

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.873 of 2011

In

Civil Writ Jurisdiction Case No. 10032 of 2009

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K.K. Pathak S/o Late Major G.S. Pathak R/o D1-39, Central Govt. Officers Flats, Bapudham, Opposite Jesus and Mary College, Chanakyapuri, New Delhi 110021

.... Respondent/Appellan

Versus

1. The State of Bihar through the Principal Secretary, Dept. of Human Resources Development, Govt. of Bihar, Patna

2. The Principal Secretary, Human Resources Development Department Government of Bihar, Patna

3. The Director, Higher Education, Govt. of Bihar, Patna

4. Principal Secretary, Dept. of Finance, Govt. of Bihar, Patna

... ... Respondents 1st Set

5. Chancellor of Universities of Bihar Raj Bhawan, Bihar, Patna

6. Vice Chancellor Patna University, Patna

7. Patna University through its Registrar Patna University, Patna

8. Registrar, Patna University, Patna

9. Dr. Dharm Sheela Prasad, D/o Dr. Jagarnath Prasad Sinha, R/o House Abhilasha, Mohalla Bazar Samiti Road, P.S. Rajendra Nagar, Dist. Patna, at present University Professor, Department of Sociology, Magadh Mahila College, Patna University, Patna

... Respondents 2nd Set

10. Pramod Kumar Poddar, S/o Late Ram Narayan Poddar, R/o Indira Nagar, P.O. Lohia Nagar, P.S. Kankarbagh, Dist. Patna, at present University Professor, Department of History, B.N.College, Patna University, Patna

11. Vinay Kumar Kanth, S/o Late Ram Sharan Prasad Kanth, R/o Mohalla Shakti Nagar, P.S. Anisabad, Dist. Patna, at present Reader, Department of Mathematics, Bihar National College, Patna

... ... Respondents 3rd Set

.... Respondents

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Appearance :

For the Appellant/s : Mr. Naresh Dikshit, Advocate

For the State : Mr. Lalit Kishore, P.A.A.G. with Mr. Vikash Kumar, AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

10 20-01-2016 Heard learned counsel for the petitioner and learned Principal Additional Advocate General for the State.

The Miscellaneous Appeal itself had been filed against the order dated 13.9.2010 passed by a learned Single Judge of this Court in CWJC No. 10032 of 2009 by which apart from the other directions the appellant was inflicted with a fine of Rs.25,000/-. By the same order it was left open to the State Government to consider as to how it would deal with such Officer under it in the facts of the case and it was further directed to initiate criminal contempt proceedings against the appellant. It is not in dispute that the criminal contempt proceeding was separately initiated in a separate independent file along with copies of the orders of this Court, which was finally dropped and against which proceedings are pending before the Supreme Court.

So far as the infliction of imposition of fine of Rs.25,000/- on the writ petitioner-appellant is concerned, against the said order the petitioner-appellant filed LPA No. 1714 of 2010 which was dismissed by a Division Bench of this Court by order dated 27.7.2011 as not maintainable with a liberty to file a contempt appeal holding that the Letters Patent Appeal has been filed against the punishment order for contempt dated 13.9.2010 passed by the learned Single Judge in CWJC No. 10032 of 2009 and therefore the order is appealable under the Contempt of Courts Act. Thereafter the present Miscellaneous Appeal was filed.



When this appeal came before the Division Bench, by order dated 27.9.2012 it was found that the order under appeal dated 13.9.2010 contained four different orders: the main grievance of the appellant is against the part of the order by which a personal fine of Rs.25,000/- was imposed against the appellant, and also against the order dated 27.7.2011 passed in LPA No. 1714 of 2010 which had been passed on an impression that it had been filed against a punishment order for contempt. The Division Bench found itself unable to agree with the said observation and, accordingly, referred the matter to a Larger Bench for deciding the maintainability of this appeal under Contempt of Courts Act. Thereafter the matter has come up before us.

Learned counsel for the petitioner submits that the appeal has been filed only because of the previous order dated 27.7.2011 passed in LPA No. 1714 of 2010 filed by the present appellant, which, according to him, was an appropriate remedy available but because of the said order the appellant has filed the present appeal. In this regard learned counsel fairly submits that the matter is not at all res integra but squarely covered by a decision of the Supreme Court in the case of Midnapore Peoples' Coop. Bank Ltd. vs. Chunilal Nanda and others : (2006) 5 SCC 399, in paragraph 11 of which it has been held as follows :

“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)."

It is admitted by learned counsel for the appellant that the



present appeal is confined to that part of the order by which Rs.25,000/- has been imposed upon the appellant and so far as the direction for initiating criminal contempt was concerned, the same is not involved in the present appeal and was subject matter of separate proceedings being Or.Cr.Misc.No. 6 of 2010 in which by order dated 6.4.2012 the contempt proceedings were dropped on account of apology tendered by the opposite party, i.e., the present appellant.

Learned Principal Additional Advocate General also submits that in the present matter the challenge being only to that part of the order of the learned Single Judge by which imposition of fine was made in a writ proceeding, the only remedy available for the appellant against that part of the order was by filing a Letters Patent Appeal and no appeal under Section 19 of the Contempt of Courts Act would lie against such an order which has not been passed in contempt proceedings.

Section 19 of the Contempt of Courts Act is in the following terms :

“19. Appeals.- (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-
(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;
(b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.
(2) Pending any appeal, the appellate Court may

order that- (a) the execution of the punishment or order appealed against be suspended; (b) if the appellant is in confinement, he be released on bail; and (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed- (a) in the case of an appeal to a Bench of the High Court, within thirty days; (b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.”

It is evident from a consideration of the aforesaid provisions that an appeal under the Contempt of Courts Act would only lie against a decision in exercise of the jurisdiction to punish for contempt of Court.

It is not disputed, rather admitted, by learned counsel for the appellant that the present appeal has not been filed against any order passed in exercise of Contempt Jurisdiction of this Court. Moreover, the order itself had been passed in a Writ petition and not in a contempt matter. There can hardly be any doubt that the only remedy available to the appellant against the said order is by filing a Letters Patent Appeal before this Court. In fact, even the order dated 27.7.2011 proceeded on the assumption that LPA had been filed against punishment order for contempt dated 13.9.2010 although in a Writ Jurisdiction. The assumption was clearly wrong as the fine was imposed on account of the manner in which the appellant had conducted his defence in the writ proceedings. Thus,

the very basis of the order dated 27.7.2011, according to us, was not correct and the conclusion therefore was also not correct.

In the light of the aforesaid discussions, we are clearly of the view that no Miscellaneous Appeal shall lie against the part of the order dated 13.9.2010 by which a fine of Rs.25,000/- has been inflicted and only a Letters Patent Appeal will lie against the said order. Consequently the present appeal is held to be not maintainable. It is, accordingly, dismissed with a liberty to the appellant to take recourse to appropriate proceedings for redressal of his grievances.

(Ramesh Kumar Datta, J)

(Jyoti Saran, J)

(Sudhir Singh, J)

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