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Court : Mumbai

Decided On : Feb-19-1951

Reported in : 1952CriLJ749

Judge : R. Kaushalendra Rao and ;Deo, JJ.

Appellant : Zikar

Respondent : State

Judgement :
ORDER

1. The order in this case will also govern miscellaneous Civil Cases Nos. 168 and 169 of 1950.

2. The application is for leave to appeal to the Supreme Court against the conviction of the applicant and his two advocates for contempt of Court.

3. Leave is sought under Article 132(1) of the Constitution or alternatively under Article 134(1)(c) thereof.

4. The decision holding the applicants guilty of contempt is not affected by any substantial Question of law as to the interpretation of the Constitution. Shri Bobde, however, contended that the power of the Court to punish for contempt is derived from Article 215 and so the case fulfils the requirement of Article 132(1). This Court has been constituted a Court of record by its letters patent. The power of

this Court to punish for contempt is thus inherent in itself as a Court of record. Article 215 does not confer any new power on this Court which it did not already possess A question of law as to the Interpretation of the Constitution cannot be said to arise every time this Court exercises the power to punish for contempt.

5. The next question is whether the case comes within Article 134(1)(c). The answer to the question depends upon whether an order or sentence passed in a proceeding for contempt can be regarded as a sentence in a criminal proceeding within the meaning of Clause (1)(c) of Article 134. The question is not free from difficulty.

6. A proceeding for contempt cannot be regarded as a criminal proceeding merely because it ends in imposing a punishment on the condemner. Contempt's have been divided broadly into two classes according to the purpose which is sub-served by the proceeding. Contempt which is punished for disobedience of an order of the Court with a view to enforcing the rights of private parties is distinguished from contempt which is punished for vindicating the dignity of the Court. The latter is regarded as criminal and punitive while the former is regarded as civil and remedial. Whatever be the purpose of the proceeding, a proceeding for punishing contempt has been regarded as 'subgenres' and of an anomalous nature. A proceeding for contempt is not regulated by the ordinary law of criminal procedure. In Re Bai Amrit 8 Bom 380 ; Ebrahim Mammoji v. Emperor 4 Ran 257 and In the matter of K.L. Gauba ILR (1942) Lah 411 .

7. In Kafeldev Malaviya v. Chief Justice and Judges of High Court Allahbad : AIR1935 All811 , in rejecting an application for leave to appeal to the Privy Council under Section 109 of the Code of Civil Procedure against a conviction for contempt, the Court held the proceedings were of a criminal nature and the jurisdiction of the Court was exclusive and final. But in In Re Tusharkanti GhoshH 63 Cal 287, leave to appeal to the Privy Council was asked under Clause 41 of the Letters Patent of the Calcutta High Court which provided for an appeal from any order or sentence made in the exercise of original criminal Jurisdiction. Leave was refused by the Division Bench. Derbyshire, C.J. observed:

These proceedings for contempt of Court are of a peculiar nature though it may be that in certain aspects they are 'quasi' criminal; in my view they are not exercised as part Of the original criminal jurisdiction of this Court. Consequently the application must fail.

8. Further it would appear that the Constitution has not made in Part V an exhaustive division of all proceedings before this Court into two broad categories, civil and criminal. A glance at Clause (I) of Article 132 dispels any such suggestion. There the expression 'other proceeding' is mentioned in addition to the words 'civil' and 'criminal.'

9. It is, however, not necessary to pursue this point further and give our decision on it as in our view the applications must fail on merits.

10. We do not think that we should certify that this is a fit case for appeal to the Supreme Court. The Court has not exercised either a newfangled jurisdiction or held anything to be a contempt which is not already covered by precedent. The questions raised in our decision cannot be regarded as either 'res Integra' or such as have given rise to any divergence of view. To put in a nutshell, the entire range of our discussion in the decision against which appeal is sought In covered by one Pull Bench and two Division Bench decisions: In Re Sham Lal AIR 1932 Lah 502 and In Re P. Subramania Ayyar 1934 Mad 78 and M.G. Kadir v. Kesri Naraub ILR (1945) All 7. The responsibility of a legal adviser for scandalous pleadings is no new rule. See the decision off the House of Lords in Hamilton v. Anderson (1858) 3 Mac 363 . The contention that the Bar Councils Act operates somehow as a bar against the conviction of an advocate for a contempt committed in his professional capacity has been sufficiently dealt with in our decision and repelled (vide paragraphs 64-68). Not a single case is to be found in the reports in support of the contention.

11. The above considerations are normally sufficient to reject the present applications. There are, however, other equally weighty considerations which we may now advert to.

12. Zikar begged to be excused. We took that fact into account in awarding the punishment. He asks for leave only because, as he has stated to the Court, his two advocates were involved in the case.

13. In our view, the offence was aggravated by the way it was sought to be justified by the two advocates. In such a case the words in bold type are not adequate to convey to a Court of appeal the defiant and indecorous tone of the justification.

14. A right of appeal is no doubt a creation of statute. Where an appeal as of right is given by a statute, it cannot be limited by any considerations foreign to the statute. But the right of appeal given in Clause (c) is not as of right but at the discretion of the Court. See Radhakishan v. Shridhar ILR (1950) Nag 532 . True, the discretion has to be exercised riot arbitrarily but on sound judicial considerations. But in considering a case under the residuary Clause (1) to of Article 134, it may not be improper to bear in mind the nature of the jurisdiction exercised by a superior Court of record in a matter of contempt. It is well established that every superior Court of record is the sole and exclusive judge of what constitutes contempt of itself: Rainy v. Sierra Leinoe Justices Of (1852) 8 MP.C 47 : 14 E.R 19 ; Surendra Nath Banerjee v. The Chief Justice and Judges of The High Court 10 Cal 109 and Brass Crosby's case (1771) 95 E.R 1005. It is pertinent to refer to the observations of Blackstone Justice in the last case:.All Courts, by which I mean to include the two Houses of Parliament, and the Courts of Westminster-Hall, can have no control in matters of contempt. The sole adjudication of contempt's, and the punishment thereof, in any manner, belongs exclusively, and without interfering, to each respective Court. Infinite confusion and disorder would follow, if Courts could by writ of habeas corpus, examine and determine the contempt's of others. This power to commit results from the first principles of justice; for if they have power to decide; they ought to have power to punish: no other Court shall scan the judgment of a Superior Court, or the principal seat of justice, as I said before it would occasion the utmost confusion, if every Court of this Hall should have power to examine the commitments of the other Courts of the Hall, for contempt's; so that the judgment and commitment by each respective Court, as to contempt's, must be final, and without control. It is a

confidence, that may, with perfect safety and security, be reposed in the judges, and the Houses of Parliament. The legislature since the Revolution (see 9 and 10 W. 3 c. 15) have created many new contempt's. The objections which are brought of abusive consequences prove too much, because they are applicable to all Courts of dernier resort: et ab abusu ad usum non valent consequentia, is a maxim of law as well as of logic.

15. It is of interest to note that under the common law practice an attachment for contempt is without any right of appeal. Though by the statute of 'magna charta', none are to be imprisoned 'sine Judicio parium', vel per legem terrae' the summary method of punishing for contempt has long been practiced as being absolutely necessary to the furtherance and execution of justice See Bacon's Abridgement, Vol 1, p. 386.

16. Learned Counsel Shri Bobde submitted that whatever might have been the origin and the nature of jurisdiction and the matter of contempt the Privy Council entertained appeals in such cases. But that was because of the general prerogative of the Crown to review all judicial decisions of Courts of record in the dominions overseas. See Andhra Paul Terence Amberd v. Attorney-Genral of Trubudad Tivagi AIR 1936 P.C 141 . Learned Counsel referred to Article 136(1) of the Constitution under which the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court in India. The power of the Supreme Court under that Article is undoubtedly wide. But that Article has no bearing on the question, before us. It is not our function, and it would indeed be presumptuous on our part even to attempt to discuss the considerations which might weigh with their Lordships if the Supreme Court under Article 136 (1) in dealing with an application for grant of special leave to appeal against a conviction for contempt.

17. Even granting for the nonce that a proceeding resulting in conviction for contempt is a criminal proceeding within the meaning of Article 134(1), half the efficiency of the jurisdiction exercised by the Court would be impaired if the condemner were to be permitted to appeal as a matter of course under Clause (c)

in every case of conviction. We do not regard the decision as a whole or the case of any of the applicants as in any way exceptional enough to require further consideration by an appellate Court.

18. In our view, the case is not a fit one for appeal to the Supreme Court.

19. We dismiss the applications and assess the additional Government Pleader's fee at Rs. 30/- in each case.