Before Binod Kumar Roy, C.J. and S.S. Nijjar, J

COURT ON ITS OWN MOTION—*Petitioner*

versus

KULDEEP SINGH—*Respondent*

C.O.C.P. NO. 3 OF 2000

30th May, 2003

Contempt of Courts Act, 1971—Ss. 12 & 20—Constitution of India, 1950—Arts. 20(2), 215 and 226—Misappropriation of the Society funds—Secretary of the Society found liable to pay the amount—Challenge by the Secretary—High Court ordering issuance of notice of motion without staying the operation of any orders—Interpolation of the words "and stay granted" in certified copy of order issued by High Court—High Court dismissing the petition with costs without going into merits of the case and also holding the Secretary guilty for comitting contempt of Court—Contempt proceedings—Whether barred by Art. 20(2)—Held, no—Dismissal of writ petition with costs cannot be labelled as punishment for contempt of Court—Contempt proceedings about 2 years after interpolation of the order—Whether beyond the period of limitation of one year as provided under section 20 of the 1971 Act—Held, no—No bar to the initiation of contempt proceedings by High Court in exercise of its powers under Art. 215—Proof of forgery or interpolation—Not disputed before the High Court in writ proceedings—Tendering of an unconditional apology only at the end of the arguments—Just an excuse to escape punishment—Fabrication of an order of High Court a clear contempt of Court—Reprehensible conduct of the Secretary cannot be excused—Sentence of one month rigorous imprisonment ordered.

Held, that the powers of the High Court under Article 215 of the Constitution being summary in nature have to be exercised with great care and caution. These powers are to be exercised to maintain innocence and purity of the stream of justice. It is axiomatic that greater the power, greater the caution in the exercise thereof. Therefore, we have adopted a very cautious approach during these proceedings. We have given the petitioner every opportunity and liberty to project his case. We are of the considered opinion that the proceedings initiated

by this Court are not barred by the limitation prescribed under Section 20 of the Act.

(Para 33)

Further held, that a perusal of the order passed by the Division Bench dated 10th January, 2000 clearly shows that it was not disputed before the Bench that the petitioner had interpolated the certified copy of the order obtained from this Court and added the words "and stay granted" therein when no such order had, in fact, been passed by this Court. Having not disputed the aforesaid position before the Division Bench on 10th January, 2000, the contemnor cannot be permitted to say that there is no proof of forgery or interpolation.

(Para 34)

Further held that the contemnor has scant regard for the rule of law. He has even lesser regard for the sanctity of the orders passed by the competent authorities in different jurisdictions. He has defied the orderes passed by the Appellate Authority and Revisional Authority holding him responsible for embezzlement of such a huge amount of money belonging to poor members of the cooperative society. He has granted unto himself an interim relief which was not granted by the Division Bench of this court. The authority before whom the interpolated order was produced acted on the bonafide belief that the order had been passed by a Division Bench of this Court. The authority fully obeyed the order of this Court by revoking the order of suspension of the contemnor. Having committed gross contempt of Court, the contemnor has persisted with his conduct to mislead this Court. Even in his reply to the show cause notice, a categoric plea is taken that the order was not interpolated by him. At the same time, he did not dispute before the Division Bench on 10th January, 2000 that the order had been interpolated by him. Such reprehensible conduct cannot be excused. Any leniency shown by this Court would do much more harm to the cause of maintaining the purity of administration of justice than any conceivable benefit that may accrue to the contemnor. This apart, the apology tendered by the contemnor does not satisfy any of the criteria laid down by the Supreme Court for acceptance of an apology. The apology has not come at the earlist possible stage of the proceedings. It is not unconditional. It is just an excuse to escape punishment. At no stage, the contemnor has expressed any remorse

at his reprehensible behaviour. Even in the affidavit, the prayer is that the apology be accepted and the contemnor be exonerated from the contempt. During the course of hearing, the learned counsel for the contemnor made offer of the apology only at the end of the arguments. Such being the situation, we are satisfied that this is not a case where the contemnor can escape punishment by offering an unconditional apology. Hence, the apology tendered by the contemnor is rejected.

(Paras42 & 43)

Anupam Gupta, Advocate, *(Amicus Curiae on behalf of the Court).*

K.S. Jaitley, Advocate, *for the contemnor.*

JUDGEMENT

S.S. NIJJAR, J. (Oral) :

(1) Contemnor Kuldip Singh had filed C.W.P. No. 210 of 1998 with the following prayers :—

(a) That issue a writ of *certiorari* quashing the impugned orders dated 2nd January, 1997 passed by respondent No. 7; Annexure P-2 and dated 23rd May, 1997 passed by respondent No. 2, Annexure P-3; or

(b) to pass an appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the present case.

(2) He is Ex-Secretary of the Saunda Cooperative Credit and Service Society Ltd. (hereinafter referred to as "the Society"). A reference was made under Sections 102/103 of the Haryana Cooperative Societies Act, 1984 (hereinafter referred to as "the Act") for arbitration to the Deputy Registrar Cooperative Societies alleging that Kuldip Singh had embezzled an amount of Rs. 1,31,800.97 paise. This embezzlement was detected during the course of audit in the year 1994-95. As Secretary of the Society, the contemnor had received cash from members of the Society. He had made entries in the pass-books of the members which were subsequently not credited in the books of accounts of the Society. Thus, the members of the Society had been deprived of the

credit for the amounts deposited with the Society. The contemnor filed an application before the Deputy Registrar requesting that one Nichhattar Singh who had been working as Salesman with the Society be arrayed as a party in the proceedings as Nichhattar Singh had been receiving cash from the members of the Society and had been depositing the same in the Central Cooperative Bank in the account of the Society. The arbitrator accepted the prayer of the contemnor and impleaded Nichhattar Singh as a party to the arbitration proceedings. The arbitrator in his award held Nichhattar Singh, Salesman-cum-Clerk liable to the tune of Rs. 61,576.97 paise. The Contemnor was held liable for Rs. 19,737.00 which was promptly deposited by him in the Society. Nichhattar Singh and three others filed Appeal No. Coop. 176 of 1996 before Additional Registrar (Credit) Cooperative Societies, Haryana, Chandigarh challening the award of the Arbitrator on the ground that he had no jurisdiction to implead Nichhattar Singh as a party. On 2nd January, 1997, the Additional Registrar allowed the appeal filed by Nichhattar Singh with the following observations :—

> "After hearing the arguments of the learned counsel for the appellant and learned counsel for the respondent No. 3, I kept the judgment reserve on 16th December, 1996. Now I hold respondent No. 3 (Kuldip Singh) responsible for the embezzlement committed in Saunda Credit Society amounting to Rs. 1,31,800.97 and direct Saunda Credit to recover this amount from respondent No. 3 alongwith interest @15% and further direct respondent No. 3 to deposit this amount by 31st March, 1997. If this amount is not deposited up to due date i.e. 31st March, 1997, then the Society will have a right to recover principal i.e. Rs. 1.31.800.97 + interest @15% up to 31st March, 1997 and future interest @18% till the amount is realised. Inform the parties accordingly. Announced
>
> Dated the 2nd January, 1997.

(3) Against the aforesaid order, the contemnor filed R. No. 9/97 before the Joint Secretary to Government Haryana, Cooperation Department under section 115 of the Act. In the revision petition, the contemnor argued that the Additional Registrar Cooperative Societies

was biased on the ground that "one of the staff attached to him belongs to the village where the Society is in operation". This allegation was denied by the counsel for the respondents on the ground that Society was not even a party to the arbitration proceedings. Further more, the allegations against the personal staff of the Additional Registrar Cooperative Societies were said to be totally baseless. It was argued that the contemnor should have given an affidavit in support of the flimsy allegations made in the revision petition. The revision peition filed by the Contemnor was dismissed on 23rd May, 1997 by the Joint Secretary Cooperation Department, Haryana with the following observations :—

> "I have heard the arguments of both the parties and perused the record available on the file. Based on the facts and circumstances of the case, I am of the opinion that the Deputy Registrar Cooperative Society while conducting under Section 102 of the Haryana Cooperative Society Act, 1984 as arbitrator does not have any authority to implead any one as party to the arbitration proceedings under section 103 of the Haryana Cooperative Society Act, 1984. An arbitrator assumes the jurisdiction to decide a dispute between a society and its constituents or a servant on the basis of a reference made by the Registrar. In the absence of a reference he has no authority to implead any party to the arbitration proceedings. *Prima facie* the procedure adopted by the Arbitrator was illegal. This has also been held by Hon'ble Punjab and Haryana High Court in a case of Shamsher Singh and others *versus* The State of Haryana dated 4th November, 1986. Hence it is amply clear that in relation to the involvement of the petitioner in the embezzlement of the Society funds, liability cannot be fastened on the respondent because the reference before the arbitrator is specific and he has to decide within the four corners of the reference referred to. Hence I dismiss the revision petition filed by the petitioner with no order as to cost.
>
> Announced in the open Court.
>
> Chandigarh, dated 23rd May, 1997"

(4) These two orders were challenged by the Contemnor in C.W.P. No. 210 of 1998. The writ petition came up for motion hearing on 9th January, 1998. On 9th January, 1998, a Division Bench of this Court passed the following order :—

"Mr. S.S.Dalal, Advocate

Notice of motion for 16th February, 1998.

(Sd.). . .,

(T.H.B. CHALAPATHI), Judge.

9th January, 1998 (Sd.). . .,

(B. RAI),
Judge".

(5) On 17th February, 1998, Additional Advocate General, Haryana appeared for respondents No. 1, 2 and 7 i.e. service had been effected on the Registrar, Cooperative Societies, Haryana, Joint Secretary to Government of Haryana and Additional Registrar Cooperative Societies, Haryana. Fresh notices were issued to respondents No. 3 to 6. After completion of service, on 13th July, 1998, respondents No. 3 to 6 filed the written statement through Mr. Asha Nand Sharma, Advocate.

(6) In the writ petition, the petitioner did not give any details with regard to his service with the Society. By way of interim relief, the Contemnor had prayed that during the pendency of the writ petition, the operation of the impugned orders, Annexures P-2 and P-3 may kindly be stayed, in the interest of justice. As noticed earlier while issuing notice of motion this Court did not stay the operation of orders, Annexures P-2 and P-3 i.e. the order passed by the Additional Registrar (Credit) Cooperative Societies, Haryana in Appeal Coop. No. 17/96, dated 2nd January, 1996 and the order passed by the Joint Secretary to Government of Haryana, cooperation Department Haryana in R.A. No. 9/97, dated 23rd May, 1997. After respondents No. 3 and 6 filed the written statement, the matter was adjourned to 26th August, 1998 on the request. In this order, the presence of only the counsel for the petitioner is noted. Thus, it appears that the

adjournment was granted on the request of counsel for the Contemnor. On 26th August, 1998 again the matter was adjourned to 8th October, 1998 on the request of counsel for the Contemnor. Again on 8th October, 1998 the matter was adjourned to 8th December, 1998 at the written request of the counsel for the petitioner (contemnor). The same request for adjournment was made on 8th December, 1998 and the matter was adjourned to 17th February, 1999. Thereafter the matter came on board on 30th March, 1999. On which date, the replication filed by the petitioner/contemnor was permitted to be placed on record and the matter was adjourned to 7th April, 1999. On that date one Mr. Ramesh Hooda, Advocate appeared for the counsel for the petitioner and stated that the counsel for the petitioner is not available on account of some election. On his request, the matter was stood over on a number of occasions till it reached hearing. On 10th January, 2000, the Division Bench of this Court passed the following order :—

Mr. S.S. Dalal, Advocate alongwith petitioner Kuldip Singh son of Gurcharan Singh.

Mr. N.K. Joshi, AAG, Haryana *for respondents 1, 2 and 7.*

Mr. Asha Nand Sharma, Advocate *for respondents 3 to 6.*

"N.K. Sodhi, J. (Oral) :

Petitioner is an ex-Secretary of the Saunda Cooperative Credit and Service Society Limited, Saunda (for short the Society). On a reference made by the Society under Sections 102/103 of the Haryana Cooperative Societies Act, the dispute between the Society and the petitioner was referred for arbitration to the Deputy Registrar, Cooperative Societies who by his award dated 1st May, 1996 found the petitioner liable to pay a sum of Rs. 1,31,800.97 to the Society which amount was allegedly misappropriated by him. The award was affirmed in appeal by the Additional Registrar, Cooperative Societies, Haryana and also by the State Government in a revision petition filed by the petitioner. These orders have been challenged in the present writ petition filed under Article 226 of the Constitution.

When this petition came up for hearing on 9th January, 1998 notice of motion was issued to the respondents for 16th February, 1998 and even though a prayer for staying the operation of the impugned orders had been made in the petition, no interim order was passed by this Court. The petitioner obtained a certified copy of the order and interpolated the words "and stay granted" therein and produced the same before the Ambala Central Cooperative Bank Limited, Ambala claiming that recovery of the amount had been stayed by this Court. The respondents then moved an application pointing out the true facts and prayed for the dismissal of the writ petition in view of the interpolation made by the petitioner.

We have heard learned counsel for the parties. It is not in dispute that the petitioner interpolated the certified copy of the order obtained from this Court and added words therein when no stay order had, in fact, been issued by this Court. His conduct cannot but be deprecated and in view of his reprehensible conduct we dismiss the writ petition in the exercise of our discretionary jurisdiction without going into the merits of the impugned orders. He will pay costs to the respondents which are assessed at Rs. 20,000.

Since the petitioner had forged a certified copy of the order obtained from this Court, we are prima facie satisfied that he has committed contempt of this Court for which he is liable to be proceeded against. Let notice issue to him to show cause why he should not be punished for having committed contempt of this Court.

The petitioner is present in person and accepts notice. He is allowed four weeks time to file his reply.

Adjourned to 21st February, 2000.

(Sd.). . ., (N.K. SODHI), JUDGE

10th January, 2000 (Sd.). . ., N.K. SUD, JUDGE

(7) A Perusal of the aforesaid order shows that the writ petition of the contemnor was dismissed without going into the merits of the impugned orders. He was directed to pay costs to the respondents assessed at Rs. 20.000. Apart from this, the Division Bench was *prima facie* satisfied that the petitioner therein had committed contempt of Court. Therefore, a show-cause notice was issued to him. The petitioner who was present in Court, accepted the notice. He was allowed four weeks time to file his reply. The matter was adjourned to 21st February, 2000. The conduct of the petitioner/contemnor came to the notice of the Division Bench on 10th January, 2000 on perusal of the averments made in the written statement filed by respondents No. 3 to 6 on 13th July, 1998. In this written statement, these respondents had stated that the petitioner is not only guilty of concealment of facts, but is a habitual manipulator. After the dismissal of the revision petition by order, Annexure P-3, he was served a notice dated 2nd January, 1998 for recovery by the Central Cooperative Bank of Ambala of the embezzled amount. The petitioner (contemnor) avoided the notice uptill 16th January, 1998. In the meantime, he approached this Court by filing C.W.P. No. 210 of 1998 which was listed for hearing on 9th January, 1998. As noticed earlier, this Court only issued Notice of motion and no interim relief was granted. On 27th January, 1998, he applied for a certified copy of the order dated 9th January, 1998. The certified copy was prepared by the office on 4th February, 1998 and delivered on 13th February, 1998. He submitted an application to the Ambala Cooperative Bank on 21st February, 1998 stating therein that he had filed an appeal in Punjab and Haryana High Court and that the High Court had stayed the further proceedings in this case. He mentioned that earlier also he had sent the information to the Bank. He thereafter states "therefore, it is requested that till further decision of the High Court, proceedings may kindly be stayed in the above case". The copy of the order which he presented to the Ambala Central Cooperative Bank purporting to be the order passed by this Court on 9th January, 1998 is as under :—

"Present

The Hon'ble Mr. Justice T.H.B. Chalapathi.

The Hon'ble Mr. Justice B. Rai.

For the petitioner Mr. S.S. Dalal, Advocate

Notice of motion for and stay granted. 16th February, 1998.

(Sd.). . ., (T.H.B. CHALAPATHI)
Judge.

(Sd.). . .,

9th January, 1998 (B.RAI) Judge".

(8) It was averred by the respondents that the perusal of the copy submitted by the petitioner allegedly passed by this Court clearly shows that in the original order the words "and stay granted" have been interpolated. It was stated that "the petitioner has not only misguided the authorities by submission of this fabricated order but has also committed fraud with this Hon'ble Court by fabricating and tampering the order passed by this Hon'ble Court. Not only the writ petition is liable to be dismissed but suitable action in its own motion by the Hon'ble High Court is prayed for. Petitioner also got his suspension revoked on 2nd April, 1998 on the basis of forged stay order (R-2)". The respondents also pointed out that the petitioner accepted the liability of having embezzled a sum of Rs. 19,737.00 by depositing the same and not filing any appeal against the order. It is further averred that the petitioner had appended false documents as Annexure R/1, R/4, R/5, R/6 and R/10 before the revisional authority alleging that respondent No. 3 had signed these vouchers in the presence of certain witnesses. These witnesses filed affidavits before the authorities stating that these signatures were forged by petitioner, Kuldip Singh. These affidavits have not been challenged by the petitioner in any proceedings till date. The petitioner was, therefore, guilty of fabricating evidence before respondent No. 2. Respondents No. 3 to 6 further pointed out that earlier also on a number of occasions petitioner/contemnor has been indulging in embezzlement of funds in a number of societies. The sum of Rs. 1,31,342.00 embezzled by the peitioner/contemnor is given as under :—

"27-7-96	Rs. 19,737.00	The Saunda C.A.S.S.
27-7-96	Rs. 15,300.00	The Bhano Kheri C.A.S.S.
27-7-96	Rs. 4,700.00	-do-

27-7-96	Rs. 5,000.00	-do-
27-7-96	Rs. 5,000.00	-do-
27-1-97	Rs. 6,603.00	The Saunda C.A.S.S.
29-7-96	Rs. 30,000.00	The Panjokhera C.A.S.S.
17-8-96	Rs. 11,883.00	C.B. Ambala
26-9-96	Rs. 12,117.00	The Panjokhera C.A.S.S.
4-10-96	Rs. 21,002.00	C.B. Ambala."

(9) These amounts had been deposited by the petitioner showing clearly that he had embezzled the aforesaid amounts. He was put under suspension from time to time. Rest of the reply filed by respondents No. 3 to 6 deals with the legality or otherwise of the orders passed by respondents No. 2 and 3 which are not relevant for the purposes of these proceedings. Ironically, petitioner/contemnor filed replication to these allegations which is dated 25th March, 1999. He has verified the averments made in the replication as follows:—

"Verification :

Verified that the contents of above replication contained in reply to preliminary objections 1 to 4 and that on merits from paras 1 to 10 are true and correct to my knowledge. No part of it is false and nothing material has been kept concealed therein. Legal submissions made on advice which are true and correct.

Chandigarh (Sd.). . .,

Dated 25th March, 99. KULDIP SINGH"

(10) In the reply to the preliminary objections, the petitioner/ contemnor stated that in fact respondents No. 3, 4, 5 and 6 had made an unsuccessful attempt to make false and frivolous allegations with biased mind and ulterior motives. On receipt of the demand notice, the petitioner had submitted application, Annexure P-4 to the writ

petition dated 12th January, 1998. In Annexure P-4, it is stated as under :—

"To

Manager,
The Ambala Central Coop. Bank Ltd.
Ambala City.

Subject : Present Petition.

Sir,

It is submitted that I filed writ against the order of Registrar, Cooperative Societies, Haryana before Commissioner, Cooperation Department which was dismissed by the Commissioner, Cooperation Department, copy of which was received on 23rd November, 1997. Against this order I filed case in the Hon'ble Punjab and Haryana High Court, Chandigarh, the serial no. of which is 210. In this case, 16th February, 1998 has been fixed the next date.

Therefore, it is requested that all kinds of proceedings may be kept pending till the decision of the High Court.

Copy of notice of motion of High Court is enclosed.

Thanks.

Applicant

KULDIP SINGH,

(Sd.). . .,

Secretary,
Shahjadpur Branch.

The 12th January, 1998.

Dy. No. 3359

The 14th January, 1998"

(11) On the basis of this, the petitioner states that there has been no concealment of any material fact and there was no tampering with the order passed by this Court on 9th January, 1998. It is further stated that in response to the demand notice sent by the Bank, the petitioner had sent the application dated 24th February, 1998 attached as Annexure P-5 to the replication. Even in this application, the petitioner had not stated that the stay has been granted by this Court. He further submits that when the case came up for hearing on 9th January, 1998, the petitioner was present in Court and the counsel for the respondents was also watching the case. Counsel for the respondents had confirmed from the counsel for the petitioner that no stay had been granted. He states that "the tampering with the order dated 9th January, 1998 is deliberate by the respondent and the same has been done after hatching a conspiracy against the petitioner". The petitioner deliberately omits to identify the participants in the conspiracy, if any. Interestingly, there is no denial of the proved embezzlement, details of which had been given in paragraph 3 of the preliminary objections raised by respondents No. 3, 4, 5 and 6. in view of the order passed by the Division Bench on 10th January, 2000 Cr. O.C.P. No. 3 of 2000 had been registered and has been placed before this Bench. On 19th April, 2000, the contemnor filed a reply by way of affidavit to the show-cause notice. In this reply, he has reproduced the contents of the alleged applications sent on 12th January, 1998 which has already been reproduced above. In paragraph 5 of the affidavit, the petitioner has stated as follows :—

> "5. That, without putting up any defence of any kind or nature in respect of the notice contempt dated 10th January, 2000, the deponent, unconditionally, implores and begs for apology and craves for indulgence of this Hon'ble Court for his discharge and absolution accordingly."

(12) He has further stated that the petitioner was suspended on 16th March, 1998 and his suspension was revoked on 2nd April, 1998. He further states that the alleged letter containing the forgery of the document/order of the High Court made on 9th January, 1998 is dated 21st February, 1998. Had the petitioner/deponent made the letter dated 21st February, 1998, then the suspension of the petitioner could not have been passed on 16th March, 1998. He states that "in

fact after the issuance of notice of motion on 9th January, 1998 and sending of the letter dated 12th January, 1998, counsel for the respondents No. 3 to 6 Asha Nand Sharma had met the petitioner/ deponent on 14th January, 1998 and told that he would not succeed in the case and it is he who would make him succeed in the case as well as in arbitration case since Nichhattar Singh was not to be made the party by the Arbitrator who is now respondent No. 3 and for which purpose he obtained signatures on two blank papers and power of attorney and demanded Rs. 20,000 as fees. Rs. 15,000 were paid by the petitioner to Shri Asha Nand Sharma, Advocate in his Chamber No. 205, located at Civil Courts, Chandigarh; through Gandharb Raj Teacher, now retired as the petitioner did not believe him being opposite counsel appearing for the management. The affidavit of Shri Gandharb Raj, son of Shri Bhulla Ram is attached as Annexure PIC". In paragraph 8 of the affidavit, the Contemnor has even denied the authorship of the letter dated 21st February, 1998. But he states "However, the signatures are of the petitioner/deponent". His prayer is that he be exonerated from the contempt proceedings. In support of the averments against Asha Nand Sharma, Advocate, the contemnor has also filed an affidavit of Gandharb Raj, son of Ptbulla Ram, resident of House No. 409, Jogi Mandi, Kacha Bazar, Ambala Cantt. This reply was taken on record on 20th April, 2000 and the matter was directed to be listed on 5th May, 2000.

(13) From the record it becomes apparent that being perturbed by the allegations made by the Contemnor, Asha Nand Sharma, Advocate has filed Crl. M. 12668 of 2000 seeking the permission of this Court to intervene in the proceedings on 3rd May, 2000. On 5th May, 2000, the matter was stood over to 8th May, 2000. On 8th May, 2000, a Division Bench consisting of J.L. Gupta, J. and Mehtab Singh Gill, J. have noticed that the contemnor has filed an additional reply dated 7th May, 2000. The Bench, however, directed that the matter be placed before the 5th D.B. since the matter had earlier been considered by that Bench. In the additional reply, to petitioner submitted that the writ petition of the petitioner already having been dismissed with costs of Rs. 20,000, the present proceedings would be barred under Article 20(2) of the Constitution of India. He cannot be punished twice for the same offence. He has also raised the ground of limitation as a bar to the proceedings for contempt of court. It is stated that the alleged forgery has not been committed in any of the proceedings of

this Court. The petitioner did not file any forged document and did not interpolate the order dated 9th January, 1998 before this Court. The respondents have alleged that the same was moved before them on 21st February, 1998. So, the contempt proceedings now initiated by this Court by order dated 10th January, 2000 are barred by law of limitation by virture of Section 20 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act"). The cause of action, if any, having arisen on 21st February, 1998 or at best when the written statement was filed by the respondents on 30th July, 1998, the proceedings which had been initiated on 10th January, 2000 are clearly barred by limitation which is one year from the date on which the contempt is alleged to have been committed.

(14) The matter was again listed before the 5th D.B. on 29th May, 2000. The Bench requested Mr. Anupam Gupta, Advocate to assist the Court as amicus curiae. This request was accepted by Mr. Gupta. To enable the counsel to prepare the matter, it was adjourned to 1st August, 2000.

(15) We have heard Mr. K.S. Jaitley the learned counsel for the contemnor and Mr. Anupam Gupta, amicus curiae.

(16) The first and foremost argument advanced by Mr. Jaitley, the learned counsel for the contemnor is that the present proceedings for contempt of Court are barred under Article 20(2) of the Constitution of India. Civil Writ Petition No. 210 of 1998 filed by the petitioner was dismissed by the Division Bench of this Court on 10th January, 2000 on the ground that the petitioner had interpolated the certified copy of the order dated 9th January, 1998. He submitted that the aforesaid writ petition was dismissed by the Division Bench without going into the merits of the case. The Bench did not examine the matter on merits as it was satisfied that the petitioner had made interpolations in the order dated 9th January, 1998 and presented the same before the authorities. It has been held by the Bench that the conduct of the contemnor cannot but be deprecated and in view of the reprehensible conduct, dismissed the writ petition by imposing costs assessed at Rs. 20,000. Thus, the petitioner had already been held guilty and punished. Further proceedings for contempt on the basis of the same allegations would amount to double jeopardy.

(17) Mr. Jaitley then submitted that the present proceedings are beyond the period of limitation provided under the Act. According to Mr. Jaitley, the contemnor is alleged to have interpolated the order dated 9th January, 1998 and produced the same before the authorities on 21st February, 1998. The contempt proceedings which have been initiated on 10th January, 2000, are clearly beyond the period of limitation of one year as provided under Section 20 of the Act. He further submitted that in any case the contempt was brought to the notice of the Court when the respondent Nos. 3 to 6 filed the written statement on 13th July, 1998. Even from this date, the initiation of proceedings for contempt by order dated 10th January, 2000, are beyond limitation. In support of above submission, learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of ***Om Parkash Jaiswal*** versus ***D.K. Mittal, (1).***

(18) Mr. Jaitely further submitted that the contemnor has offered an unconditional apology in paragraph 5 of the reply dated 19th April, 2000. He submitted that in view of the apology tendered, no further punishment be imposed on the contemnor. He submitted that justice has to be tempered with mercy. In support of the aforesaid submission, learned counsel has relied on a judgment of the Hon'ble Supreme Court in the case of ***R. Dayananda Sagar etc.,*** versus ***Vatal Nagaraj etc., (2).***

(19) On merits, the learned counsel has submitted that there is no evidence to the effect that the contemnor has committed the alleged forgery in the order dated 9th January, 1998. The allegations being criminal in nature have to be proved beyond reasonable doubt. In any event, the forgery of the order would not anount to contempt of Court as the forged order was not produced in any proceeding before this Court or any other Court subordinate to this Court. It is submitted that this is a case of no evidence and the petitioner cannot be held guilty for contempt of Court on merits.

(20) On the other hand, Mr. Anupam Gupta, learned Amicus Curiae, has argued that the dismissal of the writ petition would not amount to prosecution and punishment as envisaged under Article 20(2) of the Constitution of India. Therefore, the rule of double jeopardy

(1) 2000(2) RCR (Criminal) 104
(2) AIR 1976 S.C. 2183

invoked by the contemnor would not be applicable. In support of this submission learned counsel has relied on two judgments of the Hon'ble Supreme Court viz. ***Thomas Dana*** versus ***State of Punjab, (3) and The Assistant Collector of Customs, Bombay and another versus L.R. Melwani and another, (4).***

(21) Mr. Gupta has further submitted that the present proceedings cannot be said to be barred by limitation as provided under Section 20 of the Act. In support of this submission learned counsel has relied on a Full Bench judgment of this Court in the case of ***Manjit Singh and Others*** versus ***Darshan Singh and Others, (5),*** which has been specifically approved by the Hon'ble Supreme Court in the case of ***Pallav Sheth*** versus ***Custodian and Others, (6).*** He further submitted that the judgment of the Hon'ble Supreme Court relied upon by the contemnor in support of the plea of limitation in Om Parkash Jaiswal's case (supra) has, in fact, been overruled by the Supreme Court in the case of Pallav Sheth's case (supra).

(22) Mr. Gupta has further submitted that an abuse of the process of Court in any form can constitute contempt of Court depending on the facts and circumstances of each case. Forging, altering or interpolating any official Court document is an obvious example of contempt. In support of this submission, learned counsel has relied on the well recognised commentaries of some English Authors, viz. "The Law of Contempt (Third Edition)" by Nigel Lowe and Brenda Sufrin; Oswald's "Contempt of Court"; C.J. Miller's "Contempt of Court"; and Arlidge, Eady and Smith "On Contempt (Second Edition)". On the basis of the observations made in the aforesaid commentaries, learned Amicus Curiae submitted that no further evidence is required to prove that contempt has been committed by the petitioner. Learned counsel has further submitted that the apology tendered by the petitioner is not unconditional. The same has been tendered only as an excuse to escape punishment. He further submitted that the contemnor having deliberately forged the orders of this Court, exemplary punishment deserves to be imposed on the him.

(3) AIR 1959 SC 375
(4) AIR 1970 SC 962
(5) 1984 Crl. L.J. 301
(6) JT 2001(6) SC 330

(23) We have considered the submissions made by the learned counsel for the parties. The issues raised by the contemnor are no longer res integra as the same have been authoritatively settled by the Hon'ble Supreme Court in a plethora of reported judgments and a Full Bench decision of this Court. Therefore, it would not be necessary for us to reconsider the matter on first principles. As noticed earlier, the first submission made by the learned counsel for the contemnor is that the present proceedings are barred under Article 20(2) of the Constitution of India. Article 20(2) of the Constitution reads as under :—

"20. Protection in respect of conviction of offences.

(1) XXX XXX XXX

(2) No person shall be prosecuted and punished for the same offence more than once.

(24) A bare perusal of the aforesaid Article shows that a person can claim protection under this Article if he has been already prosecuted and punished for the same offence. In other words, firstly, he must have been prosecuted in the previous proceeding by a court of competent jurisdiction. Secondly, the offence which is the subject-matter of the second proceedings, must be the same as that of the first proceedings, for which he was prosecuted and punished. In the present case, the dismissal of Civil Writ Petition No. 210 of 1998 filed by the contemnor cannot be said to be his prosecution. Further the dismissal of the petition with costs cannot be labelled or understood as punishment of the contemnor for Contempt of Court. It is by now accepted, as a cardinal principal of law, that the parties that come before a Court of law, must come with clean hands. The cause of a party found to be guilty of suppression or misrepresentation of the material facts can be thrown out by the Court at any stage of the proceedings. The aforesaid view taken by us finds support from the judgment of the Supreme Court in the case of ***S.P. Chengalvaraya Naidu (dead) by L. Rs.*** versus ***Jagannath (dead) by L. Rs. and others (7)*** wherein Kuldip Singh, J. speaking for the Court, has observed as under :—

"KULDIP SINGH, J.:— "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice

(7) AIR 1994 SC 853

Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/ decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands.We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal-gains idenfinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working

as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chuni Lal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the court as well as on the opposite party".

(25) We are of the opinion that these observations are fully applicable in the present case.

(26) The Division Bench having come to the conclusion that the petitioner has deliberately tried to subvert the course of justice, dismissed Civil Writ Petition No. 210 of 1998 with costs of Rs. 20,000. The imposition of costs of Rs. 20,000 was to place on the record the displeasure of the Bench "of the reprehensible conduct of the petitioner". Having dismissed the writ petition, the Bench issued notice to show cause why the petitioner should not be punished for having committed contempt of this Court. In such circumstances, initiating proceedings for contempt would not infringe Article 20(2) of the Constitution of India.

(27) The Supreme Court has considered the scope and ambit of Article 20 of the Constitution of India in Thomas Dana's case (supra). The Supreme Court was dealing with a case where the

Collector of Central Excise and Land Customs had passed an order against the petitioners and had come to the conclusion that the petitioners had planned to smuggle Indian and Foreign currency out of India, in contravention of the law. He had directed that different kinds of currency which had been seized from the possession of the petitioners, be "absolutely confiscated" for contravention of Section 8 (2) of the Foreign Exchange Regulation Act, 1947 read with Section 23-A and 23-B of the Act. Various other items belonging to the petitioners were also directed to be confiscated. The Collector also imposed a personal penalty of Rs. 25,00,000 on each of the petitioners, under Section 167(8) of the Sea Customs Act. The petitioners were also prosecuted, convicted and sentenced to two years rigorous imprisonment under Section 23-A read with Section 23-B of the Foreign Exchange Regulation Act, six months rigorous imprisonment under Section 120-B of the Indian Penal Code. The appeal against the conviction and sentence was dismissed. The revision petitions filed before this Court were also summarily rejected by the Hon'ble Chief Justice. Hence, the matter reached the Supreme Court. It was vehemently argued on behalf of the petitioners that the prosecution of the petitioners under the provisions of the aforesaid Act; their conviction and sentence by the Courts below infringed the protection against double jeopardy enshrined in Article 20(2) of the Constitution of India. The Supreme Court in paragraph 9 of the judgment held as under :—

> "It is manifest that in order to bring the petitioner's case within the prohibition of Art. 20(2), it must be shown that they had been "prosecuted" before the Collector of Customs, and "punished" by him for the "same offence" for which they have been convicted and punished as a result of the judgment and orders of the courts below, now impugned. If any one of these three essential conditions is not fulfilled, that is to say, if it is not shown that the petitioners had been "prosecuted" before the Collector of Customs, or that they had been "punished" by him in the proceedings before him, resulting in the confiscation of the properties aforesaid, and the imposition of a heavy penalty of Rs. 25,00,000, each or that they had been convicted and "sentenced" for the "same offence", the petitioners will have failed to bring

their case within the prohibition of Art. 20(2).....

According to "Wharton's Law Lexicon" 14th edn., p.810, "prosecution" means "a proceeding either by way of indictment or information, in the criminal courts, in order to put an offender upon his trial. In all criminal prosecutions the king is normally the prosecutor". This very question was discussed by this Court in the case of **Maqbool Hussain** *versus* **State of Bombay,** 1953 SCR 730 at pp.738, 739, 743: (AIR 1953 SC 325 at pp. 328, 329, 330), with reference to the context in which the word "prosecution" occurred in Art. 20.....".

(28) The aforesaid ratio of law makes it apparent that the dismissal of the writ petition would not attract the bar under Article 20 (2) of the Constitution of India to the proceedings for contempt of Court. The same rule as noticed above, has been reiterated by the Supreme Court in L.R. Melwani's case (supra). In parapraph 7 of the aforesaid case, it is observed as under :—

".....In order to get the benefit of Section 403, Criminal Procedure Code or Article 20 (2), it is necessary for an accused person to establish that he had been tried by a "Court of competent jurisdiction" for an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force....."

(29) In the present case, it was the petitioner who had filed the writ petition seeking a writ of certiorari quashing the orders Annexures P-2 and P-3. This writ petition was dismissed by the Division Bench as petitioner had not come to Court with clean hands. He had granted by interpolation of the order dated 9th January, 1998, interim relief unto himself which was not granted by the Division Bench. He had created for himself an interim order of stay of recovery. It was this reprehensible conduct of the petitioner which had led to the dismissal of the writ petition with costs of Rs. 20,000. That decision cannot be questioned as it is in consonance with the ratio of law laid down by the Supreme Court in **S.P. Chengalvaraya Naidu's case**

(supra). It was the contemnor who was prosecuting the writ petition. Neither prosecution had been initiated against him nor any punishment was imposed on him on the basis of a successful prosecution. We, therefore, find no merit in the submission made by the learned counsel for the contemnor with regard to the applicability of the bar contained in Article 20 (2) of the Constitution of India, to the present proceedings.

(30) Learned counsel for the contemnor had then argued that the present proceedings are beyond the period of limitation prescribed under Section 20 of the Act. Here again, the matter has been entirely settled by the Hon'ble Supreme Court and there is no scope for any further argument. The issue of limitation was pointedly raised before the Hon'ble Supreme Court in Pallav Sheth case (supra). The judgment of Om Parkash Jaiswal's case (supra), heavily relied upon by the learned counsel for the contemnor, was also considered by the Hon'ble Supreme Court in Pallav Sheth's case, in which the Hon'ble Supreme Court observed as follows :—

> 39. In the case of criminal contempt of subordinate court, the High Court may take action on a reference made to it by the High Court or on a motion made by the Advocate General or the Law Officer of the Central Government in the case of Union Territory. This reference or motion can conceivably commence on an application being filed by a person whereupon the subordinate court or the Advocate General if it is so satisfied may refer the matter to the High Court. Proceedings for civil contempt normally commence with a person aggrieved bringing to the notice of the Court the wilful disobedience of any judgment, decree, order etc. which could amount to the commission of the offence. The attention of the Court is drawn to such a contempt being committed only by a person filing an application in that behalf. In other words, unless a Court was to take a *suo motu* action, the proceedings under the Contempt of Courts Act, 1971 would normally commence with the filing of an application drawing to the attention of the Court to the contempt having been committed. When the judicial procedure requires an application being filed either before the Court or consent being

sought by a person from the Advocate General or a Law Officer, it must logically follow that proceedings for contempt are initiated when the applications are made.

40. In other words, the beginning of the action prescribed for taking cognizance of criminal contempt under Section 15 would be initiating the proceedings for contempt and the subsequent action taken thereon of refusal or issuance of a notice or punishment thereafter are only steps following or succeeding to such initiation. Similarly, in the case of a civil contempt filing of an application drawing the attention of the Court is necessary for further steps to be taken under the Contempt of Courts Act, 1971.

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background, such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the Court, a contemner cannot be made to suffer. Interpreting the Section in the manner canvassed by Mr. Venugopal would mean that the Court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of a contempt having been committed and the same having been brought to the notice of the Court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigant as also by placing a pointless fetter on the part of the Court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the Court nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the contemner would

render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore, be avoided.

42. The decision in Om Parkash Jaiswal's case (supra), to the effect that initiation of proceedings under Section 20 can only be said to have occurred when the Court formed the *prima facie* opinion that contempt has been committed and issued notice to the contemner to show why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realties of the situtation. For instance, in a case where a contempt of a subordinate court is committed, a report is prepared whether on an application to court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a High Court can take further action under section 15. In the process, more often that not, a period of one year elapses. If the interpretation of Section 20 put in Om Parkash Jaiswal's case (supra) is correct, it would mean that notwithstanding both the subordinate court and the High Court being *prima facie* satisfied that contempt has been committed, the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court making of a reference by a subordinate court on its own motion or the filing an application before an Advocate General for permission to initiate contempt proceedings is regarded as initiation by the court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that Section with the powers of the Courts to punish for contempt which is recognised by the Constitution.

43. A question arose before a Full Bench of the Punjab and Haryana High Court in the case of **Manjit Singh and Others** *versus* **Darshan Singh and others** (1984 Crl. L.J. 301) with regard to the application of Section 20 to the proceedings of criminal contempt. After coming to the conclusion that on the language of Section 20 the date when the time begins to run is fixed from the point on which the criminal contempt is alleged to have been committed the court had to decide the terminating point or the terminus *ad quem* for the limitation under Section 20 of the Act. Four possibilities which fell for consideration in this regard were (i) the date on which the actual notice of contempt is issued by the Court; (ii) the date on which the Advocate General moves the motion under Section 15 (1) (a); (iii) the date on which a subordinate court makes a reference of the criminal contempt under Section 15 (2) of the Act and, (iv) the date on which any other person prefers an application to the Advocate General for his consent under Section 15 (1) (b) of the Act. On behalf of the State, the contention raised before the Full Bench was that the sole *terminus ad quem* was the date of the actual issuance of the notice of criminal contempt by the court and reliance in this behalf was *interalia* placed on the above mentioned decision of this Court in **Baradakanta Mishra's case.** The Full Bench, in our opinion, rightly came to the conclusion that the sole question which arose for consideration in **Baradakanta Mishra's case** related to the interpretation of Section 19 of the Act and no question of interpreting or applying Section 20 was at all in issue. Following the dictum of Lord halsbury in **Quinn** *versus* **Leathem** [1901 AC 495] that a case is only an authority for what it actually decides and cannot be quoted for a proposition that may even seem to follow logically therefrom, the Full Bench correctly observed that **Baradakanta Mishra's case** was no warrant for the proposition that the issuance of a notice of criminal contempt by the High Court is the sole *terminus ad quem* for determining limitation under Section 20 of the Act".

(31) The aforesaid enunciation of law makes it aboundantly clear that the proceedings were initiated in the present case on the filing of the written statement on 13th July, 1998. It is not disputed that the contemnor had produced the interpolated order dated 9th January, 1998 before the authorities on 21st February, 1998. Clearly, therefore, the proceedings were initiated within the period stipulated under Section 20 of the Act. Further more, we are of the considered opinion that the limitation provided under Section 20 of the Act would not be applicable to the proceedings initiated by the High Court under Article 215 of the Constitution of India. The powers under Article 215 of the Constitution have been held to the untramelled and the limitation provided under Section 20 of the Act would not be applicable. Therefore, the period of the year under Section 20 of the Act cannot be a bar to the initiation of contempt proceedings by the High Court in exercise of its powers under Article 215 of the Construction of India. Accepting such an interpretation would mean that the High Court would be helpless in initiating any proceedings for a blatant contempt of Court which the contemnor somehow manages to conceal from the High Court for a period of one year from the date when the contempt is committed. It is a settled proposition of law that the "contemnor should not be allowed to enjoy and/or retain the fruits of his contempt". This principle has been laid down by the Hon'ble Supreme Court in the case of ***Mohd. Indris*** versus ***R.J. Babuji, (8).*** It was reiterated by the Hon'ble Supreme Court in the case of **Delhi Development Authority** versus **Skipper Construction Company (P) Ltd. and another** (9), In paragraph 21 of the judgment it is held as follows :—

> "21. There is no doubt that this salutary rule has to be applied and given effect to by this Court, if necessary, by overruling any procedural or other technical objections. Article 129 is a constitutional power and when exercised in *tandem* with Article 142, all such objections should give away. The Court must ensure full justice between the parties before it".

(32) Article 129 of the Constitution of India states that the Supreme Court shall be a court of record and shall have all the powers

(8) AIR 1984 SC 1826
(9) AIR 1996 SC 2005

of such a court including the power to punish for contempt of itself. This Article is identical to Article 215 of the Constitution of India which makes every High Court a Court of record and grants all the powers of such a Court including the power to punish for contempt of itself. The Division Bench while initaiting the present proceedings exercised the powers under Article 215 of the Constitution of India. For these added reasons, we hold that the proceedings initiated against the contemnor do not suffer from any legal or factual bar. The ambit of the jurisdiction of the Supreme Court under Article 129 and the High Court under Article 215 of the Constitution of India, respectively, was considered by the Supreme Court in the case of ***Pritam Pal*** versus ***High Court of Madhya Pradesh, Jabalpur through Registrar (10).*** In this judgment, it has been held as under :—

> "22. From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit .....

(33) After discussing the legal position in England and the United States of America, the Supreme Court held as follows :—

> "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 is a special one not drived from any other statute but derived only from Articles 129 and 215 of the Constitution of India [See D. N. Taneja *versus* Bhajan Lal, 1988 (2) SCC 26] 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

(10) 1992 (2) SLR 16 = (AIR 1992 SC 904)

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 follows should be fair and that the contemnor should be made aware of the charge against him and given a reasonable opportunity to defend himself".

(34) We are fully conscious of the aforesaid observations of the Supreme Court. It is, no doubt, true that the powers of the High Court under Article 215 of the Constitution being summary in nature, have to be exercised with great care and caution. These powers are to be exercised to maintain innocence and purity of the stream of justice. It is exiomatic that greater the power, greater the caution in the exercise thereof. Therefore, we have adopted a very cautious approach during these proceedings. We have given the petitioner every opportunity and liberty to project his case. We are of the considered opinion that the proceedings initiated by this Court are not barred by the limitation prescribed under Section 20 of the Act.

(35) Learned counsel for the contemnor had also argued that there is no proof of forgery having been committed by the contemnor. It is too late in the day for the contemnor to raise such a plea. A perusal of the order passed by the Division Bench dated 10th January, 2000 clearly shows that it was not disputed before the Bench that the petitioner had interpolated the certified copy of the order obtained from this Court and added that words "and stay granted" therein when no such order had, in fact, been passed by this Court. Having not disputed the aforesaid position before the Division Bench on 10th January, 2000, the contemnor cannot be permitted to say that there is no proof of forgery or interpolation. Even apart from this, the sequence of events as narrated in the earlier part of the judgment, would make it abundantly clear that the contemnor was the only party to gain by the interpolation of the term "and stay granted" in the order dated 9th January, 1998. Further more, a perusal of the order as interpolated clearly shows that the words "and stay granted" have been incorporated in the order dated 9th January, 1998 which simply reads as follows :—

"Notice of motion for 16th February, 1998".

(36) The contemnor produced before the authorities the order which reads :

"Notice of motion for and stay granted 16th February, 1998".

(37) The interpolated order makes no sense. From a perusal of the interpolated order produced by the respondents, it becomes clear that the words "and stay granted" have been typed by a different typewriter. There is a full stop after the added words "and stay granted". Thereafter the date "16th February, 1998" appears which is part of the original order. Therefore, we have no manner of doubt that the original order has been interpolated. The conduct of the contemnor throughout the proceedings also speaks volumes. After the order dated 9th January, 1998 had been passed, the Additional Advocate General appeared in Court on 17th Febuary, 1998 for respondent Nos. 1, 2 and 7. Respondent Nos. 3 to 6 filed their written statement on 13th July, 1998. These respondents, as noticed earlier, brought the contempt to the notice of the Court. The contemnor thereafter took many adjournments which have also been noticed in the earlier part of the judgment. Thus, the matter remained pending till 10th January, 2000. In the meantime, the contemnor was trying the persuade the counsel for respondent Nos. 3 to 6 not to raise any objection if the writ petition was withdrawn by the contemnor. These facts have been brought to the notice of the Court in Criminal Misc. No. 12993 of 2000 filed by Mr. Asha Nand Sharma, Advocate, of respondent Nos. 3 to 6. This application was filed on the directions of the Division Bench given at the time of hearing on 5th May, 2000. The allegations are duly supported by an affidavit. The contemnor even gave threats to the Advocate Asha Nand Sharma, which were also brought to the notice of the Division Bench. The conduct of the contemnor narrated above, makes it clear beyond reasonable doubt that the contemnor has deliberately tried to subvert the course of justice. Fabrication of an order of the High Court is a clear contempt of Court under any jurisdiction. In the case of ***Ram Autar Shukla*** versus ***Arvind Shukla, (11)*** the Hon'ble Supreme Court in paragraph 7 of the judgment held as under :—

> "Any interference in the course of justice, any obstruction caused in the path of those seeking justice are an affront to the majesty of law and, therefore, the conduct is punishable as contempt of court. Law of contempt is only one of the many ways in which the due process of law is prevented from being perverted, hindered or thwarted to further the cause of justice. Due course of justice means not only any particular

(11) 1995 Supp. (2) S.C.C. 130

proceedings but broad stream of administration of justice. Therefore, due course of justice used in Section 2 (c) or Section 13 of the Act are of wide import and are not limited to any particular judicial proceedings. Much more wider when this Court exercises *suo motu* power under Article 129 of the Constitution. Due process of law is blinkered by acts or conduct of the parties to the litigation or witnesses which generate tendency to impede or undermine the free flow of the unsullied stream of justice by blatantly resorting, with impugnity, to fabricate court proceedings to thwart fair adjudication of dispute and its resultant end. If the act complained of substantially interferes with or tends to interfere with the broad stream of administration of justice, it would be punishable under the Act. If the act complained of undermines the prestige of the court or causes hindrance in the discharge of due course of justice or tends to obstruct the course of justice or interfere with due course of justice, it is sufficient that the conduct complained of, constitutes contempt of court and liable to be dealt with in accordance with the Act. It has become increasingly a tendency on the part of the parties either to produce fabricated evidence as a part of the pleadings or record to fabricate the court record itself for retarding or obstructing the course of justice or judicial proceedings to gain unfair advantage in the judicial process. This tendency to obstruct the due course of justice or tendency to undermine the dignity of the court needs to be severely dealt with to deter the persons having similar proclivity to resort to such acts or conduct. In an appropriate case, the mens rea may not be clear or may be obscure but if the act or conduct tends to undermine the dignity of the court or prejudice the party or impedes or hinders the due course of judicial proceedings or administration of justice, it would amount to contempt of court. The acts of the respondent in fabricating the court proceedings purported to be dated 9th June, 1992, impersonating himself to be the petitioner and producing the fabricated copy of the court proceedings in the office of the District Inspector of Schools thus constitute contempt of the court. It tended to interfere with the course of justice in legal proceedings to gain unfair

advantage over the petitioner and is not as innocent as pretended to be by the respondent. Further as we have already held that he alone stands to gain by fabricating the court proceedings and producing it before the authorities for his continuance as a Manager of the School, he had the necessary animus or mens rea to fabricate the court's proceedings impersonated himself to be the petitioner and produced it in the office of the District Inspector of Schools. Thereby, he committed contempt of court".

(38) We are of the considered opinion that the aforesaid observations of the Supreme Court are fully applicable to the facts and circumstances of this case.

(39) Mr. Gupta had rightly relied upon the commentaries which have been mentioned in the earlier part of the judgment, the same propositions have been approved by the Supreme Court in the case of ***Chandra Shashi*** versus ***Anil Kumar Verma, (12)*** in paragraph 10 of the judgment, it is held as under :—

"A reference to standard text books on contempt, to wit, C.J. Miller's Contempt of Court; Oswald;s "Contempt of Court". and Anthony Arlidge and David Eady's "The Law of Contempt" would amply bear what has been stated above; and that if a forged and fabricated document is filed, the same may amount to interference with the administration of justice. Ofcourse, for the act to take this colour there is required to be an element of deceit or the knowledge of the statement being forged or fabricated. This is what finds place at pages 399 to 201 (2nd Edn.) ; page 62 (1993 Reprint): and pages 186 to 188 (1992 Edn.) respectively of the aforesaid treatise".

(40) The Supreme Court in the opening part of the judgment aforesaid observed as follows :—

"HANSARIA, J.

1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may

(12) JT 1994(7) SC 459

give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court;s environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice".

(41) Keeping the aforesaid observations in view, we have no hesitation in holding that the petitioner has committed gross contempt of Court.

(42) After the matter had been argued with full Vehemence and at length, learned counsel for the contemnor made a prayer that the apology tendered in paragraph 5 of the written statement of the reply to the show cause notice, be accepted. We are unable to accept this submission of the learned counsel for the contemnor. In Chandra Shashi's case (supra), the Supreme Court dealt with a similar situation in paragraphs 15, 16 and 17, wherein it has been observed as follows :—

"15. Before applying our mind to the question of sentence, we would advert to an offer of unconditional apology tendered by Anil Kumar in his affidavit filed on 29th October, 1994. A perusal of the same shows that this was done after the deponent formed an impression, when the matter was argued in court in his presence on 24th October (on which date the judgment was also reserved), that we were of the view that he had committed wrong. The affidavit further states that if he would be punished, his life would "get shattered", as after his divorce proceeding was completed recently he could secure a job and has started his "life afresh", Thus, the apology tendered is not a product of remorse

or contrition, which it has to be to merit acceptance, as stated in M.B. Sanghi *versus* High Court of Punjab & Haryana, 1991-3, SCC 600, in which case it was also pointed out that an apology merely to protect against rigours of law is no apology. In Major General B.M. Battacherjee *versus* Russal Estate Corporation, 1993-2 SCC 533, an "unconditional apology" while trying to justify the act (similar is the position here as would appear from the averments made in paragraph 5 of the aforesaid affidavit) was not accepted. Recently, in K A Mohammed Ali *versus* CN Parasannam, JT. 1994-6, SC 584, a belated apology sought was refused.

16. Had the contemner shown real contriteness and regret for the act done, we would have perhaps accepted his apology; but as it cannot be used as a weapon of defence to get purged of the guilt, which precisely the contemner has sought to do as he desires to avoid wordly suffering which would follow if sentenced, we reject his offer and proceed to decide the question of sentence. Let it be first seen whether sentence of fine would meet the ends of justice. In our view, such a sentence would not be conducive to the larger cause of maintenance of purity in the portals of court inasmuch as if a fabricated document with oblique motive can be filed in the apex Court, a serious view for the same has to be taken to maintain a modicum of fairness in courts below. This apart, the increasining tendence of taking recourse to objectionable means to get a favourable verdict in the courts has to be viewed gravely to deter the large number of persons approaching courts from doing so. Such a tendencey is required to be curbed, which requires somewhat deterrent sentence.

"17. Keeping in view the above, we award sentence of two week's imprisonment to the contemner, we would have indeed awarded a longer period of incarceration because of the gravity of contumacious act-fabrication of document to defeat just cause of an adversary and thereby seriously effecting the purity of court's

proceeding-but we have refrained from doing so as this is the first occasion in free India when this Court (for that matter may be any court of the country) has felt called upon to send a person like the contemner behind iron bars in exercise of contempt jurisdiction. We have restricted the period of imprisonment to two weeks in the hope that the incarceration of this contemner will work as eye opener and no court will henceforth feel constrained and to do so in any other case. We have traversed the untraded path guardedly, because the assumption of contempt jurisdiction by a court requires jealous and careful movement as the afected party faces a summary trial and the prosecutor himself acts as a judge".

(43) It has become apparent from the facts narrated in the earlier part of the judgment that the contemnor has scant regard for the rule of law. He has even lesser regard for the sanctity of the orders passed by the competent authorities in different jurisdictions. He has defied the orders passed by the Appellate Authority and the Revisional Authority holding him responsible for embezzlement of such a huge amount of money belonging to poor members of the co-operative society. He has granted unto himself an interim relief which was not granted by the Division Bench of this Court. The authority before whom the interpolated order was produced acted on the *bona fide* belief that the order had been passed by a Division Bench of this Court. The authority fully obeyed the order of this Court by revoking the order of suspension of the contemnor. Having committed gross contempt of Court, the contemnor has persisted with his conduct to mislead this Court. Even in his reply to the show cause notice, a categoric plea is taken that the order was not interpolated by him. At the same time, he did not dispute before the Divison Bench on 10th January, 2000 that the order had been interpolated by him. Such reprehensible conduct cannot be excused. Any leniency shown by this Court would do much more harm to the cause of maintaining the purity of administration of justice than any conceivable benefit that may accrue to the contemnor. This apart, the apology tendered by the contemnor does not satisfy any of the criteria laid down by the Supreme Court for acceptance of an apology. The apology has not come at the earliest possible stage of the proceedings. It is not unconditional. It

is just an excuse to escape punishment. At no stage, the contemnor has expressed any remorse at his reprehensible behaviour. Even in the affidavit, the prayer is that the apology be accepted and the contemnor be exonerated from the contempt. During the course of hearing, the learned counsel for the contemnor made offer of the apology only at the end of the arguments. Such being the situation, we are satisfied that this is not a case where the contemnor can escape punishment by offering an unconditional apology.

(44) In view of the above, the apology tendered by the contemnor is rejected.

(45) At this stage, we must notice the judgment in R. Dayananda Sagar's case *(supra)*, cited by the learned counsel for the contemnor in support of the proposition that administration of justice must be tempered with mercy. The aforesaid judgment was given by the Supreme Court in a review petition. The Supreme Court laid down that the judgment of the final Court of the land is final. A review of such a judgment is an exceptional phenomenon, permitted only where a grave and glaring error of other well established ground is made out. While disposing of C.M. No. 2095 of 1975, the Supreme Court had made certain observations in the judgment. It was argued by Mr. Sen that the remarks which had branded his client as an unindicted criminal-guilty of abetting forgery and purgery were unmerited. A prayer was made that these remarks should be obliterated. The Supreme Court did not agree to the submission. It was accepted that the strictures were in no way integral to the decision, although relevant if an over all view is taken. During the course of argument. Mr. Sen had also argued that the Supreme Court had been misled in reaching the inference drawn. It was in this context that Krishana Iyer. J. observed as follows:—

> "Shri Sen submits that we were misled in reaching the inference drawn. May be, we were, Judge Learned Hand once said that the spirit of liberty is "the spirit which is not too sure that it is right", that great Judge was "found of recalling Cromwell's statement : "I beseech ye in the bowels of Christ, think that ye may be mistaken". He told a Senate Committee, "I should like to have that written over the portals of every church,

every school and every court-house and may I say, of every legislative body in the United States. I should like to have every court begin, "I beseech ye in the bowels of Christ, think that we may be mistaken". (Yale Law Journal : Vol. 71 : 1961 November part).

In a sense, it is this likelihood of error that persuaded Jesus Christ to caution : "Judge not, that ye be not judged". Our search for truth sometimes reaches a blind alley expressed by Bacon : "What is truth ?" said jesting Pilate : and would not stay for an answer".

In this conspectus of great sayings, we are inclined to be humble in spirit and free to tone down the harshness of the characterisation to some extent. We would content ourselves by saying that the materials placed before us in appeal, read in the light of the conclusions of the High Court, may well lead to the inference and justify the observations made by us, although it may not be ruled out that a more innocent inference exculpating any role for the petitioner is possible. Thus, far we modify the rigour, but decline to cancel, as pleaded by the petitioner. Wisdom cannot be confounded with obstinacy and a charitable construction of a situation cannot be excluded. That is why we have consented to the dilution".

(46) As noticed earlier, we have given the fullest opportunity to the contemnor to plead his case. We have not like Pilate left without waiting for the answer. Rather we have satisfied ourselves that there is sufficient material on the record to establish that the contemnor has made interpolations in the order dated 9th January, 1998 and that he took advantage of the interpolation. We are also conscious of the fact that deprivation of the liberty of a person without authority of law would straightaway be struck down as being violative of the fundamental rights enshrined under Article 21 of the Constitution of India. The powers of the High Court under Ariticle 215 of the Constitution of India being of a summary nature have to be used sparingly with care and caution. We are also aware of the principle that incarceration of a person behind bars would be a punishment of last resort. For the aforesaid reasons, we have adopted a very cautious

approach before giving the findings recorded above. Jurisprudentially, it has been a well accepted principle that sentence be commensurated to the gravity of the offence/mis-conduct. This principle in its practical working was demonstrated by the Supreme Court in the case of ***Shankar Das*** versus ***Union of India and another, (13).***

(47) In that case, a clerk had been prosecuted for committing temporary embezzlement of Rs. 500. He was prosecuted and found guilty of temporary embezzlement. The Magistrate, however, released him on probation. Not being able to digest the release of the employee on probation, the department dismissed him from service under Article 311 (2) of the Constitution of India on the basis of the conduct leading to conviction. The employee filed a civil suit in 1966 in the Court of Sub Judge First Class, Delhi, for settiing aside his dismissal from service, mainly on the ground that since he was released under the Probation of Offenders Act, it was not permissible to the authorities to visit him with the penalty of dismissal from service. The civil suit was dismissed. The decree of the trial Court was confirmed by the Additional Senior Sub Judge, Delhi, in January, 1968. He filed second appeal in the High Court of Delhi which was allowed by the learned Single Judge on 13th April, 1971. The Government of India filed Letters Petent Appeal against that judgment which was allowed by a Division Bench on 10th October, 1972. The employee filed Civil Appeal No. 480 (N) of 1973 in the Supreme Court. This is how the matter had reached the Supreme Court. Considering the peculiar facts and circumstances in which the employee had been placed, the C.J.I., Y.V. Chandrachud spoke thus :—

> "The learned Magistrate, First Class, Delhi. Shri Amba Prakash, was gifted with more than ordinary understanding of law. Indeed, he set an example worthy of emulation. Out of the total sum of Rs. 1,607.99 which was entrusted to the appellant as a Cash Clerk, he deposited Rs. 1,107.99 only in the Central Cash Section of the Delhi Milk Scheme. Undoubtedly, he was guilty of criminal breach of trust and the learned Magistrate had no option but to convict him for that offence. But it is to be admired that as long back as in 1963 when S. 235 of the Code of Criminal Procedure was not on

(13) AIR 1985 SC 772

the Statute Book and later refinements in the norms of sentencing were not even in embryo the learned Magistrate gave close and anxious attention to the sentence which in the circumstances of the case could be passed on the appellant. He says in his judgment; The appellant was a victim of adverse circumstances ; his son died in February, 1962, which was followed by another misfortune ; his wife fell down from an upper storey and was seriously injured ; it was then the turn of his daughter who fell seriously ill and that illness lasted for eight months. The learned Magistrate concluded his judgment thus :—

"Misfortune dodged the accused for about a year..... and it seems that it was under the force of adverse circumstances that he held back the money in question. Shankar Dass is a middle aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict. Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958".

It is to be lamented that despite these observations of the learned Magistrate the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since Cl. (a) of the second proviso to Art. 311 (2) makes the

provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical".

(48) We have kept the aforesaid principle in mind while considering the question of sentence to be imposed on the contemnor. We are also conscious of the observations made by the Supreme Court in Chandra Shashi case *(supra)*. As seen above, the contemnor in that case had made a strong plea in mitigation of sentence. After considering the peculiar facts and circumstances of that case, the Supreme Court rejected the plea that the contemnor be punished by imposition of fine only. It is further observed that the Supreme Court would have awarded a longer period of incarceration, but a lenient view was taken as it was perhaps the first occasion in free India that the Supreme Court had felt called upon to send a person like the contemnor behind bars in exercise of contempt jurisdiction. In the present case, no circumstances have been placed on the record to persuad this Court as to why a lenient view may be taken by the Court. In fact, as noticed earlier, even the apology has been half heartedly made and that too at the conclusion of the arguments.

(49) In view of the above, the contemnor is sentenced to undergo one month rigorous imprisonment and to pay a fine of Rs. 2,000. In default of payment of fine, the contemnor shall further undergo one month rigorous imprisonment. The *suo motu* contempt petition is accordingly ordered.

ORDER OF COURT

(50) The Senior Superintendent of Police, Ambala, is directed to arrest the contemnor and confine him at the Central Jail, Ambala, to undergo the sentence of one month rigorous imprisonment pursuant to the conviction ordered in this petition.

BINOD KUMAR ROY, C.J.

(49) I agree.

R.N.R.