
(2003) 09 PAT CK 0057
In the Patna High Court
Case No : Misc. Appeal No. 285 of 2003

Haridwar Pandey

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Citation : (2003) 09 PAT CK 0057

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. During the course of hearing of Miscellaneous Appeal No. 285 of 2003 (Haridwar Pandey v. The State of Bihar) by a Division Bench there arose dispute relating to maintainability of present appeal u/s 19(1) of the Contempt of Courts Act, 1971. Both the Hon''ble judges recorded different findings and differed in their conclusion. Hon''ble Mr. Justice S.N. Jha after recording the detailed order observed that the appeal against the order refusing bail u/s 14(4) of the Act would be maintainable u/s 19 of the Act. While Hon''ble Mr. Justice B.N.P. Singh by his detailed order observed that the appeal would not be maintainable. In view of the difference in opinion, the matter has come up before me.

3. Before dwelling upon the issue of maintainability it is necessary to record certain facts. One Haridwar Pandey S/O Late Ramdutt Pandey had filed Gr. Misc. No. 21709 of 2003. In the said matter, the appellant/applicant sought modification of the earlier order, passed by Hon''ble Mr. Justice Chandramauli Kumar Prasad.

4. The said Cr. Misc. No. 21709 of 2003 came up for hearing before the Hon''ble judge on 11-8-2003. The petitioner appeared in person. When the matter was taken up for consideration, the applicant before the Court asked for transfer of the case and referred to the prayer made in that application for hearing of the matter before a Full Bench of at least three judges. In the application, it was said by him that he had already written registered letter dated 11-3-2003 to the Hon''ble Chief Justice for the said purpose. The Hon''ble Single Judge after going through the complete application found that there were serious scandalous and

irresponsible allegations against some of the judges of the subordinate judiciary and even the petitioner did not leave the High Court in spitting the venom. The petitioner went on to observe that the Hon''ble Court (High Court) while passing the order dated 21-2-2003 has suppressed this fact that the trial Court of Sri Madhusudan Singh had a plan to get the petitioner killed any how number of other irresponsible allegations were also made.

5. The Hon''ble judge before proceeding further in the matter asked the petitioner about all those statements made in the application and the stand taken by him. The learned Judge in his order dated 11-8-2003 after recording certain portions from the application recorded his findings that the acts of the petitioner clearly constitute contempt committed in the face of the Court. After recording such a finding, the Hon''ble Judge proceeded further in the matter u/s 14 of the Contempt of Courts Act and directed that the petitioner be detained in Adarsh Central Jail, Beur, Patna, and a copy of the order was asked to be served upon the petitioner on that date itself. On petitioner's request, time was granted to him till 21-8-2003 to file his defence. After the said order was passed, the petitioner made a prayer for bail. The learned Judge refused to accede to the prayer of the petitioner because he found him prima facie guilty of contempt in face of the Court. The matter was adjourned to 25-8-2003. Being aggrieved by the order dated 11-8-2003 refusing bail the petitioner chose to file the present Miscellaneous Appeal No. 285 of 2003.

6. It appears that the Stamp Reporter raised an objection with regard to the maintainability of the appeal. Thereafter, the division bench heard the parties. On 3-9-2003, oral order was passed by Hon''ble Mr. Justice S.N. Jha dictating in the Court while the order of disagreement or differences was recorded by Hon''ble Mr. Justice B.N.P. Singh in Chambers on 3-9-2003.

7. Learned counsel for the appellant vehemently contended before me that a fair understanding of Section 19(1) and Section 19(2) read in juxtaposition with Section 14(4) of the Contempt of Courts Act, 1971 it would clearly appear that an appeal against the order rejecting prayer for bail would be maintainable. He has placed strong reliance upon the judgment of the Supreme Court/reported in Purshotam Dass Goel Vs. Hon''ble Mr. B.S. Dhillon and Others, . He has also placed reliance upon yet another judgment of the Supreme Court in the matter of R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, . He has also placed his reliance upon a Division Bench decision of the Calcutta High Court in the matter of Ashoke Kumar Rai v. Ashoke Arora and Anr., reported in 1996 CWN 278 . It is contended by the learned counsel for the appellant that from these pronouncements of the Supreme Court and the decision of the Division Bench of the Calcutta High Court it would be clear that present appeal would be maintainable because the orders are orders of moment and are adversely affecting the valuable rights of the notice.

8. For proper appreciation of points raised in the matter, it would be necessary to look into Sections 14, 15 and 19 of the Act.

9. Sub-section (1) of Section 14 reads as under:--

"When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter shall

- (a) cause him to be informed in writing of the contempt with which he is charged;
- (b) afford him an opportunity to make his defence to a charge;
- (c) After taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and
- (d) make such order for the punishment or discharge of such person as may be just.

Sub-section (2) of Section 14 relates to transfer of a case to another Judge on an application by the notice while Sub-section (3) relates to what would be treated as evidence. Under Sub-section (4) of Section 14 of the Act pending determination of the charge, the Court shall detain the noticee or the alleged contemnor, but he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties with condition that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court."

10. Section 15 of the Act reads as under:--

"In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-

- (a) the Advocate General, or
- (b) any other person, with the consent in writing to the Advocate General, or
- (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a Subordinate Court, the High Court may take action on a reference made to it by the Subordinate Court or on a motion made by the Advocate General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this Section shall specify the contempt of which the person charged is alleged to be guilty."

11. According to Section 15, in the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by persons referred to in Clauses (a), (b) and (c) of Sub-section (1) of Section 15 of the Act.

12. Section 19 of the Act, which shall relate to an appeal reads as under:--

"(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a single judge, to a Bench of not less than two judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court; Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that-

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by Sub-section (2).

(4) An appeal under Sub-section (1) shall be filed-

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

At this stage, it would be necessary to refer to the judgment of the Supreme Court in the matter of Purushotam Dass Goel (supra). The Supreme Court, in unambiguous terms, observed after relying upon the judgment in the matter of Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, that what has been decided therein is that on a reference made by the Advocate General if the Court declines to take cognizance and to initiate proceeding for contempt, the order is not an order initiating contempt proceeding. The Supreme Court also observed that surely, it is not appealable u/s 19, but there were no observations by Supreme Court, not on the facts of that case there could be any, to show that an appeal would lie to the Supreme Court from an order of the High Court merely initiating the proceeding by issuance of a notice. The relevant observations of the Supreme Court are as follows:--

"We may repeat that it may be a different matter if the order does decide some

disputes raised before it be the contemnor asking it to drop the proceeding on one ground or the other. But unless and until there is some order or decision of the High Court adjudicating upon any matter raised before it by the parties, affecting their rights the mere order issuing the notice is not appealable."

13. These observations of the Supreme Court have been considered in the matter of R. N. Dey and Ors. v. Bhagya Bati Pramanik and Ors. (supra). Apart from the above observations made by the Apex Court, the Court also considered the observations in the matter of Purushotam Dass Goel v. Justice B. S. Dhillon (supra), which is as under:--

"If the alleged contemnor in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred u/s 20 of the Act but the High Court holds that the proceeding is not barred, it may be that an appeal would lie to this Court u/s 19 from such an order although the proceeding has remained pending in the High Court."

14. In the matter of R.N. Dey and Ors. v. Bhagya Bati Pramanik and Ors. (supra) a writ application was filed for recovery of money due. Thereafter, the amount required to be paid in execution of decree were ordered to be paid in the writ jurisdiction and after the amount was paid, the proceedings were kept pending. Under those circumstances, the Supreme Court observed that in the matter of R.N. Dey (Supra) an appeal could lie before the Supreme Court because the High Court was not passing final order in the matter and had ordered to keep alive the proceedings which were against the interest of the parties or were adversely affecting the right of the parties.

15. In the present matter, on being asked, learned counsel for the appellant has unhesitatingly said that neither he has challenged the initiation of contempt proceedings or the continuance of the proceedings nor he is asking this Court to drop or quash the proceedings. The only matter under challenge is that the learned Single Judge was wrong in refusing bail while according to Section 14(4) of the Act bail ought to have been granted. In such circumstances, in my opinion, the said two judgments of the Supreme Court in the matters of Purushotam Dass Goel and R.N. Dey and others, would not come to the rescue of the appellant. For appreciation of the matter of Ashoke Kumar Rai v. Ashoke Arora and Anr., it would be necessary to see that in the said matter the question before the Court was that if the High Court refuses to exercise the jurisdiction by initiating the proceedings or refuses to punish for contempt, whether an order dismissing the contempt proceedings would be appealable u/s 19 of the Act.

16. After referring a number of judgments of the Supreme Court and other Courts the Division Bench of the Calcutta High Court observed that if they were to follow the decision in D.N. Taneja Vs. Bhajan Lal, : Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, they would require to dismiss the present appeal u/s 19 of the Act in limine simply because the impugned order was not an order imposing punishment for contempt. On the

other hand, if they were to follow 1976 decision in Baradakanta AIP 1976 SC 1206 then the Court must find that the exercise of the jurisdiction to punish for contempt had already commenced with the initiation of the proceeding for contempt and therefore, the appeal against the impugned order passed after such commencement of exercise of jurisdiction was not liable to be dismissed in limine on the ground that no order not being an order of punishment for contempt can be said to have been passed in exercise of the jurisdiction or power to punish for contempt. The Division Bench of the Calcutta High Court preferred to follow the judgment of the Apex Court in the matter of Baradakanta.

17. In my opinion, the judgment of the Calcutta High Court is contrary to the judgment of the Supreme Court, not only in D.N. Taneja Vs. Bhajan Lal, : Barada Kanta Mishra Vs. Orissa High Court, but even subsequent judgment reported in 1996(6) 291 (J.S. Parihar v. Ganpat Duggar and Ors.). In the three judges judgment it was held that a order of exoneration passed by the High Court in its contempt proceedings would not give authority to any person to challenge the said order in appeal u/s 19(1) of the Act. The Supreme Court made it clear that an appeal would lie u/s 19 of the Act when an order in exercise of the jurisdiction of the High Court, punishing the contemner, has been passed. The Supreme Court has further observed that in the matter in hand the finding was that the respondents had not wilfully disobeyed the order. The Supreme Court was of the considered opinion that as there was no order punishment of the respondents for violation of the orders of the High Court, then, an appeal u/s 19 of the Act would not be maintainable. If this is the authoritative pronouncement of the Supreme Court, then it would simply be improper on my part to follow the judgment of the Division Bench of the Calcutta High Court. Even otherwise those two judgments in the matter of Baradakanta and D.N. Taneja, are judgments by two Judges of the Supreme Court.

18. At this stage, it would be necessary for me to refer to the three Judges judgment in the matter of Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, . In the said matter, the Supreme Court had clearly observed that the exercise of the contempt jurisdiction being a matter entirely between the Court, though moved by motion or reference the Court may in its discretion, decline to exercise its jurisdiction for contempt. The Supreme Court further observed that the exercise of the jurisdiction to punish for contempt commences with the initiation of proceedings for contempt, whether suo motu or on a motion or a reference. That in fact is for or qua limitation. The period of limitation provided in Section 20 is one year from the date when contempt is committed and a proceeding for contempt is initiated by the Court.

19. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not therefore, fall within the opening words of Section 19, Sub-section (1) and no appeal would

lie against it as of right under that provision. The Supreme Court has further observed that in such a case the Advocate General or any other person who has with the consent in writing of the Advocate General moved the High Court can always come to Supreme Court by a petition for special leave to appeal.

20. In the matter of Baradakanta Mishra v. Mr. Justice Gatikrushna Misra, the core question was whether an order refusing to initiate proceeding can be challenged in appeal or not. The Apex Court observed that order directing initiation of the proceeding at the instance of the private party or suo motu or after the consent of the Advocate General was obtained would not be appealable. However, it would not be necessary for me to proceed further on these issues because the judgment of the Supreme Court in the matter of Baradakanta Mishra was differently understood by the Supreme Court in the matter of R.N. Deyand Taneja. Be that as it may, the facts remains that according to the three Judges Bench of the Supreme Court, initiation of the proceedings cannot be challenged in appeal u/s 19 of the Act while according to the judgment of two Judges Bench of the Supreme Court, the initiation proceedings or non-closure of the same can be challenged i an appeal u/s 19 of the Act.

21. At this stage, I shall again refer to the judgment of the Calcutta High Court in the matter of Ashoke Kumar Rai v. Ashoke Arora and Anr.. The Division Bench had also taken up for consideration the question relating to bail as provided u/s 14 of the Act. In paragraph-11 of the said judgment, the Court said that if the scope of appeal u/s 19 is restricted only to punishment imposed u/s 12 and to nothing else, then a person who in a given case might have been refused bail under Sub-section (4) of Section 14 would have no right of appeal against such refusal of bail pending the determination of charge of contempt. The Court observed that to deprive the alleged contemner of the right of appeal even where bail is refused or a bond of excessive sum of money, in a hypothetical case, is demanded for his release on bail will, in their opinion, defeat to a large extent the very purpose of making provision for appeal to give relief in appropriate cases. Strong reliance was also placed by the appellant on this judgment of the Division Bench of the Calcutta High Court in support of the contention that the appeal is maintainable,

22. It can never be doubted that right to appeal is creation of statute. In number of Acts substantive or procedural, the right to appeal is given.

23. In the matter of confinement of a particular person by the police on a charge of non-bailable offence competent Court, under Sections 437 and 439 of the Code of Criminal Procedure, may grant bail. In cases where a person is entitled to bail u/s 436, bail is refused, the order would not become appealable under any law. Such a person would require to approach the higher Court is as bail jurisdiction or revisional jurisdiction so that such competent Court, may correct the errors of law committed by the authorities. The order refusing bail u/s 436 of the Code of Criminal Procedure certainly would be an order which would run contrary to the very spirit of the CPC and would violate the fundamental right

because every law is established in accordance with the Constitution of India. But the breach of the Fundamental Right by refusing bail in a bailable case would not confer a right of appeal in favour of such aggrieved person. In certain civil matters, as provided under the Code of Civil Procedure, certain judgments and orders are made appealable under Sections 104, 96 and 100. Certain orders which do not fall within the ambit of above but otherwise adversely affect the rights of the parties and which are otherwise absolutely illegal can be corrected in the revisional jurisdiction. Simply because, an order is illegal or order runs contrary to law, the same cannot be challenged in appeal. The right to appeal is creation of the statutes. When some body wants to strike on the head of the others with the authority to file an appeal then he must show that he has the authority to hold the sword of appeal against other party. In the present matter, simply on the ground that it is imperative u/s 14 of the Act, the Court had to grant bail, it cannot be observed that the present appeal would be maintainable. Non-grant of the bail in fact affects the right of the petitioner but the said sufferings of the petitioner would not make the order appealable.

24. Section 19, which I have quoted earlier says that an appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt, where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court; where the order or decision is that of a Bench, to the Supreme Court; provided that where the order or decision is that of " the Court of the Judicial Commissioner in any Union Territory, such appeal shall lie to the Supreme Court. Sub-section (2) of Section 19 of the Act says that pending any appeal, the appellate Court may order that the execution of the punishment or order appealed against be suspended; if the appellant is in confinement, he be released on bail; and the appeal be heard notwithstanding that the appellant has not purged the contempt. From Clause (a) of Sub-section (2) of Section 19 a castle is sought to be build saying that if the execution of punishment can be suspended or, the order appealed against if can be suspended then in the present case detention of the petitioner occasioned by non-grant of bail which would amount to punishment, therefore, this appeal is maintainable. Reliance for the purpose is also placed on Calcutta High Court decision in the matter of Ashoke Kumar v. Ashoke Arora and Anr. to contend that the appeal would be maintainable. In the opinion of this Court Sub-section (2) of Section 19 does not provide that in what circumstances, the appeal can be filed. An appeal can be filed against any order or decision passed or given by the High Court in the exercise of its jurisdiction to punish for contempt. Sub-section (2) simply provides that what powers can be exercised by the Appellate Court.

25. An appeal shall lie to the Appellate Court u/s 374 of the Code of Criminal Procedure. In the Cr. P.C. right of appeal is u/s 374 while the powers of the Appellate Court are provided u/s 389.

26. Section 19 of the Act appears to be composite. It provides the right to file appeal and also the powers which can be exercised by the Appellate Court. In a

given case, while awarding punishment, the Court may even impose fine. In such circumstances, while suspending the execution of the sentence, the Court can stay the execution of the order of recovery of fine. So far as power to grant bail to a person who is already in confinement is concerned, it is provided under Sub-section (2) of Section 19 of the Act. Clause (c) of Sub-section (2) of Section 19 is concerned, it simply provides that the appeal would be heard irrespective of the fact that the appellant had not purged contempt. It cannot be argued that in a given case the Single Judge, assuming illegally, refuses to grant bail then too an appeal would lie u/s 19 of the Act. The order passed by the learned Single Judge may be a wrong order or in a worst situation (as argued) may be a bad order, but it would not be an appealable order.

27. At this stage, I would also consider the question relating to the right of the alleged contemner to get bail. If the law provides that under Sub-section (4) of Section 14 of the Act on a request oral or written, the bail must be granted on condition then bail must be granted, but in a given case, if the bail is not granted, then the order may be deemed to be bad order, wrong order, illegal order or an order which runs contrary to the provisions of law but these allegations against the said order would not make the order appealable, simply because the valuable right of the alleged contemnor is violated by refusing bail. Sub-section (1) of Section 19 of the Act as it reads, says that an appeal shall lie as a right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt.

28. In the matter of Barada Kanta Mishra v. Orissa High Court, reported in 1976 AIR SC 1207 the Supreme Court had observed that only those orders or decisions in which some point is decided or finding is given in the exercise of jurisdiction by the High Court to punish for contempt, are appealable u/s 19 of the Act. In the said matter, the High Court was pleased to observe that all the points arising in the case, including the one of maintainability of the proceedings, would be heard together. The Supreme Court observed that such an order cannot be challenged in an appeal u/s 19 of the Act.

29. I have also observed that in the present matter, the appellant is not challenging the initiation or commencement of the contempt proceeding. If that be so, then the other judgments, which have taken different view, would also not come to help of the present appellant. In the matter of D.N. Taneja Vs. Bhajan Lal, , the Supreme Court has clearly observed that if no punishment in exercise of the contempt jurisdiction is awarded then an appeal would not lie and if the person is discharged, the complainant cannot file an appeal. If that be so and the Supreme Court has taken the restricted view of the matter then it would not be prudent to hold that the present appeal would be maintainable u/s 19 of the Act. I accordingly hold that the present appeal simply challenging non-grant of bail would not be maintainable.

30. Let the matter be placed before Hon"ble the Chief Justice so that it may be placed before the same Division Bench, which has recorded the difference of

opinion.