



IN THE HIGH COURT OF JUDICATURE AT PATNA

In the matter of an Appeal under Section
19(1) of the Contempt of Court Act.

Miscellaneous Appeal No.794 of 2013
IN
Miscellaneous Jurisdiction Case No. 2747 of 2012

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K.B. Sharma Son of Janardan Prasad Singh, Resident of Village- Raipur
Bandhavan, P.S.- Hanspura, District- Aurangabad, presently posted as professor in
Department of Zoology, Magadh University, Bodh Gaya, Gaya

.... Appellant/s

Versus

1. The State Of Bihar
2. Sri. Arun Kumar, Vice-Chancellor, Magadh University, Bodh Gaya, Gaya
3. Sri D.K. Yadav, Registrar, Magadh University, Bodh Gaya, Gaya
4. Dr. Chandradeo Pd. Sinha S/O Gutru Pd. Singh R/O Kalibari, Samir Takiya,
P.S.- Civil Line, Gaya

.... Respondent/s

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With

Original Cr. Misc. No. 2 of 2013
(Arising out of M.J.C. No. 2747 of 2013)

The State of Bihar

..... . Petitioner

Versus

Arun Kumar & Ors.

.....Opposite parties

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Appearance :

For the Appellant/s	:	Mr. Yugul Kishore, Senior Advocate Mr. Kumod Kumar Srivastava, Advocate
For the Respondent No. 4	:	Mr. Rajendra Prasad Singh, Sr. Advocate Mr. Sanjeev Kumar Singh, Advocate
For the University	:	Mr. Grijesh Kumar Yadav, Advocate Mr. Vipin Kumar Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 08-05-2015

Heard learned counsel for the appellant in the Appeal, learned counsel for the University and respondent no.4 therein as also learned counsel for the parties in the Original Criminal Miscellaneous case.

The appeal has been filed by the appellant being aggrieved by the order dated 20.03.2013 passed in M.J.C. No. 2747 of 2012 (contempt) by which the opposite parties including the appellant have been directed to file show cause as to why they should not be punished for contempt as their earlier show cause was rejected.

The Original Criminal Miscellaneous Case has been registered on the directions issued by the aforesaid order dated 20.03.2013 to the office to register original criminal miscellaneous in the matter against opposite party nos. 2 to 4 of the aforesaid contempt application.

The respondent no. 4 in the appeal had filed C.W.J.C. No. 19146 of 2011 in which the appellant was also respondent no. 4. The origin of the dispute is with regard to the continuance of the respondent no. 4 in the writ petition as Head of Department of Zoology and Dean of Magadh University. The contention of the writ



petitioner was that the respondent no. 4 was notified to work as Head of Department by virtue of notification issued on 31.03.2008 and he was also appointed and notified as a Dean vide notification dated 23.08.2009; however, he could not hold the office beyond three years on the post of Head of Department and beyond two years on the post of Dean from the date of the respective notifications.

The learned Single Judge vide order dated 19.03.2012 allowed the writ petition holding that the tenure has to be calculated from the date of the notification made in favour of the person and can never be extended or to be added merely because there may be periods of interruption when a person was prevented from working as such and accordingly, held that continuance of the respondent no. 4 (appellant herein) on the two posts effective from the next date i.e. 20th March, 2012 shall cease. Another direction was issued to the Vice-Chancellor to take a fresh decision.

Respondent no. 4 to the writ petition thereafter filed a contempt application being M.J.C. No. 2747 of 2012 alleging that the contemnors were guilty of wilful violation of the aforesaid order passed in the writ petition and praying to convict and punish them in accordance with the provisions of Contempt Of Courts Act read

with Article 215 of the Constitution of India. Thereafter, the appellant and others were directed by order dated 06.02.2013 in the said M.J.C. to file their show causes within four weeks. When the matter was taken up on 20.03.2013, the learned Single passed the following order:-

“Prima facie the OPs are in contempt from the material which has already been brought on record and the unsatisfactory show-cause, which has been filed on behalf of the OP No. 2 and 3.

The OPs are directed to file a show-cause as to why they should not be punished for contempt, as their earlier show-cause is hereby rejected.

Office will register original criminal miscellaneous in the matter against O.P. Nos. 2 to 4.”

Aggrieved by the aforesaid order, the appellant has filed the present appeal under Section 19(1) of the Contempt of Courts Act. The office in terms of the order dated 20.03.2013 passed by the learned Single Judge has registered Original Criminal Miscellaneous No. 2 of 2013.

Section 2 (a) (b) & (c) of the Contempt of Courts Act,

1971 is in the following terms :-

2. Definitions.—In this Act, unless the context otherwise requires,

(a) “contempt of Court” means civil contempt or criminal contempt;

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a court;

(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which –

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

On a consideration of the aforesaid definition, what emerges is that contempt of Court has been classified as either civil



contempt or criminal contempt. A civil contempt is confined to any wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court.

Criminal contempt, on the other hand, relates to publication in any manner of any matter or the doing of any other act which either scandalises or tends to scandalise, or lowers or tends to lower the authority of the Court or prejudices or interferes or tends to interfere with, the due course of any judicial proceeding or interferes or tends to interfere with, or obstructs, the administration of justice in any other manner.

The High Court can make rules in exercise of power under Section 23 of the Contempt of Courts Act, 1971. Under Chapter XXVII-A of Rule 6 of the Patna High Court Rules framed under the said section, every petition in respect of civil contempt, which relates to the orders and directions passed by a Judge of this Court, has to be listed before a Single Judge of this Court whereas proceedings of criminal contempt are to be listed before a Bench of this Court. As per the practice of this Court, a civil contempt matter is listed as Miscellaneous Judicial Case (MJC) whereas criminal contempt is listed as Original Criminal Miscellaneous Case.



From a consideration of the application filed by respondent no.4 by way of M.J.C. No. 2747 of 2012, it is evident that the same was filed for wilful violation of the order dated 19.03.2012 passed by this Court. Thus, the allegation against the petitioner and other opposite parties of the said contempt application would fall in the category of civil contempt as defined under Section 2 (b) of the Contempt of Courts Act, 1971 and not criminal contempt. It is evident from the order dated 19.03.2012 passed in the proceedings of the writ petition that there was no question of any prejudice or interference to the judicial proceeding or obstruction to the administration of justice by violation of the said order and it is a pure and simple matter covered by civil contempt. Thus, the proper jurisdiction under which it ought to have been heard is as a miscellaneous judicial case.

For the aforesaid reasons, we are of the view that the direction of the learned Single Judge by order dated 20.03.2013 to the office to register original criminal miscellaneous in the matter against the opposite parties is not in accordance with the provisions of the Contempt of Courts Act read with the rules as contained in Chapter XXVII-A of the Rules of Patna High Court.

So far as the appeal against the order dated 20.03.2013 is



concerned, on a proper appreciation of the order dated 20.03.2013, we find that the learned Single Judge has only prima facie found the opposite parties therein as guilty of contempt and rejected the earlier show cause directing to file further show cause as to why they shall not be punished for contempt with further direction to register an original criminal miscellaneous case.

In our view, the said direction cannot be said to be a final finding holding the petitioner guilty of contempt rather it is only a prima facie finding with a further direction to the opposite parties therein to file their show causes. In the said view of the matter, the order dated 20.03.2013 is only to be treated as an order initiating proceedings of contempt against the opposite party nos. 2 to 4 and not a final order holding the said opposite parties including the appellant herein as guilty of contempt. Thus, in the said circumstances, Section 19 of the Contempt of Courts Act cannot be invoked as the order cannot be said to be an order or decision in exercise of jurisdiction of contempt rather it is in the nature of initiation of proceeding of contempt.

For the aforesaid reasons, we hold that the present appeal is not maintainable. It is, accordingly, dismissed.

In view of the aforesaid findings, the direction in the

order dated 20.03.2013 to register original criminal miscellaneous is set aside and it is directed that the contempt application shall proceed as a civil contempt as MJC No. 2747 of 2012.

Let the matter be placed before the appropriate Single Judge for proceeding in the matter from the stage of initiation of contempt proceeding

The appellant and other opposite parties shall comply with the order dated 20.03.2013 by filing further show causes. Thereafter, the learned Single Judge shall proceed further and decide the matter in accordance with law.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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