

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT APPEAL NO. 1 OF 2018

Sanjay Trivedi

major of age, Son of Mr. Krishna  
Chandra Trivedi, Occupation-  
Business, Resident of 345, New  
Colony, Besides St. Thomas  
Church, Nagpur Maharashtra State  
and presently Residing at Flat  
No.AI-1, Building 'A' Complex,  
Supreme Temple Gardens,  
Rumdamol, Davorlim, Salcete,  
Goa.

... Appellant

*V e r s u s*

Mr. Xec Mukta Ali

S/o Late Mr. Sattar Sheikh, Aged  
47 years, Service, Resident of  
H.No.238, Behind Cine Vishant,  
Aquem, Margao, Goa, Through  
his duly constituted Power of  
Attorney Mr. Surendra Raghuvir  
Haldankar, Aged 38 years,  
Business, R/o. House No.254,  
Aquem Alto, Margao, Goa.

... Respondents

Mr. Rohan Pandurang Desai, Advocate for the Appellant.

Mr. Sudesh Usgaonkar and Ms. Marie Rosette Pereira, Advocates  
for the Respondent.

Coram :- M. S. SONAK &  
M. S. JAWALKAR, JJ.

Date : 9<sup>th</sup> December, 2019.

ORAL JUDGMENT (Per M. S. Sonak, J)

1. Heard Mr. Rohan Pandurang Desai, the learned Counsel for the appellant and Mr. Sudesh Usgaonkar, the learned Counsel for the respondent.

2. This is an appeal against the order dated 9<sup>th</sup> February, 2018, the operative portion of which, reads as follows :

*“The contemner Sanjay Trivedi is found guilty for committing civil contempt. It is hereby directed that he be detained in civil prison for a period of eight days and shall pay a fine of Rs.1000/-. In default of payment of fine he shall be detained for a further period of four days. The Registrar (Judicial) of this court shall issue warrant of commitment and detention under his*

*signature in view of the Chapter XXXIV Rule 26 of the Bombay High Court Appellate Side Rules, 1960.”*

3. In this appeal, we had offered an opportunity to the appellant to make a statement whether he was willing to deposit the amount of Rs.3,99,000/- in respect of which, he had tendered repeated undertakings to this Court. The matter was in fact adjourned from 11<sup>th</sup> November, 2019 to 19<sup>th</sup> November, 2019 in order to enable the appellant to remain present in the Court and make a statement in the said regard.

4. On 19<sup>th</sup> November, 2011, the appellant remained present and made a statement to this Court that without prejudice to his rights and contentions, he will deposit an amount of Rs.3,99,000/- within two weeks either in cash or by Demand Draft/Banker's cheque, so that there is no issue of dishonour of cheque for the realisation of the amount of cheque.

5. Mr. Trivedi, the appellant, who was present in the Court in person, made a statement to this Court that this amount will be

positively deposited within two weeks, and accordingly, the statement was accepted as a statement made to this Court. We were assured that the appellant will not seek any extension of time beyond two weeks. This was also recorded in paragraph 3 of our order dated 19<sup>th</sup> November, 2019.

**6.** Today, when the matter is called out, Mr. Rohan Desai, along with the appellant, appeared in the Court. They say that the statement made on the earlier occasion has not been complied with and the amount of Rs.3,99,000/- has not been deposited.

**7.** Accordingly, we have heard Mr. Desai, the learned Counsel for the appellant in the appeal and Mr. Usgaonkar, the learned Counsel for the respondent.

**8.** Mr. Rohan Desai, the learned Counsel for the appellant submits that the affidavits filed by and on behalf of the appellant were not considered by the learned Single Judge in their proper prospective. He pointed out that there were financial difficulties

which the appellant was facing and, therefore, this is not a case of any wilful disobedience of the undertakings. Mr. Rohan Desai also relies upon the decision of the Hon'ble Apex Court in the case of *Smt. Pushpaben & anr. vs. Narandas V. Badiani & anr.* **1979 2 SCC 394**, to contend that wilful disobedience of an undertaking given to the Court is a civil contempt and punishment for such contempt is fine unless the Court for special reasons want to impose sentence of imprisonment. Mr. Rohan Desai, the learned Counsel for the appellant, upon taking instructions from the appellant, who is present in the Court, offers to pay a fine of Rs.10,000/-.

**9.** Mr. Sudesh Usgaonkar, the learned Counsel for the respondent, submits that several opportunities were granted to the appellant and the appellant has breached the undertakings wilfully. Mr. Usgaonkar, learned Counsel, in fact submits that unless the appellant purges the contempt in the appeal Court, this appeal should not even be entertained on merits.

**10.** We have given our consideration to the contentions raised on behalf of the learned Counsel for the parties.

**11.** From the perusal of the impugned order dated 9<sup>th</sup> February, 2018, we are unable to agree with the contention of Mr. Rohan Desai, the learned Counsel for the appellant, that the explanation offered by the appellant have not been considered by the learned Single Judge in their proper prospective. The explanations, in any case, do not inspire confidence at all. However, it is apparent that the explanations have been considered and on basis of consideration of such explanations, time and again, opportunity was granted to the appellant to pay/deposit the amount which the appellant had undertaken to pay.

**12.** From the perusal of the impugned order, it is clear that on 20<sup>th</sup> September, 2017, the petitioner was directed to pay the amount. On 13<sup>th</sup> November, 2017, this direction was reiterated. The appellant, in fact, did in purported compliance, deposit a pay order bearing no.292450 dated 27<sup>th</sup> September, 2017 for an

amount of Rs.3,99,000/- in this Court. However, this amount could not be realised as his bankers returned the negotiable instrument with a remark “insufficient funds”. The fact that the appellant did furnish a negotiable instrument to this Court with full knowledge that there were no funds in his account to honour the same, speaks of the manner in which the appellant treats the orders made by this Court and the indulgence shown by this Court.

**13.** As if this was not sufficient, the learned Single Judge on 29<sup>th</sup> November 2017 accepted, yet another undertaking from the appellant that he would deposit the amount of Rs.3,99,000/- within a period of three weeks. This period expired on 8<sup>th</sup> January, 2018. On this date, the petitioner neither appeared before this Court nor honoured the undertakings given by the Court to him. It is at this stage, a show cause notice came to be issued to the appellant requiring as why action should not be initiated against him for contempt of Court. The appellant

thereafter appeared on 25<sup>th</sup> January, 2018 and gave an explanation of his absence on 8<sup>th</sup> January, 2018.

**14.** Mr. Desai, the learned Counsel for the appellant, is not right in his submission that this explanation was not considered. In fact, this explanation was considered and on basis of such consideration, further two weeks time was granted to the appellant to deposit the amount. This was again on the basis of the undertaking by the appellant that he would not seek any adjournment. In fact, the appellant was required to file such undertaking before the learned Single Judge.

**15.** The appellant neither filed the required undertaking nor deposited the amount within the extended period. Despite all this, the learned Single Judge granted further indulgence to the appellant and took into consideration the unconditional apology tendered by the appellant. Upon consideration of the affidavit filed by the appellant, which is supposed to have contained the unconditional apology, the learned Single Judge quite correctly

held the apology was far from genuine. At no stage did the appellant deposit the amount or give any proper convincing reasons for failure to do so. The conduct of the appellant before this Court has also not been any different.

**16.** According to us, the record makes it very apparent that the appellant is bent upon breaching the undertakings given by this Court wilfully and deliberately. This has happened on no less than three to four occasions. According to us, the learned Single Judge has recorded special reasons for imposition of the sentence of imprisonment which, in any case, despise a lenient sentence in the facts and circumstances of the present case. The ratio in the case of *Smt. Pushpaben* (supra) thus stands complied with. The manner in which the appellant has gone on giving repeated undertakings to this Court but has also gone on breaching of such undertakings, indeed constitute special reasons which warrant the sentence of imprisonment.

**17.** There are really no mitigating circumstances. The appellant, as noted earlier, was offered opportunities in the appeal Court as well. The appellant availed such opportunities but failed to stand by his own statement solemnly made to this Court.

**18.** Therefore, considering all these aspects, we find that there is no case made out to interfere with the impugned order dated 9<sup>th</sup> February, 2018. This appeal is accordingly dismissed.

**19.** The Registry to take necessary steps as directed in the impugned order dated 9<sup>th</sup> February, 2018.

**20.** Mr. Rohan Desai, the learned Counsel for the appellant, prays for two weeks time on behalf of the appellant to enable him to surrender. He makes a statement that the appellant possesses no passport. He also makes a statement that in the course of this day, the appellant will furnish necessary bail bonds in an amount of Rs.10,000/- and one surety in the likeamount to the satisfaction of the Registrar (Judicial) and thereafter mention this

matter at 4.30 p.m. to report compliance. Liberty is granted to mention after compliance. If there is compliance, perhaps the Court will consider the grant of time to surrender.

**21.** This matter was mentioned at 4.30 p.m. by Mr. Rohan Desai, the learned Counsel for the petitioner, stating the necessary bail bonds will be executed and the surety will be produced before the Registrar (Judicial) latest by tomorrow. Accordingly, if this is complied with, we grant liberty to the learned Counsel for the appellant to once again mention this matter tomorrow i.e. 10.12.2019.

**M. S. JAWALKAR**

**M. S. SONAK, J.**

arp/\*