(2004) 12 AHC CK 0225

In the Allahabad High Court

Case No : C.M. Contempt P. No. 2943 of 2004

Aska Merchants and Others — APPELLANT

Vs

Dharam Singh and Others — RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Constitution of India, 1950 — Article 21
Contempt of Courts Act, 1971 — Section 12

Citation : (2005) 2 AWC 1919

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

Bench : Single Bench

Advocate : S.D. Singh, for the Appellant; C.P. Misra, Ashok Pandey, R.P. Dubey, A.P. Srivastava, Arvind Kumar, U.K. Saxena and Nripendra Mishra, S.C., for the Respondent

Judgement

D.P. Singh, J.—Heard learned counsel for the parties.

2. The applicant No. 1 is a partnership firm while applicants No. 2 and 3 are its partners. It appears that the firm was enjoying a cash credit limit of Rs. 45 lacs with the Central Bank of India, Chowk Branch, Vanarasi. Since the limit fixed by the Bank had exceeded, on a demand of the bank, a recovery certificate dated 13.1.2004 was issued against the applicant but on deposit on certain amounts, the same was withdrawn by the bank on 4.3.2004. However, one of the applicant was arrested in pursuance of the citation leading to the filing of Writ Petition No. 11868 of 2004 wherein the opposite party Nos. 8 and 1 were also parties.

3. A Division Bench by a detailed order dated 22.3.2004, stayed the recovery proceedings against the applicants and directed the release of the applicant No. 2. It is alleged that the said order was passed in the presence of the counsel for the bank but even then the order was served by registered post on the Branch Manager of the Bank, opposite party No. 8, vide covering letter dated 14.5.2004. For convenience, the order of the Division Bench is quoted below :

"We have heard Sri S. D. Singh, learned counsel for the petitioners, standing counsel appearing for respondents No. 1 to 4 and Sri Ashok Pandey holding brief of Sri C. P. Mishra appearing for respondent No. 5.

A recovery certificate was issued against the petitioners on 13.1.2004, for recovering Rs. 49,30,119.00 along with the recovery charges. This recovery certificate issued by the Bank on 4.3.2004, because the Bank wanted to revise the same, respondent No. 1 to 4 instead of returning the recovery certificate, have proceeded with the recovery proceedings in spite of withdrawal of recovery certificate by the Bank and the Amin has arrested petitioner No. 2 on 17.3.2004. Learned counsel for the petitioners has urged that this was in violation of fundamental right to liberty guaranteed under Article 21 of the Constitution. Since the petitioner No. 2 has been arrested without any authority or cause, therefore, adequate compensation may be awarded to the petitioner from respondents No. 2, 3 and 4. The compensation cannot be awarded and the public accountability cannot be fixed on them without hearing respondents No. 2, 3 and 4.

District Collector, Varanasi, Naib Tehsildar, Tehsil Sadar, Varanasi and Collection/ Recovery Amin, Tehsil Sadar, Varanasi are directed to file personal affidavits to show cause as to why public accountability be not fixed and compensation be not awarded to the petitioners. Personal counter-affidavits shall be filed by respondents No. 2, 3 and 4 within one month and the Central Bank of India, Varanasi shall also file counter affidavit within one month. Three weeks time thereafter is allowed to the petitioners for filing rejoinder-affidavit.

List on 10th May, 2004. In case counter-affidavits are not filed by respondents No. 2, 3 and 4 within the time allowed, they shall be present personally before the Court on 10th May, 2004.

Until further orders, the respondents are directed to release petitioner No. 2 forthwith arrested by them on 17.3.2004. It is further directed that the recovery proceedings against the petitioners shall remain stayed.

The office is directed to hand over a copy of this order to Sri Ramesh Singh, standing counsel within 24 hours for communication as well as for compliance of this order."

4. Alleging that the opposite party Nos. 4 to 7 with the active help of opposite party No. 8 fraudulently appropriated the recovery charges from the money deposited by the applicant with the Bank, which was in utter disregard of the writ order.

5. By a detailed order dated 27.10.2004 charges were framed against Sri O. P. Singh, Senior Manager, opposite party No. 8, after considering the counter-affidavit filed by all the opposite parties. The charges were to the following effect:

"You Sri O. P. Singh, Senior Manager, Central Bank of India, Chowk Branch, Varanasi show cause why you should not be tried and punished u/s 12 of the

Contempt of Courts Act for wilful or deliberate violation of the order dated 22.3.2004 passed by the Division Bench of this Court in Writ Petition No. 11868 of 2004."

6. In pursuance of the charges framed, the opposite party No. 8 and the applicants have filed their respective replies.

7. The Apex Court in the case of Suresh Chandra Poddar Vs. Dhani Ram and Others, has held that the power of contempt should not be exercised for a technicality but only in cases of substantial violation and where there is real prejudice caused to the party, but it should never be exercised as a matter of course. It has further went on to hold in P. Kasilingam v. P. S. G. and sons (1990) SCC (Cri) 626 , and a Division Bench of our High Court in G.N. Verma Vs. Hargovind Dayal and Others, that justification cannot be pleaded as a defence in contempt proceedings. These broad principles can be applied to the facts of the present case.

8. In the contempt petition serious allegations against Sri Singh have been levelled by the applicants, which have been mentioned in paragraphs 4 (i) to (xlviii). It is alleged that the applicants had deposited Rs. 10 lakhs with the Bank between 27.2.2004 and 4.3.2004 (as mentioned in para 4 (xxiii) of the petition) but Sri Singh instead of crediting the said amount in the name of the applicants had shown deposit of only Rs. 4 lakhs and when this fact came to the knowledge of the applicants on receipt of the accounts, a complaint was lodged with the Senior Superintendent of Police which was thereafter lodged as a first information report and wherein investigation by Economic cell of the police is going on.

9. The alleged violation has to be judged also in the aforesaid background.

10. The specific case, as set up in the contempt petition is that even though the Division Bench had stayed the recovery proceedings, Sri Singh with the connivance of the Tehsil authorities, especially opposite parties No. 4 to 7 had defrauded the applicants of Rs. 37,206, which was paid to the opposite parties No. 4 to 7 as recovery charges on 6.7.2004.

11. When this petition was taken up on 27.10.2004, the opposite parties No. 4 to 7 were personally present and had filed their affidavits, inter alia stating therein, that Sri Singh had summoned them to the Bank and he had paid them the aforesaid amount as recovery charges, thus they had issued receipts for the recovery. They had made statements in Court to the aforesaid effect and said that they did not recover any money from the applicants and thus they are not guilty of violation of the orders of the Division Bench. In reply to the charges Sri Singh in his affidavit filed along with the discharge application dated 19.11.2004, had stated that he "adjusted the amount deposited by the applicants in the aforesaid manner to oblige the Tehsil authorities in the interest of the Bank...." He has further defended his action on the ground that it was not his voluntary act, but he was coerced by the Tehsil authorities to pay the recovery charges. To

prove coercion of the Tehsil authorities, Sri Singh has relied upon an alleged letter of the Tehsildar dated 5.7.2004, which is annexed with the said affidavit. A bare perusal of the said letter shows that only comments of Sri Singh was sought with regard to deposit of the amount in the Bank, but there is nothing to show that any direction was issued for payment of any collection charge to the authorities, much less any coercion was used for the payment of collection charges. The opposite parties No. 4 to 7 are emphatic that they did not recover any cash from the applicants but merely issued the receipts.

12. Sri Singh has filed counter affidavits. In the affidavit dated 27.10.2004, he has stated that he handed over Rs. 4 lakhs deposited by the applicant to the Amin, who returned the amount after deducting the collection charges of Rs. 37,206 and this amount was credited in the applicants account. However, when confronted with the statements and affidavits of opposite parties No. 4 to 7. Sri Singh swore another story in his affidavit dated 9.11.2004 that the Tehsil authorities had coerced him to pay the recovery charges.

13. During arguments, the counsel for Mr. Singh had no other option but to admit that the entire incident was only a paper transaction and the only defence was that under threat of revenue officials he had no other option but to pay the recovery charges in spite of the stay order of the Division Bench. From a perusal of statement of account, it is crystal clear that only debit and credit entries were made. Not only this, no reason worth the name has been given why the amount was kept in suspense account, even after 4th March, 2004 when admittedly the Bank had withdrawn the recovery certificate and the amount was credited only after 26 days in the account of the applicant. Sri Singh has failed to show any provision of law or even any guidelines of the Bank which obliges him to pay recovery charges to the Tehsil authorities in case deposit is made of outstanding dues directly in the Bank.

14. From the aforesaid, it is crystal clear that Sri O. P. Singh, opposite party No. 8 is clearly guilty of deliberate and wilful violation of the orders of the Division Bench.

15. The Apex Court in the case of Bank of Baroda v. Sadruddin Hasan Daya 2004 (2) AWC 1450 (SC) : AIR 2004 SC (First Supplementary) 942, while considering the nature and power of contempt has held to the following effect:

"Contempt proceedings serve a dual purpose of vindication of the public interest by punishment of a contemptuous conduct and coercion to compel the contemnor to do what the law requires of him."

In the same case the Court went on to hold that:

"One who played fraud on the Court, he obstructs the course of justice and brings the judicial institution into disrepute."

In this very judgment, the Apex Court has reiterated the ratio laid down by it In re: Vinay Chandra Mishra (the alleged contemner), has held :

At the same time, the Court should act with seriousness and severity where justice is jeopardized by a grossly contemptuous act of a party. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our Constitutional scheme will give way and with it will disappear the rule of law...."

16. In my opinion, the violation is not only deliberate but it is also coupled with malice if the action is examined in the background of the allegations made against Sri Singh. Though, Sri Singh has submitted an apology, but it does not appear to be genuine. An apology should be an act of real contrition or repentance. The apology of Sri Singh lacks both. In the affidavit filed in reply to the charges a statement was made by Sri Singh that he is prepared to return the amounts paid to the tehsil authorities within 15 days, but he did not come clean on his undertaking and only when the Court was about to deliver the judgment that he sought time to pay the amount. Now the amount has been paid.

17. The Apex Court in Dr. K.L. Sahu Vs. Hari Shankar Bhandari and others, has held that there is no rule that the Court is bound to accept even an unconditional apology. Even if the Court were to accept the apology, it cannot be said that the right to punish is lost. The Apex Court has further gone oh to hold in K.A. Mohammad v. Parsa Nand AIR 1976 SC 454 and Arun Kshetrapal Vs. Registrar, High Court, Jabalpur and Another, that the right to punish is not lost even by acceptance of the apology.

18. In my opinion, the action of the opposite party No. 8 is not only contumacious but is also malicious. He tinkered with the money of the applicants in spite of a clear positive direction of this Court and there is no justifiable reason for his actions. If the action of Mr. Singh is considered in the background of the allegations made against him and also that a first information report had already been filed against him, it cannot but be held that it was his purposeful act to harass the applicant in spite of the order of the writ court. Necessarily, mens rea is not required to be proved in a case of contempt but in the present case the violation is wilful, deliberate coupled with the intention and motive to harass the applicants.

19. For the reasons given above, I find Sri O. P. Singh, opposite party No. 8 guilty u/s 12 of the Contempt of Courts Act, and on these facts, fine only would not meet the ends of justice because Sri Singh is a senior Bank official, who is the custodian of the money of his customer has committed a grossly reprehensible act and in case he is not punished, it would send down a wrong signal to other officials of the Banks that even such unbusiness like conduct invites only a warning or fine. As it is, Courts are flooded with recovery matters where orders are passed. In my opinion, fine of Rs. 2,000 and simple imprisonment for one week would meet the ends of justice. In case of default he would suffer one day''s further simple imprisonment.

20. On the oral request of the counsel for Sri Singh, the order shall be kept in abeyance till 7.1.2005 to enable him to file an intra court appeal, in case no orders are obtained, he shall surrender before the Registrar General of this Court at 3 p.m. on 7.1.2005, who will send Sri Singh to jail to serve out the sentence.

The Registrar-General to submit a report by 11.1.2005 to this Court about the compliance. Petition is finally disposed of.