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PRITHAWI NATH RAM

v.

STATE OF JHARKHAND AND ORS.

AUGUST 24, 2004

B

[ARIJIT PASAYAT AND D.M. DHARMADHIKARI, JJ.]

Contempt of Courts Act, 1971 :

C

Ss. 11 and 15—Contempt Jurisdiction—Scope of—Non-compliance of order of High Court—Aggrieved party filing application for initiating contempt proceedings—Court examining correctness of the order and declining to take action for contempt—Held, the court exercising contempt jurisdiction cannot traverse beyond the order the non-compliance of which is alleged—It cannot test correctness or otherwise of the order—Constitution of India, 1950—Article 215—Practice and Procedure.

D

In an application for initiating contempt proceedings for non-compliance of an order of the High Court, a single Judge proceeded to examine the correctness of the said order and held that the directions given therein could not have been given and, therefore, there was no scope for taking any action for contempt. Aggrieved, the applicant filed the present appeal.

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Allowing the appeal and remitting the matter back to the High Court, the Court.

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HELD : 1.1. While dealing with an application for contempt, the Court is primarily concerned with the question whether the earlier decision which has received its finality has been complied with or not and whether conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order, is contumacious. It would not be permissible for a Court to examine the correctness of the earlier decision which has not been assailed and to take the view different than what was taken in the earlier decision. The Court cannot traverse beyond the order, non-compliance of which is alleged. It cannot test correctness or otherwise of the order or give

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additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. [742-G-H; 743-A-C; 744-C-D] A

K.G. Derasari and Anr. v. Union of India and Ors., [2001] 10 SCC 496 and *Mohd. Iqbal Khanday v. Abdul Majid Rather*, AIR (1994) SC 2252, relied on. B

T.R. Dhananjaya v. J. Vasudevan, [1995] 5 SCC 619, referred to.

Niaz Mohammad and Ors. v. State of Haryana and Ors., [1994] 6 SCC 352, held inapplicable. C

1.2. If any party concerned is aggrieved by the order, which in its opinion is wrong or against rules, or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. At the same time, in a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, that cannot be taken as a ground for dis-obedience of any interim order passed by the Court. [744-A-B, E-F] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5024 of 2000. E

From the Judgment and Order dated 7.3.2000 of the Patna High Court in M.J.C. No. 262 of 1999.

WITH F

I.A. Nos. 10-11 of 2004

Raju Ramachandran, Zaiki Ahmed Khan and Irshad Ahmad for the Appellant.

B.B. Singh for the Respondent. G

Anil Kumar Jha for State of Jharkhand.

Lakshmi Raman Singh for Respondent.

Anurag Sharma and Navin Prakash for B.P.S.C. H

A The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Appellant filed an application under Sections 11 and 15 of the Contempt of Courts Act, 1971 (in short the 'Act') read with Article 215 of the Constitution of India, 1950 (in short the 'Constitution'). The foundation of such application was alleged non-compliance of the directions given by a learned Single Judge of the Patna High Court in CWJC 1120 of 1998 by order dated 30.3.1999.

C A learned Single Judge of the said High Court, while dealing with the application for initiation of contempt proceedings, has passed the impugned judgment holding that it would not be proper to take any action for contempt. Though learned Single Judge noticed that the scope of consideration while dealing with an application for initiation of contempt proceedings was confined to the question whether there was compliance with the order or not, yet proceeded to examine the correctness of the order and called upon the parties to satisfy him that the direction of the kind contained in the order dated 30.3.1999 could be issued. After an indepth analysis, he came to hold that the directions could not have been given and therefore there was no scope for taking any action for contempt.

E Learned counsel for the appellant submitted that the learned Single Judge has not kept the correct parameters of law in view while dealing with the application for contempt. In essence he has sat in judgment over the decision rendered by another learned Single Judge. It was not open in the contempt proceedings to examine whether the order, non-implementation of which was being urged, is valid or not. That is beyond the scope of consideration.

G In response, learned counsel for the State submitted that there can be no straight jacket formula which can be applied in such matters. If the order was not capable of being implemented, certainly it was open to the learned Single Judge dealing with the application for initiation of contempt proceedings to consider whether the order was legal or not.

H While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be

permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision. A similar view was taken in *K.G. Derasari and Anr. v. Union of India and Ors.*, [2001] 10 SCC 496. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the concerned party to approach the higher Court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in *Niaz Mohammad and Ors. v. State of Haryana and Ors.*, [1994] 6 SCC 352, we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher Court. State took diametrically opposite stands before this Court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.

On the question of impossibility to carry out the direction, the views expressed in *T.R. Dhananjaya v. J. Vasudevan*, [1995] 5 SCC 619 need to be noted. It was held that when the claim *inter se* had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect thereof by hovering over the rules to get round the result, to legitimize legal alibi to circumvent the order passed by a Court.

In *Mohd. Iqbal Khanday v. Abdul Majid Rather*, AIR (1994) SC 2252, it was held that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order

A and plead about the difficulties of implementation at the time contempt proceedings are initiated.

B If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is C alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The D same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for E initiation of contempt proceedings.

In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other side cannot take that as a ground for dis-obedience of any interim order passed by the Court.

F It is to be noted that after re-organisation of States, the dispute presently pertains to the State of Jharkhand, which has been substituted in place of original respondent, the State of Bihar.

G Appeal is allowed to the aforesaid extent with no order as to costs.

R.P.

Appeal allowed.