

(1984) 08 AHC CK 0019

In the Allahabad High Court

Case No : Civil Contempt Petition No. 299 of 1984

Dr. B.C. Hasaram

APPELLANT

Vs

Santosh Kumar

RESPONDENT

Date of Decision : 30-08-1984

Acts Referred:

Constitution of India, 1950 — Article 225
Contempt of Courts Act, 1971 — Section 12, 15, 17, 18, 2
Contempt of Courts Rules, 1980 — Rule 2, 4

Citation : (1985) ACR 25

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

Bench : Single Bench

Advocate : D.S. Misra, for the Appellant;

Judgement

I.P. Singh, J.—This civil contempt application has been moved for punishment u/s 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act). It is at admission stage.

2. u/s 23 of the Act every High Court can make rules to provide for any matter relating to its procedure.

3. This Court has framed Rules for the purpose (Contempt) which are contained in Chapter XXX-E of Rules of Court, 1952 (Allahabad High Court). Article 225 of the Constitution of India also provides the constitutional sanction to the framing of the Rules.

4. Rule 2 provides every application, reference or motion for taking proceedings under the Contempt of Courts Act, 1971 shall mention at the head whether it relates to the commission of "civil contempt" or "criminal contempt".

5. This Bench of a single Judge has jurisdiction to receive (when presented) and entertain applications relating to civil contempt only vide Rule 4(a) of the Rules of this Court which says " Every case relating to civil contempt shall be presented before the Bench of a single Judge constituted for that purpose.

6. So it is essential to find out if the allegations contained in the petition relate to "civil contempt" before it can be entertained by this Bench.

7. "Civil Contempt" is defined u/s 2(b) of the Act as meaning wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

8. There is no allegation in the application that there has occurred any disobedience to any judgment, decree, direction, order, writ of a court or breach of any undertaking given to a Court Sri D.S. Misra learned Counsel confines the matter to "disobedience" to "process of a court."

9. For this stress is laid on the allegations contained in paras 4, 20, 22 and 29 to 32 of the affidavit accompanying the petition which are to the effect that the Petitioner was granted bail by this Court on 29-9-80 but on 12-4-84 application for cancellation of bail of the Petitioner was moved in this Court supported by affidavit of opposite party No. 1 but many facts were deliberately concealed and not placed before this Court, (But it is not clear what facts which existed prior to 12-4-84 were concealed). On being served with notice of that application Sri Shamshuddin Ahmad, counsel for the Petitioner filed his Parcha on 22-5-84 and thereafter the said application is still pending in this Court. Later on another application supported by affidavit of Opposite Party No. 1 was filed in this Court on 6/7-6-84 for the same purpose, i.e. cancellation of bail of the Petitioner. In this application many facts were concealed as mentioned in paras 35 and 36 of the affidavit accompanying the present petition. Even the factum of pendency of first application dated 12-4-84 was concealed. 16-7-84 was fixed for hearing of this application dated 6/7-6-84.

10. Sri D.S. Misra the learned Counsel for the Petitioner points out that as the first application dated 12-4-84 was pending for decision before the Court, then without waiting for its decision to move another application dated 6/7-6-84 was nothing but "disobedience to the process of court."

11. The words "process of court" mean "anything done by the court" See In Re: Llewelyn Evans, and Assistant Government Advocate Vs. Upendra Nath Mukerji, .

12. I do not think that when any application is pending before a court for decision then mere "pendency" can be called "process of court". Filing of another application for the same relief on the same grounds during the pendency of the first application may be highly improper and undesirable and may curtail certain other consequences but certainly it cannot be called "disobedience" to the process of court.

13. Therefore, on the allegations made in the petition there appears no case of "civil contempt".

14. Sri D.S. Misra, the learned Counsel for the Petitioner has then stressed two points. First that concealment of facts while moving application for cancellation of bail dated 6/7-6-84 would amount to "criminal contempt" and secondly, that this

Bench can initiate proceedings for "criminal contempt" vide Full Bench decision of five Judges in the case--Court on its Court on its own motion Vs. Kasturi Lal and Others, .

15. I refrain from expressing any opinion on the first point as to whether concealment of facts while moving an application for cancellation of bail would amount to criminal contempt or not for the simple reasons that this Bench at the moment is exercising jurisdiction in the matters of civil contempt only. However, for limited purpose of answering the second point let us assume that answer to the first point is in the positive. The Full Bench decision in 1980 case (supra) has in column 2 at page 77 observed ;

To sum up, it is evident that even under the 1971 Act also a single Judge is entitled to both initiate and adjudicate and punish for civil contempts of all kinds and also for criminal contempts committed in facie curiam. It, therefore, must be held that the present Act does not wholly bar this exercise of the contempt jurisdiction in general and of criminal contempt in particular by a single Judge of the High Court.

16. After analysing the provisions of Sections 15, 17 and 18 of the Act it was held in para 25 as follows:

In the light of the foregoing discussion, it appears that on principle, the provisions of the statutes as also by way of analogy from authoritative precedents it must be held that a single Judge of the High Court is in no way barred from initiating proceedings for criminal contempt and Section 18 of the Contempt of Courts Act presents no impediment to this exercise of the limited power.

17. However, the matter did not rest there because the Rules framed by the High Court u/s 23 of the Act also needed reconciliation with the above view. In other words, it was to be seen whether the High Court of its own volition placed any restriction on itself in the exercise of the above jurisdiction in the matters falling under Sections 15, 17 and 18 of the Act. In this connection the learned Judges in para 31 of the judgment quoted Article 225 of the Constitution of India and concluded that High Court is entitled to make rules and thereby regulate and determine whether certain matters are to be considered by the whole court or by the members thereof sitting alone or in Division Courts. It was in this background that there Lordships considered the import and implication of Rule 6(1) of the Contempt of Courts (Punjab and Haryana) Rules, 1974, framed by that court. It runs as follows:

6 (1) Every petition, motion or reference in relation to criminal contempt shall, unless the Chief Justice directs it to be heard by a larger Bench, be laid for motion hearing before a Division Bench of at least two Judges.

18. In para 33 of the judgment it was observed as follows:

However, a matter of interpretation with regard to the application of Sub-rule (1)

of Rule 6 nevertheless arises for consideration. It provides that every petition, motion or reference for taking cognizance of criminal contempt apparently u/s 15 must be placed before a Division Bench of atleast two judges.... In the context in which it is laid, it appears to be self evident that the word " Motion" used in Rule 6 does not and cannot by the very nature of things, include within its ambit suo motu action by a single Judge. It can only govern the motions apart from those made on the Court's own motion.

19. Thus in the context of said Rule 6(1) it was laid that except in the case of suo motu action by a single Judge, every other petition, motion or reference for taking cognizance of criminal contempt apparently u/s 15 of the Act must be placed before a Division Bench of atleast two judges.

20. Rule 4 of the Rules of Court 1952 (Allahabad High Court) provides:

4 (a) Every case relating to civil contempt shall be presented before the Bench of a Single Judge constituted for that purpose.

(a) Every case of criminal contempt coming u/s 15 of the Act shall be presented before the Bench of not less than two Judges constituted for the purpose.

(b) Provided that every case of contempt of court presented before the court shall bear the report of the Stamp Reporter as to sufficiency of court fee paid and also about limitation. References relating to contempt of court received on Administrative side from the subordinate courts shall, along with the office report with respect thereto, be laid before the Chief Justice, who shall have the discretion to file the same or to order that the same be laid before the Bench concerned, for further proceedings in connection with the case.

Rule 4(b) in very unambiguous terms says that every case of criminal contempt for the purpose of taking cognizance u/s 15 of the Act must necessarily be "presented" before the Bench of not less than two Judges constituted for the purpose.

21. Proviso to Rule 2 of the Rules of Court, 1952 (Allahabad High Court) says:

Provided, that, if there are allegations both of commission of civil contempt and criminal contempt against the same person/persons, two separate applications shall be moved, one dealing with civil contempt and the other with criminal contempt.

22. In the present case according to own showing of the Petitioner there are allegations both of commission of civil contempt and criminal contempt against the same person, so the Petitioner having presented the present petition as civil contempt petition before this Bench, he, if so desires, may present a separate petition for alleged criminal contempt before the proper Bench constituted for the purpose.

23. The present civil contempt petition is hereby rejected.

Petition rejected.