

(2000) 09 KL CK 0019
In the High Court Of Kerala
Case No : C.C.C. No. 244 of 2000

Balakrishna Pillai

APPELLANT

Vs

Balachandran

RESPONDENT

Date of Decision : 29-09-2000

Acts Referred:

Constitution of India, 1950 — Article 129, 215
Contempt of Courts Act, 1971 — Section 12, 16, 2, 22, 7

Citation : (2001) CriLJ 846 : (2001) 1 RCR(Civil) 376

Hon'ble Judges : S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench : Division Bench

Advocate : T.V. Prabhakaran, T. Ravikumar and S. Rajeev, for the Appellant; T.P. Kelu Nambiar, for the Respondent

Judgement

S. Sankarasubban, J.—Petitioner in this contempt case, R. Balakrishna Pillai, is a former Minister and is a Member of Kerala Legislative Assembly. He is an accused in C.C. No. 2/1989 on the file of the Court of Enquiry Commissioner and Special Judge, Vigilance, Thiruvananthapuram. First respondent was the Enquiry Commissioner and Special Judge, Thiruvananthapuram. Second respondent is the Printer and Publisher of Desabhimani Newspaper. Third respondent is the General Secretary of Communist Party of India (Marxist), Kerala State Committee and the General Manager of P. Krishna Pillai Memorial Printing and Publishing Co. Pvt. Ltd., Thiruvananthapuram. Fourth respondent is V.S. Achuthanandan, Chief Editor, Desabhimani Newspaper, Thiruvananthapuram and the fifth respondent C. Rajendran is the Photographer attached to the Desabhimani Newspaper.

2. In addition to the petitioner, there are two other accused in C.C. No. 2/1989. On 20.3.2000, the case was posted for framing charges against the accused persons. Petitioner was present. The charges were read over to all the three accused persons including the petitioner. The newspapers, especially the local papers reported the proceedings of the first respondent's court with respect to

the framing of charges. But the Thiruvananthapuram edition of the Desabhimani Daily carried a photo of the proceedings in the court. This photo showed the first respondent reading the charges and the three accused persons including the petitioner standing in front of the Judge and hearing the charges. The photograph along with the paper is produced as Annexure A. By the side of the photograph, there is also a report that the charges in the graphite case have been given to the accused. According to the petitioner, this photograph was taken from inside the court hall, while the charges were being read over to the petitioner and other accused persons in open court. The photograph was taken by the fifth respondent, as it is clear from the publication in the paper (the name of the Photographer is given as C. Rajendran).

3. Petitioner relies on Circular dated 28th June, 1962 issued by this Court. According to this Circular, the Presiding Officers of the Subordinate Courts are prohibited from giving sanction to take photographs of trial scenes or other proceedings in court, except with prior permission of the High Court. Petitioner contends that the photograph was taken with the full knowledge and consent of the first respondent, who was the Presiding Officer. It is further contended that respondents 2, 3 and 4 are also liable to be proceeded against for contempt, as they have colluded together for political purposes to have the photograph taken. The fifth respondent has committed contempt as he has taken photograph of the proceedings without the permission of the court. Hence, the contempt has been filed against the respondent.

4. In the draft charged filed along with the contempt case, it is submitted that the actions of the respondents are against the directions contained in the Circular dated 28th June, 1962. So far as respondents 2 to 5 are concerned, it is stated that respondents 2 to 5 deliberately colluded with each other in taking the photograph of the proceedings in open court disobeying the Circular issued by this Court. It is further stated that the above action amounts to contempt, as it interferes with the due course of justice.

5. On 3.4.2000, this Court ordered to issue notice to respondents 2 to 5. A report was called for from the Enquiry Commissioner and Special Judge, Vigilance, Thiruvananthapuram whether any photograph was taken when the charges were read over to the accused persons and whether any permission in terms of the Circular was obtained from the Court. The Enquiry Commissioner was also to report whether any Circular subsequently has been issued regarding the requirements. Further, as per the order of this Court, respondents 2 to 5 appeared before this Court.

6. Respondents 2 to 5 have filed reply affidavits in this case. In the reply affidavit filed by the second respondent, P. Karunakaran, he denied that he had colluded with the other respondents as Printer and Publisher of Desabhimani Daily having five units at Thiruvananthapuram, Kottayam, Kochi, Kozhikode and Kannur. He is having overall supervision of the functioning of the Press. He is the General Manager of Desabhimani Presses. Each unit is under the direct control and

supervision of the Managers of the respective Presses. He had no occasion to contact the fifth respondent or instruct him to take the photograph of the proceedings. He submits that the contempt case is filed under Ss. 12 and 16 of the Contempt of Courts Act. What is alleged is civil contempt under S. 2(b) of the Contempt of Courts Act. 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. It was submitted that the Circular instruction issued by the Registrar prohibiting the taking of photographs and the proceedings of a court is not a judgment, decree, direction or order and hence will not come under S. 2(b) of the Contempt of Courts Act. It is further stated that there are some other procedural irregularities adopted in filing the contempt petition.

7. Third respondent has submitted that he is the registered owner of the Desabhimani Press owned by P. Krishna Pillai Memorial Printing and Publishing Company Pvt. Ltd. He is a sitting M.L.A. and the State Secretary of the Communist Party of India (Marxist). He has taken the same contention as that was taken by the second respondent. He contended that the action will not amount to civil contempt. The fourth respondent has also stated in the line of the third respondent. The fifth respondent is the Photographer. According to him, the Circular will not come under S. 2(b) of the Contempt of Courts Act under the definition of "civil contempt" and hence, he has not committed any contempt. There is no express prohibition of publication of the photographs of the proceedings in a court. He has emphatically denied that he had colluded with others in taking the photograph. In paragraph 8 of the reply affidavit, the fifth respondent further stated that there was no objection from the office of the first respondent in taking the photograph. He was present with the Camera in open Court. From the first respondent or any of his personal staff or the office staff of the first respondent, there was no objection. He was never cautioned of the Circular instructions issued by the Registrar of this Court prohibiting the taking of photographs of trial scenes or other proceedings in Court.

8. As per the directions of this Court, the first respondent filed a report. In the report submitted by the first respondent, it is stated as follows: "I submit that I had not permitted any one to take any photograph of any proceeding in my Court and I was also not aware of any photograph having been taken by any one. Inquiries made by me with the Manager of my Court reveal that photographers and video photographers were not present even in the verandah of the Court hall but that they were present in the premises of the Court and were seen interviewing the accused but that no photograph at all had been taken of any proceeding in the Court". It was further stated as follows: "I further submit that the only possibility in having taken the photograph in issue could be from the road to which the Court is having frontage, by using a zoom lens and even for that there was no permission granted and was without my knowledge." He has also submitted that he has not come across any Circular diluting the requirements of the Circular dated 28th June, 1962. Thus, according to the first

respondent, nobody came inside the court to take photograph and he did not give any permission for taking photograph. Thus, it is now admitted that the fifth respondent took the photograph of the proceedings in the first respondent's Court when the charges were being read over in C.C. No. 2/1989 and that Annexure A photograph was taken by the fifth respondent and it was published in the Desabhimani Newspaper. While the first respondent- Presiding Officer would state that nobody came with Camera inside the Court and that none of his staff gave permission to take photograph, the affidavit filed by the fifth respondent says that he took the photograph from inside the Court. It appears that the presence of the photographer was not noted by the learned Judge and it is possible that the Judge would not have noted the photographer, since he was engaged in the reading of charges against the accused persons. The submission of the fifth respondent is that he came with the Camera and none of the staff of the fifth respondent objected to it. The correctness of this statement has to be verified. For the present, we will take it that nobody objected the fifth respondent coming to the court with Camera. The fifth respondent has no case that he sought permission either from the Judge or from any other staff for taking the photograph of the proceedings.

9. Learned counsel for the petitioner Shri. T. Ravikumar submitted that it cannot be believed that the fifth respondent would have taken the photograph of the proceedings without the consent of the first respondent. Further, he submitted that nobody has got right to take photograph of the proceedings of trial scenes without the consent of the Presiding Officer and publish it in the Newspaper. He submitted that the court room has its own sanctity. Even though the public have got aright to enter into the court hall and watch the proceedings, they have no right to take photograph of the proceedings without the permission of the Court. He submitted that it was in the above lines that the Circular was issued by the High Court. Since the act done by the fifth respondent is in violation of the Circular, he is liable for contempt of court. According to him, the Circular will amount to a direction under S. 2(b) of the Contempt of Courts Act, 1971 and hence, action would have to be taken against the fifth respondent for having committed contempt. It is the further case of the petitioner that respondents 2 to 4 cannot escape from their responsibilities, since they are responsible for publishing the photograph in the Newspaper.

10. Shri. T.P. Kelu Nambiar, senior counsel appearing for respondents 2 onwards submitted that the petitioner is relying on the Circular dated 28th June, 1962. This Circular does not prohibit taking photograph of trial scenes. It only prohibits the Presiding Officer from granting permission to take photograph without the prior permission of the High Court. He further submitted that the above Circular will not come within the definition of "judgment", "decree", "direction", "order" or "writ" as stated in S. 2(b) of the Contempt of Courts Act. According to him, these words should be read as ejusdem generis. It contemplates only a direction or order in a judicial proceeding. Circular is not a judicial proceeding. It was further contended that under S. 4 of the Contempt of Courts Act, a person shall

not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof. Learned counsel further argued that the respondents have not violated S. 7 of the Contempt of Courts Act. Learned counsel further submitted that the Circular is not clear in prohibiting the taking of photographs. According to him, it is vague. He relied on certain observations from "Human Rights in Constitutional Law" by Dr. (Justice) Durga Das Basu. In the above book, at page 408, it is stated as follows;

"A restriction cannot be said to be reasonable if it is so vague or wide as to include within its sweep not only a conduct which the Constitution empowers the State to suppress but also to punish the lawful exercise of a fundamental right guaranteed by the Constitution.

In other words, the Fundamental Right should be left "breathing space to survive" by defining the restriction "only with narrow specificity."

So far as penal law is concerned, it is one of the basic principles of Anglo-American jurisprudence that a man can be punished only on a specific charge and that, accordingly, no punishment can be sustained where the terms of the statute which creates the offence are not reasonably certain".

The learned Author has quoted what Douglas, J. has pointed out, as follows:

".....a law fails to meet the requirement of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular cases..... Certainly one of the basis purposes of the Due Process Clause has always been to protect a person against having the Government to impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries on understandable meaning with legal standards that courts must enforce."

Thus, it was submitted that the Press has got freedom to take photograph unless they are prohibited by Law. In so far as there is no express provision, learned counsel submitted that the action taken by the fifth respondent does not amount to contempt.

11.S.2(b) of the Contempt of Courts Act defines "civil contempt" as follows:

"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".

It may be true that the Circular issued by this Court will not come under the definition of S. 2(b) of the Contempt of Courts Act. Because, to become a civil contempt, there should be a willful disobedience to any judgment, decree, direction or order. It relates to order or direction in judicial proceedings. The definition has got statutory recognition and should be abide by judicial decisions.

In the decision reported in *State v. Dasrath Jha*, AIR 1951 Patna 443, it was held that civil contempts consist of cases of non-compliance or of disobedience of the orders of the courts which are made for the benefit of private parties, A disobedience to judgments, orders and other process or for breach of undertaking categorised as civil contempt involves private injury and is punishable when the disobedience is useful. When an order made for the benefit of a party is disregarded or violated the courts seek to enforce the order by punishing the person guilty thereof for contempt, and for the reason it has been said that such a proceeding for contempt is a form of execution, the main object of the proceeding being to secure enforcement of the orders. In "the Law of Contempt" by Anthony Arlidge David Eady at page 263, it is stated that civil contempt or "contempt in procedure" as it is sometimes called, may arise in various circumstances during proceedings. It consists principally in disobedience to an order of the Court. At page 18! of the above book, it is stated that a court of law has power to regulate its own proceedings and disobedience to any order made under that power is a contempt. All courts of law have power to order a person interrupting or hindering their proceeding to leave court and to remove him if he fails to leave. At page 46 in the same book, it is stated that contempts of court may be either criminal or civil. A criminal contempt is an act which so threatens the administration of justice in general that it requires punishment. Many of the traditional heads of contempt are clearly established as criminal. They include contempts in the face of the court, publication of matter scandalising the court, acts calculating to prejudice the fair trial of a pending cause, revenges on those who act in a particular cause for what they have done in that cause, impeding service of process of the court or forging that process and contempts in relation to wards of court. Civil contempt is defined as disobedience to an order of the court made in a civil cause. In practice this is a definition which has caused such trouble and may require re-assessment in the light of recent cases assimilating certain types of civil contempt to criminal contempts.

12. According to us, the act of the fifth respondent in taking the photograph may not amount to civil contempt as defined in S. 2(b) of the Contempt of Courts Act, 1971. But S. 22 of the Contempt of Courts Act says that the provisions of this Act shall be in addition to and not in derogation of, the provisions of any other law relating to contempt of courts. The power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of Record. The Court of Record has the power of summarily punishing for contempt. Art. 215 of the Constitution of India states that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Hence, the question before us is whether even though the Circular referred to may not come under the definition "civil contempt" does the act of the fifth respondent in taking the photograph of the proceedings will amount to contempt of court. As observed by the Supreme Court in *S.K. Sarkar*, Member, Board of Revenue, U.P.,

Lucknow Vs. Vinay Chandra Misra, : "Arts. 129 and 215 preserve all the powers of The Supreme Court and the High Court, respectively as a Court of Record which include the power to punish the contempt of itself. There are no curbs on the power of the High Court to punish for contempt of itself except those contained in the Contempt of Courts Act. Arts. 129 and 215 do not define as to what constitutes contempt of court. Parliament has, by virtue of the Entries 77 and 14 in List I and III respectively of the Seventh Schedule, power to define and limit the powers of the courts in punishing contempt of court and to regulate their procedure in relation thereto. Indeed, this is what is stated in the preamble of the Act of 1971".

13. An additional defence taken by respondents 2 to 5 is that the Circular does not prevent taking photograph of proceedings in a Court. According to us, this contention cannot be accepted. The Circular is very clear that the Presiding Officer is not able to grant permission to take photograph of proceedings in a court without prior permission of the High Court. This implies that the proceedings in a court cannot be photographed without the permission of the High Court. A member of the public has no right to take photograph of the proceedings in a court. The court hall is a place of sanctity and the proceedings there are under the control of the Presiding Officer. A person may come and watch the proceedings. But further than that he has no right to take photograph or video tape of the proceedings. It is not necessary for us to state that freedom of the press is absolute. As was stated in *R. v. Gray*, 1900) 2 Q.B 36, the "liberty of the press is no greater than the liberty of every subject of the Queen".

"The Court cannot authorise trials by newspapers and cannot endanger the rights of accused persons before the courts. The power of the courts to publish any publication calculated to obstruct and prevent the due course of justice and law is not restricted by the constitutional guarantee of liberty of the press, for liberty of the press is subordinate to the independence of the judiciary and the proper administration of justice.

It is the duty of the courts to maintain the liberty of the press and the usefulness and efficiency of the courts. A person has full liberty, for example, to twirl his walking stick in any way he pleases, but his liberty ends where his neighbour's nose begins. In the like manner, the liberty of the press ceases where a further exercise thereof would impede, embarrass or obstruct the court in the discharge of its duties." (*Vide Leo Roy Frey v. R. Prasad & Ors.* 1958 CrL.L.J. 1225.

Regarding taking of photograph, a question arose in the decision reported in *Leo Roy Frey v. R. Prasad & Ors.* 1958 CrL.L.J. 1225. In the above decision, Bhandarri, C.J. held as follows:

"The petitioner complaints that the newspapers were not justified in taking or publishing the photographs of the car in which he and his companion happened to be travelling on that fateful day and that the publication of these photographs is likely to prejudice his trial in court. A trial court may forbid the taking or

publication of photographs of a prisoner on trial and may punish a person for contempt when he takes or publishes photographs of a prisoner in the Court Room or when he is on his way to the Court room.

People cannot be allowed to take his photographs against his will when he is in custody and it is the duty of the Court to protect him against unauthorised invasions of his personal rights".

But in the above decision, the learned Judge was of the view that there was no decision which prevents a person from taking or publishing pictures of a vehicle long before the commencement of the trial and at a considerable distance from the scene of the trial. Further, the learned Judge was of the view that the publication of the pictures would not prejudice a fair trial of the petitioner.

14. Recently, a similar question arose before the Karnataka High Court in *Ramakrishna Gowda v. Chairman, Zee Television, New Delhi and Ors*, AIR 2000 Karn 276. In the above decision, it was observed as follows: "the Court halls have a sanctity and symbolise the divinity of justice it seeks to represent. The Court halls cannot be used for any purpose other than the holding of Court proceedings for dispensation of justice. The proceedings in the Court are held in open and the public in general can attend the proceedings unless otherwise directed. But nobody can be permitted to defile the same. The court proceedings in the High Court or any Court subordinate thereto cannot be video taped, photographed or telecast without taking prior written permission from the High Court".

15. In the light of the above facts, we are of the view that the action on the part of the fifth respondent in taking photograph of the proceedings in the court is improper. It is made clear that no person whether he is a member of a Press or otherwise or any member of the public is entitled to take photographs of the proceedings of the court including subordinate courts without the permission of the High Court. If any person takes photographs violating the above procedure, that will amount to contempt of court. So far as the facts of this case is concerned, we are satisfied that the fifth respondent was not aware of the prohibition in taking photograph. Further, he says that he took photograph from the court hall and nobody prevented him from taking the photograph. The proceedings reported are with regard to the framing of charges against the accused and we are of the view that the publication of the photograph has not in any way interfered with or prejudiced the proceedings in the Court. Taking all these facts into consideration, we are of the view that it is not necessary to proceed further with the matter. As observed by Lord Denning M.R. in *R. v. Commissioner of Police of the Metropolis, Ex pane Blackburn* 1968 (2) A.E.R. 319, "It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise", In *Pratap Singh and Another Vs. Gurbaksh Singh*, it is observed thus: "Even if the action of the officers be considered to be improper, that would not justify holding them guilty of contempt of court when their action in no way prejudiced the trial of the suit. It is when the departmental action

directly affects the course of the judicial proceeding that it can amount to interfering with the course of justice and consequently, to contempt of court. If it does not do so, there can be no case of contempt of Court."

16. Before we close the matter, we would direct the District Judge-in-charge of Thiruvananthapuram, Shri. Kamal Pasha to enquire into the question whether the fifth respondent herein was present in the court of the first respondent on 20th March, 2000 with Camera and whether the Court Officer and Peons in the Court hall and any other staff of that court knew the presence of the fifth respondent with Camera and if so, why they did not inform the Presiding Officer about the same. We are excluding the first respondent from the enquiry, because we are satisfied from the report that he was not aware of the presence of the fifth respondent with Camera.

17. Contempt case is closed.