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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1312/2021, CRL.M.A. 6772/2021

ALOK KUMAR TIWARI

..... Petitioner

Through Mr. H.K Chaturvedi, Ms. Anjali
Chaturvedi, Mr. Sagar Chaturvedi &
Ms. Megha Chaturvedi, Advocates.
versus

MAMTA

..... Respondent

Through Mr. Rajesh Kaushik, Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **02.03.2022**

The petitioner vide the present petition has sought the quashing of the complaint no. 609/2021 filed by the respondent under Section 10 read with Section 12 of the Contempt of Courts Act, 1971 and consequential proceedings emanating therefrom being notice dated 06.04.2021 issued by the learned MM in complaint no. 609/2021 submitting to the effect that the Trial Court could not have proceeded in terms of the Section 10 & 12 of the Contempt of Courts Act, 1971 in view of the provisions of Sections 10, 11 & 12 and also provisions of Sections 13, 14 & 15 of the said enactment which read as under:

“10. Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, 1860 (45 of 1860).

11. Power of High Court to try offences committed or offenders found outside jurisdiction.—*A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within or outside such limits.*

12. Punishment for contempt of court.—*(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:*

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.—*An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.*

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section(1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purpose of sub-sections (4) and (5),—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and*
- (b) “director”, in relation to a firm, means a partner in the firm.*

13. Contempts not punishable in certain cases.—
Notwithstanding anything contained in any law for the time being in force,—

- (a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;*

- (b) *the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.*

14. Procedure where contempt is in the face of the Supreme Court or a High Court.—(1) *When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—*

- (a) *cause him to be informed in writing of the contempt with which he is charged;*
- (b) *afford him an opportunity to make his defence to the charge;*
- (c) *after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and*
- (d) *make such order for the punishment or discharge of such person as may be just.*

(2) *Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.*

(3) *Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section*

(1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court:

Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

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.”*

(emphasis supplied)

The reply that has been filed by the respondent to the present petition itself inter alia makes it apparent that the respondent does not challenge the aspect of contempt proceedings being required to be initiated by this court or the superior court and not by the subordinate courts and it has been submitted in the reply to the petition in para 4 to the effect that the respondent had filed the application for contempt of court before the Trial Court which had only issued the notice to the respondent for knowing the fate of the application and thereafter getting the response from the petitioner and for sending the same to this Court for taking necessary action.

Apparently, the verdict of this Court *in Syed Nusrat Ali Vs State & Anr.* in CrI.MC 2899 of 2009 dated 05.08.2010 as followed also in *Rajeev*

Mittal Vs Sanjay Goel in CM(M) 434/2012, *Neville A Mehta Vs Sanjay Goel* in CM(M) 437/2012 vide verdict dated 19.04.2012 and the provisions of Sections 10, 11 and Section 15(2), makes it apparently clear that the subordinate court can only make a reference to this Court and cannot initiate contempt proceedings itself. Thus without any observations on the merits or demerits of the prayer made in the contempt application that the respondent has filed before the Trial Court in relation to CC No. 37676 of 2016 in relation to which the respondent undoubtedly has rights in accordance with law for the maintenance allegedly not being paid by the petitioner, the impugned notice dated 06.04.2021 issued by the learned MM in complaint no. 609 of 2021 under Section 10 & 12 of the Contempt of Courts Act, 1971 is set aside. However, the setting aside of the same shall not amount to any observation on any contempt action if referred by the Trial Court to this Court.

Accordingly, the petition is disposed of. Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

MARCH 2, 2022

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