Smt. Pushpaben and Another

Vs

Narandas V. Badiani and Another

Criminal Appeal No. 43 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

29.03.1979

JUDGMENT

FAZAL ALI, J. –

1. This is an appeal under Section 19 of the Contempt of Courts Act (hereinafter called the Act) against an order of the High Court of Bombay convicting the appellants for a Civil Contempt and sentencing them to one month's simple imprisonment. The facts of the case have been fully detailed by the High Court and it is not necessary for us to repeat the same all over again. It appears that respondent I had given a loan of Rs. 50,000 to the appellants on certain conditions. Somehow or other, the loan could not be paid by the appellants as a result of which respondent I filed a complaint under Section 420, IPC against the appellants, While the complaint was pending before the Court of the Magistrate, the parties entered into a compromise on July 22, 1971 under which the appellants undertook to pay the loan of Rs. 50,000 with simple interest @ 12 per annum on or before July 21, 1972. An application was filed before the Court for allowing the parties to compound the case and acquit the accused. The Court after hearing the parties, passed the following order :

> The accused has given an undertaking to the court that he shall repay the sum of Rs. 50,000 to the complainant on or before July 21, 1972 with interest as mentioned on the reverse. In view of the undertaking, I permit the compromise and acquit the accused.

2. It is obvious, therefore, that the Court permitted the parties to compound the case only because of the undertaking given by appellants.

3. Thereafter, it appears, that the undertaking was violated and the amount of loan was not paid to the respondent 1 at all. The respondent, therefore, moved the High Court for taking action for contempt of Court against the appellants as a result of which the present proceedings were taken against them. The High Court came to the conclusion that the appellants had committed a willful disobedience of the undertaking given to the Court and were, therefore, guilty of civil contempt as defined in Section 2(b) of the Act. Hence, this appeal before us.

4. Mr. V. S. Desai appearing in support of the appeal has raised two short points before us. He has submitted that there is no doubt that the appellants had violated the undertaking but in the circumstances it cannot be said that the appellants had committed a wilful disobedience of the orders of the Court. So far as this point is concerned, we fully agree with the High Court. In the circumstances, the appellants undoubtedly committed wilful disobedience of the order of the Court by committing a serious breach of the undertaking given to the Court on the basis of which alone,

the appellants had been acquitted. For these reasons, the first contention put forward by Mr. Desai, is overruled.

5. It is, then, contended that under Section 12(3), normally the sentence that should be given to an offender who is found guilty of civil contempt, is fine and not imprisonment, which should be given only where the Court is satisfied that ends of justice require the imposition of such a sentence. In our opinion, this contention of learned Counsel for the appellants is well-founded and must prevail. Sub-section (3) of Section 12 reads thus :

> Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

6. A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule.

7. Having regard to the peculiar facts and circumstances of this case, we do not find any special reason why the appellants should be sent to jail by sentencing them to imprisonment. Furthermore, respondent 1 before us despite service, has not appeared to support the sentence given by the High Court. Having regard to these circumstances, therefore we are satisfied that the present case, squarely falls in the first part of Section 12(3) and a sentence of fine alone should have been given by the High Court. We, therefore, allow this appeal to this extent that the sentence of imprisonment passed by the High Court is set aside and instead the appellants are sentenced to pay a fine of Rs. 1,000 each. In case of default, 15 days' simple imprisonment. Four weeks time to pay the fine.

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