

Romesh Kumar v. Bhagwan Dass Ahuja (J. V. Gupta, J.)

(6) Later, a Division Bench of High Court of Bombay in *National Insurance Co. Ltd. v. Gonti Eliza David and Others*, (7) also held to the same effect, namely; that the words “— — the liability, if any, arising under the Workmen’s Compensation Act, 1923” occurring in clause (a) of sub-section (2) of Section 95 of the Act, implied that the insurer was liable for common law damages also and not only in respect of the liabilities arising under the Workmen’s Compensation Act, 1923.

(7) A reading of the provisions in Section 95 of the Act would show that there is no provision contained therein which can be read to limit the liability of the Insurance Company to that payable under the Workmen’s Compensation Act, 1923. The reference to the liability of the Insurance Company under the Workmen’s Compensation Act, 1923 in proviso (i) to Section 95(b) of the Act is merely to indicate the existence of the liability of the Insurance Company under that Act, but not the extent thereof. The limit of liability of the Insurance Company is prescribed under section 95(2) (a) of the Act, which was rightly construed by the Division Benches of the High Courts of Allahabad and Bombay as inclusive of liability both under the Motor Vehicles Act, 1939 as also under the Workmen’s Compensation Act, 1923. Respectfully agreeing with this view, the conclusion is inescapable that in the present case, the liability of the Insurance Company must extend to the entire amount awarded. In other words, the truck-owner, driver as also the Insurance Company are jointly and severally liable for the compensation awarded to the claimants.

(8) This appeal is accordingly hereby accepted with costs. Counsel fee Rs. 300.

N.K.S.

Before J. V. Gupta, J.

ROMESH KUMAR,—Petitioner.

versus

BHAGWAN DASS AHUJA,—Respondent.

Civil Contempt Petition No. 123 of 1985

October 25, 1985.

Contempt of Courts Act (LXX of 1971)—Sections 12 and 20—
petition for contempt filed after more than one year from the date

(7) 1984 A.C.J. 8.

when the contempt is alleged to have been committed—Such petition—Whether barred by time—Starting point of limitation—Whether the date on which the contempt is committed.

Held, that a petition for contempt would be barred by time if it is filed after more than one year from the act of contempt alleged to have been committed by the contemner. The starting point of limitation is the date on which the contempt is alleged to have been committed and the period of one year will not run from the time when it has come to the notice of the petitioner and the same is brought to the notice of the court and no provision stops the running of the time of limitation of one year.

(Paras 1 and 3)

Contempt petition under section 12 of the contempt of Courts Act, 1971 praying that the respondent, who obtained order dated May 23rd, 1983 from Hon'ble Mr. Justice J. V. Gupta on an undertaking has wilfully disobeyed the same and has made a breach of the said undertaking in the year 1983 when his appeal was pending before the Additional District Judge, Bhatinda, and has intentionally concealed the transfer of his Car No. PUT 4 attached in the execution to Shri Sat Paul, son of Kundan Lal, is guilty for committing contempt of this Hon'ble Court and as such he be suitably punished for the same.

Sh. S. P. Gupta, Advocate, for the Petitioner.

Sh. A. K. Chopra, Advocate, for the Respondent.

JUDGMENT

J. V. GUPTA, J.

(1) This contempt petition under section 12 of the Contempt of Courts Act has been filed on the basis that the respondent has violated the undertaking given by him in this Court in C.R. No. 1467 of 1982 which was decided on 11th May, 1983. The copy of the said order has been filed as Annexure P.5. Therein the respondent has given an undertaking that the property which was attached would not be alienated by him till the decretal amount is recovered. It has been alleged in the petition that in spite of that undertaking the car which was attached was sold by the respondent on 7th August, 1983 and thus the respondent has violated the said undertaking and was therefore liable for contempt of court. In the reply on behalf of the respondent a preliminary objection has been raised that the petition for contempt was barred by time as it was

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filed after more than one year from the act of contempt alleged to have been committed by the respondent, and was therefore barred under section 20 of the Contempt of Courts Act. Admittedly, the contempt petition was filed on 8th April, 1985 which is more than 1 year from the date i.e. 7th August, 1983 when the undertaking is said to have been violated.

(2) Learned counsel for the petitioner submitted that the period of one year will run from the time when it has come to the notice of the petitioner and the same was brought to the notice of this Court. Once it is brought to the notice of this Court then it is for this Court to take proceedings within one year thereof. In support of his contention he referred to *Sudesh Kumar Vs. Jai Narain and another*, (1) *Baradakanta Mishra vs. Mr. Justice Gatikrushna Misra, C.J. of the Orissa H.C.* (2). On the other hand, learned counsel for the respondent submitted that the period of one year runs from the date on which the contempt is alleged to have been committed and therefore the petition was clearly barred by time when it was filed on 8th April, 1985 as the act of contempt is said to have been committed on 7th August, 1983. According to the learned counsel, Limitation Act as such does not apply to these proceedings and therefore the question of extending the time, therefore, does not arise. In support of his contention he cited *N. Venkataramanappa vs. D. K. Naikar and another* (3) and *Gulab Singh and another vs. The Principal, Sri Ranji Dass* (4).

(3) After hearing the learned counsel for the parties on this preliminary objection, I find force in the contention raised on behalf of the respondent. Section 20 of the Contempt of Courts Act reads as under:—

“No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”

(1) 1974 PLR 23

(2) AIR 1974 S.C. 2255

(3) AIR 1978 Karnataka 57

(4) AIR 1975 All 366

It was held in *N. Vankataramanappa's case* (supra) that starting point of limitation is the date on which the contempt is alleged to have been committed and not date of knowledge of complaint. Similarly, in *Gulab Singh's case* (supra) it was held that no provision stops running of the time of limitation of one year. The authorities relied upon by the learned counsel for the petitioner have no applicability to the facts of the present case. In *Sudesh Kumar's case* (supra) the following observations in para 10 were made:—

“That as to the date on which the contempt can be alleged to be committed within the contemplation of section 20 of the Act that has to be reckoned from the time when the Court becomes aware of the commission of its contempt and not from the date on which the act, comprehended to be contemptuous of this Court was committed by the contemner which apparently sounded innocuous till such time when its true nature became evident to the Court either on its own enquiry or otherwise.”

There, in that case, the contemner had filed an affidavit which was found to be false later on, the question was that the period of one year will run from the time when the allegations made in the affidavit were found to be false by the Court and not from the date when the affidavit was filed. Thus the case is clearly distinguishable because it is the falsity of the affidavit which gives the cause of action and that will only be when it is determined that the facts stated therein are false. Prior to that the question of committing any contempt as such did not arise. The Supreme Court judgement referred to above, has no relevancy to the facts of the present case. In these circumstances, though the respondent violated the undertaking given by him in this Court, but no proceedings could be initiated against him in view of the provisions of section 20 of the Act as the application was filed after the expiry of the period of one year from the date i.e. 7th August, 1983 when the said undertaking was violated.

(4) In this view of the matter, the petition fails and is dismissed with no order as to costs.

N. K. S.