
(1935) 08 AHC CK 0008
In the Allahabad High Court

Emperor

APPELLANT

Vs

S.M. Wahid Ullah Ahrari

RESPONDENT

Date of Decision : 01-08-1935

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 547

Citation : AIR 1935 All 1013 : 158 Ind. Cas. 428

Judgement

1. On the complaint of one Mohammad Istehsan proceedings under the Contempt of Courts Act, 1926, were started in this Court against S.M. Wahidullah Ahrari in connection with certain articles published by the latter in a paper at Aligarh while a complaint u/s 500, Penal Code, was pending in the Subordinate Criminal Court at Aligarh. By an order dated 26th October 1934, passed by a Bench of this Court, Wahidullah was punished with simple imprisonment for a term of four months. He was also directed to pay the costs of Mohammad Istehsan and the Crown, and the costs of Mohammad Istehsan were fixed at Rs. 100 and of the Crown at Rs. 100. In the result Wahidullah was directed to deposit Rs. 200 as costs in this Court within two months.

2. The costs were not so deposited within the time allowed by this Court and on 30th April 1935, notice was issued to Wahidullah to show cause why the costs should not be realised as a fine under the provisions of Section 547, Criminal P.C. In reply to the notice it is contended by Mr. Darbari that this Court had no jurisdiction to pass an order for costs and that in no event could such costs be recoverable as a fine under the Code of Criminal Procedure. So far as the first contention is concerned, we are of the opinion that it is open to this Bench to consider the matter. If the order, of the former Bench Court was without jurisdiction, other proceedings ought to have been taken for questioning the order. As it is, we are satisfied that this Court has such jurisdiction. In a number of cases this Court under similar circumstances has directed the person punished under the Contempt of Courts Act to pay the costs of the Crown. The same procedure was followed in the English Courts, and cases to that effect are mentioned by Oswald in his Book on "Contempt," third edition, p. 242.

3. The next question that arises is whether Ave have the power to direct the realisation of costs as a fine according to the provisions of the Code of Criminal Procedure. This question is not without some difficulty, and it is not necessary for us to express an opinion on the point. In any event if we have jurisdiction to direct the payment of costs as indeed we have inherent jurisdiction to order its recovery. We think that the proper method by which these costs should be recovered should be on the lines on which decrees are executed by the Civil Court. We issue a warrant to the Collector of Aligarh authorising him to realise the amount by execution against the moveable or immovable property of Wahidullah.

4. Finally, it was contended that Wahidullah was very poor and that we should on the ground of such poverty allow him to be discharged without paying the costs which he was ordered to pay. An application to this effect has been filed before us to-day, but it is not supported by any affidavit, and it is not possible for us to investigate the matter as to whether he is possessed of sufficient means or not. After all we are not directing the recovery of this amount by the arrest of Wahidullah; we have only authorised the Collector to realise the amount by proceeding against the moveable and immovable property of the defaulter and, if he is not" possessed of such property, execution obviously will be infructuous.