SUREME COURT OF INDIA

D.N.Taneja

Vs.

Bhajan Lal

(M.M. Dutt, R.S. Pathak and M.H. Kania JJ.)

04.05.1988

JUDGMENT

DUTT, J.

This appeal under section 19(1) of the Contempt of Courts Act, hereinafter referred to as 'the Act', is directed against the judgment and order of the Punjab & Haryana High Court dismissing the application for contempt filed by the appellant against Shri Bhajan Lal, who was then the Chief Minister of the State. In the application for contempt, it was, inter alia, alleged by the appellant that one Shri Devinder Sharma was a Forest Minister in the Council of Ministers headed by Shri Bhajan Lal. The said Devinder Sharma was defeated in the legislative assembly election held in 1982. Shri Bhajan Lal, because of his political and personal relations with Shri Devinder Sharma, was personally very keen on giving him an office of profit. In order to achieve this objective, Bhajan Lal got an Ordinance being Ordinance No. 44 of 1982 promulgated by the Governor. The Ordinance, inter alia, provided the constitution of a Forest Development Board. According to the appellant, such Board was constituted with a view to appointing the said Devinder Sharma as its Chairman.

It was further alleged by the appellant that the constitutional validity of the said Ordinance was challenged by twelve Indian Forest Officers including the appellant by filing a writ petition in the High Court. It was alleged that the respondent, Bhajan Lal, through Shri R.K. Vashisth, the Superintendent of Police, pressurised and threatened the writ petitioners to withdraw the said writ petition and, pursuant to that, eleven officers withdrew from the petition. It was only the appellant who continued to prosecute the writ petition and, as a consequence of which, the appellant was transferred from the Forest Expert Special Project Cell to the Forest Department, Haryana, on 891

March 18, 1983. The further allegation of the appellant was that after having failed to threaten and demoralise the appellant through indirect means the respondent, Bhajan Lal, called him to his official residence on July 26, 1983 through the Acting Chief Conservator of Forests and criminally intimidated him to withdraw the writ petition. Thereafter, the appellant filed an application for contempt against the respondent, Bhajan Lal, in the High Court complaining of interference by the respondent with the due course of judicial proceedings. The application was admitted and a rule nisi was issued upon the respondent. The respondent appeared in the rule and opposed the same by filing an affidavit denying all the allegations made against him by the appellant.

The learned Single Judge of the High Court, after considering the application, affidavits and the submissions made on behalf of the parties, took the view that there were circumstances to indicate

that it was not a fit case in which the court should exercise its jurisdiction under the Act. In that view of the matter, the learned Judge dismissed the application and discharged the rule nisi. It is apparent from the facts stated above that the allegations made by the appellant, if proved would consitute a criminal contempt. It is also not disputed by the parties that it was a case of criminal contempt as defined in section 2(c) of the Act. The scope and ambit of this judgment will, therefore, be confined to criminal contempt. Mr. Sibbal, learned Counsel appearing on behalf of the respondent, has taken a preliminary objection to the maintainability of the appeal under section 19(1) of the Act. It is contended by him that as no punishment was imposed on the respondent by the High Court in exercise of its jurisdiction to punish for contempt, section 19(1) is inapplicable and the appeal is incompetent. Section 19(1) provides as follows:

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

(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."

The right of appeal will be available under sub-section (1) of section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie under section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power 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 its jurisdiction or power as conferred on it by Article 215 of the Constitution.

It is, however, strenuously urged by Mr. R.K. Garg, learned Counsel appearing on behalf of the appellant, that when the High Court acquits a contemnor after hearing the parties and after considering the facts and circumstances of the case, the High Court does so also in the exercise of its jurisdiction as conferred by Article 215 of the Constitution. Counsel submits that jurisdiction to punish for contempt includes also the jurisdiction to dispose of the case either by punishing the contemnor or by acquitting him. In support of the contention much reliance has been placed on behalf of the appellant on a decision of this Court in Smt. Ujjam Bai v. State of Uttar Pradesh, [1963] 1 SCR 778 wherein S.K. Das, J. observed "jurisdiction means authority to decide." Relying upon the said observation it is submitted by Mr. Garg that the jurisdiction of the High Court to punish for contempt also includes the jurisdiction to decide whether such punishment should be

imposed or not and when the High Court comes to the finding that such punishment should not be imposed on the contemnor or that no contempt has been committed by the alleged contemnor and acquits him, such decision of the High Court acquitting the contemnor is made in the exercise of its jurisdiction to punish for contempt. We are unable to accept this contention. The said observation, in our opinion, should not be read dehors the context in which it was made. In that case, the Sales Tax Officer disallowed the claim of the petitioner to exemption from payment of Sales Tax under a certain notification. An appeal preferred by the petitioner to the Court of the Judge (Appeals), Sales Tax, Allahabad, was dismissed. The question that came up for consideration before this Court was whether a writ of certiorari could be issued for quashing the order of Assessment on the ground that the authority concerned had erroneously exercised its jurisdiction by not granting exemption to the petitioner. In that context the said observations was made and which was immediately followed by further observation:

"Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion whether it is wrong in law or in fact."

There can be no doubt that whenever a court, tribunal or authority is vested with a jurisdiction to decide a matter, such jurisdiction can be exercised in deciding the matter in favour or against a person. For example, a civil court is conferred with the jurisdiction to decide a suit; the civil court will have undoubtedly the jurisdiction to decree the suit or dismiss the same. But when a court is conferred with the power or jurisdiction to act in a particular manner, the exercise of jurisdiction or the power will involve the acting in that particular manner and in no other. Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt. It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution. It does not, however, mean that when the High Court erroneously acquits a contemnor guilty of criminal contempt, the petitioner who is interested in maintaining the dignity of the court will not be without any remedy. Even though no appeal is maintainable under section 19(1) of the Act, the petitioner in such a case can move this Court under Article 136 of the Constitution. Therefore, the contention, as advanced on behalf of the appellant, that there would be no remedy against the erroneous or perverse decision of the High Court in not exercising its jurisdiction to punish for contempt, is not correct. But, in such a case there would be no right of appeal under section 19(1), as there is no exercise of jurisdiction or power by the High Court to punish for contempt. The view which we take finds support from a decision of this Court in Paradakanta Mishra v. Mr. Justice Gatikrushna Mishra, [1975] 1 SCR 524. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of porpriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under section 19(1) of the Act, a right of appeal has been provided for. A contempt is

a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the Legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under section 19(1) can only be the contemnor who has been punished for contempt of court.

For the reasons aforesaid, there is substance in the preliminary objection raised as to the maintainability of the appeal. In our view the appeal is incompetent and is, accordingly, dismissed. There will, however, be no order as to costs.

H.S.K. Appeal dismissed.

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