

THE CONTEMPT OF COURT ORDINANCE, 2003

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THE CONTEMPT OF COURT ORDINANCE, 2003

ORDINANCE No. V OF 2003

[15th December, 2003]

AN

ORDINANCE

to regulate the exercise of the powers of courts to punish for contempt of court

WHEREAS clause (3) of Article 204 of the Constitution of the Islamic Republic of Pakistan provides that the exercise of the power conferred on courts to punish for contempt may be regulated by law;

AND WHEREAS the National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement.— (1) This Ordinance may be called the Contempt of Court Ordinance, 2003.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once and shall be deemed to have taken effect from the ninth day of November, 2003.

2. Definitions. In this Ordinance, unless there is anything repugnant in the subject of context,—

(a) “civil contempt” means the willful flouting or disregard of—

(i) an order, whether interim or final, a judgement or decree of a court;

(ii) a writ or order issued by a court in the exercise of its constitutional jurisdiction;

(iii) | an undertaking given to, and recorded by, a court;

(iv) _ the process of a court;

(b) “criminal contempt” means the doing of any act with intent to, or having the effect of, obstructing the administration of justice;

(c) “judicial contempt” means the scandalization of a court and includes personalized criticism of a judge while holding office;

(d) “notice” means a notice other than a show cause notice issued by a court;

(e) “pending proceedings” means proceedings which have been instituted in a court of law until finally decided after exhausting all appeals, revisions or reviews provided by law or until the period of limitation therefor has expired:

Provided that the pendency of an execution application shall not detract from the finality of the proceedings.

(f) “personalized criticism” means a criticism of a judge or a judgement in which improper motives are imputed; and

(g) “superior court” means the Supreme Court or a High Court.

3. Contempt of court.— Whoever disobeys or disregards any order, direction or process of a court, which he is legally bound to obey; or commits a wilful breach of a valid undertaking given to a court; or does anything which is intended to or tends to bring the authority of a court or the administration of law into disrespect or disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a court or scandalize a judge in relation to his office, or to disturb the order or decorum of a court, is said to commit “contempt of court”. The contempt is of three type, namely, the “civil contempt”, “criminal contempt” and “judicial contempt.”.

4. Jurisdiction (1) Every superior court shall have the power to punish a contempt committed in relation to it.

(2) Subject to sub-section (3), every High Court shall have the power to punish a contempt committed in relation to any court subordinate to it.

(3) No High Court shall proceed in cases in which an alleged contempt is punishable by a subordinate court under the Pakistan Penal Code (Act No. XLV of 1860).

5. Punishment.— (1) Subject to sub-section (2), any person who commits contempt of court shall be punished with imprisonment which may extend to six months simple imprisonment, or with fine which may extend to one hundred thousand rupees, or with both.

(2) A person accused of having committed contempt of court may, at any stage, submit an apology and the court, if satisfied that it is bona fide, may discharge him or remit his sentence.

Explanation.— The fact that an accused person genuinely believes that he has not committed contempt and enters a defence shall not detract from the bona fides of an apology.

(3) In the case of a contempt having been committed, or alleged to have been committed, by a company, the responsibility therefore shall extend to the persons in the company, directly or indirectly, responsible for the same, who shall also be liable to be punished accordingly.

(4) Notwithstanding anything contained in any judgement, no court shall have the power to pass any order of punishment for or in relation to any act of contempt save and except in accordance with sub-section (1).

6. Criminal contempt when committed.— (1) A criminal contempt shall be deemed to have been committed if a person—

(a) attempts to influence a witness, or proposed witness, either by intimidation or improper inducement, not to give evidence, or not to tell the truth in any legal proceeding;

(b) offers an improper inducement or attempts to intimidate a judge, in order to secure a favourable verdict in any legal proceedings;

(c) commits any other act with intent to divert the course of justice.

(2) Nothing contained in sub-section (1) shall prejudice any other criminal proceedings which may be initiated against any such person as is mentioned therein.

7. Cognisance of criminal contempt.— In the case of a criminal contempt a superior court may take action;

(i) suo moto; or

(ii) on the initiative of any person connected with the proceedings in which the alleged contempt has been committed; or

(iii) on the application of the law officer of a Provincial or the Federal Government.

8. Fair reporting — (1) Subject to sub-section (2), the publication of a substantially accurate account of what has transpired in a court, or of legal proceedings, shall not constitute contempt of court.

(2) The court may, for reasons to be recorded in writing, in the interest of justice, prohibit the publication of information pertaining to legal proceedings.

9. Personalized criticism.— (1) Subject to the provisions of this Ordinance, personalized criticism of a specific judge, or judges, may constitute judicial contempt save and except true averment if made in good faith and in temperate language in a complaint made,—

(a) to the administrative superior of a judge of a subordinate court;

(b) to a Provincial Government;

(c) to the Chief Justice of a High Court;

(d) to the Supreme Court;

(e) to the Supreme Judicial Council; or

(f) to the Federal Government for examination and being forwarded to the Supreme Judicial Council.

(2) Nothing contained in sub-section (1) is intended to deprive a judge of the right to file a suit for defamation.

10. Fair comments.— The fair and healthy comments on a judgment involving question of public importance in a case which has finally been decided and is no longer pending shall not constitute contempt:

Provided that it is phrased in temperate language and the integrity and impartiality of a Judge is not impugned.

11. Judicial contempt— (1) A superior court may take action in a case of judicial contempt on its own initiative or on information laid before it by any person.

(2) Any person laying false information relating to the commission of an alleged judicial contempt shall himself be liable to be proceeded against for contempt of court.

(3) Judicial contempt proceedings initiated by a judge, or relating to a judge, shall not be heard by the said judge, but shall (unless he is himself the Chief Justice) be referred to the Chief Justice, who may hear the same personally or refer it to some other judge, and, in a case in which the judge himself is the Chief Justice, shall be referred to the senior most judge available for disposal similarly.

(4) No proceedings for judicial contempt shall be initiated after the expiry of one year.

12. Civil contempt.— (1) Proceedings for civil contempt may be initiated suo moto or at the instance of an aggrieved party.

(2) The provisions contained herein are intended to be in addition to, and not in derogation of, the power of the court under any other law for the time being in force to enforce compliance of its orders, judgements or decrees.

13. Procedure in cases of contempt in the face of the court— (1) In the case of a contempt committed in the face of the court, the court may cause the contemner/offender to be detained in custody and may proceed against him in the manner provided in sub-section (2):

Provided that if the case cannot be finally disposed of on the same day, the court may order the release of the accused from the custody either on bail or on his own bond.

(2) In all cases of contempt in the face of the court the judge shall pass an order in open court recording separately what was said or done by the accused person and shall immediately proceed against the offender or may refer the matter to the Chief Justice for hearing and deciding the case by himself or by another Judge.

14. Expunged material. No material which has been expunged from the record under the orders of—

(i) a court of competent jurisdiction; or

(ii) the presiding officer of the Senate, the National Assembly or a Provincial Assembly,

shall be admissible in evidence unless it is otherwise ordered by the court.

15. Innocent publication — No person shall be guilty of contempt of court for making any statement, or publishing any material, pertaining to any matter which forms the subject of pending proceedings, if he was not aware of the pendency thereof.

16. Protected statements.— No proceedings for contempt of court shall lie in relation to the following:—

(i) observations made by a higher or appellate court in a judicial order or judgement;

(ii) remarks made in an administrative capacity by any authority in the course of official business, including those in connection with a disciplinary inquiry or in an inspection note or a character roll or confidential report; and

(iii) a true statement regarding conduct of a judge connected with the performance of his judicial functions:

Provided that onus of proof shall be on the person relying on the statement.

17. Procedure.—(1) Save as expressly provided to the contrary, proceedings in cases of contempt shall be commenced by the issuance of a notice, or a show cause notice, at the discretion of the court.

(2) In the case of a notice the alleged contemner may enter appearance in person or through an advocate, and, in the case of a show cause notice, shall appear personally:

Provided that the court may at any time exempt the alleged contemner from appearing personally.

(3) If, after giving the alleged contemner an opportunity of a preliminary hearing, the court is prima facie satisfied that the interest of justice so requires, it shall fix a date for framing a charge in open court and proceed to decide the matter either on that date, or on a subsequent date or dates, on the basis of affidavits, or after recording evidence:

Provided that the alleged contemner shall not, if he so requests, be denied the right of cross examination in relation to any affidavit, other than that of a judge, used in evidence against him.

18. Substantial detriment— (1) No person shall be found guilty of contempt of court, or punished accordingly, unless the court is satisfied that the contempt is one which is substantially detrimental to the administration of justice or scandalizes the court or otherwise tends to bring the court or Judge of the court into a hatred or ridicule.

(2) In the event of a person being found not guilty of contempt by reason of sub-section (1) the court may pass an order deprecating the conduct, or actions, of the person accused of having committed contempt.

(3) Subject to the provisions of this Ordinance, truth shall be a valid defence in cases of contempt of court.

19. Appeal. — (1) Notwithstanding anything contained in any other law or the rules for the time being in force, orders passed by a superior court in cases of contempt shall be appealable in the following manner:—

(i) in the case of an order passed by a single judge of a High Court an intra-court appeal shall lie to a bench of two or more judges;

(ii) in a case in which the original order has been passed by a division or larger bench of a High Court an appeal shall lie to the Supreme Court; and

(iii) in the case of an original order passed by a single judge or a bench of two judges of the Supreme Court an intra-court appeal shall lie to a bench of three judges and in case the original order was passed by a bench of three or more judges an intra-court appeal shall lie to a bench of five or more judges.

(2) The appellate court may suspend the impugned order pending disposal of the appeal.

(3) The limitation period for filing an appeal shall be thirty days.

20. Repeal.— The Contempt of Court Act, 1976 (LXIV of 1976) is hereby repealed.