

State of Rajasthan and anr. Vs. Gulam Abbas Kamruddin and anr.

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Court : Rajasthan

Decided On : Jan-06-1984

Reported in : 1984WLN64

Judge : G.M. Lodha, J.

Appeal No. : S.B. Civil Contempt Petition Nos. 69/83 and 37/82

Appellant : State of Rajasthan and anr.

Respondent : Gulam Abbas Kamruddin and anr.

Judgement :

G.M. Lodha, J.

1. These two contempt petitions have been filed in respect of the wilful disobedience' of the orders passed by this court on 29-4-81 and 14-5-81 in respect of the stay applications moved by the petitioners M/s Gulam Abbas Kamruddin in writ petition No. 528/81.

2. In both the orders the substance and operative part of the order which is relevant for the purposes of contempt relates to the permission to remove the wood and charcoal by M/s Gulam Abbas Kamruddin on furnishing an undertaking to the respondents that in case the writ petition is dismissed, the amount so valued would be paid by him. For the valuation of the amount, it was directed that a

representative of the respondents would be allowed to prepare an inventory mentioning the weight, quality, quantity and cost of them.

3. Whereas in the contempt petition filed by M/s Gulam Abbas Kamruddin it is alleged that the respondents-non-petitioners did not permit the renewal of the charcoal etc. even though an undertaking was produced, and passed orders in wilful disobedience of the orders of this Court. The State of Rajasthan has come up with a counter allegation in Contempt Petition No. 69/83 alleging the M/s Gulam Abbas Kamaruddin removed the charcoal etc. without giving an appropriate undertaking according to the orders of this Court.

4. Although prolonged detailed arguments were made by the learned Counsel for the parties on two subsequent dates but in view of the preliminary objections raised in both the cases it would be necessary first to examine whether contempt petition can be entertained in view of Section 20 of the Contempt of Courts Act. Section 20 reads as under :

20. Limitation for Section for contempt.

No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

5. According to the mandatory of Section 20 no court can initiate any proceedings for contempt after expiry of a period of one year from the date on which the contempt is alleged to have been committed.

6. Now, so far as Contempt Petition No. 69/83 is concerned it is not in dispute that the initiation of the contempt proceedings had taken place on May 17, 1983, by the following order:

17-5-83 Hon'ble G.M. Lodha, J.Mr. H.N. Calla, G.A.Mr. H.M. Parakh, for the non-petitioner Mr. Hastimal puts up appearance on behalf of non-petitioner. The petitioner should give a copy of the contempt petition to Shri Hastimal. Shri Hastimal should file a reply and show cause why the contemner should not be punished u/s 10 of the Contempt of Courts Act for committing contempt of this

Court as alleged in the contempt petition.

Put up for final hearing on 8-7-83 in orders. The learned Counsel should keep the petitioner present in Court on that hearing.

Sd/- G.M. Lodha.

7. In view of the above initiation of proceedings on May 17, 1983, it is now to be seen whether any act or omission was done by the respondents within one year earlier to 17-5-83.

8. Mr. Calla confronted with the above, submitted that the orders of this Court undoubtedly were passed on 29-12-81 & 14-5-81 but the violation and contravention continued. On a pertinent query of this Court Mr. Calla referred to the table submitted by him in the form of Annexure R-6 according to which charcoal and other things were removed by M/s Gulam Abbas Kamaruddin from 23-1-82 to 16-3-82 on various dates.

9. Assuming matters of disobedience by recurring action, the limitation will have to be computed from wilful action of disobedience. The last date as alleged in this table is 16-3-82 and that being so the limitation cannot extend beyond 16-3-83.

10. In this petition No. 69/33 the substance of contempt alleged is that without giving a proper undertaking as per order of the Court M/s Gulam Abbas Kamaruddin removed charcoal etc. and in that manner they contravened the orders passed by this Court. Obviously the contravention or wilful disobedience is not in the process of undertaking but the removal of the charcoal etc. without giving a proper undertaking and if that calls for an order of punishment for contempt of Court then limitation is to be computed from the dates only when charcoal etc. was removed. In this view of the matter it is obvious that no commission or omission was done by M/s Gulam Abbas Kamaruddin within a period of one year as alleged in this contempt petition.

11. In other words there is no allegation in the contempt petition that within one year M/s Gulam ' Abbas Kamaruddin removed the charcoal without giving a proper undertaking.

12. Both the learned Counsel fairly concede that so far as this case is concerned according to the decision of this Court in State of Rajasthan v. M/s. Jamna Das Ganga Das & Co. 1983 RLR 774 Section 20 of the Contempt of Courts Act 1971 applies for the purposes of limitation for Civil Contempt also which are to be governed under Section 12 of the Con'empt of Courts Act. It has further been laid down that the computation of time would not be from the date of filing application for the Contempt of Court but one year will have to be counted from the date on which notices were ordered to be issued.

13. The relevant observation of the Court contained in para 5 and 7 clearly goes to show that the period of limitation will have to be counted from the date of issuing notice initiating the proceedings.

14. Since in the instant case of Contempt Petition No. 69/83 the contempt proceedings were initiated on 17-5-83 and there is no allegation of any act of the respondents within one year earlier to 17-5-83, therefore, section 20 would act as a bar and there is no option but to hold that in view of Section 20 the petition deserves to be dismissed being time barred.

15. In this view of the matter I am not required to decide the merits whether any contempt was committed in fact and/of law at all. Consequently the notice of contempt is discharged and the petition No. 69/s3 is dismissed without any order as to costs.

16. Now, so far as petition No. 37/82 is concerned an order was passed by this Court on 13-4-82 in the following terms:

13-4-82 Hon'ble Mr. S.K. Mal Lodha, J. Issued notice to the non-petitioners to show cause as to why the contempt proceedings be not initiated against them.

Sd/- S.K.M. Lodha.

17. After that the question whether contempt proceedings should be initiated or not has not been decided so far and the question which requires adjudication is whether u/s 20 of the Contempt of Courts Act this Court can now initiate the proceedings as the allegations for contempt obviously relate to dates in respect of

which one year has expired.

18. The above order was sought to be interpreted by Mr. Hastimal meaning initiation of contempt proceedings for the purposes of Section 20 of Contempt of Courts Act 1971. It was argued that notice to the respondents means initiation of contempt proceedings and no particular meaning would be given to the actual words used in the order because the substance would be appreciated. Mr. Hastimal pointed out that in State of Rajasthan v. Manohar Ghoghad and Ors. 1978 WLN 85 this Hon'ble Court has held that, when Hon'ble Justice B.P. Beri, Chief Justice as he then was, ordered issue of notice only and it was treated as initiation of the proceedings.

19. Mr. Hastimal further pointed out that the parties have treated it to be initiation as such, as exemption of attendance was granted, apology has been submitted and reply has been filed.

20. I have carefully considered the submissions of Mr. Hastimal which were rebutted by Mr. Shishodia and Mr. Calla for the respondents, (t is established law that contempt proceedings partakes the character of a criminal trial because a contempt is to be punished or can be punished, with imprisonment or fine as the case may be.

21. It must also be mentioned here that by a decision of a Division Bench of this Court in State of Rajasthan vs M/s Jamna Das Ganga Das & Co. 1983 RLR 774 it has been held that section 20 applies to proceedings u/s 12 of the Contempt of Courts Act also, which are in the nature of civil contempt.

22. In this case it has also been held that the period of limitation starts not from the date of filing of the application but it should be within one year from the date when notices were ordered to be issued for contempt. It has been emphasised that it is the court which initiates the proceedings and the period of limitation under Section.20 of the Act is to be reckoned upto the date of initiation of proceedings for contempt by the Court from the date on which the contempt is alleged to have been committed.

23. In *The State of Rajasthan v. Jamnadas Gangadas & Co.* 1983 RLR 774 the Court has also noticed the observations of the Hon'ble Supreme Court in *Badra Kanta v. Misra CJ. Orissa H.C.* in para 4. The following relevant observations may be noticed: -

It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. the exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo moto or on a motion or a reference. That is why the terminus a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court.

24. The High Court has framed Rules in respect of the proceedings for contempt of court and Rule 324 Sub-clause (3) is relevant and may be noticed here. Sub-clause (3) of Rule 324 reads as under:

(3) Where an order has been made directing that notice be issued any person to show cause why he should not be punished for contempt of court, a date shall be fixed for hearing and notice thereof in the prescribed form given to the person concerned as also to the Government Advocate. The notice shall contain a substance of the allegations made against such person and require him to appear unless otherwise ordered in person before the Court at time and on the date specified therein to show cause why he should not be punished for Contempt of Court.

25. It is pertinent to notice here that the notice to be given is for showing cause why the non-petitioners should not be punished for contempt of court. This notice is to contain the allegations made against the person and further the notice to show cause is for punishment for contempt.

26. Mr. Hastimal's submission that generally when the Court applies its mind and issues notice it must be treated as initiation of proceedings is plausible and it appears to be correct but for the use of the words 'why the contempt proceedings be not initiated against them' in the order dated 13-4-82 If these words would not have been there, there would have been no objection in accepting (the contention

of Mr. Hastimal.

27. However, it is pertinent to notice that Hon'ble brother Judge considering the contempt petition did not deem it proper to initiate proceedings by giving a show cause notice for showing cause why the non-petitioners should not be punished, but he restricted to a notice to show cause as to why contempt proceedings should not be initiated.

28. The only interference which can be drawn from the above order is that the learned Judge wanted to apply his mind in respect of the initiation of the proceedings after hearing the non-petitioners. In other words, after hearing the non-petitioners an order can be passed that proceedings are initiated and he must show cause why he should not be punished or equally an order can be passed that it is not proper and fit for initiation of contempt proceedings. That being so, it is not possible to draw the inference that even though the order dated 13-4-82 in terms restricted notice for showing cause as to why the contempt proceedings should not be initiated yet it should be assumed that the learned Judge as against his order, initiated proceedings. I am not prepared to interpret the order against the express words used in it. If the words why the contempt proceedings be not taken would have been there, there would have been some ground or reason for interpreting or in drawing an inference as to what was the intention of the learned Judge whether he wanted to issue notice for final hearing or showing cause before initiation. In that situation probably there could be either of the two directions, then the inference may have been possible.

29. However, after an unequivocal language has been used by the Hon'ble Judge, it is not open to this Court to draw an inference against it.

30. Mr. Hastimal submitted that even notices were issued in compliance of this order mentioning why the contemner should not be punished.

31. This submission of Mr. Hastimal is not correct because on a physical check up of the record I find that the notice to show cause in as to why the proceedings should not be initiated. Even if a cyclostyled notice maintaining that why he should not be punished would have been issued, that also would not have changed the

nature of the order passed by the Court because a ministerial act of the office in issuing a notice in the wrong form cannot alter the order of the Court.

32. I am, therefore, convinced that no proceedings have been initiated so far and admittedly it is not in doubt that Section 20 would apply and as one year has expired, no proceedings can now be initiated today.

33. The result is that this application No. 37/82 also deserves to be dismissed being barred by limitation on account of application of Section 20 of Contempt of Courts Act, 1971.

34. The notice to show cause why proceedings should not be initiated is discharged and the application is dismissed.

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