

(2019) 05 RAJ CK 0038

In the Rajasthan High Court

Case No : Special Appeal (Civil) No. 15 Of 2017

Bhanwar Lal Sisodia And Ors

APPELLANT

Vs

Vijay Kumar Bhansali And Ors

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 RAJ CK 0038

Hon'ble Judges : Alok Sharma, J; Narendra Singh Dhatta, J

Bench : Division Bench

Advocate : A.K. Sharma, V.K. Sharma, Raunak Singhvi, Tarun Chaudhary

Final Decision : Disposed Off

Judgement

Under challenge are the orders dated 29.8.2017 and 11.9.2017 passed in S.B. Civil Contempt Petition No. 325/2016.

2. To comprehend and appreciate the challenge to the orders in issue, it would be necessary to detail the background facts in which S.B. Civil Contempt Petition No. 325/2016 arose.

3. The petitioner-respondent (hereafter 'the petitioner') Vijay Kumar Bhansali came to be elected as a Sarpanch of Gram Panchayat, Tamkor, Panchayat Samiti, Alsisar, District Jhunjhunu in the Gram Panchayat Elections of 2010. He filed S.B. Civil Writ Petition No. 12362/2014, 4 years subsequent to his being elected as Sarpanch inter alia stating that despite his election as Sarpanch, Gram Panchayat, Tamkor, his predecessor Ex-sarpanch Gokul Chand Soni had not handed over the original record of the Gram Panchayat, Tamkor to him. It was alleged that Gokul Chand Soni continued to hold back the records of the Gram Panchayat at his residence. A FIR No. 74/2011 at Police Station, Alsisar, District Jhunjhunu had come to be lodged by the petitioner against the said Gokul Chand Soni under Sections 420, 467, 468, 471 and 120B IPC. It was, in the facts and

circumstances set up, prayed that the court direct the Ex-sarpanch Gokul Chand Soni to hand over the records of Gram Panchayat Samiti, Alsisar to the petitioner such that he could carry out his statutory duties as Sarpanch smoothly and effectively.

4. That it is relevant to state that the appellants herein were not parties in the writ petition.

5. The said S.B. Civil Writ petition No. 12362/2014 laid by the petitioner was disposed of at the motion stage itself by the Single Judge vide order dated 28.4.2015 observing and directing as under:

"Having regard to the facts aforesaid, the petitioner is required to approach the District Collector, Jhunjhunu, who may take action for confiscation of the record of the Gram Panchayat Tamkor, Panchayat Samiti, Alsisar, District Jhunjhunu, if according to the petitioner, the same is in possession of former Sarpanch concerned. Investigating Officer in the aforesaid FIR may also take such steps."

6. S.B. Civil Review Petition No. 110/2016 against the order dated 28.4.2015 in S.B. Civil Writ Petition No. 12362/2014 then came to be filed by the State. The court was however of the view that police finding in FIR No. 74/2011 lodged at Police Station Alsisar, District Jhunjhunu that no record of Gram Panchayat, Alsisar, as alleged, was missing, was of no effect as it was for the District Collector to satisfy himself as to what was the nature of the record, which was allegedly in possession of the erstwhile Sarpanch and whether the same was available or missing. It was held by the Court that the petitioner could avail his remedy of filing protest petition on the negative final report stated to have been submitted by the investigating officer. So recording, petition for review and recall of the court's order dated 28.4.2015 in S.B. Civil Writ Petition No. 12362/2014 was dismissed on 8.9.2016.

7. S.B. Civil Contempt Petition No. 325/2016 then came to be filed on 24.2.2016 subsequent to 5 years' tenure of the petitioner Vijay Kumar Bhansali as Sarpanch of Gram Panchayat, Tamkor having expired. Neither of the appellants Bhanwar Lal Sisodiya and Shiv Lal Joshi were impleaded as parties in the said contempt petition nor any allegations with regard to contravention / non compliance by them of the order dated 28.4.2015 passed in S.B. Civil Writ Petition No. 12362/2014 were leveled against them.

8. That on 1.3.2016, Single Judge issued notice on the contempt petition to the District Collector, Jhunjhunu and required his presence on 12.4.2016. However, on the said date, the District Collector's personal appearance was dispensed with till further order by the Court as the Court was informed that upon the instructions of the Collector, the SDO, Alsisar had conducted a raid on the house of ExSarpanch Gokul Chand Soni. The Single Judge vide order dated 27.7.2017 again required the District Collector's presence in the Court on 8.8.2017. The Additional Advocate General appearing for one of the contemnors was directed to also ensure the presence of the erstwhile investigating officer and the then

Superintendent of Police, Jhunjhunu, the appellants herein - even though they were not impleaded in the contempt petition nor any allegation as to contempt of the court's order by them made.

9. That on 29.8.2017, the Court was informed that aside of the FIR No. 74/2011, Police Station, Alsisar, District Jhunjhunu, a preliminary enquiry had also been initiated on the alleged misdoings / illegalities of the ExSarpanch Gokul Chand Soni by the Anti Corruption Bureau, which had however been subsequently closed on no case being found for lodging of an FIR with the ACB. The Court then proceeded to note that the case before it pertained to allegations with regard to issuance of hundreds of pattas (for allotment of land) fraudulently without procedural compliance under the extant Rules. It was recorded by the court that the allegation being serious one, and the ACB yet closing the preliminary enquiry, and a negative final report in FIR No. 74/2011, Police Station Alsisar, District Jhunjhunu having been submitted on 3.1.2012, it should take cognizance of the alleged offences in issue. The Court required the then Addl. Advocate General Mr. Anurag Sharma to call for the complete record from Anti Corruption Bureau to find out the reason for closure of the case against Ex-Sarpanch Gokul Chand Soni, despite it having first commenced a preliminary enquiry against him. The Court also noted that despite allegation of misplacement of record of Gram Panchayat, Tamkor, the then investigating officer (in FIR No. 74/2011) reported it to be a case of civil nature, which on the face of it showed according to him "influence of the persons interested." The Court then proceeded to observe in its order dated 29.8.2017 that "in any case, the respondents were expected to take up the matter seriously and it should not only against the investigating officer, but the then Superintendent of Police, who approved the final report" In FIR No. 74/2011.

10. That is how the appellants now before this Court were drawn into the proceedings in S.B. Civil Contempt Petition No. 325/2016.

11. Contempt Petition No. 325/2016 thereafter come up before the Court on 11.9.2017. The appellants as directed on 29.8.2017 were present. Thence the Court required the appellants - the erstwhile investigating officer and the then Superintendent of Police, Jhunjhunu to explain as to why negative final report was filed in FIR No., 74/2011 treating the allegations therein as of civil in nature overlooking the fact that allegations in the FIR not only pertained to the records of Gram Panchayat, Tamkor (alleged to be in custody of Ex-sarpanch Gokul Chand Soni) not being available but also related to allegations of pattas illegally issued which was prima facie an offence. Dissatisfied with the explanation proffered by the appellants before the Court - obviously orally as they were neither parties in the contempt petition nor had otherwise to contend with any allegation in writing - the Court proceeded "to take suo-moto cognizance of the case to find out as to on what basis, negative final report was given by the police when primarily it did not involve controversy of civil nature, if the allegations in the FIR are looked into." The Court directed the appellants to submit reply

stating the reasons as to why despite the allegations in the FIR No. 74/2011, a negative final report thereon had been filed on 3.1.2012. The registry was directed to open a separate file on the suo moto cognizance taken by the court. That file came to be numbered as Suo Moto contempt Petition No. 1604/2017.

12. Aggrieved, the appellants have filed the present appeal challenging the orders dated 29.8.2017 and 11.9.2017 passed by the Single Judge.

13. The Division Bench of this Court vide order dated 6.10.2017 admitted the appeal and while issuing notices, stayed the effect and operation of the impugned orders dated 29.8.2017 and 11.9.2017 passed by the Single Judge. After passing the order dated 6.10.2017 by the Division Bench, when no action was taken against the then investigating officer, the Single Judge vide order dated 15.11.2017 required the presence of Director General of Police in Court on 16.11.2017. On 16.11.2017, the Director General of Police appeared and assured that action would be taken up against the then investigating officer, if required (underlining mine). Both the aforesaid orders dated 15.11.2017 and 16.11.2017 led the appellants to file a D.B. Civil Misc. IInd Stay Application No. 4552/2017. The Division Bench vide order dated 28.11.2017 while disposing of the second stay application observed that proceedings arising out of the contempt petition, until further orders would be kept in abeyance, awaiting decision of the pending appeal.

14. Mr. A.K. Sharma, Sr. Counsel with Mr. V.K. Sharma appearing for the appellants submitted that the impugned orders dated 29.8.2017 and 11.9.2017 are without jurisdiction, perverse and unsustainable. Therefore, they deserve to be quashed and set-aside. Mr. A.K. Sharma submitted that the entire foundation of S.B. Civil Writ Petition No. 12362/2014 itself from which contempt proceedings arose, was dishonest inasmuch as in FIR No. 74/2011 lodged at Police Station, Alsisar, District Jhunjhunu, prior to the filing of the writ petition in issue, a negative final report had been submitted by the police on 3.1.2012 after investigation. And on notice thereof the petitioner had in-fact filed a protest petition in the Court of Judicial Magistrate on 29.10.2012. These facts were concealed from the court both at the time of filing of the writ petition and passing of the order thereon on 28.4.2015. Mr.A.K. Sharma submitted that it would be appropriate to bring it to the notice of this Court. That though it does not concern the appellants, that even when the Government had taken statutory action against the ExSarpanch Gokul Chand Soni, a writ petition laid by him was allowed vide order dated 20.2.2017. Mr. A.K. Sharma further submitted that the final report in FIR No. 74/2011 having been submitted in the Court of Judicial magistrate, Jhunjhunu by the appellant no.1 with the approval of appellant no.2 on 30.12.2011 and the petitioner having filed a protest petition thereon, nothing remained with the learned Single Judge to exercise his contempt jurisdiction with regard to the alleged disobedience / breach / non compliance of the order dated 28.4.2015, where the only direction qua FIR No. 74/2011 was that it be investigated. Mr. A.K. Sharma pointed out, now in any event following the court's

impugned orders dated 29.8.2017 and 11.9.2017, the Judicial Magistrate, Jhunjhunu in fact has preponed listing of the protest petition filed by the petitioner from 16.9.2017 to 13.9.2017 and directed further investigation in FIR No 74/2011.

15. Aside of the above, Mr. A.K. Sharma submitted that in any event, the petitioner himself not having sought any relief against the appellants in the contempt petition, there was no occasion whatsoever for the learned Single Judge to have taken suo moto cognizance of alleged disobedience / breach / contempt at the instance of the appellants moreso as no such disobedience or contravention of the court's order dated 28.4.2015 was at all attributable to the appellants - the court's dissatisfaction, for unarticulated reasons, with the filing of negative final report in FIR No. 74/2011 even prior to the laying of SBCWP No. 12362/2014 notwithstanding. Mr. A.K. Sharma submitted the impugned orders are thus liable to be set-aside as they reflect complete lack of jurisdiction at the instance of the learned Single Judge in contempt jurisdiction.

16. Mr. Tarun Chaudhary appearing for the respondent-petitioner in the contempt petition is not in a position to deny that the petitioner when filing S.B. Civil Writ Petition No. 12362/2014 had failed to disclose that a negative final report had been filed in FIR No, 74/2011, and in respect of which his protest petition was pending before the Judicial Magistrate, Jhunjhunu. Mr. Tarun Chaudhary was also not in a position to deny that the petitioner had not made any allegations against the appellants in the contempt petition nor claimed any relief against them. Mr. Tarun Chaudhary further has not disputed the fact that following the impugned orders dated 29.8.2017 and 11.9.2017 passed by this Court, on the petitioner's protest petition against the negative final report filed in FIR No 74/2011, vide order dated 13.9.2017, the Judicial Magistrate, Jhunjhunu has directed further investigation in to the FIR.

17. Heard. Considered.

18. The jurisdiction of the Court in the contempt petition is not at large. The Court's inherent powers under Article 226 of the Constitution of India cannot be conflated with the jurisdiction of this Court in a contempt petition which is limited to finding as to whether there has been any deliberate non compliance and / or willful disobedience of the order passed by the Court or an alleged contemnor has breached an undertaking filed before the Court.

19. The Apex Court in the case of J.S. Parihar Versus Ganpat Duggar and others reported in (1996) 6 Supreme Court Cases 291 has held that "it is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order.

After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act."

20. In the instant case, the appellants were not even parties in S.B. Civil Writ Petition No. 12362/2014. The said petition was decided on 28.4.2015 and the directions qua FIR No. 74/2011 were that "the investigating officer in the aforesaid FIR may also take such steps". The import of the court's order dated 28.4.2015 qua FIR No. 74/2011, Police Station, Alsisar, District Jhunjhunu was that it be investigated. The discretion of the investigating officer was not denuded as in fact the court could not so do under law. Further in any event from the facts which have come before this Court, it is apparent that even before passing the order dated 28.4.2015, requisite steps on the FIR No. 74/2011 had not been taken and a negative final report filed before the Court of Judicial Magistrate, Jhunjhunu on 3.1.2012 holding that the allegations in the FIR No. 74/2011 were a matter relating to civil dispute and no criminality therefrom was made out. A protest petition thereagainst was also admittedly filed by the petitioner prior to laying SBCWP No. 12362/2014 and the order dated 28.4.2015, but all these facts were dishonestly suppressed and not brought to the notice of the Court. Be as it may, with the final negative report in FIR No. 74/2011 having been filed before passing of the order dated 28.4.2015, it cannot by any stretch of imagination be held that the directions of the Court in that regard were not complied with by the appellants - the erstwhile investigating officer in the said FIR and the approving then Superintendent of Police. We are of the considered view that in the facts obtaining, the learned Single Judge had no occasion whatsoever to invoke his contempt jurisdiction and in so doing has quite clearly exceeded his jurisdiction. It is well settled that substantive legal rights inter alia of not being arrayed as contemnors are not only to be protected but also that demanding of such rights has to be only as per the prescribed procedure. It is not for this Court to comment on the merits or demerits of the negative final report in FIR No. 74/2011 having been filed before the jurisdictional court by the then investigating officer as approved by the Superintendent of Police. That is a matter to be addressed by the Judicial Magistrate, Jhunjhunu in the proceedings taken in accordance with law against the negative final report. The Judicial Magistrate has in-fact already issued directions for further investigation on 13.9.2017, no doubt in some measures in the background of the impugned orders dated 29.8.2017 and 11.9.2017 - as is evident from the fact that protest petition against the negative final report was kept pending by the petitioner for about 5 years and the order dated 13.9.2017 was then passed preponing the date from 16.9.2017.

21. Whether any wrong doing has been committed by the Ex-Sarpanch Gokul Chand Soni or not, cannot be the subject matter of determination by this Court in exercise of its contempt jurisdiction. The petitioner shall be free to pursue his

case/s in that regard before the competent authorities / court, if law permits and subject to his peril. The authorities/ courts before whom/ which any proceedings are taken shall be under an obligation to address the said case/s in accordance with prescribed law and procedure. The contempt jurisdiction of this Court cannot become the dueling ground between the petitioner and his political rival Ex-Sarpanch Gokul Chand Soni. We are therefore of the considered view that the impugned orders dated 29.8.2017 and 11.9.2017 in the facts of the case are wholly without jurisdiction and liable to be quashed and set-aside.

22. The appeal is accordingly allowed with the observations hereinabove. Consequences to follow.

23. Consequent upon the disposal of the appeal, the application for placing on record the additional documents also stands disposed of.