

M/S. Aggarwal Sons v. Damodar Dass, Chief Administrator, etc.
(Gujral, J.)

was a lacuna in the report of the Public Analyst inasmuch as certain columns of the prescribed form had not been filled and it was a case of use of a prohibitive dye in the preparation of *jalebis*. The trial Magistrate had acquitted the accused, but conviction was recorded by the High Court on appeal. *Badri's* (5) is the only case where the accused was convicted for the sale of adulterated milk and his sentence was reduced to that already undergone and a fine of Rs. 500 was imposed. Enhanced punishment had originally been given to the accused for what was described as his third offence, but the High Court came to the conclusion that his conviction could not be treated as for the third offence and it was in these special circumstances that the sentence was reduced from one year's imprisonment to that already undergone and a fine of Rs. 500 was imposed. None of these cases can help Mr. Gandhi, who contends that the offence of the petitioner is only technical in nature. I also cannot agree that the offence can in any sense be said to be technical. In the peculiar circumstances of this case, I however, reduce the sentence to three months' rigorous imprisonment, but maintain the sentence of fine of Rs. 1,000 in default of payment whereof the petitioner would undergo further rigorous imprisonment for three months. The revision petition is partly allowed to the extent that the sentence of the petitioner is reduced as stated above.

R.N.M.

CRIMINAL ORIGINAL

Before Man Mohan Singh Gujral, J.

M/S. AGGARWAL SONS,—Petitioner.

versus

DAMODAR DASS, CHIEF ADMINISTRATOR AND OTHERS,—Respondents.

Criminal Original No. 209 of 1968.

October 29 1969

Contempt of Courts Act (XXXII of 1952)—Section 3—Stay order passed in open Court, not in the presence of the party but his counsel—Counsel not conveying the order to the party—Such party—Whether guilty of disobedience of the stay order.

Held, that before action under section 3 of the Contempt of Courts Act, 1952, for disobedience of the stay order passed by a Court can be taken it

has to be established that the party proceeded against has the knowledge of the order. From the fact that the order is passed in the presence of the counsel of such party, it cannot be inferred that the information is conveyed to the party in time. It is only where a clear case of contumacious conduct not explainable otherwise arises that a contemner is to be punished. (Paras 4 and 5).

Application for Contempt of Court under Section 3 of the Contempt of Courts Act, praying that an appropriate action be taken against the respondents.

R. N. MITTAL, ADVOCATE, for the petitioner.

C. D. DEWAN, ADVOCATE, for the respondents.

JUDGMENT.

Gujral, J.—This is a petition under section 3 of the Contempt of Courts Act praying that the respondents be punished for having disobeyed an order of this Court, dated 8th November, 1968.

(2) The facts giving rise to this application are that the petitioner had filed Civil Writ No. 119 of 1967 praying for a writ of *certiorari*, *mandamus* or any other writ, order or direction to be issued to the respondents to allot a large sized plot in Sector 17 on the Madhya Marg, Chandigarh, to the petitioner. That petition finally came up for hearing before a Division Bench and was dismissed on 23rd August, 1968. Subsequently, the petitioner made an application for leave to appeal to the Supreme Court which came up for final hearing on 31st October, 1968. On this date the leave was granted. The petitioner had also made an application for stay of the auction of the plots which was to be held on 10th November, 1968. The order on that application was also passed on the same day and was a part of the order allowing leave to appeal to the Supreme Court. The relevant portion of the order reads as under:—

“Mr. R. N. Mittal the learned counsel for the petitioner pointed out that some plots have recently been carved out in the same vicinity for which auction is going to be held on the 10th November, 1968, and in his application under Order 45, Rule 13 and Section 151 of the Code of Civil Procedure, prayed for the stay of auction of one plot out of these. He argued that if this stay was not granted, his leave to the Supreme Court would become infructuous. To enable the petitioner to obtain the appropriate stay from the Supreme Court, we stay for two months the auction

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of one plot along the Madhya Marg out of the plots reserved for shops for sanitary goods.”

Though this order was passed on 8th November, 1968, directing that one plot along the Madhya Marg be reserved for the petitioner but no plot was reserved and auction of all the plots was held on 10th November, 1968. The petitioner filed this petition for action being taken under section 3, of the Contempt of Courts Act.

(3) It may be stated at the outset that out of the four respondents in this petition three respondents, namely, Shri Damodar Dass, Shri Sham Lal Verma and Shri Gurdip Singh were not parties either to the Civil writ or to the application for leave to appeal to the Supreme Court. This being the position, they cannot be held liable for any disobedience of the order of this Court regarding the holding of the auction as no material has been placed on the file to show that the order was received by these respondents on or before 10th November, 1968.

(4) We are then only left with the case of Shri Hoshiar Singh who was the Estate Officer and was also party to the Civil Writ and the application for leave to appeal to the Supreme Court. The case of this respondent is that the order staying auction of plots did not come to his notice as it was issued from the office of the High Court on 13th November, 1968, and as he was not aware of the order earlier the auction regarding the plot could not be stayed. On behalf of the petitioner it is mainly contended that as the order was passed in open Court in the presence of the counsel for the respondent he would be presumed to have known the order and to have contumaciously disobeyed this order. Support for this argument is sought from *Ram Prasad Singh v. The Benares Bank*, (1) In this case it was ordered by a Single Judge of the Allahabad High Court that respondent Ram Prasad Singh was not to alienate any of the properties which had been attached by the Patna High Court prior to 1918. In spite of this Ram Prasad Singh executed two sale deeds, after the passing of the order, on 3rd and 4th January, 1919. The injunction had been passed in the presence of both parties duly represented by counsel and a formal injunction was also issued for service on Ram Prasad Singh personally. Personal service on Ram Prasad Singh could not

(1) (1920). I.L.R. 42 All. 98.

be effected as the process-server was unable to find him at his ordinary place of residence. Even if personal service was not effected it was held that Ram Parsad was guilty of contempt and the following observations were made :—

“The circumstances under which the attempt to effect personal service failed are themselves suspicious, and we must agree with the learned Judge of this Court that it is not possible really to believe that the prohibitory order, passed in open court, in the presence of a responsible legal adviser, was never communicated to the person principally concerned. Apart from the merits, we cannot hold the appellant absolved from all liability merely because of the failure of the attempt to effect personal service. The prohibitory order was passed in open court; it may not technically have the effect of a decree, but it was passed in the presence of both parties duly appearing before the court and it takes effect from the date of its delivery just as much as a permanent injunction embodied in a judgment and incorporated in a decree of the Court.”

A perusal of these observations shows that the order was made not only in the presence of the counsel but also in the presence of the parties. In an earlier portion of the judgment it was stated that the order was passed in the presence of both the parties duly represented by counsel. From the above observation it would appear that when an order is passed in open Court in the presence of the parties the fact that the order could not be served personally would be of no consequence. As in the present case it is neither the allegation nor is there any material to show that Shri Hoshiar Singh respondent was present in Court when the order was passed the observations made in the above case are therefore, not helpful to the petitioner.

(5) On behalf of the respondents reliance is placed on *P. D. Gaur v. N. Balasundaram*; (2). In this case the petitioner Balasundaram had obtained an interim order staying the recovery of sales tax on the petitioner furnishing bank guarantee within two months from the date of the order. This order was confirmed on 21st July, 1967, and the time was extended by three weeks, i.e., up to 18th August, 1967. On this date again a further extension of two months

(2) A.I.R. 1969 Pb. & Hr. 60.

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was granted in the presence of the Advocate for the State and the departmental authorities. In spite of this, the respondent, P. D. Gaur, went to the factory of Balasundaram and threatened his manager with arrest of the petitioner and attachment of his property. In these circumstances, it was observed as under :—

“It was, therefore, necessary for the respondent to prove that the appellant had the information or the knowledge of the extension of the order for furnishing bank guarantee prior to 22nd August, 1967, when he went to the office of the petitioner. This fact not having been proved, the appellant had not disobeyed the order of this Court on 22nd August, 1967, and he cannot be said to have committed any contempt of Court.”

From the above observations, it is clear that before action under section 3 of the Contempt of Courts Act can be taken it has to be established that the party proceeded against has the knowledge of the order of the High Court. From the fact that the counsel for the party has knowledge it cannot be inferred that the information was conveyed to the party concerned in time. In the present case, the order had been passed in open Court on 8th November, 1968, while the auction was held on 10th November, 1968. The petitioner was allowed to examine the departmental file of the case but he has not been able to show any document which would indicate that the counsel appearing for the respondents in the civil writ had informed the party about the order of this Court. Moreover, there is also the affidavit of Shri Radha Kishan Kapur, Superintendent of the Estate Office, stating that he had examined the relevant file and that it does not contain any communication from Dewan Chetan Dass Advocate conveying to the Estate Office the information regarding the passing of the order dated 8th November, 1968. In these circumstances, it cannot be inferred that Shri Hoshiar Singh had the knowledge about the order dated 8th November having been passed. It has often been observed by the Hon'ble Supreme Court that it is only when a clear case of contumacious conduct not explainable otherwise arises that a contemner must be punished. In the present case, it has been found that the order of this Court dated 8th November had not been communicated to Shri Hoshiar Singh and he cannot, therefore, be held to have contumaciously disregarded the order of this Court.

6. It may also be added that the order was received by the Estate Office on 15th November and thereafter one plot on Madhya Marg in Sector 7C was reserved for the petitioner. The affidavit of Shri Radha Kishan Kapur shows that sites Nos. 17 to 44 in Sector 7-C on Madhya Marg had already been created and out of these only those bearing numbers 17 to 26 had been released and auctioned. Out of the remaining plots, plot bearing number 27 which is the next to the ones which had been auctioned has been reserved for the petitioner. This being the position, it would be safe to come to the conclusion that there was no intention on the part of the respondent to disobey the order of the High Court. In fact, the fact that immediately after the receipt of the order the plot situated next to the plots auctioned was reserved would show that the order had not been received earlier as there is not much difference between plots numbers 26 and 27. If plot bearing number 27 could be reserved so could any of the other plots if the order had come to the notice of the respondent in time.

7. As a result of the above discussion, I find that there is no material to hold that respondent had come to know of the order and had intentionally disobeyed it. I, therefore, dismiss this petition and discharge the rule against all the respondents.

N. K. S.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

DR. B. R. CHAUHAN,—*Petitioner.*

versus.

THE PANJAB UNIVERSITY AND OTHERS,—*Respondents.*

Civil Writ No. 1589 of 1969.

October 30, 1969.

Panjab University Calendar (1968), Volume I, Chapter III—Regulation 2—Appointment of Professor or Reader under—Senate—Whether has authority to impose condition of probation—Such condition if imposed—Whether arbitrary—Terms and conditions of contract of service regulated by the rules of a statutory corporation—Such contract—Whether can be enforced in a Court of law.