

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1839 OF 2013

Ashok Kumar Aggarwal

.....Appellant

Versus

Neeraj Kumar & Anr.

..Respondents

J U D G M E N T

Dr. B.S. Chauhan, J.

1. This appeal has been preferred against the impugned judgment and final order dated 30.07.2007 passed by the High Court of Delhi at New Delhi in Contempt Case (Criminal) No. 8 of 2007 rejecting the said application filed by the appellant.

2. Facts and circumstances as stated by the parties, giving rise to this appeal are that:

A. The appellant had been working as Deputy Director, Enforcement of Delhi Zone under the Directorate of Enforcement from 6.11.1996, and in that capacity, he conducted raids on various

suspects under the provisions of Foreign Exchange Regulation Act (FERA), 1973 including one S.C. Barjatya, an alleged Hawala operator, as he had received an information that an amount of US\$ 1.5 lakhs had been transferred from the account of Royale Foundation in Swiss Bank Corporation, Zurich to the account of one S.K. Kapoor in HSBC Bank, Hong Kong. Subsequently, the said Shri S.C. Barjatya filed a complaint that the above transaction is forged and he is being falsely implicated. In view thereof, case No. RC S18/E0001/1999 was registered on 29.1.1999 against unknown officers of the Enforcement Directorate (hereinafter referred to as 'ED') and while enquiring into this complaint, the statements of various other persons were recorded. Passport of the appellant was seized on 4.3.1999. The statement of one Abhishek Verma was recorded under Section 161 of Code of Criminal Procedure, 1973, (hereinafter referred to as 'Cr.P.C.'), who had been arrested in that case. He was later enlarged on bail by the court and his statement under Section 164 Cr.P.C. was recorded, wherein he had stated that the appellant had been threatening him and extorting money from him while seeking information in respect of dealings in foreign exchange.

B. A look out notice was issued against the appellant through the Interpol as he was absconding. The appellant was arrested on 23.12.1999 from Saharanpur where he was staying in a hotel under a fictitious name. The appellant was remanded to police custody for 5 days in the first instance, which was later extended to another 2 days till 31.12.1999. During the police custody, the appellant alleged to have been physically abused and humiliated.

C. The appellant moved a bail application on 24.12.1999 which came for hearing on 3.1.2000 and 4.1.2000. During the course of proceedings, the learned Special Judge was shown a document purported to have been emanated from the Interpol Singapore on 29.12.1999 and sent to Interpol New Delhi in response to a requisition sent by Central Bureau of Investigation (hereinafter referred to as the 'CBI') through the Interpol Delhi on 16.12.1999. On the basis of the said information received from Interpol Singapore, the respondents-officers argued that the appellant had been in Singapore from 10.2.1999 to 14.2.1999 and though his passport which had been impounded did not contain any such stamp, and therefore he was possessing and using a forged passport with the same number. The

Special Judge accepted the submissions and rejected the application of the appellant for bail vide order dated 6.1.2000.

D. The respondents had been seeking more information from the Interpol Singapore and in response to the same, a reply dated 7.1.2000 was received that earlier communication dated 29.12.1999 was incorrect and the appellant did not enter into Singapore on the aforesaid dates i.e. 10.2.1999 to 14.2.1999. The said information dated 7.1.2000 was further confirmed by Interpol Singapore vide letter dated 12.1.2000.

In further correspondence, the **Interpol Singapore admitted its mistake vide communication dated 12.1.2000.**

E. Respondent No. 2 filed a remand application dated 13.1.2000 seeking further judicial custody of the appellant for 14 days. **In that application also, it was not disclosed that the respondents had received a communication from Interpol Singapore that earlier communication informing about the appellant being in Singapore was not correct.** The respondents **continued to withhold the said information and did not** bring it to the notice of the court. Even in a bail application filed by the appellant on 25.1.2000, claims were made that the appellant had not gone to Singapore on the aforesaid dates.

Reply to the said application was filed by the CBI on 27.1.2000 denying the said facts without bringing the real facts to the knowledge of the court. It was only on 27.1.2000 when the appellant's counsel insisted that the appellant had not gone to Singapore in February 1999 that the respondent no. 2, the investigating officer, admitted that the appellant did not visit Singapore on the dates as alleged earlier and the investigating agency had subsequently received information from Interpol Singapore that the information furnished earlier was not factually correct. After taking into consideration the above fact, the appellant was granted bail wherein all the aforesaid facts had been incorporated in the bail order dated 29.1.2000.

F. As per the appellant, on 26.7.2000, in another case before the Central Administrative Tribunal, he came to know about the subsequent communication sent by Interpol Singapore in this respect and thus, the appellant filed a Criminal Writ Petition No. 600 of 2001 before the High Court of Delhi to take action against the respondents which was disposed of vide order dated 28.5.2001 observing that the appellant may seek relief before the court of Special Judge where, according to the appellant, the CBI had misrepresented or concealed the correct information. Thus, in view of the observations made by

the High Court, the appellant filed an application under **Section 340 read with Section 195 Cr.P.C.** on 1.6.2001 before the Special Judge for taking action against the respondents for suppressing the material facts. However, the said application was dismissed by the Special Judge vide order dated 14.2.2002.

G. Aggrieved, the appellant took the matter to the High Court by filing an Appeal No. 199 of 2002. The High Court disposed of the said appeal vide judgment and order dated 16.12.2005 remanding the matter to the Special Judge to hear the parties on the application dated 1.6.2001 only on the issue of initiation of contempt proceedings and to answer the same in accordance with law. In view thereof, the Special Judge heard the said application and dismissed the same vide order dated 5.2.2007.

H. Aggrieved, the appellant filed Criminal Contempt Petition No. 8 of 2007 on 16.5.2007 before the High Court of Delhi under **Article 215** of the Constitution read with the provisions of the Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act 1971'). On receiving notice in the said case, the respondents filed reply.

I. The High Court disposed of the said petition after hearing the parties vide impugned judgment and order dated 30.7.2007 observing that the suppression or misrepresentation was not deliberate.

Hence, this appeal.

3. Shri Ram Jethmalani, learned senior counsel appearing on behalf of the appellant has submitted that the respondents had been fully aware, after receiving the communication from Interpol Singapore, that information furnished to them earlier by the said Singapore authorities was not factually correct. In spite of the fact that the matter had been listed time and again before learned Special Judge, such information was withheld and being under the same impression that the appellant had travelled to Singapore, his judicial custody was extended. Even in the application filed by the respondents for remand for a further period, such a material fact had not been disclosed. It was only at a much later stage when the appellant had already suffered unwarranted judicial custody and the counsel for the appellant had been insisting that appellant did not visit Singapore between 10.2.1999 and 14.2.1999, the Investigating Officer/Respondent no.2 revealed that they have received information from the Interpol Singapore on 7.1.2000 that the version of the

appellant was correct. Therefore, the appellant had been subjected to humiliation, insult and remained in judicial custody for a long time. Even the remand application dated 13.1.2000 was filed without disclosing such a fact. The appellant could be bailed out only on 29.1.2000 after remaining in jail for 36 days. It was the solemn duty of the investigating officer not to suppress the material fact from the court and the appellant would not have to face 36 days judicial custody in jail. The appellant had been approaching the authorities and courts time and again, however, could not get any relief from any authority or court. The application of contempt filed earlier was rejected by the Special Court. When the appellant approached the High Court by filing a criminal writ petition, the case was remanded to the Special Court on a particular issue. After remand, the case was considered and the same was also dismissed by the Special Judge. The High Court while dealing with the case under Article 215 of the Constitution, without giving any reason whatsoever, recorded a findings of fact that there was no deliberate attempt to cause any prejudice to the appellant. Hence, a finding not based on any reasoning or substantiated by any evidence, is not a judgment-in-fact. Therefore, the appeal deserves to be allowed.

4. Shri Ranjit Kumar, learned senior counsel appearing on behalf of both the respondents, has vehemently opposed the appeal raising a large number of issues, *inter-alia*, issue of limitation, jurisdiction of the court to entertain the contempt application; and referred to a large number of judgments to submit that the findings of fact recorded by the High Court that there was no deliberate attempt to cause any prejudice to the appellant was correct. Respondents had been working with all sincerity and their work has always been appreciated and a large number of certificates to that extent had been issued to them. Therefore, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

6. There is no dispute on the factual matrix of the case. The appellant had been arrested on the suspicion that he was having two passports and on the strength of one of them, he had visited Singapore between 10.2.1999 and 14.2.1999 and such a fact had been affirmed by the Interpol Singapore on queries from the Indian authorities. However, on 7.1.2000, the Interpol Singapore by a Memo dated 7.1.2000 informed the Indian investigating agency that the

information furnished by them earlier was factually incorrect and the appellant had not visited Singapore between 10.2.1999 and 14.2.1999. Subsequent thereto, the appellant filed a Criminal Writ Petition No. 600 of 2001 before the Delhi High Court; a case before the Special Judge, an appeal before the High Court and again the matter had been agitated before the Special Judge. After losing the battle, the appellant approached the High Court under Article 215 of the Constitution. The appellant was arrested on 23.12.1999 and was released on bail on 24.1.2000, thus, he remained in jail for 36 days.

7. It is also on record that the Singapore authorities had apologized for furnishing wrong information by them. The judgment and order dated 5.2.2007 of the learned Special Judge makes it crystal clear that the learned Special Judge had given an elaborate judgment deciding two issues, namely, one relating to limitation under Section 20 of the Act 1971 and, secondly, as to whether the suppression of material fact was intentional or motivated on the part of respondents and after hearing the matter, the learned Special Judge negated both the issues against the appellant holding that the application was barred by limitation as provided under Section 20 of the Act 1971 as cognizance could not be taken after one year of the date on which the

contempt had been committed. On the second issue, a finding has been recorded that there was no suppression of material fact by the respondents intentionally and deliberately as there was no motive to obstruct the administration of justice or to interfere with due course of proceedings.

8. Earlier before the appellate court in Criminal Appeal No. 199 of 2002, the same issues had been agitated and the matter was remanded to the learned Special Court to decide the specific issue so far as it relates to the initiation of contempt proceedings vide its judgment and order dated 16.12.2005. Even the order dated 29.1.2000 makes it evident that the first bail application of the appellant was rejected on 6.1.2000 considering the issues raised by the investigating agency, particularly the Interpol message suggesting that the appellant had visited Singapore on his passport no. S-243227 and remained there from 10.2.1999 to 14.2.1999, whereas the passport impounded by the CBI during the investigation did not show any entry relating to his aforesaid travel to Singapore. However, on 27.1.2000, the investigating officer admitted before the said court that a message was received from Interpol Singapore to the effect that the appellant did not visit Singapore from 10.2.1999 to 14.2.1999.

9. The High Court while dealing with the contempt petition under Article 215 of the Constitution has taken note of the facts referred to hereinabove as well as of the respective submissions advanced by the learned counsel for the parties, *inter-alia*, the submissions advanced by the respondents in respect of maintainability of the petition and limitation etc. However, without adverting to any of the issues so raised, the court abruptly came to the conclusion that the respondents did not intentionally suppress the material facts. The relevant part of the judgment reads as under:

“We find that although information was available with the CBI that the petitioner had not visited Singapore prior to 13.1.2000 yet there appears to be no deliberate attempt to cause any prejudice to the petitioner. The application for bail which came up before the Court was supported by an affidavit setting out the facts that the petitioner had not visited Singapore during the period when his passport was with the CBI which fact was duly confirmed by the public prosecutor. In that view of the matter, we are of the opinion that there was no deliberate concealment of material to the prejudice of the petitioner. The petition is, therefore, dismissed.”
(Emphasis added)

10. The respondents before this Court had also adverted to the issue of the procedure adopted by the appellant moving the Trial Court as well as the High Court in contempt matter and the procedure adopted

by those Courts and also to the issue of limitation. It is submitted that the High Court could not have proceeded with the case under Article 215 of the Constitution ignoring the limitation prescribed under the Act 1971. More so, in a criminal case where two views are possible the court must decide in favour of the person proceeded against. In order to fortify his submissions, Shri Ranjit Kumar, learned senior counsel placed reliance on the judgments in **Pallav Sheth v. Custodian & Ors.**, (2001) 7 SCC 549; **Chhotu Ram v. Urvashi Gulati & Anr.**, (2001) 7 SCC 530; **J.R. Parashar, Advocate & Ors. v. Prasant Bhushan, Advocate & Ors.**, (2001) 6 SCC 735; and **Biman Bose v. State of W.B. & Ors.**, (2004) 13 SCC 95.

11. This Court in **Sahdeo alias Sahdeo Singh v. State of Uttar Pradesh & Ors.**, (2010) 3 SCC 705, after placing reliance on a large number of earlier judgments of this Court, held that proceedings of contempt are quasi criminal in nature and the burden and standard of proof required is the same as in criminal cases. Charges have to be proved beyond reasonable doubt and alleged contemnor becomes entitled to the benefit of doubt as it would be very hazardous to impose sentence in contempt proceedings on some probabilities.

12. In **Dr. L.P. Misra v. State of U.P.**, AIR 1998 SC 3337; **Three Cheers Entertainment Pvt. Ltd. & Ors. v. C.E.S.C. Ltd.**, AIR 2009 SC 735; and **R.S. Sujatha v. State of Karnataka & Ors.**, (2011) 5 SCC 689, this Court held that the power under Article 215 of the Constitution can be exercised only in accordance with the **procedure prescribed by law**.

13. In view of the above, the High Court was required to examine as to whether the proper procedure has been adopted in bringing the petition under Article 215 of the Constitution and as to whether the limitation as prescribed under Section 20 of the Act 1971 was attracted in the case. The High Court did not advert to any of such issue of paramount importance. More so, no reasoning has been given to reach a conclusion that no deliberate attempt was made by the respondents to cause any prejudice to the appellant.

Thus, we are of the considered opinion that as both the parties had raised issues on facts as well as on law, the High Court ought to have dealt with the case adverting to all relevant issues, particularly when the appellant had made an allegation that his liberty had been jeopardised by the respondents by interfering with the course of justice by misleading the court.

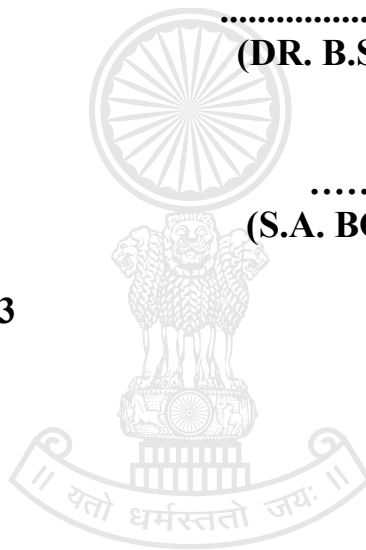
14. As a result, we set aside the judgment and order impugned and remit the case to the High Court to decide afresh answering all the factual and legal issues raised by the parties.

The appeal stands disposed of accordingly.

.....J.
(DR. B.S. CHAUHAN)

.....
.....J.
(S.A. BOBDE)

New Delhi,
November 22, 2013



JUDGMENT