Prithawi Nath Ram vs State Of Jharkhand And Ors on 24 August, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4277, 2004 (7) SCC 261, 2004 AIR SCW 4742, 2004 AIR - JHAR. H. C. R. 2593, 2004 (8) SRJ 208, 2004 (6) SLT 389, 2004 (7) SCALE 117, (2004) 8 JT 163 (SC), 2004 (3) BLJR 1802, 2004 (2) UJ (SC) 1331, (2004) 22 ALLINDCAS 32 (SC), 2004 UJ(SC) 2 1331, 2005 (1) ALL CJ 189, 2005 ALL CJ 1 189, (2004) 2 JCJR 147 (SC), (2004) 4 JCR 1 (SC), (2004) 3 KHCACJ 483 (SC), (2004) 5 ALLMR 1129 (SC), (2005) 3 EASTCRIC 191, (2005) 2 MAD LW 5, (2004) 4 RECCRIR 126, (2004) 6 SUPREME 447, (2004) 4 CURCC 48, (2004) 3 KER LT 407, (2004) 4 MAD LJ 106, (2004) 7 SCALE 117, (2004) 50 ALLCRIC 441, (2004) 4 ALL WC 2955, (2004) 4 ALLCRILR 519, (2004) 29 OCR 314, (2004) 2 WLC(SC)CVL 785, (2004) 22 INDLD 231

Author: Arijit Pasayat

Bench: Arijit Pasayat, D.M. Dharmadhikari

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           CASE NO.:
Appeal (civil)  5024 of 2000

PETITIONER:
Prithawi Nath Ram

RESPONDENT:
State of Jharkhand and Ors.

DATE OF JUDGMENT: 24/08/2004

BENCH:
ARIJIT PASAYAT & D.M. DHARMADHIKARI

JUDGMENT:
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J U D G M E N T WITH IA NOS. 10-11 OF 2004 ARIJIT PASAYAT, J Appellant filed an application under Sections 11 and 15 of the Contempt of Courts Act, 1971 (in short the 'Act') read with Article 215 of the Constitution of India, 1950 (in short the 'Constitution'). The foundation of such application was alleged non-compliance of the directions given by a learned Single Judge of the Patna High Court in CWJC 1120 of 1998 by order dated 30.3.1999.

A learned Single Judge of the said High Court, while dealing with the application for initiation of contempt proceedings, has passed the impugned judgment holding that it would not be proper to

take any action for contempt. Though learned Single Judge noticed that the scope of consideration while dealing with an application for initiation of contempt proceedings was confined to the question whether there was compliance with the order or not, yet proceeded to examine the correctness of the order and called upon the parties to satisfy him that the direction of the kind contained in the order dated 30.3.1999 could be issued. After an indepth analysis, he came to hold that the directions could not have been given and therefore there was no scope for taking any action for contempt.

Learned counsel for the appellant submitted that the learned Single Judge has not kept the correct parameters of law in view while dealing with the application for contempt. In essence he has sat in judgment over the decision rendered by another learned Single Judge. It was not open in the contempt proceedings to examine whether the order, non-implementation of which was being urged, is valid or not. That is beyond the scope of consideration.

In response, learned counsel for the State submitted that there can be no straight jacket formula which can be applied in such matters. If the order was not capable of being implemented, certainly it was open to the learned Single Judge dealing with the application for initiation of contempt proceedings to consider whether the order was legal or not. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari and Anr. V. Union of India and Ors. (2001 (10) SCC 496). The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the concerned party to approach the higher Court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in Niaz Mohammad and Ors. v. State of Haryana and Ors. (1994 (6) SCC 352), we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher Court. State took diametrically opposite stands before this Court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.

On the question of impossibility to carry out the direction, the views expressed in T.R. Dhananjaya v. J. Vasudevan (1995 (5) SCC 619) need to be noted. It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect thereof by hovering over the rules to get round the result, to legitimize legal

alibi to circumvent the order passed by a Court.

In Mohd. Iqbal Khanday v. Abdul Majid Rather (AIR 1994 SC 2252), it was held that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order and plead about the difficulties of implementation at the time contempt proceedings are initiated.

If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings.

In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other side cannot take that as a ground for dis-obedience of any interim order passed by the Court.

It is to be noted that after re-organisation of States, the dispute presently pertains to the State of Jharkhand, which has been substituted in place of original respondent, the State of Bihar.

Appeal is allowed to the aforesaid extent with no order as to costs.