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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.08.2021
Pronounced on	09.09.2021

CORAM

THE HON'BLE MR. JUSTICE P.N.PRAKASH
AND
THE HON'BLE MS. JUSTICE R.N.MANJULA

Cont.A.No.3 of 2021
and C.M.P.No.11891 of 2021

1. Shurbir Singh, I.A.S.,
The Secretary to Government (Excise),
Govt. of Puducherry,
Chief Secretariat, Puducherry.
2. Abhijit Vijay Chaudhari, I.A.S.,
The Secretary to Govt. (Art and Culture/Wakf),
Govt. of Puducherry,
Chief Secretariat, Puducherry.
3. Shashvat Saurabh, I.A.S.,
The Deputy Commissioner (Excise)-cum-Licensing Authority,
Office of the Deputy Commissioner (Excise),
Industrial Estate, Thattanchavadi,
Puducherry.

... Appellants/Respondents

Vs.

V.Gomathi

... Respondent/Petitioner

Prayer:- This Contempt Appeal is filed under Clause 15 of the Letter Patent, against the Order dated 16.06.2021 in Contempt Petition No.609 of 2020 passed by the Hon'ble Court.

Prayer in Contempt Petition No.609 of 2020:

Contempt Petition filed praying to punish the respondent Nos.1 to 3 for contempt of Court for Wilful disobedience & deliberate Non-Compliance / Violation of the order dated 10.07.2020 passed by this Hon'ble Court in W.P.No.8986 of 2020 and WMP No.10924 of 2020.



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For Appellants : Mr.T.P.Manoharan
Senior Advocate
Assisted by Mr.J.Kumaran
Additional Government Pleader
(Puducherry)

For Respondent : Mrs.Pooja Jain
for M/s.Giridhar & Sai

JUDGEMENT

(Heard through Video Conferencing)

R.N.MANJULA, J.

This Contempt Appeal has been filed against the order of the learned single Judge dated 16.06.2021 in Contempt Petition No.609 of 2020 in which the appellants/contemnors have been directed to pay a sum of Rs.25,000/- to the Cancer Institute, Adyar, Chennai, by recording a finding that the act of contempt of Courts has been proved to be true.

2. Short facts:-

The respondent held a license to run an arrack shop at No.4, (O), Karuvadikuppam, Oulgaret Municipality (shop/shop in question) in the Union Territory of Puducherry from 2019. The license of the respondent was cancelled by 3rd appellant on 05.06.2020. After filing a statutory appeal before the 2nd appellant, the respondent filed a writ petition in WP.No.8986 of 2020 seeking directions. In the said writ petition, an order dated 10.07.2020 was passed by taking into note the fact that the hearing of the appeal was fixed on 16.07.2020, an order to maintain status quo was issued with a direction to dispose of the appeal before 31.07.2020. During the pendency of the status quo order, the third appellant issued an auction notification No.1821/DCE/TP/AUC/2020-21 on 25.07.2020, wherein, the shop of the respondent was also included in page No.571. So the respondent has filed a petition to take contempt action by alleging that the appellants have wantonly violated the order of status quo passed by the learned single Judge on 10.07.2020, by including her shop in the auction notification dated 25.07.2020. After hearing both the parties, the learned single Judge did not hold the appellants guilty of Contempt of Court but directed them to pay Rs.25,000/- to the Cancer Institute. The operative portion of the order passed by the learned single Judge in Contempt Petition No.609 of 2020 dated 16.06.2021 reads as under:-



"14.

.....

19. The Contempt Petition is thus disposed putting the respondents to terms for admitted violation as recorded at paragraph 14 of this order. The respondents in the Contempt Petition are directed to pay a sum of Rs.25,000/- (Rupees twenty five thousand only) to the Cancer Institute, Adayar, Chennai within a period of four (4) weeks from today and file a memo of compliance before the Registry of the Court."

3. Aggrieved over the said order, the Appellants/contemnors have filed this present Contempt Appeal.

4. Heard Mr.T.P.Manoharan, learned Senior Advocate assisted by Mr.J.Kumaran, learned Additional Government Pleader (Puducherry) appearing for the appellants and Mrs.Pooja Jain, learned counsel for the respondent.

5. The learned Additional Government Pleader (Puducherry) for the appellants has submitted that the contemnors have utmost respect for the orders of the Court and they used to obey and comply the orders promptly; there was no intention on the part of the appellants to violate the order of status quo but the inclusion of the impugned shop in the auction notification dated 25.07.2020 was a mistake. It is further submitted that after coming to know of the mistake, a corrigendum was issued through a notification dated 31.07.2020 by removing the respondent's shop from the list of shops included therein and the same was also published in the Extraordinary Gazette of Puducherry dated 31.07.2020; since there was no act of wilful disobedience of the order of the Court, the order of the learned single Judge has to be set aside and this Contempt Appeal has to be allowed.

6. The learned counsel for the respondent/petitioner has submitted that the learned single Judge did not impose any fine and there is no punitive orders suffered by the appellants/contemnors; since the appellants/contemnors have not been given any punishment, there is no scope for reversing the order of the learned single Judge and the Appeal itself would not lie.

7. Points for determination:-

1. Whether the Appellant has wilfully violated the order of the Court?
2. Whether the finding of the learned Single Judge that the Appellant is guilty for contempt is sustainable?

8. Mr.T.P.Manoharan, learned senior counsel submitted that



the expression "any order or decision of the High Court in the exercise of its jurisdiction to punish" found in Section 19 of the Contempt of Courts Act, 1971, would include the order passed by the learned single Judge directing the appellants to pay Rs.25,000/- to Cancer Institute. In support of the contentions made by Mr.T.P.Manoharan, learned senior counsel, the following decisions have been cited:-

S.No.	Dated	Judgement Cause Title	Citations
1.	10.01.2008	Shobhana Radhakrishnan and another Vs. R.Krishnamoorthy	2008 (2) CTC 663 (DB)
2.	29.07.2008	S.C.Sekar and another Vs. Tamilnad Mercantile Bank Shareholders' Welfare Association & another	2008 (5) CTC 769 (DB)
3.	05.12.2008	Tamilnad Mercantile Bank Shareholders Welfare Association Vs. S.C.Sekar & others	(2009) 2 SCC 784
4.	19.04.2000	R.N.Dey & others Vs. Bhagyabati Pramanik & others	(2000) 4 SCC 400
5.	15.10.2003	V.M.Manohar Prasad Vs. N.Ratnam Raju & another	(2004) 13 SCC 610
6.	11.12.1973	K.T.Chandy Vs. Mansa Ram Zade	(1974) 1 SCC 414
7.	15.07.2005	Modi Telefibres Ltd. & others Vs. Sujit Kumar Choudhary & others	(2005) 7 SCC 40
8.	17.01.2014	Ram Kishan Vs. Tarun Bajaj & others	(2014) 16 SCC 204
9.	19.01.2021	Rama Narang Vs. Ramesh Narang & others	2021 SCC Online SC 29
10.	17.03.1978	Purshotam Dass Goel Vs. Hon'ble Mr.Justice B.S.Dhillon & others	(1978) 2 SCC 370

9. In the impugned order passed by the learned single Judge, a sum of Rs.25000/- was ordered to be paid by the appellants to the Cancer Institute, Adyar, without recording a finding that the appellants are guilty of Contempt of Court. In the earlier decision of the division Bench of this court rendered in Shobhana Radhakrishnan and another Vs. R.Krishnamoorthy [2008



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(2) CTC 663], it is held that as per Section 19(1) of the Contempt of Court Act, the contemnor has got a right to appeal against any order or decision passed by the Court in exercise of its jurisdiction to punish for contempt. It is worthwhile to extract the relevant portions in paragraphs 13 & 14 of the said judgement as under:-

.....

"13. Whenever a decision or order culminated into one of punishment made under Section 12 of the Act, an appeal is maintainable under Section 19(1)(a) of the Act. Similarly when this Court imposes a punishment under Article 215 of the Constitution of India, an appeal is maintainable to a bench of not less than two Judges. Section 19(1) does not say that an appeal lies only punishment for contempt but uses rather a wider expression that an appeal lies from any order or decision passed in exercise of the jurisdiction to punish for contempt. The expression "any order or decision" in this connection purports to connote prima facie a variety of orders or decisions that may be passed by the court in exercise of its jurisdiction to punish for contempt. Restricted interpretation to the words "order or decision" confining only to the punishment will be tantamount to delete such words or expressions used in Section 19 of the Act. The expression 'order of decision' in Sub-Section (a) of Section 19 also includes something other than punishment is it appears from a reading of sub-section (2)(a) of section 19 which provides that pending any appeal the appellant court may order that "the execution of the punishment or order appeal against be suspended". The section does not restrict an appeal against a punishment since the section includes "or order" as well. If the order of punishment is alone made appealable, there would have been no necessity of using the words 'or order' in the expression 'the execution of the punishment or order appealed against' as used in sub-section 2(a) of Section 19.

14. On a plain reading of Section 19 of the Act provides that an appeal shall lie from any order or decision of High Court in exercise of its jurisdiction to punish for contempt. The words "any order" should be read with the expression "decision or order" used in sub-section (1) of Section 19, which the High Court passes in exercise of its jurisdiction to punish for contempt. "Any order" is not independent of the expression "decision" and they have been put in an alternative form saying "order" or "decision". A decision or order holding the contemnor guilty of



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either an order of the Court or breach of undertaking could be questioned by way of appeal under Section 19 (1) of the Act. Of course when a decision taken by the Court to reject the contempt petition, appeal is not maintainable. Such law has been laid on the principle that the contempt proceedings are between the Court and the Contemnor and the complainant stands only as a person to bring to the notice of the Court, the alleged contempt. Though warning is not a punishment if a restricted meaning is given to the order and to hold that the appeal is not maintainable against a warning would deviate the very right of the person since such an order of warning may affect adversely or cause prejudice to the contemnor."

10. Later, in an another division bench of this Court rendered the judgement reported in 2008 (5) CTC 769 (S.C.Sekar and anr. Vs. Tamilnad Mercantile Bank Shareholders' Welfare Association & anr), the scope of section 19 has been dealt at length in paragraphs 14 and 19 as under:-

.....

"14. The next question that arises for consideration is as to whether the appellants are entitled to file the present Contempt Appeals. In this context, it would be relevant to point out that this Court in exercise of its powers under Section 12 is entitled to punish the contemnor and in such event, the person who visited with such punishment is entitled as a matter of right to prefer an Appeal under Section 19 (1)(a) of the Act. In terms of Section 19 of the Act, an Appeal shall lie as of right from any order or decision of High Court in exercise of its jurisdiction to punish for contempt. To our mind, the said Section contains two parts. Firstly, an Appeal shall lie as of right from any order or decision of the High Court and secondly, such order or direction must be in exercise of its jurisdiction to punish for contempt. It need not necessarily, therefore, mean that only in such cases where this Court punishes the contemnor, an Appeal would lie and not when some adverse order is passed. If that interpretation is given to the said provision, the first limb of the said provision regarding the right to Appeal against any order or decision of the Court would lose its full meaning. Any order or decision passed by this Court while exercising its jurisdiction to punish the contemnor would mean the exercise of jurisdiction and the corresponding order or decision. In our opinion, even in case of any order passed adversely affecting any person, certainly he would be entitled to



prefer an Appeal, as otherwise he would be left with no effective remedy and only to visit with such adverse orders.

.....
19. There has been no difficulty that the application of sub-section (1) of Section 19 to cases where the Appeal is from an order imposing punishment under Section 12 of the Act. But when the Court had not imposed punishment under Section 12 and yet some adverse interlocutory orders are passed in the course of contempt proceedings, whether the parties aggrieved by such order would be entitled to invoke the appellate jurisdiction under the Contempt of Courts Act itself. In *Purushottam Das Goel v. Justice B.S. Dhillon*, 1978 (2) SCC 370, the Apex Court broadened the area of appealability of an order which decided some bone of contention raised before the Court affecting the rights of the parties aggrieved whether made at the filing stage of the proceedings or even at an early stage. In fact the Court had observed that it was neither possible nor advisable to make an exhaustive list of the type of orders, which may be appealable under Section 19. The said view of Apex Court again reiterated by the Apex Court in *UOI and others v. Mario Cabrele Sa*, AIR 1982 SC 691. In our considered view, the provisions of Appeal under Section 19(1) cannot be restricted only to a case of punishment imposed by the Court in contempt proceedings and such right of Appeal shall also be extended where an order adversely affecting the party are passed. Considering the facts of this case, as the decision or order was made by this Court only in exercise of the contempt proceedings, the person aggrieved would be only entitled to invoke the jurisdiction of this Court under the provisions of the Contempt of Courts Act and need not necessarily relegated to the other provisions, particularly intra-Court Appeal. "

11. In the judgement of the Hon'ble Supreme Court rendered in *Tamilnad Mercantile Bank Shareholders Welfare Association Vs. S.C.Sekar & others* [2009] 2 SCC 784,], the various judgements of the High Courts and the Supreme Court have been referred. And more specifically in para-43 of the said judgment, it is stated as below:-

.....

"43. A similar view had been taken in *Ashis Chakraborty v. Hindusthan Lever Sramik Karmachari Congress* [96 CWN 673 : (1992) 1 CHN 160] by the Calcutta High Court, stating: (CHN pp. 169-70, para 9)



"9. ... We are, however, not oblivious of the fact that Section 19(1) does not merely speak of an appeal lying only against punishment for contempt but uses the expression that an appeal lies from any 'order or decision' passed in exercise of the jurisdiction to punish for contempt.

As regards the meaning of the expression 'any order or decision' we understand a variety of orders and decisions that may be passed by a court in exercise of its jurisdiction to punish for contempt. Our own High Court in *Ranjit Chatterjee v. Ram Badan Choubey* [(1981) 2 CHN 97] held that if the order or decision prejudicially affects a party, he has indeed a right of appeal. If no other order except punishment would have been appealable, there would have been no necessity of using the words 'any order or decision' in the expression 'the execution of the punishment or order appeal against' as used in Section 19(2)(a) of the Act. If the scope of appeal under Section 19 is restricted only to punishment imposed under Section 12 and nothing beyond, then a person who is *ex facie* found guilty of contempt under Section 14 and is detained in custody pending the hearing on the charge of contempt and is refused bail, would have no right of appeal against such refusal of bail pending the decision on the charge of contempt which will amount to deprive the alleged contemnor of the right of appeal in such circumstances. If in case of such an exigency, where he is directed to be released on a particular bond which is found to be much excessive, his right is to be defeated to a large extent and the very purpose of making provision for appeal to give relief in appropriate cases will be lost. We are of the clear view that while the contemnor is detained in custody under Section 14 pending determination of the charge, there is no punishment imposed on him as yet under Section 12. The contention of Mr Mukherjee is that the detention in such circumstances would also be a form of punishment under Section 12 is really untenable. The legislature in its wisdom does not use surplus words but obviously uses such words which would advance its object and would remove the mischief of ambiguity. We have exhaustively dealt with all the contingencies in this regard over appealability or otherwise of an order or decision in *Ashoke Kumar Rai v. Ashoke Arora* [FMAT No. 2146 of 1991 decided on 17-12-1991. See also fn 9 above.] to hold that even though it was stated in *D.N. Taneja v. Bhajan Lal* [(1988) 3 SCC 26 : 1988 SCC (Cri) 546] that unless a punishment is imposed, no appeal lies



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against it, at best relates to a case of criminal contempt and nothing beyond and if any order or decision is arrived at deciding any bone of contention or any issue in the controversy an appeal lies."

(emphasis in original)"

12. The S.Nos.4 to 7 and 10 of the judgements cited by Mr.T.P.Manoharan, learned senior counsel for the appellants are also in support of the same point. In the light of the above decisions rendered on the wider interpretation of the words "any order or decision of the High Court in the exercise of its jurisdiction to punish", employed in Section 19(1) of the Contempt Act, it is clear that a contemnor will not lose his right to appeal even though he was not punished for the act of contempt. Even if any non-punitive decision or order is passed by the Court, in the exercise of the Court's jurisdiction to punish for contempt, the alleged contemnor would have a right of appeal.

13. On perusal of the records and from the submission of appellants/contemnors, it is seen that the auction notification has been issued in violation of the order of the learned single Judge dated 10.07.2020. But for a contempt action, it is not sufficient to prove that there is violation but it should also be proved that the violation was wanton and wilful despite the contemnors had the opportunity to comply with the same.

14. The above proposition has been laid down by the Hon'ble Supreme Court in Rama Narang Vs. Ramesh Narang & others, (2021 SCC Online SC 29)in paragraphs 79 & 82 as below:-

.....

"79. It can thus be seen, that this Court has held, that the contempt proceeding is not like an execution proceeding under the Code of Civil Procedure. It has been held, that though the parties in whose favour, an order has been passed, is entitled to the benefits of such order, but the Court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the directions of the Court, has to take into consideration all facts and circumstances of a particular case. It has been held, that is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience of any judgment, decree, direction, order, writ or other process of the Court. It has been held, that before punishing the contemnor for non-compliance of the decision of the Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction, writ or other process but



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should also be satisfied that such disobedience was wilful and intentional. Though, the civil court while executing a decree against the judgment debtor is not concerned and bothered as to whether the disobedience to any judgment or decree was wilful and once the decree had been passed, it was the duty of the court to execute the decree, whatever may be the consequences thereof. In a contempt proceeding before a contemnor is held guilty and punished, the Court has to record a finding, that such disobedience was wilful and intentional. It has been held, that if from the circumstances of a particular case, though the Court is satisfied that there has been a disobedience but such disobedience is the result of some compelling circumstances, under which it is not possible for the contemnor to comply with the same, the Court may not punish the alleged contemnor.

.....
82. This Court has observed, that the contempt proceedings are quasi- criminal in nature and the standard of proof required is in the same manner as in the other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally, to bring the matter within the ambit of the said provision. The Court has also referred to the observations made by this Court in the case of Debabrata Bandopadhyay v. State of West Bengal , wherein it was observed, that punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority."

15. S.No.8 of the judgement cited by Mr.T.P.Manoharan, learned senior counsel for the appellants is also in support of the point dealt above. In the case in hand, despite the third appellant has issued a notification dated 25.07.2020, when it was brought to his knowledge that the subject shop is covered by an order of this Court, he has immediately taken correctional measures by issuing a corrigendum notification on 31.07.2021 by deleting the subject shop from the list. This act of the 3rd appellant would show that the earlier inclusion of the subject shop in the auction notification was a genuine mistake and the same was corrected subsequently with all seriousness and at the earliest point of time and more specifically before the date of auction. The said fact was brought to the knowledge of the learned single Judge also. However, the learned single Judge has omitted to appreciate the Corrigendum issued on 31.07.2020



vide notification No.1821/DCE/TP/AUC/2020-21 dated 25.07.2020 by the 3rd appellant and record any findings on this score.

16. It has been held in the various decisions of the Courts that in contempt proceedings, it has to be proved before the Court that the contemnor has intentionally violated the orders of the Court by showing sheer disregard to the orders of the Court. Since the 3rd appellant/respondent has issued the corrigendum by deleting the shop in question from the list of shops shown in the earlier auction notification, the earlier inclusion is found to be unintentional and without being conscious of the earlier order of the Court. So, we are inclined to accept the submission of the contemnor that he had not disobeyed the orders of the Court wilfully.

17. The appellants have been ordered to pay Rs.25,000/- to the Cancer Institute, Adyar, which renders immense service to cancer patients. Since appellants were found to be not guilty of Contempt of Court, no individual liability to pay the said sum can be fastened to any of the contemnors/officers. However, a payment of a small sum of Rs.25,000/- to the Cancer Institute by the Puducherry Government as a donation and not by the appellants personally would subserve the interests of justice especially in the light of the fact that the respondent's shop was included in the auction notification albeit the status quo order, though inadvertently.

With the above observations, this Contempt Appeal is allowed and the order of the learned single Judge dated 16.06.2021, is modified to the effect that the appellants/contemnors are not liable to pay Rs.25,000/- but we, however, direct the Government of Puducherry to donate a sum of Rs.25,000/- to the Cancer Institute, Adyar, within a period of four weeks from the date of receipt of a copy of this judgement. No costs. Connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sni

To

1. The Chief Secretary,
Government of Puducherry, Puducherry.



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2. Shurbir Singh, I.A.S.,
The Secretary to Government (Excise),
Govt. of Puducherry,
Chief Secretariat, Puducherry.
3. Abhijit Vijay Chaudhari, I.A.S.,
The Secretary to Govt. (Art and Culture/Wakf),
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4. Shashvat Saurabh, I.A.S.,
The Deputy Commissioner (Excise)-cum-Licensing Authority,
Office of the Deputy Commissioner (Excise),
Industrial Estate, Thattanchavadi,
Puducherry.
5. The Cancer Institute,
W Canal Bank Road,
Gandhi Nagar, Adyar,
Chennai - 600020.

+1cc to Government Pleader (Puducherry) Sr No.45979

Cont.A.No.3 of 2021

PM (CO)
PR (06/10/2021)