

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE JAMAL KHAN MANDOKHAIL

Civil Petition No. 34-Q of 2019

(Against the order dated 24.12.2018 passed by the High Court of Balochistan, Quetta in Contempt Application No. 01 of 2014 in Civil Revision No. 35 of 2014)

Abdul Baqi, etc.

...Petitioner (s)

VERSUS

Haji Khan Muhammad, etc.

...Respondent(s)

For the Petitioner (s): Mr. Masoom Khan Kakar, ASC
Mr. Gohar Yaqoob Yousafzai, AOR

For the respondents: N.R.

Date of Hearing: 20.05.2022

ORDER

Yahya Afridi, J. Abdul Baqi and others (“petitioners”) have sought leave to appeal against the order dated 24.12.2018 (“impugned order”) passed by the High Court of Balochistan, whereby their Contempt Application No. 1/2014 (“Contempt Application”) was dismissed.

2. The brief facts of the case are that the petitioners filed a suit for declaration claiming that they have a right to use a road situated in *Khasra* Nos. 256, 257 and 273, *Mouza* Khidrani, Tehsil and District Harnai (“disputed road”) to access their land, and also prayed for mandatory injunction against the respondents for directing them to remove the “blockages and encroachments” on the disputed road. The respondents contested the claim of the petitioners, by asserting in the written statement that, they

privately own the land in *Khasra* Nos. 256, 257 and 273 of *Mouza* Khidrani, and that there is no thoroughfare passing through their said land.

3. The trial court dismissed the suit of the petitioners *vide* judgment dated 05.09.2013, whereafter they filed an appeal, which too was dismissed *vide* judgment dated 29.01.2014. The petitioners then preferred a revision petition before the High Court, and along with the revision petition, moved a miscellaneous application (CMA No. 98/2014) for interim relief. On this application, the High Court directed the parties to maintain *status quo* regarding the disputed road till the next date of hearing *vide* order dated 06.02.2014. It may be pertinent to mention here that, finally, the High Court, while disposing the revision petition, partly allowed the same *vide* order dated 30.05.2016, whereby the judgment of the appellate court was set aside, and the case was remanded to the appellate court for decision afresh.

4. During the pendency of the revision petition, the petitioners filed the Contempt Application before the High Court, contending that the respondents were not complying with the order of the High Court dated 06.02.2014, passed in CMA No. 98/2014 for interim relief, whereby the parties were directed to maintain *status quo* regarding the disputed road, as the disputed road was stated to be blocked by the respondents by stacking stones and bushes thereon. The High Court dismissed the Contempt Application, *vide* the impugned order. Hence, the present petition is filed by the petitioners for leave to appeal.

5. We have heard the learned counsel for the parties, and perused the record with their able assistance.

6. At the very outset, we may observe that the matter of contempt of court is essentially a matter between the court and the alleged contemnor. Therefore, if the court concerned, in exercise of its discretion, does not take any action for its alleged contempt or accept the apology rendered by the alleged contemnor, for certain reasons, the appellate court would not ordinarily substitute its own opinion and direct that court to proceed in the matter necessarily or reject the apology so rendered.¹ This general principle of practice and propriety, as to non-interference in the discretionary orders of the High Court declining initiation of contempt proceedings against the alleged contemnors, was enunciated by a five member larger bench of this Court in the case of **WAPDA v. Chairman N.I.R.C.**,² thus:

The matter of contempt is essentially between the Court and the contemnor. If the Court concerned for reasons of its own and in the exercise of its discretion does not feel inclined to take any action or for example accepts an apology in a given case, it is not for any other Court much less an appellate Court or authority to direct the said Court that it must proceed in the matter or to reject the apology. This is on the principle that the power to punish for contempt is to be exercised only by the High Court whose contempt has been committed and not by another Court.

What is also important to note is that, the said general principle is not absolute and, like other such principles, admits exceptions. This Court has time and again held that, though discretionary orders passed by the High Courts are not generally interfered with but they are not immune from scrutiny, if they are found to be arbitrary, perverse, or against the settled principles of law. That is why this Court in **M.H. Khondkar v. State**³ asked the petitioner, who was aggrieved of the order passed by the High Court dismissing his contempt application, to file a separate petition for leave to appeal against that order.

¹ **WAPDA v. Chairman, N.I.R.C.** (PLD 1979 SC 912); **Nital Shah v. A.D.C.** (1970 SCMR 887).

² PLD 1979 SC 912.

³ 1971 SCMR 743.

7. In the neighbouring jurisdiction also, their apex court has held in **Midnapore People's Co-operative Bank v. Chunilal Nanda**,⁴ that in special circumstances, an order declining to initiate proceedings for contempt may be open to challenge before it, by seeking special leave to appeal under Article 136 of their Constitution, which is similar to Article 185(3) of Constitution of the Islamic Republic of Pakistan 1973 ("**Constitution**"). Thus, while this Court does not ordinarily interfere with the order of a High Court, declining to initiate contempt proceedings, but where such order, particularly passed on a petition of an aggrieved party for civil contempt, is found to be arbitrary, perverse or against the settled principles of law, the same may be corrected by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution on a petition of the aggrieved party.

8. It would also be pertinent to observe here that the ultimate jurisdiction of this Court under Article 185(3) of the Constitution to grant leave to appeal against any judgment, decree, order or sentence of a High Court is not circumscribed by any limitation by the Constitution.⁵ The principles governing the exercise of this jurisdiction are of self-restraint, settled by the Court itself, keeping in view the considerations of propriety and practice. This Court thus ordinarily exercises its jurisdiction under Article 185(3) of the Constitution, and grants the leave to appeal, as held by a six-member larger bench of this Court in **Noora v. State**⁶, in cases where some serious question of law is *prima facie* made out or some case of grave miscarriage of justice is established either by reason of the fact that the findings sought to

⁴ AIR 2006 SC 2190. See also *Sate of Maharashtra v. Mahboob Allibhoy* AIR 1996 SC 2131.

⁵ *Feroz Khan Noon v. The State* PLD 1958 SC 33; *Islamic Republic of Pakistan v. Zaman Khan* 1997 SCMR 1508.

⁶ PLD 1973 SC 469.

be impugned could not have been arrived at by any reasonable person or that the findings are so ridiculous, shocking or improbable that to uphold such a finding would amount to a travesty of justice. Therefore, only when the finding of a High Court refusing to initiate proceedings for civil contempt is arbitrary, perverse, ridiculous or improbable, can the same be interfered with by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution.

9. In the present case, the High Court has dismissed the Contempt Application of the petitioners, rendering valid reason that the evidence relied upon by the petitioners in support of the Contempt Application was produced in the suit against which the appeal, after remand, is pending adjudication before the appellate court, and thus, recording any finding on the basis of the said evidence in the Contempt Application would prejudice the case of either party in the said appeal. The High Court has further observed that the existence of the disputed road, as well as the right of the petitioners to use such road, is yet to be determined by the appellate court.

10. The learned counsel for the petitioners could not explain, and satisfy us, as to how the said reasons of the High Court for making the impugned order are perverse, arbitrary, ridiculous, improbable or whimsical that may justify interference by this Court.

11. Accordingly, for the reasons stated hereinabove, we find the impugned order to be well reasoned, which does not warrant any interference by this Court in its discretionary jurisdiction under Article 185(3) of the Constitution. Thus, the

present petition being bereft of merit is dismissed, and leave to appeal is declined.

Judge

Judge

Quetta

20.05.2022

Approved For Reporting

Arif