

RAJESHWAR SINGH

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v.

SUBRATA ROY SAHARA & ORS.

Contempt Petition (Civil) No. 224 of 2011

IN

Civil Appeal No.10660 of 2010

B

DECEMBER 9, 2013

[G.S. SINGHVI AND K.S. RADHAKRISHNAN, JJ.]

Investigation – Court monitored criminal investigation – Interference in – Prevention – Responsibility and duty cast on the court – Held: Is to see that investigation is carried out in the right direction and the Officers entrusted with the task are not intimidated or pressurised by any person, however high he may be – On facts, the allegations raised by the petitioner in the contempt petition were of very serious nature – The petitioner invoked Arts. 129 and 142 of the Constitution to apprise the Supreme Court of the difficulties he faced while carrying on court monitored investigation – Powers of the Supreme Court in contempt matters are not confined merely to the provisions of the Contempt of Courts Act and the Rules framed thereunder – Constitutional powers are conferred on the Supreme Court u/Art.129 to examine, whether, there has been any attempt by anybody to interfere with an investigation monitored by the Supreme Court – Art. 142 also confers powers on the Supreme Court to pass such orders as necessary for doing complete justice in any cause or matter pending before it – Any interference, by anybody, to scuttle a court monitored investigation would amount to interfering with the administration of justice – Contempt petition filed in the case at hand perfectly maintainable – Notice issued to respondents to show cause why proceedings be not initiated against them for interfering with the court monitored criminal investigation – Constitution of India, 1950 – Arts.129, 142 –

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A *Contempt of Courts Act, 1971 – s.2(b) and 2(c)(iii) and 12 – Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 – r.12.*

B Civil Appeal No.10660 of 2010, in which the present contempt petition has been preferred, was filed under Article 136 of the Constitution of India praying for a court monitored investigation by the Central Bureau of Investigation (CBI), in what was described as 2G Spectrum Scam and also for a direction to investigate the role played by A. Raja, the then Union Minister for DoT, senior officers of DoT, middlemen, businessmen and others. The Supreme Court after taking into consideration of the report of the Central Vigilance Commission (CVC) as well as the findings recorded by the CAG agreed for a court monitored investigation.

D Petitioner - the Assistant Director of Enforcement Directorate was invested with the responsibility and duty of investigating the 2G Spectrum case. He submitted that he was being personally attacked by the respondents through various means so that he does not make further headway in the investigation.

F The question arising for consideration before this Court was whether there was any attempt on the part of the respondents to interfere and obstruct the investigation conducted by the petitioner, which was being supervised and monitored by the Supreme Court.

G Upholding the maintainability of the contempt petition, the Court

H HELD: 1. When a court monitors a criminal investigation it is the responsibility and duty of the court to see that the investigation is being carried out in the right direction and the Officers, who are entrusted with the task be not intimidated or pressured by any person,

however high he may be. Considerable responsibility and duty is cast on the court when it monitors a criminal investigation. People have trust and confidence when court monitors a criminal investigation and the court has to live up to that trust and confidence and any interference from any quarters to scuttle that investigation, has to be sternly dealt with. [Para 6] [1059-C-D]

Aligarh Municipal Board and Ors. vs. Ekka Tonga Mazdoor Union and Ors. (1970) 3 SCC 98; Bharat Steel Tubes Limited vs. IFCI Limited (2010) 14 SCC 77; J.R. Parashar, Advocate and Ors. vs. Prashant Bhushan, Advocate and others (2001) 6 SCC 735: 2001 (2) Suppl. SCR 239; Sahdeo alias Sahdeo Singh vs. State of Uttar Pradesh and others (2010) 3 SCC 705: 2010 (2) SCR 1086 and Amicus Curiae vs. Prashant Bhushan and another (2010) 7 SCC 592: 2010 (8) SCR 723 – cited.

2.If the allegations raised against the contemnors are accepted, then one has to conclude *prima facie* that there has been an attempt by the respondents to interfere with an investigation undertaken by the petitioner which is being monitored by this Court. The allegations raised by the petitioner in the contempt petition are of very serious nature and, if proved, would amount to interference with the administration of justice, especially in a court monitored investigation. In a court monitored investigation, if the Officer who is entrusted with the task of carrying on that investigation is experiencing any threat or pressure from any quarters, he is duty bound to report the same to the court monitoring the investigation. The Officer should have the freedom to carry on his duty entrusted, without any fear or pressure from any quarters. The petitioner has invoked Article 129 and Article 142 to apprise this Court of the difficulties he faces while carrying on a court monitored investigation. [Paras 17, 18] [1071-B, D-F]

A 3.1. The Courts, if they are to serve the purpose of
 administering the justice, must have the power to secure
 obedience to the orders passed by it to prevent
 interference with its proceedings. Law is well settled that
 the powers of the Supreme Court in contempt matters are
 B not confined merely to the provisions of the Contempt of
 Courts Act and the Rules framed thereunder. Law of
 Contempt, as is often said, is only one of the many ways
 in which the due process of law is prevented from being
 C perverted, hindered or thwarted to further the cause of
 justice. This Court has plenary power to punish any
 person for contempt of court and for that purpose it may
 require any person to be present in Court in the manner
 it considers appropriate to the facts of the case. [Para 20]
 [1072-B-D]

D 3.2. Constitutional powers are conferred on this Court
 under Article 129 of the Constitution of India to examine,
 whether, there has been any attempt by anybody to
 interfere with an investigation, which is being monitored
 by this Court. The jurisdiction of the Supreme Court
 E under Article 129 of the Constitution is independent of
 the Contempt of Courts Act and the powers conferred
 under Article 129 of the Constitution cannot be denuded,
 restricted or limited by the Contempt of Courts Act, 1971.
 [Para 22] [1073-H; 1074-A-B]

F 3.3. Article 142 of the Constitution also confers
 powers on this Court to pass such orders as is necessary
 for doing complete justice in any cause or matter pending
 before it. Article 142 is conceived to meet situations which
 cannot be effectively and appropriately tackled by
 G existing provisions of law. [Paras 23, 24] [1074-C, G]

H 3.4. The petitioner has *inter alia* invoked the
 jurisdiction and power conferred on this Court under the
 above-mentioned constitutional provisions and hence
 the consent of the Attorney General is not necessary.

Petitioner is only expected to bring to notice of this Court the problems he confronts with while carrying on a court monitored investigation and it is the duty and obligation of this Court to see, rather than the petitioner, that nobody puts any pressure or threat on an Officer entrusted with the duty to investigate a court monitored criminal investigation. Any interference, by anybody, to scuttle a court monitored investigation would amount to interfering with the administration of justice. Courts, if they are to serve the cause of justice, must have the power to secure obedience to its orders to prevent interference with the proceedings and to protect the reputation of the legal system, its components and its personnel, who on its behest carry on a court monitored investigation. The court is duty bound to protect the dignity and authority of this Court, at any cost, or else, the entire administration of justice will crumble and law and order would be a casualty. [Para 25] [1075-B-E]

Delhi Judicial Service Association, Tis Hazari Court, Delhi vs. State of Gujarat and others (1991) 4 SCC 406: 1991 (3) SCR 936 and *I. Manilal Singh vs. Dr. H. Borobabu Singh and another* (1994) Suppl. (1) SCC 718: 1993 (1) SCR 769 – relied on.

Delhi Development Authority vs. Skipper Construction Co.(P) Ltd. and another (1996) 4 SCC 622: 1996 (2) Suppl. SCR 295 – referred to.

4. The petition filed under the above mentioned provisions is perfectly maintainable and this Court has got a constitutional obligation to examine the truth of the allegations as to whether the respondents are attempting to derail the investigation which is being monitored by this Court. Therefore, notice is issued to the respondents to show cause why proceedings be not initiated against them for interfering with the court monitored criminal investigation. [Para 26] [1075-F-G]

		Case Law Reference:	
A		(1970) 3 SCC 98	cited Para 2
		(2010) 14 SCC 77	cited Para 2
B		2001 (2) Suppl. SCR 239	cited Para 3
		2010 (2) SCR 1086	cited Para 3
		2010 (8) SCR 723	cited Para 4
C		1991 (3) SCR 936	relied on Para 20
		1993 (1) SCR 769	relied on Para 21
		1996 (2) Suppl. SCR 295	referred to Para 24

D CIVIL ORIGINAL JURISDICTION : Contempt Petition (Civil) No. 224 of 2011.

IN

Civil Appeal No. 10660 of 2010.

E B. Krishna Prasad for the Petitioner.

Abhinav Mukerji, Gaurav Kejriwali, Dharmendra Kumar Sinha, Prashant Bhushan, Manoj K. Mishra, Anuvrat Sharma, Kaushal Yadav for the Respondents.

F The Judgment of the Court was delivered by

G **K.S. RADHAKRISHNAN, J.** 1. We may, at the outset, point out that, at this stage, we are only examining the maintainability of this contempt petition, on which arguments have been advanced by the learned senior counsels on either side. This contempt petition has been preferred under Article 129, 142 of the Constitution of India, read with Section 12 of the Contempt of Courts Act, 1971 (for short 'the Act') and Rule 12 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975.

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2. Shri Ram Jethmalani, learned senior counsel appearing for the first respondent, submitted that this contempt petition is not maintainable since it has been filed without the consent of the Attorney General of India or other officer mentioned in Section 15 of the Act. Learned senior counsel submitted that neither the order of this Court dated 06.05.2011 nor the notice dated 23.05.2011 gives any indication of the nature of the criminal contempt to be defended by the respondent. Learned senior counsel further submitted that even the notice dated 23.05.2011 does not comply with Rule 6 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975. Learned senior counsel also submitted that it does not mention whether it is a civil contempt or a criminal contempt. Learned senior counsel also submitted that there is nothing to show that the first respondent had any knowledge of this Court's order dated 16.03.2011. Consequently, it cannot be said that there was any willful disobedience of that order. Further, such an allegation is not even raised in the notice. Reliance was placed on the Judgment of this Court in *Aligarh Municipal Board and others v. Ekka Tonga Mazdoor Union and others* (1970) 3 SCC 98. Learned senior counsel submitted that the order, on which disobedience is alleged to have been committed, is not within the knowledge of the respondent and he is not expected or bound to know the same from the media or newspapers. Learned senior counsel also pointed out that the burden to prove the knowledge is not on the alleged contemnors, as held by this Court in *Bharat Steel Tubes Limited v. IFCI Limited* (2010) 14 SCC 77.

3. Shri Rajiv Dhawan, learned senior counsel appearing for the second respondent, submitted that consent of the Attorney General is a pre-requisite to initiate contempt of court proceedings, which is not an empty formality. Learned senior counsel submitted that second respondent is not a party to any of the orders passed by this Court and he has not violated any order passed by this court. Further, it was also pointed out that

A even the notice is silent in what manner the second respondent has violated the order passed by this Court. Learned senior counsel submitted that even the powers conferred on this Court to issue *suo motu* notice is also limited and could be exercised only in exceptional circumstances. Learned senior counsel placed reliance on the Judgments of this Court in *J.R. Parashar, Advocate and others v. Prashant Bhushan, Advocate and others* (2001) 6 SCC 735 and *Sahdeo alias Sahdeo Singh v. State of Uttar Pradesh and others* (2010) 3 SCC 705.

C 4. Shri Vikas Singh, learned senior counsel appearing for the third respondent, also refuted all the allegations raised against the third respondent and submitted that he has nothing to do with the service tenure in the Enforcement Directorate or the cases relating to 2G Scam. Learned senior counsel also submitted that the contempt petition itself is not maintainable.

D 5. Shir K.K. Venugopal, learned senior counsel appearing for the C.B.I., submitted that the contempt alleged is not merely a criminal contempt but also a civil contempt. Learned senior counsel referred to Section 2(b) of the Act and submitted that there has been willful disobedience of the directions of this Court by the respondents jointly and severally. Learned senior counsel also referred to Section 2(c)(iii) of the Act and submitted that the attempt of the respondents is to interfere and obstruct the investigation conducted by the petitioner, which is being supervised and monitored by this Court. Learned senior counsel further submitted that this Court under Article 129 read with Article 142 of the Constitution has the power to see that the investigation which is being supervised/monitored by this Court is not interfered with by any person or from any quarters. Learned senior counsel also submitted that no sanction from the Attorney General is necessary when this Court *suo motu* initiates the contempt proceedings in exercise of the powers conferred under Article 129 read with Article 142 of the Constitution, irrespective of the provisions of the Act and the

Rules to Regulate proceedings for Contempt of the Supreme Court, 1975. Learned senior counsel placed considerable reliance on the Judgment of this Court in *Amicus Curiae v. Prashant Bhushan and another* (2010) 7 SCC 592.

6. We are, in this case, concerned with the question as to whether there has been any attempt on the part of the respondents to interfere with an investigation which is being monitored by this Court. When a court monitors a criminal investigation it is the responsibility and duty of the court to see that the investigation is being carried out in the right direction and the Officers, who are entrusted with the task be not intimidated or pressured by any person, however high he may be. Considerable responsibility and duty is cast on the court when it monitors a criminal investigation. People have trust and confidence when court monitors a criminal investigation and the court has to live up to that trust and confidence and any interference from any quarters to scuttle that investigation, has to be sternly dealt with.

7. Civil Appeal No.10660 of 2010, in which the present contempt petition has been preferred, was filed under Article 136 of the Constitution of India praying for a court monitored investigation by the Central Bureau of Investigation (CBI), what was described as 2G Spectrum Scam and also for a direction to investigate the role played by A. Raja, the then Union Minister for DoT, senior officers of DoT, middlemen, businessmen and others. Before this Court, it was pointed out that the CBI had lodged a first information report on 21.10.2009 alleging that during the years 2000-2008 certain officials of the DoT entered into a criminal conspiracy with certain private companies and misused their official position in the grant of Unified Access Licenses causing wrongful loss to the nation, which was estimated to be more than Rs.22,000 crores. CBI, following that, registered a case No.RC-DAI-2009-A-0045(2G Spectrum Case) on 21.10.2009 under Section 120B IPC, 13(1)(d) of the

A Prevention of Corruption Act, 1988 against a former Cabinet Minister and others.

B 8. The Central Vigilance Commission (CVC) also conducted an inquiry under Section 8(d) of the Central
Vigilance Commission Act, 2003 and noticed grave
irregularities in the grant of licences. The CVC on 12.10.2009
had forwarded the inquiry report to the Director, CBI to
investigate into the matter to establish the criminal conspiracy
in the allocation of 2G Spectrum under UASL policy of DoT and
to bring to book all wrongdoers. This Court after taking into
consideration of the report of the CVC as well as the findings
recorded by the CAG agreed for a court monitored investigation
and passed the following order:

D “We are, prima facie, satisfied that the allegations
contained in the writ petition and the affidavits filed before
this Court, which are supported not only by the documents
produced by them, but also the report of the Central
Vigilance Commission, which was forwarded to the
Director, CBI on 12.10.2009 and the findings recorded by
the CAG in the Performance Audit Report, need a
thorough and impartial investigation. However, at this
stage, we do not consider it necessary to appoint a
Special Team to investigate what the appellants have
described as 2G Spectrum Scam because the
Government of India has, keeping in view the law laid down
in Vineet Narain’s case, agreed for a Court monitored
investigation.”

G 9. This Court, with a view to ensure a comprehensive and
co-ordinated investigation by the CBI and the Enforcement
Directorate, vide its order dated 16.12.2010 gave the following
directions:

H (i) The CBI shall conduct thorough investigation into
various issues high-lighted in the report of the

Central Vigilance Commission, which was forwarded to the director, CBI vide letter dated 12.10.2009 and the report of the CAG, who have prima facie found serious irregularities in the grant of licences to 122 applicants, majority of whom are said to be ineligible, the blatant violation of the terms and conditions of licences and huge loss to the public exchequer running into several thousand crores. The CBI should also probe how licences were granted to large number of ineligible applicants and who was responsible for the same and why the TRAI and the DoT did not take action against those licensees who sold their stake/equities for many thousand crores and also against those who failed to fulfill rollout obligations and comply with other conditions of licence.

(ii) The CBI shall conduct the investigation without being influenced by any functionary, agency or instrumentality of the State and irrespective of the position, rank or status of the person to be investigated/probed.

(iii) The CBI shall, if it has already not registered first information report in the context of the alleged irregularities committed in the grant of licences from 2001 to 2006-2007, now register a case and conduct thorough investigation with particular emphasis on the loss caused to the public exchequer and corresponding gain to the licensees/service providers and also on the issue of allowing use of dual/alternate technology by some service providers even before the decision was made public vide press release dated 19.10.2007.

(iv) The CBI shall also make investigation into the

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A allegation of grant of huge loans by the public sector
and other banks to some of the companies which
have succeeded in obtaining licences in 2008 and
find out whether the officers of the DoT were
signatories to the loan agreement executed by the
B private companies and if so, why and with whose
permission they did so.

(v) The Directorate of Enforcement/ concerned
agencies of the Income Tax Department shall
continue their investigation without any hindrance or
C interference by any one.

(vi) Both the agencies, i.e. the CBI and the Directorate
of Enforcement shall share information with each
other and ensure that the investigation is not
D hampered in any manner whatsoever.

(vii) The Director General, Income Tax (Investigation)
shall, after completion of analysis of the transcripts
of the recording made pursuant to the approval
accorded by the Home Secretary, Government of
E India, hand over the same to CBI to facilitate further
investigation into the FIR already registered or
which may be registered hereinafter."

F 10. CBI and the Enforcement Directorate then used to
apprise this Court of the various stages of the investigation and
seek directions and this Court, on 10.02.2011, passed an order
stating that since this Court is monitoring the investigation of
2G Spectrum Scam no court shall pass any order which may,
G in any manner, impede the investigation being carried out by
the CBI and the Directorate of Enforcement. Learned Attorney
General also informed this Court that he had received a
communication on 16.03.2011 from the Delhi High Court of
nominating Shri O.P. Saini, an officer of the Delhi Higher
H Judicial Service, as the Special Judge to take up the trial of

cases relating to what has been described as 2G Scam. The Court was also informed that two separate notifications would be issued by the Central Government in terms of Section 3(1) the PC Act, 1988 and Section 43(1) of the Prevention of Money Laundering Act, 2002 for establishment of the Special Court to exclusively try the offences relating to 2G Scam and other related offences. Following that, two notifications were published in the Gazette of India Extra Ordinary, on the 28th March, 2011.

11. Noticing the above submissions a detailed order was passed by this Court on 16.03.2011, which *inter alia* reads as follows:

“While adjourning the case, we make it clear that no one including the newspapers shall interfere with the functioning of the C.B.I. team and the officers of the Enforcement Directorate who are investigating what has been described as 2G Scam and the Court will take serious cognizance of any endeavour made by any person or group of persons in this regard.”

12. Petitioner - the Assistant Director of Enforcement Directorate who is invested with the responsibility and duty of investigating the 2G Spectrum case, submits that, during the course of investigation, he could come across various materials, having considerable bearing on the investigation relating to 2G Scam. The petitioner, in this contempt petition, has stated as follows:

“Facts came to the notice of the Directorate of Enforcement that one M/s Sahara India Investment Corporation, a Sahara group company, now known as M/s Sahara Prime City Ltd., during the course of investigation it is revealed that the said company had invested Rs.14.00 Crores on 28.09.2007 on which date M/s S-Tel Ltd., had applied for 16 more licences. This investment has been purportedly made for purchase of

A shares of M/s S-Tel. Surprisingly, this investment has been
 sold back on 15.01.2009 for an amount of Rs.16.80
 Crores. In view of these financial details being revealed
 during the course of investigation and considering the fact
 that this entire 2G Spectrum case, there has been several
 B ways of transactions, which was deemed appropriate to
 investigate this aspect of the matter also and accordingly
 on 02.02.2011, a summon had been issued to the
 Managing Director of the said Company requiring his
 personal appearance on 17.02.2011. The Managing
 C Director is Mr. Subrata Roy Sahara, who chose not to
 appear, but, to apply for an adjournment for four weeks.
 Taking into consideration said request a fresh summon
 was issued on 30.03.2011 requiring his appearance on
 08.04.2011. He is respondent No.1, above named, and he
 chose not to appear even on 08.04.2011 and has, thus,
 D shown non cooperative attitude.”

13. The petitioner, with reference to Sahara India
 Commercial Corporation Limited, has stated as follows:

E “That there is yet another Sahara Group company by the
 name Sahara India Commercial Corporation Limited
 based in Mumbai, which has purportedly paid Rs.9.50
 Crores on 06.07.2007 to one M/s Sky City Foundation Pvt.
 Ltd., as an advance. This Sky City Foundation has in turn
 F invested the very same money with M/s S-Tel, just before
 the date of application of M/s S-Tel made to the DoT for
 issuance of Universal Access Service (UAS) Licence on
 09.07.2007.

G That in view of the said fact, it was deemed
 appropriate to summon the concerned officials of the said
 Co. M/s Sahara India Commercial Corporation Limited on
 07.04.2011 and for the purpose the summon was issued
 on 30.03.2011.”

H 14. The petitioner, referring to the second Status Report

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covering the period from 27.11.2010 to 08.02.2011, has referred to the involvement of M/s Sahara India Investment Ltd., now known as M/s Sahara Prime City Ltd. and stated as follows: A

"The said status report also mentions other details about the acquisition of other two companies by a group in March, April, 2009 in respect of which letters for inquiry have been sent to Mauritius. It is deemed expedient not to disclose further details in this application on account of the fact that the Directorate of Enforcement is investigating into the money trail and if further details are disclosed in the application the same is likely to be prejudicial to the interest of investigation. However, the applicant undertakes to disclose such other facts including the status report in a sealed cover to this Hon'ble Court, if so directed. B C

It is further respectfully submitted that in the third Status Report, covering the period from 09.02.2011 to 17.03.2011 also mentions about a person being issued summon. The said fact is mentioned on page 20 in paragraph 20-D. Details therein clearly show that M/s S-Tel Pvt. Ltd. had arranged for certain funds from various groups to pay licence fee. On Page 21 of the said Status Report, it is mentioned that further investigation in respect of the companies named therein just above paragraph 20-E is in progress. Similarly in the fifth Status Report, filed on 26.04.2011, there is a mention in paragraph 6-B regarding sale of holding of a company and funding of M/s S-Tel by two groups mentioned therein. The fact of Sahara India Commercial Corporation having sought adjournment is also mentioned in the said Status Report." D E F

15. The petitioner, referring to the Sahara Group of Companies, stated as under: G

"It is further submitted that yet another reference dated 11.06.2010 as forwarded by the Head Quarter of the Office of the Directorate of Enforcement has been received from H

A an Intelligence Unit of India, which inter alia alleges that Sh.
 Subrata Roy, respondent No. 1 of M/S. Sahara Group of
 Companies alongwith others have deposited an amount
 of Rs.150 Crores which has been rotated through a maze
 of financial transactions between accounts of M/S. Sahara
 B Corporation and M/S. Sahara India within the same
 branch/bank. On basis of said input, the Directorate of
 Enforcement had initiated discreet enquiries against M/s.
 Sahara Corporation and M/s. Sahara India for alleged
 violation of Foreign Exchange Management Act, 1999.
 C This investigation is handled by the present applicant, who
 made several enquiries with number of banks by issuing
 directives on 23.07.2010 and 28.07.2010. This
 investigation involves over 100 banks and accounts and
 large financial transactions are being investigated. The
 D modus operandi that was adopted is resorting to cash
 deposits of huge amounts on different dates in different
 accounts and at remote far off places of the country and
 withdrawal immediately by cheques which would show that
 there is a clear attempt prima facie to legitimize the
 amounts. Details from four banks have been received
 E which show cash deposits of more than Rs.24 Crores, so
 far.

F That further investigation have revealed that M/s.
 Sahara India is operating more than 334 bank accounts
 and details thereof has been sought from all those banks
 which are yet to be scrutinized. This matter is also referred
 to the Income Tax Department on 29.09.2010 for further
 necessary action at their end.

G That during the course of enquiries a further
 information is received from a reliable sources that a
 company having registered office opposite Domestic
 Airport in Mumbai, which is a group company of Sahara
 Group, has given a loan a huge amounts in pounds to a
 H company in Mauritius, which is purported to be a short term

loan and investment in hospitality sector. This amount was transferred under an automatic route through a bank in Mumbai and this amount is transferred to a foreign country for acquisition of a property of a hotel company whose shares were pledged with the Bank and which money has been utilized to repay the outstanding of the bank. Summons are issued to the concerned bankers of the said companies for 09.05.2011 for appearance of these bankers for recording of their statements. This entire matter is also referred to by the applicant to the Reserve Bank of India on 22.03.2011 and 11.04.2011 and response to some queries are yet to be received and the investigation in the said matter is under progress.

That there is yet another investigation which is popularly referred is as Madhu Koda Scam case in respect of which the Division Bench of High Court of Jharkhand has issued directions, directing the Central Bureau of Investigation to conduct an investigation as regards the predicate offence and directed the Directorate of Enforcement to investigate offence under Foreign Exchange Management Act and Prevention of Money Laundering Act, 2002. These investigations are also under progress and are conducted by the applicant as an Investigating Officer. In this investigation properties worth Rs.125 Crores have already been attached in exercise of powers under Prevention of Money Laundering Act and during the course of investigation it is suspected that large amount of funds which are tainted money which are proceeds of crime have been invested in Sahara Group companies by those accused persons with a view to project them as untainted money. The investigation of this is also being carried.

It is submitted that all these investigations undertaken by the petitioner applicant, before your lordship, has irked the Sahara Group and more particularly the respondents.”

A 16. Petitioner submits that he is being personally attacked by the respondents through various means so that he will not make further headway in the investigation. The petitioner has explained in Paras 5 to 12 of the petition, the manner in which he is being intimidated, which read as follows:

B "5. That when investigations have been initiated in the 2G Spectrum case against them, the respondents have conspired to interfere with the original 2G Spectrum case investigations so as to derail the same, the details whereof are stated hereinafter.

C It may not be out of place to mention that M/s. Sahara Airlines, which is now taken over by Jet Airways and operated under the banner of Jetlite are also facing investigations for violation under FERA, 1973 and an opportunity show cause notice was issued prior to launching prosecution which has been made subject matter of a challenge before the High Court at Lucknow.

D That by an interim order dated 21.05.2002, further proceedings have been stayed and on the said fact having come to my notice while I was Assistant Director Incharge of Lucknow Zone, I had filed application to get the interim order vacated.

E 6. It is submitted that on 02.05.2011 having come to know from reliable sources that some business house / liaison persons together with disgruntled government officials had initiated a campaign of making false anonymous and pseudonymous complaints to various agencies and started spreading rumours, the applicant deemed appropriate to send the latest immovable properties return. This was necessitated that in view of the fact that in April, 2011, a property which was purchased from Lucknow Development Authority by taking a loan, was disposed off and the proceeds of the disposal were received as refund being

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given by the Lucknow Development Authority, a government body. A

That this was forwarded to the Additional Director thorough proper channel and it is reliably learnt that the same is in the process being sent even to the Director, Central Bureau of Investigation, on my request. B

7. It is submitted that on 05.05.2011, there has been an attempt to intimidate the applicant after hearing of the 2G Spectrum case was concluded before this Hon'ble Court. The applicant has received a letter purported to be sent by the respondent No.3, Shri Subodh Jain, which contain wielded threat to start a campaign against the applicant with a view to intimidate and, thus, interfered in the ongoing investigations against the Sahara Group companies in the 2G Spectrum case. C D

On 05.05.2011, a copy of the said letter has been delivered by hand at the office of the applicant and at 15.43, the same is received on FAX of the Dy. Director, Directorate of Enforcement, copies thereof are annexed herewith and marked as ANNEXURE-F (COLLY). E

8. The response to the queries raised is being produced in a sealed cover together with documents supporting the same for perusal of this Hon'ble Court. The only purpose of producing it in a sealed cover is to see such future intimidation to torpedo the ongoing investigation does not take place. The applicant respectively declares before this Hon'ble Court that he is ready and willing to file an affidavit of these disclosures before this Hon'ble Court. F

9. The petitioner applicant respectfully submit that it is, thus, clear that only with a view to dissuade the petitioner, who is the Investigating Officer, to carry the investigation in the right direction against the Sahara Group, the respondents, and more particularly in the 2G Spectrum H

A case, that the respondents have attempted to intimidate which is nothing sort of contempt of this Hon'ble Court since not only the investigation is monitored by this Hon'ble Court, but, this Hon'ble Court has given directions as contained in their lordship's judgment dated 16.12.2010 and 16.03.2011, which are being carried out by the applicant in the matter of investigation of 2G Spectrum case.

10. It is respectfully submitted that this attempt by the respondents to intimidate the applicant, who is the Investigating Officer is clearly an attempt to interfere or an attempt which tends to interfere with or obstruct or tends to obstruct the administration of justice and is thus a criminal contempt within the meaning of Section 2(c) of the Contempt of Court Act, 1971. It is submitted that this is an attack on the investigating officer carrying out the directions of this Hon'ble Court in his way to obstruct the course of justice by preventing the petitioner, who is the Investigating Officer, from carrying out the directions of this Hon'ble Court.

11. That this conduct is intended to impeach, embarrass and obstruct the applicant in the discharge of his duties and carrying out directions of this Hon'ble Court. It is respectfully submitted that it is expected out of the applicant that he is able to conduct the investigation free from any outside interference and the present letter dated 05.05.2011 intending to cause embarrassment to the applicant and detract him from the ongoing investigation is clearly an act of interference that would jeopardize the ongoing investigation and thus hamper the petitioner from carrying out the directions of this Hon'ble Court.

12. That this communication is intended to influence the petitioner publically and, thus, target him with an intention that the petitioner may not carry on the ongoing 2G

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Spectrum investigation as well as other investigations against the Sahara Group.” A

17. We are of the view that if the allegations raised against the contemnors are accepted, then we have to conclude *prima facie* that there has been an attempt by the respondents to interfere with an investigation undertaken by the petitioner which is being monitored by this Court. The petitioner has stated that he has also filed a complaint of violation under the Foreign Exchange Management Act, 1999 (FEMA) to the extent of Rs.4600 Crores against five more companies including M/s S-Tel and he is in the process of filing five complaints involving an amount of Rs.1800 Crores under the FEMA, 1999 and is also in the process of issuing an order of attachment as contemplated under the Prevention of Money Laundering Act, 2002. B
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18. We may point out that the allegations raised by the petitioner in the contempt petition are of very serious nature and, if proved, would amount to interference with the administration of justice, especially in a court monitored investigation. In a court monitored investigation, if the Officer who is entrusted with the task of carrying on that investigation is experiencing any threat or pressure from any quarters, he is duty bound to report the same to the court monitoring the investigation. The Officer should have the freedom to carry on his duty entrusted, without any fear or pressure from any quarters. The petitioner has invoked Article 129 and Article 142 to apprise this Court of the difficulties he faces while carrying on a court monitored investigation. E
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19. Let us examine the extent of the power conferred on this Court under Article 129 of the Constitution, which reads as follows: G

“Article 129. Supreme Court to be a court of record –
The Supreme Court shall be a court of record and shall

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A have all the powers of such a court including the power to punish for contempt of itself.”

B 20. We are of the view that the Courts, if they are to serve the purpose of administering the justice, must have the power to secure obedience to the orders passed by it to prevent interference with its proceedings. Law is well settled that the powers of the Supreme Court in contempt matters are not confined merely to the provisions of the Contempt of Courts Act and the Rules framed thereunder. Law of Contempt, as is often said, is only one of the many ways in which the due process of law is prevented from being perverted, hindered or thwarted to further the cause of justice. This Court has plenary power to punish any person for contempt of court and for that purpose it may require any person to be present in Court in the manner it considers appropriate to the facts of the case. This Court in *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and others* (1991) 4 SCC 406, examined at depth the scope of Article 129 of the Constitution and stated as follows:

E “The power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammled by any ordinary legislation including the provisions of the Contempt of Courts Act. Their inherent power is elastic, unfettered and not subjected to any limit. The power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution

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that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemnor should be made aware of the charge against him and given a reasonable opportunity to defend himself.... Entry 77 of List 1, Schedule 7 read with Article 246 confers power on the Parliament to enact law with respect to the Constitution, organization, jurisdiction and powers of the Supreme Court including the contempt of the Supreme Court. The Parliament is thus competent to enact a law relating to the powers of Supreme Court with regard to 'contempt of itself' such a law may prescribe procedure to be followed and it may also prescribe the maximum punishment which could be awarded and it may provide for appeal and for other matters. But the Central Legislature has no legislative competence to abridge or extinguish the jurisdiction or power conferred on the Supreme Court under Article 129 of the Constitution.
....."

21. This Court, again, in *I. Manilal Singh v. Dr. H. Borobabu Singh and another* (1994) Suppl. (1) SCC 718 has delineated the plenary powers of this Court and stated that the power conferred on this Court under Article 129 is a constitutional power which cannot be circumscribed or delineated either by the Contempt of Courts Act, 1971 or Rules or even the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, framed in exercise of powers under Section 23 of the Contempt of Court Act, 1971, read with Article 145 of the Constitution of India.

22. We are of the view that, assuming, there has not been any proper compliance of the provisions of the Contempt of Courts Act, 1971, as contended by the learned senior counsels for the respondents, that would not deter or take away the constitutional powers conferred on this Court under Article 129 of the Constitution of India to examine, whether, there has been

A any attempt by anybody to interfere with an investigation, which
 is being monitored by this Court. The jurisdiction of the
 Supreme Court under Article 129 of the Constitution is
 independent of the Contempt of Courts Act and the powers
 conferred under Article 129 of the Constitution cannot be
 B denuded, restricted or limited by the Contempt of Courts Act,
 1971.

23. Article 142 of the Constitution also confers powers on
 this Court to pass such orders as is necessary for doing
 complete justice in any cause or matter pending before it. The
 C said Article 142 reads as under:

**"Article 142. Enforcement of decrees and orders of
 Supreme Court and orders as to discovery, etc. (1)**
 D The Supreme Court in the exercise of its jurisdiction may
 pass such decree or make such order as is necessary for
 doing complete justice in any cause or matter pending
 before it, and any decree so passed or orders so made
 shall be enforceable throughout the territory of India in such
 E manner as may be prescribed by or under any law made
 by Parliament and, until provision in that behalf is so made,
 in such manner as the President may by order prescribe

(2) Subject to the provisions of any law made in this behalf
 by Parliament, the Supreme Court shall, as respects the
 whole of the territory of India, have all and every power to
 F make any order for the purpose of securing the attendance
 of any person, the discovery or production of any
 documents, or the investigation or punishment of any
 contempt of itself."

G 24. Article 142 is conceived to meet situations which
 cannot be effectively and appropriately tackled by existing
 provisions of law. In *Delhi Development Authority v. Skipper
 Construction Co.(P) Ltd. and another* (1996) 4 SCC 622, this
 Court has held that the very fact that the power is conferred only
 H upon the Supreme Court, and on no one else, is itself an

assurance that it will be used with due restraint and circumspection; keeping in view the ultimate object of doing complete justice between parties and the Court's power to do complete justice is not confined by any statutory provision.

25. We may indicate that the petitioner has *inter alia* invoked the jurisdiction and power conferred on this Court under the above-mentioned constitutional provisions and hence the consent of the Attorney General is not necessary. Petitioner is only expected to bring to notice of this Court the problems he confronts with while carrying on a court monitored investigation and it is the duty and obligation of this Court to see, rather than the petitioner, that nobody puts any pressure or threat on an Officer entrusted with the duty to investigate a court monitored criminal investigation. Any interference, by anybody, to scuttle a court monitored investigation would amount to interfering with the administration of justice. Courts, if they are to serve the cause of justice, must have the power to secure obedience to its orders to prevent interference with the proceedings and to protect the reputation of the legal system, its components and its personnel, who on its behest carry on a court monitored investigation. The court is duty bound to protect the dignity and authority of this Court, at any cost, or else, the entire administration of justice will crumble and law and order would be a casualty.

26. We are, therefore, of the view that the petition filed under the above mentioned provisions is perfectly maintainable and this Court has got a constitutional obligation to examine the truth of the allegations as to whether the respondents are attempting to derail the investigation which is being monitored by this Court. We, therefore, issue notice to the respondents to show cause why proceedings be not initiated against them for interfering with the court monitored criminal investigation.

B.B.B. Contempt Petition held maintainable.