

PETITIONER:
BUNNA PRASAD AND ORS.

Vs.

RESPONDENT:
THE STATE OF U.P. & ANR.

DATE OF JUDGMENT:
24/04/1968

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
SHELAT, J.M.
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 1348 1969 SCR (1) 115

ACT:
Contempt of Courts Act, 1952, ss. 4 and 5-Accused applying to Panchayat not to proceed with matter because of stay order granted by High Court-No proper affidavit or other evidence to support application-Panchayat disbelieving applicant and continuing trial-If guilty of contempt-Whether bound to adjourn for better proof.

HEADNOTE:

M, an accused person in certain proceedings pending before the Nyaya Panchayat filed a petition under Art. 227 in the High Court and obtained a stay of the proceedings on December 20, 1963. Thereafter when the Panchayat met to proceed with the matter, he made an application supported by a document purporting to be an affidavit stating that the High Court had admitted his writ petition and had stayed further proceedings before the Panchayat; and that therefore nothing further should be done in the matter. However, the Panchayat did not allow his application and proceeded (to hold M and others guilty and imposing fines on them.

M, thereafter filed an application under ss. 4 and 5 of the Contempt of Courts Act, 1952, alleging contempt of the High Court by the Panchayat. An affidavit filed before the High Court by the Sarpanch stated that the document filed by M, by way of an affidavit in support of his application had not been verified by any proper authority and for this and other reasons the Panchayat did not believe that the High Court had stayed the proceedings. The High Court held the members of the Panchayat guilty of contempt and observed that if they wanted to ascertain the matter, they should have at best stayed the proceedings for a short while and asked the applicant to produce a certified copy of the stay order; in not doing so, the Panchas had obviously not acted bona fide and their action amounted to, wilful disobedience of the High Court's order.

On appeal to this Court,

HELD : The appeal must be allowed and the judgment and order of the High Court set aside.

The only material before the Panchayat was the application dated December 25, 1963, which was not supported by 'any affidavit sworn to before a person authorised to administer

oaths. Further, the application did not contain the date of the order; even a copy of the telegram stated to have been sent by M's advocate in the High Court was not attached to the application. On this material the bona fides of the Panchas could not be doubted if they refused to accept the mere statement of the party that the High Court had stayed the proceedings before them. In such matters those who assert that a person had knowledge of the order must prove this fact beyond all reasonable doubt. If there is any doubt, the benefit, ought to be given to the person charged with contempt of court. [120 F-H; 121 A--B]

It is true that in certain cases proceedings can be adjourned to enable the parties to file better proof, but a judicial officer is not bound (to do so and, if the bona fide does not in his discretion adjourn proceedings, it cannot be said that he has committed contempt of court. [121 C-D]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.112 of 1965.

Appeal by special leave from the jurisdiction and order dated April 29, 1965 of the Allahabad High Court in Criminal Misc. 'Contempt Case No. 43 of 1965.

A. S. R. Chari, M. K. Ramamurthi, Vineet Kumar and Shyamala Pappu, for the appellants.

O. P. Rana, for respondent No. 1.

J. P. Goyal, V. C. Prasar and S. P. Singh for respondent No. 2.

The Judgment of the Court was delivered by Sikri, J. This appeal by special leave is directed against the judgment of the Allahabad High Court adjudging the five appellants guilty of contempt of court and sentencing each of them to pay a fine of Rs. 1,000/- and further ordering that in case of default they shall undergo simple imprisonment for two weeks. The High Court held that the five appellants had disobeyed an order of stay passed by it staying proceedings pending before the Nyaya Panchayat, Jokha Khas, District Deoria.

The relevant facts are these. On September 2, 1963, Yashoda, son of Raj Kumar, filed a complaint before the Nyaya Panchayat, Jokha Khas, against Jagdeo, Mahabir and Laxmi alleging that he had been abused and be laboured and his property worth Rs. 40/- damaged. On September 10, 1963, the Nyaya Panchayat assembled and evidence was led before it. The case was adjourned to December 25, 1963. On October 11, 1963, Mahabir, accused, made an application under s. 85 of the U.P. Panchayat Raj Act, 1947, to S.D.M., Deoria, to transfer the proceedings on the ground that the complainant Yashoda was father of Bunna Prasad, Sarpanch of Nyaya Panchayat, Jokha Khas. On November 28, 1963, the S.D.M. rejected this application. On December 13, 1963, a notice was issued to the five members of the Panchayat to assemble on December 25, 1963, and hear the case. On December 20, 1963, Mahabir moved an application under Art. 227 of the Constitution challenging the order of the S.D.M., dated November 28, 1963, and on the same day the High Court admitted the application and stayed further proceedings before the Nyaya Panchayat. An urgent copy of the order was applied for and obtained on that very day and the counsel sent a telegram in the following words

"Allahabad He 20

Baldeopd cashier Trust
Sdr GR
Mahabir application admitted stay granted
Banwarilal."

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It is alleged on the side of the applicant, Mahabir, that immediately after the receipt of the telegram an application accompanied by an affidavit and the telegram of his counsel in the High Court was presented before the Nyaya Panchayat with the prayer to stay further proceedings but the Sarpanch refused to take it. This fact was denied and the High Court seems not to have relied on this fact in its judgment. It seems to us that it is not proved on the evidence here that any such application was made before the Nyaya Panchayat. No application dated December 21, 1963, which was not accepted by the Nyaya Panchayat, has been produced.

On December 23, 1963, Mahabir submitted an application in the Court of Shri R. Singh, S.D.M., Deoria, alleging that "writ petition has been admitted and a stay order has been issued. But notwithstanding my informing the Panchayat Adalat of that, I am not getting any hearing there, and when an application is made there, it is not entertained." He prayed that the Panchayat Adalat be directed to postpone proceedings pending the receipt of the stay order. He produced the telegram received from the Advocate before the S.D.M. In the affidavit accompanying the application, however, no mention was made about Mahabir having informed the Panchayat Adalat of the stay order or the fact that the order and the application was not being entertained by the Adalat. It happened that the S.D.M. was absent on December 23, 1963, and papers were put up before Shri S. K. Srivastava, Additional Sub-Divisional Magistrate, who issued the order "Put up with records". Apparently he did not take any further action till December 26, 1963. But as the notice against Shri Srivastava has been discharged by the High Court, we need not give any further details about his various orders,

On December 25, 1963, the Nyaya Panchayat met and proceeded to hear the case. The order sheet reads thus :

"Put up today the 25th December, 1963. The complainant and the accused are present. The statements of the complainant and his witnesses, Bhabhuti and Damri, are recorded. The accused refused to make statements and put down their signatures. Today, the 25th December, 1963, Mahabir has made an application to the Court and signed it before it. Hence judgment shall be given on 25-12-63."

This order was signed by three Panchas, Phagu Parsad, Jagat Dubey and Badri Yadav. On the same day a final order was made holding the accused guilty and imposing a fine of Rs. 3/- each on accused Nos. 1 and 3, and Rs. 9/- on accused No. 2. The application of Mahabir, referred to in the order, reads thus:

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Sir,

It is submitted that I have filed a writ petition in the above case, in the High Court. It has been admitted by the High Court which has stayed proceedings also in this case. It is, therefore, prayed that the proceedings in this case may be stayed."

A document purporting to be an affidavit was also attached, in which it was stated

"I make oath and say that in the above case I

have filed a writ petition in the High Court, that it has been admitted, and that proceedings in the case have been stayed by the High Court."

We looked at this so-called affidavit and found. that it has not been sworn to before any person authorised to administer oaths.

On May 21, 1964, Mahabir filed an application under ss. 4 and 5 of the Contempt of Courts Act, 1952, against the five appellants and S. K. Srivastava, A.S.D.M. The main allegation, apart from reciting the facts which we have already detailed above, was that "in spite of the knowledge of the interim stay dated 20-12-63 passed by the Hon'ble High Court the Sarpanch, the Opposite Party No. 1 and the members of the Bench, Opposite Parties Nos. 2 to 5 disobeyed the order of the Hon'ble High Court and disposed of the case on 25-12-63 and thus they committed contempt of the Hon'ble High Court." Affidavits were filed in the High Court by Baldeo Prasad, pairokar of Mahabir, Burma Prasad, the Sarpanch, and Mahabir, and statements of Phagu Prasad and Bunna Prasad were recorded on oath. Bunna Prasad, in his affidavit, stated that as the Nyaya Panchayat was not satisfied for want of evidence by way of proper affidavit etc., the Nyaya Panchayats proceeded with the case. Phagu Prasad. in his statement, stated

"As the paper of Mahabir's application and affidavit was not good, we had asked him to get them written on a proper paper obtained from the Tehsil. We had also told him to get the affidavit verified before some Tehsil authority. We had told Mahabir as above before we had read the application and affidavit presented before the Nyaya Panchayat. Mahabir told us that he is not prepared to go to Tehsil, but is presenting before the Panchayat whatever he has got in his possession."

Phagu Prasad further stated that "no other affidavit had ever been filed before us, but we knew that in the law courts the

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affidavits, which are filed, are verified by some authority." He further added that "the reason why we did not believe the affidavit of Mahabir was that it did not contain any date of the High Court's stay order." Bunna Prasad, in his statement, stated that he had told Mahabir to bring the affidavit on a good quality paper of full size, and Mahabir thereupon told him that he would present whatever he had. According to him, the Panchas did not tell Mahabir that his affidavit was not proper; they, however, told him to get it verified in Tehsil and that it should be duly sealed.

The High Court, on examination of the evidence, came to the conclusion that it was the Sarpanch who had initially declared that the affidavit of the applicant was not proper and that the matter should file a proper affidavit in support of his allegations, though the Sarpanch had admitted in his deposition that he had to authority to tell Mahabir that his affidavit was not proper. It appeared to the High Court that "the Sarpanch first wanted to avoid the petitioner's affidavit being brought on the record by declaring that it was not proper because it did not fully evidence the fact that the High Court had passed an order staying proceedings before the Nyaya Panchayat." The High Court further held that "the Nyaya Panchas faithfully

accepted the objections raised by the Sarpanch and dittoed him about the impropriety of the petitioner's affidavit and inadequacy of the evidence contained therein regarding the stay order alleged to have been passed by the High Court." The High Court disbelieved the explanation of the Panchas given before it because no mention of these was made in the order sheet dated December 25, 1963. The High Court held :

"There was no reasonable ground for the Panchas to have doubted the averments made in the application and affidavit of Mahabir that the High Court had stayed further proceedings before the Panchayat, nor is there any thing in the order sheet to show that the Panchas did not believe the contents of the application, and affidavit of Mahabir. However, if they wanted to ascertain the matter, they should have at best stayed the proceedings for a short while and should have asked the applicant to produce a certified copy of the stay order. In the alternative, they should have verified from the Sub Divisional Magistrate whether Mahabir had really filed an application and affidavit before him along with the original telegram received from his counsel at Allahabad saying that the High Court had already stayed the proceedings before the Nyaya Panchayat. But the Panchas did nothing of the kind. The action of the Nyaya Panchas in not doing so was obviously not bona fide and

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amounts to wilful disobedience of the High Court's order.

The learned counsel for the appellants, Mr. Chari, says that no contempt of court has been established because a Court is entitled not to act on an application which is not accompanied by an affidavit properly sworn to or a certified copy of the order. He urges that the Nyaya Panchayats exercised judicial powers and, even if the Panchas erred in not staying proceedings, before finding them guilty of contempt of court it should be definitely proved that the order was passed deliberately to by-pass the order of the High Court.

This Court quoted with approval the following passage from Oswald's Contempt of Court, in Hoshiar Singh v. Gurbachan. Singh(1):

"The judgment or order should be served on the party personally, except in the following cases : (1) prohibitive orders, the drawing up of which is not completed;.....

In order to justify committal for breach of a prohibitive order it is not necessary that the order should have been served upon the party against whom it has been granted, if it be proved that he had notice of the order aliunde, as by telegram, or newspaper report, or otherwise, and knew that it was intended to be enforced, or if he consented to the order, or if he was present in Court when the order was pronounced, or when the motion was made, although he left before the order was pronounced."

We need not consider whether it makes any difference in law if the order has been drawn up. We will for the purpose of this case assume that it does not make any difference. It is also clear that in such matters those who assert that a

person had knowledge of the order must prove this fact beyond all reasonable doubt. If there is any doubt, the benefit ought to be given to the person charged with contempt of court. If a person bona fide comes to the conclusion on the material placed before him that the source of information is not authentic he cannot be held guilty of contempt of court for disobeying the order.

The question then arises whether the Sarpanch and the Panchas had knowledge of the existence of the order of the High Court dated December 20, 1963. The only material before them was the application dated December 25, 1963, which was not supported by any affidavit sworn to before a person authorised to

(1) [1962] Supp. 3 S.C.R. 127,138.

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administer oaths. Further, the application did not contain the date of the order; even a copy of the telegram was not attached to the application; and the application seems to have been made after the proceedings on that date had commenced and evidence taken. We are unable to appreciate how on this material the bona fides of the Panchas can be doubted if they refused to accept the mere statement of the party that the High Court had stayed proceedings before them. It seems to us that the High Court did not appreciate that the so-called affidavit which was filed before the Panchas was in fact not an affidavit at all. It had not been sworn to before any person authorised to administer oaths. It was no part of the duty of the Panchas to enquire from the S.D.M. about the filing of the application before him. At any rate, he has apparently no jurisdiction to stay proceedings before the Nyaya Panchayats when no Proceeding is pending before him. It is true that in certain cases proceedings can be adjourned to enable the parties to file better proof, but a judicial officer is not bound to do so and, if he bona fide does not in his discretion adjourn proceedings, it cannot be said that he has committed contempt of court. It must also be borne in mind that Panchas are not well-versed in law and procedure and the records maintained by them should not be judged in the same manner as that of ordinary courts. With respect, the High Court should not have drawn an adverse inference from the fact that the reasons for not accepting the prayer for stay were not recorded. Contempt of court is a serious matter and a High Court should be chary of finding a judicial officer guilty of contempt of court for disobeying its orders unless there is unimpeachable evidence that the judicial officer had knowledge of the order of the High Court. In our opinion, there is no such evidence in this case.

The learned counsel for the State contends that we should not reappreciate the facts, but, with respects, it seems to us that the High Court, while dealing with the evidence, has not kept in mind the principles which we have mentioned above.

In the result we allow the appeal and set aside the judgment and order of the High Court.

R.K.P.S. Appeal allowed.

Sup.C.I.--68--9

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