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PUSHPABEN & ANR.

v.

NARANDAS V. BADIANI & ANR.

March 29, 1979

B [S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

Contempt of Courts Act—Section 12(3)*—Scope of—Sentence of imprisonment—When should be awarded in civil contempt.*

Respondent No. 1 filed a complaint under s. 420 IPC against the appellants alleging that a loan taken by them from him had not been repaid. While C the complaint was pending before a Magistrate the parties entered into a compromise under which the appellants undertook to repay the loan before a stipulated date. The Magistrate accordingly allowed the parties to compound the case.

When the appellants failed to repay the loan in accordance with the undertaking given before the Magistrate the respondent moved the High Court for D taking action against the appellants for contempt of court. On the view that the appellants had committed a wilful disobedience of the undertaking the High Court held that they were guilty of civil contempt and sentenced them to one month's simple imprisonment.

Allowing the appeal in part,

HELD : 1. The appellants had committed wilful disobedience of the court E of the Magistrate by committing serious breach of the undertaking given to it on the basis of which alone they had been acquitted. The High Court was, therefore, right in holding that the appellants were guilty of civil contempt under s. 2(b) of the Contempt of Courts Act. [638 A]

2. Having regard to the circumstances of the case the present case falls within the first part of s. 12(3) of the Act and a sentence of fine alone should F have been awarded by the High Court. By enacting the section the legislature intended that a sentence of fine alone should be imposed in normal circumstances. Special power is, however, conferred on the court to pass a sentence of imprisonment if it thought that ends of justice so required. Therefore, before a court passed a sentence of imprisonment it must give special reasons for passing such a sentence. [638 G]

G In the present case there are no special reasons why the appellants should be sent to jail.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 43 of 1975.

From the Judgment and Order dated 9-1-1973 of the Bombay High H Court in Criminal Application No. 681/72.

V. S. Desai, P. H. Parekh, C. B. Singh, M. Mudgol, B. L. Verma and *J. C. Rajani,* for the Appellants.

M. N. Shroff for the Respondents. A

The Judgment of the Court was delivered by

FAZAL ALI, J.—This is an appeal under S. 19 of the Contempt of Courts Act (hereinafter called the Act) against an order of the High Court of Bombay convicting the appellants for a Civil Contempt and sentencing them to one month's simple imprisonment. The facts of the B case have been fully detailed by the High Court and it is not necessary for us to repeat the same all over again. It appears that Respondent No. 1 had given a loan of Rs. 50,000/- to the appellants on certain conditions. Somehow or other, the loan could not be paid by the appellants as a result of which Respondent No. 1 filed a complaint under S. 420 I.P.C. against the appellants. While the complaint was C pending before the Court of the Magistrate, the parties entered into a compromise on 22-7-1971 under which the appellants undertook to pay the loan of Rs. 50,000/- with simple interest @ 12% per annum on or before 21-7-1972. An application was filed before the Court for allowing the parties to compound the case and acquit the accused. The Court after hearing the parties, passed the following order :— D

> "The accused given an undertaking to the court that he shall repay the sum of Rs. 50,000/- to the complainant on or before 21-7-1972 with interest as mentioned on the reverse. In view of the undertaking, I permit the compromise and acquit the accused". E

It is obvious, therefore, that the Court permitted the parties to compound the case only because of the undertaking given by the appellants.

Thereafter, it apears, that the undertaking was violated and the amount of loan was not paid to the Respondent No. 1 at all. The respondent, therefore, moved the High Court for taking action for contempt of Court against the appellants as a result of which the present proceedings were taken against them. The High Court came to the conclusion that the appellants had committed a wilful disobedience of the undertaking given to the Court and were, therefore, guilty of civil contempt as defined in S. 2(b) of the Act. Hence, this appeal before us. F G

Mr. V. S. Desai appearing in support of the appeal has raised two short points before us. He has submitted that there is no doubt that the appellants had violated the undertaking but in the circumstances it cannot be said that the appellants had committed a wilful disobedience of the orders of the Court. So far as this point is concerned, we fully H agree with the High Court. In the circumstances, the appellants undoubtedly committed wilful disobedience of the order of the court

A by committing a serious breach of the undertaking given to the Court on the basis of which alone, the appellants had been acquitted. For these reasons, the first contention put forward by Mr. Desai, is overruled.

It is, then, contended that under S. 12(3), normally the sentence B that should be given to an offender who is found guilty of civil contempt, is fine and not imprisonment, which should be given only where the Court is satisfied that ends of justice require the imposition of such a sentence. In our opinion, this contention of learned counsel for the appellants is well-founded and must prevail. Sub-section 3 of S. 12 reads thus :—

C

> "Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be D detained in a civil prison for such period not exceeding six months as it may think fit".

A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprison- E ment if it think that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation Thus, the sentence of imprisonment is an exception while sentence of fine is the rule.

F Having regard to the peculiar facts and circumstances of this case, we do not find any special reason why the appellants should be sent to jail by sentencing them to imprisonment. Furthermore, respondent No. 1 before us despite service, has not appeared to support the sentence given by the High Court. Having regard to these circumstances, therefore, we are satisfied that the present case, squarely falls in the G first part of S. 12(3) and a sentence of fine alone should have been given by the High Court. We, therefore, allow this appeal to this extent that the sentence of imprisonment passed by the High Court is set aside and instead the appellants are sentenced to pay a fine of Rs. 1000/- each. In case of default, 15 days simple imprisonment. H Four weeks time to pay the fine.

P.B.R. *Appeal allowed in part.*