

Rasheed Vs. Saji Basheer

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Court : Kerala

Decided On : Feb-17-2005

Reported in : 2005CriLJ1638; 2005(2)KLT106

Judge : B. Subhashan Reddy, C.J. and; A.K. Basheer, J.

Acts : Kerala High Court Act - Sections 5; [Contempt of Courts Act, 1971](#) - Sections 2 and 19; [Constitution of India](#) - Article 136

Appeal No. : C.C.C. No. 1003 of 2004

Appellant : Rasheed

Respondent : Saji Basheer

Advocate for Def. : K. Anand, Adv.

Advocate for Pet/Ap. : V. Rajendran and; George Varghese Kizhakkambalam, Adv.

Disposition : Appeal dismissed

Judgement :

B. Subhashan Reddy, C.J.

1. This appeal has been filed under Section 5 of the Kerala High Court Act. Appeal has not been numbered by the Registry raising objections regarding

maintainability. That is how the matter came up before the Court when the appellant reiterated his stand that Writ Appeal is maintainable under Section 5 of the Kerala High Court Act. The above provision reads thus:

5. Appeal from judgment or order of Single Judge:-- An appeal shall lie to a Bench of two Judges from -

(i) a judgment or order of a Single Judge in the exercise of original jurisdiction; or

(ii) a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by a Subordinate Court'.

2. By bare reading it is no doubt sounds that appeal is maintainable against any judgment or order of a Single Judge in the exercise of original jurisdiction under Section 5(i). But that is a general provision. Question is whether the contempt proceedings which are also filed on original side come within the ambit of the above provision. But, [Contempt of Courts Act, 1971](#) is a self-contained Act providing appeal provision under Section 19 thereof and in view of the said special provision, Section 5 of the Kerala High Court Act is not applicable. Further under Section 19 of the Contempt of Courts Act, appeal is maintainable only against the orders committing the contemnor for contempt and not against the order of discharge. The only remedy in case of discharge of contemnor is to invoke Article 136 of the Constitution by filing an appeal before the Supreme Court. The judgment of the Supreme Court in *D.J. Taneja v. Bhajan Lal*, (1988) 3 SCC 26, is an authority for the above proposition.

3. In the instant case, Writ Petition No. 31022 of 2003 was closed on the submission of the Government Pleader that payment of dues on account of the service rendered will be made in six month's time. If that is an undertaking within the meaning of Section 2(b) of the Contempt of Courts Act and a wilful breach of the same is committed, then it would be an act of contempt punishable under Section 12 thereof. In the case on hand, the learned Single Judge obviously did not treat the statement made by the respondents as an undertaking and that is why he opined that there was no act of contempt on the part of the respondents. If

the appellant is aggrieved by the same, he has to only invoke the provisions under Article 136 of the Constitution as Section 19 of the Contempt of Courts Act gives a right of appeal if the contemnor is committed for contempt and there is no such appeal provision when a contemnor is discharged. But, here we have to add a note of caution. While disposing of the contempt case and discharging the contemnor if the court passes any order which adversely affects the respondent, then the respondent can always file Writ Appeal against such order of a Single Judge only if the said order runs beyond the scope of the order passed in the original proceedings, as, such part of the order is not governed by the Contempt of Courts Act. But, in the instant case such situation does not arise.

4. Learned counsel for the appellant has cited the judgments reported in *Garikapati v. Subbiah Choudhary*, AIR 1957 SC 540, *R.L. Powell v. Administrator General*, AIR, 1967 All. 231, and *Paul v. Susan*, 1999 (2) KLT 848. But the fact situation in those cases are quite different from the instant one and as such the ratio laid down in those judgments are not applicable to the facts of the case on hand.

In the result, the office objection is upheld and the Writ Appeal is held to be not maintainable.