
(1962) 01 AP CK 0017
In the Andhra Pradesh High Court
Case No : A.A.O. No. 171 of 1959

Thummu Koti Nagaiah

APPELLANT

Vs

D. Sambaiah and Others

RESPONDENT

Date of Decision : 31-01-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2(3), 36

Citation : AIR 1963 AP 136

Hon'ble Judges : P. Chandra Reddy, C.J.;Kumarayya, J

Bench : Division Bench

Advocate : P. Babulu Reddy and I. Koti Reddy, for the Appellant; S. Venkata Reddi, M. Ramaiah and R. Rajeswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—This is an appeal against the order of the Subordinate Judge, Guntur, directing the detention of the appellant in a Civil Prison for period of six months.

2. The facts material for the purpose of this enquiry may be briefly narrated. The first respondent instituted O.S. No. 48 of 1956, against the appellant in the Subordinate Judge's Court, Guntur for recovery of a sum of Rs. 7,664/- on the foot of a promissory note executed by the appellant in his favour. Along with the suit, he filed I. A. No. 990 of 1956 for attachment before judgment of the moveables including the tobacco lying in the godown of the appellant and belonging to him. When the petition came up for hearing on 25-4-1956, the first defendant appeared through a lawyer and requested time till 26-4-1956. Thereupon, the Court passed the following order :

"Notice. Counter and disposal. The defendant not to alienate any of the moveables in the meanwhile."

3. Notwithstanding, this order of injunction, the appellant sold tobacco to the

second and third respondents.

4. When this was brought to the notice of the Subordinate Judge, he issued a notice to the appellant to show cause why he should not be punished for violation of the order mentioned above.

5. Various contentions were raised on behalf of the appellant, the chief of them being that he had not sold the tobacco to the second respondent but he merely shifted it to his godown for safe custody, and as such he had not disobeyed the injunction and that even otherwise he could not be punished for violation of an order passed under Order 39, Rule 1, C. P. C.

6. The trial Court, on a consideration of the material, found that the appellant effected a sale of the tobacco to respondents 2 and 3 and as such he committed breach of the injunction and that the violation of an order of injunction made under Order 39, Rule 1 was punishable under Order 39, Rule 2, Sub-rule (3) read with Section 94 C. P. C. In the result, the trial Court committed the appellant to civil prison for six months. It is this decision that is now under appeal.

7. The finding that the appellant sold the tobacco which he was prohibited from disposing of is not canvassed before us. The only point pressed upon us is that the order of detention for violating the injunction issued under Order 39, Rule 1 C. P. C. is wholly without jurisdiction. It was suggested that disobedience of an order of injunction made under Order 39, Rule 1 C. P. C. would not attract Sub-rule (3) of Rule 2 of Order 39 C. P. C., as that rule governs only breach of injunction issued under Rule 2.

8. In order to appreciate this contention, it is useful to reproduce the relevant statutory provisions. Section 94 C. P. C. omitting the unnecessary portions, reads :

"In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed-

X X X X

(c) grant a temporary injunction and in case of disobedience, commit the person guilty thereof to the Civil prison and order that his property be attached and sold;"

9. We will now turn to Order 39, C. P. C., which also provides for the issue of temporary injunctions and for punishment for disobedience of such injunctions. Rule 1 enacts :

"Where in any suit it is proved by affidavit of otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or (intends to remove or dispose of his property

with a view to defraud his creditors;

XXX the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders."

10. We are unconcerned with Sub-rules (1) and (2) of Rule 2 of Order 39, the only rule material for the purpose of this enquiry being Sub-rule (3) which says :

"In the case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release "

11. Indisputably, in the instant case, the order was passed under Rule 1(b) of Order 39 C. P. C. and the punishment was inflicted under Sub-rule (3) of Rule 2. The argument advanced on behalf of the appellant is that sub-rule (3) is inapplicable to this case since it governs only Rule 2. It is contended that Section 94 C. P. C. contemplates that the grant of an injunction and the infliction of punishment for its breach should be prescribed by rules and that this rule being contained in Order 39, Rule 2, the disobedience of an injunction granted under Rule 1 cannot be punished, as the Legislature has not made any provision in that behalf. It is stated that the operation of Sub-rule (3) is confined only to injunctions issued under Rule 2 and cannot be extended to an order made under Rule 1. We do not think that we could accede to this proposition.

A perusal of Section 94 C. P. C. clearly indicates that it is intended to take in breaches of all injunctions, that section being couched in general terms. We are not persuaded that the generality and scope of relevant statutory provisions should be confined to breach of injunctions issued under Rule 2 of Order 39, C. P. C. It is true that the provision containing the punishment for disobedience of injunctions is included as part of Rule 2 but that is not decisive of the matter. Order 39 C. P. C. has to be read in the light of Section 94 C. P. C. In our considered judgment, this was intended by the legislature to be applied to all breaches of injunctions issued under Order 39 and Section 94 C. P. C. It cannot be postulated that the legislature did not provide for penalty through some-inadvertence in Order 39, Rule 1 C. P. C. for punishing persons guilty of disobedience of orders of Courts.

12. It is argued for the appellant on the basis of *Dulhin Janak Nandini Kunwari Vs. Kedar Narain Singh, and Pannalal Rose v. Shree Dalurani* (AIR 1945 Nag 134) that the legislature had not omitted to provide a penalty for breach of injunction issued under Order 39, Rule 1 C. P. C. in that the injunctions contained in orders could be enforced" under Order 21, Rule 32 read with Section 36 C. P. C. and that it would not be natural to interpret Order 39, Rule 2, Sub-rule (3) as covering orders under Order 39, Rule 1. We are unable to assent to the principles

enunciated in the two cases cited above.

We are not satisfied that Order 21, Rule 32 read with Section 36 C. P. C. is intended to apply to temporary injunctions issued under Order 39. Order 21, Rule 32 read with Section 36 C. P. C. deals with execution of orders. The remedy provided under Order 21, Rule 32 and Section 36 could be availed of only by parties to a proceeding and it does not empower a Court suo motu to punish a person for breach of an injunction. These provisions are meant to enable a party to enforce the injunctions contained in the decrees or orders but not for the purpose of empowering a Court to punish a party guilty of disobedience. That being the object of Order 21, Rule 32 read with Section 36 C. P. C. resort cannot be had to those provisions for the purpose of punishing a person for breach of an injunction.

13. In our opinion, a combined reading of Section 94 and Order 39, Rules 1 and 2, C. P. C. leads to the conclusion that the punishment prescribed by Sub-rule (3) applies to an injunction issued under Order 39 and Section 94 C. P. C. It may be that Sub-rule (3) was drafted somewhat inartistically but the intendment of the legislature appears to be clear, namely, to punish persons guilty of violation of injunctions issued under either of the two rules.

14. We are fortified in this opinion of ours by the judgment of a Division Bench of the Madras High Court in *S. Adaikkala Thevan and Another Vs. The Imperial Bank, Madura Branch and Others*, . Venkata Subba Rao and Madhavan Nair JJ., laid down in that case that Sub-rule (3) of Rule 2 applies not only to disobedience of orders issued under Clauses 1 and 2 of that rule, but it applies equally to disobedience of an injunction issued u/s 94 of the Code. The learned Judges referred with approval to the judgment of Kumaraswamy Sastri J., in *Krishnapur Mutt by Vidyapurna Thirthaswami Vs. The Vicar of Suratkal Church*, . The view taken by the Patna High Court in *Jang Bahadur Singh Vs. Chhabila Koiri*, and *Sita Ram Sahu Vs. Lachmi Narain Sah and Others*, is in accord with this doctrine. We are not satisfied that the law stated in *S. Adaikkala Thevan and Another Vs. The Imperial Bank, Madura Branch and Others*, is wrong and that it requires re-consideration, as suggested by the learned counsel for the appellant. We feel that it brings out clearly the spirit of Section 94 and Order 39 C. P. C.

15. It follows that it was quite competent for the lower Court to punish the appellant for violating the injunction issued under Order 39, Rule 1 C. P. C.

16. However, we think that the ends of justice will be met by reducing the punishment imposed on the appellant to two months. In other respects, the appeal is dismissed with costs.