

(2002) 1 ALT 189

Andhra Pradesh High Court

Case No: Contempt Appeal No. 11 of 2001

N. Ramanuja and
Others

APPELLANT

Vs

P. Satyanarayana and
Others

RESPONDENT

Date of Decision: Oct. 17, 2001

Acts Referred:

- Contempt of Courts Act, 1971 - Section 19, 19(1), 19(2)
- Contempt of Courts Rules, 1980 - Rule 18

Citation: (2002) 1 ALT 189

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: S. Venkata Reddy and P. Nageswara Sree, for the Appellant; M.L. Ali, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Sinha, C.J.

This appeal is directed against a notice dated 12-10-2001 issued by a learned Single Judge of this Court directing the appellants herein to appear before this Court so as to answer the charge of Contempt of Court viz., for violating the orders of the High Court dated 19-12-2000 in Writ Petition No. 28597 of 1995 and show cause as to why they shall not be committed to prison for violation of the said orders.

2. To a query as to whether an appeal is maintainable against issuance of a notice under the Contempt of Courts Act, 1971 (for short "the Act") read with the Contempt of Court Rules, 1980 (for short "the Rules") framed by this Court, Mr.S. Venkata Reddy, learned Senior Counsel appearing on behalf of the appellants would submit that an appeal is maintainable both u/s 19 of the Act as also Clause 15 of the Letters Patent of this Court. According to the learned Counsel, it was incumbent upon the learned Single Judge to

issue a notice at the first instance as to why a proceeding under the Act shall not be initiated. According to the learned Counsel, a notice directing the appellants to show cause as to why they shall not be committed to prison is a judgment within the meaning of Clause 15 of the Letters Patent. Section 19 of the Act reads thus:

(1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt --

(a) Where the order of decision is that of a Single Judge, to a Bench of not less than two Judges of the Court;

(b) Where the order or decision is that of Bench, to the Supreme Court;

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the Appellate Court may order that --

(a) the execution of the punishment or order appealed against be suspended.

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by Sub-section (2).

(4) An appeal under Sub-section (1) shall be filed,

(a) in the case of an appeal to a Bench of the High Court within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of order appealed against."

3. A bare perusal of the aforementioned provision would clearly go to show that even if wider meaning is given thereto, an appeal shall be maintainable only when a finding is arrived at to the effect that the appellants are guilty of commission of Contempt of Court.

4. The question as to whether an appeal in terms of Section 19 of the Act is maintainable or not is squarely covered by a decision of the Apex Court in [J. Parihar Vs. Ganpat Duggar and others](#), .

5. Interpreting Sub-section 1 (a) of Section 19 of the Act which envisages that "an appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt where the order or decision is that of a Single Judge to

a Bench of not less than two Judges of the Court", the Apex Court held that an appeal would lie u/s 19 only when an order in exercise of the jurisdiction of the High Court punishing the contemner has been passed. Admittedly, in the instant case, only a notice has been ordered by the learned Single Judge. In [State of Maharashtra Vs. Mahboob S. Allibhoy and another](#), it was held that unless by the order, High Court imposes punishment in exercise of its jurisdiction to punish for contempt, no appeal would lie. Therefore, only in cases where an order has been passed by the High Court in exercise of its jurisdiction to punish any person for contempt of Court, then only an appeal shall be maintainable under Sub-section (1) of Section 19 of the Act. It was held that the words "any order" has to be read with the expression "decision" used in the said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. "Any order", according to the Supreme Court, is not independent of the expression "decision". In either case, it must be in the nature of punishment for contempt. It was further held that no appeal against an interlocutory order passed in a proceeding for contempt would lie under Sub-section (1) of Section 19. Construing so, it was held that no appeal is also maintainable against an order dropping proceeding for contempt or refusing to imitate (sic. initiate) a proceeding for contempt.

6. The Court in terms of the Rules framed by this Court under the Act has two options. It may in its discretion issue a notice to show cause as to why a proceeding shall not be initiated. It has also the discretion to issue rule nisi. Rule 18 of the Rules reads thus:

Notice of every contempt case, if ordered by Court for service on the contemner, shall be in Form I and shall be accompanied by one set of all papers filed in the case and the said notice with all enclosures shall be served personally on the alleged contemner, unless the Court otherwise directs for reasons to be recorded, requiring him to appear in person, unless otherwise ordered, on a day fixed, which shall be not less than four weeks from the date of the order or as fixed by the Court, for hearing of the proceeding and to show cause why he may not be suitably punished under the Contempt Courts Act, 1971 and he shall continue to remain present during the hearing till the proceeding is finally disposed by order of the Court, unless otherwise directed.

Provided that the Court, on an application made by the contemner before the date fixed for his appearance in the notice, to dispense with his personal appearance in Court, may, for sufficient cause, dispense with his personal appearance and permit him to appear by his pleader.

7. When rule nisi is issued, a notice in Form I is served upon the alleged contemnors. The notice impugned in this appeal is in terms of Form I of the aforementioned Rules.

8. We are unable to accede to the contention of the learned Counsel appearing for the appellants-contemnors that the notice issued by the learned Single Judge to show cause as to why they should not be committed to prison is a judgment within the meaning of Clause 15 of the Letters Patent. In view of the decisions of the Apex Court referred to

above, it is not possible to be construed so. By reason of issuance of such notice, the learned Single Judge cannot be said to have arrived at a finding to the effect that the appellants herein are guilty of contempt of Court and as such are liable to be punished. No order imposing the punishment u/s 19 of the Act has been passed by the learned Judge. They have been merely asked to show cause. No Us has been adjudicated upon. The remedy of the appellant would, therefore, only be to file show cause before the Court. In [R.N. Dey and Others Vs. Bhagyabati Pramanik and Others](#), unfortunately, the earlier decisions of the Supreme Court had not been noticed. However, in that case, an application was filed for dropping the contempt proceedings, which was heard along with the main matter. Thus, in that case also, the alleged contemnor appeared before the Court and raised a plea that no contempt has been committed. The said decision was rendered in peculiar fact situation obtaining therein.

9. The Court in that case held that having regard to the fact that the decree was passed, execution petition ought to have been filed. A finding of fact was arrived at that there has been no wilful disobedience of the order and as such initiation of contempt proceedings was wholly unjustified.

10. The observations that an appeal would be maintainable must be read in the aforementioned context. Issuance of a notice it is trite, is not a judgment. Clause 15 of the Letters Patent can be invoked only when a judgment is rendered. As indicated hereinbefore, by reason of the impugned notice, no lis has been adjudicated upon nor any finality has been attained in the matter. Clause 15 of the Letters Patent, therefore, cannot be said to have any application at all.

11. In [T.V. Chowdary Vs. Riata Industrial Corporation](#), a final order was passed in contempt proceeding. In that case, the Court held that as there had been no positive direction to dispose of the application in a particular manner and as the matter has been disposed of, no contempt of Court has been committed.

We therefore are of the opinion that no appeal is maintainable against the impugned notice. It is dismissed accordingly. No order as to costs.