

(2010) 11 AHC CK 0104

In the Allahabad High Court

Case No : Contempt Application (Civil) No. 5543 of 2010

Shiv Kumar and Another

APPELLANT

Vs

Satyapal Gautam, Vice Chancellor, M.J.P. Rohilkhand Uni.

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Contempt of Courts Act, 1971 — Section 20

Citation : (2010) 11 AHC CK 0104

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—The present application for contempt has been filed for violation and non-compliance of the final order of this Court dated 27.05.2005, passed in Writ Petition No. 33424 of 2002. It appears from the record and the order impugned that applicants raised a grievance regarding grant of B. Tech. degree and for issuance of mark sheet. There was a dispute between the University authority, therefore, on that ground applicants filed a writ petition before this Court and ultimately this Court allowed the writ petition vide its judgment and order dated 27.05.2005 by passing the following directions :

In the facts and circumstances of the case, I am of the view that the remaining Petitioners having been issued mark sheets by the University are entitled to issuance of degree also.

For the reasons stated above, the petition is allowed and the impugned orders are quashed. The Respondent-University is directed to award degree to Petitioner Nos. 2, 5, 7 & 9. The Vice-Chancellor shall pass necessary orders in this regard to ensure compliance within a period of two months. No order as to costs.

2. Admittedly, this order was passed on 27.05.2005. According to applicants, the University preferred a defective special appeal bearing No. 801 of 2005; The Vice Chancellor, M.J.P. Rohilkhand University, Bareilly v. Shiv Kumar and Ors. The said

appeal was kept pending and in the year 2009, the delay in filing the appeal was condoned and regular number was given as Special Appeal No. 1151 of 2009. Ultimately, this appeal was listed on 13.09.2010 and in the revised list as nobody appeared on behalf of the applicant, therefore, the appeal was dismissed for want of prosecution. Now, this application for contempt has been filed with a request that order of this Court passed in 2005 has not been complied with and the ground taken by the applicants is that due to pendency of the special appeal before this Court against the judgment and order dated 27.05.2005, the contempt application could not be filed. As soon as the special appeal has been dismissed and in spite of that order, the order of this Court has not been complied with, this application for contempt is filed.

3. Sri Suneet Kumar, learned Counsel appearing for the applicants submits that Section 20 of the Contempt of Courts Act will not come into play in view of the fact that special appeal against the judgment and order dated 27.05.2005 was filed and it was kept pending and it has been dismissed by order dated 13.09.2010. Immediately after the dismissal of the appeal, when the order of this Court has not been complied, then this application is filed, therefore, it cannot be said and held that this application is time barred and cannot be entertained in view of Section 20 of the Act. Learned Counsel for the applicants has placed reliance upon paragraphs 19, 20, 33 and 34 of the judgment of the apex court reported in AIR 2001 Supreme Court 2763; Pallav Sheth v. Custodian and Ors. The same are being reproduced below :

In Firm Ganpat Ram Rajkumar Vs. Kalu Ram and Others, where an order of this Court ordering delivering of premises had not been complied with, an application was filed for initiation of contempt proceedings. A contempt was raised on behalf of the alleged contemner based on Section 20 of Contempt of Courts Act, 1971. Dealing with this contention, this Court observed as follows :

Another point was taken about limitation of this application u/s 20 of the Act. Section 20 states that 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. In this case, the present application was filed on / or about 3rd Nov., 1988 as appears from the affidavit in support of the application. The contempt considered, inter alia, of the act of not giving the possession by force of the order of the learned Sr. Sub-Judge, Narnaul dated 12th Feb., 1988. Therefore, the application was well within the period of one year. Failure to give possession if it amounts to a contempt in a situation of this nature is a continuing wrong. There was no scope for application of S. 20 of the Act.

20. The abovementioned observations indicate that the contention based on Section 20 was not accepted for two reasons firstly that the application for initiating action for contempt was filed within one year of the date when the contempt was alleged to have been committed and secondly failure to give possession amounted to continuing wrong and, therefore, there was no scope for

application of Section 20 of the Act. This case is important for the reason that the Court regarded the filing of the application for initiating contempt proceedings as the relevant date from the point of view of limitation.

33. The question which squarely arises is as to what is the meaning to be given to the expression "no Court shall initiate any proceedings for contempt...." occurring in Section 20 of the 1971 Act. Section 20 deals not only with criminal contempt but also with civil contempt. It applies not only to the contempt committed in the face of the High Court or the Supreme Court but would also be applicable in the case of contempt of the subordinate Court. The procedure which is to be followed in each of these cases is different.

34. As we have already noted, in the Bill which was presented to the Parliament after taking into consideration the recommendations of the Sanyal Committee there was no provision similar to Section 20 of the 1971 Act. It is only the Joint Parliamentary Committee which recommended the insertion of Clause 20 so as to provide for a period of limitation. There can be little doubt that Section 20, as framed, is not happily worded. The heading of the section, however, indicates what it was to provide for "Limitation for actions for contempt." The wording of the section are negative but it is clear that terminus ad quem is the initiation of proceedings for contempt. The question that arises as to how or when are the proceedings for contempt initiated.

4. Taking support of the aforesaid judgment, learned Counsel for the applicants submits that the apex court has held that though in view of Section 20 of the Act no Court shall initiate any proceeding for contempt, but in case it has been brought to the notice of the Court regarding anything which defies the order of this Court, then in that circumstance it is always open to the Court to initiate a proceeding for contempt against the authority concerned. In that case, the order was passed in the year 1988, but the application for initiating contempt proceeding was filed on 18.06.1998 and in that circumstances the apex court has held that application can be treated to be well within time.

5. I have considered the submissions of the learned Counsel for the applicants and perused the record. There is no dispute to this effect that the final judgment was passed in the year 2005 by this Court granting two months time to the Vice-Chancellor to take necessary action and to ensure compliance. From the record it also appears that though appeal was filed against this order, but as the appeal was beyond time, therefore, defective number was given and ultimately in the year 2009 delay in filing the appeal was condoned and regular number was given. In the opinion of the Court and in the eye of law if a defective appeal against the judgment and order has been filed, then it cannot be treated to be pending appeal against that particular judgment. Legally it can be held and said that appeal was actually filed and can be said to be pending when the delay in filing the appeal was condoned. It is also borne out from the record that no interim order was granted, therefore, as soon as two months period was expired, as directed in the order dated 27.05.2005, from that date within a period of one

year applicants should have approached this Court for non-compliance of the judgment and order passed by this Court. Admittedly, present contempt application has been filed after the dismissal of the appeal on 19th November 2010.

6. In my opinion, the submission made by Sri Suneet Kumar, learned Counsel appearing for the applicants cannot be accepted that limitation will be counted from the date of dismissal of the special appeal dated 13.09.2010. If up to 2009 no appeal was pending it was open to the applicants to file a contempt petition immediately after expiry of the limitation, but it has not been done. As regards the apex court judgment relied upon by the learned Counsel for the applicants, the facts of this case and the facts of that case are altogether different in view of the fact that in that case certain papers were submitted after the judgment before the Custodian and it was accepted that this act was done in the year 1981, but by letter dated 05.05.1998, the Income Tax Department has given an information regarding fraud perpetuated by the applicants in that case then immediately on 18.06.1998 application was filed. In that circumstance, apex court has held that application can be treated well within time in view of the fact and circumstances of the present case. In the present case admittedly the order was passed in 2005. Though, a defective appeal was filed, but there was no interim order and actually the delay was condoned in the year 2009, therefore, in that circumstance, if the order of this Court was not complied with, it was always open to the applicants to make an application for contempt. In such circumstances, it cannot be held and said that Section 20 will not come into play and this application filed by the applicants can easily be treated to be beyond limitation, as provided u/s 20 of the Act.

7. Therefore, I see no justification to interfere. The present application for contempt is hereby dismissed on the ground of limitation, as provided u/s 20 of the Act. However, it is provided that in case the order of this Court has not been complied with that may be complied with by the Vice-Chancellor.