

Advocate-General, State of Bihar

Vs

M/S. Madhya Pradesh Khair Industries and Another

Criminal Appeal No. 349 of 1974

(O. Chinnappa Reddy, R. S. Sarkaria JJ)

05.03.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The Advocate-General of Bihar is the appellant in this appeal under Section 19 of the Contempt of Courts Act, 1971. Respondent 1, M/s. Madhya Pradesh Khair Industries, represented by respondent 2, Om Prakash Agrawal, were the highest bidders at an auction held by the Divisional Forest Officer, Garwa South, of four forest coupes in the State of Bihar. Under the terms of the agreements the respondents were required to deposit 25% of each of the four bids as security. The respondents were, however, able to make the deposit in respect of one coupe only and not in respect of the other three coupes. The respondents requested for time. Thereafter, there was a long course of correspondence with which we are not now concerned. Finally, on January 28, 1970, the Conservator of Forests determined the agreements. On February 28, 1970, respondent 1 served a notice on the Divisional Forest Officer, Garhwa South, intimating him that they had filed an application under Article 226 of the Constitution in the Calcutta High Court and the S. C. Deb, J., had been pleased to issue a rule nisi and also an injunction restraining the Government of Bihar and the officials of the Forest Department of the Government of Bihar from giving effect to the proceedings by which the leases were determined and further directing them to allow M/s. Madhya Pradesh Khair Industries to carry on the work of cutting and felling of trees and removing the material in the said forest coupes. Alleging that the Officers of the Forest Department of the Government of Bihar had violated the order of injunction granted against them, the respondents filed an application to commit the officers for contempt of court and in that application they prayed for and obtained an interim order directing the officers not to interfere in any way with the activities of the respondents in removing the produce of the Khair trees. The State of Bihar preferred an appeal to Division Bench of the Calcutta High Court and on September 29, 1970, the Division Bench passed an order allowing the appeal and directing the respondents to furnish security in a sum of Rs. 1,55,000 if they desired to remove the forest produce. Otherwise they were restrained from selling the trees and extracting the produce. The respondents offered certain property as security but that was rejected by the Registrar of the Calcutta High Court as the title was found to be defective.

2. At this stage, on January 8, 1971, the State of Bihar filed money suit No. 3 of 1971 in the Court of the Subordinate Judge of Palamau to recover a sum of Rs. 1,93,225 as damages. The State of Bihar also filed an application under Order 38, Rule 5 Code of Civil Procedure and obtained an order of attachment of the 'Kath' manufactured by the respondents along with utensils, equipment etc. The respondents were directed to furnish security in a sum of Rs. 2 lakhs and asked to show cause why the interim attachment should not be made absolute. The attachment was effected on January 10, 1971. The respondents appeared before the learned Subordinate Judge and requested

that the amount of security may be reduced from Rs. 2 lakhs to Rs. 75,000. The learned Subordinate Judge allowed the prayer of the respondents and reduced the amount of security from Rs. 2 lakhs to Rs. 75,000. The State of Bihar preferred an appeal to the Patna High Court and an interim order was made by the High Court, staying the operation of the order of the learned Subordinate Judge but continuing the attachment. On March 29, 1971, after hearing both the parties the Patna High Court made an order directing the respondents to furnish security of immovable property in a sum of Rs. 75,000 and to deposit cash or furnish bank guarantee in a sum of Rs. 50,000. It was directed that on such security being furnished the interim attachment would cease and the respondents would be allowed to remove the stock, utensils and equipment.

3. Without complying with the order of the Patna High Court, respondent 1 then moved the learned Single Judge of the Calcutta High Court on April 21, 1971, and obtained an order restraining the State of Bihar from continuing the money suit in the Court of the Subordinate Judge, Palamau and further directing the State to take steps to get the attachment vacated if security was furnished by the respondents as directed by the Division Bench of the Calcutta High Court. The State of Bihar filed an appeal against the order of the learned Single Judge and the operation of the order was stayed by an order of January 10, 1972 of the Division Bench. It was directed that the proceedings in the money suit in the Court of the learned Subordinate Judge of Palamau should proceed. In the meanwhile on July 30, 1971, respondent 1 moved another application before the learned Single Judge of the Calcutta High Court offering to deposit Rs. 60,000 in cash and requesting that on such deposit being made, they might be allowed to remove the stock. This application was allowed on July 30, 1971, by the learned Single Judge and the amount was directed to be deposited with the counsel for the State of Bihar. The order was later on modified on December (sic February) 16, 1972, and the amount was directed to be deposited with Registrar of the High Court.

4. On November 20, 1972, the State of Bihar filed an application in the Court of the Subordinate Judge, Palamau complaining that the respondents had not furnished security as directed by the Patna High Court and as the attached stock was deteriorating it might be sold by auction. Before anything further could be done respondent 1 filed a petition on December 14, 1972 and obtained an order from the learned Single Judge of the Calcutta High Court on December 18, 1972, staying the proceedings in the money suit in the Court of the Subordinate Judge, Palamau until the attached goods were released in compliance with the orders dated July 30, 1971 and February 16, 1972. The State of Bihar preferred an appeal against the order of the learned Single Judge and on January 22, 1973, a Division Bench of the Calcutta High Court set aside the order of the learned Single Judge and directed the proceedings in the Court of Subordinate Judge, Palamau, to go on.

5. Vexed by the manner in which the first respondent was filing repeated applications and procuring orders from a learned Single Judge of the High Court, necessitating the filing of as many appeals to the Division Bench, the State of Bihar filed an application for committing the respondents for contempt of court alleging that, by their conduct the respondents were obstructing the administration of justice and interfering with the due course of judicial proceedings. The Patna High Court held that the respondent's conduct was a most unscrupulous one and that there was gross abuse of the process of the court, which could in certain circumstances amount to contempt of court. The High Court, however, dismissed the application on the ground that it was barred by limitation as it was filed beyond the period of one year prescribed by Section 20 of the Contempt of Courts Act. The High Court held, on a reading of the contempt application, that the material allegation in regard to the contempt committed by the respondents was that relating to the filing of the application dated April 7, (sic 21) 1971, before the Single Judge of the Calcutta High Court to circumvent and nullify the order dated March 29, 1971 of the Division Bench of the

Patna High Court. As the contempt application was filed more than a year later it was time-barred. In regard to the allegation relating to the filing of the petition dated December 14, 1972, the High Court observed that there was no specific allegation that any contempt of court was committed by the filing of this application. We may also mention that the respondents tendered an unconditional apology to the High Court of Bihar. The question of accepting the apology was not considered as the application was found to be beyond time. The Advocate-General of Bihar has filed this appeal against the judgment of the Patna High Court.

6. Before we consider the merits of the appeal we may mention here that the learned Single Judge who made the several orders in favour of the respondents was himself compelled in a later order dated August 13, 1973 to state that the respondents had suppressed material facts and misled him on various occasions and obtained orders from him.

7. Section 2(c) of the Contempt of Courts Act defines criminal contempt as follows :

(c) 'Criminal Contempt' means the publication (whether by words, spoken or written, or any signs, or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which -

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices or interferes or tends to interfere with the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

While we are conscious that every abuse of the process of the court may not necessarily amount to contempt of court, abuse of the process of the court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice, we must say, is a contempt of court. It may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties by striking out pleadings under the provisions of Order 6, Rule 16 or in some other manner. But on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult or injury as the expression "Contempt of Court" may seem to suggest but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage." (Per Frankfurter, *J. Offutt v. U. S.*, ((1954) 345 US 11) "The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope." (Per Judge Curtis-Raleigh quoted in *Jennison v. Baker*, ((1972) 1 All ER 997, 1006)

8. In HALSBURY'S LAWS OF ENGLAND (4th Edn. Vol. 9, paragraph 38), there is a brief

discussion of when abuse of the process of the court may be a punishable contempt. It is said :

38. Abuse of process in general. - The court has power to punish as contempt any misuse of the court's process. Thus the forging or altering of court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the court of the court's officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt.

Certain acts of a lesser nature may also constitute an abuse of process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court by exercising its statutory powers, its powers under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as an abuse of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a contempt.

9. In the present case, the respondents began 'the game' by filing an application under Article 226 of the Constitution in the Calcutta High Court, whereas in the normal course one would expect such an application to be filed in the Patna High Court within whose jurisdiction the subject-matter of the dispute was situate. For some mysterious reason which nobody has been able to explain to us, writ application was filed in the Calcutta High Court. A justifiable prima facie inference from this circumstance may be that the application was not bona fide but intended to harass and oppress the opposite parties. We do not want to say anything more about this aspect of the case as we are told that this is a failing of the respondents which they shared with several others. Perhaps, as we had occasion to remark during the course of the hearing, some parties are unable to reconcile themselves to the fact that the Calcutta High Court has long since ceased to have jurisdiction over the area comprising the State of Bihar which it had several decades ago.

10. The 'game' proceeded further. Application after application was filed before the learned Single Judge, everyone of them designed to circumvent, defeat or nullify the effect of the orders of the Division Benches of the Calcutta High Court and the Patna High Court. The order of the Division Bench of the Calcutta High Court directing the respondents to furnish security in a sum of Rs. 1,55,000 was never complied with. The order of the Division Bench of the Patna High Court directing the respondents to furnish security of immovable property in a sum of Rs. 75,000 and to deposit cash or furnish bank guarantee in a sum of Rs. 50,000 was also never complied with. Instead, an order was obtained from the Single Judge of the Calcutta High Court restraining the State of Bihar from continuing the money suit in the Court of the Subordinate Judge, Palamau. When this order was set aside by the Division Bench, an attempt was made to circumvent all earlier orders by obtaining an order from the Single Judge that they may be allowed to deposit Rs. 60,000 in cash and permitted to remove the stock from the forest coupes. When the State of Bihar moved the learned Subordinate Judge, Palamau for a direction to auction the attached stock, the respondents moved an application on December 14, 1972, and obtained an order from the Single Judge of the Calcutta High Court staying the proceedings in the money suit in the Court of the Subordinate Judge, Palamau. In considering the question whether the filing of the application dated December 14, 1972, amounts to a contempt of court, we must take into account the whole course of the continuing contumacious conduct of the respondent from the beginning of the "game". Clearly, not a single application made to the Single Judge was bona fide. Every application was a daring

'raid' on the court and each was an abuse of the process of the court. The application dated December 14, 1972 praying that the proceedings in the money suit in the Court of the Subordinate Judge should be stayed was made despite the fact that earlier, on January 10, 1972, the Division Bench of the Calcutta High Court had expressly permitted the proceedings in the money suit to go on. The application of the respondents clearly showed that they were intent upon obstructing the due course of the proceedings in the money suit in the Court of the Subordinate Judge, Palamau and to obstruct the administration of justice by abusing the process of the court.

11. The High Court expressed the view that there was no specific allegation that any contempt of court has been committed by the filing of the application dated December 14, 1972. We are unable to agree with the view of the High Court. Paragraph 29 of the application to commit the respondents for contempt expressly refers to the application dated December 14, 1972 and paragraph 31 states that all the facts and circumstances enumerated in the petition established that the respondents were obstructing and interfering with the due course and administration of justice. It was not necessary that every allegation made should be followed then and there by the statement that the allegation established a contempt of court.

12. We are satisfied that the filing of the application dated December 14, 1972, was an abuse of the process of the court, calculated to obstruct the due course of a judicial proceeding and the administration of justice and was, therefore, a criminal contempt of court. The respondents had expressed an unconditional apology to the Patna High Court, but we are convinced that the conduct of that the respondents is so reprehensible as to warrant condemnation by the imposition of a sentence. We accordingly allow the appeal and sentence each of the respondents to pay a fine of Rs. 500, in default to undergo simple imprisonment for a period of two weeks.

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