
(1981) 05 AHC CK 0028

In the Allahabad High Court

Case No : Criminal Miscellaneous Contempt Case No. 234 of 1979

Smt. Indu Tewari

APPELLANT

Vs

Ram Bahadur Chaudhari and Others

RESPONDENT

Date of Decision : 07-05-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 39 Rule 2A
Contempt of Courts Act, 1971 — Section 12

Citation : AIR 1981 All 309 : (1981) AWC 521

Hon'ble Judges : J.M.L. Sinha, J

Bench : Single Bench

Advocate : B.P. Naithani, for the Appellant; A.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.M.L. Sinha, J.—This is an application u/s 12 of the Contempt of Courts Act filed by smt. Indu Tewari, hereinafter called the petitioner. The facts giving rise to the petition can briefly be stated as under:

The petitioner purchased a motor vehicle No. U. P. Z. 9529 in the name of her nephew Saroj Kumar, The petitioner wanted to ply the motor vehicle as a public carrier and applied for a permit for the same in respect of Etawah-Bhind route in the name of Ram Bahadur Chaudhary, opposite party as he already possessed a driving licence in his name. With that end in view she also got the name of the opposite party entered in the relevant papers as registered owner. Thereafter some differences cropped up between the parties. It is not necessary to mention in detail the facts relating to those differences. It should suffice to state that in the year 1979 the petitioner filed a suit in the court of the Civil Judge Etawah for injunction to restrain the opposite party from interfering in the petitioner's ownership and possession of the disputed vehicle. This suit was decreed ex parte on 17th July, 1979. The opposite party filed an appeal against the ex parte decree in this Court and also moved an application for injunction. The opposite party, however, failed to get any stay and the first appeal filed by him is still

pending. The petitioner's grievance is that in spite of the decree passed in the civil suit, the opposite party has been plying the bus on permit No. 1028 and he is, therefore, guilty of contempt. The opposite party has entered appearance and opposed the petition,

2. The first question that falls for consideration in the instant case is whether, in view of the fact that the petitioner had an effective alternative remedy of enforcing the decree passed in the civil suit by putting it in execution under Order XXI, Rule 32 of the Code of Civil Procedure, it would be a fit case in which this court should exercise its jurisdiction u/s 12 of the Contempt of Courts Act.

3. It is well settled that the matter of contempt is always an issue between the court and the contemner. No right vests in a private party to get any person punished for contempt. He can only inform the Court of the contempt committed by any person and thereafter it is for the Court to deal with the contemner. The party which informs the Court about the alleged contempt can only assist the Court in coming to the conclusion whether any contempt has been committed or not. As opposed to this, if a person obtains an interim injunction or a final decree for injunction, he gets a right to enforce it. The provision for enforcement of an interim injunction is contained in Order XXXIX Rule 2-A, Civil P. C. and the provision for enforcement of a decree for injunction is contained in Order XXI, Rule 32, Civil P. C. According to the said provision, a person who disobeys an injunction order can be put into prison and his property can also be attached. The attachment can continue for one year and if the party against whom the order or decree is passed refused to comply, the property can even be sold. The orders passed in proceedings under Order XXXIX, Rule 2-A as well as the orders passed in execution proceedings under Order XXI, Rule 32 of the CPC are appealable orders. Further the proceedings under Order XXXIX, Rule 2-A as well as execution proceedings under Order XXI, Rule 32 are elaborate proceedings in which the parties can adduce their evidence and they can examine and cross-examine the witnesses. As opposed to this, the proceedings under the Contempt of Courts Act are of summary nature. In my opinion, a person who has got an effective alternative remedy of the nature specified under Order XXXIX, Rule 2-A or under Order XXI, Rule 32, Civil P. C. should not be permitted to skip over that remedy and take resort to initiate proceedings under the Contempt of Courts Act. The least that can be said is that it would not be a proper exercise of discretion on the part of this Court to exercise its jurisdiction under the Contempt of Courts Act when such an effective and alternative remedy is available to any person. I am fortified in taking this view by the observations made in *Ram Rup Pandey Vs. R.K. Bhargava and Others*, and *Calcutta Medical Stores v. Stadmed Private Ltd.* 81 CWN 209. Relying on these two decisions I myself took the same view recently in *Abdul Sattar v. Hira Lal* (Civil Misc. Contempt Case No. 96 of 1979 decided on 20-2-1981).

4. Learned counsel for the petitioner referred me to a decision of this Court in *B. K. Hari v. S. B. Mehrotra* (Civil Contempt No. 38 of 1973 decided on 8-11-1974),

by Justice G. C. Mathur in support of his contention that the fact that the petitioner had an effective alternative remedy under Order XXI, Rule 32, Civil P. C. should not stand in the way of this Court to exercise its jurisdiction under the Contempt of Courts Act. I have carefully gone through that decision and I find that it does not support the learned counsel for the petitioner. It would be pertinent to Quote the following observation from the aforesaid decision.

"Sri Rajesh Tandon, learned counsel for Mehrotra. contended that the proceedings for "contempt of court were not competent in view of the fact that action could have been taken in the court of 1st Additional Civil Judge Dehradun, under Order 39, Rule 2-A, Civil P. C. He has placed reliance on the decision of a Division Bench of the Madras High Court in A. Ramalingam Vs. V.V. Mahalinga Nadar, . In this case it was observed that when the matter relates to infringement of a decree or decretal order embodying rights, as between parties, it is clearly not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing that decree, or merely because other remedies may take time, or are more circumlocutory in character. It was further observed that in the case of disobedience of a temporary prohibitory injunction the provisions of Order 39, Rule 2 (3) of the CPC provide a much more adequate and satisfactory remedy than a proceeding for contempt of court. The Court was of the view that in such cases the court should not exercise its discretion to take proceedings for contempt. In similar circumstances, a learned single Judge of this Court in Ram Rup Pandey Vs. R.K. Bhargava and Others, held that when an alternative mode of redress In respect of disobedience of an injunction order is available, the High Court will not exercise its discretionary power in the contempt jurisdiction. There can be no quarrel with the proposition that if the disobedience of the order can be adequately dealt with by the court which parsed the order, then the High Court will not exercise its discretion to proceed for contempt of court, for the disobedience of the order of the subordinate Court". (Underlining by me).

The above observations clearly support what I have said above. It is true that in the aforesaid case the learned single Judge exercised his jurisdiction under the Contempt of Courts Act despite the aforesaid observation, but it was for two reasons viz., (i) that the suit in which the injunction order was passed had already been disposed of and hence no application under Order XXXIX, Rule 2-A could lie and (ii) that the injunction order in that case was issued u/s 151, Civil P. C. and not under Order XXXIV, Rule 1 or Rule 2 and hence Order XXXIX, Rule 2-A did not apply.

5. Learned counsel for the petitioner referred me to the cases Thummu Koti Nagaiah Vs. D. Sambaiah and Others, , Sita Ram Sahu v. Lachmi Narain (AIR 1946 Pat 47), Hiralal Hargovindas Vs. Popatlal Sankalchand Patel and Another, , M. Amritlal Vs. P. Srinivas Rao, and The Aligarh Municipal Board and Others Vs. Ekka Tonga Mazdoor Union and Others, in a bid to support his contention that the petitioner can take resort to proceedings under the Contempt of Courts Act for

punishing disobedience of the decree for injunction by the opposite party. I have carefully looked into all these cases. In my opinion, none of them can have any relevance. In the case of Thummu Koti Nagaiah v. D. Sambaiah (supra) the only rule laid down was that Order XXI, Rule 32 cannot be made use of punishing a person for breach of temporary injunction. In the case of Sita Ram Sahu v. Lachmi Narain Sahu (supra) it was held that the words "in case of disobedience" occurring in Rule 2 (3) of Order XXXIX are wide enough to cover breach of injunctions issued under Order XXXIX, Rule 1 and that once an injunction order is issued, it must be complied with whether it is right or wrong. In the case of Hiralal Hargovindas v. Popatlal Sankal Chand Patel (supra) all that was held that a person committing breach of an injunction order passed under Order XXXIX, Rule 1 can be punished under Order XXXIX, Rule 2 (3) and that Order XXI, Rule 32 is not meant for empowering the Court to punish a party for disobedience of a temporary injunction. In the case of M. Amritlal v. P. Srinivas Rao (supra) the question for consideration was whether a temporary injunction issued during the pendency of the case and made absolute on the same date on which the suit was decided was valid and whether its disobedience can be punished under Order XXXIX, Rule 2 (3) of the Code. As for the Supreme Court decision in the case of Aligarh Municipal Board v. Ekka Tonga Mazdoor Union (supra) the stay order had been passed by this Court and therefore the proceedings under the Contempt of Courts Act had been taken by this Court for disobedience of that Order.

6. In my opinion, thus none of the aforesaid cases can be of any help to the petitioner.

7. As already stated, in the instant petition, the petitioner had an effective alternative remedy of enforcing the decree passed in her favour by putting the same in execution under Order XXI, Rule 32, Civil P. C. It is, therefore, not a fit case in which this Court should exercise its jurisdiction under the Contempt of Courts Act.

8. The petition is, accordingly, dismissed and the notice issued to the opposite party is discharged. The stay order dated 10-9-1980 is vacated.