

2022 LiveLaw (SC) 575

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

UDAY UMESH LALIT; J., S. RAVINDRA BHAT, J., PAMIDIGHANTAM SRI NARASIMHA, J.

July 11, 2022

CONTEMPT PETITION (C) NOS.421-424 OF 2016 IN SPECIAL LEAVE PETITION (C) NOS.6828-6831 OF 2016

STATE BANK OF INDIA AND ORS. *versus* DR. VIJAY MALLYA

Contempt of Courts Act 1971 - Vijay Mallya sentenced to 4 months imprisonment and Rs 2000 fine for contempt of court for disobedience of court orders- It is, well settled that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. The approach may require the court to pass directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him- In a given case, to meet the ends of justice, the concept of purging of the contempt would call for complete disgorging of all the benefits secured as a result of actions which are found by the court to be contumacious. (Para 13)

Counsel for Parties: Mr. Jaideep Gupta, Sr. Adv.(AC) Mr. Kunal Chatterji, AOR Mr. Sanjay Kapur, AOR Ms. Megha Karnwal, Adv. Mr. Arjun Bhatia, Adv. Ms. Shubhra Kapur, Adv. Mr. Ankur Saigal, Adv. Mr. E. C. Agrawala, AOR M/S. Dua Associates, AOR Mr. B.K. Prasad, AOR Mr. Anand Sukumar, AOR Mr. Dheeraj Nair, AOR Mr. Vipin Kumar Jai, AOR

ORDER

Uday Umesh Lalit, J.

1. These Contempt Petitions have come up before us pursuant to the Judgment and Order dated 9.5.2017 passed by this Court in “I.A Nos.9-12 & 13-16 of 2016 in SLP (C) Nos.6828-6831 of 2016 with I.A. Nos.1-4 of 2016 in and with Contempt Petition (C) Nos.421-424 of 2016 in SLP (C) Nos.6828-6831 of 2016”.

2. After dealing with the facts which led to the filing of the aforesaid Interim Applications and Contempt Petitions, this Court found Respondent No.3 (Dr. Vijay Mallya) guilty of committing contempt of Court on two counts. Paragraphs 22 to 30 of said Judgment and Order dated 9.5.2017 were: -

“22. We now turn to the alleged violation of orders dated 03.09.2013 and 13.11.2013 passed by the High Court of Karnataka. It is not disputed that such orders were passed restraining the concerned respondents including Respondent No.3 and that the orders were passed in proceedings arising from O.A. No.766 of 2013 before DRT Bengaluru. The present proceedings before this court have also arisen from the very same O.A. No.766 of 2013. The orders of restraints passed by the High Court were therefore in the very same proceedings with which we are presently concerned. Said orders bound the concerned respondents including Respondent No.3 and restrained them from transferring, alienating, disposing or creating third party rights in respect of movable as well as immovable properties belonging to them till further orders in the proceedings. A question has been raised by Mr. Vaidyanathan learned senior advocate whether the orders would be restricted only so far as the properties which were in the hands of the concerned respondents as on the date when

those orders of restraint were passed. In other words, whether any properties which in future or subsequent to the Orders had come in the hands or control of the concerned respondent would be covered by such orders or not. On plain reading of the Orders, in our view, whether the properties were in the hands of the concerned respondents on the date when the orders of restraint were passed by the High Court or had come in their hands or under their control at a later point in time, regardless of such qualification all properties whether movable or immovable were governed by the orders of restraint. There is no ambiguity of any sort and the Orders of restraint are quite clear. Consequently, funds amounting to US\$ 40 million which came to be under the control of and in the hands of Respondent No.3 were completely covered and governed by said orders of restraint.

23. The memo dated 28.06.2016 filed by Respondent No.10 in said O.A. No.766 of 2013 annexed, "Extract confirming payment of US\$ (US Dollars) 40 Million to Defendant No.3 on 25.02.2016". It is thus beyond any doubt that the payment of US\$ 40Million was received by Respondent No.3 on 25.02.2016. These facts are admitted by Respondent No.3 in Paragraph 3 of his "further counter affidavit". The explanation that the funds now stand transferred in favour of the trusts over which Respondent No.3 has no control at all, in fact aggravates the extent of violation. It is clear that the funds which were in control of Respondent No.3 have now been sought to be put beyond the reach of processes of court, which is reflective of the intent.

24. The applications moved by the petitioners-banks on 02.03.2016 themselves had made clear reference to the fact that as disclosed by respondent Nos.10 and 11 to London Stock Exchange and Bombay Stock Exchange respectively Respondent No.10 would pay to Respondent No.3 a sum of US\$75 million and accordingly petitioners-banks had moved four interlocutory applications for orders against respondent Nos.10 and 11 for disbursing said amount of US\$ 75 million. The amount of US\$ 40 Million so received by Respondent No.3 was therefore subject matter of the present controversy. The least that was expected of Respondent No.3 was to disclose relevant facts pertaining to receipt and disbursement of US\$ 40 million. The violation on that count is thus not only against the directions issued by this court but also against express mandate of orders dated 03.09.2013 and 13.11.2013 passed in the proceedings in question.

25. Having thus found that the actions on the part of Respondent No.3 in disbursing the amount of US\$ 40 million was against the text and tenor of the orders passed by the High Court of Karnataka, the question then arises whether this Court can take cognizance of such violation or should it leave it to be decided by the High Court of Karnataka itself in a properly instituted legal proceeding.

26. In *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and others*¹, a question arose whether the power and jurisdiction of this Court under Article 129 of the Constitution is confined to "the contempt of this Court" alone. Submissions advanced in that behalf were noted in paragraph 14 of the judgment which sets out the submission of the learned Attorney General:

"...The Supreme Court as the Apex Court is the protector and guardian of justice throughout the land, therefore, it has a right and also a duty to protect the courts whose orders and judgments are amenable to correction, from commission of contempt against them."

The subsequent paragraphs of the judgment namely paragraph 26 onwards show that the contentions so advanced by the learned Attorney General were accepted by this Court. It is true that the discussion was in the context of the contempt of a subordinate court. However, the nature of power exercisable by this Court was considered in the backdrop that this Court has supreme appellate jurisdiction over all courts and tribunals in the country which is clear from the observations in paragraph 31 of the judgment. We must say that Mr. Vaidyanathan did not seriously contend to the contrary but his submission was that if the jurisdiction is so assumed and cognizance is taken by this Court, Respondent No.3 would lose one opportunity of having the matter assessed at the

¹ (1991) 4 SCC 406

level of the High Court. In our considered view, since we are dealing with the very same cause in which the orders of restraint were passed by the High Court and since it is coupled with the violation of orders of this Court as well, the matter can and ought to be dealt with by this Court.

27. The record shows that by order dated 11.01.2017 the violation of those orders for restraint passed by the High Court of Karnataka was taken note of by this Court and the Counsel appearing for respondent had sought time to file an appropriate reply. However, no such reply was filed. Respondent No.3 was thus put to clear notice about the violation of those orders of restraints passed by the High Court of Karnataka. As such, no prejudice has been caused or visited upon Respondent No.3.

28. We find that the allegations against Respondent No.3 of committing of contempt are on two counts, in that –

a) He is guilty of disobeying the Orders passed by this Court in not disclosing full particulars of the assets as was directed by this Court.

b) He is guilty of violating the express Orders of Restraint passed by the High Court of Karnataka in the same Cause from which the present proceedings have arisen.

Though the contempt on the second count is theoretically of the orders passed by the High Court of Karnataka since those orders pertain to the very same Cause and the actions on part of Respondent No.3 in not disclosing the account in question through which the transfers were affected also fall with respect to contempt on first count, we proceed to exercise our contempt jurisdiction even with regard to the second count. As stated above, Respondent No.3 was adequately put to notice and no prejudice has been caused as a result of such assumption of jurisdiction by this court.

29. Having considered the entirety of the matter, we find that Respondent No.3 is guilty of having committed contempt of court on both the counts. At this stage it must be stated that in terms of Rule 6 (1) of Rules to Regulate Proceeding for Contempt of Supreme Court 1975 , Respondent No.3 was obliged and duty bound to appear in person in response to the notice issued by this Court in Contempt Petition. Instead, he chose to file application seeking recall of the orders issuing notice. Having considered the matter, we see no reason to recall that order and dismiss I.A. Nos.1 to 4 of 2016 preferred by Respondent No.3 in Contempt Petition Civil Nos.421-424 of 2016. Respondent No.3 is therefore duty bound to appear in person in the present contempt proceedings.

30. Since Respondent No.3 has not filed any reply to the Contempt Petition nor did he appear in person, though we have found him guilty of having committed contempt of court, we deem it necessary to give him one more opportunity and also hear him on the proposed punishment. We therefore adjourn matter to 10.07.2017 for hearing Respondent No.3 in person on matters in issue including one regarding the proposed punishment to be awarded to him for contempt of court. The instant contempt petitions and connected cases shall now be listed at 2 o'clock on 10.07.2017. Respondent No.3 may keep his affidavit ready to be tendered on the same day by stating mitigating circumstances, if any and any other submissions he chooses to advance.

31. We direct the Ministry of Home Affairs, Government of India, New Delhi to secure and ensure presence of Respondent No.3 before this Court on 10.07.2017. A copy of this Judgment be sent to the Ministry of Home Affairs for compliance”.

3. The disbursement of US\$ 40 million which had entered the account held in Edmond De Rothschild (Suisse) S.A. was dealt with in detail and paragraph 3 of the “further counter affidavit” filed by Respondent No.3 was also quoted by this Court as follows: -

“**16.** Respondent No.3 thereafter filed “further counter affidavit” in aforementioned I.A. Nos.9-12 of 2016 on 23.11.2016. The affidavit enclosed letter dated 18.11.2016 issued by Edmond De Rothschild (Suisse) S.A. Paragraph 3 of the affidavit was to the following effect:

“On a mere perusal of the letter dated 18 th November, 2016 issued by Edmond De Rothschild (Suisse) S.A. (Annex. “R-2” hereto), it is evident that the US\$ 39,999,994 million paid by Diageo Plc was received on 25th February, 2016. On instructions of Respondent No.3, an aggregate sum of US\$ 39 ,999,993.99 was paid to the following parties on 26 th and 29th February, 2016 respectively :

NAME OF PARTY	AMOUNT
S. Three Gift Settlement (a Trust the sole beneficiary of which is Siddartha Mallya, son of Respondent No.3)	US\$13,000,000 (On 26.02.2016) & US\$ 333,331.33 (on 29.02.2016)
L. Three Gift Settlement (a Trust the sole beneficiary of which is Leena Mallya, daughter of Respondent No.3)	US\$13,000,000 (On 26.02.2016) & US\$ 333,331.33 (on 29.02.2016)
T. Three Gift Settlement (a Trust the sole beneficiary of which is 333,331.33 Tanya Mallya, daughter of Respondent No.3)	US\$13,000,000 (On 26.02.2016) & US\$ (on 29.02.2016)
TOTAL	US\$ 39,999,993.99

Each of the three children of Respondent No.3, who are the sole beneficiaries of the aforesaid Trusts, are majors and are citizens of the United States of America. Respondent No.3 is neither the Settlor nor the Trustee nor the beneficiary of any of the aforesaid named Trusts, and has no control over the Trusts or the manner in which the respective corpuses of each of the aforesaid Trusts is utilized. However, the respective corpuses as they stood on 31st March, 2016 have been included in the statements of assets of the three children handed over to this Hon’ble Court in sealed envelope on 26th April, 2016.” ”

4. As stated in paragraphs 29 and 30 quoted hereinabove, an opportunity was given to Respondent No.3 (hereafter referred to as the Contemnor) to file his response and advance submissions on the proposed punishment. The matter was accordingly adjourned to 10.7.2017.

5. The Contemnor however sought review of the Judgment and Order dated 9.5.2017, which application remained pending for some time and was rejected by this Court vide Order dated 03.08.2020. By said order the Contemnor was directed to appear before this Court; and the Ministry of Home Affairs, Government of India, New Delhi, was directed to facilitate and ensure the presence of the Contemnor on the date of such appearance.

6. The subsequent developments in the matter stand captured in the Order dated 30.11.2021 passed by this Court, which for facility, is extracted here:-

“By judgment dated 09.05.2017 passed by this Court in I.A. Nos.9-12 and 13-16 of 2016 in SLP (Civil) Nos.6828-6831 of 2016 and I.A. Nos.1-4 of 2016 in Contempt Petition (C) Nos.421-424 of 2016 in SLP (Civil) Nos.6828-6831 of 2016, respondent no.3 Dr. Vijay Mallya was found to be guilty of having committed contempt of court. The judgment directed that the matter be listed on 10.07.2017 to hear respondent no.3 on matters in issue including one regarding the proposed punishment to be awarded to him for contempt of court. However, because of proceedings, which at the relevant time, were going on in the Courts of United Kingdom, the presence of respondent no.3 could not be secured.

In its subsequent order dated 02.11.2020, this Court noted that certain proceedings were going on in United Kingdom, though the details of such proceedings were not forthcoming. This Court rejected the submission made by Mr. E.C. Agrawala, learned Advocate seeking discharge and it was directed that the learned Advocate would continue to appear for respondent no.3. Mr. Tushar Mehta, learned Solicitor General was then granted time to place Status Report on record.

The matter was thereafter adjourned on few occasions and because of COVID-19 pandemic situation, the matter could not be listed and taken up.

Today when the matter was called out, Mr. Tushar Mehta, learned Solicitor General invited our attention to the Office Memorandum dated 30.11.2021 issued under signature of Deputy Secretary (Extradition), CPV Division, Ministry of External Affairs, Government of India. Paragraphs 2 to 5 of the Memorandum read as under:

“2. It may be recalled that an extradition request in respect of VM was forwarded to UK side on 9 February 2017 in CBI Case under Sections 120B read with 420 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. On 10 December 2018, the Senior District Judge Westminster Magistrate’s Court, London recommended VM’s extradition to India. VM appealed the Order of his extradition before the High Court of London. The appeal was admitted on the sole ground of sufficiency of prima facie case. The High Court of London dismissed the appeal on 20 April 2020. VM applied leave to appeal to the Supreme Court in the High Court. On 14 May 2020 the High Court of London rejected his application for permission to appeal to Supreme Court. VM has thus exhausted all avenues of appeal in the UK.

3. Following the refusal of leave to appeal, VM’s surrender to India should, in principle, have been completed within 28 days. However, the UK Home Office intimated that there is a further legal issue which needs to be resolved before VM’s extradition may take place. The UK side further said that this issue is outside and apart from the extradition process, but it has the effect that under the United Kingdom law, extradition cannot take place until it is resolved. The High Commission was further informed that the issue is confidential and so it cannot be disclosed.

4. In compliance with the Order of the Hon’ble Supreme Court dated 31.08.2020, the Government of India again took up the pending extradition case of VM with the Government of UK so as to seek his early extradition and facilitate his presence before the Hon’ble Supreme Court on 5 October 2020.

5. The UK side has informed that extradition of VM cannot take place until a separate legal issue, which is judicial and confidential in nature is resolved. The UK side emphasized that neither they can provide any more details nor intervene in the process. They have also indicated that through the designated channel, the UK Home Office has received a request to serve summons on VM for his hearing before the Hon’ble Supreme Court. The British Home Office has forwarded the Hon’ble Supreme Court’s Order through the Hertfordshire Police on 17 September 2020 for serving it to VM.”

As indicated in paragraph 2 of the Memorandum, the proceedings for extradition have attained finality and respondent no.3 has exhausted all avenues of appeal in the United Kingdom. However, paragraphs 4 and 5 deal with some proceedings which are stated to be confidential and with regard to which no details are forthcoming. It appears that these are the same proceedings which were referred to in the order dated 02.11.2020. Having considered all the circumstances on record, it is directed:

a. The matter in terms of the directions issued by this Court in its order dated 09.05.2017 shall now be listed on 18.01.2022.

b. Respondent No.3 is at liberty to advance such submissions, as are deemed appropriate, pertaining to the issues set out in the order dated 09.05.2017.

c. If, for any reason, respondent no.3 is not present to advance such submissions, learned counsel on his behalf can advance such submissions as are open to respondent no.3, in law.

d. We request Mr. Jaideep Gupta, learned Senior Advocate of this Court to assist the Court as Amicus Curiae in the matter.

Mr. Gupta will be at liberty to avail services of any Advocate-on-Record of his own choice in the instant matter.

The Registry is directed to supply papers of this matter to Mr. Gupta within a week.

e. The matter shall be dealt with finally on 18.01.2022.”

7. The matter thereafter came up before this Court on 10.03.2022 on which date the following Order was passed: -

“1. Pursuant to orders passed from time to time and more particularly orders dated 30.11.2021 and 10.02.2022, the matter is posted today for hearing.

2. In terms of Directions (b) and (c) issued by this Court vide order dated 30.11.2021, the contemnor was given specific liberty to advance submissions pertaining to the issues set-out in the judgment dated 09.05.2017. Additionally, he was given further liberty to advance such submissions through his learned Counsel.

3. Mr. Ankur Saigal, learned counsel appearing on behalf of the contemnor submits that all the orders including the orders dated 30.11.2021 and 10.02.2022 were brought to the notice of the contemnor and that there was exchange of communications between the learned counsel and the contemnor. A copy of the communication dated 17.01.2022 has been placed for our perusal which communication inter alia states inability on part of the Solicitors of the contemnor to provide any information about the nature of proceedings and the relief sought in the pending proceedings in the United Kingdom.

4. We then invited Mr. Ankur Saigal, learned counsel to advance submissions on merits of the matter in keeping with the directions issued in last two orders. Mr. Saigal expressed his inability to advance the submissions.

5. We have heard Mr. Jaideep Gupta, learned Senior Advocate, who has assisted this Court as Amicus Curiae very ably. He has invited our attention to various aspects of the record including the judgment dated 09.05.2017 in State Bank of India & Others v. Kingfisher Airlines Ltd. & Others, (2017) 6 SCC 654, provisions of the Contempt of Courts Act and the Supreme Court Rules, 2013. He has also relied upon various decisions of this Court including the decision in Supreme Court Bar Association v. Union of India & Another, (1998) 4 SCC 409.

6. Mr. Gupta may file his written submissions on or before 12.03.2022.

7. Even though Mr. Ankur Saigal, learned counsel has expressed his inability to advance submissions though he was invited to do so, we still grant one more opportunity to file his submissions on or before 15.03.2022, with an advance copy to the learned *Amicus Curiae*.”

8. The oral arguments advanced by Mr. Jaideep Gupta, learned Amicus Curiae were summarized in his Written Submissions as under: -

“A. The sum of the money which was received by Edmond deRothschild (Suisse) M.A. was, on the instruction of the Respondent No.3/ contemnor, paid to three trusts wherein the sole beneficiaries were the son and two daughters of the Respondent No.3/ Contemnor. The aforementioned amount had been transferred in violation of order of court by taking advantage of the very act of contempt which has been held against the Contemnor/ Respondent No.3. It is, therefore, submitted that this Hon'ble Court may give appropriate direction for reversal of the aforesaid transactions by declaring the said transactions to be void.

B. The present contempt proceedings arise out of recovery proceedings by Banks. It is stated by the Counsel on behalf of State Bank of India that decrees have been passed against the Respondent No.3 in the said recovery proceedings and Recovery Officer has been appointed for enforcement and execution of the said decree. It thought fit, this Hon'ble Court may give appropriate direction to the said Recovery Officer to trace the said funds into the hands of whoever they may have been transferred to and use the same in execution of the decree.

C. In the event the said funds are found inadequate to purge the said contempt, appropriate orders may be passed for sequestration of the assets of the respondent no.3/ contemnor both in India and outside. Assistance of the Banks and/ or the Union of India may be taken to find out all assets that may be available to the respondent No.3/ Contemnor. Alternatively, a forensic auditor may be appointed to undertake such an exercise.”

Reliance was placed by the learned *Amicus Curiae* on the decisions of this Court in *Supreme Court Bar Association v. Union of India & Anr.*², *Noorali Babul Thanewala v. K.M.M. Shetty & Ors.*³, *Rama Narang v. Ramesh Narang*⁴, *Pravin C. Shah v. K.A. Mohd. Ali & Anr.*⁵ to submit that in contempt jurisdiction the Court can direct the contemnor to purge the contempt by reversing the very transaction that was found to be contumacious. On the remedy of sequestration of assets, reliance was placed on *Rose v. Laskington*⁶, *Mir v. Mir*⁷ and *Richardson v. Richardson*⁸.

9. In spite of repeated opportunities afforded to the Contemnor, no submissions were advanced on his behalf either on purging of contempt or on the quantum of punishment.

10. The actions on part of the Contemnor having been found to be contumacious and established in the Judgment and Order dated 09.05.2017, we are presently concerned with the issues as to what orders be passed regarding punishment and purging of contempt. The approach in such cases was succinctly stated by this Court in *Pravin C. Shah v. K.A. Mohd. Ali & Anr.*⁵ as under:

“23. Now we have to consider the crucial question — how can a contemnor purge himself of the contempt? According to the Disciplinary Committee of the Bar Council of India, purging oneself of contempt can be done by apologising to the court. The said opinion of the Bar Council of India can be seen from the following portion of the impugned order: “Purging oneself of contempt can be only by regretting or apologising in the case of a completed action of criminal contempt. If it is a case of civil contempt, by subsequent compliance with the orders or directions the contempt can be purged of. There is no procedural provision in law to get purged of contempt by an order of an appropriate court.”

24. Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word “purge”, which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters (vide Words and

² (1998) 4 SCC 409.

³ (1990) 1 SCC 259.

⁴ (2009) 16 SCC 126.

⁵ (2001) 8 SCC 650.

⁶ (1989) 3 ALLER 306.

⁷ (1992) 1 ALLER 765.

⁸ (1989) 3 ALLER 779.

Phrases, Permanent Edn., Vol. 35-A, p. 307). In Black's Law Dictionary the word "purge" is given the following meaning: "To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt." It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

25. We are told that a learned Single Judge of the Allahabad High Court has expressed a view that purging process would be completed when the contemnor undergoes the penalty [vide *Madan Gopal Gupta (Dr) v. Agra University* [AIR 1974 All 39]]. This is what the learned Single Judge said about it: (AIR p. 43, para 13)

"In my opinion a party in contempt purged its contempt by obeying the orders of the court or by undergoing the penalty imposed by the court."

26. Obeying the orders of the court would be a mode by which one can make the purging process in a substantial manner when it is a civil contempt. Even for such a civil contempt the purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong. If that is the position in regard to civil contempt the position regarding criminal contempt must be stronger. Section 2 of the Contempt of Courts Act categorises contempt of court into two categories. The first category is "civil contempt" which is the wilful disobedience of the order of the court including breach of an undertaking given to the court. But "criminal contempt" includes doing any act whatsoever, which tends to scandalise or lowers the authority of any court, or tends to interfere with the due course of a judicial proceeding or interferes with, or obstructs the administration of justice in any other manner.

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforesaid decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt."

11. Similarly, following observations were made and directions were issued by this Court in *Noorali Babul Thanewala v. K.M.M. Shetty & Ors.*³:

"**11.**It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in a civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the contempt or a sentence of imprisonment or fine or all of them. On the facts and circumstances of this case in the light of our finding that there was a breach of the undertaking we think that mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to purge the contempt by directing respondent 1-contemnor to deliver vacant possession immediately and issuing necessary further and consequential directions for enforcing the same.

12. In the foregoing circumstances, we find respondent 1 guilty of committing contempt by wilful disobedience of the undertaking given by him in this Court and accordingly we convict him and sentence him to pay a fine of Rs 500 within the period of four weeks, failing which he shall suffer simple imprisonment for one month, and also direct him to deliver vacant possession of the premises forthwith to the petitioner to the extent possible by him. We further direct the District Magistrate, Thane, to evict all those who are in physical possession of the property including respondent 2 and his men and if necessary, with police help and give vacant possession of the premises to the petitioner forthwith."

12. The importance of passing appropriate directions, apart from imposing punishment upon the contemnor, was stressed by the Constitution Bench of this Court in *Supreme Court Bar Association v. Union of India & Anr.*² as follows:

“**33.** Thus, the recognised and accepted punishments for civil or criminal contempt of court in English law, which have been followed and accepted by the courts in this country and incorporated in the Indian law insofar as, civil contempt, is concerned are:

- (i) sequestration of assets;
- (ii) fine;
- (iii) committal to prison.

34. The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord-tenant dispute. Apart from punishing the contemner, the court to maintain the majesty of law may direct the police force to be utilised for recovery of possession and burden the contemner with costs, exemplary or otherwise.”

13. It is, thus, well settled that apart from punishing the contemnor for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. The approach may require the court to pass directions either for reversal of the transactions in question by declaring said transactions to be void or passing appropriate directions to the concerned authorities to see that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him. It is precisely for these reasons that the direction to have vacant possession delivered to the rightful claimant was passed by this Court in *Noorali Babul Thanewala v. K.M.M. Shetty & Ors.*³ Mere passing of an order of punishment as stated by this Court in *Pravin C. Shah v. K.A. Mohd. Ali & Anr.*⁵ would not be enough or sufficient. In a given case, to meet the ends of justice, the concept of purging of the contempt would call for complete disgorging of all the benefits secured as a result of actions which are found by the court to be contumacious.

14. In its Judgment and Order dated 09.05.2017, this Court had found that the action on part of the Contemnor in disbursing the amount of US\$ 40 million was against the text and tenor of orders passed by the High Court of Karnataka and that the Contemnor was guilty of contempt.

15. In the circumstances, in order to maintain the majesty of law, we must impose adequate punishment upon the Contemnor and must also pass necessary directions so that the advantages secured by the Contemnor or anyone claiming under him are set at naught and the amounts in question are available in execution of the decrees passed in the concerned Recovery Proceedings.

16. Considering the facts and circumstances on record and the facts that the Contemnor never showed any remorse nor tendered any apology for his conduct, we impose sentence of four months and fine in the sum of Rs.2,000/- (Rupees Two Thousand Only) upon the Contemnor. The fine shall be deposited in the Registry of this Court within four weeks and upon such deposit, the amount shall be made over to the Supreme Court Legal Services Committee. In case the amount of fine is not deposited within the time stipulated, the Contemnor shall undergo further sentence of two months.

We direct the Ministry of Home Affairs, Government of India, New Delhi to secure the presence of the Contemnor to undergo the imprisonment imposed upon him. Needless to say, Government of India including the Ministry of External Affairs and all other agencies or instrumentalities shall carry out the directions issued by this Court with due diligence and utmost expediency. A Compliance Report shall thereafter be filed in the Registry of this Court.

17. We also direct:

A. The transactions referred to in the Judgment and Order dated 09.05.2017 in terms of which the amount of US\$ 40 million was disbursed to the beneficiaries detailed in paragraph 16 of the said judgment and order is held to be void and inoperative;

B. The Contemnor and the beneficiaries under said transactions referred to in the said Paragraph 16 shall be bound to deposit the amount received by such beneficiaries along with interest at the rate of 8 per cent per annum with the concerned Recovery Officer within four weeks.

C. In case the amounts are not so deposited, the concerned Recovery Officer shall be entitled to take appropriate proceedings for recovery of said amounts; and Government of India and all the concerned agencies shall extend assistance and complete cooperation. It shall be open to take such appropriate steps including the appointment of Forensic Auditor(s).

18. In the end, we must express our sincere gratitude and appreciation for the efforts put in by Mr. Jaideep Gupta, learned Senior Advocate who assisted this Court very ably as *Amicus Curiae*.

19. These contempt petitions, thus, stand disposed of.