

(2012) 06 KAR CK 0082
In the Karnataka High Court
Case No : Criminal Appeal No. 579 of 2012

Sri Sathyanarayana Kuduru

APPELLANT

Vs

The Office Shresthidar Madhugiri Courts Madhugiri

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372, 374 (2), 378, 397

Citation : (2013) 2 Crimes 322 : (2013) 1 KarLJ 112

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : N.S. Sanjay Gowda, for the Appellant;

Judgement

Jawad Rahim

1. The appellant herein has brought into question direction in the judgment dated 02.05.2012 in S.C.No. 170/2010 on the file of Judge, Fast Track Court, Madhugiri imposing penalty on him for the alleged insult to the trial Judge during deposition in evidence. The appeal filed is u/s 374(2) of the Cr.P.C.

2. A question arose as to whether the appeal is maintainable u/s 374(2) of the Cr.P.C. when the appellant was neither arraigned nor tried nor has been convicted by any judicial order.

3. The learned Counsel would submit the order impugned imposes upon him "penalty" by way of punishment. Therefore, it is deemed conviction and hence, the appeal u/s 374(2) of the Cr.P.C. is maintainable. Thus, the test would be to see the nature of the order passed. The impugned order reveals thus:

The I.O. has committed intentional insult to the trial judge during his evidence, while sitting in the judicial proceeding, and therefore, he is liable to pay fine u/s 228 of IPC, for the derogatory words used by him against the judicial officer, such as "IT IS UNBECOMING OF A JUDGE" and that the court has got PREJUDICE towards the I.O. Infact, it is unbecoming of the I.O. and he is liable to pay

penalty of Rs. 1,000-00 for each of the above said insulting and blasphemous words, i.e., total amount of Rs. 2,000-00, and if he failed to make payment of the penalty to the Government within 30 days, he shall undergo simple imprisonment for two months.

The Office Sheristedar is directed to register a separate Criminal Misc. case u/s 228 of the IPC, to compel the C.P.I., Satyanarayana Kudur, to comply with the penalty, if he failed to make payment within 30 days.

4. From the phraseology and the language used in the impugned order, it is evident that the learned Sessions Judge during the trial of an accused for offences punishable under the provisions of the IPC has taken note of the conduct of the appellant who was a witness to impose the penalty. The impugned order spells out learned trial Judge has imposed penalty upon him for act which is brought within the mischief of Section 228 of the IPC.

5. Section 228 of the IPC defines about the offence punishable by the Court. It reads:

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

6. Therefore, indulging in intentional insult or interruption to a public servant while sitting in a judicial proceeding is made an offence defined the Indian Penal Code to be visited with penal consequences and punishment is also prescribed. It therefore implies that to impose punishment upon a person for an offence, he has to be subjected to trial as provided by the Code of Criminal Procedure. In the instant case, the order impugned is not in a trial conducted against the appellant but is an order based on observation made during the course of judicial proceedings while conducting trial against another individual. The appellant's conviction is in a proceeding wherein he was neither arraigned, charged or subjected to trial. The question is whether such an order is appealable. The test to be applied is to refer to the provisions of Section 372 of Cr.P.C. which provides for appeal against conviction. Section 372 envisages:

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

7. It spells out an appeal against any judgment or order is permissible only as provided by the Code of Criminal Procedure. The right of appeal is embodied u/s 374 and 378 of the Cr.P.C. A convicted person has a right of appeal u/s 374 subject to provisions of section 375 and 376. Section 374 leaves no scope for doubt that:

(1) any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in whom a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial may appeal to the High Court.

8. The thrust is on the words "convicted on trial". Therefore, it presupposes the conviction must be a result of the trial of a person in the manner known to law (prescribed by code of Criminal Procedure). In the instant case, the appellant has not been put to trial and therefore, the impugned order imposing penalty does not answer the test provided by these sections.

9. The question is what is the remedy for such an individual. The impugned order has to be tested from the point of legality, impropriety or as to whether it is legally permissible. Such an exercise is permissible under provision of Section 397 of the Cr.P.C. In this view, the appeal is not maintainable. But the appellant has a remedy of revision or a writ action.

Consequently, the appeal is held as not maintainable.

10. At this stage, learned Counsel for the appellant Sri. N.S. Sanjay Gowda files a memo seeking permission for conversion of this appeal into revision. The request is granted. For all statistical purposes, appeal stands disposed of by this order and Registry to permit conversion of this appeal into revision.