

(2001) 08 MP CK 0036

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Criminal Case No. 539 of 2000

Babulal Sharma

APPELLANT

Vs

State of Madhya Pradesh and
Others

RESPONDENT

Date of Decision: Aug. 23, 2001

Acts Referred:

- Contempt of Courts Act, 1971 - Section 12, 20
- Criminal Procedure Code, 1973 (CrPC) - Section 446, 482
- Limitation Act, 1963 - Section 5
- Penal Code, 1860 (IPC) - Section 283, 406, 420, 467, 468

Citation: (2001) 4 MPHT 259 : (2002) 1 MPJR 70 : (2001) 3 MPLJ 569

Hon'ble Judges: R.B. Dixit, J

Bench: Single Bench

Advocate: R.K. Goyal and D.D. Bansal, for the Appellant; J.D. Suryavanshi, Government Advocate, S.B. Mishra and J.P. Mishra, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.B. Dixit, J.

Respondent No. 4-contemner, Ramakant Ashthana, who was found in possession on supurdgi a disputed vehicle (Bus), was directed vide the order dated 3-10-1997 of this Court passed in Misc. Criminal Petition No. 3005/94, to produce the said vehicle before the Judicial Magistrate First Class, Lahar within a month, irrespective of any earlier order passed by the Courts at Gwalior or in the District of Bhind. It was further directed that the Magistrate at Lahar shall be free to pass fresh orders in respect of the supurdgi of the bus, in the nature and circumstances of the case and keeping in view the likelihood of the tampering of the same during the pendency of the trial, the Judicial Magistrate First Class, Lahar was also asked to expedite the trial of the case and decide the same at the earliest, preferably within six months.

Petitioner Babulal had thereafter filed an application u/s 482, Cr.PC before this Court stating that the respondent-contemner has failed to produce the said vehicle before the Judicial Magistrate First Class, Lahar in compliance of the aforesaid order of this Court. With the result he has suffered a lot and has unnecessarily being dragged into litigation and has further prayed to issue proper directions against the respondent No. 4 to deposit mesne profit at the rate of Rs. 25,000/- per month for the period in which he failed to comply with the orders of this Court.

The respondent-contemner, who first time appeared on 21-7-2000 before this Court was repeatedly asked to produce the said vehicle before the Court at Lahar and on his failure to do so on 13-10-2000 was noticed for disobedience of the order dated 3-10-1997 passed in Misc. Cr. Case No. 3005/94. In reply, although he had tendered an apology for non-production of the vehicle, but, contended that the vehicle is not in operational condition and could not be transported for production before the Court concerned. After issuance of the notice for contempt on 23-3-2001, the respondent-contemner again on 23-3-2001 sought one week's time for production of the said vehicle before the Court, even then he failed to comply with the aforesaid direction and argued that he could not be punished for contempt as contempt having been rendered infructuous being out of limitation.

The brief history of this case as available on record emerges like this : Petitioner Babulal who claims to be registered owner of the Bus No. BHR 9191 had purchased on 25-6-93 the same from Smt. Abeela Begum which was originally registered in RTO Office, Jhansi. The bus was duly transferred in the name of the petitioner. On address being changed the name of petitioner was recorded as owner in the office of the RTO, Gwalior.

A criminal case u/s 283 of Indian Penal Code bearing Crime No. 224/93 was registered and challan was filed before the Judicial Magistrate First Class, Lahar. In that case, the vehicle was given in Supurdgi of the petitioner on 5-10-1993. The bus was later on sent to Gwalior for making certain quarries to S.D. Motors which was inspected on 11-10-93 and returned on 27-10-93. During this period, it is alleged that respondent No. 4 contemner Ramakant Ashthana in connivance with the Padav Police at Gwalior removed certain important parts of the vehicle for which an FIR was lodged at Police Station, Lahar. The vehicle was not inspected by Service Engineer of Tata Diesel Vehicles, Diesel Section, Jamshedpur and it was verified to be the original vehicle No. BHR 9191.

The respondent No. 4 thereafter lodged a report at Police Station, Lahar on which a Crime No. 252/93 under Sections 406, 420, 467 and 468, IPC was registered and Police again seized the vehicle. It is alleged by the petitioner that respondent No. 4 had manipulated the documents in the office of RTO, Gwalior on the basis of which RTO, Gwalior sent a letter to Police Station, Padav, on its basts. Padav Police registered another case under Sections 420, 467 and 468, IPC. By order dated 24th August, 1994, the Judicial Magistrate First Class, Gwalior had given the vehicle in

Supurdgi of the respondent No. 4. A revision against that order having been dismissed, the petitioner moved an application u/s 482, Cr.PC which was registered as Misc. Cr. Case No. 3005/94 wherein the respondent No. 4 was directed to produce the vehicle before the Judicial Magistrate First Class, Lahar, as stated hereinabove.

The learned counsel for the respondent-contemner has submitted that the bus after supurdginama is lying in a damaged condition with one of the surety of the contemner in the circumstances the Court has full power to move against the surety for realisation of the amount of security or for the production of the bus, as the case may be, taking recourse to the proceedings envisaged u/s 446 of Cr.PC. Reliance is placed on a decision of the Apex Court in case of [R.N. Dey and Others Vs. Bhagyabati Pramanik and Others](#), . I am of the opinion that in this referred judgment the dispute was between decree-holder and judgment-debtor and it was found that when the decree holder is entitled to take steps towards executing the decree he should not be encouraged to invoke contempt jurisdiction of Court only because the decree has not been satisfied. So far as the present case is concerned, the directions were issued for production of the vehicle before the Judicial Magistrate First Class, Lahar. In the circumstances, the Court at Lahar had no jurisdiction to take any action against a surety who is concerned with supurdginama executed by the orders of the Judicial Magistrate First Class, Gwalior. That apart, the bus was given on supurdginama of the respondent-contemner and the Court is not concerned as to how and why the vehicle was allowed to pass to a person who said to have stood as surety for him,

The learned senior counsel for the respondent-contemner has strenuously urged that the respondent-contemner can not be punished under the Contempt of Court as the prayer for proceedings under Contempt is hopelessly barred by limitation. It was argued that the notice to respondent has been issued for non-compliance of the order dated 3-10-97 of this Court which required to produce the vehicle within a month from the date of the order. Admittedly, the notice of contempt has been issued on 13-10-2000 after about 3 years from the passing of the aforesaid order. The learned counsel for the respondent has relied upon a decision of the Apex Court in case of Om Prakash Jaiswal Vs. D.K. Mittal and another, reported in (2000) 3 Supreme Court Cases 171, wherein it has been observed that Section 5 of the Limitation Act is not applicable for proceedings of contempt. Proceedings can be said to have been initiated only when Court forms an opinion by application of mind that a prima facie case for initiation of proceedings is made out and accordingly issues notice to the alleged contemner to show cause why he be not punished for contempt. Mere issuance of notice calling upon the alleged contemner to show cause why the contempt proceedings be not initiated would not amount to initiation of proceedings for contempt for the purposes of Section 20 of the Contempt of Courts Act.

The learned counsel for the petitioner on the other hand, has contended that by non-compliance of the order dated 3-10-1997 of this Court the respondent-contemner has committed a breach which is of continuity in nature and, therefore, Section 20 of the Contempt Act has not applicable to such orders. Reliance is placed on a decision of Hon"ble Supreme Court in case of [Bank of India Vs. Vijay Transport and Others](#), where the High Court by its order dated 28-12-1976 had stayed the execution of the counter-claim subject to the petitioner-Bank depositing Rs. 16 lakhs and was given liberty to withdraw the sum upon furnishing a bank guarantee but the amount of cost was permitted to be withdrawn unconditionally. Thereafter on 16-12-85 under the directions of the Sub-Judge, the respondents were found guilty of unauthorisedly withdrawing the said amount which was a property of custodia legis. The contempt proceedings in such a situation were found properly initiated.

I am of the considered opinion that since this petition was filed u/s 482, Cr.PC for issuance of proper direction for production of the vehicle and realisation of the amount of mesne profit there was no occasion to issue any notice of contempt to the respondent No. 4, however, it is only during the hearing of the petition the Court considered it necessary to give further chance to the respondent on his request to produce the vehicle before the Trial Court and on his failure to do so this Court was left with no alternative but to initiate the proceedings for contempt against him. In the circumstances, the respondent-contemner is liable to be punished for committing further contempt of this Court for non-compliance of the orders issued at the request of the contemner himself. The contempt proceedings therefore, are not hit by any period of limitation envisaged u/s 20 of the Contempt of Courts Act.

It has to be noticed that the contemner-respondent never cared to inform the Court at Lahar about his inability to produce the vehicle before it for any reasons behind his control. He has also failed to assign any reason as to why the vehicle which was alleged to be carried on a Supurdginama was allowed to be kept by a surety. Even after repeated directions and opportunities to produce the vehicle before the Court concerned, it seems that the respondent-contemner has failed to comply with the directions with some interior motive to manipulate or to interfere with the marks of identification of the vehicle in order to frustrate the different criminal proceedings alleged to have been drawn in respect of the aforesaid vehicle. In the circumstances it amounts to willful disobedience of the orders of the Court, and liable to be punished for gross contempt.

For the reasons stated hereinabove, the respondent No. 4 contem-ner-Ramakant Ashthana is hereby found guilty u/s 12 of the Contempt of Courts Act and sentenced to two months simple imprisonment and a fine of Rs. 2,000/- (Rs. Two thousand only) in default of which he shall further suffer one month's simple imprisonment. The amount of fine should be deposited before the Judicial Magistrate First Class, Lahar where the criminal case is pending. Out of this amount of fine, if realised, the

Court if so requires may meet out certain expenses for removing the vehicle from the custody of the respondent or his surety, as the case may be. The supurdginama of the respondent No. 4 stands cancelled and Court at Lahar is free to take necessary steps in accordance with law for seizure and production of the vehicle through the police agency.