
(1983) 06 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1254 of 1983

Sandeep Khanna

APPELLANT

Vs

First Civil Judge, Class I, Gwalior and others

RESPONDENT

Date of Decision : 30-06-1983

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, 15, 2(a), 23

Citation : (1983) JLJ 694 : (1983) MPLJ 633

Hon'ble Judges : J.S. Verma, J;C.P. Sen, J

Bench : Division Bench

Advocate : P.R. Bhave, for the Appellant;

Final Decision : Dismissed

Judgement

J.S. Verma, J.

In a pending suit in the Court of First Civil Judge, Class-I, Gwalior, an interim order was made. It was then alleged that the petitioner, who is Collector at Gwalior, had disobeyed that interim order. In view of this allegation made against the petitioner, the First Civil Judge, Class-I, Gwalior issued a notice to the petitioner to show cause why action be not taken against him for contempt of Court. This is obviously to enable the subordinate Court to decide whether it should report the matter to the High Court for taking cognizance under the Contempt of Courts Act, 1971, or to drop the proceeding. Instead of filing a reply to the show-cause-notice, the petitioner has filed this petition to quash the notice dated 24-2-1983 (Annexure P-2) issued by the First Civil Judge, Class-I, Gwalior, in these circumstances.

Ordinarily, we would have dismissed the petition on the short ground that it was open to the petitioner to show cause and satisfy the subordinate Court that he had not disobeyed any order of that Court, as asserted before us by learned counsel for the petitioner and, therefore, it was not necessary to go into the merits of the points raised in the petition. However, learned counsel for the

petitioner strenuously urged that we should decide these points which relate to the authority of the subordinate Court to issue such a notice; and to the validity of rule 7 of the "Rules for proceedings under the Contempt of Courts Act" framed by the High Court. It is for this reason that we are disposing of the contentions urged before us, on merits.

The contention of learned counsel for the petitioner is that there is no power in the subordinate Court to make a reference to punish for civil contempt, since the provisions in the Contempt of Courts Act, 1971, envisage such a reference only in cases of criminal contempt and not civil contempt.

Reference is made by learned counsel to sub-section (2) of section 15 of the Contempt of Courts Act, 1971. Section 23 of the Act has been referred to indicate that the High Court can make rules not inconsistent with the provisions of the Act providing for its procedure and on that basis rule 7 framed by the High Court is claimed to be invalid. There is no merit in this contention.

Section 10 of the Act empowers the High Court to punish contempts of subordinate Courts, which means that the power is to punish not only for criminal contempt, but also for civil contempt since "Contempt of Court" is defined in section 2(a) of the Act to mean civil contempt or criminal contempt. The power to punish for civil contempt also of subordinate Courts is admittedly available to the High Court. The question is, therefore, only of the procedure to be followed. Section 15 of the Act provides a more stringent procedure in cases of criminal contempt and one of the modes prescribed for taking cognizance is on a reference made to the High Court by the subordinate Court. The procedure to be followed is prescribed by the rules framed by the High Court. There is no dispute about the prescribed procedure being applicable to cases of criminal contempt. Rule 7 of the rules framed by the High Court merely says that in case of civil contempt, the Court concerned shall make a reference to the High Court by following as far as possible the same procedure laid down for reference in case of a criminal contempt. We fail to appreciate how this rule can be called invalid. The effect of the rule is to require the same procedure as prescribed in cases of criminal contempt to be followed, as far as possible, in cases of civil contempt also. If at all, the procedure prescribed is more beneficial to the contemner and there can be no occasion for him to feel aggrieved. Moreover, the Act having conferred power on the High Court to take cognizance and punish all cases of contempt of the subordinate Courts, the rules framed to prescribe the procedure are meant only to carry out the purpose of the Act. There is no inconsistency between rule 7 and the Act.

According to the rules, a subordinate Court, before making a reference, even in cases of civil contempt, gives a show cause notice to the contemner so that the contemner has the opportunity of satisfying the subordinate Court that the allegation against him is unfounded and if he does so, there would be no occasion for the subordinate Court to make a reference. However, if he fails to satisfy the subordinate Court or does not avail of that opportunity, a reference is

made to the High Court which takes cognizance of the alleged contempt and proceeds to decide the matter after notice to the contemner. The grievance made by the petitioner that this procedure enables two enquiries, i. e. one by the subordinate Court before reference and the other by the High Court after taking cognizance, is misconceived. The opportunity given before making the reference is for the contemner's benefit and he is free to avail it or not, as he pleases. The reference made is only the mode prescribed for reporting the matter to the High Court even in cases of civil contempt. After the matter is so reported, the High Court decides in the manner prescribed, whether cognizance should be taken or not. It is indeed strange that this additional opportunity given to a contemner before taking cognizance should be a cause of grievance to the contemner.

In our opinion, there is no merit in the petitioner's contention that rule 7 of the "Rules for proceedings under the Contempt of Courts Act, 1971" framed by the High Court is invalid. The validity of rule 7 alone having been challenged at the hearing before us, it is not necessary to refer to rule 5 or any other provision mentioned in the petition in this context.

The only surviving question now is about the validity of the show cause notice (Annexure P-2) issued by the subordinate Court to the petitioner. It is sufficient to say that the petitioner has the opportunity, if he wants to avail it, of satisfying the subordinate Court that he has not, in any manner, disobeyed any order passed by that Court, as was stated before us at the hearing of the petition. We have no doubt that the subordinate Court will take into account the petitioner's reply to the show cause notice and drop the proceedings, in case the reply is satisfactory. We refrain from saying anything on merits at this stage since the same will be gone into by the High Court, in case the subordinate Court chooses to make a reference.

Subject to the above observations, this petition is dismissed summarily.