
(2010) 03 AHC CK 0300
In the Allahabad High Court
Case No : Special Appeal No. 909 of 2002

Babbu Ram Mishra

APPELLANT

Vs

Shri R.P. Singh, Chief Conservator of Forest and Others

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Constitution of India, 1950 — Article 136, 215, 226, 227
Contempt of Courts Act, 1971 — Section 19, 19(1), 20

Citation : (2011) 1 UPLBEC 244

Hon'ble Judges : S.P. Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Rajesh Chandra, JJ.—The present special appeal purported to have been filed under Chapter VIII, Rule 5 of the Rules of the Court, 1952 against the order dated 9.7.2002 passed by the learned Single Judge in Civil Misc. Contempt Petition No. 53 of 2002.

2. It appears that the Petitioner-Appellant filed the aforementioned contempt petition on the ground of disobedience of the order dated 19.1.2000 passed by this Court in Civil Misc. Writ Petition No. 25090 of 1998. The said order dated 19.1.2000 is reproduced in Paragraph 3 of the affidavit accompanying the stay application filed in the present special appeal.

3. The aforementioned contempt petition was dismissed by the learned Single Judge, inter alia, holding that the same was barred by time. The said order dated 9.7.2002 passed by the learned Single Judge dismissing the contempt petition is as under:

Heard learned Counsel for the Petitioner and perused the record including the order dated 19.1.2000 passed by this Court in Writ Petition No. 25090 of 1998. As per the allegations of Petitioner, he made last representation to the authority concerned on 5.3.01 and as such the contempt petition was entertainable upto

5.3.2002 as rightly reported by the office. The cognizance having not been taken within a year as per the provisions of the Contempt of Courts Act, the petition is barred by time and is dismissed as such.

4. We have heard Shri Atul Kumar, learned Counsel for the Petitioner-Appellant, and the learned Standing Counsel appearing for the Respondents, and perused the record.

5. Shri Atul Kumar, learned Counsel for the Petitioner-Appellant submits that the present special appeal against the aforesaid order dated 9.7.2002 is maintainable. He places reliance on the following decisions:

1. Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others,

2. A.P. Verma, Principal Secretary, Medical Health and Family Welfare, U.P. Lucknow and Ors. v. U.P. Laboratory Technicians Association, Lucknow and Ors. (1998) 3 UPLBEC 2333.

6. It is further submitted by Shri Atul Kumar that the view of the learned Single Judge that the contempt petition was barred by limitation was not correct. Referring to Paragraph 3 of the supplementary-affidavit, filed on behalf of the Petitioner-Appellant in the present special appeal, he submits that the contempt petition was filed on 21.12.2001. In case, that the contempt petition was filed on 21.12.2001. In case, there was any delay on the part of the Court in taking cognizance of such contempt petition, the contempt petition could not be dismissed on the ground of limitation. He refers to the decision of the Apex Court in Pallav Sheth Vs. Custodian and Others,

7. In reply, the learned Standing Counsel appearing for the Respondents submits that the present special appeal is not maintainable. He further submits that the decisions relied upon by the learned Counsel for the Petitioner-Appellant are not applicable to the present case.

8. It is further submitted by the learned Standing Counsel that the view expressed by the learned Single Judge in the order dated 9.7.2002 is correct.

9. We have considered the submissions made by the learned Counsel for the parties.

10. The first question to be considered is as to whether the present special appeal, purported to have been filed under Chapter VIII, Rule 5 of the Rules of the Court, is maintainable.

11. The aforementioned contempt petition before the learned Single Judge was evidently filed under the provisions of the Contempt of Courts Act, 1971 (in short "the Contempt Act") alleging the commission of civil contempt by the Respondents in the contempt petition on the ground of disobedience of the order dated 19.1.2000 passed by this Court in Civil Misc. Writ Petition No. 25090 of 1998. The contempt petition was dismissed by the learned Single Judge by the

order dated 9.7.2002 holding that the cognizance of the contempt petition having not been taken within one year from the date on which, the contempt was alleged to have been committed, the same was barred by limitation in view of the provisions of Section 20 of the Contempt Act.

12. The provision of "Appeals" is contained in Section 19 of the Contempt Act which is reproduced below:

19. Appeals.: (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt:

(a) where the order or decision is that of a single Judge, to Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the Appellate Court may order that:

(a) the execution of the punishment or order appealed against be suspended;

(b) if the Appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the Appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by Sub-section (2).

(4) An appeal under Sub-section (1) shall be filed:

(a) in the case of an appeal to a Bench of the High Court, within thirty days; and

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

13. A perusal of Sub-section (1) of Section 19 of the Contempt Act shows that an appeal is maintainable as of right from any order or decision of High Court in exercise of its jurisdiction to punish for contempt.

14. Chapter VIII, Rule 5 of the Rules of the Court deals with "special appeal", and provides as under:

5. Special Appeal.: An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution

in respect of any judgment, order or award (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.

15. The above-quoted Rule 5, thus, provides that an Appeal shall lie to the Court from a judgment of one Judge except in respect of the matters enumerated in the said rule.

16. In A.P. Verma case (supra), a Division Bench of this Court considered the provisions of Section 19 of the Contempt Act and those of Chapter VIII, Rule 5 of the Rules of the Court.

17. Following propositions, amongst others, have been laid down by the Division Bench (See Paragraphs 3, 4, 5, 6 and 7 of the said UPLBEC):

1. Section 19 of the Contempt Act lays down that an appeal shall lie as of right from any order or direction of the High Court in exercise of its jurisdiction to punish for contempt. Interlocutory orders pertaining purely to the procedure of the Court are not appealable u/s 19 of the Contempt Act.

2. The appeal would be maintainable not only against a specific order of punishment but also against an order or decision which has been rendered in exercise of jurisdiction to punish.

3. There is no absolute bar of an appeal against an order passed at an intermediate stage. It will depend upon the nature of the contention raised and the manner in which the same has been disposed of by the Court. In a case a contention which goes to the very root of jurisdiction is raised and the same is turned down or the order or decision is such which decides some bone of contention affecting the rights of the parties aggrieved, an appeal would be maintainable u/s 19(1) of the Contempt Act.

4. No appeal is maintainable under Chapter VIII, Rule 5 of the rules of the Court against an order passed in proceedings under the Contempt Act as it is a self-contained Code and it also provides for a remedy of appeal u/s 19 though only against specified type of orders or decisions.

5. In any proceedings initiated under the Contempt Act, the High Court can either punish or discharge the alleged contemner and in doing so it can pass all such ancillary orders which are necessary for exercise of such power but it cannot issue any directions or orders regarding the main dispute or controversy between the parties which has led to the filing of the writ petition by either of the parties. However, if in dealing with contempt petition, any order or direction is made by the Court concerning the merit of the controversy or dispute between the parties, or for implementation of any judgment or order, it will be de hors the

provision of the Contempt Act, and they can only be deemed to have been issued in exercise of power conferred by Article 226 of the Constitution of India. Such direction would, therefore, be amenable to an appeal under Chapter VIII, Rule 5 of the rules of the Court as they are not issued in exercise of any power conferred by the Contempt Act.

18. It may be noted that the present special appeal has been filed against the order dated 9.7.2002 whereby the contempt petition has been dismissed. Thus, the present special appeal is not directed against any interlocutory order.

19. In Midnapore case (supra), their Lordships of the Supreme Court considered the provisions of the Contempt Act as also those for the Letters Patent of the Calcutta High Court. Their Lordships framed the following three points for consideration (Paragraph 9 of the said AIR):

(i) Where the High Court, in a contempt proceedings, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable u/s 19 of the Contempt of Courts Act, 1971 ? If not, what is the remedy of the person aggrieved ?

(ii) Where such a decision on merits, is rendered by an interlocutory order of a learned Single Judge, whether an intra-Court appeal is available under Clause 15 of the Letters Patent ?

(iii) In a contempt proceeding initiated by a delinquent employee (against the Enquiry Officer as also the Chairman and Secretary in-charge of the employer-Bank), complaining of disobedience of an order directing completion of the enquiry in a time bound schedule, whether the Court can direct (a) that the employer shall reinstate the employee forthwith; b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the Enquiry Officer shall cease to be the Enquiry Officer and the employer shall appoint a fresh Enquiry Officer; and (e) that the suspension shall be deemed to have been revoked ?

20. As regards point No. (I), their Lordships of the Supreme Court held as under (Paragraphs 10 and 11 of the said AIR):

10. Section 19 of the Contempt of Courts Act, 1971 ["CC Act" for short] provides for appeals. Relevant portion of Sub-section (1) thereof is extracted below:

(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt:

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

The scope of Section 19 has been considered by this Court in Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, Purshotam

Dass Goel Vs. Hon''ble Mr. B.S. Dhillon and Others, Union of India v. Mario Cabrale Sa AIR 1982 SC 691 ; D.N. Taneja Vs. Bhajan Lal, State of Maharashtra Vs. Mahboob S. Allibhoy and another, and J. Parihar Vs. Ganpat Duggar and others, These cases dealt with orders refusing to initiate contempt proceedings or initiating contempt proceedings or acquitting/exonerating the contemnor or dropping the proceedings for contempt. In all these cases, it was held that an appeal was not maintainable u/s 19 of CC Act as the said section only provided for an appeal in respect of orders punishing for contempt.

11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus:

I. An appeal u/s 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the cotnemnor, is appealable u/s 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of Court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties will not be in the exercise of "jurisdiction to punish for contempt" and therefore, not appealable u/s 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal u/s 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-Court appeal (if the order was of a learned Single Judge and there is a provision for an intra-Court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly.

(Emphasis supplied)

21. In deciding the above point No. (I), their Lordships or the Supreme Court considered various decisions including the decision of the Supreme Court in D.N. Taneja case (supra). In D.N. Taneja case (supra), it was laid down by the Apex

Court as under (Paragraphs 8,10 and 12 of the judgment Today):

8. The right of appeal will be available under Sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt.... When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution."

10.... It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the Court hears the parties and considers the materials produced before it and if necessary examines witnesses and thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution".

12... The aggrieved party u/s 19(1) can only be the contemnor who has been punished for contempt of Court.

(Emphasis supplied)

22. In regard to point No. (ii), framed in Midnapore case (supra), their Lordships of the Supreme Court held as under (Paragraphs 12 and 18 of the said AIR):

12. We will next consider as to whether an intra-Court appeal under Clause 15 of the Letters Patent was available against the interlocutory order dated 20.11.1998 containing the directions on merits of the dispute. Clause 15 of the Letters Patent provides for an appeal from a "judgment" of a Single Judge in exercise of original jurisdiction, to a Division Bench....

18. The Division Bench, therefore, committed a serious and obvious error in holding that the appeal [MAT 4075/1998] was not maintainable under Clause 15 of the Letters Patent. Though the order of the learned Single Judge dated 20.11.1998, by which several directions to the Bank with reference to first Respondent were issued, is not a final "judgment", it is an "interlocutory judgment" which finally decides several rights and obligations of the employee vis-a-vis the employer and therefore, appealable under Clause 15 of the Letters Patent."

(Emphasis supplied)

23. In regard to point No. (iii), framed in Midnapore case (supra), their Lordships of the Supreme Court held as under (Paragraphs 20 and 21 of the said AIR):

20. In the circumstances, the Court ought to have proceeded to consider whether there was any willful disobedience of the order dated 9.4.1997, on the part of S.K. Das and if so, punish him for contempt. As S.K. Das was nowhere in the picture when the order dated 9.4.1997 was passed in the writ petition, and as he was appointed as an independent Enquiry Officer only by an order dated 5.1.1988 and as there was a complaint about the non-co-operation by the first Respondent, (delinquent employee), it is doubtful whether there was any case for even issuing a show cause notice to him. Be that as it may, we are not concerned with the issue of show cause notice to S.K. Das in this appeal. What is relevant to be noticed is that the learned Single Judge could not have made an order in the contempt proceedings, that Sri S.K. Das had, by his conduct, disqualified himself to be the Enquiry Officer and that he shall cease to be the Enquiry Officer and that another Enquiry Officer shall be appointed.

21. There was also no justification for the further direction by the learned Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary within four weeks, and that the suspension order shall be deemed to have been revoked. These were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the Court to issue such directions, even assuming that such directions could be issued in the course of the contempt proceedings. Hence, directions (2) and (3) and the direction relating to revocation of suspension are liable to be set aside.

(Emphasis supplied)

24. Following principles, amongst others, follow from the above decisions:

1. The appeal u/s 19 of the Contempt Act is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt i.e., an order imposing punishment for contempt.
2. No appeal u/s 19 of the Contempt Act may be filed against an order declining to initiate proceedings for contempt, or an order initiating proceedings for contempt, or an order dropping the proceedings for contempt, or an order acquitting or exonerating the contemnor.
3. In contempt proceedings, the High Court can decide whether any contempt of Court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

4. In case, in contempt proceedings any direction is issued or decision is made by the High Court on the merits of a dispute between the parties, then two situations may arise:

(A) Such direction or decision is not incidental to or inextricably connected with the order punishing for contempt in this case, such direction or decision cannot be challenged in an appeal u/s 19 of the Contempt Act. However, such direction or decision can be challenged by intra-Court appeal even though such direction or decision is not a final judgment but is an interlocutory judgment, which finally decides rights and obligations of the parties.

(B) Such direction or decision is incidental to or inextricably connected with the order punishing for contempt. In this case, the appeal u/s 19 of the Contempt Act can also encompass the incidental or inextricably connected directions or decisions.

Keeping in view the aforementioned Principles, let us examine the present case.

25. In the present case, as noted above, the Special Appeal, purported to be under Chapter VIII, Rule 5 of the Rules of the Court, has been filed against the order dated 9.7.2002 whereby the contempt petition has been dismissed as barred by limitation. The special appeal is, thus, not against an interlocutory order but is directed against the final order/judgment. Thus, the propositions laid down by the Division Bench in A.P. Verma case (supra), in respect of the maintainability of the appeal u/s 19 of the Contempt Act against the interlocutory orders are not applicable to the present case.

26. It is further noteworthy that the order dated 9.7.2002, impugned in the present special appeal, has dismissed the contempt petition as barred by limitation. Thus, no contempt proceeding has been initiated on the contempt petition nor has any Respondent in the contempt petition been punished as a consequence of the contempt proceedings. Hence, no appeal u/s 19 of the Contempt Act is maintainable against the order dated 9.7.2002. Therefore, the present special appeal, filed against the order dated 9.7.2002, cannot be held to be maintainable u/s 19 of the Contempt Act.

27. It is again pertinent to note that the order dated 9.7.2002 has not considered the merits of the case of the Petitioner-Appellant and no direction or decision has been given in regard to the merits of the case of the Petitioner-Appellant. Therefore, the Petitioner-Appellant is not entitled to challenge the said order dated 9.7.2002 by filing special appeal under Chapter VIII, Rule 5 of the Rules of the Court.

28. From the above discussion, it follows that the special appeal filed by the Petitioner-Appellant is not maintainable either under Chapter VIII, Rule 5 of the Rules of the Court or u/s 19 of the Contempt Act.

29. As we are of the view that the appeal, filed by the Petitioner-Appellant, is not maintainable, it is not necessary to go into the question of correctness or

otherwise of the said order dated 9.7.2002 passed by the learned Single Judge.

30. The special appeal is dismissed as not maintainable.

31. However, on the facts and in the circumstances of the case, there will be no order as to costs.