

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cont. Case (Civil) Filing No. 11364 of 2024

Abhishek Krishna Gupta, aged about 49 years, S/o Late Shri Ram Krishna Sahu, R/o Flat No.406, Block-B, Pearl Crest Apartment, Pundag Road, P.O. Doranda, P.S. Argora, District- Ranchi, Jharkhand

... Petitioner

-Versus-

1. The State of Jharkhand
2. Rajeev Kumar, aged about 59 years, S/o Shri Satya Deo Roy, R/o Gauri Shankar Nagar, P.O. Doranda, P.S. Argora, District- Ranchi, Jharkhand

... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Mr. Abhishek Krishna Gupta, In person
For the State	: Mr. Manoj Kumar, G.A.-III

04/06.12.2024 Heard Mr. Abhishek Krishna Gupta, Advocate appearing in person and Mr. Manoj Kumar, learned counsel appearing for the State.

2. Office has raised objection with regard to maintainability of the present contempt petition filed in person by the Advocate of this Court, who was not party in the order against which the present contempt petition has been filed and the present contempt case has been filed against the practicing Advocate of this Court.

3. Mr. Abhishek Krishna Gupta, Advocate appearing in person submits that Mr. Rajeev Kumar, Advocate of this Court has obtained an order by this Court on 30.09.2024 in W.P. (Cr.) Filing No.20855 of 2024, which has been later numbered as W.P. (Cr.) No.803 of 2024 by saying that one of the matter is being investigated by the CBI and in view of that, this Court has given direction to the CBI to file counter affidavit. According to him, the CBI has already submitted charge-sheet in that case and the investigation is not

pending and in view of that, suppression is made by Mr. Rajeev Kumar, Advocate in obtaining that order. He submits in view of that, the contempt petition has been filed by him in person and this Court may initiate contempt proceeding. He further submits that the order of this Court dated 30.09.2024 passed in W.P.(Cr.) No.803 of 2024 has already been challenged before the Hon'ble Supreme Court. With regard to maintainability of the contempt petition, he submits that any person can file the contempt petition even if he is not party. He refers to Article 51-A of the Constitution of India. According to him, the contempt proceeding may kindly be initiated against Mr. Rajeev Kumar, practicing Advocate of this Court.

4. So far as civil contempt is concerned, that has been defined under Section 2(b) of the Contempt of Courts Act, 1971 and in view of the definition of Section 2(b), it transpires that for civil contempt, two ingredients are necessary; firstly wilful disobedience to any judgment, decree, direction, order, writ or other process of Court and secondly wilful breach of an undertaking given to a Court. The essential ingredient is 'wilful' disobedience and not any and every disobedience due to various reasons such as delay due to unavoidable circumstances, or inadvertence and for that 'wilful' has to be proved. Thus, for 'wilful' disobedience, purposefulness and clear intention to flout must be proved. Similarly, breach of an undertaking should also be proved to be wilful. If wilfulness is not made out, the Court will refuse to exercise its contempt power to punish the alleged contemner. Further, the allegation made in the present contempt is with regard to a proceeding, which is still pending and final order has not

been passed.

5. The purpose of the law of contempt was to secure public respect and confidence in the judicial process, and provide a sanction for any act or conduct which is likely to destroy or impair such respect and confidence. In the case of ***U.N. Bora v. Assam Roller Flour Mills, Assn.,*** reported in ***(2022) 1 SCC 101***, after analysing the various principles of law on the point rendered, the Hon'ble Supreme Court laid down the following parameters as to when action under the Contempt of Courts Act, 1971 should be initiated:

"9. We do not wish to reiterate the aforesaid settled principle of law except by quoting the reasoned decision of this Court in Hukum Chand Deswal v. Satish Raj Deswal [Hukum Chand Deswal v. Satish Raj Deswal, 2020 SCC OnLine SC 438] wherein the celebrated judgment in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] , has been quoted. The following paragraphs would govern the aforesaid principle : (Hukum Chand Deswal v. Satish Raj Deswal [Hukum Chand Deswal v. Satish Raj Deswal, 2020 SCC OnLine SC 438] , SCC paras 20-21 & 25-27)

'20. At the outset, we must advert to the contours delineated by this Court for initiating civil contempt action in Ram Kishan v. Tarun Bajaj [Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204 : (2015) 3 SCC (L&S) 311] . In paras 11, 12 and 15 of the reported decision, this Court noted thus : (SCC pp. 209-11)

"11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof

required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202], Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196], Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21], Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360], Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172].)

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. The word 'wilful' introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. 'Wilful' means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a 'bad purpose or without justifiable excuse or stubbornly, obstinately or perversely'. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. 'Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.' Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591], Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Rama Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255], Niaz Mohamma v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332], Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282], Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1], State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122] and Uniworth

Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753]......

6. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Thus, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of ***Sushila Raje Holkar v. Anil Kak***, reported in **(2008) 14 SCC 392** and in the case of ***Three Cheers Entertainment (P) Ltd. v. CESC Ltd.***, reported in **(2008) 16 SCC 592**.

7. The weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. The discretion given to the Court is to be exercised for maintenance of the Court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the Court should exercise such jurisdiction as contempt is between a contemner and the Court.

8. In view of the above, the Court is required to consider Sections 14 and 15 of the Contempt of Courts Act, 1971. Section 14 of the said Act reads as under:

"14. Procedure where contempt is in the face of the Supreme Court or a High Court.—(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court

may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

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

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

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

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

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

9. Section 15 of the Contempt of Courts Act speaks of cognizance of

criminal contempt in other cases, which is quoted herein below:

"15. Cognizance of criminal contempt in other cases.—*(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—*

- (a) the Advocate-General, or*
- (b) any other person, with the consent in writing of the Advocate-General, or*
- (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.]*

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.—In this section, the expression "Advocate-General" means,—

- (a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;*
- (b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;*
- (c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."*

10. Looking into Section 14 of the Contempt of Courts Act, 1971, it is crystal clear that the procedure prescribed therein and a reasonable interpretation is made that when during hearing or in presence, if Supreme Court or High Court forms own view that the person has been guilty of contempt, then the Court may cause such person to be detained in custody, and, at any time before the rising of the Court on the same day, or as early as possible, shall be issued notice informing in writing of the contempt with

which he is charged and also afford him an opportunity to make his defence to the charge and the Court may take evidence in this regard and then pass punishment order and, as such, the procedure laid down in Section 14 of the Act for the Hon'ble Supreme Court and High Court to adopt when the Hon'ble Supreme Court or High Court forms own view that person has committed contempt on the face of the Court and if the Court forms an opinion on its own view, then a contempt proceeding can be initiated. Thus, procedure is meant for the Court to initiate contempt. Third party or private individual has not been given right under Section 14 of the Act to file any contempt proceedings against any other party.

11. Section 15 of the Contempt of Courts Act, 1971 empowers the Court to initiate criminal contempt proceedings on its own motion or motion made by the Advocate General or any other person, however, with the consent in writing of the learned Advocate General.

12. In view of the above, if the High Court takes cognizance of contempt under Section 14 of the Act or in case, if the High Court takes cognizance of contempt under Section 15(1) of the Act or if motion is moved on the petition presented by learned Advocate General under Section 15(1)(a) or Section 15(2) of the Act or on motion founded on a petition by any other person with the consent in writing of the learned Advocate General under Section 15(1)(b) of the Act.

13. The issue with regard to filing of the contempt petition by any private person, who is not a party in any proceeding before the Court, is no more *res integra*.

14. It is well settled if a private party seeks punishment for contempt of Court, he can file a petition only under Section 15 of the said Act with prior written consent of the learned Advocate General. In the case in hand, no such prior written consent has been obtained by Mr. Abhishek Krishna Gupta, Advocate appearing in person and in view of that, he has not fulfilled mandatory requirement for invoking contempt jurisdiction of the Court.

15. The contempt petition under Section 14 of the Act at the behest of the petitioner, who was not party in W.P. (Cr.)No. 803 of 2024 and he has not appeared till that date, is being a third party, is not maintainable.

16. Thus, if the Court forms an opinion that false affidavit has been filed and the order is passed by the Court, then only the contempt proceeding can be initiated by the Court.

17. Further, it was pointed out that so far as W.P.(Cr.) No.803 of 2024 is concerned, that is not disposed of as yet and that is going to be listed on 09.12.2024. It was further pointed out that the said order of this Court is challenged by the State of Jharkhand by way of filing S.L.P. before the Hon'ble Supreme Court and that order is being considered by the Hon'ble Supreme Court.

18. Article 215 of the Constitution of India has been considered by the Hon'ble Karnataka High Court in the case of ***Sri Shamshuddin v. SriHaris M.Y.***, reported in ***2016 SCC OnLine Kar 6468***, wherein, at paragraph 5, it has been held as under:

"5. It is a settled position in law that the power conferred on a High Court under Article 215 of the Constitution of India to punish for Contempt of Court must be exercised in accordance with the provisions of the

Contempt of Courts Act, 1971. Therefore, having regard to the provisions of the Act, petition to initiate action for civil contempt as defined under Section 2(b) of the Act can be presented only by a party aggrieved, except where the Court which passed the order has given liberty to third parties, who are not parties to the order, to initiate action for Contempt of Court. We may state that Section 14 of the Act relates to procedure where contempt is in the face of the Supreme Court or a High Court and Section 15 of the Act relates to procedure in the case of a criminal contempt; they are exceptions to the rule of locus standi relating to civil contempt stated above."

19. The petitioner appearing in person is not party in his personal capacity to the said order against which the present contempt case has been filed and this petition has been presented in his personal capacity, whereas, in the order no liberty was given to any third party to file contempt case and, hence, the petition brought by Mr. Abhishek Krishna Gupta is not maintainable.

20. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of ***Parents Association of Students v. M.A. Khan and another***, reported in ***(2009) 2 SCC 641***, wherein, it has been held in paragraphs 13 to 16 and 19, which stipulate as under:

"13. *We, however wish to deal with the basic issue. Appellant filed the writ petition, inter alia, for a direction upon the State to regulate professional education so far as it, inter alia, relates to fixation of fee. First Respondent admittedly runs a professional institution. It, subject to any law, would be bound by the decision of this Court in T.M.A. pai (supra). The contemnor or the institution which he represents, however, was not a party. If he was not a party, subject to statutory interdict, only in exceptional cases, he may be proceeded against under the Contempt of Courts Act, 1971.*

14. *It is one thing to say that a direction having been issued upon the State Government; issuance of a Government Order in exercise of its jurisdiction under Article 162 of the Constitution of India would attract the wrath of the Contempt of Courts Act, but it would be another thing to say that a party who merely derives*

benefit from such Government Order would also be liable to be proceeded against under the Contempt of Courts Act, 1971 despite the fact that he was not a party to the judgment. The learned Single Judge did not address itself to this aspect of the matter at all. Ordinarily, a person if not a party to the lis and no direction having been issued against him, a contempt petition against him would not lie. Whether an exceptional case has been made out against him is yet to be determined.

15. *In S.N. Bannerjee v. Kuchwar Lime and Stone Co. Ltd. [AIR 1938 PC 295], it has been observed :-*

"The question whether a contempt committed not by any person inhibited by injunction for breach of that injunction but by a person said to have aided and abetted a person so inhibited in breaking the injunction is of such a criminal nature as to prevent an appeal has given rise to much controversy, controversy which in the present case this Board does not think it necessary to resolve. The respondents themselves when petitioning the Court asked the Court to issue notice upon the opposite parties to show cause why they should not be committed for contempt for disobedience of the injunction. Strictly speaking this was a wrong remedy to ask against Ghose and Banerjee. The injunction was not binding on them and they had never disobeyed it. The petition should have asked that they be committed for aiding and abetting the Secretary of State in his disobedience. Indeed on the authority of Wellesley (Lord) v. Earl of Mornington and Wellesley (Lord) v. Earl of Mornington (No.2), the High Court might well have dismissed the petition against those two appellants and left the petitioners to apply again in proper form. Though the High Court did not do so but treated the petition as if application had been made to commit those appellants for contempt in aiding and abetting the Secretary of State, yet their Lordships do not think, the respondents have any cause of complaint if the Court in admitting the appeal treated the case (as the respondents themselves had done) as being a petition for breach of the injunction and gave a certificate as in a civil matter."

16. *It is one thing to say that a person claiming title or any other right is bound by a direction issued to another through or under whom he is claiming a right but it may not be correct to opine that a person who has nothing to do with the functions of the State would also be liable therefor. In any event, the issue admittedly is a debatable one. It is required to be gone into. Without any application of mind in this behalf on the part of the High Court not only a notice has been issued but also an interim order has*

been passed which vitally affects the respondents No.1. A person aggrieved by an order must have a remedy. Technicalities of law should not be allowed to come on his way to move the higher courts.

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19. *The question as to whether a person, although not a party in the original writ proceedings, could be proceeded against, is a debatable one. Such a question, therefore, was required to be determined at the threshold. If prima facie two views are possible and unless it is firmly held that the respondent No.1 not only was bound by the directions issued by the High Court but he had also defied it willfully and deliberately, he cannot be punished for commission of contempt. If, prima facie, appellant cannot be punished for commission of contempt of the High Court, an interim order also should have not been passed.*

We draw inspiration in this regard from a decision of this Court in The State of Bihar v. Rani Sonabati Kumari[AIR 1961 SC 221] which has since been followed in a large number of cases."

21. In view of the above judgment of the Hon'ble Supreme Court, if prima facie two views are possible unless it is firmly found that such party was not only bound by the directions issued by the High Court but he had also defied it willfully and deliberately, such party cannot be punished for contempt.

22. In the case of ***Prashant Bhushan and another in RE***, reported in ***(2021) 1 SCC 745***, the Hon'ble Supreme Court has considered about availability of the contempt jurisdiction and it has been held in paragraphs 54, 57 and 58 as under:

"54. *It has been held, that a citizen is entitled to bring to the notice of the public at large the infirmities from which any institution including the judiciary suffers from. It has been further held, that the right to offer healthy and constructive criticism, which is fair in spirit must be left unimpaired in the interest of the institution itself. It has been held, that critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. It has also been held, that constructive public criticism even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public*

institutions.

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57. *The Constitution Bench of this Court in Supreme Court Bar Assn. v. Union of India [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] , held thus : (SCC pp. 429-30, para 42)*

"42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the Judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemnor and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."

58. *The observations of the Constitution Bench reiterate the legal position that the contempt jurisdiction, which is a special jurisdiction has to be exercised sparingly and with caution, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised, when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. This jurisdiction is not to be exercised to protect the dignity of an individual Judge, but to protect the administration of justice from being maligned. It is reiterated, that in the general interest of the community, it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It has been reiterated, that no such act can be permitted, which may have the tendency to shake the public confidence in the fairness and*

impartiality of the administration of justice.”

23. In view of the above discussion and considering the Contempt of Courts Act particularly the petitioner, who is appearing in person is not the party in the order dated 30.09.2024 passed in W.P. (Cr.) No. 803 of 2024, this petition is not maintainable.

24. In view of the above facts, reasons and analysis, this contempt petition is dismissed with cost of Rs.25,000/- (Rupees Twenty Five Thousand) to be deposited by the petitioner with the Jharkhand State Legal Services Authority (JHALSA) within four weeks.

25. At this stage, Mr. Abhishek Krishna Gupta, Advocate appearing in person submits that he will prefer S.L.P. against this order before the Hon'ble Supreme Court and in view of that, further time may kindly be allowed to him.

26. As such, depositing of cost is extended for further four weeks and he is directed to deposit the amount of cost before JHALSA within two months.

27. It is made clear that if the cost is not deposited within two months, Registry will place this matter before appropriate Bench as any order passed by the Court cannot be thrown in the dustbin.

28. Accordingly, the contempt petition is dismissed.

(Sanjay Kumar Dwivedi, J.)

Ajay/ **A.F.R.**