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R. L. KAPUR

v.

STATE OF MADRAS

February 8, 1972

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[J. M. SHELAT AND H. R. KHANNA, JJ.]

Penal Code—S. 70 read with S. 25 of the General Clauses Act 1897—Whether security deposited in Court in certain contempt matters can be adjusted against a fine imposed upon him in those proceedings after the lapse of 6 years.

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The appeal is directed against the order of the High Court of Madras directing a sum of Rs. 500/- deposited in the High Court as security for the appellant's appearance before it in certain contempt of Court proceedings, to be adjusted against the fine imposed upon him in those proceedings. The contempt of Court proceedings (No. 3 of 1962) were taken against the appellant in the High Court in respect of a letter written and addressed by the appellant to the then Chief Justice of the High Court and which contained certain remarks in regard to the dismissal of the appellant's revision application by a single judge of the High Court. The contempt with which the plaintiff was charged in those proceedings was contempt of the High Court and not the City Civil Court, in which the appellant had filed the suit from which, the said revision application arose. In those proceedings, the High Court by its judgment, held the appellant guilty of contempt of Court and sentenced him to 6 months' simple imprisonment and fine. The appellant served out the sentence of imprisonment but failed to pay the fine.

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The said amount of Rs. 500, deposited in the said contempt proceedings remained unattached till 1971, when two applications were filed in the High Court—one by the appellant for refund and the other by the State for adjustment of the said amount towards the fine remaining unpaid and the High Court allowed the State's application for payment of the said sum towards satisfaction of the said unpaid fine. Counsel for the appellant relied on S. 70 of the Penal Code and urged that six years having elapsed since the passing of the order imposing fine upon the appellant, the State application was time barred and the High Court could not pass the impugned order. Further, counsel relied on S. 25 of the General Clauses Act 1897 which provides that Sections 63 to 70 of the Penal Code and the provisions of the Criminal Procedure Code in relation to the issue and execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation etc., and since a fine which was imposed upon the appellant, was an order passed under the Contempt of Court Act 1952, Section 70 of the Penal Code was applicable. Dismissing the appeal,

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HELD: (i) Sec. 5 of the Penal Code provides, *inter alia*, that its provisions are not to affect the provisions of any special or local law and under Art. 215 of the Constitution, every High Court being a Court of Record, have all the powers of such a Court including the power to punish for contempt of itself. The jurisdiction is a special one, not arising or derived from the Contempt of Courts' Act 1952, and therefore, not within the purview of either the Penal Code or the Code of Criminal Procedure. The law as to contempt of Court, as administered by the

Madras High Court, in the present case, is a special law and therefore, S. 70 of the Penal Code does not apply to the facts and circumstances of the case. Further since such a special law does not prescribe any period of limitation for collecting and satisfying a fine imposed thereunder no question of limitation would arise. [420 A]

(ii) The power of the High Court to punish for contempt of itself arises not under any Act, such as Contempt of Courts' Act, but the Constitution itself vests these rights on every High Court, and no Act of a Legislature could take away that jurisdiction and confer it afresh by virtue of its own authority and since the sentence of fine and imprisonment passed against the appellant was not imposed under any act or statute, Section 25 of the General Clauses Act has no application in the present case. [420 E-F]

Sukhdev Singh Sondhi v The Chief Justice and Judges of the Pepsu High Court [1954] S.C.R. 454 referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 185 of 1971.

Appeal by special leave from the judgment and order dated June 19, 1971 of the Madras High Court in Application Nos. 1171 and 1172 of 1971.

S. N. Prasad, for the appellant.

A. V. Rangam, for the respondent.

The Judgment of the Court was delivered by

Shelat, J. This appeal, by special leave, is directed against the order of the High Court of Madras, directing a sum of Rs. 500, deposited in the High Court as security for the appellant's appearance before it in certain contempt of court proceedings, to be adjusted against the fine imposed upon him in those proceedings. It appears that the contempt of court proceedings, being No. 3 of 1962, were taken against the appellant in the High Court in respect of a letter written and addressed by the appellant to the then Chief Justice of the High Court and which contained certain remarks in regard to the dismissal of the appellant's revision application by a single Judge of the High Court. Thus, the contempt with which the plaintiff was charged in those proceedings was contempt of the High Court, and not the City Civil Court, Madras, in which the appellant had filed the suit from out of which the said revision application arose. In those proceedings, the High Court, by its judgment and order, dated February 25, 1964, held the appellant guilty of contempt of court and sentenced him to six months' single imprisonment and fine. The appellant served out the sentence of imprisonment, but failed to pay the fine.

A It appears that the said amount of Rs. 500, deposited, as aforesaid, in the said contempt proceedings, remained unattached till 1971. In 1971, two applications were filed in the High Court, one by the appellant for refund of the said amount and the other on behalf of the State for adjustment of the said amount towards the fine remaining unpaid. By an order, dated June 29, 1971, B the High Court dismissed the appellant's application for refund and allowed the State's application for payment of the said sum towards satisfaction of the said unpaid fine.

As against the said order, counsel for the appellant relied on sec. 70 of the Penal Code and urged that six years having elapsed since the passing of the order imposing fine upon the appellant, C the State's application was time barred and the High Court could not pass the impugned order, the effect of which was to collect the said fine from out of the said deposit. If sec. 70 were to apply to the said contempt of court proceedings, there is no doubt that the State's application would be time barred as that section in terms provides that such fine can be levied within six years D after the passing of the order of conviction and sentence. But sec. 5 of the Penal Code provides, *inter alia*, that its provisions are not to affect the provisions of any special or local law. Under sec. 41 of the Penal Code, a special law is one applicable to a particular subject. Therefore, if the law as to contempt of court, as administered by the High Court of Madras, a chartered High E Court, were to be regarded as special law, sec. 70 of the Penal Code, obviously, cannot apply, and since such a special law does not prescribe any period of limitation for collecting and satisfying a fine imposed thereunder, no question of limitation would arise.

Counsel, however, relied on sec. 25 of the General Clauses Act, 1897 which provides that secs. 63 to 70 of the Penal Code and the provisions of the Code of Criminal Procedure in relation F to the issue and execution of warrants for the levy of fines shall apply to all fines imposed under "any Act, Regulation, rule or bye-law" unless such Act, Regulation, rule or bye-law contains an express provision to the contrary. The argument was that the order of sentence which imposed upon the appellant the fine was and must be regarded as an order passed under the Contempt of G Courts Act, XXXII of 1952, and consequently, sec. 70 of the Penal Code was applicable.

The question is, does the power of the High Court of Madras to punish contempt of itself arise under the Contempt of Courts Act, 1952, so that under sec. 25 of the General Clauses Act, H 1897, secs. 63 to 70 of the Penal Code and the relevant provisions of the Code of Criminal Procedure would apply? The answer to such a question is furnished by Art. 215 of the Constitution and the provisions of the Contempt of Courts Act, 1952

themselves. Art. 215 declares that every High Court shall be
 a court of record and shall have all powers of such a court including the power to punish for contempt of itself. Whether Art. 215 declares the power of the High Court already existing in it by reason of its being a court of record, or whether the Article confers the power as inherent in a court of record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of either the Penal Code or the Code of Criminal Procedure. Such a position is also clear from the provisions of the Contempt of Courts Act, 1952. Sec. 3 of that Act provides that every High Court shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of contempt of courts subordinate to it as it has and exercises in respect of contempts of itself. The only limitation to the power is, as provided by sub-sec. (2), that it shall not take cognizance of a contempt committed in respect of a court subordinate to it where such contempt is an offence punishable under the Penal Code. As explained in *Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court*,⁽¹⁾ sec. 3 of the Act is similar to sec. 2 of the 1926 Act, and "far from conferring a new jurisdiction, assumes, as did the Old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction, powers and authority "in accordance with the same procedure and practice. . . .". In any case, so far as contempt of the High Court itself is concerned, as distinguished from that of a court subordinate to it, the Constitution vests these rights in every High Court, and so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. No doubt, sec. 5 of the Act states that a High Court shall have jurisdiction to inquire into and try a contempt of itself or of a court subordinate to it whether the alleged contempt is committed within or outside the local limits of its jurisdiction and whether the contemnor is within or outside such limits. The effect of sec. 5 is only to widen the scope of the existing jurisdiction of a special kind and not conferring a new jurisdiction. It is true that under sec. 4 of the Act the maximum sentence and fine which can be imposed is respectively simple imprisonment for six months and a fine of Rs. 2,000, or both. But that again is a restriction on an existing jurisdiction and not conferment of a new jurisdiction. That being the position, sec. 25 in the General Clauses Act, 1897 cannot apply. The result is that sec. 70 of the Penal Code is no impediment by way of limitation in the way of the recovery of the fine.

(1) [1954] S.C.R. 454, at 463.

- A It is true that the deposit was made for a particular purpose, that is, to secure the presence of the appellant at the time of the hearing of the said contempt proceedings. But the High Court, as a court of record, being clothed with a special jurisdiction, has also all incidental and necessary powers to effectuate that jurisdiction. Consequently, it had the power to order satisfaction of
- B fine imposed by it from out of an available fund deposited by or on behalf of or for the benefit of the appellant.

In our view, the contentions raised on behalf of the appellant cannot, for the reasons aforesaid, be sustained. The appeal fails and is dismissed. There will be no order as to costs.

S.C.

Appeal dismissed.