B. K. Kar

Vs

The Chief Justice and His Companion Judges of The High Court of Orissa and Another

Criminal Appeal No. 58 of 1959

(K. Subha Rao, Raghuvar Dayal, J. R. Mudholkar JJ)

14.03.1961

JUDGMENT

MUDHOLKAR, J. -

In this appeal by special leave, the appellant who has been found guilty of contempt of court by the High Court of Orissa is challenging his conviction. To this appeal, as well as to criminal appeal 2 of 1960 in which another person is challenging his conviction for contempt of court by the same High Court, the Chief Justice and the Judges of the High Court have been made parties. The learned Additional Solicitor General who has put in an appearance for a limited purpose has raised a point that in such matters it is not at all necessary to make the Chief Justice and the Judges of the High Court parties. He points out that in England in all contempt matters the usual title of the proceeding is "in re..... (so and so)", that is the person who is proceeded against for contempt. The same practice, according to him, is followed in appeals. We must, however, point out that in appeals preferred to the Privy Council from convictions for contempt by the High Courts in India as well as in appeals before this Court, the Chief Justice and the Judges of the High Court concerned have been made respondents. In Ambard v. Attorney-General for Trinidad & Tobago [(1936) A.C. 322.] we find that the Attorney General was made a party to the appeal. The question raised by the learned Additional Solicitor General is of some importance and we think it desirable to decide it.

In every suit or appeal persons who claim relief or against whom relief has been given or persons who have or who claim the right to be heard must undoubtedly be made parties. That is because they have an interest in the decision or the result of that case. But where Judges of a High Court try a person for contempt and convict him they merely decide a matter and cannot be said to be interested in any way in the ultimate result in the sense in which a litigant is interested. The decision of Judges given in a contempt matter is like any other decision of those Judges, that is, in matters which come up before them by way of suit, petition, appeal or reference. Since this is the real position we think that there is no warrant for the practice which is in vogue in India today, and which has been in vogue for over a century, of making the Chief Justice and Judges parties to an appeal against the decision of a High Court in a contempt matter. We may point out that it is neither necessary nor appropriate to make the Chief Justice and the Judges of a High Court parties to a legal proceeding unless some relief is claimed against them. In a contempt matter there is no question of a relief being claimed against the Chief Justice and the Judges of the High Court. The present practice should, therefore, be discontinued and instead, as in England, the title of such proceedings should be "in re..... (the alleged contemner)".

Now we address ourselves to the merits of this case. The appellant was a Sub-Divisional Magistrate at Dhenkanal in the year 1957. In a criminal matter before him a Magistrate III class, Dhenkanal

passed an order under s. 522, Criminal Procedure Code putting the complainant, one Golam Mohammed in possession of some property. The order was actually executed on October 14, 1955. It was also confirmed by the Additional District Magistrate in appeal. It was, however, set aside by the High Court in revision on August 27, 1957. The opposite party, one Sarif Beg, thereupon made an application on November 20, 1957 before the appellant for redelivery of possession. This application was opposed by Golam Mohammed. It was heard by the appellant on November 21, 1957, and order was reserved till November 23, 1957. Apparently the order was not ready and so the matter was adjourned to November 27, 1957. That day the application was allowed and compliance was directed by December 2, 1957.

While these proceedings were going on, an application was made by the complainant to the High Court apparently for a review of its previous order. By order dated November 25, 1957 this application was admitted by P. V. Balakrishna Rao J. He also granted an interim stay of the proceedings in the case before the Sub-Divisional Magistrate, Dhenkanal but did not direct that the said order should be communicated to the Sub-Divisional Magistrate by telegram. On November 26, 1957 an application bearing an illegible signature was made to the Magistrate in which, amongst other things, it was stated "that the petition being not maintainable the opposite party has once more moved the Hon'ble High Court in the matter and it has been ordered that further proceedings should be stayed until the disposal of the opposite party's revision". Evidently, by "opposite party" the applicant meant himself and by "revision" he meant the review application made by him. Along with this application the complainant filed a telegram addressed to Mr. Neelakanth Misra, Pleader, Dhenkanal saying "Golam Mohammad's case further proceedings stayed, Ram". It does not appear from the order sheet of the Magistrate that in the proceedings before him Mr. Neelakanth Misra represented the complainant. However, we will assume that he did so. Even then, there is nothing to indicate as to who "Ram" is. There is no suggestion that he was the Advocate who represented the complainant before the High Court in the proceeding before it. It would appear that on November 25, 1957 the Sub-Divisional Magistrate was out of headquarters and, therefore, the second officer directed that the application be placed before the Sub-Divisional Magistrate on his return. The Sub-Divisional Magistrate refused to act on this telegram but made the following endorsement on November 27, 1957 on what is said to be the complainant's application :

> "No action can be taken on telegram, File."

He then proceeded to deliver his order on the opposite party's application for restitution. A copy of the order of the High Court was received at Dhenkanal on November 28, 1957. On that day the Sub-Divisional Magistrate was absent and the second officer made in following entry in the order sheet :

> "Seen. A.D.M's D.S. No. 326 dated 28-11-57. In Cr. Misc. Case No. 90/57 Hon'ble High Court has stayed further proceedings. Stay further proceedings. Put up before S.D.M. Inform parties."

Consequent on this endorsement no writ for re-delivery of possession was issued and thuds the status quo was maintained.

Upon perusal of the records on August 18, 1957 in connection with the application for review made by the complainant the High Court ordered the issue of a notice to the appellant on August 25, 1958 to show cause why he should not be committed for contempt. The appellant is a lengthly statement explained all the facts and also stated that he had not the slightest intention to disobey or go beyond the orders and directions of the High Court and that he passed the order dated November 27, 1957

because the complainant's application for stay was not accompanied by an affidavit; nor was it signed by the complainant or his lawyer. He further stated that he should not be held liable for contempt because he had "no intention to prejudice or affect the course of justice in the disposal of the matter pending before the High Court" and added that he acted in good faith in discharge of his official duties. Finally he stated that if after considering his explanation the Court found him guilty of disobeying its order he expressed his regret and tendered his apology for what he had done. This apology was regarded as merely a conditional apology and was not accepted. After an elaborate consideration of the case law on the question of disobedience of orders by subordinate courts, the High Court found the Sub-Divisional Magistrate guilty of contempt and sentenced him to pay a fine of Rs. 100. By the same order the High Court dismissed the review application preferred before it by the complainant.

Before a subordinate court can be found guilty of disobeying the order of the superior court and thus to have committed contempt of court, it is necessary to show that the disobedience was intentional. There is no room for inferring an intention to disobey an order unless the person charged had knowledge of the order. If what a subordinate court has done is in utter ignorance of an order of a superior court, it would clearly not amount to intentional disobedience of that court's order and would, therefore, not amount to a contempt of court at all. There may perhaps be a case where an order disobeyed could be reasonably construed in two ways and the subordinate court construed it in one of those ways but in a way different from that intended by the superior court. Surely, it cannot be said that disobedience of the order by the subordinate court was contempt of the superior court. There may possibly be a case where disobedience is accidental. If that is so, there would be no contempt. What is, therefore, necessary to establish in a case of this kind is that the subordinate court knew of the order of the High Court and that knowing the order it disobeyed it. The knowledge must, however, be obtained from a source which is either authorised or otherwise authentic. In the case before us it is not clear as to who the person who signed the application dated November 27, 1957 was because the signature is illegible. It was not countersigned by a pleader not is there anything to show that it was presented in court by a pleader authorised to appear on behalf of the complainant. Furthermore, it was not accompanied by an affidavit. Therefore, there could be no guarantee for the truth of the facts stated therein. No doubt, it was accompanied by a telegram and even though it was addressed to a pleader there is nothing to indicate that he was authorised to appear for the complainant. Further it is not possible to say as to the capacity of the sender. Had the telegram been received from the court or from an advocate appearing on behalf of the complainant before the High Court and addressed either to the court or pleader for the complainant different considerations would have arisen and it may have been possible to take the view that the information contained therein had the stamp of authenticity. Of course, we do not want to lay it down here as law that every telegram purporting to be signed by an advocate or a pleader is per se guarantee of the truth of the facts stated therein and also of the fact that it was actually sent by the person whose name it bears. In order to assure the Court about these matters an affidavit from the party would be necessary. Upon the materials before us we are satisfied that the Sub-Divisional Magistrate was entitled to ignore the telegram as well as the application. We, therefore, hold that his refusal to act on the telegram did not amount to contempt of court. We may add that the fact that on receiving a copy of the High Court's order through the Additional District Magistrate not only were further proceedings stayed but a writ to redeliver possession was not permitted to issue. This would show clearly that there was no intention on the part either of the Sub-Divisional Magistrate or the second officer to disobey the order of the High Court. The conviction as also the fine of the appellant is erroneous and accordingly set aside.

Appeal allowed.

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