

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5728 OF 2005

GYANI CHAND

Appellant

VERSUS

STATE OF A.P.

Respondent

J U D G M E N T

ANIL R. DAVE, J.

1. Being aggrieved by the judgment and order passed in Contempt Case No.58 of 2005 on 10.08.2005 by the High Court of Andhra Pradesh at Hyderabad, this appeal has been filed by the appellant, who has been held guilty of contempt of Court and has been sentenced to simple imprisonment for one week

and to pay a fine of Rs.2,000/-. It is pertinent to note that the appellant has already undergone the sentence.

2. Undisputed facts giving rise to the present litigation in a nutshell are as under:

The appellant had given an undertaking in I.A. No.11 of 1985 in O.S. No.231 of 1972 before the IXth Assistant Judge, City Civil Court, Hyderabad that he would “return the documents on an undertaking to produce them whenever directed”. The mother of the appellant, Late Sharda Bai was a litigant in the afore-stated case, which had been disposed of in 1981. Some of the documents, which had been produced by the mother of the appellant in the said case, were required by her and as she was unable to remain present before the Court due to her old age, she had requested the appellant to make an application on her behalf, for return of the documents and, accordingly, the appellant had made an application to the Court for return of the documents, which had been produced by Late Sharda Bai, the mother of the appellant. While returning the

documents, the appellant was asked to give an undertaking to the Court that the said documents would be produced by him as and when the same would be required by the Court.

3. The said documents, which were handed over to the appellant, were given by him to his mother, Late Sharda Bai. The said documents were required in I.A. No.632 of 2001 in O.S. No.231 of 1972, which was pending in the Court of IXth Junior Civil Judge, Civil Court at Hyderabad. By an affidavit dated 5.10.2001, Late Sharda Bai had admitted the fact that the said documents were given to her by the appellant and she had further stated in the said affidavit that the appellant in the said proceedings had no right to get the said documents. Thus, it is an admitted fact that the present appellant had handed over the said documents to his mother Late Sharda Bai, who had right to retain the same as the documents were produced by her.

4. It is also an admitted fact that Sharda Bai expired on 02.06.2004.

5. When the appellant was asked to produce the said documents as per the undertaking given by him to the court, the appellant had submitted before the court that he had already handed over the said documents to Late Sharda Bai, who had expired on 02.06.2004 and he had further submitted that his house was “badly hit by the cyclone in the year 1999, as a result of which his house was submerged into the flood water consequent to that it was collapsed as his house was built up of mud and covered with asbestos sheets resulting most of their belongings were vanished”. Thus, the said documents were neither with the appellant nor were they available at that time. According to the appellant, the case in which the said documents were required, was filed by the relatives of the appellant and they had filed an application for production of the said documents to pressurise the appellant in their family affairs.

6. Thus, it was the case of the appellant before the Court that it was impossible for him to return the documents handed over to him as the said documents were handed over by him to the

rightful owner of the documents and the documents were also destroyed.

7. As the matter was taken up seriously by the Court concerned, reference was made for initiating contempt proceedings against the appellant as the documents were not returned as per the undertaking and the matter was placed before the High Court and by virtue of the impugned order, the High Court came to the conclusion that the appellant was guilty of contempt of court and therefore, the appellant has been punished.

8. Upon hearing the learned counsel appearing for the parties, we are of the view that there is no willful breach of the undertaking given to the court by the appellant, for which he can be held guilty of committing contempt of the Court.

9. In the instant case, it is an admitted fact that the documents had been handed over by the appellant to his mother, Late Sharda Bai, who was the rightful owner of the said documents and the said fact was admitted by his mother by

filing an affidavit in another legal proceedings. Subsequently, the said documents had been destroyed because of the flood and therefore, it was impossible for the appellant to return the same to the Court.

10. Section 2(b) of the Contempt of Courts Act, 1971 reads as under:

“2(b) “civil contempt” means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;”

11. Upon perusal of the above mentioned definition of “civil contempt”, it is very clear that so as to hold somebody guilty of contempt of court, the concerned person must have **willfully** disobeyed any judgment, decree, direction, order, writ or any other process of a court or should have **willfully** committed breach of an undertaking given to a court.

12. In the instant case, from the facts stated hereinabove, it is crystal clear that the appellant had no intention of committing breach of the undertaking given to the court. It was physically

impossible for the appellant to produce the documents as the documents had already been given by him to his mother, on whose behalf he had collected the same from the court and the said documents had been subsequently destroyed because of a natural calamity. In our opinion, after knowing the above stated facts, the court should not have directed the appellant to produce the documents because it was impossible for the appellant to produce the documents. It would not be fair on the part of a court to give a direction to do something which is impossible and if a person has been asked to do something which is impossible and if he fails to do so, he cannot be held guilty of contempt.

13. It is deplorable that the appellant has been held guilty and has also undergone the sentence imposed by the High Court. We hold that the appellant was not guilty of committing contempt of court as there was no willful breach of the undertaking given to the court.

14. For the afore-stated reasons, we are not in agreement with the judgment delivered by the High Court and therefore, we set aside the same and allow the appeal with no order as to costs.

.....J.
[ANIL R. DAVE]

.....J.
[UDAY UMESH LALIT]

.....J.
[L. NAGESWARA RAO]

**New Delhi,
September 20, 2016.**