
(1978) 09 DEL CK 0009

In the Delhi High Court

Kuldip Singh

APPELLANT

Vs

Court on its own motion

RESPONDENT

Date of Decision : 15-09-1978

Acts Referred:

Citation : (1980) CriLJ 271

Hon'ble Judges : Yogeshwar Dayal, J;V.D. Misra, J

Bench : Division Bench

Judgement

Vyas Dev Misra, J.—This is an appeal u/s 19(1)(a) of the Contempt of Courts Act, 1971 against the decision of the learned single Judge holding the appellant guilty of contempt of court and directing him to be detained in civil prison for a period of six months.

2. The detailed facts are given in the decision of the learned single Judge and we do not intend to repeat all the details. The material facts, briefly stated, are these.

The Central Bank of India (the Bank) had advanced moneys to M/s. Current Transport and Finance Pvt. Ltd. and Current Transport Service (the Company), on the hypothecation of five buses. When the Bank failed to recover the loan it filed a suit on May 26, 1972 against the Company as well as all its directors. Kuldip Singh appellant is one of the directors. The Bank also moved an application on the same day under Order 38 Rule 5 (I. A. No. 991 of 1972) praying for the attachment of the buses in question. An ex parte order was passed by a learned single Judge on July 17, 1972 restraining the defendants from transferring, alienating or parting with the possession of the said buses. Notices were also issued to the defendants. When the application came up for hearing on October 9, 1972, Mr. R. M. Gupta, Advocate, appeared on behalf of, amongst others, Kuldip Singh. The Advocate gave an undertaking that the said buses will not be alienated in any manner whatsoever until this application is heard and decided. On May 17, 1973 the court passed an interim order appointing a Receiver directing him to take into possession the five vehicles in question. The Receiver

reported that Kuldip Singh appellant showed his ignorance about the whereabouts of the said buses and so he (the Receiver) could not take them into possession.

3. On October 17, 1973 Kuldip Singh appellant showed his willingness to point out the buses. The Court, Therefore, appointed the appellant as co-Receiver along with Mr. Prithvi Raj Sachdeva, Advocate. At the request of the appellant several opportunities were granted to him but he did not get the vehicles recovered. On November 19, 1974 a notice of contempt was issued to him,

4. The learned Single Judge came to the conclusion that the appellant has "exhibited a complete defiance and willful disobedience to the orders of the court," and punished him as aforementioned,

5. Mr. M.S. Gandhi, learned Counsel for the appellant, has raised various legal contentions which we will presently deal with. However, he does not dispute that the undertaking given by Mr. R.M. Gupta, Advocate, on Oct. 9, 1972 was on behalf of Kuldip Singh appellant who was defending on behalf of the Company as well. Nor does he deny that buses in question were under the control of the appellant. Indeed, these facts cannot be disputed. The order of the learned single Judge deals exhaustively with the facts and refers to various stands taken by the appellant from time to time to show that it was the appellant who was in control of the said vehicles.

6. The first contention of Mr. Gandhi is that the notice issued to the appellant is defective. It is submitted that the notice is not precise inasmuch as it does not mention the date of the breach of the undertaking and its details. The proposition of law that notice issued to a contemner should be precise and should contain all the Relevant material in order to enable the contemner to meet the charge against him, cannot be disputed : In the instant case the appellant did not raise the present objection in reply to the notice served on him. He has not even been able to show any miscarriage of justice because of the alleged lack of any material facts. He is, Therefore, not entitled to raise this objection. However, we propose to deal with this objection. It is contended that the contemner undertook not to "alienate in any manner whatsoever" the buses in question and the notice does not allege that the contemner has alienated the vehicles. According to Mr. Gandhi, "alienate" means "transferring proprietary rights only". It is further submitted that even the manner of alienation is not mentioned in the notice. We are not at all impressed by this contention. The Court had passed ex parte order restraining the defendants "from transferring, alienating or parting with the possession of the motor vehicles in suit" and thereafter the undertaking "that the buses... will not be alienated in any manner whatsoever until this application is heard and decided" was given. This undertaking was acted upon by the court. No fresh order was passed by the court. Indeed, there was no need to pass , any order. (See A.B. Gurumurthi Chetty Vs. Sella Perumal Pillai, . The vehicles had been secured. It was plain that the appellant would produce the buses whenever called upon to do so by the Court, and till then he was allowed

to run them. The appellant cannot now turn round and say that he had the right to do away with the buses without "transferring proprietary rights". The appellant was called upon to produce the buses, he was granted as much time as he requested for, and when he finally failed to produce them, he committed "a breach of the undertaking. The manner in which he parted with the possession or did away with the buses is within his special knowledge, and, Therefore, he cannot be heard to say that it was the duty of the court to first find out what he had done with the buses and then mention that fact in the notice before he could be called upon to account for the breach of the undertaking given by him. The contention is, Therefore, rejected.

7. The next contention of the learned Counsel for the appellant is that the notice dated November 19, 1974 is barred by limitation in view of Section 20 of the Contempt of Courts Act. According to the learned Counsel the time asked for by the appellant to produce the buses should not be taken into consideration while calculating the period of limitation. Section 20 of the Contempt of Courts Act reads:

No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed .

8. It is obvious that the period of limitation shall start only when the contempt has been committed. In the instant case the undertaking given by the appellant was binding till the "application is heard and decided". As already discussed, the appellant can be said to have committed the breach only when he finally failed to produce the buses in court. It may be noticed that on October 17, 1973 the appellant showed his willingness to get the buses recovered and he was, Therefore, appointed a co-Receiver with Mr. Prithvi Raj Sachdeva, Advocate and directed to report by November. 19, 1973. When the matter came up before the court on November 27, 1973, appellant stated that "buses" were at Hapur. At the request of the appellant the time was extended. Finally on December 11, 1973 the time was extended to February 18, 1973, when .the appellant applied for extention of time by another two months. When the matter came up before the court on February 25, 1974, the appellant was not granted any further extension. It was thus on February 25, 1974 that the appellant can be said to have committed the breach of his undertaking. We cannot agree to the proposition that when the appellant asked for time, which was granted by the Court, to produce the buses the appellant had committed breach of the undertaking. The Court did not suspect the bona fides of the appellant when he asked for time. He cannot now be allowed to over-reach the court by pleading that the Court should not have granted his request. We, do not Therefore, find any force in the contention that the notice was barred by limitation.

9. Finally it is contended that the undertaking given was ambiguous as the contemner had undertaken not to sell or transfer proprietary rights and there is no evidence that he has done so. In other words, the contemner wants to take

advantage of his undertaking by calling it ambiguous. We do not find any ambiguity. Ex parte order had restrained the defendants from transferring, alienating or parting with the possession. Thereafter the appellant's undertaking not to alienate the buses "in any manner whatsoever", which was acted upon by the court, cannot be said to be ambiguous. We may at this stage refer to the Halsburys Laws of England (4th (Hailsham) ed. Vol. 9 para 75) which reads thus:

The breach of an undertaking given to the court by a person or corporation in pending proceedings on the faith of which the court sanctions a particular course of action or inactions has the same force as an injunction made by the court and a breach of the undertaking is misconduct amounting to contempt.

We would, Therefore, dismiss the appeal.