passed the order concerned in exercise of the jurisdiction conferred on the High Court as such. “High Court” is defined by Section 2(d) of the Act to mean “the High Court for a State or a Union territory, and includes the Court of the Judicial Commissioner in any Union Territory”. The procedure for exercise of contempt jurisdiction can be laid down by the High Court concerned by framing suitable Rules under Section 23 of the Act.

11. In the light of the aforesaid parameters of the powers of the High Courts as a superior court of record it is difficult to appreciate how the Full Court of the Allahabad High Court by framing the impugned Rule had enacted a provision which fell foul on the touchstone of Article 215 of the Constitution. The High Court as an institution has the seisin of the relevant record pertaining to all the cases tried before it. Record cannot be said to be in the custody of the author of the order giving rise to contempt proceedings. The cases may be pending or might have been disposed of. Civil contempt might



be alleged in connection with interim orders in pending matters and can also be alleged in connection with final orders in matters which are already disposed of. The record of such matters would be available in the High Court. All that the impugned Rule has done is to entitle the Chief Justice to assign the work of hearing civil contempt matters to one of the Judges. Such an exercise, as seen above, is perfectly legal and valid in the light of the constitutional scheme. The civil contempt alleged is the contempt of the High Court as such and not the contempt of the author of the order being the Judge concerned who might have passed the said order, whether interim or final. When civil contempt by way of breach of such an order is alleged it is the institution of the High Court as such which is said to have been contemptuously dealt with by the contemnor concerned. For upholding the majesty of the institution as such, therefore, the High Court as a court of record can look into the grievance centering round the alleged breach of its order and it is this power to punish the contemnor that flows from Article 215 of the Constitution of India as well as from the relevant provisions of the Act. But how this grievance of the aggrieved party is to be processed and examined pertains to the realm of distribution of work and jurisdiction of the High Court amongst different Division Benches and that exercise is permissible to the Chief Justice of the High Court as per the rules framed by the High Court on its administrative side. That exercise has nothing to do with Article 215. Article 215 saves the inherent powers of the High Court as a court of record to suitably punish the contemnor who is alleged to have committed civil contempt of its order. Order might have been passed by any of the learned Judges



exercising the jurisdiction of the High Court as per the work assigned to them under the Rules by the orders of the Chief Justice, but once such an order is passed by a learned Single Judge or a Division Bench of two or more Judges the order becomes the order of the High Court. Breach of such an order which gives rise to contempt proceedings also pertains to the contempt of the High Court as an institution. At that stage Article 215 does not operate, but it is only Article 225 read with the Rules framed by the High Court on administrative side and the power inhering in the Chief Justice, of assigning work to the appropriate Bench of Judge or Judges, under Section 108 of the Government of India Act, 1915 read with Section 223 of the Government of India Act, 1935 which would have its full play. Consequently if under the impugned Rule the task of considering the grievances of the aggrieved party in connection with civil contempts of High Court's orders is assigned to one of the Judges of the High Court it cannot be said that thereby the impugned Rule has in any manner affected the status of the High Court as a court of record. It has to be kept in view that when civil contempt is alleged in connection with breach of any order of the High Court, whether final or interim, while deciding the said question the learned Judge to whom this work is assigned is entitled to look into the relevant record which obviously is available in the High Court and thereby the learned Judge is not depriving any other Judge of the said record. So far as matters which are finally disposed of are concerned, such an eventuality can never arise but even in pending matters where breach of interim orders is alleged, when contempt proceedings in connection with such orders are placed for examination and scrutiny before the learned Judge to whom the work



is assigned by the Chief Justice under the Rules, it is difficult to appreciate how it can be said that the record of the case in any way gets adversely affected or disturbed. It is the question of internal arrangement and transmission of record from court to court as per the exigencies and necessities of the case. Under these circumstances it is impossible to hold that the impugned Rule is in any way ultra vires Article 215 of the Constitution of India.

16. It is also to be kept in view that while exercising original jurisdiction under Contempt of Courts Act, 1971 in connection with civil contempt of its own orders the High Court is not exercising any review jurisdiction wherein statutorily the proceedings may have to be placed for decision of the same Judge or Judges if they are available. Contempt jurisdiction is an independent jurisdiction of original nature whether emanating from the Contempt of Courts Act or under Article 215 of the Constitution of India. How such original jurisdiction can be exercised is a matter which can legitimately be governed by the relevant Rules framed by the High Court on its administrative side by exercising its rule-making power under Section 23 of the Act or under its general rule-making power flowing from the relevant provisions of the constitutional scheme as seen earlier. Consequently it cannot be said that the impugned Rule is violative of Article 215 of the Constitution of India as held by the judgment under appeal.”

(emphasis supplied)

6. Thus, the position of law pronounced by the Hon'ble Supreme Court is that the contempt alleged is the contempt of the High Court as

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such and not necessarily the contempt of only a particular Bench or Judge who might have passed the order concerned in exercise of the jurisdiction conferred on the High Court as such. The cases may be pending or might have been disposed of. Civil contempt might be alleged in connection with interim orders in pending matters and can also be alleged in connection with final orders in matters that have already been disposed of. The record of such matters would be available in the High Court. It was emphasized that while exercising Contempt jurisdiction in connection with civil contempt of its orders, the High Court is not exercising any review jurisdiction where, statutorily, the proceedings may have to be placed for the decision of the same judge or judges if they are available. Contempt jurisdiction is an independent jurisdiction. The placement of the Contempt Petition is a part of the fixation of the Roster.

7. This being the position of law, the present practice which as pointed out by the Registry causes unnecessary delay and inconvenience, is not only not traceable to any Rule but, in fact, is contrary to the above legal position. The placement of the Civil Contempt Petition can be as per the administrative order issued to fix the Roster. The Civil Contempt Petitions containing allegations of breach or defiance of a judgment or order of the High Court can be taken up by the concerned Division Bench or single Judge before whom the main matter is pending as per Roster or before whom the main matter would

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lie as per the Roster if it were pending. As pointed out by the Registry, it will aid speedy disposal of the civil contempt cases.

8. The Registry to place the matter on the administrative side for suitable directions.

9. The *suo motu* proceedings are accordingly closed.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

krj/-

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APPENDIX

PETITIONER' S ANNEXURES :-

- Annexure A COPY OF COMMON ORDER DATED 25/07/2024 IN
CONT. CASE (C) NOS.551, 569, 632, 643,789 AND
1161 OF 2024.
- Annexure B COPY OF O.M. NO.HCKL/1143/2024-A7-HC KERALA
DATED 20-07-2024.
- Annexure C OFFICE NOTES AND ORDERS OF THE HONOURABLE THE
ACTING CHIEF JUSTICE DATED 01/08/2024.

RESPONDENTS' ANNEXURES:- "NIL"

//TRUE COPY//

P.A. TO C.J.