

Bombay High Court

Capt. Kersy Ratonsha Driver vs The Collector Of Chennai & Ors on 8 September, 2009

Bench: J.N. Patel, R.P. Sondurbaldota

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.311 OF 2008

IN

CONTEMPT PETITION NO.71 OF 2004

IN

WRIT PETITION NO.2763 OF 2002

Capt. Kersy Ratonsha Driver

.... Appellants

Vs.

The Collector of Chennai & Ors. Respondents

Mr.S.C. Naidu i/by C.R. Naidu and Co. for appellants.

Mr.R.M. Pardiwala i/by Mulla & Mulla Craige Blunt & Caroe

for respondent nos. 4 to 6.

Coram : J.N. PATEL &
SMT.R.P.SONDURBALDOTA, JJ.

Date : 8th September, 2009

JUDGMENT (Per Smt.Justice R.P. SondurBaldota,J.)

1. This appeal is directed against the order passed by the learned Single Judge refusing to initiate action under the Contempt of Courts Act,1971 against the respondents.

2. The respondents have raised a preliminary objection to the maintainability of the appeal. They contend that in view of Section 19 of the Contempt of Courts Act, 1971 an appeal is maintainable only against an order punishing for contempt and not otherwise. An order declining to initiate proceedings for contempt or an order of acquittal of the contemnor is not amenable to appeal.

3. For the reasons stated hereinafter, we uphold the preliminary objection raised by the respondents. In our opinion plain reading of Section 19 of the Contempt of Courts Act, 1971 makes it clear that an appeal shall lie from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt.

The said provision reads as under :

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

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(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: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that--

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed-

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

Our view is supported by decision of the Apex court in Midnapore Peoples' Co-op. Bank Ltd. & Ors. v. Chunilal Nanda & Ors ., reported in AIR 2006 SUPREME COURT PAGE 2190. In the said decision, the Apex Court observed that the appeal under Section 19 above would lie only against any decision or order of a High Court passed in the exercise of it's jurisdiction 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 it's jurisdiction or power as conferred on it by Article 215 of the Constitution of India.

Therefore when the High Court does not impose any punishment on the alleged contemnor, it does not exercise it's jurisdiction or power to punish for contempt and hence no appeal would lie against such a decision. The Apex Court then after considering number of its earlier decisions summarised the position as regards the appeals against the orders in contempt proceedings. The same reads as follows :

"11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

I. An appeal under Section 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 under Section 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 direction 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 under Section 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 under section 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)"

4. Mr.Naidu the learned counsel for the appellant implores us to take a broader interpretation of the provision submitting that restricting the appeal under Section 19 to an order punishing for contempt will be a narrow interpretation. He seeks to draw support for his submission from the decision of the Apex Court in Municipal Corporation, Jabalpur vs. Om Prakash Dubey reported in A.I.R. 2007 SUPREME COURT, PAGE 893. In the proceedings before it, the Apex Court was considering order of Division Bench of Allahabad High Court in Contempt Petition giving certain directions to the alleged contemnors in connection with the alleged act of contempt. After considering the appropriateness of the directions given, the Apex Court observed at paras 22 and 23 as follows :

22. We are in this case not called upon to consider the implication of the Awards, which might have been passed in favour of the workmen. The Division Bench, by reason of the impugned judgment had issued directions in exercise of its jurisdiction under Section 12 of the Contempt of Courts Act, 1971, without arriving at a finding as to how the Corporation has violated its order. It issued directions which are contrary to or inconsistent with the directions issued by a learned Single Judge by an order dated 27.2.2003

23. The judgment of the Division Bench is, thus, subject to correction by this Court both under Article 136 of the Constitution of India as also under Section 19 of the Contempt of Courts Act.

Thereafter at para 24, the Apex Court simply quoted the following passage from the the decision in R.v. Serumaga [2005 (2) ALL ELR 160] :

"We have considered two interpretations of S.13(1).

The narrow interpretation is to the effect that it is not triggered until the contemnor has been convicted of, and sentenced for, the contempt. The broad interpretation is that the language `any order or decision... in the exercise of jurisdiction to punish for contempt' is sufficiently wide to relate also to orders or decisions made in the course of proceedings which may result in a conviction of and sentence for contempt. But we have come to the conclusion that the broad interpretation is the correct one. The statutory language permits it. It provides a remedy in a case of unjustifiably prolonged custody, and it does so without impinging on cases where the allegation is of an offence other than contempt of Court. Moreover, there are exceptional features which surround summary proceedings for contempt which, as the authorities make clear, demand an enlarged process of judicial scrutiny".

Beyond the above, there is no discussion on Section 19 in the Judgment and as such there is no ratio laid down as regards the applicability of Section 19. It is also seen than the judgment of the Apex

Court in the matter of Midnapore (supra) was not placed before it while deciding the matter and hence it was not considered by it.

5. In our humble opinion, the decision in the case of Municipal Corporation of Jabalpur (supra) is neither inconsistent nor contrary to the decision in Midnapur case (supra). It considers a situation where some orders or decisions made in the course of contempt proceeding which may result in a conviction of and a sentence for contempt. An illustration for the same would be order or directions issued to the alleged contemnor relating to the alleged act of contempt without convicting him for contempt.

Such order or direction if not complied with may result in a conviction of and a sentence for contempt and therefore appeal against the same may be preferred u/s 19 of the Contempt of Courts Act. Therefore the decision of the Apex Court in Midnapur case still holds the field and we are bound by the same.

6. Mr.Naidu then points out that the decision in Municipal Corporation of Jabalpur is relied upon by a division bench of our High Court in M/s Clough Engineering Limited vs. Oil and Natural Gas Corporation, reported in 2009 (3) AIR Bom. R 364 D.B. In the case before it, the Division Bench was considering similar directions issued by the learned Single Judge in Contempt Petition before arriving at the decision on the action for contempt. The Division Bench said "We find that the judgment of the Supreme Court in the matter of Midnapore :(2006) 4 AIR Bom R 322 (supra) has not been considered by the Supreme Court in the matter of Municipal Corporation of Jabalpur (supra). Therefore we are left at a controversy, namely, out of the two judgments which differ so far as the ratio are concerned, which of those judgments should be followed by this Court. It is well settled law that the judgment which is acceptable to us out of the two Supreme Court judgments can be followed by us". It then stated that the ratio laid down by the Apex Court in the matter of Municipal Corporation of Jabalpur was acceptable to the Bench and held that the appeal was maintainable.

7. As already seen above, the decision of the Apex Court in Midnapore case still holds the field. It has been followed by our High Court in two more decisions in Bombay Diocesan Trust Association Pvt. Ltd. vs. Pastorate Committee & Ors. reported in 2008(6) Bom.C.R. 645 and in Savitri Sippy vs. Shashikant Ghorpade & Ors., reported in 2009(3) Bom.C.R. 104. In the circumstance, the appeal is dismissed as not maintainable.

(Smt.R.P.SondurBaldota,J) (J.N. Patel, J.)