

Kundan Ram and Etc. Vs. Darshan and Etc.

Kundan Ram and Etc. Vs. Darshan and Etc.

SooperKanoon Citation : sooperkanoon.com/890723

Court : Himachal Pradesh

Decided On : Sep-12-1994

Reported in : 1997CriLJ473

Judge : Bhawani Singh, Actg. C.J. and; Lokeshwar Singh Panta, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 2B, 9, 12, 17, 19, 19(1) and 20; ;Contempt of Courts Act, 1952; ;[Constitution of India](#) - Article 215; ;Code of Criminal Procedure (CrPC) ; ;Code of Civil Procedure (CPC)

Appeal No. : Contempt Appeal (C) No. 5 of 1993, F.A.O. No. 296 of 1993 and L.P.A. No. 1 of 1994

Appellant : Kundan Ram and Etc.

Respondent : Darshan and Etc.

Advocate for Def. : Rajinder Kishore Sharma, Adv. in C.A. No. 5/93

Advocate for Pet/Ap. : Ajay Sharma, Adv.,; Indar Singh, Adv. General,; K.D. Soo

Disposition : Appeal dismissed

Judgement :

Bhawani Singh, Actg. C.J.

1. Since common question of law is involved in these cases, we propose to deal with them simultaneously. However, we set out the facts contained in Contempt Appeal (Civil) No. 5 of 1993, (Kundan Ram v. Darshan) being the principal case in which the questions for-determination have been framed.

2. The appellant was locked in civil litigation with the respondent. Before the Sub-Judge I-Class (I), Karsog, undertaking was given whereby the respondent undertook not to obstruct the flow of water into the fields of the appellant and in case he failed to abide by the undertaking, he would render himself liable for contempt of Court. The undertaking was accepted by the Court and the suit of the appellant was dismissed as withdrawn. The respondent did not abide by the undertaking. He obstructed the flow of water into the land of the appellant resulting in loss to him. The undertaking given by the respondent was brought to his notice but no attention was paid to it. Rather, it was stated by the respondent that he did not bother about the contempt proceedings that may be initiated against him.

3. Accordingly, in the aforesaid background, contempt petition was preferred by the appellant under Section 2(B) read with Section 12 of the [Contempt of Courts Act, 1971](#) which was ultimately dismissed by the Chief Justice by order dated July 16, 1993 (Contempt Petition (Civil) No. 47 of 1993). This order is intended to be assailed by way of this appeal on number of grounds with which we are not presently concerned. Notice of this appeal was given to the opposite side. Objection as to the maintainability of this appeal has been taken on the ground that since the respondent has not been punished and notice discharged, no appeal is maintainable. Similar question arises in other cases connected with this appeal. On December 16, 1993, we requested the learned Advocate General and other prominent lawyers of this Court to assist us in examining this question. We also framed the following circumstances:

- (a) When a complaint, bringing to the notice of the Court commission of contempt by a party, is dismissed Without issuance of notice to the opposite side;
- (a) When notice is issued, case tried, complaint dismissed and notice discharged.

4. It was contended by the learned Advocate General that right of appeal has to be created under the statute. It is available only to the extent provided thereunder and no appeal can be competently preferred under the Letters Patent. In face of this situation, no appeal is competent under either of the circumstances mentioned above. It was also submitted that in this regard there would be no difference whether contempt is of civil or criminal nature since right of appeal is available in cases provided under Section 19 of the Act. The matter stands concluded by series of decisions rendered by the Apex Court. Shri . K. D. Sood also supported this line of thought.

5. From the opposite side, Shri Deepak Gupta, Shri Rajiv Sharma, Shri Shrawan Dogra and Shri Ajay Sharma submitted that apart from cases covered under Section 19 of the Act, remedy by way of appeal is available under the Letters Patent which makes no difference in the nature of contempt involved. Learned counsel also contended that the Apex Court has not finally decided a case of civil contempt where the aggrieved party has a lis with the other party and is aggrieved by the violation of the Court order independently of the fact that the dignity of the Court is also involved and all the cases on which reliance has been placed by the other side, are of criminal nature. Respective sides placed certain decisions for our consideration in support of their pleas. We proceed to consider some of them.

6. In *Baradakanta v. Justice Misra*, C.J. AIR 1974 SC 2255 : 1975 Cri LJ 1, it was held that (p. 2260) (of AIR): (at p. 6 of Cri LJ):

The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemner, the Court, though moved by a motion or reference, may in its discretion, decline to, exercise its jurisdiction for contempt. 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 motu or on a motion or a reference. Which 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. 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 provision.

7. Same view was taken in *Barada Kanta v. Orissa High Courts* AIR 1976 SC 1206 : 1976 Cri LJ 944, wherein their Lordships observed (Para 1):.Only those orders or decisions in which some point is decided or finding is given in the exercise of jurisdiction by the High Court to punish for contempt, are appealable under Section 19 of the [Contempt of Courts Act, 1971](#).

8. In *Purshotam Dass v. B.S. Dhillon* AIR 1978 SC 1014 : 1978 Cri LJ 772, once again, while examining the ambit and scope of appeals under Section 19(1) of the Act, the Apex Court opined (Para 3):

It would appear from a plain reading of the section that an appeal shall lie to this Court as a matter of right from any order or decision of a Bench of the High Court if the order has been made in the exercise of its jurisdiction to punish for contempt. No appeal can lie as a matter of right from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated under Section 17 by issuance of a notice.

9. Again in *D.N. Taneja v. Bhajan Lal* (1988) 3 SCC 26, a three Judge Bench of the Supreme Court held in unequivocal terms that the right of appeal is available under Sub-section (1) of Section 19 only against any decision or order of a High Court in the exercise of its jurisdiction to punish for contempt. Their Lordships then went on to notice that 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, implied that the High Court could exercise its jurisdiction only by punishing for contempt and not by refusing to punish. The Bench went on to opine:..It is true that in considering a question whether the alleged contemner is guilty of contempt or not, the Court hears the parties and considers the materials produced before it and, if necessary, examines witnesses and, therefore, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemner, the High Court

does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should not in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution.

In para 12 of the judgment it has been said that:

12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under Section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the Court and the alleged contemner. Any person who moves the machinery of the Court for contempt only brings to the notice of the Court certain facts constituting contempt of Court. After furnishing such information, he may still assist the Court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the Court and the contemner. It may be one of the reasons which weighed with the legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under Section 19(1) can only be the contemner who has been punished for contempt of Court.

(See also 1984 Cri LJ 1243 (All) (Kuldip Narain Lal v. Mahendra Pal Jain); and 1986 All CJ 113 (FB), (Ravi Saraswat v. Ram Chandra Maheswari).

10. Relying on AIR 1974 SC 2255 : (1975 Cri LJ 1), and AIR 1978 SC 1014: (1978 Cri LJ 772) (supra), the Punjab and Haryana High Court held (1989) Cri LJ 481, (R.P. Bhardwaj v. Smt. Kiran Aggarwal) that (Para):.We are of the view that no distinction can be made whether the petition is dismissed without hearing the respondent or whether it is dismissed after hearing the respondent. In both the cases, as held by the Supreme Court, the Court does not exercise its power to punish and therefore, no appeal lies. Section 19 also does not make any distinction between a criminal and civil contempt. It relates to every order made by the High Court in exercise of its jurisdiction to punish for contempt....

Thus, rejecting also the contention that the decisions of the Apex Court related to criminal cases and not to civil cases, a plea being raised in these cases also.

11. In *Shantha V. Pai v. Vasanth Builders*, Madras 1991 Cri LJ 3026 (Mad), Dr. A.S. Anand, C.J. (as he then was), dealt with this question taking into consideration number of important decisions. It has been held that (Paras 13, 19, 20 and 24):

13. We accordingly hold that except to the extent of the field occupied by Section 19(1) of the Act, an appeal would be competent under clause 15 of the Letters Patent, provided it satisfies the conditions prescribed in clause 15 of the Letters Patent itself.

19. From a review of the aforesaid judgments, it clearly emerges that the expression 'judgment', within the meaning of clause 15 of the Letters Patent, implies an order which effectively decides some right or liability in controversy between the parties to the main proceedings, irrespective of the fact whether such an order is final or made at any interlocutory stage. The nature of the order has to be examined to ascertain whether there has been- determination of any right or liability between the parties. Thus, the nature of the order passed and its effect is the determinative factor, to find out whether or not a particular order qualifies the test of being a 'judgment' within the meaning of clause 15 of the Letters Patent. Does an order or decision of the trial Judge refusing to punish an alleged contemner for contempt amount to a 'judgment' within the meaning of clause 15 of the Letters Patent? Does such an order determine any right or liability of the parties to the proceedings?

20. The proceedings which were initiated by the appellant herein were proceedings to punish the alleged contemner (respondent herein) for having flouted the orders of this Court under the Act. Contempt proceedings are a matter between the Court and the alleged contemner and the person who moves the machinery of the Court for punishing an alleged contemner, only brings to the notice of the Court certain facts which, in his opinion, constitute contempt of Court. He has no other role. The only two parties, therefore, in a contempt proceeding are the Court and the alleged contemner and even if the proceedings have been

initiated at the instance of an applicant, he is only an informant of the Court and cannot be treated as a party-juris, entitled to any order of commitment of the opponent as of right. If the trial Judge, whose attention has been drawn by the appellant to certain facts which, in the opinion of the applicant, amount to flouting of the orders of the Court, finds that its order has not been disobeyed, obviously he would refuse to punish the alleged contemner, as no vindication of his own order has become necessary. The trial Judge would, under these circumstances, reject the application and refuse to commit the alleged contemner. In doing so, the trial Judge would not be determining any right of the applicant, nor imposing any liability on him. Such an order cannot, therefore, be said to be a 'judgment' within the meaning of clause 15 of the Letters Patent. It is elementary that the right of appeal can only be available to an aggrieved party and an aggrieved party for the purposes of proceedings for contempt of Court has been held to be only the party who has been punished for contempt, and not the party whose application has been rejected. See 1988 SCC (Cri) 546. The power of the High Court to constitute proceedings for contempt and punish, where necessary, is a special jurisdiction which is inherent in all Courts of record. Such proceedings are not governed either by the Code of Criminal Procedure or the Code of Civil Procedure. The jurisdiction is inherent in the Court so as to uphold the majesty and dignity of the Law Court and the image of the same in the mind of the public at large. This jurisdiction is necessary because the administration of justice cannot be effective unless respect for it is fostered and maintained. Courts cannot function properly unless they are allowed to keep their dignity and unless there vests in them a power to enforce discipline and respect in its administration of justice and to enforce its orders. Disobedience of its orders wilfully, interferes and shakes the very pillars of administration of justice and the party guilty of such disobedience has to be punished for committing contempt of Court. Recourse to jurisdiction to punish the contemner for committing contempt of Court, however, is not meant for settling private scores, or to wreak private vengeance. So far as the private rights of the parties are concerned, they have to be settled through appropriate proceedings and not by invoking the contempt jurisdiction. It is the Court which is the sole and exclusive Judge of what amounts to a contempt of Court and in case the Court itself finds that nothing has been done, which necessitates the exercise

of its contempt jurisdiction, it is not open to any party to insist that the alleged contemner must be punished. To proceed or not to proceed against the alleged contemner is a matter of Court's discretion and an applicant has no right to ask for the discretion to be exercised in a particular manner. Generally speaking, words and acts obstructing administration of justice are considered as criminal contempt, whereas disobedience as the orders or the process of Court are classified as contempt in procedure of civil contempt. But, in either case, the matter essentially is between the Court and the alleged, contemner. Even where it is a civil contempt and the order is inter parties, to the extent that the Court is moved by the applicant, it does not make the applicant a party to the proceedings and the matter remains exclusively between the Court and the alleged contemner. In *Collector of Bombay v. Issac Penhas* AIR 1948 Bom 103, a Full Bench of the Bombay High Court (prior to the coming into force of the 1971 Act) held that an appeal lies to the Court within the meaning of clause 15 of the Letters Patent from the order of a single Judge committing a party to prison or ordering him to pay a fine for disobedience of the order of Court because such an order is final. The Bench went on to observe, at page 105: It would be vexatious if a party to litigation could pursue application to commit his opponent for contempt of Court to the Court of Appeal, when the trial Court whose process it was alleged had been disobeyed was of opinion that no vindication of its own order was necessary.

12. The Full Bench noticed the earlier Division Bench Judgment of the same High Court in *Narendrabhai v. Chinubhai* AIR 1936 Bom 314, wherein it had been opined at page 315:

Does the order appealed from decide any question between the parties and determine any right or liability? On the notice of motion there was, in my opinion, no question between the parties. Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted, and if the Court in its discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question

between the parties, so that any order made such an application by which the Court in its discretion refused to take any action against the party alleged to be in the wrong can be said to raise any question between the parties.

24. As a result of the aforesaid discussion, we hold that a Letters Patent Appeal under Clause 15 would not lie against any order passed in exercise of the contempt jurisdiction by the High Court where the trial Judge refuses to take cognizance of an application seeking to punish the opposite party for contempt of Court or where it rejects the application after being satisfied that its order had not been flouted and was of the opinion that no vindication of its order was called for by committing the alleged contemner for contempt of Court. Since in the instant case, the learned trial Judge, after a detailed discussion, came to the conclusion that his order had not been violated or flouted by the respondent and in exercise of his proper judicial discretion, refused to commit the respondent for the alleged contempt of Court, such an order of refusal is not a 'judgment' within the meaning of Clause 15 of the Letters Patent and as such, is not appealable under that clause. The second preliminary objection also, therefore, succeeds and the appeal is held to be not maintainable under clause 15 of the Letters Patent either.

13. AIR 1954 SC 194 : 1954 Cri LJ 475 (Surendra Singh v. State of Uttar Pradesh), and (1972) 1 SCC 651 : 1972 Cri LJ 643 (R.L. Kapur v. State of Madras) deal with the special jurisdiction of High Courts and Supreme Court exercisable under the [Constitution of India](#) being Courts of record independent of the Contempt of Courts Act, 1952, now the later Act. This jurisdiction cannot be taken away by legislative enactments. It can be said that the jurisdiction conferred by the Contempt of Courts Act is in aid of the constitutional jurisdiction exercisable in this behalf. (See also 1993 Supp(1) SCC 529 : 1992 Cri LJ 1269 (Pritam Pai v. High Court of Madhya Pradesh)).

14. 1980 Cri LJ NOC 109 (Delhi), (Vishwanath Khanna v. Ram Swaroop Rastogi and Sons, Lucknow) has not, with respect, taken into consideration the fact that the legislature did not provide remedy of appeal intentionally where the Court did not exercise jurisdiction to punish for contempt. There is no distinction between a civil and a criminal contempt since the spirit behind the law is the same that in

such cases the informer is not the aggrieved party. The issue is between the Court and the contemner, be it a civil case or a criminal. The remedy under the Letters Patent is not available, it stands excluded by specific mention of circumstances when appeal can be filed under Section 19 of the Act. In such cases, no appeal can lie against an interlocutory order. (See also AIR 1976 SC 1206 : (1976 Cri LJ 944) (Barada Kanta Mishra v. Orissa High Court)).

15. In AIR 1936 Bom 314, (Narendrabhai Sarabhai Hatheesing v. Chinubhai Manibhai Seth), it has been held that an order of the Court refusing to commit a person for breach of an undertaking given to the Court and embodied in the order of the Court, cannot be said to be a judgment within the meaning of clause 15, as it does not affect the merits of any question between the parties and hence is not appealable. The party in whose favour the undertaking is given, brings the fact to the notice of the Court and the Court may take such action as it thinks fit.

16. The soul of Apex Court's decisions, we may point out, is that the exercise of contempt jurisdiction is a matter entirely between the Court and the alleged contemner, though, moved by a motion or reference. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise the jurisdiction to punish for contempt and as such a decision cannot be regarded as a decision in exercise of its jurisdiction to punish for contempt. It would not be a decision within Sub-section (1) of Section 19 of the Act, therefore, no appeal would lie against it. The informer may or may not appear before the Court in the matter. The question whether proceedings for contempt deserve to be initiated and if so initiated, whether the contemner ought to be punished, is in the sole discretion of the Court. In case the Court declines to take action or to punish the contemner after having found guilty, does not make the informer an aggrieved party entitling him to file an appeal under Section 19(1) of the Act. Aggrieved party, in such cases, would be the contemner who has been punished for having committed the contempt of Court.

17. While enacting Section 9 of the Act, the legislature very well knew that Letters Patent Appeal was available against the judgment of single Judge of High Court. However, no exception was made under Section 19(1) of the Act covering the

cases against which appeal was not specifically provided under Section 19(1) of the Act. This conscious omission plainly demonstrates that except in circumstances falling under Section 19(1) of the Act, no remedy of appeal was made available under the Letters Patent. There is a sound rationale behind it. The right of appeal has been restricted under Section 19(1) of the Act only to cases where an order of punishment has been passed in exercise of contempt jurisdiction and not in cases where the Court declines to do so preventing the informer from initiating vexatious litigation and pursuing the same against its opponent despite the single Judge of the High Court declining exercise contempt jurisdiction, either by not issuing the process at all or by not punishing the contemner, in his discretion after having been found guilty of committing the contempt. In our considered opinion, principle behind the exclusion of appeal is available to both civil and criminal contempt and decisions attempting to make this kind of distinction, with respect have not correctly understood why remedy of appeal has not been provided in cases falling outside the purview of Section 19(1) of the Act nor this question was strictly raised in those decisions

18. Accordingly, we hold that appeals are maintainable only to the extent expressly provided under Section 19(1) of the Act and in no other case. Therefore, no appeal would: be available in the circumstances (a) and (b) framed in these cases. Remedy of appeal under the Letters Patent would not lie since it has not been saved by the legislature while enacting Section 19(1) of the Act. Hence, these appeals are not maintainable and are, therefore, dismissed. No costs.