
(2014) 11 CHH CK 0029
In the Chhattisgarh High Court
Case No : Contempt Case (C) No. 412 of 2014

Sada Singh and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Constitution of India, 1950 — Article 300
Contempt of Courts Act, 1971 — Section 12

Citation : (2015) CriLJ 1462

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Amit Kumar, Advocates for the Appellant; Anupam Dubey, Deputy Govt. Advocate, Advocates for the Respondent

Judgement

Sanjay K. Agrawal, J.—The short question falling for consideration in this contempt petition is the nature of the contempt proceedings whether it is proceeding in personam or it is representative proceeding? The contempt petitioners herein have filed this contempt petition impleading State of Chhattisgarh through Secretary Department of Planning and Urban Development, Collector, Dantewada and Nagar Panchayat, Dantewada through its Chief Municipal Officer as impleaded in the writ petition alleging that order passed in W.P. (S) No. 2228/2013 on 01-08-2013 has been disregarded by them.

2. It is well settled law that State as such cannot be said to commit a contempt. In case of State, the allegation must be against particular officer or officers of the State, and where an order was passed against State in a duly constituted proceedings restraining the State and it is alleged by the contempt petitioners/complainants that, there has been contempt by breach of that order, the contempt petitioners will have to take out the rule for contempt against the particular officer or officers who has or have disobeyed that order and in such a petition for contempt rule must be asked against individual and not against the State but before an individual officer of the Government can be held to be liable,

it must be established that he was a person in-charge of the subject-matter to which the order alleged to have been disobeyed relates, and principle contained in Article 300 of the Constitution of India which provides for proceedings by way of suit against the State or Union of India cannot be applied to contempt proceedings.

3. The Division Bench of the Calcutta in case of Tarafatullah Mandal & others v. S.N. Maitra and others", has held contempt proceeding to be proceeding in person am. Paragraph 28 of the report states as under:-

"28. A proceeding in contempt is by its nature a proceeding in person am. A contempt proceeding, therefore, cannot be, allowed to acquire the character of a representative proceeding. One of the respondents described in the petition for Rule is in the form: "The State of West Bengal represented by S. Banerjee, Secretary, Department of Land and Land Revenue." That I think is wholly an unjustified procedure and cannot be permitted."

4. In the above stated judgment the Calcutta High Court has deprecated the practice of impleading the State in, the contempt proceeding and made the following observation in paragraph 5 of the report:-

"5. As the practice of impleading the State as represented by some particular individual is becoming common in contempt proceedings, it seems necessary to point out what the correct procedure is. Nothing can be less accurate or more ridiculous than to ask that a particular State should itself be committed to prison, or that the State should be regarded as personified in, some individual officer nominated by the complainant, and should be committed to prison in the person of that officer. The State is not a minor, or a lunatic, or a Hindu deity that it can "be represented by anyone in the manner sought to be done in the present petition. Nor is it a body corporate. Even when the Union of India, or one of the component States is sought to be made a party, it is to be impleaded in the manner and the name indicated in the Constitution itself. To implead the Union, or one of the States as represented by some particular officer, whether in Civil or Criminal proceedings, is not warranted by any provision of law, and so far as Criminal Proceedings are concerned, is particularly inappropriate."

5. Rule 349 of the High Court of Chhattisgarh. (Contempt of Court Proceedings) Rules, 2007 states as under:-

"349. (1) Every petition, motion or reference made under rule 348 shall contain in precise language the statement setting forth the facts constituting the contempt of which the person charged as alleged to be guilty and shall specify the date or dates on which the contempt is alleged to have been committed.

(2) When the petitioner relies upon any document or documents in his possession he shall file them along with the petition.

(3) Every petition for taking action under the Act, shall be supported by an affidavit and shall comply with the provisions of rules relating to filing procedure,

documents, and affidavits provided in these Rules."

6. From the careful perusal of the above quoted rule it would appear that the contempt petitioner is required to clearly state the name of the person charged/contemnor who is alleged to be guilty of the contempt of order of the Court and also required to specify, the date or the dates, on which contempt is allegedly committed by the person charged.

7. If the facts of the case are examined in light of the High Court of Chhattisgarh (Contempt of Court Proceedings), Rules, 2007 and the principles of law laid down with regard to nature of contempt proceeding and impalement of the contemnor/person charged as laid down Tarafatullah Mandal case (supra) it is held that contempt proceeding is proceeding in personam and the petitioners have neither given the names of the person charged and responsible for breach of the order of Court on behalf of the State Government and Nagar Panchayat, therefore a contempt proceeding cannot be proceeded with in absence of individual person responsible for disobeying the order of the Court being a party as contemnor. Thus the petitioners having failed to name the person charged/contemnor in the contempt petition and even not given the date or dates on which the order is said to be disobeyed the contempt proceeding cannot be initiated under Section 12 of the Contempt of Courts Act, 1971. Resultantly, the contempt petition as framed and filed is not in accordance with Rule 349 of the High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007 is dismissed as not maintainable. However it will be open to the contempt petitioners to file duly constituted contempt petition in accordance with Rules of 2007.