Court on Its Own Motion Vs. Rajiv Dawar

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SooperKanoon Citation : sooperkanoon.com/712607

Court : Delhi

Decided On : Jan-02-2007

Reported in : 136(2007)DLT321; 2007(94)DRJ202

Judge : Manmohan Sarin and; Manju Goel, JJ.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 21, 23 and 28; Contempts of Court Act, 1971 - Sections 2, 10 and 15(2); Constitution of India - Article 215; Code of Criminal Procedure (CrPC)

Appeal No. : Crl. C. Ref. No. 2/2005

Appellant : Court on Its Own Motion

Respondent : Rajiv Dawar

Advocate for Def. : A.S. Chandhiok and ; P.P. Khurana, Sr. Advs., ; Shyam Moor

Advocate for Pet/Ap. : Sanjay Jain, Sr. Adv.,; amices Curiae and; Arjun Mitra,

Judgement :

Manmohan Sarin, J.

1. The present reference arises out of the complaint of Edward Joseph Ellis, who is the accused in sessions case No. 17/2004 under the Narcotic Drugs and Psychotropic Substances Act, 1985 pending before the Sessions Court. Edward

Joseph Ellis (accused) was produced before the Court of Sh. Lal Singh, Additional Sessions Judge, on 22.7.2004. On the said date the accused personally handed over to the Additional Sessions Judge, in court, an eight page hand written complaint, raising allegations against Mr.Rajiv Dawar, Advocate, respondent herein, that in December 2003, Mr. Dawar assured the accused his release on bail for a sum of Rs. 30 lacs as he had now spoken to the people who would be directly responsible for his release on bail.

2. As per the complaint, the respondent had approached the accused several times whilst being taken away from Patiala House Courts in June 2003 and had held out himself to be an advocate of repute who had got bail for several similarly placed people who were arrested for serious charges. Respondent allegedly offered his services for assured release on bail within 6 months. The complainant says that being desperate to be released, he took the bait offered by the respondent and engaged the respondent for his defense. Further, it is alleged that respondent had received Rs. 6 lacs from Ms. C Gibbard, the relative of the accused, as part payment towards arranging bail for the accused and thereafter, to avoid fulfillment of the said promise, obtained from the accused, an undated statement for acknowledging payment of Rupees three lacs for court appearances, on the pretext of completing formalities with regard to an enquiry from British High Commission. After giving the undated statement, the accused says that he realized the probable consequences thereof and demanded the statement back from the respondent who refused to return it. Accused claims to have then realized, that respondent was not really working in his best interests and was rather carrying out a very calculated fraud in order to gain monetarily. Accused stopped release of any further payment towards the respondent thereafter.

3. For facility of reference and record, complaint as made is reproduced:

EDWARD JOSEPH ELLIS

WARD 2

TIHAR JAIL 3

NEW DELHI

22-7-2004

TO

THE HONOURABLE JUDGE

PATIALA HOUSE COURT

NEW DELHI

DEAR SIR

AN ADVOCATE NAMED RAJIV DAWAR OF 20-21 LAWYERS CHAMBERS PATIALA HOUSE COURTS NEW DELHI HAS DEFRAUDED A MEMBER OF MY FAMILY NAMED C GIBBARD OF KANATA ONTARIO CANADA OUT OF THE SUM of 6 LAC RUPEE BY PROMISING MY FAMILY MEMBER AND MYSELF THAT FOR THE PAYMENT OF 30 LAC RUPEES HE WOULD HAVE ME RELEASED ON BAIL FROM CUSTODY WHERE I AM AT PRESENT HERE IN TIHAR CENTRAL JAIL.

IN THE MONTHS OF JUNE AND JULY, 2003 I WAS APPROACHED SEVERAL TIMES BY MR.RAJIV DAWAR AND HIS ASSOCIATE MR.VIKAS DUDEJA WHILST LEAVING PATIALA HOUSE COURT AFTER MY APPEARANCE THERE ON EACH OCCASION MR.RAJIV DAWAR TOLD ME THAT HE WAS A VERY EXPERIENCED ADVOCATE AND THAT HE COULD HAVE ME RELEASED ON BAIL IN 6 WEEKS.

ON ANOTHER OF MY APPEARANCES AT PATIALA HOUSE COURT I WAS TAKEN TO MR.RAJIV DAWARS CHAMBER WHERE MR.RAJIV DAWAR TOLD ME VERY FORCEFULLY THAT I WAS IN VERY SERIOUS TROUBLE AND THAT HE WAS THE ONLY PERSON WHO COULD HELP ME AND HE THEN QUOTED TO ME THE NAMES OF MANY PEOPLE WHO HE SAID HAD BEEN IN SIMILAR CIRCUMSTANCES AS MINE WHO HE HAD SET FREE.

AFTER CONSIDERING MY SITUATION AT THE TIME OF MR.RAJIV DAWARS APPROACHES TO ME AND AFTER LEARNING HERE IN TIHAR JAIL OF THE MANY PEOPLE WHO SPENDS MANY YEARS UNDER TRIAL I REALIZED THAT I COULD EASILY BE FORCED TO SPEND 4 TO 5 YEARS OR EVEN LONGER IN CUSTODY WHILE I WENT THROUGH TRIAL PROCEEDINGS BEFORE I COULD BE ACQUITTED AND BECAUSE OF THIS I DECIDED TO CONTACT MR.RAJIV DAWAR AND TO TAKE UP HIS OFFER OF BEING RELEASED ON BAIL UNDER HIS AUSPICE FROM CUSTODY HERE IN TIHAR JAIL.

AT MY NEXT MEETING WITH MR.RAJIV DAWAR HE TOLD ME THAT HE WOULD HAVE TO BE PAYED 30,000 RUPEES TO BEGIN TO LOOK IN TO THE SITUATION AND I ARRANGED TO PAY HIM 30,000 RUPEES THROUGH THE BRITISH HIGH COMMISSION NEW DELHI.

ON MY NEXT MEETING WITH MR.RAJIV DAWAR HE TOLD ME THAT HE WOULD NOW REQUIRE A FURTHER PAYMENT FOR SERVICES AND I ARRANGED TO PAY HIM 75,000 RUPEES THROUGH THE BRITISH HIGH COMMISSION NEW DELHI. MR.RAJIV DAWAR ALSO TOLD ME AT THE SAME MEETING THAT HE WOULD ALSO REQUIRE A PAYMENT OF 2 LAC RUPEES AS AN ADVANCE PAYMENT TOWARDS HIS FEES FOR ACQUIRING BAIL FOR ME. AT THIS MEETING I ASKED MR.RAJIV DAWAR HOW MUCH THE WHOLE COST WAS GOING TO BE FOR MY RELEASE ON BAIL AND MR.RAJIV DAWARS REPLY WAS THAT HE HAD NOT AT THAT TIME THOUGHT IN TERMS OF THE COST OF THE WHOLE PROCESS BUT THAT HE WOULD LET ME KNOW.

SEVERAL DAYS AFTER THIS REQUEST FOR 2 LAC RUPEES FROM MR.RAJIV DAWAR I CONTACTED A MEMBER OF MY FAMILY AND AFTER EXPLAINING MY SITUATION I THEN ARRANGED FOR 2 LAC RUPEES TO BE PAID TO MR.RAJIV DAWAR BY MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA. THIS PAYMENT WAS MADE AT MR.RAJIV DAWARS REQUEST NOT THROUGH THE BRITISH HIGH COMMISSION NEW DELHI BUT THOUGH WESTERN UNION MONEY TRANSFER.

AFTER THE PAYMENTS OF 75,000/- RUPEES AND 2 LAC RUPEES TO MR.RAJIV DAWAR HE APPEARED TO BECOME VERY ERATIC AND THEN HE OFTEN FAILED TO KEEP HIS APPOINTMENTS WITH ME AND HE SEVERAL TIMES SENT MR.VIKAS DUDEJA TO SEE ME TO INFORM ME THAT MR.RAJIV DAWAR WOULD BE COMING TO VISIT ME ON A SPECIFIC DATE BUT EACH TIME MR.RAJIV DAWAR THEN FAILED TO KEEP HIS APPOINTMENT WITH ME.

IN DECEMBER 2003 MR.RAJIV DAWAR MET ME AT PATIALA HOUSE COURT AND TOLD ME THAT HE HAD NOW SPOKEN TO THE PEOPLE WHO WOULD BE DIRECTLY RESPONSIBLE FOR RELEASING ME ON BAIL AND HE TOLD ME THAT THE TOTAL COST WOULD NOW BE 30 LAC RUPEES AND THE TERMS WOULD BE THAT HE WOULD HAVE TO BE PAID 15 LAC RUPEES AS ADVANCE AND THE BALANCE JUST BEFORE MY RELEASE AND THAT THE WHOLE PROCESS WOULD TAKE FROM BETWEEN 8 TO 10 WEEKS FROM THE TIME THAT HE RECEIVED THE FIRST 15 LAC RUPEES.

AS I DID NOT HAVE 30 LAC RUPEES AVAILABLE TO ME I THEN EXPLAINED MR.RAJIV DAWAR'S OFFER TO MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA WHO LATER ARRANGED FOR A LOAN AGAINST HER HOME SO AS TO BE ABLE TO PAY MR.RAJIV DAWAR 28 LAC RUPEES WHICH WITH THE 2 LAC RUPEES WHICH HAD PREVIOUSLY BEEN PAID TO MR.RAJIV DAWAR AS A DEPOSIT ON HIS FEE FOR HAVING ME RELEASED ON BAIL WOULD THEN ADD UP TO THE 30 LAC RUPEES WHICH MR.RAJIV DAWAR REQUIRED AS THE TOTAL FEE FOR ACQUIRING BAIL FOR ME.

IN APRIL OF THIS YEAR 2004 MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA BEGAN TO TRANSFER THE MONEY REQUESTED BY MR.RAJIV DAWAR FOR MY RELEASE ON BAIL AT HIS REQUEST TO BOTH HIMSELF AND HIS WIFE VANI DAWAR THROUGH WESTERN UNION MONEY TRANSFER IN UNITS OF 1 LAC RUPEES PER TRANSFER AND TO DATE 2 LAC RUPEES HAS BEEN TRANSFERRED TO MRS.VANI DAWAR AND 4 LAC RUPEES HAS BEEN TRANSFERRED TO MR.RAJIV DAWAR IN THIS WAY.

ON THE 13TH MAY THIS YEAR 2004 MR.RAJIV DAWAR TOLD ME THAT I WOULD HAVE TO GIVE HIM AN UNDATED STATEMENT TO SAY THAT I HAD PAID HIM 3 LAC RUPEES FOR COURT APPEARANCES AND APPLICATIONS AS HE HAD RECEIVED AN ENQUIRY FROM THE BRITISH HIGH COMMISSION NEW DELHI ABOUT SOME OF THE FIRST PAYMENTS WHICH HAD BEEN MADE TO HIM AND WITHOUT REALLY THINKING HIS REQUEST THROUGH I GAVE HIM THE UNDATED WRITTEN STATEMENT THAT HE REQUESTED.

LATER AFTER I HAD GIVEN THE STATEMENT TO MR.RAJIV DAWAR I FELT VERY UNCOMFORTABLE ABOUT HAVING DONE SO AND ON THE NEXT DAY THE 14TH MAY 2004 I ASKED MR.RAJIV DAWAR TO RETURN THE STATEMENT TO ME SO THAT I MIGHT CANCEL IT. MR.RAJIV DAWAR REFUSED TO DO SO AND TOLD ME THAT HE NO LONGER HAD THE STATEMENT.

AS A RESULT OF MR.RAJIV DAWAR'S REFUSAL TO RETURN THE STATEMENT TO ME AND BECAUSE OF THE MANY INACCURACIES IN WHAT MR.RAJIV DAWAR AND MR.VIKAS DUDEJA HAD TOLD TO ME IN THE PREVIOUS MONTHS I WAS FORCED TO RECOGNISE THAT RATHER THAN BEING INVOLVED IN WORKING MY BEST INTERESTS MR.RAJIV DAWAR WAS REALLY CARRYING OUT A VERY CALCULATING FRAUD AGAINST MYSELF AND MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA BY PROMISING TO HAVE ME RELEASED ON BAIL FROM CUSTODY HERE IN TIHAR JAIL FOR A PAYMENT OF 30 LAC RUPEES.

BECAUSE OF THIS AWARENESS OF MR.RAJIV DAWAR'S TRUE INTENTIONS I THEN CONTACTED MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA AND I INFORMED HER ABOUT WHAT HAD OCCURRED HERE WITH MR.RAJIV DAWAR I THEN REQUESTED THAT NO MORE MONEY BE TRANSFERRED TO MR.RAJIV DAWAR OR HIS WIFE MRS.VANI DAWAR AND I ALSO REQUESTED THAT MY FAMILY MEMBER TO CHECK WITH WESTERN UNION MONEY TRANSFER IF ALL OF THE TRANSFERS WHICH HAD BEEN MADE TO MR.RAJIV DAWAR AND MRS.VANI DAWAR HAD BEEN

WITHDRAWN AND WHEN MY FAMILY MEMBER C GIBBARD DID MAKE THIS ENQUIRY SHE WAS INFORMED BY WESTERN UNION MONEY TRANSFER THAT AS MRS.VANI DAWAR HAD ALREADY WITHDRAWN THE MAXIMUM AMOUNT OF TRANSFERS THAT AN INDIVIDUAL IS ALLOWED TO WITHDRAW IN THE PREVIOUS 1 YEAR THE 2 X 1 LAC RUPEE TRANSFERS WHICH HAD BEEN SENT TO MRS.VANI DAWAR BY MY FAMILY MEMBER C GIBBARD WERE STILL LYING WITH WESTERN UNION MONEY TRANSFER. THESE TWO TRANSFERS OF 1 LAC RUPEE EACH WERE THEN RETURNED TO THE SENDER MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA.

ON 3 JUNE THIS YEAR 2004 I DELIVERED A LETTER FOR MR.RAJIV DAWAR TO HIS CHAMBERS INFORMING HIM THAT I HAD RECOGNISED HIS ATTEMPT TO DEFRAUD MYSELF AND MY FAMILY MEMBER C GIBBARD OUT OF 30 LAC RUPEES BY FRAUDULENTLY PROMISING TO HAVE ME RELEASED ON BAIL FOR THAT SUM AND I ASKED HIM TO RETURN THE 6 LAC RUPEES WHICH HE HAD DEFRAUDED SO FAR FROM MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA PLUS ALL OF THE COURT PAPERS RELATING TO MY CASE TO THE BRITISH HIGH COMMISSION NEW DELHI FOR SAFE KEEPING AND TO DATE THIS HAS NOT BEEN DONE.

THE 6 LAC RUPEES WHICH MR.RAJIV DAWAR HAS OBTAINED BY FRAUD FROM MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA HAS BEEN PAID TO HIM IN THESE AMOUNTS.

TO MR.RAJIV DAWAR BY WESTERN UNION MONEY TRANSFER

2,00,000/- RUPEE DATE 10.8.2003 TRANSFER NO. 7601121551

1,00,000/- RUPEE DATE 13.4.2004 TRANSFER NO.0520532850

1,00,000/- RUPEE DATE 29.4.2004

1,00,000/- RUPEE DATE 30.4.2004 TRANSFER NO.9000449837

1,00,000/- RUPEE TRANSFER NO.9860599345.

THE TRANSFERS WHICH WERE MADE TO MRS.VANI DAWAR BY WESTERN UNION MONEY TRANSFER AND WHICH HAVE SINCE BEEN RETURNED TO THE SENDER ARE

100,000 RUPEE DATE 29.4.204 TRANSFER NUMBER 9661426967

100,000 RUPEE DATE 30.4.2004 TRANSFER NUMBER 1160898188

ALL OF THE DOCUMENTS RELATING TO THE TRANSFER OF MONIES BY MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA THROUGH WESTERN UNION MONEY TRANSFER TO MR.RAJIV DAWAR AND MRS.VANI DAWAR THAT ARE LISTED ON THE PREVIOUS PAGE CAN BE PLACED BEFORE THE COURT IF REQUIRED.

YOUR HONOUR

THIS SITUATION THAT I WRITE TO YOU ABOUT PLUS THE LOSS OF 6 LAC RUPEES BY MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA TO MR.RAJIV DAWAR HAS PLACED BOTH MYSELF AND MY FAMILY MEMBER IN VERY REAL DIFFICULTIES AND BECAUSE OF THIS I REQUEST THE COURT ASSISTANCE IN OBTAINING THE RETURN OF THE 6 LAC RUPEES FROM MR.RAJIV DAWAR SO THAT THEY MIGHT BE PLACED WITH THE BRITISH HIGH COMMISSION FOR SAFEKEEPING AND THEN BE RETURNED TO MY FAMILY MEMBER C GIBBARD OF KANATA ONTARIO CANADA.

THANK YOU.

SD/-

EDWARD JOSEPH ELLIS

4. The material allegations in the aforesaid complaint which are relevant for the purposes of the present proceedings have been highlighted. It would be seen that as per the complaint, the respondent/contemnor had represented to the accused

that 'he had spoken to the people who would be directly responsible for releasing him on bail and the total cost would now be 30 lac rupees and the terms would be that he would have to be paid 15 lac rupees as advance and the balance just before my release and that the whole process would take between 8 to 10 weeks from the time he received the first 15 lac rupees.' As per the allegations in the complaint, clear and unequivocal meaning of the 'person responsible for release on bail' can be none other than Judicial Officer who has the statutory duty to decide applications for bail.

5. After going through the handwritten complaint, the learned Addl. Sessions Judge directed that a reference to the High Court be prepared and a copy of the complaint received from the accused be also sent to the Chairman, Bar Council of Delhi and the Administrative Committee of the High Court. Pursuant to the said directions on 22th July, 2004, a reference dated 5th August, 2004 was prepared for the High Court and forwarded along with the complaint. The learned Addl. Sessions Judge while making the reference for the complaint under Sections 10, 15(2) and 2(c) of the Contempts of Court Act, 1971 noted that the respondent virtually represented to the accused, a foreign national that in the Indian judicial system, money can procure a bail order howsoever severe may the offence be and whatever be the legal impediments thereto. He opined that the act of the respondent 'defamed the Court and lowered reputation and image of the Court, which lowers or tends to lower the authority of the Court.' He also noted that this tantamounts to interference with the administration of justice and with due course of judicial proceedings.

6. The conclusion of the Learned Additional Sessions Judge with regard to the existence of ingredients of criminal contempt under Section 2(c) of the Contempts of Court Act can be logically drawn from the above facts and circumstances and the averments in the complaint.

7. Reference, after being processed by the Registry was put up before the Division Bench which issued notice on 2nd March, 2005 to the respondent/contemnor. On 4th May, 2005, respondent/contemnor appeared in person and sought time to file response to the notice. The court granted four weeks' time to the respondent to file

his affidavit in response. Mr.Sanjay Jain, Senior Advocate was also appointed amices Curiae to assist the court and directions were issued for supply of copies of the reference and documents to him. On 18th August, 2005, respondent sought further time to file affidavit and two weeks further time to file affidavit was granted. Production warrants was also directed to be issued for appearance of complainant-accused Edward Joseph Ellis for 7th September, 2005. Reply was filed on 6th September, 2005 and counsel for the respondent sought an adjournment to address the court on the issue whether a prima facie case for contempt was made out or not? Matter was again adjourned on account of non availability of respondent's counsel. During the course of proceedings, it was brought to the attention of the court by the amices Curiae as well as respondent's counsel that the Additional Sessions Judge had not examined the complainant/accused with regard to the complaint prior to making of the reference. Accordingly, on 16th November, 2005, a direction was issued for production warrants of the accused for asserting and authenticating the complaint made by him.

8. Pursuant thereto on 6th December, 2005, statement of Edward Joseph Ellis was recorded on oath in the presence of respondent's counsel. Complainant/Accused stated that:

I have made the complaint Exhibit C-1 in my own handwriting to the Trial Court. It is signed by me at point `A'. The complaint, which is in block letters, is in my hand. I have signed the same at point `A'. The averments and allegations made in the complaint by me are correct.

9. Adjournment was again sought by respondent's counsel. Vide orders dated 10th January, 2006, learned Counsel for the respondent and the respondent were asked whether they wish to file additional affidavit to specifically answer the allegations in the complaint which had been authenticated by the complainant and also to account for payments claimed to have been made by the complainant vis-a-vis the respondent's stand of having charged only the professional fee. Two weeks time was granted for filing the additional affidavit. Trial court record was also called for.

10. Respondent/contemnor filed an additional affidavit wherein the respondent has dwelt at length on his professional experience and standing at the bar. Respondent has also admitted the receipts of payments amounting to Rs. 6 lakhs through Mrs. Christine Gibbard, relation of the complainant/accused besides a sum of Rs. 30,000/- and Rs. 75,000/- separately.

11. Respondent/contemnor has raised a number of objections with regard to maintainability of the reference especially in view of the respondent not having been given an opportunity to show cause against the proposed reference and not having been heard prior to its issuance. It is contended that the reference thus stood vitiated and extinguished. Respondent also contended that non recording of the statement of the accused/complainant by the Addl. Sessions Judge was not mere irregularity but went to the root of the matter and the same could not be cured by subsequent authentication by the complainant/accused and recording of his statement before the High Court. It was also contended that reference was also barred by limitation.

12. The learned amices Curiae as well as respondent's counsel were also directed to file written submissions. Matter was repeatedly adjourned at the instance of the respondent to enable him to conclude his submissions. On 1st December, 2006, learned Senior Counsel for the respondent Mr.P.P.Khurana informed the court that pursuant to the complaint filed with the Bar Council, the Bar Council had disbelieved the substantive allegations made against the respondent but he was directed to return a sum of Rs. 4 lakhs which he had done. Mr.Khurana further submitted that the Bar Council has not even found the respondent guilty of any misconduct and hence there was no question of respondent/contemnor offering any apology for alleged contempt.

13. Before we deal with the merits of the reference, it would be appropriate, at this stage, to deal with the objections to the maintainability of the reference. Contention of the respondent is that while the cause of action of making the alleged assurance for release on bail by speaking to people who would be directly responsible took place in December, 2003, and the hand written complaint was handed over on 22nd July, 2004, notice of contempt was issued on 2nd March,

2005 by this Court well beyond the period of one year and the authentication itself before the High Court was done even later on 6th December, 2005. Thus the reference is alleged to be wholly barred by limitation. This plea is devoid of merit. Reference in this case, as noted earlier, was forwarded by the learned Addl. Sessions Judge on 5th August, 2004. Reference for initiation of the contempt proceedings as distinct from the cognizance thereof was made within seven months of the act of contempt complained of and was thereforee within limitation.

14. Further, the plea of reference being barred by limitation does not stand in view of the judgment of the Supreme Court in Pallav Seth v. Custodian : 2001 CriLJ4175 , wherein it was held that in cases of criminal contempt of a subordinate court on a reference made by it, the proceedings must be deemed to have been initiated on the date when such reference is made. thereforee the present proceedings are just an extension of the said reference.

15. Coming to the second plea that reference stood vitiated and extinguished because of denial of any opportunity to the respondent/contemnor to show cause against it and for non-examination of the complaint/accused, it may be noted that in the absence of any rules being framed regarding the format or procedure to be followed prior to making of reference, the reference cannot be flawed or said to be vitiated or non est because of the denial of an opportunity to be heard before referring the matter to the High Court. Reference may also be usefully made to the decision in the case of Matter of Contempt of Court v. D.B. Vohra and Ors 2nd 1974 Delhi 466 where a full bench of this Court held that in the absence of any rules being framed in this regard, the word 'reference' cannot be given any technical meaning and a statement submitted by the subordinate court, through proper channel was sufficient. Admittedly, in this case, reference has been made by the Subordinate court within the prescribed period of limitation and forwarded through proper channel. There was no statutory requirement for a hearing to be given by the subordinate court before forwarding the reference.

16. We may also notice that this is not a case where the respondent has been denied a fair opportunity to represent his case. Respondent had been duly served with all the documents as well as reference note forwarded by the Subordinate

Court and had been given a fair opportunity of presenting his case. Reference may usefully be made to Sukhdev Singh Sondhi v. The Chief Justice and Judges of the Pepsu High Court : [1954]1SCR454 , wherein the Court observed that:.We hold thereforee that the Code of Criminal Procedure does not apply in matters of contempt triable by High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This Rule was laid down by the Privy Council Re: Pollard 2nd 2 PC 106 and was followed in India and in Burma Re: Vallabh Das 27 Bom 394 and Ebrahim Mamojee Parekh v. King Emperor 4 Rang 257. In our view that is still the law.

17. In the instant case, as noted in the narration hereinbefore, notice was issued by the court and the respondent availed of the opportunity by filing a detailed and comprehensive response raising all objections regarding the validity and maintainability of the reference as also on merits. The statement of the complainant/accused was also recorded on oath authenticating his complaint and verifying his signature in the presence of respondent's counsel. Respondent was given an opportunity to file additional affidavit by way of his response and explain and account for the payments claimed to have been made by the complaint vis-a-vis his stand of having charged only the professional fee. Respondent also availed of this opportunity and filed a detailed additional affidavit duly supported with annexures. respondent thereafter, also filed his detailed written notes and submissions. Thus, full opportunity of presenting his case and raising all conceivable objections has been provided to the respondent. In these circumstances, objection regarding the initiation of reference having exhausted itself or having stood vitiated on account of violation of principles of natural justice would not stand and is rejected.

18. Learned senior counsel for the respondent Mr. A.S. Chandhiok had also submitted that no criminal contempt as defined under Section 2(c) of the Contempts of Courts Act was made out, no impediment to the administration of justice has been demonstrated in the reference. The contents of the reference do not contain any reference to the Judge or judicial proceedings. There was no

suggestion that any words, which were published or spoken tended to scandalize the court. Mr. Chandhiok urged that there was no act done in the judicial proceedings by the respondent so as to attract Sub clauses (2) and (3) of Sub section (c) of Section 2. Moreover, no bail application was even attempted by the respondent/contemnor.

19. Mr.Chandhiok also criticized the order of reference, where the learned Addl. Sessions Judge had inferred from the complaint that a representation had been made by the respondent to the complainant that even if the offence was heinous or serious ones, bail could be obtained within six weeks whereas in the actual complaint, the period of six weeks is mentioned in para 2 of the complaint without any reference to the judicial system. The above overlooks the material portion of the complaint starting from the portion 'In December 2003, Mr Rajiv Dawar met me at Patiala House Court and told me that he had now spoken to the people who would be directly responsible for releasing me on bail and he told me that total cost would now be 30 lac rupees and the terms would be that he would have to be paid 15 lac rupees as advance and the balance just before my release and that the whole process would take between 8 to 10 weeks from the time he received the first 15 lac rupees.'

20. We may also notice that complaint has to be read as a whole and the substance has to be seen and not different portions torn out of context. We do not wish to deal with certain minor inaccuracies sought to be brought out in the order of reference vis-a-vis the complaint. It is sufficient to notice that these minor inaccuracies would not alter or mitigate the gravity of the allegations contained in the complaint. Similar is the position with regard to criticism of the order of the reference insofar as it refers to lowering the reputation and image of the court.

21. Lastly, Mr.Chandhiok even attempted to urge that the words 'spoken to the people who would be responsible for releasing him on bail' do not refer to a Judge or Judiciary. The said plea has only to be rejected as the reference can only be to the person who has the power to enlarge an accused on bail which, in this case, could be none other than the Addl. Sessions Judge.

22. Having dealt with the objections raised to the maintainability and validity of the reference, let us look at the genesis of the complaint and the admitted facts as they emerge from the record:

Complainant/accused Edward Joseph Ellis was apprehended by the Customs Authorities on 20th May, 2003 while attempting to smuggle contraband narcotics (Hashish) out of the country. He was arrested and charged for the offences under Sections 21, 23 and 28 of the NDPS Act. The offences are punishable with minimum imprisonment for 10 years with a compulsory fine of Rs. 1 lac. The offences were clearly non bailable. Section 37 of the NDPS Act puts further stringent conditions for grant of bail. Complainant-accused was previously convicted having served a sentence of one year for a drug offence at Amsterdam. The material allegation made by the complainant-accused was that respondent-contemnor told him that he had now spoken to the people who would be directly responsible for releasing the accused on bail and he told the accused that total cost would now be 30 lac rupees and the terms would be that the respondent would have to be paid 15 lac rupees as advance and the balance just before the release of the accused and that the whole process would take between 8 to 10 weeks from the time the respondent received the first 15 lac rupees. It is, in this background, that we may take note of the payments which are admitted to have been received by the respondent-contemnor.

23. It is the respondent's own case that he had been engaged by a relation of the complainant Mrs.Christine Gibbard in the month of May-June, 2003. Respondent-contemnor admits having received a sum of Rs. 30,000 and Rs. 75,000 through the British High Commission. Additionally, he also admits having received undermentioned payments as per Annexure `A' to the additional reply affidavit:

(I) Cheque No. 46794 in the name of respondent for Rs. 1,05,000/-, credited on 23rd October, 2003;

(ii) Cheque No. 46795 for Rs. 95,000/- credited on 24th October, 2003;

(iii) Cheque No. 603659 for Rs. 1,00,000/- in the name of respondent which was credited on 30th April, 2004;

(iv) Cheque No. 603657 for Rs. 1,00,000/- which was credited in respondent's account on 30th April, 2004;

(v) Cheque No. 30420 for Rs. 1,00,000/- which was credited in respondent's account on 26th May, 2004; and

(vi) Cheque No. 907860 for Rs. 1,00,000/- in the name of respondent which was credited on 2nd June, 2004.

24. Thus, from the foregoing, the respondent admits having received payment of Rs. 7.05 lakhs. In addition, there is also remittance said to have been made to respondent's wife Mrs.Vani Dabar through the Western Union Money Transfer in the sum of Rs. 2 lakhs, which amount, it is claimed, could not be released as the latter had already withdrawn the permissible amount in an year. It is the complainant who claims that the above amounts are part of the payments which were being made to the respondent-contemnor who had promised to get him released on bail. Respondent-contemnor in the reply affidavit contended that he was engaged as defense counsel, rendered his services in the case and was entitled to get professional fee in the capacity of defense counsel. His appearances commenced since May-June, 2003. Respondent has also dwelt in his affidavit on the complainant-accused being a previous convict and a person who is fully aware of the stringent laws including Section 37 which debars release on bail and thereforee, the allegations of assuring release on bail are groundless and fabricated. Respondent has protested against the attempt to browbeat or bully lawyers, by a litigant or an under trial with such criminal propensity, which led him to smuggle heroin for making quick money. Respondent contends that complainant-accused had made several complaints against other lawyers who represented him. It was urged that the Complainant/Accused has attempted to make comments on the legal institution and system. It is rather contended that accused is the one who has made scandalous allegations against the institution including the legal fraternity. Respondent-contemnor has also referred to the subsequent dissatisfaction of the complainant with the counsel who succeeded him and to the general distrust of lawyers. There are number of other averments which are not relevant and extraneous for the purpose of this petition.

25. The additional affidavit filed by the respondent where he availed of the opportunity of explaining the services rendered by him and the payments received, deserves to be taken note of.

26. Respondent-contemnor admits receipt of Rs. 7.05 lakhs and claims the same to be his professional fee and charges for services given to the accused under trial in the matter beginning June, 2003 till the month of May-June, 2004, including legal advice and opinions given, various conferences and discussions held, services covering the period of remands and investigations conducted by the investigating agency in the case of the accused. Besides legal opinions and conferences were held with the Canadian Client Mrs.Christine Gabbard and further more with the persons who had attended upon the case of the accused under trial during the relevant time and towards the personal proposed ventures of the above named Mrs.Gibbard. The details of the remittance amounting to Rs. 6 lakhs were given in Annexure A to the respondent affidavit. Respondent has also averred in his affidavit that he is not an ordinary run of the mill kind of a legal practitioner but is an advocate of repute having put in more than 25 years of practice in different branches of law and more extensively on the criminal side and is known for his capabilities.

27. The case of the complainant is that he himself had no money. He was facing incarceration and feared being lodged in the Jail as an under trial for years together. His desperation for being released followed by the assurances by the respondent for release on bail held out during his appearances before the Patiala House Courts led the accused to engage the services of the respondent. Money was arranged by his sister by mortgaging her house and remitting such funds which were towards the total amount to be paid for release on bail. Respondent as noted above has claimed that this money was received for services rendered.

28. While a legal practitioner has the freedom to determine the value of professional services rendered by him, in the present case, what we are confronted with is to see whether any services, as are claimed, had been at all rendered, whether money was being received towards the said services or was part of the arrangement on the basis of promise held out by the respondent which

undermines judicial process and administration of justice.

29. We find on perusal of the trial court record that the respondent-contemnor appeared on behalf of the complainant/accused on 14th May, 2004 and 18th May, 2004. Apart from this, there are about seven appearances of his associates on different dates. These are all for miscellaneous and proceedings of no consequences. No application for bail or discharge had ever been submitted. Two applications which were made, related to the return of the airlines tickets and the address book/ Identity Card etc, for which respondent-contemnor appeared on 14th and 18th May, 2004. Appearance of the associates were for miscellaneous proceedings like supply of copies of complaint and for supply of other documents etc. Respondent had not appeared for the complainant either for effective miscellaneous proceedings or for effective hearing. The Bar Council while dealing with the complaint noted that relief sought by the complainant was for refund of Rs. 6 lakhs paid by him which were received by the respondent-contemnor by allegedly defrauding the accused and his relation. Accordingly, vide orders dated 30th September, 2006 taking note of the fact that no bail application had been made the Bar Council held it to be a case of withdrawal from the case and not misconduct. The respondent-contemnor was directed to return the fee accepted by him after December, 2003 i.e a sum of Rs. 4 lakhs, which the respondent claims he has done.

30. We are not persuaded to take a similar view or to drop these proceedings in view of the decision by the Bar Council. We are also conscious of the fact that contempt jurisdiction is to be exercised sparingly and in clear cases and not on the basis of mere probabilities.

30. The evidence and record produced before us and the complainant having authenticated his complaint on oath and the attendant circumstances lend credibility to the complainant's version and belie the version set up by the respondent of the remittances being payments for professional services rendered. It is trite said 'men may lie but circumstances do not'. In the instant case, the admitted case, as noted earlier, is of receiving Rs. 7.05 lakhs. We are not on the quantum of fee that a counsel may charge. What is critical is that remittances have

been made through complainant's sister who mortgaged her house for the said purpose. The payment of Rs. 2 lakhs between 23rd and 24th October, 2003 as well as Rs. 4 lakhs between end April and beginning June, 2004 coupled with the absence of any proceedings or services rendered by the respondent-contemnor before the Trial Court demonstrate that these payments were part of the arrangement and pursuant to the assurance held out by the respondent of having spoken to the persons responsible for releasing him on bail. The above factors coupled with the remittance of Rs. 2 lakhs in the name of respondent-contemnor's wife Mrs.Vani Dabar through Western Union Money Transfers which could, however, not be encashed, all tend to support the version of the complainant-accused and belie the case of the same being professional fee for services rendered. It is also significant that barring vague reference to some personal proposed ventures for Mrs.Christine Gibbard or alleged meeting with the acquaintances and those representing complainant-accused, neither any details nor particulars of the said personal proposed venture/meetings have been given. There is nothing to support these averments and these are evidently false and appear to have been raised as an after thought, fortifying the allegations of the complainant-accused. We may notice that after recording of the statement of the complainant-accused, authenticating the complaint, respondent-contemnor was given the opportunity to file additional affidavit to specifically answer the allegations in the complaint and also to account for the payments claimed to have been made vis-a-vis the respondent's stand of having charged only the professional fee. Respondent had miserably failed to do so. The conduct of the respondent-contemnor has been such so as to substantially interfere or tend to interfere with or tends to obstruct the administration of justice. It has undermined the judicial process.

31. Complainant-accused being a dealer in Narcotics or a previous convict and having alleged notorious background, would not in any manner be a mitigating circumstance for the respondent-contemnor.

32. It was also urged before us since the respondent-contemnor has refunded Rs. 4 lakhs, as directed by the Bar Council, nothing further survives in the matter and a quietus ought to be applied. We are unable to persuade ourselves to do that. To

our mind, for maintaining the stream of justice unsullied, it is essential that aberration committed by those who are integral part of the administration of justice are sternly and firmly dealt with. Magnanimity and latitude should be available to those who are not knowledgeable or conversant with the system or commit the offence unwittingly or innocently. We may also observe that through out these prolonged proceedings, despite several opportunities being available, there has not even been expression of any slightest remorse or regret on the part of respondent-contemnor and he continues to maintain his high ground.

33. Learned amices curiae, Mr.Sanjay Jain submitted that the facts and circumstances of this case were such that the Court must act in a resolute manner for vindication of its honour, prestige and to ensure respect for the rule of law and for maintenance of the purity of the justice system, especially by those who are part of the system. Regarding the scope, ambit and power of the Court while punishing for contempt, he submitted that it was an inherent power in a Court of record by virtue of Article 215 of the Constitution of India, which was not abridged or fettered by limitations under the Contempt of Court Act. He referred to Raj Prakash v. Choudhry Plastic Works and Anr. (1981) 2 Delhi 939, Pritam Pal v. High Court of Madhya Pradesh, Jabalpur : 1992 CriLJ1269 and Midnapore Peoples' coop.Bank Ltd. And Others v. Chunilal Nand an Ors. : 2006 CriLJ2903 .

33. In view of the foregoing discussion, we hold that respondent-contemnor has committed criminal contempt and is liable to be punished for the same. We impose a fine of Rs. 2000/- on respondent-contemnor. Further, in exercise of powers under Article 215 of the Constitution of India, we direct that respondent-contemnor shall not be permitted to appear in this Court or the courts subordinate to it for a period a two months. He would, however, be free to discharge his professional duties in terms of consultation, advises, drafting, miscellaneous pleadings and participate in conferences etc.

A copy of this order be sent to the District & Sessions Judge for compliance, who would ensure its intimation to the concerned Judges-in-charge of Courts at Patiala House, Karkardooma and Rohini.

Reference stands disposed of in the above terms.