

(1968) 05 PAT CK 0017
In the Patna High Court
Case No : A.F.A.O. No. 24 of 1964

Basanta Chandra Ghose

APPELLANT

Vs

Collector of Patna

RESPONDENT

Date of Decision : 14-05-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 38
Contempt of Courts Act, 1971 — Section 4
Criminal Procedure Code, 1898 (CrPC) — Section 386(1), 547, 561A

Citation : AIR 1969 Patna 70 : (1969) 17 BLJR 655 : (1969) CriLJ 398

Hon'ble Judges : P.K. Banerji, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : S.C. Ghose, M.P. Pandey and S.K. Chattopadhyaya, for the Appellant; K.P. Verma, for the Respondent

Final Decision : Dismissed

Judgement

1. The sole appellant in this case was punished for contempt of court, by a Special Bench of this Court in Original Criminal Miscellaneous No 4 of 1959, decided on 29-1-1960. The judgment is reported in the matter of In Re: Basanta Chandra Ghosh, Advocate and Others, . A fine of Rs. 250/- was imposed upon him, in default, he was sentenced to undergo simple imprisonment for a period of one month. A cost of Rs. 500/- was assessed and awarded against him.

2. Ext. A shows that on 11-3-1960 a notice was directed to issue by the Special Bench to Shri B. C. Ghosh to deposit, a sum of Rs. 500, the amount of cost payable by him. within a week of the receipt of the notice, failing which a warrant was directed to be prepared and sent to the Collector of Patna for execution and realisation in terms of Section 386(1)(b) of the Criminal Procedure Code (hereinafter to be referred to as the "Code"). It appears from the same exhibit that later on when the appellant - filed an application under Article 134(1)(c) of the Constitution of India for grant of a certificate of fitness for appeal to the Supreme Court, while rejecting that application by order dated 13-7-1960, the

Special Bench repelled the contention put forward on his behalf that the order for cost was made without affording him an opportunity to show cause against that order. It was pointed out that during the course of the hearing of the proceeding for contempt, on the basis of several authorities, an indication was given to the appellant that he could be saddled with cost. His contention that the amount of cost could not be realised u/s 386(1)(b) of the Code was also repelled by observing that it was open to this Court to have the cost realised by a number of ways including by directing to deposit it within certain period failing which he might be proceeded with for contempt of court, or it was also open to the Court to resort to a milder procedure prescribed by Section 386(1 Kb) of the Code.

3. The appellant paid the amount of Rs. 250 imposed upon him as fine, but is resisting the execution case filed by the Collector for realisation of the amount of Rs. 500 awarded against him as cost. He is doing so on two grounds, (1) that the order of the High Court awarding cost is without jurisdiction and a nullity, and (2) that costs cannot be realised by following the procedure prescribed u/s 386(1)(b) of the Code.

4. In our judgment, there is no substance in the first point. There are several authorities in support of the view that cost can be awarded in a proceeding for contempt. The High Court has got the inherent power to award cost in such a proceeding and no authority was cited before us taking a contrary view. We may also add that the question is not open to be examined now by the execution court, as the question of legality of the High Court's order awarding cost against the appellant was sought to be agitated in the Supreme Court but without any success. It is not open to the executing court now to say that the order is without jurisdiction and a nullity. That being so, it cannot go behind the order and has got to execute it.

5. Coming to the second point, it should be pointed out first that, in terms.

Section 386(l)(b) of the Code cannot be applied. The procedure in Clause (b) of Sub-section (1) of Section 386 of the Code, of issuing a warrant to the Collector of the District authorising him to realise the amount by execution according to the civil process, against the moveable or Immovable property, or both. of the defaulter, has been in terms prescribed for realisation of the fine imposed upon an offender by a court passing the sentence. Section 547 of the Code runs as follows:--

"Any money other than a fine payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for shall be recoverable as if it were a fine."

This also cannot bring into operation the procedure prescribed in Clause (b) of Sub-section (1) of Section 386 of the Code for realisation of the amount of cost, as, obviously the cost had not been awarded by the High Court under the Code. The proceeding for contempt of court is of a very special nature and for the matter of awarding cost it was not necessary for the High Court to take recourse

to any special provision under the Code nor could it do so. We are, therefore, of the opinion that although in the order dated 11.3.1960 it was directed that the warrant should be prepared and sent to the Collector of Patna for execution and realisation of the amount of cost in terms of Section 386(1)(b) of the Code, which section in terms, even with the aid of Section 547 of the Code, may not apply, what was meant to be directed was that factually the Collector of Patna may proceed to realise by execution in accordance with the procedure prescribed u/s 386 (1) (b) of the Code. It is a well-established principle of law that if the Court has got an inherent power to make an order, it has got the inherent power to execute and enforce it also in the manner and way it thinks fit and proper. That being so, direction by this court to prepare the warrant and send it to the Collector of Patna for execution and realisation of the amount of cost by following the procedure provided u/s 386 (1)(b) of the Code is perfectly legal and justified. In pursuance of that direction the Collector of Patna has levied the execution case against the appellant as appears from the execution petition filed in the execution court. It is open to the High Court to adopt the mode prescribed u/s 386 (1) (b) of the Code for realisation of the amount of cost. In our opinion, therefore, the point raised on behalf of the appellant has no substance and must be rejected.

6. It was contended on behalf of the appellant by Mr. S. C. Ghose that the procedure prescribed in the Code is not applicable to a proceeding for contempt. In this regard reliance was placed upon certain passages occurring in the judgment of the Special Bench in the matter of *In Re: Basanta Chandra Ghosh, Advocate and Others*, and the decisions of the Supreme Court in *Sukhdev Singh v. Hon'ble C. J. S. Teja Singh* AIR 1954 SC 186 and *V.G. Paterson Vs. O.V. Forbes and Others*, . In the Matter of *In Re: Basanta Chandra Ghosh, Advocate and Others*, it has been said:

".....it has been repeatedly laid down that a proceeding in contempt is a quasi criminal proceeding and the Code of Criminal Procedure does not apply ..."
Our attention was drawn to a passage occurring in column 2 at page 440 which is a quotation from the judgment of the Supreme Court in *Sukhdev Singh's* case AIR 1954 SC 186. We would better quote that passage from the decision of the Supreme Court itself. At page 190, column 1, Bose J., who delivered the judgment on behalf of the Court, said:-

"We hold, therefore, that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure". The passage just extracted rather supports the view which we have expressed above. In the case of *V.G. Paterson Vs. O.V. Forbes and Others*, the question canvassed before the Supreme Court was whether the property in question attached in a process issued against a contemner who had absconded by following the procedure under sections 87 and 88 of the Code, could be available and be at the disposal of the State Government under Sub-section (7) of Section 88 of the Code. The case was

chiefly decided on the particular facts of the appeal before the Supreme Court, but, that apart, the question as to whether the Court had the power of arrest and of attaching the alleged contemner's property in an attempt to secure his presence, was left open, as would appear from paragraph 19, column 1 at page 697 of the report. Das Gupta, J., who delivered the judgment on behalf of the Court, stated in paragraph 18:--

"It seems to us that the Chief Court as a court of record had the right to punish persons for contempt and for the proper exercise of that power it will have all other powers necessary and incidental to it."

In the 19th paragraph it was further said, to which our attention was drawn by learned counsel for the appellant, that -

".... The right of the Government to have any control over the attached property flows from the provisions of Section 88 of the Criminal Procedure Code. As no attachment could legally be made u/s 88, Criminal Procedure Code, in any proceeding for contempt, the provisions of Section 88(7) of the Code of Criminal Procedure, under which the property under attachment shall be at the disposal of the State Government, if the proclaimed person does not appear within the time prescribed in the proclamation cannot come into operation."

It is true, that while prescribing its own procedure in a proceeding for contempt or adopting its own procedure in exercise of the inherent power for enforcement of its orders passed in that proceeding, the court cannot legislate and in terms, adopt the procedure prescribed under the Code. Factually it can adopt some of the procedures prescribed there. The procedure adopted in exercise of the inherent powers or while prescribing its own mode of execution, the court may adopt the identical procedure, yet in terms, the section of the Code will not apply and all incidents of that procedure will not come into operation. The observations of the Supreme Court appreciated in that light, if we may say so with respect, clearly brings about the ratio decidendi of the Supreme Court decision and instead of helping the appellant lends support to the view expressed by us.

7. We, therefore, hold that the execution levied by the Collector of Patna for realisation of the amount of cost of Rs. 500/- from the appellant is manifestly legal and justified and it cannot fail on either of the grounds urged on behalf of the appellants. In this connection we may also refer to a Bench decision of the Allahabad High Court in Emperor Vs. S.M. Wahid Ullah Ahrari, on which reliance was placed for the respondent by the learned Standing Counsel. The Bench of the Allahabad High Court also observed that costs awarded in a proceeding for contempt could be directed to be recovered in exercise of the inherent jurisdiction of the Court.

8. In the result, we dismiss the appeal, but in the circumstances we shall make no order as to costs.