

(1984) 09 AHC CK 0028

In the Allahabad High Court

Case No : Civil Misc. (Contempt) Application No. 263 of 1984

Anis Ahmad Khan and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 03-09-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2(3), Order 39 Rule 2A
Contempt of Courts Act, 1971 — Section 10, 12, 2

Citation : (1985) AWC 25

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : K.B.L. Gour, for the Appellant;

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This Civil Contempt Application at present is at the admission stage.

2. In this case injunction order that is said to have been violated by the contemnors, to commit "contempt of court" is that of Civil Judge, Agra.

3. During the arguments advanced by the learned Counsel for the applicants a legal point has arisen as to whether for the alleged contempt this Court should proceed to punish the contemner u/s 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act) or should the matter be left to be dealt with by the court below whose injunction order is said to have been violated.

4. It may here be conceded at the very outset that Section 10 of the Act confers jurisdiction, power and authority of this Court in respect of Contempt of Courts subordinate to it.

5. At the same time Order 39, Rule 2-A, CPC provides:

Consequences of disobedience or breach of injunction:

(1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2)....

6. The learned Counsel for the applicants has argued that when "remedies" are open in two forums then it is for the applicant to choose the forum. So the mere fact that remedy under Order 39, Rule 2-A, CPC is open can be no bar to the present application in this Court for the exercise of its jurisdiction, power and authority under the Contempt of Courts Act. The learned Counsel for the Petitioners has in this connection referred to the decision in State v. S.N. Dikshit 1973 AWR 80 (DB) In it "criminal contempt" u/s 2(c) of the Act concerning writing of defamatory letter was under consideration. It was observed in column 2 page 85:

It was also submitted that the contents of the letter at the most amounted to libel against the officer concerned, which was an offence under the Indian Penal Code. The officer concerned, therefore, could seek his appropriate remedy against Shri Dikshit but the latter was not liable for punishment under the Contempt of Courts Act. This contention is untenable. A distinct remedy may be available to a person who has been defamed or against whom a complaint has been made but if the same action does constitute contempt the person responsible for such action is liable to be punished under the provisions of Contempt of Courts Act. The two remedies are not naturally exclusive.

7. It was, therefore, argued that availability of alternative remedy is no bar to the maintenance of the present contempt application in this Court under the Act.

8. But the above decision is distinguishable. In that decision the alternative remedy was by way of criminal prosecution for a distinct offence of defamation under Indian Penal Code. But, in the present case the alternative remedy of action under Order 39, Rule 2-A, CPC in my view, is also an action for contempt of Court. No other offence is involved. Thus the choice is only about the forum in which the contempt proceedings should commence. In this view of the matter, the above decision of the Division Bench is not of direct application to the point involved in the present case.

9. The learned Counsel for the applicants again stressed that even where the "same remedy" lies in two forums the choice is of the Petitioner to select the forum. But, at the same time, it is to be remembered that where the question of "same remedy" by way of contempt action is involved, the power and authority to be exercised by this Court under the Contempt of Courts Act to initiate contempt proceedings against the alleged contemner is discretionary. The

applicant has no vested right to claim that the contemner must be punished. The applicant brings the facts to the knowledge of the Court and points out how the contempt of Court has been committed. Thereafter the matter is merely between the Court and the contemner. Here comes in the discretion of this Court whether to proceed or not against the alleged contemner.

10. I am fortified in holding this view by the following decisions:

(1) *Ram Rup Pandey Vs. R.K. Bhargava and Others*, . In para 5 thereof observation of the Privy Council in AIR 1945 147 (Privy Council) was quoted which is as follows:

The question of committal or non committal is one for the exercise of the discretion of the Court before whom the application to commit is brought and unless there is found to be a serious disregard of the principles of natural justice their Lordships would be slow to interfere with the discretion.

Thus it clearly lays down that although the jurisdiction of the court was not barred, yet the power to take action was discretionary.

In para 7 of the above ruling observations appearing in *A. Ramalingam Vs. V.V. Mahalinga Nadar*, were quoted. It was held therein that the High Court should not exercise its discretionary jurisdiction under the Act in a case where a detailed enquiry could be made under Order 39 Rule 2 sub rule (3), CPC by the court which had passed the injunction order.

(2) *Barad Kant Misra v. Mr. Justice Gati Krishna Misra C.J. of Orissa High Court* AIR 1974 SO 2255 it was held in para 5 at page 2258:

It has always been regarded as well settled law that so far as criminal contempt is concerned it is a matter entirely between the Court and the alleged contemner. No one has a statutory or common law right to say that he is entitled as a matter of course to an order for committal because the alleged contemner is guilty of contempt. All that he can do is to move the Court and draw its attention to the contempt alleged to have been committed and it will then be for the Court, if it so thinks fit, to take action to vindicate its authority and commit the alleged contemner for contempt. It is for the Court in the exercise of its discretion to decide whether or not to initiate a proceeding for contempt. Even if the Court is *prima facie* satisfied that a contempt has been committed, the Court may yet choose to ignore it and decline to take action. There is no right in any one to compel the Court to initiate a proceeding for contempt even where a *prima facie* case appears to have been made out. The same position obtains even after a proceeding for contempt is initiated by the Court on a motion made to it for the purpose. The Court may in the exercise of its discretion accept an unconditional apology from the alleged contemner and drop the proceedings for contempt, or, even after the alleged contemner is found guilty, the Court may, having regard to the circumstances, decline to punish him. So far as the contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged

contemner. An outside party comes in only by way of drawing the attention of too Court to the contempt which has been committed; he does not become a part to the proceeding for contempt which may be initiated by the Court.

11. Though the above observations are in connection with "criminal contempt" yet in my view, they equally apply to "civil contempt".

12. It can, therefore, be conclusively and affirmatively asserted that the exercise of jurisdiction, power and authority of this Court under the Act is discretionary.

13 Much stress was laid by the learned Counsel to show that alternative remedy under Order 39 Rule 2-A CPC in the circumstances of the present case is not available and as such the only remedy lies under the Act. Thus distinction is sought to be high lighted by arguing that action under Order 39, Rule 2 CPC is remedial while that under the Act punitive. To stress his point reference is made to Single Bench Decision of this Court in *Sitaram v. Ganesh Das* 1973 AWR 296, wherein in para 4 it was observed as follows:

The purpose of Order 39, Rule 2A CPC is to enforce the order of injunction. It is a provision which permits the Court to execute the injunction order. Its provisions are similar to the provisions of Order 21, Rule 32, CPC which provide for the execution of a decree for injunction. The mode of execution given in Order 21, Rule 32 is the same as provided in Rule 2A of Order 39. In either case, for the execution of the order or decree of injunction, attachment of property is to be made and the person who is to be compelled to obey the injunction can be detained in civil prison. The purpose is not to punish the man but to see that the decree or order is obeyed and the wrong done by the disobedience of the order is remedied and the status quo ante is brought into effect. This view finds support from the observations of the Supreme Court in the case of *The State of Bihar Vs. Rani Sonabati Kumari*, ; while dealing with Order 39 Rule 2(iii) Civil PC (without the U.P. Amendment) the Court held that the proceedings are in substance designed to effect enforcement of or to execute the order and a parallel was drawn between the provisions of Order 21 Rule 32 and Order 39 Rule 2(iii) CPC which is similar to Order 39, Rule 2A, This curative function and purpose of Rule 2A of Order 39, CPC is also evident from the provision in Rule 2A for the lifting of imprisonment which normally would be when the order has been complied with and the coercion of imprisonment no longer remains necessary.

14. It was argued that the interlocutory injunction order dated 25-5-83 In Original Suit No. 72 of 1976 Defendants 1 to 3 of the suit (out of whom No. 1 and 2 are O.Ps. 1 and 2 here) were restrained from transferring the possession of the property in suit to Defendant No. 9 or any other person till 7-7-83 which period was extended by order dated 27-7-83 to "till the disposal of the injunction application". The contention is that this injunction order was in force till 15-7-84 but on 15-7-84 vide *Dakhalnama* annexure II possession was delivered in violation of the injunction order. The argument is that when possession has been delivered the mischief has been done and this cannot be undone by O.Ps.1 and 2

by their own volition. According to the learned Counsel said provisions of Order 39, Rule 2A CPC are meant only to enforce the rights of the party enuring to him under the injunction order on the pain of detention in civil prison for the maximum period of three months and attachment of property for one year followed by sale after the expiry of that time. It is argued that these provisions inherently conceive that the moment the contemner obeys the injunction order the detention period can be cut short and his release ordered and attachment can be withdrawn. It is argued that these can only be done if the contemner obeys and complies with the injunction order and when such compliance or obedience goes out of his volition, after committing contempt, then said provision of Order 39, Rule 2A, CPC becomes ineffective and cannot be pressed into action leaving the aggrieved party with the only remedy under the Act.

15. But, I do not agree with the above argument. Provisions of Order 39, Rule 2A, CPC are not merely instruments to enforce the injunction order but are also punitive in nature. Thus their scope is dual, i.e. enforcement plus punishment.

16. It would not be out of place to mention that in *Sitaram v. Ganesh Das* (supra) reliance was placed on the observation of the Supreme Court in the case of *The State of Bihar Vs. Rani Sonabati Kumari*, to hold that the proceedings under Order 39, Rule 2A, CPC are in substance designed to effect enforcement or to execute the order.

17. If I may say so with all respects to the learned Judge giving the decision in *Sitaram v. Ganesh Das* (supra) he missed to quote the full observation contained in *State of Bihar v. Sonapati Kumari* (supra). The full quote is as follows:

Though undoubtedly proceedings under Order 39, Rule 2(3) CPC have a punitive aspect as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by the CPC for the execution of a decree for a permanent injunction.

18. In this way, it is not correct to hold that the proceedings under Order 39, Rule 2A, CPC (which corresponds to earlier provisions of Order 39, Rule 2(3) CPC) are not punitive.

19. In this connection reference to the decision in *M. Amritlal v. Srinivas Rao* AIR 1967 Andhra Pradesh 48 would be of value. In that case injunction restraining the Appellant from alienating his movable properties was granted. The Appellant notwithstanding the injunction order alienated the property. (In this way alienation having been effected it could not be undone by the Appellant by his own volition). The Appellants' detention in civil prison for disobedience of the injunction order directed by the lower court was upheld. Thus said detention in civil prison was not to enforce the injunction order but was by way of punishment.

20. In Commentaries - K.J. Ayar's Law of Contempt of Courts, 6th Edition, 1983

at page 157 it is observed:

Section 10 of the Contempt of Courts Act, 1971 no doubt invests the High Court with ample powers to take cognizance of such contempt committed with regard to the courts, subordinate to the High Court, which in an appropriate case may be exercised. But that does not mean that in each and every case of such an alleged contempt the High Court should exercise such powers, allowing the same to be used is a convenient substitute for the specific remedies otherwise provided by law. Violation of an order of injunction constituting disobedience to an order of a court, subordinate to the High Court, if fulfilled may constitute civil contempt as defined by the Act and the High Court may also be invested with powers to take action for such contempt. But civil contempt is by its very nature remedial, the primary object being to enforce the order for the benefit of the party in whose favour the order had been made. Such being the nature of civil contempt, it would, be reasonable to think that where the law otherwise specifically provides a remedy for breach of such order as also the means for its enforcement the parties must normally avail of such remedies and the High Court should not encourage by passing such remedies by initiating proceedings under the Contempt of Court Act". *Calcutta Medical Store v. Stadmed Private Ltd.* (1976) 81 CWN. 209. Of course, in the above observation remedial aspect is given stress but as already discussed above the "punishment aspect" is also there. At any rate, the above observation lay emphasis on the point that where alternative remedy is specifically provided by law the parties must normally avail themselves of such remedies and the High Court should not encourage by passing such remedies by initiating proceedings under the Act.

21. In view of the above discussion, I see no reason to initiate the present contempt proceedings in this Court. This contempt application is, therefore, dismissed. Of course, the applicants if they so desire, may seek their remedy under Order 39, Rule 2A, CPC in the court below.