

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL
Special Appeal No. 101 of 2009

Thakur Dan Singh Bisht TrustAppellant
Versus
Ghanshyam Lal Sah and others ...Respondents.

Mr. Tribhuwan Phartiyal, Advocate with Mr. Anirudh Katoch, Advocate for the appellant.
Mr. D.S. Patni, Advocate for the respondents.

Coram: Hon'ble J.S. Khehar, C.J.
Hon'ble Sudhanshu Dhulia, J.

Sudhanshu Dhulia, J.

This special appeal has been filed under Rule 5 of Chapter VIII of the Rules of the Court, 1952. By the present special appeal, the appellant has challenged the order of the learned Single Judge of this Court dated 17.3.2009 passed in Civil Misc. Contempt Petition No. 5 of 2008 as well as the order dated 20.4.2009 passed in the review petition.

All the same, before the present special appeal can be heard on its merits, the appellant must satisfy this Court as to the maintainability of the present special appeal inasmuch as the special appeal has been filed challenging the order of the learned Single Judge sitting in a contempt jurisdiction whereby the learned Single Judge has rejected the contempt petition on grounds that no contempt is made out of the orders of the High Court. In other words, the learned Single Judge has refused to exercise his jurisdiction given to him under the Contempt of Courts Act read with Article 215 of the Constitution of India.

The Contempt of Courts Act, 1971 provides for a statutory appeal under Section 19 of the Act, which reads as follows :-

“19. Appeals. – (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt –

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court ;

(b) where the order or decision is that of a Bench, to the Supreme Court :

Provided that where the order or decision is that of the court of the Judicial Commissioner in any Union Territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate court may order that –

(a) the execution of the punishment or order appealed against be suspended ;

(b) if the applicant is in confinement, he be released on bail ; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed –

(a) in the case of an appeal to a Bench of the High Court, within thirty days ;

(b) in the case of an appeal to the Supreme Court within sixty days, from the date of the order appealed against.”

An appeal under Section 19 of the Contempt of Courts Act, 1971 therefore lies before a Division Bench against the order or decision of a learned Single Judge only in a case where the court has exercised its jurisdiction given to him under the Contempt of Courts Act, not otherwise. In other words, in a given case, where the court has refused to exercise its jurisdiction or, in other words, has come to the conclusion that no

contempt is made out and the contempt petition itself is dismissed, no appeal is maintainable against such an order. The seminal decision on this point is D.N. Taneja Vs. Bhajan Lal (1988) 3 SCC 26. The Apex Court in the aforesaid case was also seized with a matter which had come up before it under Section 19 (1) of the Contempt of Courts Act, which was directed against the judgment and order of the Punjab and Haryana High Court dismissing the application for contempt filed by the appellant Shri Bhajan Lal, the then Chief Minister of Haryana. The Punjab & Haryana High Court after considering the contempt application and the pleadings therein was of the view that under the circumstances, it was not a fit case for the Court to exercise its jurisdiction of the contempt court and the contempt petition was dismissed. The applicant thereafter filed an appeal before the Apex Court where a preliminary objection was raised on the maintainability of the appeal itself under Section 19 of the Contempt of Courts Act. The preliminary objections were accepted by the Apex Court for the reasons that the right of appeal is only available under Section 19 of the Contempt of Courts Act against a decision or an order of the High Court which has been passed in exercise of its jurisdiction for punishment of its contempt. According to the Apex Court, the High Court primarily derives its powers and jurisdiction to punish for a contempt under Article 215 of the Constitution of India. Therefore, an appeal will only lie under Section 19 (1) of the Contempt of Courts Act where the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. In other words, an appeal under Section 19 (1) would only lie when the High Court exercises its jurisdiction or powers, as conferred on it by Article 215 of

the Constitution of India, while imposing a punishment in contempt. Conversely therefore when a High Court refuses to impose any punishment on the alleged contemnor or dismisses the contempt petition, the High Court has not exercised its jurisdiction or power to punish for contempt. The Apex Court in the case, referred above stated that “The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.”

The Apex Court while elaborating on this aspect further stated as under :-

“Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt. It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the material produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution.

We have exactly a similar situation before us. A learned Single Judge of this Court has refused to exercise his jurisdiction in a contempt petition. An appeal under Section 19 of the Contempt of Courts Act is therefore not maintainable.

The learned counsel for the appellant has also argued that this is in fact not an appeal under Section 19 (1) of the Contempt of Courts Act, 1971, before this

Court, but a special appeal under Rule 5 of Chapter VIII read with Rule 10 of Chapter IX of the Rules of Court. Therefore, even if no appeal is maintainable under Section 19 (1) of the Contempt of Courts Act, under the facts and circumstances of the case, a special appeal is maintainable under Rule 5 of Chapter VIII read with Rule 10 of Chapter IX of the Rules of the Court. This argument of the appellant is also misconceived for the following reasons :-

Firstly, the Contempt of Courts Act is a special Act which provides only in a given contingency, a provision for an appeal. This being the case, in a contempt matter an appeal before a Division Bench of this Court can only lie under Section 19 (1) of the Act. Since under Section 19 (1) of the Act an appeal is not maintainable, as already referred above and reasons assigned, it cannot be maintainable under the Rules of the Court.

Secondly, it may be possible that in certain cases prior to coming of the Contempt of Courts, 1971 special appeals, or the later patent appeals, as they were known earlier, may have been entertained. This was because earlier under the Contempt of Courts Act, 1952 there was no provision for statutory appeal even against the order imposing punishment. Therefore, a special appeal was the only remedy. This lacuna in the Contempt of Courts Act itself has since been removed in the present Contempt of Courts Act, 1971. Hence a provision being there under the Statute the provision for special appeal under the Rules of Court would not be attracted.

Thirdly, a special appeal can only be filed by a person who is aggrieved. The appellant is not a person aggrieved. By the impugned order, the Court has refused to exercise its jurisdiction for punishing a person. In case

of non-exercising of its jurisdiction, as already been referred above, no prejudice has been caused to the appellant and, therefore, he is also not a party aggrieved.

Apart from this, the only exception where a special appeal can be filed against an order of a learned Single Judge sitting in a contempt jurisdiction is where the contempt jurisdiction has been exceeded. In other words, where the Court had traversed beyond its jurisdiction or it has tested the correctness or otherwise of the orders which are alleged to have been violated or has given additional directions or deleted any directions. This is what has been laid down by the Apex Court in Director of Education, Uttaranchal & Ors. Vs. Ved Prakash Joshi & Ors. in Appeal (civil) 3713 of 2005.

In the present case, we find no such situation.

A Division Bench of this Court in Special Appeal No. 98 of 2009 (Sri Ghanshyam Singh Jainar Vs. Sri N. Ravishankar & others) in its order dated 9.3.2008 has already held that neither an appeal under Section 19 (1) of the Contempt of Courts Act nor a special appeal under Rule 5 of Chapter VIII read with Rule 10 of Chapter IX of the Rules of Court is maintainable before a Division Bench against an order of a learned Single Judge, where the learned Single Judge has refused to exercise its jurisdiction under Section 215 of the Constitution of India.

The present special appeal is, therefore, not maintainable and is hereby dismissed. No order as to costs.

(Sudhanshu Dhulia, J.)

(J.S. Khehar, C.J)

31.3.2010