

READING MATERIAL FOR SEMESTER- VIII (B.Com LL.B.)

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DEFENCES IN CONTEMPT OF COURT CASES

According to the Oxford Dictionary, contempt is the state of being despised or dishonored; disgrace. Any conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties or their witness during litigation is considered to be contempt of court, says Oswald. Contempt is defined by Halsbury, as consisting of words spoken or written which obstruct or tends to obstruct the administration of justice.

The Indian legislature does not provide with a concrete definition of contempt, however section 2(a) of The Contempt of Courts, 1971 says 'contempt of court means civil contempt or criminal contempt'. Section 2(b) & section 2(c) of The Contempt of Courts Act, 1971 defines civil and criminal contempt. Although the legislature has not defined what amounts to contempt, it has defined civil and criminal contempt. Thus contempt cannot be confined to four walls of a definition. Therefore, what would offend the court's dignity and what would lower the court's prestige is thus a matter which can be decided by the court itself and it's for the court to deal with each case of contempt under the facts and circumstances of that case.

Kinds of Contempt

Contempt of court are classified under three broad categories, according to Lord Hardwick:

1. Scandalizing the court itself.
2. Abusing parties who are concerned in the cause, in the presence of court.
3. Prejudicing the public before the cause is heard.

However, in India, contempt is classified under two major categories:

1. Civil contempt
2. Criminal contempt

Civil Contempt

According to section 2(b) of the Contempt of Courts Act, 1971 civil contempt means willful disobedience to any judgement, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court.

Thus from the abovementioned definition it can be ascertained that there are two important essentials to constitute civil contempt:

1. Disobedience of any judgement, decree, direction, order, writ or other process of a court or an undertaking given to the court.

There should be disobedience of a valid order to constitute contempt of court. An order includes all kinds of judgements, orders-final, preliminary, ex-parte, contempt order. Disobedience of a decree, direction, writ or other process of a court, or an undertaking given to the court, will also amount to contempt of court. It was held by the Supreme Court, in the case of H.Puninder v. K. K. Sethi,[2] that in absence of the stay order in appeal or revision of higher court, the order appealed against should be complied with, subject to any order passed at later stage, otherwise it is open for the contempt court to proceed further on merit of the contempt case.

A different view was upheld by the Supreme Court in case of interim relief/stay order. The Supreme Court, in the case of State of Jammu and Kashmir v. Mohammad Yakub Khan,[3] held that where stay vacation application has been promptly filed by the respondent against whom the stay order has been passed and the same is pending for disposal the court shouldn't proceed in the contempt case unless and until the stay vacation application has been decided.

So far as the breach of undertaking as contempt of court is concerned, the basis behind this is that the contempter obtains a beneficial order for himself from the court, by giving an undertaking and if he fails to honor the undertaking at a later stage, he plays a serious fraud on the court and thereby interferes with the

administration of justice by bringing the court into disrespect.

An undertaking can be given to the court in two ways:

- By moving an application or filing an affidavit before the court clearly stating the terms of the undertaking.
- By giving a clear and express oral undertaking which is incorporated by the court in the order.

A willful breach of an undertaking, given according to the abovementioned ways, would amount to contempt of court.

2. The Disobedience or breach must be willful, deliberate and intentional.

Mere disobedience or breach of the court's order by the person is not sufficient to constitute civil contempt. Such a disobedience or breach must be willful, deliberate and intentional. In order to exercise its power to punish the contemnor the court has to be satisfied beyond reasonable doubt that the contemnor has willfully, deliberately and intentionally violated the court's order.

No court including contempt court is entitled to take trivialities and technicalities into account while finding fault with the conduct of the person against whom contempt proceeding is taken.

Where the order has been substantially complied with and a reasonable explanation has been provided for the delay in compliance with the order, the contempt will not lie as the violation is not willful and deliberate.

Criminal Contempt

According to section 2(c) of The Contempt of Courts Act, 1971, criminal contempt means the publication (whether by word, spoken or written, or by signs, or by visible representation, 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 obstruct or tends to obstruct, the administration of justice in any other manner.

Thus from the abovementioned definition it can be ascertained that there are four important essentials to constitute criminal contempt:

1. Publication of any matter.

The word publication has been given a very wide meaning so far as contempt of court is concerned. It includes words (spoken/written), signs and visible representation. It also includes the publication of any material in the newspaper and magazines, the broadcasting of any material on the radio and exhibition of anything in cinemas, theaters and television.

If these materials contain anything which scandalizes or lowers or tends to scandalize or lower the authority of any court, prejudices or interferes with the due course of any judicial proceeding or interferes or tends to interfere with administration of justice, it will amount to criminal contempt of the court.

2. Scandalizing or lowering the authority of the court.

Scandalizing might manifest itself in various ways but in substance, it is an attack on individual judges in particular or the court as a whole, with or without reference to a particular case, by casting unwarranted and defamatory aspersions upon the character or the ability of the judges. Such conduct is punished as criminal contempt for the reason that it tends to create distrust in the minds of common people and thereby shatters confidence of the people in the judiciary.

The Supreme Court made it clear, in the case of Arundhati Roy, that criticism which undermines the dignity of the court can't be said to be fair criticism and does not fall under the ambit of freedom of speech and expression as is guaranteed by Article 19 (1)(a) of Constitution of India. Thus prosecution of persons for scandalizing the court is not prohibited by constitutional right of freedom of speech and expression under Article 19 (1)(a).

Writing/drafting in pleading or petition by which defamatory allegations have been levelled against a judge in particular or court as a whole, would amount to criminal contempt, held the Supreme Court.[4]

In case of U.P Residential Employee Cooperative Society v. New Okhla Industrial Development Authority[5], the Supreme Court held that filing a false affidavit in the court with a view to mislead the court will amount to criminal contempt.

3. Prejudice or interference with the due course of any judicial proceeding.

Any publication which prejudices or interferes with the due course of any judicial proceeding would amount to criminal contempt of court. Media trial or trial by newspaper is not considered proper because it effects the fairness of trial and is likely to cause interference with the administration of justice.

The knowledge of pendency of the case and reasonable grounds to believe that the case in pending is sufficient to make out criminal contempt and the intention and motive of the publisher behind the content of publication is not relevant for the purpose of criminal contempt. If it lowers the authority of the court and causes interference with the due course of judicial proceeding it would amount to criminal contempt.

In civil cases, the pendency starts with the filing of the plaint and in criminal cases, with the filing of a charge sheet or the issuance of summons or warrants. The pendency continues till the case is decided. In case an appeal/revision is filed, pendency continues till the appeal or revision is decided. If appeal/revision is not filed, pendency continues till the period of limitation for filing the same has not expired. Once it expires, pendency is over.

4. Interference/Obstruction with the administration of justice in any other manner.

The publication or doing of any act which interferes or obstructs or tend to interfere and obstruct in the administration of justice in any other manner, would amount to criminal contempt of court. This clause is a residuary clause, covering

those cases of criminal contempt which are not expressly covered by section 2(c) of the Contempt of Court Act.

The term 'administration of justice' is much wider than the term 'course of judicial proceedings'. Every person in India is entitled to approach the court in order to secure justice and for the redressal of his grievances and the court has to decide dispute between the parties as per law and equity.

Any conduct which tends to prevent or actually prevents a party to approach the court, amounts to criminal contempt of court, for eg. writing a threatening letter to litigating party or his counsel preventing him from attending the court, writing a letter to the judge or approaching him in order to influence his judicial conscience or approaching a counsel for undue favor are all examples of interference with administration of justice and are contempt of court.

An advocate is an officer of the court and undue interference with the advocate in the discharge of his professional functions amounts to contempt of court. Casting aspersions on counsel or approaching him for not defending a particular person amounts to criminal contempt of court.

It was held by the Supreme Court in case of **J. R Parashar v. Prashant Bhushan**[6], that holding a dharna or resorting to strike by itself may not amount to contempt of court but if in doing so the presiding officer of the court, its staff, the police personnel and the litigating parties are prevented from approaching the court, it will amount to interference in the administration of justice and will be criminal contempt of the court.

Punishment Under The Contempt of Court Act

Section 12 of the act deals with the punishment for contempt of court. It provides as follows-

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: - (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 other 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 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 purposes 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.

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

Period of Limitation

Section 20 deals with period of limitation for initiating contempt proceeding. Section 20 provides that no court shall initiate contempt proceedings either on its own notions or otherwise after the expiry of one year from the date on which contempt is alleged to have been committed. The period of limitation is applicable both in civil as well as criminal contempt. Contempt proceedings can be initiated either by filing an application or by the court itself suo moto. In both the cases, contempt proceedings must be initiated within one year from the date on which contempt is alleged to have been committed.

In criminal contempt, contempt is alleged to have been committed the moment scandalization of court or interference with the administration of justice takes place. Consequently, the period of limitation immediately starts running. But, in case of civil contempt the period of limitation does not start from the date of the order. It starts running after expiry of period mentioned in the order after service of certified copy of the order upon the other side. If no time limit is mentioned in the order, the order should be complied within a reasonable period. The term

“reasonable period” has been interpreted to be a period of three months from the date of service of certified copy.

Defences In Civil Contempt

A person charged with civil contempt of court can take the following defences-

- **No knowledge of order**

The general principle is that a person cannot be held guilty of contempt in respect of an order of which he claims to be unaware. Law casts a duty upon a successful party to serve the certified copy of the order on the other side either personally or by registered speed post. Notwithstanding the fact that the order has been passed in presence of both the parties or their counsels.

So, it can be successfully pleaded in defense that the certified copy of the order was not formally served on the alleged contemnor.

- **Disobedience or breach was not willful**

It can be pleaded that although disobedience or breach of the order has taken place but it was due to accidental, administrative or other reasons beyond the control of the party concerned. This plea can be successful only when the order has been complied with and a reasonable explanation has been given for non-compliance thereof.

The Court may assess the intention of the party from the act done in the same way as a reasonable prudent man would assess in the given circumstances.

- **Order disobeyed is vague or ambiguous**

If the order passed by court is vague or ambiguous or its not specific or complete, it would be a defense in the contempt or alleged contemnor can raise a plea in defense that the order whose contempt is alleged cannot be complied with as the same is impossible. In case of R.N.Ramaul vs. State of Himanchal Pradesh[7] the Supreme Court directed the respondent corporation to restore the promotion of the petitioner in service from a particular date.

This direction was complied with by the respondent corporation by treating him as promoted from that particular date which was given in the order. But, the monetary benefits for that period were not paid by the respondent corporation and as such the contempt petition was filed. Respondent Corporation took a defense that monetary benefits were not paid to the petitioner because there was no direction in the order for payment of monetary benefit and they cannot be held liable for contempt.

In case of **Bharat Coking Coal Ltd. vs. State of Bihar**[8], the Supreme Court clarified the legal position by holding that where the order is incomplete and ambiguous, the parties should approach the original court and get the order clarified by getting the ambiguity removed.

• **Order involves more than one reasonable interpretation.**

If the order whose contempt is alleged involves more than one reasonable and rational interpretation and the respondent adopts one of them and acts in accordance with one such interpretation, he cannot be held liable for contempt of court. However, this defense is available only when a bonafide question of interpretation arises. The intention of bonafide interpretation can be gathered from the fact that the order has been complied with by adopting one such interpretation. In case of *T.M.A. Pai Foundation vs. State of Karnataka*[9] it was held that this defense won't be allowed if a doubt about the order has been deliberately created when actually there is no doubt at all.

• **Compliance of the order is impossible.**

In proceedings for civil contempt, it would be a valid defense that the compliance of the order is impossible. However, the cases of impossibility must be distinguished from the cases of mere difficulty. In case of *Amar Singh v. K.P. Geetakrishnan*, the court granted certain pensioner benefits to a large number of retired employees with effect from a particular back date. The plea of impossibility was taken on the ground that the implementation of the order would result in heavy financial burden on the exchequer. However, the plea of impossibility was rejected by the court with the observation that although it's

difficult to comply with the order but it's not impossible to comply and therefore, it should be complied with.

- **The order has been passed without jurisdiction.**

If the order whose contempt is alleged, has been passed by a court which had no jurisdiction to pass it, the disobedience or violation would not amount to contempt of court for the reason that the order passed without jurisdiction is a void order and binds nobody. In case of **Krishna Devi Malchand V. Bombay Environmental Action Group**[10], the Supreme Court clarified the legal position and held that if the order is void, it cannot be ignored by the party aggrieved by it. The litigating party cannot assume the role of Appellate or Provisional authority in order to say that the order is not binding upon them. Consequently, if any party feels that the order has been passed by a court which had no jurisdiction to pass it, he should approach the same court for seeking such declaration by moving an application for recall of the order. If the application is rejected, the Appellate Court can be approached for such declaration. In case of **State of Jammu and Kashmir vs. Mohd. Yaqub Khan**[11], the Supreme Court has held that where stay petition application is pending, the Contempt Court should not proceed with the contempt case till the stay vacation application is decided. So, in case of interim order having been passed by a court which has no jurisdiction, a stay vacation application can be promptly file, raising the plea of lack of jurisdiction.

In **Dr. H. Puninder Singh vs. K.K. Sethi**[12], the Supreme Court has held that if there is any stay order passed by the Appellate Court, the contempt court cannot proceed. However, if no interim order application is passed by the Appellate Court, the court can proceed and the order of the original court should be complied with subject to any order passed by the Appellate Court at the final stage.

Defences Against Criminal Contempt

- **Innocent publication and distribution of matter.**

S.3 deals with this defense. If a criminal contempt is initiated against a person on the ground that he is responsible for publication or for distribution of publication

which prejudices or interferes with the pending proceedings, the contemptner may take the following steps:

(a) he may plead under S. 3(1) that at the time of publication, he had no reasonable ground for believing that the proceeding was pending.

(b) he may plead under S.3(2) that at the time of publication, no such proceeding was pending.

(c) he may plead under S.3(3) that at the time of distribution of publication, he had no reasonable ground for believing that the matter (published or distributed by him) contained or was likely to contain any material which interfered or obstructed the pending proceeding or administration of justice.

• **Fair and accurate report of judicial proceedings**

S.4 of the Act provides that a person should not be held guilty of Contempt of Court for publishing a fair and accurate report of any judicial proceedings or any stage thereof. S. 7 of the Act provides Exception to the general principle that justice should be administered in public. Sub sections (1) and (2) of S.7 provide that a person shall not be guilty of Contempt of Court for publishing the text or for publishing fair and accurate summary of the whole or any part of the order made by the court in camera (in Chamber) unless the court has expressly prohibited the publication of the proceedings on the grounds of:

a) Public Policy

b) Public Order

c) Security of the State

d) Information relating to a secret process, discovery or invention, or, in exercise of the power vested in it.

• **Fair criticism of judicial act**

S.5 provides that a person shall not be guilty of criminal contempt for publishing any fair comment on the merits of any case which has been finally decided. A defense can be taken that the statement complained of (in respect of publication of which criminal contempt has been initiated) must be in respect of a case which has been finally decided and not in respect of pending proceedings. Moreover, the statement should come from the mouth of a knowledgeable person in the

field of law and not from a litigating party which has lost the case. In short, fair criticism means that criticism which while criticizing the act of a Judge does not impute any ulterior motive to him. In case of Arundhati Roy, the Supreme Court has held that judicial criticism cannot be invoked under the garb of Freedom of Speech and Expression under Article 19(1)(a) of the Constitution of India.

The Supreme Court further clarified that fair criticism of the judiciary as a whole or the conduct of a Judge in particular may not amount to contempt if it is made in good faith and in public interest. To ascertain the 'good faith' and 'public interest' the Courts have to take into consideration all the surrounding circumstances including the person's knowledge in the field of law, the intention behind the comment and the purpose sought to be achieved. A common citizen cannot be permitted to comment upon the Courts in the name of criticism by seeking the help of Freedom of speech and expression for the reason that if it is not checked, it would destroy the judicial institution itself.

In the present case, Arundhati Roy was not found to have knowledge or study regarding the working of the Supreme Court or judiciary of the country and so the defense of fair comment in good faith and public interest taken by her was rejected and she was punished for criminal contempt.

• **Bonafide complain against the presiding officer of a subordinate court.**

S.6 provides that a person shall not be guilty of contempt of court in respect of any statement made by him by way of complaint in good faith concerning the presiding officer of any sub-ordinate court to the High Court or to the Court to which he is sub-ordinate. The protection of this section will be available only when it is proved that the complaint was made in good faith.

In ascertaining the 'good faith' the intention and the purpose sought to be achieved by complaint will be taken into consideration and it would be ensured that the same was not made with ulterior motive.

• **No substantial interference with due course of justice.**

By the Contempt of Courts (Amendment) Act, 2006, a new Section 13 has been substituted in place of existing S.13. This new S. 13 provides that “notwithstanding anything contained in any law for the time being in force, no Court should impose a sentence for Contempt of Court unless it is satisfied that the Contempt is of such a nature that it substantially interferes or tends to interfere with the due course of justice.”

• **Justification by truth.**

The amended S.13(2) provides that the Court may permit justification by truth as a valid defense in any proceeding for criminal contempt if it is satisfied that it is in public interest. Thus, truth is now a defense if it is in the public interest and bonafide.

• **The statement complained of is open to different interpretations.**

If the words complained of are open to two different interpretations and one of them indicates contempt while the other does not, the contemptner cannot be punished for non-compliance of one interpretation. But, in order to succeed in this defense, it is necessary to prove that the order was complied with in respect of one interpretation. If the order is not complied with at all, it cannot be proved that there was a reasonable doubt as to the interpretation of the order. On the other hand, it will be presumed that a doubt is deliberately sought to be created so as to avoid the compliance of the order.

• **Defamation of the judge personally.**

If the publication or other act is merely a defamatory attack on the judge and is not intended to interfere with the administration of justice, it will not be taken as contempt of court.

The publication or other Act amounts to Contempt of Court only when it has nexus with the functioning of a judge. The statement complained of may amount to Contempt of Court only when it is made against a judge in his judicial capacity in the exercise of his judicial functions. However, in such a situation a judge is not remediless and he has the same remedies available which are available to a

common man. A defamatory attack on a judge may be Libel or Slander and he has a discretion to proceed for Defamation in civil, criminal or simultaneous proceedings against the person concerned but he cannot be punished summarily under criminal contempt of court. The object of Contempt law is to protect the confidence of the people in the administration of justice and its object is not to prevent attacks upon the personal reputation of any individual judge. So, any personal attack upon the judge unconnected with the office he holds, is dealt with under the ordinary rules of Libel and Slander.