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(1993) 03 AHC CK 0030

In the Allahabad High Court

Case No : Criminal Miscellaneous Contempt Petition No. 1917 of 1992

Dwarika Prasad Yadav,Regional Transport Officer,Bareilly — APPELLANT

Vs

Usha Chhatrath,Principal Secretary Transport,Govt.of U.P.& Anr. — RESPONDENT

Date of Decision : 29-03-1993

Acts Referred:

Citation : (1993) 03 AHC CK 0030

Hon'ble Judges : Kundan Singh, J

Final Decision : Dismissed

Judgement

Kundan Singh, J.—The applicant has filed the above contempt petition to initiate proceedings against the opposite parties under Section 12 of the Contempt of Courts Act and to punish them for wilful and deliberate disobedience of the orders of this Court dated 20692, 14992 and 30992, passed in Civil Misc. Writ Petition No, 22596 of 1992 in which the order dated 1061992 transferring the applicant from Bareilly to Pauri is challenged. The writ petition was put up before me on 30992. After hearing the learned counsel for the parties I passed an under for listing of the writ petition itself on 231092 for final disposal but instead of getting the writ petition decided finally, the petitionerapplicant filed the above contempt petition on 21192. In the similar circumstance the Supreme Court in the case State of Jammu & Kashmir v Mohammad Yaqoob Khan and others, reported in journal "Judgment Today" 1992 (5) SC 278, has laid down the law, the relevant portion of which is extracted below :

"We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt, only after disposing it of, the other case should have been taken up. It is further significant to note that the respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Besides challenging the claim on merit, the respondent is entitled to raise a plea of nonmaintainability of a writ application filed for the purpose of executing a

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decree."

2 In view of the ratio of decision laid down by the Supreme Court in the aforesaid case. If would net be proper for me to take up this case and sit in judgment on the present contempt proceedings unless the stay matter in the above writ petition is decided either side finally by the Bench dealing with such matters, particularly when in the writ petition I passed an order on 30992 for listing the petition itself on 231092 for final disposal, I am afraid to accept the prayer of the learned counsel for the applicant that the opposite parties be directed to appear in Court for receiving the punishment and to comply with the orders of this Court. Such a direction is nothing but tantamounts a threat to the respondents for accepting the claim of the writ petitioner for saking their right of objection thereto.

3 Since in the writ petition a counter affidavit alongwith a stay vacating application has been filed on behalf of the respondents disputing the correctness of the allegations made in the writ petition on the basis of which exparte interim order was passed, which is said to have been infracted by the respondents the Court ha? to judge the veracity of the counter version of both the parties and then pass a positive direction confirming, modifying or vacating the interim order. If thereafter the positive mandamus issued is disobeyed by the respondents, then it would constitute a contempt of the order of this Court and a stage would arise for proceeding against the respondent for deliberately and wilfully violating the mandamus of the Court. Unless the stay vacation application is decide:! by the Bench dealing with the writ petition in which the Interim orders were passed, the respondents cannot be proceeded against for the infracting the order of the Court. The present contemt partition, in my opinion is premature and deserves to be dismissed at this stage.

4. Accordingly, the contempt is dismissed as premature.

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