

State of Maharashtra

Vs

Mahboob S. Allibhoy and Another

Criminal Appeal No. 42 of 1992

(N.P. Singh, S. Saghir Ahmad JJ)

10.04.1996

JUDGMENT

1. This appeal has been filed on behalf of the State of Maharashtra for setting aside an order dated 12th July, 1988 passed by the High Court of Bombay dropping the contempt proceeding which had been initiated against the respondents.

2. It appears that respondents had filed a writ petition before the High Court claiming refund of Rs. 2,60,144-70 paid as counter vailing/additional duty. The Customs Department filed an affidavit stating that a false claim had been made before the Court for obtaining refund because in fact the writ petitioners - respondents has not paid any duty at all and had claimed the refund on basis of forged documents. In connection with the said dispute, a notice was issued to the respondents as to why a complaint be not filed against them under Sections 191, 192, 209 and 210 of the Indian Penal Code. A notice was also issued to the respondents directing them to show cause why proceedings for contempt be not initiated against them. After taking into consideration the show cause filed on behalf of the respondents an order was passed directing that a complaint be filed against them. The learned Judges having passed the aforesaid order directed that no action be taken under Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act'). This part of the order is being challenged in this appeal. According to the appellant - State in the facts and circumstances of the present case the contempt proceeding should not have been dropped.

3. The preliminary question which has to be examined as to whether in the facts and circumstances of the case an appeal is maintainable against an order dropping the proceeding for contempt. It is well settled that an appeal is a creature of a statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or course. Section 19 of the Act says :

"Appeals - (1) An appeal shall lie as of right from any order or decision of 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.

(2) Pending any appeal, the appellate Court may order that -

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed -

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court; within sixty days, from the date of the order appealed against".

On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right for any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision. They have been put in an alternative form saying 'order' or 'decision. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

4. It is well know that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. The person who informs the court or brings to the notice of the court that anyone has committed the contempt of such court is not in the position of a prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case. This Court in the case of Baradakanta Mishra v. Mr. Justice Gutikrushna Misra, C.J. of the Orissa H.C., AIR 1974 SC 2255 : 1975 (1) SCR 524 said (at p. 2260 of AIR) :

"....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 provisions".

Again in the case of D. N. Taneja v. Bhajan Lal, (1988) 3 SCC 26 it was said :

"The right of appeal will be availing 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, as 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".

No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from sub-section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate Court may order that -

- (a) the execution of the punishment or the order appealed against be suspended;
- (b) if the appellant is in confinement, he be released on bail; and
- (c) the appeal be heard notwithstanding that the appellant has not purged his contempt. Sub-section (2) of Section 19 indicates that the reliefs provided under clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of Court.

5. But even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and later dropped or whose petition for initiating contempt proceedings has been dismissed, is not without any remedy. In appropriate cases he can invoke the jurisdiction of this Court under Article 136 of the Constitution and this Court on being satisfied that it was a fit case where proceeding for contempt should have been initiated, can set aside the order passed by the High Court. In suitable cases, this Court has to exercise its jurisdiction under Article 136 of the Constitution in the larger interest of the administration of justice.

6. So far the facts on the present case are concerned, the learned Judges having passed an order directing that a complaint be lodged against the respondents, thought it proper not to pursue the proceeding for contempt against them. No appeal under Section 19(1) of the Act is maintainable. In the facts and circumstances of the case it cannot be said that such an order requires to be interfered with by this Court in exercise of its jurisdiction under Article 136. The appeal is dismissed. No costs. Appeal dismissed.