

(1991) 09 AHC CK 0095

Allahabad High Court

Case No: Contempt Case No. 101 of 1982

State

APPELLANT

Vs

Baldev Raj, Advocate

RESPONDENT

Date of Decision: Sept. 10, 1991

Acts Referred:

- Constitution of India, 1950 - Article 136, 215, 226
- Contempt of Courts Act, 1971 - Section 15, 17, 17(1), 17(3), 17(4)
- Criminal Procedure Code, 1973 (CrPC) - Section 1(2), 362, 369, 482, 5
- Income Tax Act, 1922 - Section 66(1)
- Income Tax Act, 1961 - Section 66

Citation: (1991) 15 ACR 657

Hon'ble Judges: S.R. Bhargava, J; M.L. Bhatt, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

S.R. Bhargava, J.

In Writ Petition No. 484 of 1982 Baldeo Raj was Petitioner. He made certain scandalous allegations against Shri S.D.N. Singh, the then District Judge, Allahabad. This writ petition was decided by Hon"ble Mr. Justice J.M.L. Sinha (now retired). In his order dated 8-2-1982 he interalia mentioned that there were serious allegations constituting criminal contempt. Hence he proposed that record be placed before appropriate Division Bench for examination whether notice should or should not be issued.

2. Division Bench of Hon"ble Mr. Justice P.N. Harkauli (retired) and Hon"ble Mr. Justice Wahajuddin (retired) went through the record and the order passed by Hon"ble Mr. Justice J.M.L. Sinha (retired) and by order dated 6th March, 1982 arrived at the opinion that it was a fit case for taking cogniztnce of the alleged contempt case. Then notice was issued to Baldeo Raj. It was served personally on him as

required u/s 17(1) of the Contempt of Courts Act, 1971. Charge was framed and was also served upon him. It does not appear from the record that he filed affidavit in support of his defence as laid down in Section 17(5) of the Contempt of Courts Act, 1971. On the other hand, he moved repeated applications for withdrawal of notice. On 20th May, 1983 the aforementioned Division Bench convicted Baldeo Raj of the offence of criminal contempt of court and sentenced him to two months simple imprisonment and a fine of Rs. 1000/-. In default of payment of fine he was to further undergo one month simple imprisonment. He was taken into custody. He moved bail application which was allowed.

3. The very next day Baldeo Raj moved the application under disposal. He prayed for recalling of the judgment and order dated 20th May, 1983.

4. On 29th July, 1983 this application was dismissed without hearing Baldeo Raj. He moved application that this recall application was dismissed without hearing him hence the order dated 29th July, 1983 be set aside and he may be heard on his recall application. In our order dated 6th December, 1990 the application for recall of judgment and order dated 20th July, 1981 was treated as review petition. We allowed the application for setting aside of order dated 29th July, 1983 and directed that review petition be listed for consideration. Thereafter heard Baldeo Raj and learned A.G.A. representing the State at length.

5. Learned A.G.A. raised preliminary point that an application for recall or review judgment and order convicting a person for criminal contempt does not lie. He relied upon Section 362 and 482 of Code of Criminal Procedure. He submitted that this Court has no inherent power of recall or review. He cited various rulings before us, some of which can be mentioned here, namely, Mahesh v. State 1971 AWR 255 , [State of Orissa Vs. Ram Chander Agarwala and Others](#), , Raj Narain v. State AIR 1959 (FB) 250, Mst. Simdukhiya v. Smt. Dali Mukherji alias Smt. Chhabbi Mukherji AIR 1990 SC 1605, Suchi Ram v. Hashim AIR 1959 SC 542 and [Sankatha Singh Vs. State of U.P.](#), .

6. Baldeo Raj argued this case himself. His contention was that powers of a High Court to punish for contempt of Court flow from Article 215 of the Constitution of India which lays down 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. Contempt of Courts Act, 1971 is a special Act and lays down procedure for punishing a citizen for contempt of Court.

7. Section 5 of Code of Criminal Procedure is the saving provision. It lays as under:

Saving - Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

8. In the case of Sukhdev Singh v. Hon^{ble} C.J.S. Teja Singh and the Hon^{ble} Judges of the Pepsu High Court at Patiala AIR 1954 SC 186, there was a transfer application before the Supreme Court for transferring the contempt proceedings. In that connection their Lordships of the Supreme Court interpreted Article 215 of the Constitution and laid down that the power of a High Court to institute proceedings for contempt and punish wherever necessary is special jurisdiction which is inherent in all Courts of Record. Section 1(2) Code of Criminal Procedure excludes special jurisdiction from its scope. Hence, the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge and is given a fair and reasonable opportunity to defend himself. Their Lordships further said that contempt is a special set of laws peculiar to Courts of Record. The words "any other law" in Section 5 of the Code of Criminal Procedure do not cover contempt of a kind punishable summarily by the High Court. Hence their Lordships of the Supreme Court took the view that the transfer application was not maintainable under the provisions of Code of Criminal Procedure as it then stood.

9. Having given our serious thought to the matter we are of the opinion that the contempt proceedings relate to special jurisdiction and special law. Hence provisions of Section 362 and 482 Code of Criminal Procedure whether old or new cannot be applied to contempt proceedings.

10. The learned A.G.A. then contended that even under Contempt of Courts Act, 1971 this Court has no inherent power to recall a judgment and order of conviction and sentence. The learned A.G.A. cited a single Judge case of Committee of Management, Adarsh Junior High School, Katra Wazir Khan, Agra v. Prabha Kant Shukla 1985 UP LB EC 245. In this case there was an application before the Single Judge with the prayer that the order dated 18th September, 1984 refusing to exercise jurisdiction for punishing the Respondents under the provisions of Contempt of Courts Act be set aside and the contempt petition be heard afresh on merits. What appears from the facts stated in the judgment is that the contempt petition moved by the private citizen was decided on merits in absence of the Petitioner. His Lordship referred to Rule 10 of the High Court Rules, framed in respect to Contempt of Courts Act and held that Petitioner has no right to appear or argue, unless called upon by the Court specifically to do so. Failure of Counsel for Petitioner to appear before the High Court inspite of opportunity given to him can be no ground to set aside an order passed on merits in contempt petition. It is evident that in this case the powers of the High Court of review or recall in contempt proceedings was not considered. This case was decided on altogether different ground and renders no help in the instant case.

11. Baldeo Raj vehemently urged that in view of Article 215 of the Constitution High Court has inherent powers of recall or review its judgment or order in proceedings

of criminal contempt. It is no doubt true that Article 215 of the Constitution is too general and shows that the powers of the High Court for contempt proceedings are unlimited. Yet the Constitution has provided machinery for checks on the powers of the High Court in contempt proceedings. It cannot be overlooked that the Constitution of India is very comprehensive and has provided checks and balances in almost every matter. Item 14 of List III. Concurrent list of the VII Schedule of the Constitution is as under:

14. Contempt of Court, but not including contempt of the Supreme Court.

12. This item clearly shows that both the Parliament and State Legislature are entitled to frame law regarding powers of the High Court in matters of contempt of Court. The Parliament and the State Legislature are entitled to frame law even to limit the powers of the High Court in matters of contempt of Courts. Thus Contempt of Courts Act, 1971 has been enacted by the Parliament within the framework of the Constitution. Preamble of this Act is:

An Act to define and limit the powers of certain Courts in punishing contempt of Courts and to regulate their procedure in relation thereto.

Statements of object and reasons for the Act were:

The previous Act of 1952, which this Act repealed, had for its objective, as declared in its preamble, "to define and limit the powers of certain Courts in punishing Contempt of Courts". It neither defined contempt of Courts nor provided for any procedure in itself, which, therefore, had to be guided by practice and incidence as also the rules framed by the High Court. The independence of the country and the drawing up of the Constitution brought about sweeping changes in the notions of freedom and liberties with which the existing precedence did not fit well. Consequently there had been a clamour and public agitation demanding changes in the law to suit the new set up. There was also a demand for a comprehensive statute which not only defines the "contempt of Court" but also provided for the procedure. As a result, the Bill of the present Act was referred to various committees of jurists, and experts and after long drawn discussions and various changes, this Act was passed meeting fairly the demands of the public in its provisions. Hence the preamble to this Act adds to the objective "to define and limit the powers of certain courts in punishing contempt of courts" the further provisions and to regulate their procedure in relation thereto.

13. Obviously the Contempt of Courts Act, 1971 not only defines civil and criminal contempt but also lays down the procedure. This Act does not expressly give any inherent power to the High Court in matter of contempt of Court. It provides in Section 19 appeals from order or decision of the High Court in the exercise of its jurisdiction to punish for contempt. When the Act does not confer inherent power or power of recall or review and provides remedy against order or decision in the matters of contempt, the power of the High Court to recall or review in matters of

contempt cannot be invoked.

14. Baldeo Raj relied upon Single Judge case of [Mehtar Chand Vs. The State](#), . Facts of the case clearly show that it was a case of contempt under the Act of 1952. In this case it was held that though the High Court has no inherent power u/s 561A to review its judgment, the first proviso to Section 3 of the Contempt of Courts Act, gives the Court a power of review its judgment awarding punishment to an accused under the Act in a case where the accused offers an apology to the satisfaction of the Court. The proviso is "other law for the time being in force" within the purview of Section 369 which permits review. The power of review is discretionary. Facts of the case were that notices were issued to several persons for contempt of court. All of them except one appeared and tendered apology. Their apology was accepted. But one person to whom notice was issued did not turn up and was punished by an ex parte order with fine of Rs. 200/-. He applied for review and tendered apology. For accepting his apology the Single Judge exercised discretion of review. I am afraid that in view of the Contempt of Courts Act of 1971 this Single Judge ruling of Himachal Pradesh in a case filed under the Contempt of Courts Act, 1952 is not good law.

15. Baldeo Raj further relied upon the case of [V.G. Paterson Vs. O.V. Forbes and Others](#), . In this case notice u/s 3 of the Contempt of Courts Act, 1952 was issued to a person. On his non-appearance his property was attached and placed at the disposal of the State Government u/s 88(7) Code of Criminal Procedure. After the death of the contemner rightful owner applied for restoration of property. It was held that Section 87 and 88 Code of Criminal Procedure were not applicable to contempt proceedings. Government possession being through mistake of Court, property was ordered to be restored to owner.

16. This decision obviously related to matter of Contempt of Court under the Contempt of Courts Act, 1952. In Section 17(3) of the Contempt of Courts Act, 1971, it was specifically provided that the Court, if it is satisfied that a person charged u/s 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable. Section 17(4) of this Act provides that Every attachment under Sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908, for the attachment of property in execution of a decree for payment of money, and if, after such attachment the person charged appears and shows to the satisfaction of the court that he did not abscond or keep out of the way to avoid, service of the notice; the court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit. In our opinion the aforementioned decision of the Supreme Court has lost significance after the Contempt of Courts Act, 1971. At any rate this decision does not relate to powers of the High Court to recall or review its decision or order under Contempt of Courts Act, 1971. It is, however, clear that a mistake can be corrected. But when the Contempt of Courts

Act, 1971 provides appeal mistake has to be confined to clerical or typing mistake. If there is a legal mistake in any order or decision passed under the Contempt of Courts Act, 1971 it can be corrected, if an appeal lies u/s 19 of this Act by the Supreme Court in such appeal, or if no appeal lies u/s 19 of this Act then in special appeal under Article 136 of the Constitution. In the ruling referred to above, the Supreme Court corrected the mistake in special appeal.

17. The case of [Jaipur Mineral Development Syndicate, Jaipur Vs. The Commissioner of Income Tax, New Delhi](#), related to a reference u/s 66(1) of the Income Tax Act, 1922. High Court declined to answer reference for absence of party and non-filing of paper book. There was application for rehearing. High Court held that it was functus officio to entertain an application for rehearing the reference. Their Lordships of the Supreme Court held that a party or its Counsel may be prevented from appearing at the hearing of a reference for a variety of reasons. In case such a party shows, subsequent to the order made by the High Court, declining to answer the reference that there was sufficient reason for its non-appearance, the High Court has inherent power to recall its earlier order and dispose of the reference on merits. Their Lordships further held that the High Court in suitable cases has, as already mentioned, inherent powers to recall the order made in the absence of the party and dispose of the reference on merits. There was nothing in any of the provisions of the Income Tax Act, 1922 which either expressly or by necessary implication, stood in the way of the High Court from passing an order for disposal of the reference on merits. The courts have power, in the absence of any express or implied prohibition to pass an order as may be necessary for the ends of justice or to prevent abuse of the process of the Court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice. This decision was with respect to a matter under Income Tax Act, 1922 which did not limit the powers of the High Court to restore a reference dismissed in default or non-prosecution. Under the Contempt of Courts Act, 1971, as Section 17 shows there cannot be an ex parte decision. The presence of the contemner has to be obtained by coercive measure namely attachment of property. When a decision or order is passed under the Contempt of Courts Act, 1971 on merits as it was done in this case, there is implied prohibition in this Act to recall the order or decision because the punished contemner has been given a right of appeal. In our view Baldeo Raj cannot get the benefit of law enunciated by their Lordships of the Supreme Court with respect to a reference u/s 66 of the Income Tax Act, 1962 which was not answered because party concerned was absent and paper book was not supplied.

18. Baldeo Raj then referred to the case of [Shivdeo Singh and Others Vs. State of Punjab and Others](#). In this case facts were that on a writ petition by A for cancellation of the order of allotment passed by the Director of Rehabilitation in favour of B the High Court cancelled the order in favour of B though he was not a party to the writ proceedings. Subsequently B filed a petition under Article 226 for impleading him as a party to A's writ petition and re-hearing the whole matter. The

High Court allowed the writ petition. It was held by the Supreme Court that the second writ petition by B was maintainable and the High Court had not acted without jurisdiction in reviewing its previous order at the instance of B who was not a party to the previous writ proceedings. It was further held that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. In entertaining B's petition the High Court thereby did what the principles of natural justice required it to do.

19. It is evident that this ruling relates to the inherent power of the High Court in respect of power exercised under Article 226 of the Constitution. Facts of the case were quite distinguishable. Person at whose instance power of review was exercised was not earlier party to the petition. We are of the opinion that the powers of the High Court under Article 226 are much wider to secure natural justice. At the risk of repetition it can be said that the powers of the High Court in matters of Contempt of Courts have been limited by the preamble of the Contempt of Courts Act, 1972. It provides elaborate procedure and then appeal against an order or decision of the High Court. We are of the opinion that the Act impliedly excludes power of recall or review. However, as stated earlier even after a final order or decision in matter of Contempt of Court a High Court has inherent power to correct clerical or typing mistake.

20. In the instant case we have heard Baldeo Raj and learned AGA at length. Contention of Baldeo Raj that the case was fixed for hearing and on that date judgment could not have been delivered. Firstly this cannot be called a mistake. It is not unusual that after hearing judgment is delivered the same day. If a party refuses to argue and participate in hearing by making some application of frivolous nature the High Court can pronounce judgment. This cannot be called a mistake apparent on the record or a mistake of clerical nature. Baldeo Raj further vehemently argued that the bench was biased against him. This can be a matter to be looked into in appeal but cannot be called a clerical mistake. Baldeo Raj was much aggrieved because at one stage the bench hearing the contempt case against him called the police and then expressed regret. Once again this is a matter to be considered in appeal and cannot be called a mistake apparent on the face of the record or a clerical mistake. Contention that Baldeo Raj did not get reasonable opportunity of hearing can be a ground of appeal but not for review or recall of a judgment and order of conviction or correction of clerical mistake.

21. In result, we see no force in this recall petition and it is hereby dismissed.

22. The judgment was sent some by my learned brother, Hon. Bhargava, J. about two weeks ago and it remained with me for about ten days. I have read the judgment thoroughly and returned the same to Hon. Bhargava, J. a couple of days earlier. However, I did not sign the judgment when I returned the same to Hon.

Bhargava, J. The judgment was pronounced today by Hon. Bhargava, J. on behalf of the Division Bench. Since I have already agreed with the conclusions arrived at by Hon. Bhargava, J. therefore, I have signed the judgment after it was delivered at about 4.10 P.M. today when I got the file from his Court.

23. Mr. Baldev Raj also appeared before me with the request that judgment may not be signed by me as it was already delivered. He informed me that the judgment was already delivered. I think this request of his is not reasonable because when I have already agreed with the conclusions arrived at by Hon. Bhargava, J. and sent the same to him for its delivery on any date, he likes, it will not be proper for me not to sign the judgment.

24. I am writing this detailed note because Mr. Baldev Raj has some reservation about my signing the judgment after it was delivered. Judgment could be delivered by Hon. Bhargava, J. also sitting singly. He has done so with my concurrence after having read the judgment thoroughly, and having given my consent to deliver the same. This note shall be treated as part of the judgment.