
(2000) 05 J&K CK 0012

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No. 16 Of 2000

Tripat Singh, Brig.

APPELLANT

Vs

Manzoor Brick Killin

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Jammu and Kashmir Contempt of Courts Act, 1997 — Section 19

Citation : (2000) 1 SriLJ 207 : (2000) SriLJ 207

Hon'ble Judges : G.D.Sharma, J and Syed Bashir-Ud-Din, J

Bench : Division Bench

Judgement

1. Through the medium of this Letters Patent Appeal, order dated: 20.10.94 passed by the Learned Single Judge in contempt petition No. 469/98

has been challenged. In the impugned order the appellant has been prima facie held to have wilfully disobeyed order dated 20.10.1994 passed in

OWP No. 553/93. the appellant was required to show cause to the notice on the next date.

2. The order has been challenged on the ground that in the/order dated: 20.10.1994 (passed in OWP No. 553/93). the liability to determine and

make the payment of the amount of damages to the respondent No. 1 was fixed on respondent No.2 only (Mr. C. Phonsog Addl. Chief Secretary

Govt. Home Department) and not on Union of India or the petitioner. In the contempt proceedings, the learned Judge has falsely implicated both

of them and thus the order is wrong.

3. The relevant facts of the case are that respondent No. 1 in writ petition No. 553/93 had impleaded (1) Union of India through Secretary of

Home Affairs. New Delhi; (2) Chief of Army Staff. Army H/Q. New Delhi; (3) SubArea Commander, 31 Army Corps C/o 56 APO Badami

Bagh. Srinagar; (4) State of J&K through Addl.; Chief Secretary (Home) J&K. Janinui: (5) Director General of Police. J&K Srinagar: (6) Deputy

Inspector General of Police, Kmr. Range Srinagar; (7) Divisional Commissioner Kashmir. Srinagar; (8) Addl.: Divisional Commissioner. Kashmir;

(9) Deputy Commissioner. Budgam: (10) General Manager, District Industries Centre, Budgam. (11) Tehsildar (settlement) Tehsil Chadura as

respondents and prayed for the relief of writ of mandamus commanding them to vacate the land occupied by them and pay the compensatory

damages from October 10.1990 till date. Respondents 1 to 3 were required to vacate the land occupied by them. The Ld. Single Judge decided

the writ petition holding as under"" Therefore, in view of the foregoing, it is undoubtedly clear that the Union of India is bound by law to pay

compensation by way of rents in lieu of the user of the land in accordance with law to the petitioner. "" The concluding para of the judgment runs:

Therefore this writ petition is allowed and a direction is issued to the Collector of District Budgam that he shall hold an inquiry in the matter

providing sufficient opportunities to both the parties to assess the loss suffered by the petitioner from October, 1990 by way of damages. He may

make a summary inquiry providing opportunity to both the parties by way of adducing evidence and then decide the quantum of compensation by

way of rents payable to the petitioner and shall submit a report to the Addl.; Chief Secretary (Home), J&K State. within a period of three months

from today and the Addl.; Chief Secretary (Home), J&K in turn shall implement the same within a period of two months thereafter and pay the

rents payable to the petitioner by way of compensation.

4. Heard the arguments.

Mr. Qadiri. Sr. AAG has raised preliminary objection regarding the maintainability of the appeal by pleading that under Section 19 of the J&K

Contempt of Courts Act, 1997 (hereinafter referred as contempt Act) an appeal is allowed only against a final order and a show cause notice does

not fall in the category of an appealable order. Mr. Elan, the Ld. counsel for the appellant combated this argument and submitted that an appeal

lies against this order under LPA Rule 12 as a matter of right. In support of this contention, he cited the case of National Insurance Co. Ltd. &

Another Vs. Union of India & Anor. (1989 KLJ 711). In this case, the Ld. Single

Judge had passed the order in contempt petition on April

29, 1988 which was challenged in LPA and the appeal was held maintainable. The law cited by the counsel has no relevance with the present

controversy because that order was passed not under the provisions of contempt of courts Act which was not then in force. It came into force on

29.9.97. Section 19 of the contempt Act creates a Statutory right to file the appeal. A plain reading of section 19 reveals that an appeal shall lie

where the order or decision is that of a Single Judge, as a matter of right if the order has been made in the exercise of its jurisdiction to punish for

contempt and no appeal can lie as a matter of right from any kind of order made by the Ld. Single Judge in the proceedings for contempt. Under

the Act, the proceedings are initiated by issuing the notice and many interlocutory orders have yet to be passed and it is not the intention of the

legislature to provide for an appeal as a matter of right from each and every such order made by the Single Judge or by a bench of not less than

two judges while hearing the case of criminal contempt. The order of 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 proceedings for contempt by the issuance of the notice on the

prima facie view that the case is a fit one for drawing up the proceedings, does not decide any question. The matter has to be decided either finally

or may be, even at an earlier stage an order is made, which does decide a contention raised by the alleged contemnor to drop the proceedings. A

final order surely will be appealable. Such a view is fortified by the decision rendered by the Apex court in the case of Purshotam Dass Vs. S.S.

Dhillon (AIR 1978 SC 1014). Mr. Qadiri has also cited the case of State of Maharashtra Vs. Mahboob's Alibhoy and Anor. (1996 (4) SCC

411) wherein it is held that appeal will not lie U/s 19 against an interlocutory order of High court dropping or refusing to initiate contempt

proceedings. Words "any order" must be read with "decision" so as to exclude any interlocutory order of High Court from the scope of appeal.

Unless by the order High Court imposes punishment in exercise of its jurisdiction for contempt, no appeal will lie against it. However, even against

an order dropping/refusing to initiate contempt proceedings Supreme Court's jurisdiction under Article 136 can be invoked. It will be

advantageous to reproduce the relevant observations of the Supreme Court made in the said case and the are:

An appeal is a creature of a statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no

appeal can be filed or entertained as a matter of right or course. Section 19 of the Contempt of Courts Act provides that an appeal shall lie as of

right from any order or decision of High Court in exercise of its jurisdiction to punish for contempt. Thus 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 SubSection (1) of Section 19

of the Act. The words ""any order"" has to be read with the expression 'decision' used in the said SubSection which the High Court passes in

exercise of its jurisdiction to punish for contempt/""Any order"" is not independent of 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. So construed an appeal cannot lie under SubSection

(1) of Section 19 against an interlocutory order passed in a proceeding for contempt by the High Court. Therefore, no appeal is maintainable

against an order dropping proceedings for contempt or refusing to initiate a proceeding for contempt. This is apparent not only from SubSection (I)

but also from SubSection (2) of Section 19"".

5. The Ld. Single Judge of this court has not yet decided that appellant is guilty for committing the contempt of court but in terms of the impugned

order he was given a chance to show compliance to the judgment and in case of failure he has to explain his position on the next date of hearing.

This is not an order/decision of the Ld. Single Judge passed under Section 19 of the Contempt Act when right of appeal is available to the

appellant. In view of the specific statutory right guaranteed under the Contempt Act to file an appeal against the kind of order/decision no aid can

be sought from L.P. A. provisions to make the appeal maintainable when the order is interlocutor)' one. Viewing the controversy in its true

perspective the appeal is found not maintainable which is dismissed. The appellant has yet to show cause in the proceedings before the writ court.

All the defences put up in memo of appeal are available to him and we find it not desirable to express any opinion on the factual matrix of the case.

The office is directed to list the case at an early date when the single bench is available.