
(2015) 04 AHC CK 0217

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 7404 of 2002

Daulat Ram Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Contempt of Courts Act, 1971 — Section 14, 2(c)
Criminal Procedure Code, 1973 (CrPC) — Section 204
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 2 ACR 2251 : (2015) 6 ADJ 300 : (2015) 90 ALLCC 246

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Anand Kumar Pandey, B.D. Malhotra and D.R. Sharma, for the Appellant; Y.K. Sinha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J—Sri Anand Kumar Pandey, learned Counsel for the petitioner, states that he has not prepared the matter at all and has gone through the file. He submitted that the matter may be adjourned today. The matter is of the year 2002 and proceedings of the Court below have been stayed for the last 12 years. When he was informed that there are four Counsels appearing in this matter, he submitted that he has nothing to do with other counsels but so far as he is concerned, he is not ready with the case. From the record, I find that petitioner, Daulat Ram Sharma, son of M.D. Sharma, himself is an Advocate and is also appearing in person. His name is also been shown in the cause list. In these facts and circumstances, I do not find any justification to accept the request of adjournment only for the reason that out of four, only one Counsel i.e. Sri Pandey is not inclined to address the Court particularly when no other Counsel has appeared, though the case has been called in revised.

2. Besides, petitioner, whose name is also shown in the cause list, is also not present, therefore, I have no option but to go through the record myself and

decide this writ petition.

3. This writ petition under Article 226 read with Article 227 of the Constitution has been filed assailing judicial orders, i.e., judgment and order dated 23.7.2002 passed by 2nd Additional District and Sessions Judge, Gautambudh Nagar dismissing Revision against the order dated 15.1.2000 passed by 3rd Additional Chief Judicial Magistrate, Ghaziabad in Criminal Case No. 1305 of 1999 whereby the Magistrate has rejected objection of accused filed under section 204 Cr.P.C.

4. Apparently this writ petition under Article 226 has come up against judicial orders passed by Courts dealing with criminal matters. Recently a three-Judge Bench of Apex Court has considered the question whether judicial orders passed by Civil Courts can be challenged in a writ petition under Article 226 in the case of *Radhey Shyam and Others Vs. Chhabi Nath and Others* (2015) 3 AD 73 : (2015) 2 RCR(Civil) 606 : (2015) 3 SCALE 88 : (2015) 5 SCC 423 : (2015) 3 SCJ 552 : (2015) 1 UPLBEC 646 and has held that against judicial orders passed by Civil Court, writ petition under Article 226 would not lie. It has also held that Article 227 is distinct from Article 226 and within the limitation and permissibility of Article 227, the judicial orders passed by Civil Court can be assailed before the High Court.

5. The reasons assigned by Apex Court in taking the aforesaid view that against judicial orders of Civil Court, writ petition under Article 226 would not lie would squarely apply to judicial orders of a Criminal Court also. Therefore, in my view, a writ petition under Article 226 against judicial orders passed by Court dealing with criminal matters would not lie.

6. Now I come to the question whether the impugned order are assailable under Article 227.

7. In supervisory jurisdiction of this Court over Subordinate Courts, the scope of judicial review is very limited and narrow. It is not to correct the errors in the orders of the Court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

8. This power involves a duty on the High Court to keep the inferior Courts and Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

9. In *D.N. Banerji Vs. P.R. Mukherjee and Others*, AIR 1953 SC 58 : (1953) 4 SCR 302 the Court said:

"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226 and 227 of

the Constitution to interfere."

10. A Constitution Bench of Apex Court examined the scope of Article 227 of the Constitution in *Waryam Singh and Another Vs. Amarnath and Another*, AIR 1954 SC 215 : (1954) 1 SCR 565 and made following observations at p. 571:

"This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee*, AIR 1951 Cal 193 to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

11. In *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, AIR 1984 SC 38 : (1983) 2 SCALE 1013 : (1983) 4 SCC 566 : (1984) 1 SCR 211 : (1984) 16 UJ 132 the Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

12. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, AIR 1963 SC 1895 : (1963) 2 SCR 570 Supp , *Rukumanand Bairoliya Vs. The State of Bihar*, AIR 1971 SC 746 : (1971) 3 SCC 167 : (1971) 3 UJ 143 , *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, AIR 1980 SC 1896 : (1980) 1 LLJ 137 : (1980) 2 SCC 593 : (1980) 2 SCR 146 , *Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives*, (1995) 7 JT 400 : (1995) 5 SCALE 481 : (1995) 6 SCC 576 , *Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others*, AIR 1997 SC 3892 : (1997) 7 JT 618 : (1997) 5 SCALE 633 : (1997) 7 SCC 300 : (1997) 3 SCR 636 Supp : (1997) AIRSCW 3819 : (1997) 8 Supreme 52 , *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, AIR 1998 SC 128 : (1998) CriLJ 1 : (1997) 8 JT 705 : (1997) 6 SCALE 610 : (1998) 5 SCC 749 : (1997) 5 SCR 13 Supp and *Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others*, AIR 1999 SC 162 : (1998) 7 JT 596 : (1999) 121 PLR 753 : (1998) 6 SCALE 115 : (1999) 1 SCC 47 : (1998) 2 SCR 643 Supp : (1999) 1 UJ 504 : (1998) AIRSCW 3521 : (1998) 8 Supreme 412 .

13. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to upset conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so

unreasonable that no Court could ever have reached them. (See: Mrs. Rena Drego Vs. Lalchand Soni, Etc., (1998) 3 AD 74 : AIR 1998 SC 1990 : (1998) 2 JT 369 : (1998) 2 SCALE 256 : (1998) 3 SCC 341 : (1998) 2 SCR 197 : (1998) AIRSCW 1840 : (1998) 2 Supreme 376 , Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others, AIR 1999 SC 2266 : (1999) 1 SCC 70 : (1999) AIRSCW 2309 , Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, AIR 1999 SC 602 : (1998) 8 JT 581 : (1998) 6 SCALE 580 : (1999) 2 SCC 171 : (1999) 1 UJ 310 : (1999) AIRSCW 270 : (1998) 9 Supreme 412 and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another, AIR 1999 SC 413 : (1999) 81 FLR 932 : (1998) 8 JT 552 : (1999) 1 LLJ 416 : (1998) 6 SCALE 519 : (1999) 2 SCC 143 : (1999) SCC(L&S) 492 : (1998) 3 SCR 488 Supp : (1999) AIRSCW 80 : (1998) 9 Supreme 415 .

14. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: Union of India and Others Vs. Himmat Singh Chahar, AIR 1999 SC 1980 : (1999) CriLJ 2894 : (1999) 3 Crimes 60 : (1999) 2 CTC 503 : (1999) 3 JT 631 : (1999) 3 SCALE 620 : (1999) 4 SCC 521 : (1999) 3 SCR 513 : (1999) 2 UJ 1056 : (1999) AIRSCW 1670 : (1999) 5 Supreme 366)

15. In Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, AIR 1999 SC 1351 : (1999) 82 FLR 137 : (1999) 3 JT 38 : (1999) 1 LLJ 1260 : (1999) 2 SCALE 508 : (1999) 6 SCC 82 : (1999) SCC(L&S) 1054 : (1999) 2 SCR 505 : (1999) AIRSCW 1051 : (1999) 4 Supreme 51 , the Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution.

16. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., AIR 2000 SC 931 : (2000) 2 JT 558 : (2000) 2 SCALE 186 : (2000) 3 SCC 190 : (2000) 1 UJ 746 : (2000) AIRSCW 690 : (2000) 2 Supreme 49 , the Court said that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse.

17. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another, AIR 2000 SC 1508 : (2000) 2 CTC 506 : (2000) 85 FLR 672 : (2000) 4 JT 503 : (2000) 1 LLJ 1618 : (2000) 3 SCALE 255 : (2000) 4 SCC 245 : (2000) SCC(L&S) 471 : (2000) 2 SCR 1212 : (2000) AIRSCW 1475 : (2000) 3 Supreme 344 , the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having

based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

18. In *Union of India and Others Vs. Rajendra Prabha and Another*, AIR 2001 SC 1672 : (2001) 75 ECC 3 : (2001) 129 ELT 286 : (2001) 4 JT 97 : (2001) 2 SCALE 608 : (2001) 4 SCC 472 : (2001) AIRSCW 1407 : (2001) 2 Supreme 545 , the Court observed that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

19. Similar view has been reiterated in *State of Maharashtra Vs. Milind and Others*, (2000) 3 JT 213 Supp : (2000) 7 SCALE 628 : (2001) SCC(L&S) 117 : (2001) 1 UJ 271 : (2000) AIRSCW 4303 : (2000) 8 Supreme 429 , *M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd.*, (2001) 7 AD 690 : AIR 2001 SC 3295 : (2001) 7 JT 657 : (2001) 6 SCALE 275 : (2001) 8 SCC 97 : (2001) AIRSCW 3544 : (2001) 7 Supreme 53 and *Ouseph Mathai and Others Vs. M. Abdul Khadir*, AIR 2002 SC 110 : (2001) 9 JT 517 : (2001) 8 SCALE 110 : (2002) 1 SCC 319 : (2001) AIRSCW 4672 : (2001) 8 Supreme 262 .

20. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, AIR 2003 SC 3044 : (2003) 4 CTC 48 : (2003) 6 SCALE 133 : (2003) 6 SCC 675 : (2003) 2 SCR 290 Supp : (2003) WritLR 722 : (2003) AIRSCW 3872 : (2003) 6 Supreme 390 , it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by Subordinate Courts. It also held that when Subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

21. In *Jasbir Singh Vs. State of Punjab*, (2006) 9 JT 35 : (2006) 10 SCALE 224 : (2006) 8 SCC 294 : (2007) 1 SCC(L&S) 401 : (2006) 7 SCR 174 Supp , the Court said:

"...while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority. The power of superintendence exercised over the Subordinate Courts and Tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the Subordinate

Courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior Courts in the discharge of their judicial functions."

22. In *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, (2011) 1 CTC 854 : (2010) 7 JT 529 : (2011) 1 RCR(Rent) 1 : (2010) 7 SCALE 428 : (2010) 8 SCC 329 : (2010) 8 SCR 836 : (2010) AIRSCW 6387 , the Court said that power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the Tribunals and Courts subordinate to High Court. The above authority has been cited and followed in *Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another*, AIR 2011 SC 1353 : (2011) 3 CTC 665 : (2011) 14 JT 255 : (2011) 2 RCR(Civil) 381 : (2011) 3 SCALE 42 : (2011) 12 SCC 600 : (2011) 4 SCR 417 : (2011) AIRSCW 1737 and *Bandaru Satyanarayana Vs. Imandi Anasuya and Others*, (2011) 6 SCALE 489 .

23. In *Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others*, (2010) 1 CTC 466 : (2010) 1 JT 508 : (2010) 1 SCALE 267 : (2010) 2 SCC 432 : (2010) 1 SCR 899 : (2010) 2 UJ 496 : (2009) AIRSCW 269 , Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

24. In *T.G N. Kumar Vs. State of Kerala and Others*, AIR 2011 SC 708 : (2010) 1 BC 612 : (2011) 1 Crimes 339 : (2011) 1 CTC 627 : (2011) 3 JT 280 : (2011) 1 RCR(Criminal) 507 : (2011) 1 SCALE 472 : (2011) 2 SCC 772 : (2011) 1 SCR 436 : (2011) 1 UJ 344 : (2011) AIRSCW 5678 : (2011) AIRSCW 635 : (2011) 1 Supreme 559 , the Court said that power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority.

25. In *The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar*, (2011) 12 JT 27 : (2011) 2 SCALE 142 : (2011) 12 SCR 1189 : (2012) 1 SLJ 203 , Apex Court referring to its earlier decision in *Union of India and Others Vs. R.K. Sharma*, AIR 2001 SC 3053 : (2001) 91 FLR 1006 : (2001) 9 JT 76 : (2001) LabIC 4007 : (2001) 7 SCALE 70 : (2001) 9 SCC 592 : (2001) 4 SCT 828 : (2002) 1 SLJ 323 : (2001) AIRSCW 4136 : (2001) 7 Supreme 497 , observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

26. Considering the scope of scrutiny of judicial orders passed by Subordinate Courts under Article 227, I do not find that any of the orders impugned in this writ petition can be said to have been passed by Courts below, committing any jurisdictional error.

27. In a complaint filed under section 138 of Negotiable Instruments Act,

summons were issued by Additional Chief Judicial Magistrate on 6.3.1996 to the accused-petitioner, Daulat Ram Sharma, who is an Advocate also. After receiving the summons accused-petitioner filed an objection requesting Court of Magistrate to reject complaint being not maintainable. It is this objection filed by accused which has been rejected by Magistrate by order dated 15.1.2000. The Magistrate has recorded a finding of fact in respect to disputed cheque that notice was duly served by complainant upon the accused and neither the complaint was barred by limitation nor otherwise not maintainable. Aggrieved thereto, accused preferred a Revision which has been rejected by Additional District and Session Judge.

28. Apparently I do not find any such infirmity which may justify interference by this Court in exercise of jurisdiction under Article 227. In these circumstances, writ petition lacks merits.

29. Dismissed.

30. Interim order, if any, stands vacated.

31. After the Court completed dictation, Sri Anand Kumar Pandey, Advocate, did not leave the Dais but insisted upon the Court to adjourn the matter and recall the order dismissing writ petition. He said that since he has not argued the matter, therefore, Court cannot dismiss writ petition on merits. When the Court pointed out that request for adjournment was already rejected and since he was not inclined to address the Court and no other Counsel, whose names are also shown in the cause list, appeared though the case has been called in revised, this Court is fully justified to decide the writ petition after perusal of record, thereupon he immediately said, The Court requested him that since his matter is over, he should allow other cases to proceed and the next case was called, but learned Counsel continued with his insistence and did not allow other cases to proceed. Taking this conduct as also the utterances of learned Counsel, as noted above, as derogatory, particularly when the same were in presence of number of litigants, clerks and staff, in the open Court Room, this Court found that it was an ex facie contempt on the part of learned Counsel by not only lowering down the authority and Majesty of the Court but also amounts to obstruction in functioning of Court, and amounts to criminal contempt, as defined under section 2(c) read with section 14 of Contempt of Courts Act, 1971 (hereinafter referred to as "Act, 1971").

32. In the circumstances after giving a warning to Counsel that the Court is going to draw contempt proceedings and when he did not deter, but continued to insist upon his attitude with apparent audacity, this Court having no option, proceed to draw criminal contempt proceeding against him and frame the following charge:

"You Anand Kumar Pandey, Advocate, has used derogatory language in the Court openly in presence of several litigants, staff, clerks and other Advocates and has also obstructed Court's functioning despite the order was dictated in your case,

i.e. Criminal Misc. Writ Petition No. 7404 of 2002. Your this act amounts to lowering down the authority and majesty of the Court in the eyes of general public and also interference in administration of justice. Therefore, you are guilty of criminal contempt defined under section 2(c) read with section 14 of Act, 1971. This Court take you in judicial custody forthwith and send to jail for three days. You shall be produced before the Court on 13.4.2015 on which date you may file reply to the aforesaid charge."

33. Learned Counsel was taken into custody by Court Master. Since by that time, lunch period intervened, the Court retired in Chamber. After Lunch when the Court assembled, a large number of Advocates led by certain senior members of Bar were present in the Court along with Sri Anand Kumar Pandey. Learned senior members stated that aforesaid Advocate, as per their own personal knowledge, is quite a gentleman, though in some momentary passion he has committed some serious mistake which ought not to have been done. They assured the Court that in case a lenient view is taken in the matter and learned Advocate is pardoned, he will not repeat such conduct in future.

34. At this stage, Sri Anand Kumar Pandey also stood before the Court with folded hand, tendered apology and assured that he shall not commit such mistake in future. He also filed a written application reiterating what he said orally in written words as under:

"5. That during aforesaid submission unsavoury something happen which was not proper for which I as Counsel feel sorry for the same and further assure to the Hon"ble Court that in future such thing will not happen."

35. This written application submitted by Sri Anand Kumar Pandey shall form part of record of this writ petition. Considering the entire facts and circumstances as above, as also the fact that learned Counsel has showed remorse, which appears to this Court bona fide and genuine, this Court accepts apology and drop contempt proceedings, with hope and trust that Sri Anand Kumar Pandey, Advocate, in future shall maintain his conduct as he has assured to this Court.