

State of Rajasthan Vs. Jamnadass Gangadass and Co. and anr. Etc. Etc.

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Court : Rajasthan

Decided On : Feb-07-1983

Reported in : 1983CriLJ1766; 1983()WLN224

Judge : M.C. Jain, J.

Appellant : State of Rajasthan

Respondent : Jamnadass Gangadass and Co. and anr. Etc. Etc.

Judgement :

ORDER

M.C. Jain, J.

1. The above contempt applications raise a common question of limitation, so they are being disposed of by this common order.

2. In the writ petitions filed by the contemnors, similar interim orders were passed by this Court, whereunder the contemnors were required to deliver sixty-five per cent stock of sugar held by them on the date of commencement of the Sugar (Retention & Sale by Recognised Dealers) Order, 1979, on payment of its price @ Rs. 323/- per quintal. Despite intimation by the State Government, as contemplated by the interim orders, the contemnors failed to sell sugar to the Government, as ordered. The State has moved applications for initiating contempt proceedings against the contemnors under Section 12 of the Contempt of Courts Act, 1971 (Act No. 70 of 1971) (hereinafter referred to as 'the Act'). On these applications, this Court ordered issuance of notices to the contemnors. Although the applications were filed within one year from the date of commission of contempt, but admittedly the notices were ordered to be issued after the expiry of period of one year from the date of commission of contempt. Faced with the question of limitation, applications for amendment of the original applications were moved by the State of Rajasthan, whereby it was sought that the applications may be treated to be the applications under Article 215 of the Constitution and in the alternative under Order 39, Rule 2-A, C. P. C. In some of the applications, the amendment has been allowed and in others the amendment has been objected to and orders thereon have not been passed. I am proceeding to dispose of these applications assuming that the applications are not only under Section 12 of the Act, but are also applications under Article 215, as well as under Order 39 Rule 2-A, C. R. C.

3. On behalf of the State, Shri R. P. Dave, learned Deputy Government Advocate submitted that the applications may be treated within time in view of the fact that the applications were moved by the State within the period of One year and so the

proceedings for contempt were initiated against the contemnors by the State. For the purpose of limitation, under Section 20 of the Act, it is not necessary that action has to be taken by the Court. It is enough that the person aggrieved may move the court for initiating proceedings for contempt

4. The above submission, of Mr. Dave, In my opinion, is not tenable in view of the Division Bench decision of this Court in State of Rajasthan v. Manohar Goghad 1978 Rai LW 186. A similar question came up for consideration before the Division Bench. The Division Bench relying on a decision of the Allahabad High Court in G. N. Verma v. Hargovind Dayal : AIR1975All52 held that the proceedings can be said to be initiated against the contemnors, when the Court ordered for issuance of notice. In that case the dates for commission of contempt were 1st Apr. 1974 and 15th July, 1974, but the reference to the High Court for initiation of the contempt proceedings was made on 2-9-1974 The proceedings were initiated by Hon'ble the Chief Justice on 25-9-1975. In view of this, it was held that the proceedings for contempt were initiated against the non-petitioners beyond a period of one year from the date on which the contempt was alleged to have been committed. I may also profitably refer to another decision of this Court in State of Rajasthan v. M. R. Mitruka 1978 Raj LW 224 : 1978 Cri LJ 144.0. In that case Gupta J., speaking for the Division Bench, considered the question as to how proceedings can be initiated for contempt. It was observed that such initiation of proceedings for contempt can only take place when a Bench, consisting of at least two Judges of the High Court applies its judicial mind to the facts of the case and on consideration thereof decides to take cognizance of the case and directs the issuance of notice in accordance with the provisions of Section 17 of the Act. A similar argument was also advanced by Mr. H. M. Parekh, learned Counsel for the non-petitioners, in the case of State of Rajasthan v. Manohar Goghad (supra) and in that case the Division Bench observed that the contention does not appear to be devoid of force. Both those cases were cases relating to criminal contempt under Section 15 of the Act, so the question of cognizance arose. The present are the cases under Section 12 of the Act, relating to civil contempt. Nevertheless in an action under Section 12 of the Act, proceedings have to be initiated and, the proceedings are to be initiated by the court, although the proceedings can be initiated by the court on its own motion or otherwise. Thus, it is the court, which initiates the proceedings and the period of limitation under Section 20 of the Act is to be reckoned up to the date of initiation of proceedings for contempt by the court. Section 20 of the Act lays down that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. Thus, Section 20 prescribes the period of limitation and it bars initiation of proceedings for contempt by the court after the expiry of the period of one year from the date of commission of contempt. The limitation is not to be reckoned by the date of presentation of the applications. The presentation of application cannot be equated with initiation of proceedings for contempt by the court. From the phraseology and the wordings of Section 20, it is amply clear that the court has to initiate proceedings either on its own motion or otherwise. It is not the party, which initiates the proceedings. Thus, the limitation prescribed under Section 20 would not be computed on the basis of initiation of motion by any party to the lis. In this view of the matter I am unable to agree with the learned Deputy Government Advocate that the limitation may be computed from the date of the presentation of the applications by the State. The applications are, therefore, clearly barred by time

5. It is next urged by Shri R. P. Dave, learned Deputy Government Advocate, that

Article 215 of the Constitution provides that the High Courts shall be the courts of record and as such shall have all the powers to punish for contempt of itself. The powers conferred under Article 215 of the Constitution on the High Courts are plenary powers and such powers conceive of no limitation. The High Courts can initiate proceedings for contempt. The Act would not in any way curtail the powers of High Courts under Article 215.

6. It may be stated that the Act has been enacted by the Parliament in exercise of its legislative power. It is true that the power to punish for contempt cannot be curtailed or abridged by the Parliament, but the power can certainly be regulated. If this would not have been the position, there would not have been mention of conferment of legislative power in relation to contempt of court. Entry 14 of List III of Schedule VII relates to contempt of court, but not including contempt of the Supreme Court. This entry is in the Concurrent List, whereas in relation to the Contempt of Supreme Court Parliament can enact law under Entry 77 of List I of Schedule VII. In *Dr. Janardan Prasad Gupta v. Dr. O. P. Chakarvarty* 1975 Cri LJ 164 the Division Bench of the Allahabad High Court (Lucknow Bench), observed that 'it is quite true to say that the earlier Act of 1952 did not prescribe any procedure and the Supreme Court or a High Court was free to lay down' its own procedure. That position will, however, not affect the power of Parliament to legislate about the procedure, if the Constitution says that it can. Under Article 246 of the Constitution, Parliament has exclusive powers to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, referred to as the Union List. Entry 77 of this List reads 'constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court)...'. Under Clause (2) of Article 246, Parliament also has the power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule referred to as the 'Concurrent List'. Entry 14 in this list reads 'Contempt of Court' but not including contempt of Supreme Court. These two entries give a clear picture of the legislative power of Parliament. It has full power to legislate with regard to 'Contempt of Court'It was further observed that at best, in order to reconcile Articles 129 & 215 with Article 246 and the entries aforesaid what can be said is that parliament cannot take away the power to punish, without a Constitutional amendment, but it would be untenable to say that it cannot prescribe the procedure as to how a contempt matter has to be dealt with by the Supreme Court or a High Court.'

7. Prescribing a period of limitation is a matter relating to procedure and is nothing, but regulating the exercise of power. It cannot be said that the power of (to punish for ?) contempt as such has been taken away. The power of (to punish for ?) contempt continues, but has to be exercised within the time prescribed under Section 20 of the Act. Thus, even if the applications are considered under Article 215 of the Constitution, still the applications would be governed, so far as the question of limitation is concerned, by Section 20 of the Act and viewed in this light proceedings would be barred by time.

8. So far as the provision of O. 39, Rule 2-A, C. P.C. is concerned, that provision has no application to the proceedings under Article 226 of the Constitution. The present proceedings are the offshoots of the proceedings under Article 226 of the Constitution. Besides that, the provisions of the Act are the provisions governing the contempt proceedings. The provisions of the Act would be applicable over the provisions of the Civil P.C.

9. In the light of the above discussion, in my opinion, all the aforesaid applications deserve to be dismissed, as the proceedings have been initiated beyond the period of limitation.

10. Accordingly, the aforesaid contempt applications are dismissed, the proceedings are dropped and the notices issued are discharged.

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