
(2014) 03 AP CK 0174

In the Andhra Pradesh High Court

Case No : Contempt Appeal No. 3 of 2014

Kunam Raghava Reddy, Hyderabad

APPELLANT

Vs

M/s. Shah Enterprises, Secunderabad

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Contempt of Courts Act, 1971 — Section 10

Citation : (2014) 5 ALD 230 : (2014) 4 ALT 519

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; P.V. Sanjay Kumar, J

Bench : Division Bench

Advocate : V.V. Samba Siva Rao, for the Appellant; R. Chandrashekhar Reddy, for the Respondent

Final Decision : Allowed

Judgement

Kalyan Jyoti Sengupta, C.J.—We admit this appeal. Learned counsel for the respondent at whose instance the impugned judgment and order was passed and the appellant was convicted is present. It is one of such extremely strong case, that can be decided at the admission stage for the simple reason that conviction recorded by the learned Trial Judge is patently without jurisdiction, if not unconstitutional. The reasons for our aforesaid conclusion are as follows:

The respondent herein filed an application for contempt before the learned Trial Judge. In the prayer portion of the said application he alleged as follows:

The petitioner therefore prays that this Hon'ble Court may be pleased to punish the contemnor for violating the orders of attachment dated 28.03.2009 in I.A. No. 3832 of 2008 in O.S. No. 64 of 2008 and its own undertaking dated 01.07.2009 on the file of the Hon'ble I Additional Chief Judge, City Civil Court, Secunderabad, in the interest of justice.

2. Going by the prayer, admittedly, contempt application was filed in violation of the order of the Subordinate Court and not of the High Court. The learned Trial

Judge has proceeded with this matter pursuant to the above application recording the first paragraph as follows:

This contempt case is filed by the petitioner to punish the respondent for willfully disobeying the order dated 28.03.2009 in I.A. No. 3832 of 2008 in O.S. No. 64 of 2008 on the I Additional Chief Judge, City Civil Court, Secunderabad as well as an undertaking dated 01.07.2009 filed before the said Court.

3. We record that what language the petitioner has not used, the learned Trial Judge has recorded supplying word "willfully". Even in the body of the application we do not find the words "willful violation", as it is settled law that contempt proceedings can be initiated and proceeded with only when prima facie allegation of willful violation is mentioned. We are not on this question right now. At the moment we are really pained how the learned Trial Judge was misled by the petitioner. The contempt proceedings can be drawn up with regard to the violation of the order of the Subordinate Court on the basis of the procedure established by the Rules framed by this Court in exercise of the power of the Contempt of Courts Act, 1971 (for short, "the Act"). Rule 5 of the Contempt of Courts (Andhra Pradesh High Court) Rules, 1980 (for short, "the Rules") provides as follows:

5. In case of contempt other than the contempt referred to in rule 4, the High Court may take cognizance of contempt and take action-

(a) suo motu, or

(b) on a petition made by the Advocate-General of the State of Andhra Pradesh, or

(c) on a petition made by any person, and in the case of Criminal Contempt with the consent in writing of the Advocate-General of the State of Andhra Pradesh, or

(d) on a reference made to it by a Court Subordinate to it in the case of any contempt of such Subordinate Court or on a motion made by the Advocate-General of the State of Andhra Pradesh in that behalf.

4. Rule 9 provides as follows:

9. (1) All references made by the Subordinate Courts under rule 5(d) shall contain the particulars as mentioned in rule 7(1)(a) and (b) so far applicable.

(2) The Subordinate Courts shall transmit all relevant documents or true copies thereof duly attested along with the letter of reference.

(3) All references made under rule 5(d) by the Subordinate Courts other than the Courts of District and Sessions Judges shall be forwarded through the respective District and Sessions Judges for onward transmission of the same to the High Court expeditiously with their report.

(4) Before making reference, the Subordinate Courts shall hold a preliminary enquiry by issuing a show-cause notice of the Contemnor and after hearing him,

the said Court shall write a concise reasoned order of the reference about the alleged contempt.

5. Upon careful reading of the impugned judgment and order, we are sure to conclude that this contempt proceeding was not drawn up suo motu by the learned Trial Judge and His Lordship proceeded on the basis of this application for contempt. We find His Lordship was pleased to exercise the power u/s 10 of the Act. We shall deal on this aspect little later.

6. From a reading of the aforesaid two Rules, it is very clear that contempt proceedings for violation of the order of the Subordinate Judge can be brought by this following methodology.

(1) By making an application to the Court whose order was violated and who will make a reference to the Court after being satisfied or after observing the above provision of the rules or

(2) On a petition by the Advocate General of the State as mentioned above, or

(3) Suo motu by the High Court Judge. As to who is the Judge who can take up the case suo motu is not clear from the rules.

(4) In case of criminal contempt, on application made by any person with leave of Advocate General of the State.

7. The learned Trial Judge proceeded on the basis of the above application directly made by the party. We are of the view that this application should not have been entertained by the learned Trial Judge straight away for initiating contempt proceedings. In other words, the learned Trial Judge could have assumed jurisdiction only on lawful reference having been made by the Subordinate Judge concerned in terms of the above rule and the same was assigned to His Lordship by the Hon''ble Chief Justice on the administrative side. So, we hold that the learned Trial Judge had no jurisdiction to entertain this application and therefore should not have passed the impugned Judgment and order of conviction with almost extreme punishment in this matter.

8. His Lordship has exercised the power u/s 10 of the Act. We are of the view that it is the power of the High Court and not any particular Judge alone. Power under the law is one thing and exercise of power is another thing. Power can be exercised by Court only when lawfully instituted proceedings have been brought and not otherwise. In this case, we think His Lordship took up this matter without any lawful conferment of the jurisdiction by the Hon''ble The Chief Justice on the administrative side. The Chief Justice is the master of the roster. Unless this matter is allocated to any Hon''ble Judge of this Court, it cannot be taken up, unless order of that Hon''ble Judge is violated in case of contempt proceedings.

9. The aforesaid legal position is settled by the Hon''ble Supreme Court in the case of State of Rajasthan Vs. Prakash Chand and Others,

10. The framer of the rule has carefully drafted the aforesaid procedure to deal

with contempt proceedings in relation to the Subordinate Court with an idea that it must be dealt with by the superior Court where required degree of skill, expertise and experience is ensured, obviously for this reason power of contempt has not been given to the Subordinate Court. Rule 9(2) clearly mentions the procedure how the reference is to be made and what are the legal formalities to be adhered to before the reference is made to the High Court. The aforesaid rule expressly provides observance of principle of natural justice before the reference is made affording opportunity of being heard.

11. The aforesaid provision of rule, in our view, is the procedure established by law. Article 21 of the Constitution of India has given guarantee that personal liberty cannot be taken away except by the procedure established by law. We are of the view that the sentence of conviction of imprisonment has taken away the civil liberty of the appellant. This conviction and sentence recorded by the learned Trial Judge is not in accordance with the procedure established by law, as above legal provision is patently violated by the petitioner at whose instance this contempt proceeding was drawn up. It is settled law that the contempt proceedings must be between the Court and the alleged contemnor, therefore it is the primary duty of the Court to see and examine that any proceedings of contempt is drawn up in accordance with the established procedure and without any departure.

12. Moreover, we notice in the body of the contempt petition that there is no prima facie allegation of willful violation of order, not even in the prayer. According to us, that without the aforesaid prima facie complaint the Court cannot assume jurisdiction to draw up a contempt.

13. In view of the aforesaid discussion we set aside the impugned judgment and order of conviction and hold that this Court could not assume the jurisdiction to draw contempt basing on above application. We would have remanded the application for contempt to the Court below concerned, but we have noticed that there has been no prima facie act of contempt. Hence, we desist ourselves from doing so.

14. We therefore allow this appeal. However, liberty is given to the respondent to take action in accordance with law, if there is any case of willful violation of the order of the Subordinate Court, if so advised.

15. We feel that when the Court has been unduly and illegally activated by the respondent and for which the appellant had to contest a matter, which was not lawfully instituted, appearing before inappropriate forum, and ultimately faced unjustly adverse order followed by preferring an appeal, the appellant shall be compensated with exemplary cost. Therefore, we assess costs at Rs. 20,000/- (Rupees Twenty thousand only) to be paid by the respondent to the appellant. Such cost is to be paid within a period of fortnight from the date of receipt of a copy of this order. Miscellaneous petition, if any, pending in this appeal shall stand closed.