Baradakanta Mishra

Vs

Mr. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court

Criminal Appeal No. 84 of 1973

(D. G. Palekar, P. N. Bhagwati, V. R. Krishna Iyer JJ)

21.06.1974

JUDGMENT

BHAGWATI, J. -

1. Since we are disposing of this appeal on a preliminary point, it is not necessary to state the facts in detail. It would be sufficient if we state only so much of the facts as bear on the preliminary point.

2. The appellant was at all material times a member of the Judicial Services of the State of Orissa. He was promoted as an Additional District and Sessions Judge on July 31, 1968 but by an order dated March 30, 1972 made by the High Court of Orissa, he was suspended as a disciplinary inquiry was decided to be instituted against him. On April 29, 1972, a charge-sheet containing eight charges was served on him and he was called upon to show cause why disciplinary action should not be taken against him. In the meantime, on April 10, 1972, the appellant addressed an appeal to the Government complaining against the order of suspension passed by the High Court and requesting the Governor to cancel the order of suspension on the ground that it was outside the authority of the High Court. The High Court withheld the appeal of the appellant and refused to forward it to the Governor since in its opinion no appeal lay to the Governor against an order of suspension passed by the High Court. The appellant thereupon forwarded directly to the Governor a representation dated May 14, 1972 with a copy to the Registrar of the High Court and by this representation the appellant moved the Governor to transfer the disciplinary inquiry against him to the Administrative Tribunal. There were several statements made in this representation which scandalized the High Court and tended to lower its prestige, dignity and authority and thus constituted criminal contempt of court within the meaning of the Contempt of Courts, Act, 1971. The High Court, therefore, suo motu issued a notice dated July 3, 1972 calling upon the appellant to show cause why he should not be punished for contempt of court. The notice set out the passages from the representation made by the appellant to the Governor which, in the prima facie opinion of the High Court, amounted to contempt of court. The proceeding for contempt initiated by this notice was numbered as Criminal Miscellaneous Case No. 8 of 1972. The appellant appeared in answer to the notice and raised several contentions with a view to exonerating himself from the charge of contempt. One of the contentions was that whatever he had said in regard to the judges of the High Court in the representation made by him to the Governor was in regard to their conduct in the discharge of administrative functions and not judicial functions, and therefore, it did not amount to contempt of court. The appellant pleaded before the Full Bench of five judges, which was constituted to hear the proceeding for contempt, that this contention should be tried as a preliminary issue, but the Full Bench rejected the plea of the appellant. The appellant thereupon preferred a petition for special leave to appeal to this Court and in this petition, the appellant once again made statements which

prima facie appeared to constitute criminal contempt of court. The petition was rejected by this Court but the High Court taking note of the objectionable statements contained in the petition issued a supplementary notice dated January 5, 1973 to the appellant to show cause why he should not be punished for having committed contempt of court by publishing such statements. The Full Bench thereafter heard the proceeding for contempt on the charges contained in both the notices and by an order dated February 5, 1973 held the appellant guilty of contempt of court and sentenced him to simple imprisonment for two months.

3. Meanwhile the disciplinary inquiry instituted under the charge-sheet dated April 29, 1972 was entrusted to K. B. Panda, J., and the learned Judge, after holding a proper inquiry in accordance with the principles of natural justice, submitted a report dated August 2, 1972 finding the appellant guilty of all the eight charges set out in the charge-sheet, except charge No. 4(a). The High Court considered the report at a Full Court meeting of all the judges and finding itself in agreement with the report, the High Court issued a show cause notice calling upon the appellant to show cause why he should not be reduced to the rank of Additional District Magistrate (Judicial). The appellant was granted personal hearing and after considering the explanation given by him, the High Court again at a Full Court meeting of all the judges held on December 8, 1972, found the appellant guilty of the charges levelled against him except charge No. 4(a) and reduced him to the rank of Additional District Magistrate (Judicial). The appellant took the view that some of the issues arising in the disciplinary inquiry were the same as those arising in the proceeding for contempt which was pending against him and the decision of those issues by the High Court on the administrative side in the course of the disciplinary inquiry amounted to prejudging those isses in the proceeding for contempt which was a judicial proceeding and the Chief Justice and other judges of the High Court, who decided the disciplinary inquiry were, therefore, guilty of criminal contempt of their own High Court. The appellant, therefore, as soon as the proceeding for contempt was decided by the Full bench on February 5, 1973, moved the Full Bench for initiating proceeding for contempt against the Chief Justice and other judges in their personal capacity. The motion of the appellant was heard by a Full Bench of three judges and by an order dated February 13, 1973, the Bench held that in its opinion there was no contempt of court committed by the Chief Justice and the other judges and in any event, by reason of Section 15, sub-section (1), the appellant was not entitled to move the High Court for taking action against the Chief Justice and other judges since he had not obtained the consent in writing of the Advocate General and the Bench accordingly declined to take any action on the motion of the appellant. The appellant thereupon, purporting to avail of the right of appeal granted under Section 19, sub-section (1), preferred the present appeal to this Court.

4. When the appeal reached hearing before us the learned Additional Solicitor General, appearing on behalf of the respondent, raised a preliminary objection against the maintainability of the appeal. The learned Additional Solicitor General contended that no appeal lay under Section 19, sub-section (1) against the refusal of the High Court to take action on the motion made by the appellant. It is only if the High Court suo motu or on a motion made by the Advocate General or any other person with the consent in writing of the Advocate General takes action and initiates proceeding for contempt against the alleged contemner and on arriving at a finding of guilt, punishes him for contempt that the alleged contemner has a right of appeal under Section 19, sub-section (1). Even if a proceeding for contempt is initiated against the alleged contemner but the alleged contemner is found not guilty and is exonerated, there is no right of appeal, contended the learned Additional Solicitor General, and neither the Advocate General nor the person who has, with the consent in writing of the Advocate General, moved the High Court, can appeal as of right. The appellant, who appeared in person, combated this contention by relying on the words "any order or decision - in the exercise of its jurisdiction to punish for contempt" and urged that even if a decision was taken by the

High Court not to take action on the motion made by the Advocate General or any other person with the consent in writing of the Advocate General, it would still be a decision in the exercise of its jurisdiction to punish for contempt and would, therefore, be appealable on the plain terms of Section 19, sub-section (1). It is difficult to imagine, contended the appellant, that the Legislature should have conferred a right on the Advocate General or any other person with the consent in writing of the Advocate General to move the High Court for taking action for contempt, but should have refused to grant a right of appeal to the Advocate General or such other person even if his motion was wrongly rejected by the High Court. These rival contentions raise an interesting question of law depending for its determination on the true interpretation of the language of Section 19, sub-section (1).

5. Now, while considering this question, we must bear in mind the true nature of the contempt jurisdiction exercised by the High Court and the law in regard to right of appeal which obtained immediately prior to the enactment of the Contempt of Courts Act, 1971. It has always been regarded as well settled law that as far as criminal contempt is concerned, it is a matter entirely between the Court and the alleged contemner. No one has a statutory or common law right to say that he is entitled as a matter of course to an order for committal because the alleged contemner is guilty of contempt. All that he can do is to move the Court and draw its attention to the contempt alleged to have been committed and it will then be for the Court, if it so thinks fit, to take action to vindicate its authority and commit the alleged contemner for contempt. It is for the Court in the exercise of its desertion to decide whether or not to initiate a proceeding for contempt. Even if the Court is prima facie satisfied that a contempt has been committed, the Court may yet choose to ignore it and decline to take action. There is no right in any one to compel the Court to initiate a proceeding for contempt even where a prima facie case appears to have been made out. The same position obtains even after a proceeding for contempt is initiated by the Court on a motion made to it for the purpose. The Court may in the exercise of its discretion accept an unconditional apology from the alleged contemner and drop the proceeding for contempt, or, even after the alleged contemner is found guilty, the Court may, having regard to the circumstances, decline to punish him. So far as the contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged contemner. An outside party comes in only by way of drawing the attention of the Court to the contempt which has been committed : he does not become a part to the proceeding for contempt which may be initiated by the Court. It was for this reason that a Division Bench of the Bombay High Court held in Narendrabhai Sarabhai Hatheesing v. Chinubhai Manibhai Seth (ILR 60 Bom 894) that an order made by the High Court refusing to commit a man for breach of an undertaking given to the Court is not a judgment within the meaning of Clause 15 of the Letters Patent as it does not affect the merits of any question between the parties to the suit. Beaumont, C.J., pointed out :

> The undertaking is given to the court; if it is broken, and that fact is brought to the Court's notice, the Court may take such action as it thinks fit. If it comes to the conclusion that the order has been deliberately broken, it will probably commit the defaulter to jail, but the Court is free to adopt such course as it thinks fit.

Rangnekar, J., also spoke in the same strain when he said :

> Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the

> authority of the Court has been flouted, and if the Court thinks that it was so, then the Court in its discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question between the parties, so that any order made on such an application by which the Court in its discretion refuses to take any action against the party alleged to be in the wrong can be said to raise any question between the parties.

It is, therefore, clear that under the law as it stood prior to the enactment of the Contempt of Courts Act, 1971 no appeal lay at the instance of a party moving the High Court for taking action for contempt, if the High Court in the exercise of its discretion refused to take action on the motion of such party. Even if the High Court took action and initiated a proceeding for contempt and in such proceeding, the alleged contemner, being found guilty, was punished for contempt, the order being one made by the High Court in the exercise of its criminal jurisdiction, was not appealable under Clause 15 of the Letters Patent, and therefore, no appeal lay against it from a Single Judge to a Division Bench and equally, there was no appeal as of right from a Division Bench to this Court. The result was that in cases of criminal contempt, even a person punished for contempt had no right of appeal and he could impugn the order committing him for contempt only if the High Court granted the appropriate certificate under Article 134 in fit cases or on the refusal of the High Court to do so, this Court intervened by granting special leave under Article 136.

6. This was a highly unsatisfactory state of affairs and it was largely responsible for the criticism against the large posers of the Court to punish for contempt. This unsatisfactory feature of the law of contempt was adversely commented upon by Sanyal Committee in its report dated February 28, 1963 submitted to the Government of India. The Sanyal Committee pointed out in paragraph 2.1 in Chapter XI of tits Report :

> The present state of the law relating to appeal in cases of criminal contempt appears to be more the result of accidents of legal history than a matter of policy. That this is so is clearly evident from the fact that in those cases of contempt for which specific provision is made in the Indian Penal Code and the Code of Criminal Procedure a right of appeal is provided for under Section 486 of the Code of Criminal Procedure. In the case of contempt falling within the purview of inherent powers of the High Courts, no specific provision has been made in the Letters Patent of the High Courts and the only explanation for this seems to be that no such provision was made in England in regard to the English superior courts. Further, under the provisions of the Letters Patent, no appeal is ordinarily permissible where the order of the Court is made in the exercise of the criminal jurisdiction. It has also been held that Section 411A of the Code of Criminal Procedure does not afford any remedy by way of appeal in contempt cases. The result has been that before the Constitution came into force, an appeal in contempt cases from the decision of a High Court could lie only in special cases to the Judicial Committee. The Constitution did not alter this position very much for the effect of Articles 134 and 136 of the Constitution is merely to substitute the Supreme Court for the Privy Council. In short, there is only a discretionary right of appeal available at present in cases of criminal contempt.

Then in paragraph 3.1 in Chapter XI of its Report the Sanyal Committee proceeded to state :

> ... we accordingly recommend that against an order of a single Judge, punishing for contempt, the appeal should lie, in the High Court, to a Bench of Judges, and against

> a similar order of a Bench of Judges of a High Court, the appeal should lie as of right to the Supreme Court.

Chapter XII of the Report contained the recommendations of the Sanyal Committee and Clause 25 of the recommendations was in the following terms :

> Provision may be made for an appeal as of right from any order or decision of a High Court in the exercise of its jurisdiction to publish for contempt. The appeal should lie to a Bench of Judges of the High Court where the order or decision is of a single Judge. Where the order or decision is of a Bench the appeal should lie to the Supreme Court.

It was in pursuance of this recommendation made by the Sanyal Committee that the Parliament, while enacting the Contempt of Courts Act, 1971, introduced Section 19, sub-section (1) in that Act conferring an appeal as of right "from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt".

7. Before we examine the language of Section 19, sub-section (1) in order to arrive at its true interpretation, we may first look at Sections 15, 17 and 20. Sub-section (1) of Section 15 provides that in a case of criminal contempt other than contempt in the face of the Court, the Supreme Court or the High Court may take action on its own motion or on a motion made by the Advocate General or any other person with the consent in writing of the Advocate General and sub-section (2) of that section says that in case of criminal contempt of any subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General or in relation to Union Territories, by such law officer as the Central Government may specify in this behalf. Section 17 lays down the procedure to be followed by the Court when it decides to take action and initiates a proceeding for contempt under Section 15. Sub-section (1) of that section provides that notice of every proceeding under Section 15 shall be served personally on the person charged and according to sub-section (2), such notice shall be accompanied, in case of a proceeding commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded, and in case of a proceeding commenced on a reference by a subordinate court, by a copy of the reference, Section 20 prescribes a period of limitation by saying that no court shall initiate any proceeding for contempt either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. It will be seen from these provisions that the scheme adopted by the Legislature is that the Court may initiate a proceeding for contempt suo motu or on a motion made by the Advocate General or any other person with the consent in writing of the Advocate General or on a reference made by a subordinate court. Where the Court initiate a petitioner for contempt suo motu, it assumes jurisdiction to punish for contempt and takes the first step in exercise of it. But what happens when a motion is made by the Advocate General or any other person with the consent in writing of the Advocate General or a reference is made by a subordinate court. Does the Court enter upon the jurisdiction to punish for contempt and act in exercise of it when it considers such motion or reference for the purpose of deciding whether it should initiate a proceeding for contempt ? We do not think so. The motion or reference is only for the purpose of drawing the attention of the Court to the contempt alleged to have been committed and it is for the Court, on a consideration of such motion or reference, to decide, in exercise of its discretion, whether or not to initiate a proceeding for contempt. The Court may decline to take cognizance and to initiate a proceeding for contempt either because in its opinion no contempt prima facie appears to have been committed or because, even if there is prima facie contempt, it is not a fit case in which action should be taken

against the alleged contemner. The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemner, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiate of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminous a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, sub-section (1) and no appeal would lie against it as of right under that provision. This of course does not mean that there is no remedy available where the High Court on an erroneous view of the law or unreasonably and perversely refuses to take action for contempt in a motion or a reference. Though no appeal lies under Section 19, sub-section (1) as of right against such order or decision of the High Court, the Advocate General or any other person who has with the consent in writing of the Advocate General moved the High Court can always come to this Court by a petition for special leave to appeal and the power of this Court to interfere with such order or decision in the exercise of its extraordinary jurisdiction under Article 136 is unfettered. This Court can always in suitable cases set right any order or decision of the High Court refusing to take action for contempt against the alleged contemner, if the larger interests of administration of justice so require.

8. It is, therefore, clear that the order made by the Full Bench of the Orissa High Court in the present case rejecting the motion made by the appellant and refusing to initiate a proceeding for contempt against the Chief Justice and other judges was not appealable under Section 19, sub-section (1). We may point out that in the present case it is unnecessary to consider whether an appeal under Section 19, sub-section (1) is confined only to a case whether the High Court after initiating a proceeding for contempt finds the alleged contemner guilty and punishes him for contempt as contended by the learned Additional Solicitor General or it extends also to a case where after initiating a proceeding for contempt, the High Court finds that the alleged contemner is not guilty of contempt and exonerates him, or even if he is found guilty of contempt, declines to punish him. A question may well arise whether in the latter case the Advocate General or any other person who has, with the consent in writing of the Advocate General, moved the High Court can appeal as of right against the order or decision of the High Court. The question does not arise in the present case and we need not, therefore, express any opinion upon it, though we may point out that in England a right of appeal is given to a disappointed applicant under Section 13, sub-section (1) and (2) of the Administration of Justice Act, 1960.

9. We are, therefore, of the view that the preliminary objection raised by the respondent is well founded and the appellant is not entitled to maintain the present appeal under Section 19, sub-section (1). The appeal, therefore, fails and is dismissed. There will be no order as to costs.

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