SUPREME COURT OF INDIA

R.S. Sujatha

Vs.

State of Karnataka

C.A.No.9579 of 2003

(P.Sathasivam and Dr. B.S.Chauhan JJ.)

29.11.2010

JUDGMENT

Dr.B.S.Chauhan, J.

1. This appeal has been filed against the judgment and order of the Central Administrative Tribunal, Bangalore Bench (hereinafter called as the `Tribunal') dated 19.12.2002 in Original Application No. 715 of 2002.

2. (A) Facts and circumstances giving rise to this case are that the State of Karnataka vide order dated 24.1.2001 initiated disciplinary proceedings against the appellant, an Indian Administrative Service Officer of Karnataka cadre, on the allegation that she had committed certain irregularities in the allotment of wheat under a special programme called the State Funded Wheat Based Nutrition Programme of the Government of India at public distribution system rates to a supplier called M/s Nandi Agro Industries Ltd. The said regular enquiry stood initiated on the basis of the preliminary enquiry report dated 31.3.1997.

> "(B) The appellant filed O.A. No.715 of 2002 before the Tribunal on 5.8.2002 for quashing the Articles of charge dated 30.11.1999 and subsequent proceedings on diverse grounds. In the said Original Application (hereinafter referred to as `O.A.'), the appellant had made a specific averment that the charge memo dated 30.11.1999 was received by her only on 19.6.2002, as the copy of the same was furnished to her by the 3rd respondent i.e. the Enquiry Officer. Therefore, it had been contended by the appellant that she had approached the Tribunal within limitation. However, taking abundant caution, she had also filed an application for condonation of delay. (C) The reply to the said application was filed by the respondents therein on 18.10.2002, wherein it was contended that the order dated 30.11.1999 had been issued to the appellant on 2.12.1999 by Registered Post with AD.
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> (D) The Tribunal instead of proceeding with the matter on merit or deciding the issue of limitation, passed an order dated 15.11.2002 stating that the appellant had made a

false statement in the O.A. regarding limitation which was intentional and deliberate. Therefore, prima facie, the Tribunal was of the view that the appellant had committed criminal contempt and a show cause notice dated 15.11.2002 was issued to the appellant calling upon her "to appear in person before the Tribunal on 29.11.2002 at 10.30 a.m. to answer the said show cause notice on which day the matter would be listed for hearing".

(E) The appellant not only appeared in response to the said notice personally, but submitted a reply to the show cause notice contending that she had not made any false statement for the purpose of securing the order of condonation of delay and in fact the charge memo dated 30.11.1999 had been served upon her first time on 19.6.2002. She also made a request to summon certain government records to substantiate her case.

(F) The Tribunal directed the respondent authorities to produce the documents, i.e. Inward Register, Postal Acknowledge Due and original letter dated 23.12.1999 and other relevant documents, if any, which would have bearing on the matter by the next date and the matter was directed to be listed on 12.12.2002. (G) On 12.12.2002 though learned counsel for the respondent authorities did not produce any of the required documents, but he produced the photocopies of letter dated 23.12.1999 and the Inward Register. The Tribunal adjourned the case to 19.12.2002. The Tribunal passed the impugned order dated 19.12.2002 holding that the appellant was guilty of perjury, as well as of criminal contempt of the Tribunal and imposed the punishment of imprisonment till rising of the court and a fine of Rs.2,000/-."

3. Being aggrieved, the appellant approached the High Court by filing a writ petition which was ultimately dismissed vide order dated 2.9.2003, observing that the High Court had no jurisdiction to entertain the matter placing reliance on the judgment of this Court in *T. Sudhakar Prasad v. Govt. of A.P. Ors.*[1], wherein it had been held that against the order under the Contempt of Court Act, 1971, passed by the Tribunal, the party aggrieved has to approach this Court. Hence, this appeal.

4. Shri Rajesh Mahale, learned counsel appearing for the appellant has submitted that the order impugned had been passed in flagrant violation of not only the principles of natural justice, but also the statutory rules known as The *Contempt of Courts (C.A.T.) Rules, 1992 (hereinafter called as 1992 Rules)* and the appellant had not been given due opportunity to defend herself. The Tribunal did not decide the original application filed by the appellant. The Tribunal picked up one of the pleadings taken by the appellant treating it to be false and initiated the criminal contempt proceedings which is not permissible in law. Therefore, the order impugned is liable to be set aside.

5. There is none to oppose the appeal. We have considered the submissions made by learned counsel for the appellant.

6. The facts mentioned hereinabove make it clear that the Tribunal has not adjudicated upon the case filed by the appellant at all. The appellant had approached the Tribunal for quashing of the disciplinary proceedings initiated against her and the opposite party had raised the issue of limitation pointing out that she had been served the Articles of Charges at an earlier stage and the averment made by the appellant in this regard was false. The Tribunal ought to have framed an issue on limitation, asked the parties to lead evidence and decide it on merit.

> "It was totally unwarranted and uncalled for to initiate criminal contempt proceedings merely on the basis of the pleadings taken by the opposite parties therein. Criminal contempt has been defined under Section 2(c) of the *Contempt of Courts Act, 1971*, which reads as under:
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> "(c) "Criminal Contempt" means the publication (whether by words, spoken or written, or by signs, by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which; -
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> (i) scandalize or tends to scandalize or lowers or tends to lower the authority of any court; or
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> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
>
> (iii)interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."
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> It has been submitted by learned counsel for the appellant that none of the above referred to provisions was attracted in the facts of this case."

7. The learned Tribunal proceeded on the basis that this Court in *Chandra Shashi v. Anil Kumar Verma*[2], held that nobody should be permitted to indulge in immoral acts like perjury, prevarication and motivated falsehoods in the judicial proceedings and if someone does so, it must be dealt with appropriately. In case the recourse to a false plea is taken with an oblique motive, it would definitely hinder, hamper or impede the flow of justice and prevent the courts from performing their legal duties.

8. Before the Tribunal, the case had been at a preliminary stage, thus, the Tribunal ought not to have initiated the criminal contempt proceedings at such a pre-mature stage making reference to the provisions of Sections 191, 193 and 197 of the *Indian Penal Code, 1860 (hereinafter called as the IPC)*. Section 191 IPC deals with giving false evidence; Section 193 provides for punishment for giving false evidence; and Section 197 deals with issuing or signing a false certificate.

9. In *Chajoo Ram v. Radhey Shyam Anr.*[3], this Court while dealing with a similar issue held as under:

> ".....No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge....."

10. In *Chandrapal Singh & Ors. v. Maharaj Singh & Anr.*[4], this Court while dealing with a case of a false statement for the purposes of Sections 193 and 199 IPC held as under: " ..... When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199 IPC. .....Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out in courts averments made by one set of witnesses are accepted and the counter-averments are rejected. If in all such cases complaints under Section 199 IPC are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the court....." (Emphasis added)

11. In *Pritish v. State of Maharashtra Ors.*[5], this Court dealt with the provision of Section 340 of the Code of Criminal Procedure, 1973 extensively, in a case where admittedly forged document had been filed in a reference under Section 18 of the Land Acquisition Act, 1894 for getting a higher amount of compensation. The court observed as under :- "Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed.....But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into.....It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

12. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

13. In the instant case, all the documents summoned by the Tribunal had not been produced before the Tribunal. More so, any document sent by Registered Post is presumed to have been received by the addressee in view of the provisions of Section 27 of the General Clauses Act, 1897 and Illustration (f) of Section 114 of the Indian Evidence Act, 1872, but every presumption is rebuttable. (Vide: *Harihar Banerji v. Ramshashi Roy*[6], *Gujarat Electricity Board & Anr. v. Atmaram Sugomal Postani*[7], *Shimla Development Authority & Ors. v. Santosh Sharma (Smt.) & Anr.*[8], *and Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra*[9]).

14. In such a fact-situation, the appellant ought to have been given time to rebut this presumption and lead evidence to prove that she did not receive the said document as alleged by the opposite parties, and it was necessary to do so for the reasons we record later.

15. The Tribunal proceeded in great haste as the show cause notice was issued by the Tribunal on 15.11.2002 for initiating the said proceedings, fixed the date for 12.12.2002 and disposed of the matter on 19.12.2002. The Tribunal failed to appreciate that criminal contempt proceedings are quasi criminal in nature and any action on the part of a party by mistake, inadvertence or by misunderstanding does not amount to contempt. In contempt proceedings, the court is the accuser as well as judge of the accusation. Therefore, it behoves the Tribunal to act with great circumspection as far as possible, making all allowances for errors of judgment. Any action taken in unclear case is to make the law of contempt do duty for other measures and therefore is totally unwarranted and should not be encouraged. The proceedings being quasi criminal in nature, burden and standard of proof required is the same as required in criminal cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities. The court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises. (See *Sahdeo alias Sahdeo Singh v. State of Uttar Pradesh & Ors.*[10]).

16. Needless to say, the contempt proceedings being quasi criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings. In *L.P. Misra (Dr.) v. State of U.P.*[11], this court while dealing with the issue of observance of the statutory rules held as under: "..... we are of the opinion that the Court while passing the impugned order had not followed the procedure prescribed by law. It is true that the High

Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution of India but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law.

(Emphasis supplied)

17. In *Three Cheers Entertainment Pvt. Ltd. v. C.E.S.C. Ltd.*[12], and Sahdeo (supra), this Court reiterated a similar view observing that in contempt proceedings the court must conclude the trial and complete the proceedings "in accordance with the procedure prescribed by law".

18. The instant case has to be dealt with under the 1992 Rules. The aforesaid rules provide the following procedure: "Rule 7. Initiation of proceedings:-

> "(i) .....
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> (ii) Every petition for `Criminal Contempt' made in accordance with these rules and every information other than a petition, for initiating action for criminal contempt under the Act on being scrutinized by the Registrar shall first be placed on the administrative side before the Chairman in the case of the principal Bench and the concerned Vice Chairman in the case of other Benches or such other Member as may be designated by him for this purpose and if he considers it expedient and proper to take action under the Act, the said petition or information shall be registered and numbered in the Registry and placed before the Bench for preliminary hearing. (iii) When suo motu action is taken, the statement of facts constituting the alleged contempt and copy of the draft charges shall be prepared and signed by the Registrar before placing them for preliminary hearing.
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> Rule 13. Hearing of the case and trial:-
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> (a) .....
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> (b) .....
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> (c) The respondent shall be furnished with a copy of the charge framed, which shall be read over and explained to the respondent. The Tribunal shall then record his plea, if any.
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> (d) .....
>
> (e) .....
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> Rule 15. Procedure for trial:-

(i) Except as otherwise provided in the Act and these rules, the procedure prescribed for summary trials under Chapter XXI of the Code shall as far as practicable be followed in the trial of case for contempt.

(ii) .....

(iii) .....

(iv) .....

(v) .....”

(Emphasis added)

19. In the instant case, admittedly, the procedure prescribed hereinabove under the 1992 Rules has not been followed. A criminal contempt case has neither been registered nor numbered separately. No charge (s) had ever been framed by the Tribunal as mandatorily required under the rules. Thus question of furnishing the copy of the same to the appellant did not arise. Therefore, the contempt proceedings had not been concluded in conformity with the aforesaid rules at all. This Court in Sahdeo (supra) while dealing with a similar situation held as under:

> “Every statutory provision requires strict adherence, for the reason that the Statute creates rights in favour of persons concerned. The impugned judgment suffered from non-observance of the principles of natural justice and not ensuring the compliance of Statutory Rules, 1952. Thus, the trial itself suffered from material procedural defect and stood vitiated. The impugned judgment and order, so far as the conviction of the appellants in Contempt proceedings are concerned, is liable to be set aside.”
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> (Emphasis added)

20. The ratio of the judgment in Sahdeo (supra) applies to this case in entirety. The instant case is squarely covered by the aforesaid judgment. In view of the above, the impugned judgment and order dated 19.12.2002 in O.A. No. 715 of 2002 passed by the Tribunal is liable to be set aside. The appeal is allowed. The judgment and order of the Tribunal is set aside. No costs.

[1](2001) 1 SCC 516	*[2](1995) 1 SCC 421*	*[3]AIR 1971 SC 1367*
[4]AIR 1982 SC 1238	*[5]AIR 2002 SC 236*	*[6]AIR 1918 PC 102*
[7]AIR 1989 SC 1433	*[8](1997) 2 SCC 637*	*[9]JT 2010 (12) SC 287*
[10](2010) 3 SCC 705	*[11]AIR 1998 SC 3337*	*[12]AIR 2009 SC 735*