
(2013) 11 JH CK 0066
In the Jharkhand High Court
Case No : Cont. Case (Civil) No. 837 of 2013

Ajit Kumar Das

APPELLANT

Vs

The State of Jharkhand and Smt. Alka Tewari

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2013) 11 JH CK 0066

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Ritu Kumar, for the Appellant; R. Mukhapadhyay, S.C. II., for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Alleging disobedience of order dated 08.03.2013 passed in W.P. (S) No. 612 of 2003 the present Contempt case has been filed. 2. In paragraph Nos. 5-7, the applicant has stated as under:

5. That however, inspite of lapse of more than six months, the opposite party No. 2 has not complied with the order dated 08.03.2013 passed in W.P. (S) No. 612 of 2003 by this Hon''ble High Court and the petitioner has not been supplied with any document nor has been given an opportunity of hearing to him or his authorized representative.

6. That moreover, though this Hon''ble High Court has been pleased to quash the order dated 14.12.2002 and the consequent order dated 22.12.2002 by its order dated 08.03.2013 but he is not being paid any amount towards his pension.

7. That in view of the order dated 08.03.2013 the date of contempt starts from 08.09.2013.

2. The learned counsel appearing for the applicant has stated that a copy of the order dated 08.03.2013 was sent by the petitioner through speed post on 26.03.2013 and a proof of the same has been attached along with the contempt

petition. The learned counsel for the petitioner has submitted that the direction of this Court was to pass fresh order after supplying copies of the documents and affording opportunity of hearing to the applicant, within six months and since, this has not been done by the contemnor No. 1, the contemnor is liable to be proceeded against by this Court.

3. On a perusal of the contempt petition, I find that in paragraph No. 5 the applicant made a statement that since he has not been supplied with the documents and no opportunity of hearing has been granted to him within the time fixed by this Court, the contemnor has disobeyed the order passed by this Court on 08.03.2013. I am of the opinion that the applicant has not been able to make out a case even for issuing a show-cause to the contemnor No. 1. Merely because the order passed by this Court has been sent by speed post on 26.03.2013, a presumption cannot be drawn that the said order has been received by the contemnor No. 1 and even if it is accepted that the said communication was received by the alleged contemnor, a presumption cannot be drawn that the contemnor has disobeyed the order passed by this Court.

4. The contempt proceeding being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. There should be a clear case of intentional obstruction of administration of justice by the alleged contemnor. There must be clear and reliable evidence to substantiate the allegation against the alleged contemnor.

5. Section 2(b) of the Contempt of Courts Act, 1971 defines "Civil Contempt" as under:

Section 2(b) "civil contempt" means willful disobedience to, any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a Court;

6. The word "willful" occurs in Section 2(b) of the Act and thus, it is clear that the disobedience must be willful. It has been held by the Hon'ble Supreme Court that even if breach of an order is admitted by the alleged contemnor, it would not be sufficient to initiate a proceeding under the Contempt of Courts Act, 1971. The Act provides for a punishment of imprisonment and thus, it is clear that any proceeding under the Contempt of Courts Act follows serious consequences. I am of the view that before a proceeding under the Contempt of Courts Act is initiated the applicant is required to allege and prove by cogent evidence that the alleged contemnor has disobeyed the order passed by the Court willfully and intentionally.

7. In *Sahdeo @ Sahdeo Singh Vs. State of U.P. and Others*,

15. The proceedings of contempt are quasi-criminal in nature. In a case where the order passed by the court is not complied with by mistake, inadvertence or by misunderstanding of the meaning and purport of the order, unless it is intentional, no charge of contempt can be brought home. There may possibly be

a case where disobedience is accidental. If that is so, there would be no contempt. [Vide B.K. Kar. v. Chief Justice and Justices of the Orissa High Court B.K. Kar Vs. The Chief Justice and His Companion Judges of The High Court of Orissa and Another,

16. Similarly, in Debabrata Bandopadhyay v. State of W.B. this Court has observed as under: Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another,

9. A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behooves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.

(emphasis supplied)

The same view has been reiterated by this Court in Aligarh Municipal Board v. Ekka Tonga Mazdoor Union, Capt. Dushyant Sontal v. Sushma Somal Bharat Coking Coal Ltd. v. State of Bihar, Niaz Mohammad v. State of Haryana and Manish Gupta v. Gurudas Roy.

8. In Manish Gupta and others Vs. Gurudas Roy,

15. If the pay as refixed was Rs. 600 which was also the pay drawn by the respondent in May 1989, it is difficult to appreciate how it can be said that the basic pay of the respondent was reduced as a result of such refixation. The said refixation was done on the basis of the officiating promotion of the respondent as Upper Division Assistant and not on the basis of the order passed by the Appellate Bench on 20-9-1989. Moreover, in the order dated 22-1-1990 it was expressly mentioned:

This is a provisional fixation of his pay and final fixation will be made as per refixation of the seniority in the U.D. cases by common cadre wing.

16. The pay of the respondent was, thereafter, refixed in the light of the orders dated 24-7-1990 and 23-10-1990 revising date of his promotion as Upper Division Assistant and his seniority in the cadre of Upper Division Assistant on that basis. In these circumstances, it cannot be said that the order dated 22-1-1990 reflects an intention on the part of the appellants to willfully or deliberately disobey the directions given by the Appellate Bench in the order dated 20-9-1989.

9. In the present case I find that except a bald statement that a copy of the

order passed by this Court was sent by speed post, no material has been produced by the applicant that the alleged contemnor has committed willful disobedience of order dated 08.03.2013 passed in W.P. (S) 612 of 2003. I further find that in the petition the applicant has not even averred that the order passed by this Court has been disobeyed by the alleged contemnor, willfully and intentionally. In view of the aforesaid, the contempt petition lacks merit and accordingly, it is dismissed.