
(2009) 07 AHC CK 0126
In the Allahabad High Court

S.M.A. Abdi and Another

APPELLANT

Vs

Private Secretaries Brotherhood and Another

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Constitution of India, 1950 — Article 136, 215
Contempt of Courts Act, 1971 — Section 17, 19

Citation : (2009) 4 AWC 4026 : (2010) CriLJ 1021

Hon'ble Judges : S.K. Singh, J; Ashok Srivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Sri Zafar Nayyer, learned Additional Advocate General assisted by Sri M. C. Tripathi, learned Additional Chief Standing Counsel who appeared in support of this appeal and Sri M. D. Singh Shekhar, learned Senior Advocate assisted by Sri Tiwari who appears for the respondents.

2. This contempt appeal is directed against the order passed by the learned Single Judge dated 16.7.2009 exercising the powers under the Contempt of Courts Act by which liberty has been given to the respondents to comply with the orders passed by this Court on 29.7.1998 in writ petition No. 17585 of 1996 within ten days and to file a fresh compliance report before the Court on the date fixed. It is further provided that in case the order is complied with nobody need to appear failing which the appellants are to appear in person before the court on the date fixed i.e. 30.7.2009. The order assailed in this appeal, for convenience, is quoted here:

Heard Sri M. D. Singh Shekhar learned Senior Counsel assisted by Sri R.D. Tiwari for the petitioner/applicant and Sri Jyotindra Mishra, learned Advocate General assisted by Sri Zaffar Nayyer, learned Additional Advocate General and Sri M. C. Chaturvedi learned Chief Standing Counsel along with M. C. Tripathi Additional Chief Standing Counsel for the respondents.

After hearing at length, I am of the considered opinion that there can be no justification to detract the view taken earlier by this Court mentioned in the order dated 6.5.2009. I am in full agreement of the aforesaid view, accordingly the same is hereby reiterated.

Respondents are permitted to comply with the order passed by this Court on 29.7.1998 in writ petition No. 17585 of 1996 within ten days from today and file a fresh compliance report before the court on the date fixed. In case the order is complied with by that time, the Principal Secretary (Finance) and the Principal Secretary (Law) will not appear in person before this Court on the date fixed. However, in case of non-compliance of the order they are directed to appear in person before this Court on the date fixed.

List/Put up on 30th July, 2009.

A copy of this order shall be provided to Sri M. C. Chaturvedi learned Chief Standing Counsel and Sri Zaffer Nayyer Additional Advocate General free of cost within 24 hours.

Sd/- Hon. Sabhajeet Yadav, J.

3. Initially when the appeal was placed, Sri Singh raised a preliminary objection about maintainability of the appeal. This Court directed the learned Stamp Reporter to examine and report, upon which the report came in which it is mentioned that the appeal is not maintainable in view of Section 19 of the Contempt of Courts Act. Thus this Court is to hear the contention of either of the sides on the question of maintainability of the appeal.

4. Sri Nayyer, learned Additional Advocate General, to object the report of the learned Stamp Reporter about maintainability of the appeal and also to the submission of the Sri Singh submits that the order of learned Single Judge challenged in this appeal is not an order only for framing of charge simplicitor rather it is an order by which a mandate to do something has been given and thus even the order is at an interlocutory/intermediary stage but as it directs to do something in a particular way, the appeal as filed is maintainable u/s 19 of the Contempt of Courts Act.

5. It is further submitted that the direction given by the learned Single Judge on the facts is without jurisdiction and, therefore, the appellant cannot be left to be remediless and as the only remedy as on date available to the appellant is to file the appeal, this appeal is maintainable. Lastly it is submitted that all the directions given by this Court in the writ petition has been complied with and, therefore, the learned Single Judge has committed an error in passing the order by reiterating the order passed in the writ petition dated 6.5.2009 and in giving the impugned direction. In support of the submissions about maintainability of the appeal, learned Advocate placed reliance on the decision given by the Apex Court in the case of A.P. Verma v. U.P. Laboratory Technicians Association and Ors. reported in (1998) 3 U.P.L.B.E.C. 2333; in the case of Modi Telefibres Ltd.

and Ors. v. Sujit Kumar Choudhary and Ors. reported in (2005) 7 SCC 40, decision given in the case of v. M. Manohar Prasad v. N. Ratnam Raju and Anr. reported in (2004) 13 SCC 610 and at the same time a recent decision given by the Apex Court in the case of Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others,

6. In response to the aforesaid Sri Singh submits that Section 19 of the Contempt of Courts Act clearly refers for an appeal against the order of punishment by the learned Single Judge exercising the powers under Contempt of Courts Act and thus every order passed in the exercise of that jurisdiction cannot be equated to the word "punishment" so mentioned in Section 19 of the Act and, therefore, the appeal as filed by the appellant is not maintainable.

7. Sri Singh further submits that the submission of appellants side that the order of the learned Contempt Judge is without jurisdiction is totally misconceived for the simple reason that learned Single Judge has not passed any independent order, of its own rather he has just reiterated the earlier orders passed by the court in the writ exercise and, therefore, if it is a case of incorrect interpretation according to the two sides then also it cannot be said to be an independent exercise by the Contempt Judge which is said to be without jurisdiction so as to accept the submission of the appellant side about maintainability of the appeal.

8. Lastly it is submitted that as by the order of learned Single Judge only compliance has been directed to be ensured in respect to the order passed in the writ and if the contention of the appellant side is accepted to be correct that order has been complied in its true sense then it is always open for them to put in appearance before the Court and to satisfy about the merits. The scope of an argument of the appellants about compliance or non compliance of the orders which were passed by the writ court cannot be examined in the contempt appeal at this stage.

9. In support of the submission that against this kind of order, the appeal has been rightly reported to be not maintainable, Sri Singh placed reliance on the case of Smt. Kamal Kumari Singh v. State of U.P. and Ors. reported in 2007 (1) ALJ 389 and also the decision given in the case of Midnapore Peoples" Coop. Bank Ltd. and Ors. (Supra), on which reliance has been placed by the appellant side also.

10. In view of the aforesaid, this Court has to deal with the merit in the submission about maintainability of the appeal, as noted above in the light of decisions so referred and some other judgments of the Apex Court on the point.

11. To deal with the submissions about maintainability of the appeal this Court will have to refer the provisions of Section 19 of the Contempt of Court Act and thus for convenience Section can be quoted here:

19. (1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt -

(a) where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

12. On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under Sub-section (1) of Section 19 of the Act. As Sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said Sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words ""any order"" have to be read with the expression ""decision"" used in the said Sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. ""Any order"" is not independent of the expression ""decision"". They have been put in an alternative form saying ""order"" or ""decision"". In either case, it must be in the nature of punishment for contempt. If the expression ""any order"" is read independently of the ""decision"" then an appeal shall lie under Sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result. In a judgment given by the Apex Court in the case of D.N. Taneja Vs. Bhajan Lal, observation as made by the Apex Court is to be quoted here:

The right of appeal will be available under Sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.

13. We may refer to the observation made by the Apex Court in another decision on the point in the case of Purshotam Dass Goel Vs. Hon"ble Mr. B.S. Dhillon and Others,

The (contempt) proceeding is initiated u/s 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question.... It is neither possible, nor

advisable, to make an exhaustive list of the type of orders which may be appealable to this Court u/s 19. A final order, surely will be appealable.

14. On a consideration of the views expressed in series of decisions referred above, the Apex Court in the recent decision of Midnapore Peoples" Coop. Bank Ltd. and Ors. (Supra) posed various questions for consideration and they were accordingly answered. The Apex Court after quoting provision of Section 19 of Contempt of Courts Act framed questions for consideration as are contained in para 9 of the judgment which are being quoted here:

(i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable u/s 19 of the Contempt of Courts Act, 1971 ? If not, what is the remedy of the person aggrieved ?

(ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under Clause 15 of the Letters Patent ?

(iii) In a contempt proceeding initiated by a delinquent employee (against the enquiry officer as also the Chairman and Secretary in charge of the employer Bank), complaining of disobedience of an order directing completion of the enquiry in a time-bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the enquiry officer shall cease to be the enquiry officer and the employer shall appoint a fresh enquiry officer ; and (e) that the suspension shall be deemed to have been revoked?

15. The first question so posed has been decided in para 11 of the aforesaid judgment. The answer by the Apex Court in this respect can itself be quoted for convenience:

I. An appeal u/s 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable u/s 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable u/s 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal u/s 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly.

16. Thus it is clear that while dealing with the second question the Apex Court clearly said that in respect to the decision even so rendered on merits by interlocutory order a person is not remedy less and an intra-court appeal if is provided is maintainable.

17. Recent judgment of the Apex Court as noted above in the case of Midnapore Peoples" Coop. Bank Ltd. and Ors. (Supra) was referred in the recent cases by our own court and contempt appeals were dismissed on the ground of being not maintainable. We may refer to the decision given in the case of Prakash v. Arun Chand Pandey reported in 2008 (26) LCD 1034 and decision in the case of Jai Karan Lal Verma Vs. Rajesh Kumar Pathak and Others, It is thereafter in another recent judgment of this Court given in Contempt Appeal No. 7 of 2009 Smt. Sudha Shukla v. Ausan and Ors. and Contempt Appeal No. 8 of 2009 Krishna Shukla v. Ausan and Ors. decided on 26.5.2009 series of judgments of the Apex Court has been referred and on a consideration of all the aspects the question of maintainability has been decided. It has been held that unless any adverse order having immediate effect causing injury is passed, that cannot be appealed either by filing Contempt Appeal or even by filing Special Appeal if it is not so provided.

18. Observation in this respect is also contained in the decision of this Court in the case of Smt. Kamal Kumari Singh (Supra). Observations as made in this judgment in para 19 is to be quoted here:

Sri Ravi Kant, learned senior counsel, further contended that part of the order, which restrain the appellant from working as officiating principal of the institution observing that the Court is satisfied that the appellant is not fit person, is appealable under Chapter VIII. Rule 5 of the Rules of the Court. In our view, even this submission cannot be accepted for the reason that an appeal under Chapter VIII, Rule 5 of the Rules of the Court lies against the "judgment". The Hon"ble Single Judge while issuing notice to the appellant has passed an interlocutory order in the nature of restraining the appellant from working as

officiating principal in institution but there is nothing to show that the Hon''ble Single Judge has decided any issue or has recorded a finding of fact on any aspect of the matter against which part an appeal may lie under Chapter VIII, Rule 5 of the Rules of the Court.

19. It is not to be emphasised that right of appeal is a creature of statute and unless the law specifically provides for filing the appeal, that cannot be permitted. Any order or decision as referred in Section 19 of the Act cannot be read independently from an order of punishing for contempt.

20. So far the decision on which reliance has been placed by counsel for the appellants on the facts and details so noticed have no application to the case in hand.

21. In the decision given in the case of V.M. Manohar Prasad (Supra) the Apex Court said that if the order of the Contempt Judge is without jurisdiction then the appellants may approach the appellate forum. On the facts, this Court is not to accept the submissions of the appellants that observations of the learned Single Judge in the impugned order is without jurisdiction for the simple reason that learned Single Judge has just reiterated earlier orders passed by the writ court and asked the appellants to comply them. No independent or fresh order on the merits has been passed and, therefore, the contention of the appellants side suggests to interpretation of the orders passed by the writ court in respect to their compliance as being claimed or about their non compliance as being complained which cannot be done here. Accordingly the appellants cannot take advantage of the decisions so referred.

22. In the decision given in the case of Modi Telefibres Ltd. and Ors. (Supra) the Apex Court found that the learned Single Judge has recorded a finding about committing of the contempt by the appellants and the case was adjourned to accept the contemnor to purge the contempt or else for deciding the quantum of punishment. This not being the situation here, the decisions so referred may be of not much help to the appellants.

23. So far the decision in the case of A. P. Verma (Supra) on which reliance has been placed by the appellants, the Apex Court said that if a contention which goes to the very root of the jurisdiction is raised and the same is turned down or the order or decision is such which decides some bone of contention effecting the rights of the parties aggrieved, an appeal would be maintainable. Here is not a case where any fresh decision has been given by the learned Contempt Judge deciding some bone of contention effecting the right of the parties rather earlier orders passed in the writ were just reiterated and, therefore, neither it can be said to be a case of an order by the learned Judge which is without jurisdiction or deciding rights of the parties afresh.

24. On these facts, it cannot be said that the cases on which reliance has been placed by the learned Counsel for the appellants have taken the view that every order as and when passed by Hon''ble Single Judge is appealable u/s 19 of the

Act.

25. This being the situation on an analysis and in view of the decision of the Apex Court in the case of Midnapore Peoples" Coop. Bank Ltd. and Ors. (Supra) , this Court has to take the view that appeal filed by the appellants is not maintainable. Accordingly this contempt appeal is held to be not maintainable and thus it is dismissed.