

IN THE HIGH COURT OF JUDICATURE AT PATNA
Or. Criminal Miscellaneous (DB) No.1 of 2019

Arising Out of PS. Case No.-74 Year-2014 Thana- KHAGAUL District- Patna

Yashwant Kumar Pandey, son of late Maharaja Pandey, Resident of House of Shyam Bihari Singh Palace, Cant Road, Mustfapur, P.S.-Khagaul, District-Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sarvdeo Singh, Advocate Mr. Sanjay Kumar Sinha, Advocate
For the State	:	Mr. Dilip Kumar Sinha, APP
For the Complainant	:	Mr. Sanjeev Kumar Nirala, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-05-2019

Heard Shri Sarvdeo Singh, learned counsel for the appellant.

This is a peculiar case which arises out of a dispute between the husband and wife.

In a criminal case instituted by the wife, the appellant had come up for bail before this Court where he had been granted provisional bail, but the same was cancelled on account of having violated the directions of this Court.

The learned Single Judge in order to ensure the production and presence of the appellant cancelled the provisional



bail and then also simultaneously issued a show cause notice calling upon the appellant to file a response as to why he should not be punished for having committed contempt of court by violating the order of the High Court.

It is in these contempt proceedings that the punishment was inflicted on the appellant against which the present appeal has been filed. Having noticed all the background of the litigation, we passed the following order day- before- yesterday (14.05.2019):-

“14.05.2019

Heard learned counsel for the appellant.

This appeal has been preferred under Section 19 of the Contempt of Courts Act, 1971 questioning the validity of the punishment order dated 31st of October, 2018 whereby the appellant has been sentenced to a fine of Rs.2,00,000/- to be deposited within three months coupled with an imprisonment of six months. Failure to pay the amount within three months entails further imprisonment of six months.

Learned counsel for the appellant contends that the proceedings that were initiated were on the strength of a show cause notice which does not indicate as to whether it was drawn up as a proceeding treating it to be a criminal contempt or a mere failure or disobedience of the terms and conditions of the provisional bail granted to the appellant, nonetheless, the learned Single Judge who had heard the matter proceeded to punish the appellant which, according to the appellant, can amount to only a punishment in civil contempt inasmuch as had it been a criminal contempt the matter would have been triable by a Division Bench of this Court.



Learned counsel, therefore, submits that in the event the order partakes the character of a criminal contempt then the entire proceedings were without jurisdiction, but if the punishment awarded is in terms of Section 12 of the Contempt of Courts Act, 1971 then the maximum sentence of six months can be coupled with fine only to the extent of Rs.2000/- whereas the learned Single Judge has imposed a penalty of Rs.2,00,000/- which travels beyond the statutory prescription.

The provisional bail granted to the appellant had already been cancelled and, since after cancellation he was putting in appearance, the same was taken to be a violation of the orders of this Court and, accordingly, these contempt proceedings were drawn.

Learned counsel for the appellant contends that once the provisional bail had been cancelled, then the consequences thereof under the Code of Criminal Procedure are for arrest and detention and a contempt proceeding would not lie inasmuch as with the termination/cancellation of the bail the Court could not have initiated proceedings for contempt.

There is yet another development in this case which deserves notice as it has been pointed out by the learned counsel for the appellant that this was arising out of a criminal case where the appellant had been charged with the alleged offence of having demanded dowry and other offences related thereto. It is in the said criminal case that the bail had been granted by this Court whereas on the civil side a divorce petition was filed between the appellant and the complainant wife and in the said proceedings a joint affidavit praying for dissolution of the marriage in terms of Section 13(B) of the Hindu Marriage Act had been tendered in which the next date fixed is 13th of June, 2019. In this background, it is urged that the proceedings for contempt deserves to be terminated and the order imposing the penalty of Rs.2,00,000/- being not



sustainable also deserves to be set aside with a direction to release the amount.

Prima facie, these contentions may have to be examined, but if the information tendered about a joint affidavit having been filed in the divorce proceedings is correct, then in that event, the task of this Court would become easier.

For this, we direct the learned counsel for the appellant to serve a copy of this appeal on the learned counsel for the complainant Sushma Kumari Sweti, who is the second respondent in Cr. Misc. No.32161 of 2014, giving rise to this appeal. The learned counsel for the said respondent may obtain instructions and, if possible, call upon the second respondent to make herself available or file her affidavit before this Court through the counsel in order to prima facie ascertain the genuineness of the aforesaid assertion about the proceedings in the divorce petition.

Learned counsel prays that the matter be taken up day after tomorrow to enable him to assist the Court after serving the learned Counsel in this regard.

Put up day after tomorrow i.e. 16th May, 2019.”

Today, learned counsel for the complainant in the criminal case, who had also appeared in the provisional bail matter Shri Sanjeev Kumar Nirala is present along with his client Sushma Kumari Sweti. She has been identified by him as to be the same person, who is respondent no.2 in Cr. Misc. No.32161 of 2014 and with whom the dispute is going on with the appellant.



She has stated before the Court that she has filed the joint affidavit before the Family Court in terms of Section 13-B of the Hindu Marriage Act praying for a mutual divorce.

Consequently, the information tendered to the Court and as recorded in the order dated 14.05.2019 has been affirmed by Shri Nirala in the presence of his client.

We now proceed to examine the correctness or otherwise of the impugned order of the learned Single Judge in the aforesaid background.

In our considered opinion, the proceedings that were drawn up for contempt do not appear to be a criminal contempt as defined under Section 2(c) of the Contempt of Courts Act, 1971 inasmuch as the same was not an *ex facie* contempt. From the purport of the show cause notice issued to the appellant, it appears that the contempt proceedings were drawn up for having violated the order of the Court which was obviously in the nature of a civil contempt, but arising out of a criminal proceeding. We have reservations about the proceedings having been drawn up inasmuch as once the provisional bail had been cancelled, then it is the provisions of the Criminal Procedure Code that could have been given effect to by executing the warrants and for production of the appellant or his arrest. If the appellant had not surrendered



even after the provisional bail had been cancelled, then the course available was under the Criminal Procedure Code and not under the Contempt of Courts Act, but even assuming for the sake of argument that such a violation was amenable to the jurisdiction of this Court, we find that the powers of the High Court as a Court of Record are available in terms of Article 215 of the Constitution of India. The said power is, however, controlled by law, namely, the Contempt of Courts Act, 1971 where civil and criminal contempt are both provided for and also defines the punishment in this regard. Had the contempt proceedings been drawn up for having committed criminal contempt, then the same would have been cognizable by a Division Bench and not by the learned Single Judge himself, but assuming for the sake of arguments that the proceedings drawn up were civil contempt, then in that view of the matter, the imposition of a penalty of Rs.2,00,000/- (Rupees Two lacs) was clearly contrary to the provisions of the Contempt of Courts Act, 1971 where the maximum penalty that can be imposed is a sum of Rs.2,000/- (Rupees Two thousand) only.

Apart from the aforesaid facts, the background in which we find that the litigation is now coming to a close with the divorce petition having been filed, we do not find any justification for the appellant to be detained in prison on account of non-



payment of the fine of Rs.2,00,000/- imposed on the appellant. It is undisputed that the appellant is already in custody after the provisional bail was cancelled and, therefore, he has already served more than six months on the count of punishment under the orders passed by this Court which we do not find to be justified keeping in view the fact that we have found that the proceedings could not have been drawn up in the manner in which it has been done by imposing punishment on the appellant in the background of the case.

We, therefore, set aside the impugned judgement dated 31st October, 2018 without entering into the quantum of the imposition of the sentence of imprisonment, but as observed above, the imposition of fine being contrary to law, namely, the provisions of 1971 Act, the appeal is allowed to the aforesaid extent and the order imposing a fine of Rs.2,00,000/- is quashed.

So far as the request for bail of the appellant is concerned, the same has to be considered by the learned Single Judge in appropriate proceedings that may be initiated by the appellant seeking bail from the appropriate Court.

It has been further stated by the learned counsel for the parties that the bail application being Cr. Misc. No.32161 of 2014 be also disposed of and for which the learned counsel for the



parties pray that this is necessary as the participation of the appellant is necessary in divorce proceedings otherwise the same shall get delayed. Since the learned counsel for the complainant is also present, we direct that Cr. Misc. No.32161 of 2014 be listed tomorrow (17.05.2019) before the Bench to be nominated by the Chief Justice on the administrative side today itself.

The appeal stands disposed of accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2019
Transmission Date	16.05.2019

