
(1999) 08 J&K CK 0009

Jammu & Kashmir High Court

Case No: Reference No. 7/1998

Robkar

APPELLANT

Vs

Abdul Razaq Bhat

RESPONDENT

Date of Decision: Aug. 6, 1999

Acts Referred:

- Constitution of Jammu and Kashmir, 1956 - Section 96
- Jammu and Kashmir Contempt of Courts Act, 1997 - Section 12, 2(b)

Citation: (2000) 2 SriLJ 566 : (2000) SriLJ 566

Hon'ble Judges: G.D.Sharma, J

Bench: Single Bench

Advocate: N.A.Ronga, M.Sultan, B.A.Bashir, Advocates appearing for the Parties

Judgement

1. This Civil reference has been made by the learned Additional District Judge. Srinagar with the following observations:".....that in the facts and

circumstances of the case Abdul Razaq Bhat has prima facie committed ""civil contempt"" within the meaning of section 2 (b) of the Jammu and

Kashmir Contempt of Courts Act, 1997 by having made wilful breach of the undertaking given in this court and apart from that has also made

wilful disobedience of several orders given in the judicial proceedings passed by this court and the Hon'ble High Court, as referred to above.

2. In the end, he has recommended suitable punishment for the above stated contemner.

3. The relevant facts of the case briefly stated are as under

On October 03. 1996. Civil 1st Appeal No: 95/1986 was decided by this court and the contemner was directed to deposit an amount of Rs.

1.76,432.99 alongwith interest at the rate of 4% per annum within a period of six weeks, failing which he was required to pay the interest at the

bank rate. This order was challenged in an appeal¹ (L.P.A. No: 02/1996). which was dismissed on 05031998. The contemner did not comply

with the order and the learned Addl. District Judge. Srinagar initiated the execution proceedings. Earlier to it. the Addl. District Judge. Srinagar

vide his order dated 07121996 had attached the land of the contemner measuring 1 kanal and 5 marlas. which order had been challenged in

Revision petition No: 86/1996. which was dismissed on 10071997. The learned Single Judge of this court, while disposing of the said Revision

petition, had said:

The net result of all the orders as 1 feel is that money must be recovered and the reference must be decided after recovering the money the interse

claims and apportionment of amount of compensation can be decided.

4. The direction was not complied, but to gain time, an interim order of the trial court was challenged by filing Revision petition No: 70 of 1997,

which was decided on 26091997 with the following observations: ""Learned Addl. District Judge is directed that he shall go ahead with the recovery

proceedings and sale proceeds/auction of the properties, both moveable and immoveable, whatever has been attached to recover the amount

alongwith interest at the Bank rate from 11081986 and in case any amount is left out. the other properties be also attached and put to auction and

sale till the amount alongwith prevalent bank rate is realised as per orders passed by the learned Single Judge dated 03101996.

5. The learned Addl. District Judge, Srinagar had attached the landed property of the contemner on the identification of the petitioner, but could

not put that property to auction due to the fact that it could not be identified by the revenue authorities. The petitioner filed contempt petition for

punishing the contemner and upon that petition, the present reference has been made.

6. In his objections to the reference, the contemner has pleaded that he has not committed civil contempt, as defined in Section 2 (b) of the J&K

Contempt of Courts Act (hereinafter called the Act). Section 13 of the Act provides that no court shall impose a sentence under the Act for a

contempt of court unless it is specified that the contempt is of such a nature that it shall substantially interfere or tends to interfere with due course

of justice. Since there is no wilful or contemptuous disobedience or substantial interference with due course of justice, so no offence is made out

against him. It is also pleaded that the bond executed on 08111986 by the contemner before the trial court had lost its validity because the

appellate court, while deciding the appeal on 03101996 (CIA No: 95/1986) has prescribed a specific mode for making the payment of the money.

In other words, the order in execution of which the abovesaid bond was executed has merged in the order of the appellate court, which became

final when it was confirmed in L.P.A. vide order dated 05031998. The trial court has attached the salary of the contemner as well as his

immoveable property comprising of Khasra Nos: 677min. 2252/1638/630 situated at Tengpora. From the salary, an amount of Rs. 40.000/ stands

recovered from him. Since the recovery is being made in this manner, so the contemner cannot be held guilty under any provision of the Act. At the

most, the petitioners can invoke the relevant provisions of O. 21 of C.P.C before the trial court.

Heard the arguments.

7. The learned counsel for the petitioner has contended that under section 94 of the Constitution of Jammu and Kashmir, the High Court is the

court of record and it has all the powers of such court, including the power to punish for contempt of itself or of the courts subordinate to it. In the

instant case, the contemner has committed Civil contempt, as defined under section 2 (b) of the Act as he has wilfully disobeyed all the

directions/orders of this court. He also did not fulfil the undertaking given in the subordinate court. The learned Addl. District Judge has found

himself helpless in getting the directions of the High Court implemented and at this stage, the arguments with regard to the quantum of punishment

are only to be heard. The contemner has no respect for law and is retaining the money which he had obtained on the basis of a fraudulent consent

decree obtained on 30/11/1979, which was declared as a nullity by the SubJudge (C.J.M) Sirnagar and that judgment and decree has assumed the

finality when it was confirmed in Second Civil Appeal No: 25 of 1989 on 17/07/1995. Wilful disobedience of the directions/orders of this court

started when six week's period, given to the contemner in the order dated 03/10/1996 (passed in CIA No: 95/86) expired and thereafter he went

on aggravating the contempt by flouting the orders of the trial court by not showing any compliance, but challenging consistently in higher forums.

The learned Addl. District Judge has shown helplessness to execute those orders as is evident from the language of the order, "the alleged

contemner created insurmountable hurdles as a result of which auction of the attached land was put off at every occasion." He had even not the

land of a hopeless widow (Mst. Mugli) attached which fell under Khasra No: 682 and the trial court, while accepting her application on 25/04/1998

had remarked that the act of the contemner was wilful in getting this land attached when he knew that land under Khasra No: 677min was already

under attachment. In order 'to hold the dignity of the court and the Majesty of law, the contemner requires to be deterrenity punished.

8. In rebuttal, it has been contended by the counsel of the contemner that this court, while deciding Revision petition No. 86/1996, had given a

direction to the trial court for the recovery of the money and had not held the proceedings as illegal. Since the recovery is being made, so no

contempt has been committed. There is the report of the Nazir wherein he has stated that auction of the attached land could not be done because

that was not identified and on the spot law and order problem arose on the basis of which case under F.I.R. No: 159/1998 was registered in the

concerned police station. The contemner is a IVth class employee and is suffering great hardship when his half of the pay has been attached. The

present proceedings are not covered by the provisions of the Act, which was enacted on 29.09.1997 and came into force on 01.X.1907. All the

directions of the High Court were anterior in time when the Act came into force on 01.X. 1997 and their violations cannot be stretched

prospectively. The period prescribed under section 20 of the Act for taking actions is one year, but the application for initiating proceedings for

contempt was made on 17.04.1998 when period of limitation had started after the expiry of six weeks from 03.X. 1996 (order passed in CIA No:

95/1986). Fourteen shareholders of the land had given up their shares of compensation in favour of the contemner and this fact has been admitted

in the judgment of the learned Second Addl. District Judge, Srinagar passed in appeal against the judgment and decree passed by the SubJudge,

Srinagar (The appeal No: 61/1988 decided on 28.02.1989).

Now, the controversy remains only between plaintiffs 2,3,5, and 7 and the contemner. The contemner has not committed any wilful breach or

disobedience of any order/direction of the High court and as such the reference is without any substance. The trial court itself could inflict

punishment while holding the proceedings under O.21 Rule 30 CPC. The auction proceedings were frustrated by the petitioner himself, as he could

not get the land identified. The land is under attachment and the contemner has not derived any benefit out of it. He was liable to pay only Rs.

30,000/, but till now he has paid Rs. 40,000/ and thus there is no liability against him.

9. After hearing the respective contentions of the learned counsel of the parties, the point which emerges for determination is, whether the

contemner wilfully did not fulfil the undertaking given by him in the trial court on 08.11.1986 as well as flouted the orders and directions of the High

court by not making the payment of the requisite amount and thus made himself liable to be punished under section 96 of the Constitution of J&K

read with Section 2(b) and Section 12 of the Act. All the facts and the circumstances have been set out by the trial court in this order of reference

which show how skilfully the contemner has managed to evade the compliance of the relevant orders. The trial court on 04.07.1998, examined him

to elicit the explanation about the alleged misconduct, but he tried to mislead by stating that he was not bound to deposit the amount in terms of the

undertaking given by him in the court as his appeal had partially been accepted by the learned Second Addl. District Judge, Srinagar. When he

was confronted with the suggestion that the appeal stands dismissed for nonprosecution, he had no escape route and admitted about the dismissal

of the appeal. He feigned ignorance of the direction given to him on 03.X.1996 by this court for depositing the amount within six weeks alongwith

the interest at the rate of 4% per annum and in the event of nonpayment of the amount within that period, he was liable to pay the enhanced interest

at the prevailing bank rate. He even showed ignorance about the order passed by this court requiring him to make the payment in terms of orders

dated July 10, 1997 and February 26, 1997. Thereafter, the trial court made the reference in question which was drawn after hearing the

contemner. Recommendation has been made for his conviction under the Act.

In rebuttal, it has been contended by the opposite counsel that order dated 03.X.1996 of this court is being executed by having resort to O.21,

R.30 CPC and, therefore, the provisions of the Act are not attracted. In support of this contention, the learned counsel has cited the case of

Vrinda Vs Arun, AIR 1987 Delhi 120. After going through this case, it is found that the facts of that case are different from the facts of the present

case. Here the contemner has frustrated the execution proceedings even after giving an undertaking dated 08.11.1986. On one or the other pretext

the contemner has challenged the order of the trial court when he had constantly being told by this court to refund the money retained by him on the

basis of a fraudulent decree, which stood annulled in finality. He has not voluntarily returned any amount, but even not hesitated in getting the

execution proceeding frustrated when he got the land of a third party (Mst. Mugli) attached in those proceedings. The trial court has looked with

dismay the conduct of the contemner who has not hesitated in causing loss to a widow. The interim orders of the trial court reveal that he had

succeeded in Winning the sympathies of some revenue officials and the Nazir of the trial court against whom some action was contemplated. It is

thus established that the contemner is obstructing the due course of justice by his mischievous and fraudulent conduct. The apex court in the case of

Supreme Court Bar Association Vs Union of India, AIR 1998 SC 1895, has laid down that:

The contempt of Court is a special jurisdiction to be exercised sparingly and with caution. Whenever an act adversely affects the administration of

justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised

when the act complained of adversely affects the Modesty of law or dignity of the Courts of law.... This jurisdiction is not exercised to protect the

dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of the community it is

imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a

matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of

justice, the Majesty of law and the dignity of the Courts. No such act can be permitted which may have the tendency to shake the public

confidence in the fairness and impartiality of the administration of justice.

Viewing the facts of the present case, it is found that the conduct of the contemner is adversely affecting the Majesty of law and the dignity of the

courts, which are to be upheld so that the confidence of the public is not shaken. The contemner cannot be allowed to reap the benefits of this

fraudulent behaviour when he devoured a huge sum of money received on the basis of a fraudulent decree. The contempt does not stand mitigated,

as is being argued by the learned counsel of the contemner that the undertaking given by the contemner in the court has now merged in the order of

this court passed in CIA No: 95/1996 on 03.X. 1996. In case it is deemed that there is merger even then there is no escape from carrying out the

directions of the order dated 03.X. 1996 passed in appeal (CIA No: 95/1996).

The apex court in the case of Dr. (Mrs.) Roshan Sam Joyce Vs S.R. Cotton Mills Ltd. and others, AIR 1990 SC 1881, has held that:

The party giving undertaking to court based on implications or assumptions which are false to its knowledge is guilty of misconduct amounting to contempt.

The learned counsel for the contemner has contended that no action can be taken as the contempt is timebarred under section 20 of the Act. In

support of this contention, he has cited the case of N. Venkataramanappa Vs O.K. Naikar, AIR 1978 Karnataka 57, whereing it has been held

that:

Section 20 operate as an absolute bar to initiation of contempt proceeding whether suo motu or at the instance of complainant after expiry of one

year's limitation. Starting point of limitation is the date on which contempt is alleged to have been committed' and not date of knowledge of

complainant.

10. He has also cited the case of Dineshbhai Vs Kripalu Cooperative Housing Society, AIR 1980 Gujrat 194, wherein it is also held that:

If an application for taking action under the Contempt of Courts Act. 1971 is filed within a period of one year from the date of alleged commission

of contempt, but the court has passed no order thereon before the expiry of one year from the said date, such application automatically fails and

the jurisdiction of the court is barred because the court did not apply its mind to the complaint or information within a period of one year.....

11. The question to be determined in this case is, as to what is the date when the contempt was committed. After the expiry of six weeks' period,

as prescribed in the order dated 03.X.1996, the trial court initiated execution proceedings where he is found creating obstacles at every possible

occasion. His conduct already stands discussed. Undoubtedly, his pay was attached but the trial court has rightly held that the amount which is

being realised is only a drop in the ocean and the liability of the contemner will not be liquidated in the normal course of time. In these

circumstances, the period of limitation in this case will start from 10.10.1998 when this reference order was passed and thus the contempt is not

timebarred under Section 20 of the Act.

11. In order to uphold the dignity of the High Court as well as of the subordinate trial court and maintain the Majesty of law, it becomes necessary

to invoke the Constitutional power vested in the court under Section 94 of the J&K Constitution. This is the constitutional authority available to the

court to punish a contemner which is not subservient or fettered by the powers vested by the Act. This power cannot be circumscribed by the

limitation clause of Section 20 of the Act.

12. Taking stock of all the facts and the circumstances of the case, the contemner is held guilty to have infringed Sec. 94 of the J&K Constitution

and Sec. 2(b) and 12 of the Act. Hence, the contemner is convicted under the abovesaid provisions and sentenced to undergo Simple

Imprisonment for six months and to pay a fine of Rs. Two thousand, which shall be paid to the Lawyer's Welfare Fund. In default of payment of

fine, he shall further undergone Simple Imprisonment for one month. This order shall come into force after one week. In case the contemner after

one week does not surrender before the Registry, the Registrar Judicial is authorised to issue nonbailable warrant against him through S.S.P,

Srinagar in execution of this order.

The trial court shall continue the execution proceedings and realise the remaining amount in accordance with law. He shall also take action against

the defaulting revenue officials by getting them identified who have connived with the contemner as well as action be also taken against the

concerned Nazir of the court after hearing him. The office is directed to send back the records to the trial court immediately.