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## Case Comment: Delhi Judicial Service Association vs State of Gujarat

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### INTRODUCTION

**Case Name:** Delhi Judicial Service Association vs the State of Gujarat

**Citation:** AIR 1988 SC 1214

**Appellant:** Delhi Judicial Service Association, Tis Hazari Court, Delhi

**Respondent:** State of Gujarat and Ors.

**Decided On:** 11.09.1991

**Bench/Judges:** K.N. Singh, Kuldip Singh, and N.M. Kasliwal

The Constitution of India has provided power to the Supreme Court and High courts to punish for the contempt of itself under Article 129 and 215 respectively. Till 1989, ordinarily, the High courts have inherent power to decide on the contempt of subordinate courts. After the incident of Gujarat Police cruelty who handcuffed an incumbent Magistrate, for filing complaints against the ill-conduct of the police officials an enormous uproar took place within

the country where Several Bar Associations had passed Resolutions and went on strike<sup>1</sup>. So, to protect the dignity of the court and to prevent the inconvenience caused to the public due to strike by the judicial members Supreme Court intervene in this case<sup>2</sup> and passed a landmark judgment which widen the scope of Article 129<sup>3</sup> under which they have the power to decide not only contempt of itself but also the contempt of subordinate courts.<sup>4</sup>

## FACTS

Inspector S.R Sharma has been assigned to the Gujarat police headquarters at Nadiad (Kheda). In October 1988, N.L Patel was appointed as the Chief Judicial magistrate of Nadiad and he realized that the neighborhood police had stopped providing his service in summoning and no longer cooperated with him in serving legal service papers to individuals who had been accused of crimes. This lack of cooperation was leading to delayed trial dates in court cases. He complained against the local police about their behavior towards him, but nothing much happened. In April 1989 CJM Patel filed complaints with multiple higher authorities in the police force including the D.G.P., but still, there was no adequate change for his state of affairs due to political motivations behind obstructing them from doing so.

On 25 July 1989 Patel directed the police to sign up a crook case in opposition to 14 persons who had choked judicial complaints. Finally, the CJM directed the Police Inspector to head away from the instances towards those persons. In July 1989 a group of 14 people was unlawfully chased by the police. The case was so strong it reached a judge, who then summoned Patel to explain himself. He advised the police to go after these 14 people and stop harassing them with false cases. Shah reacted strongly when he saw that CJM Patel's opinion was different from his own and moved much closer to the District Superintendent of Police, who then filed a complaint against the CJM to the Administrator in charge of giving judgments in the Court. Shah moved up close to the District Superintendent of Police, who

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<sup>1</sup> KANCHAN, 'Delhi Judicial Service Association v State of Gujarat' (*IndianLawPortal*, 6 August 2020) <<https://indianlawportal.co.in/delhi-judicial-service-association-v-state-of-gujarat/>> accessed 16 November 2021

<sup>2</sup> *Ibid*

<sup>3</sup> Constitution of India, art 129

<sup>4</sup> *Ibid*

then submitted a grievance towards the CJM with regards to what transpired within the Report Judge's room.

On September 25th, Inspector Sharma and Judge Patel met up to discuss the Jitu Game incident after the police had failed to submit a charge sheet within 90 days as mandated by law. The inspector then invited the judge into the police headquarters, where he attempted to seduce him with liquor and valuables and cause him discomfort in an attempt at blackmail. At the station, the Patel chief was attacked and tied up with rope. The Inspector did this while all the other agents watched on. The Supreme Court-appointed Justice R. He submitted a 140-page detailed report back to the court that was again contested by these police officials, but the court was not convinced. After the report was accepted by the Supreme Court, they proceeded in prosecuting the police officials.

The Supreme Court of India also found that the district superintendent of police had been extensively involved with Inspector Sharma by giving him complete control over everything and not holding him accountable on the complaints of the Chief Judicial Magistrate. The Supreme Court suspended the judgment of the trial court and imposed a sentence of imprisonment on Inspector SR Sharma for 6 months. In passing the verdict, the Supreme Court concluded that it does not approve of the conduct of the Chief Judicial Magistrate while visiting police headquarters on an invitation from Inspector Sharma. Guidelines for the police concerning detaining and arresting judges were issued by the Supreme Court during this case.<sup>5</sup>

## ISSUES

1. Did the arrest made by the police inspector amount to Contempt of Court?
2. Can the Supreme Court intervene in the decisions of the Subsidiary Court or can it take cognizance in the cases where there is contempt?<sup>6</sup>

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<sup>5</sup> *Delhi Judicial Service Association v State of Gujarat & Ors* AIR 1991 SC 2176

<sup>6</sup> *Ibid*

## ISSUES ANSWERED

1. The arrest made by the police officer was not of an ordinary person but the person who is exercising the power under judicial capacity in the administration of justice. According to article 136 of the Indian Constitution, the arrest of a person working under judicial capacity might lead to contempt of court and it is a punishable act.<sup>7</sup>

2. In regards to the intervention of the Supreme Court in the decisions of the Subsidiary Court, Article 136 of the Indian Constitution provides numerous powers to Supreme Court to intervene in the decisions of the High Court if it thinks that there is a miscarriage of justice.<sup>8</sup>

### Legal provisions involved in this case:

- Article 129 of the Indian Constitution: *“it says that the Supreme Court shall be the court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”*<sup>9</sup> The objective of this law is to protect the dignity of courts, prevent the defeat of law, and avoid obstruction in the administration of justice. Also, it ensures that civil society abides by the law, otherwise there will be chaos in the society.<sup>10</sup>
- Contempt of Courts act, 1971, Section 2(c),<sup>11</sup> 12,<sup>12</sup> 15<sup>13</sup>;
- Article 136 of the Indian Constitution: provides numerous powers to the Supreme Court to intervene in the decisions of the High Court if it thinks that there is a miscarriage of justice.<sup>14</sup>
- Article 20(3) of the Indian Constitution: *“a person who is accused of an offense cannot be forced to be a witness against himself.”*<sup>15</sup> This is necessary to ensure that an innocent person

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<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*

<sup>9</sup> Constitution of India, art 129

<sup>10</sup> *Ibid*

<sup>11</sup> Contempt of Courts Act 1971, s 2(c)

<sup>12</sup> Contempt of Courts Act 1971, s 12

<sup>13</sup> Contempt of Courts Act 1971, s 15

<sup>14</sup> Constitution of India, art 136

<sup>15</sup> Constitution of India, art 20(3)

cannot be implicated in a false criminal case and to maintain the faith of the people in the administrative system otherwise purpose of the law may get defeated.<sup>16</sup>

## JUDGEMENT

This matter had been seriously taken up by the court in the view of misbehaviour of the police authorities by falsely implicating the Chief Judicial Magistrate in a criminal case and handcuffing him. In response to the plea filed by various lawyers for the removal of police officers who have arrested the CJM, the Supreme Court charged the Police Inspector Sharma and other contemnors with the Contempt of Court under section 129, and accordingly the police inspectors and other 5 police officers were removed from their term. The Police Inspector S.R. Sharma has been awarded simple imprisonment for 6 months along with the fine of rs2000 and the other police officials were made to pay Rs 1500 and imprisonment for 15 and 3 months respectively.<sup>17</sup> However, under article 129 the jurisdiction of the Supreme Court is only limited to the contempt of itself and not for the contempt of the lower courts. But in this case, the Supreme Court has expanded the interpretation of Article 129 and ruled that it has the power to punish not only for the contempt of itself but also of the High Courts and lower courts. This is the inherent power of the Court as a 'court of record' as laid down in Article 129. Explaining the reasons for taking such a liberal view of its contempt power, the Supreme Court has observed that:

*"The subordinate court administers justice at the grass-root level. Their protection is necessary to preserve the confidence of the people in the efficacy of courts and to ensure the unsullied flow of justice at its basic level."*<sup>18</sup>

Being the judicial superintendence of all the inferior courts, the Supreme Court must safeguard the interest of inferior courts from any attack and interference from any quarter. The subordinate and inferior courts do not have adequate power under the law to protect

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<sup>16</sup> *Ibid*

<sup>17</sup> *Ibid*

<sup>18</sup> MP Jain, *Indian Constitutional Law* (8th edn, Lexis Nexis 2018) 214

themselves, thus Supreme Court must protect them. Hence, being the apex court it has the power to determine the jurisdiction of the lower courts under Article 129 of the Constitution.<sup>19</sup>

## **GUIDELINES**

- Before arresting a judicial officer a proper notice has to be given to the District Judge or the High Court.
- If immediate action is to be taken against judicial officers to avert the danger to life and maintain peace in society, a proper procedure needs to be followed to make a formal arrest.
- The facts and grounds of arrest must be intimated effectively to the sessions/district judge.
- The judicial officers so arrested must be given every means to communicate with his family member, lawyer, and with District/sessions judge.
- No medical examination should be carried out in the absence of the legal advisor.
- The respective judicial officer should not be handcuffed except there is an imminent threat to society by his presence.<sup>20</sup>

## **CRITICAL ANALYSIS**

The Constitution of India has given wide powers to the Supreme Court to exercise judicial supervision over all the Courts located within the territory of India and on this reasoning the apex court considered themselves to be the appropriate authority to decide even on the contempt of subordinate courts but this has reduced the autonomy of subordinate or lower courts to decide on its contempt.<sup>21</sup> This meant that the fate of subordinate courts will be decided by the Supreme Court. Apart from this, it will also be time-consuming as all the evidence, accused and plaintiffs have to present themselves in the national Capital where the Supreme court is located. So, there is a possibility that shreds of evidence may get tampered with within the course of traveling from district to national capital. Then another major issue is

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<sup>19</sup> *Ibid*

<sup>20</sup> *Delhi Judicial Service Association v State of Gujarat & Ors* AIR 1991 SC 2176

<sup>21</sup> *Ibid*

that since the Supreme is already overburdened with the huge number of cases of national importance and various unattended petitions, it will divert the Supreme Court from deciding important cases. Further, the constitution of India has given powers to inferior and subordinate courts to decide on the local matters of a particular district, so why this power of contempt of subordinate court is with Supreme Court. Being the matter of subordinate or inferior courts, they should be given this much autonomy to decide on its contempt. This will increase the faith of the people in the powers of subordinate and inferior courts otherwise; they will always be dissatisfied with decisions of such courts because of its less powerful and go on filing petitions in higher judiciary. Thus, there is a need for an amendment in the constitution to provide powers to subordinate or inferior courts to decide on the contempt of its own. Moreover, some sort of protection must be provided to judges of subordinate or inferior courts so that they could not get attacked by the notorious people who misuse their power so that there is no hindrance in the delivery of justice.