

(1981) 07 CAL CK 0005

Calcutta High Court

Case No: None

Ranjit Chatterjee and Another

APPELLANT

Vs

Ram Badan Choubey

RESPONDENT

Date of Decision: July 23, 1981

Acts Referred:

- Coal Mines (Nationalisation) Act, 1973 - Section 30(2)
- Contempt of Courts Act, 1971 - Section 19, 19(1), 19(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 476
- Penal Code, 1860 (IPC) - Section 114, 205, 467, 468

Citation: 85 CWN 1003

Hon'ble Judges: N.G. Chowdhuri, J; N.C. Mukherjee, J

Bench: Division Bench

Advocate: Mukti Maitra and Shyamali Banerjee, for the Appellant; Amal Chatterjee and Parthaprotim Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

N.C. Mukherjee, J.

This is an appeal against an order dated 13. 5. 81 passed by B.C. Basak, J, issuing a Rule for contempt in C. R. No. 3072 (W) of 1981 and directing the appellants (alleged contemnors) to restore whatever coal and whatever other articles were seized and removed on 23.4.81, 28.4.81 and 29.4.81 within 7 days from the date of service of the copy of the said order. The appeal has been filed on the ground that as the coals, machineries and other implements for extraction of coals have been seized by the officers of Barbani Police Station in connection with three criminal cases, instituted on the complaint of the Chief Mining Officer, Asansol u/s 30(2) of the Coal Mines (Nationalisation) Act, 1973, the order of the Trial Judge issuing a Rule for contempt and the order directing return of the said coal and other articles to the accused in the three police cases during investigation are wholly illegal and against

the provisions of the said Act and in clear violation of the judgments of the Hon^{ble} Supreme Court. The next ground taken is that the action of Rambadan Choubey (the petitioner in Contempt Cases), an accused in three police cases, is wholly malafide and the said application for contempt has been moved before the Trial Judge on 13.5.81 immediately after his application for anticipatory bail was rejected on 12.5.81 by the Criminal Division Bench of this Court and after obtaining three Rules and three interim orders from the Criminal Bench sitting singly on 12.5.81 and stay of all further proceedings in Barbani Police Station Case No. 8 dated 23.4.81, Case No. 10 dated 26.4.81 and Case No. 12 dated 29.4.81 till the disposal of the three Rules being C. R. Case Nos. 900 916 and 917 of 1981 and also in two Criminal Cases started in April 1980 by Barbani P.S. till the disposal of cr. Revision 901 and 902 of 1981.

2. On an application for stay of operation of the order of B. C. Basak, J, we issued a Rule on 2.6.81 and passed an ad-interim stay of operation of the order and all further proceedings. The Rule was disposed of by us on 12th June, 1981. On behalf of the respondent-accused a preliminary objection regarding the maintainability of the appeal was raised and it was contended that it is only against an order or decision of High Court in the exercise of its jurisdiction to punish for contempt an appeal lies according to the provisions of Section 19 of Contempt of Court's Act, 1971. The impugned order is not an order which was passed in exercise of jurisdiction to punish for contempt. We left open the question of maintainability and passed an order that the hearing of the appeal should be expedited. We further ordered that the interim order of stay passed by us on June 2, 1981, should continue till the disposal of the appeal.

3. Mrs. Mukti Moitra, learned Advocate appearing on behalf of the appellants, submits with much emphasis that the appeal is quite maintainable. In the first instance she wanted to say that even against an order issuing a Rule for contempt an appeal lies. But in view of decision of this Court and Supreme Court she does not press that point. Nevertheless, she urges that the impugned order is not simply an order for issuance of a Rule. It is something more. The appellants have been directed to deliver to the respondent the coal and other materials seized by them on three different dates within a particular period. This order, according to, Mrs. Moitra, certainly very much affects the rights of the parties and such an order was passed in the exercise of jurisdiction to punish for contempt and that being so, the present appeal is maintainable according to the provisions of Section 19 of the Contempt of Court's Act, 1971.

4. Mr. Chatterji, learned Advocate appearing on behalf of the respondents, contends that the impugned order is not appealable as the same was not passed in exercise of the jurisdiction to punish for contempt. That order was passed simultaneously with the issuance of the Rule. Such an order had nothing to do with the contempt matter. That being so, this is purely an inter-locutory order which did not decide the

rights and contentions of the parties. In such circumstances, it must be held that the order is not appellable. In support of his contention, Mr. Chatterji refers to a decision reported in 1970 CHN 1 (Purna Ch. Sarkar & Ors. vs. Nilratan Biswas & Ors.). In this case a Rule nisi was issued on the petitioners to show cause why they should not be punished for contempt for violation of an order passed by the learned Judge in a particular case. The petitioners filed an appeal against the said order and in that appeal filed an application purported to be under Sec. 19(2) of the Act praying for a Rule on the opposite parties to show cause why further proceedings in the Contempt Rule should not be stayed till the disposal of the appeal. It was held by P. C. Borooah and H. N. Sen, JJ, that "in issuing the Rule the High Court merely decided to scrutinise the allegations made in the contempt application in order to see whether the High Court will exercise its jurisdiction to punish for contempt Till the contemnors appear in answer to the Rule nisi and show cause and the High Court passes an order deciding to exercise its jurisdiction to punish for contempt, no question of any appeal under Sec. 19(1) of the Act arises."

5. Mrs. Moitra distinguishes the case, referred to above, stating that in the above case only a Rule nisi was issued. There was no other order at the time of the issuance of the Rule. But, in the present case, as has been stated earlier, the appellants have been directed to restore seized coal and other articles within a particular date. This order according to Mrs. Moitra, goes at the root of the case and this order very much affects the rights of the parties and that being so, it cannot be said that such an order is an interlocutory order or procedural order. Mrs. Moitra is conscious of the decision of the Supreme Court reported in [Barada Kanta Mishra Vs. Orissa High Court](#), . In this case, it was held "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 Sec. 19 of the Contempt of Courts Act, 1971. The order in question is not such an order or decision. It is an interlocutory order pertaining purely to the procedure of the Court. All that the order in question says is that all the points arising in the case including the one of maintainability of the proceedings, would be heard together and it rejected the paper for hearing the case piecemeal, that is, first with regard to the question of maintainability". In such Circumstances, their Lordships held that the appeal was not maintainable.

6. Mrs. Moitra next refers to a decision reported in 1978 Cr.L.J. 772 (Purushotamdas Goel v. Hon"ble Mr. Justice B. S. Dhillon & ors.) In this case, it has been held by the Supreme Court that when some point is decided or a finding is given than the order is appealable. Otherwise, simply initiating proceeding without anything further is not appealable. Mrs. Moitra next submits that the present contempt is civil contempt and the impugned order cannot be considered as an intarlocutory order and regarding the question who is entitled to get possession of the seized coal the order is final, and as such it is appealable. In support of her contention, Mrs. Moitra refers to a decision reported in [Dulal Chandra Bhar and Others Vs. Sukumar](#)

[Banerjee and Others](#), . In this case it has been held that "where, however, the contempt concerned is civil contempt and the order contains a finding as to the words or deeds, which in the view of the Judge, constituted contempt, an appeal would lie." We do not see how this decision helps Mrs. Moitra as in this case it was found that the words or deeds constituted contempt and as such it was held that an appeal would lie from such an order. But, in the present case with regard to the question whether the appellants have committed contempt or not nothing has been decided as yet.

7. Mrs. Moitra next relies on a decision reported in [V.C. Shukla Vs. State through C.B.I.](#), . In this case, their Lordships were required to explain the meaning of "interlocutory order" while deciding the question whether an application u/s 397 (2) lies against an interlocutory order. It has been held "the expression "interlocutory" order is to be understood and taken to mean converse of the term "final order". An interlocutory order merely decides some point or matter essential to the progress of the suit or collateral to the issues sought....." Mrs Moitra next relies on a decision reported in [Mohan Lal Magan Lal Thacker Vs. State of Gujarat](#), . In this case, after an enquiry under Sec. 476, Cr.P.C. the Magistrate ordered filing of a complaint against the appellant in respect of offences u/s 205, 467 and 468 read with Sec. 114 of the Penal Code. In appeal filed by the appellant; the Additional Sessions Judge held that the said complaint was justified but only in respect of the offence under Sec. 205 read with Sec. 114. In revision by the appellant, the High Court dismissed the application saying that the High Court, as a matter of law would never exercise its revisional jurisdiction in such cases. In the Supreme Court, a preliminary contention was raised on behalf of the respondent that the High Court's order dismissing the revision was not a final order. It was held per majority that "the order passed by the High Court in revision was a "final order" within the meaning of Art. 134(1)(c). The controversy between the parties as to whether the complaint in respect of offences under Ss. 467 and 468 read with Sec. 114 Penal Code, was justified or not was disposed of by the order of dismissal and the proceeding regarding that question was finally decided. The finality of that order was not to be judged by co-relating that order with the controversy in the complaint, viz., whether the appellant has committed the offence charged against him therein".

8. Mr. Chatterji, on the other hand, refers to a decision reported in [Ramchandra Spg. and Wvg. Mills Vs. Bijli Cotton Mills and Others](#), . Their Lordships were required to decide as to what a final order is. In doing so, their Lordships relied on the decision reported in [Jethanand and Sons Vs. The State of Uttar Pradesh](#), . It was held, the order is final if it amounts to a final decision relating to the rights of the parties in dispute in the civil proceeding. If after the order the civil proceeding still remains to be tried and the rights in the disputes between the parties had to be determined, the order is not a final order within the meaning of Article 133". There Lordships relied on another decision reported in 60 IA 76 (Abdul Rahaman vs. D. K. Kashem & Sons). It was held in that case the finality must be finality in relation to the suit. If after the

order the suit is still alive in which rights of parties have still to be determined no appeal lies against it. The fact that the order decides an important and even a vital issue is by itself not material. If the decision on an issue puts an end to the suit the order will undoubtedly be a final one."

9. In our opinion, in the present case we are not very much concerned whether the order, appealed against, is interlocutory order or a final order. There is no prohibition in Sec. 19 of the Contempt of Courts Act from preferring an appeal against an interlocutory order. Sec. 19(1) very clearly states that an appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt. Thus, any order or decision is appealable if the same has been made by the High Court in the exercise of its jurisdiction to punish for contempt.

10. It has been contended by Mr. Chatterji that directing the contemnors to do something at the time of the issuance of the Rule cannot be said to be an order passed in the exercise of jurisdiction to punish for contempt. In other words, Mr. Chatterji wants to say that an appeal lies only when an order or decision is made by the High Court by which some punishment is inflicted on the contemnors. Such order or decision can only be considered as having been passed in the exercise of jurisdiction to punish for contempt. The decision of this High Court as well as the decision of the Supreme Court referred to above have clearly laid down that no appeal lies against an order by which simply a Rule is issued. It has further been laid down that no appeal lies against an order which is passed regarding some procedural matter.

11. When it has been provided in Sec. 19 that an appeal lies against any order or decision we are only required to see whether the impugned order has been passed in the exercise of jurisdiction to punish them for contempt. Before B. C. Basak, J, the respondent filed an application for contempt praying that a Rule may be issued on the contemner-opposite parties (appellants before us) to show cause as to why they shall not be sent to prison and otherwise punished or dealt with for the contumacious act or conduct.....It was also prayed that pending the hearing of the Rule an ad interim order be passed directing the respondents to return or restore forthwith 4500 tonnes of coal and other materials wrongfully seized and removed from the said colliery by the respondents in violation of the interim order of the Court. The learned Judge on being satisfied that the petitioners could make out a prima facie case issued a Rule and passed the impugned order. It must be said that the said order passed by the learned Judge while exercising his jurisdiction to punish for contempt. The learned Judge was not exercising any other jurisdiction. The impugned order, in our opinion, certainly affects the rights and contentions of the parties and this order has certainly great relevance to the question whether, in fact, the appellants have violated the order passed by the Court. On a consideration of the facts and circumstances of the case and the legal position, we are of the

opinion that the appeal is maintainable.

12. Mrs. Moitra contends with much emphasis with reference to the orders passed by this Court on several writ applications and also with reference to some police cases that the appellants have not committed any contempt and that being so, impugned order ought not to have been passed by the learned Judge. Mr. Chatterji, on the other hand, submits that there has been clear violation of the order passed by this Court and the appellants are, therefore, guilty of contempt and that being so, the order has been rightly passed by the learned Judge. At this stage, we do not want to enter into the merits of the contempt application. The contempt matter is pending before the learned Judge. The contemnors have not yet appeared and shown cause. It is for the learned Judge, on a consideration of the entire materials, to come to a finding whether the contemnors have violated the order of the Court. At the time of the disposal of the contempt Rule His Lordship may pass appropriate orders, if necessary. But we feel that till the disposal of the contempt Rule the operation of the impugned order should be stayed. In the result, the appeal is allowed on contest. The order passed by the learned Judge on 13.5.31 directing the appellants to restore whatever coal and whatever other articles were seized and removed on 23rd, 28th and 29th April, 1981 within 7 days from the date of service of a copy of the order on the respondents concerned be stayed till the disposal of the contempt Rule.

There will be no order for costs in this appeal.

N. G. Chowdhury, J.

I agree.