

(1949) 09 CAL CK 0006
In the Calcutta High Court
Case No : Criminal Misc. No. 132 of 1949

Bankim Chandra Paira and Another

APPELLANT

Vs

Anand Bazar Patrika and Another

RESPONDENT

Date of Decision : 08-09-1949

Acts Referred:

Contempt of Courts Act, 1971 — Section 2, 3

Citation : AIR 1950 Cal 129

Hon'ble Judges : Lahiri, J;Blank, J

Bench : Division Bench

Advocate : Manmatha N. Das and Manishi K.R. Das, for Editor, Printer and Publisher of "Swaraj O Sangathan." and Chandra S. Sen and Jajneswar Majumdar, for the Province, S.K. Das and Benode B. Haladar, for the Appellant; Sudhansu S. Mukherji and Haridas Chatterji for Editor, Printer and Publisher of "Ananda Bazar Patrika.", for the Respondent

Judgement

Lahiri, J.—This Rule was issued upon the Editor, Printer and Publisher of the Ananda Bazar Patrika and the Swaraj O Sangathan to show cause why they should not be committed for contempt for publications in their respective newspapers of news items published on 5th July 1949 and 8th July 1949 respectively under the captions "Narayangarh--Midnapore" and "Paddy looted during broad day light". The Ananda Bazar Patrika is a very influential and popular Bengali daily published from Calcutta and enjoying a very large circulation amongst the Bengali speaking population of this province and also beyond its borders. The Swaraj O Sangathan is also an influential Bengali Weekly published by the District Congress Office, Midnapore.

2. An official translation of the publication in the Ananda Bazar Patrika runs as follows:

"Narayangarh (Midnapore)

Trouble created by Communists--The Communists looted away about 70 maunds of paddy in broad daylight from a paddy granary of Laxmi Narayan Prodhan in

village Kajichak within the police station of Narayangarh during his absence on 17th May 1949 last.

The Police-men of the Thana came to investigate and on their taking one of the accused persons into custody the extremists attacked the Police and the owner of the house in an organised manner and surrounded the village. Late in the night higher police officials with 50 armed police-men came and rescued them and left behind 12 Police-men in apprehension of a breach of the peace in the village. At present 50 accused persons who are on bail are creating panic in various ways within the village. It is only a few days that the Police force for maintaining peace had been withdrawn elsewhere, meanwhile, paddy was stolen from the granary of a witness named Gobinda De on 28th of June last, during the night. It is desirable that either the bail bonds of the accused persons should be cancelled till their trial is finished or arrangements made for providing Police guards".

3. The corresponding publication in the Swaraj O Sangathan runs thus:

"Paddy looted during broad day light.

The Communists looted away about 70 maunds of paddy from the paddy granary of Lakshmi Narayan Prodhan, in village Kajichak, in broad day-light on 17th May 1949 last. The Police Officers of the thana who came to investigate took one of the accused persons into custody, whereupon the extremists attacked the Police men and the owner of the house in an organised manner and surrounded the village. Late in the night higher police officials with 50 armed constables came and rescued them. They left behind 12 constables in apprehension of a breach of the peace in the village. At present 50 accused persons who have been released on bail are creating panic in various ways in the village. It is only a few days that the Police force for maintaining peace had been withdrawn elsewhere, meanwhile paddy was stolen from the granary of a witness named Gobinda De on 28th June 49 last, during the night. In the circumstances some are of opinion that either the bail-bonds of the accused persons should be cancelled till their trial is over or arrangements made for providing police guards.

Sri Priyanath Prodhan Head Pandit Arjuni Deshabandhu Vidyapith, P.O. Belda, Dt. Midnapore."

4. The publication in the Ananda Bazar Patrika is described in the foot note as a letter received from a reporter whose name is not printed. We are told that this reporter is not a reporter employed by the newspaper itself but an external reporter as distinguished from a reporter who exclusively represents the newspaper. The publication in the Swaraj O Sangathan, on the other hand appears over the signature of one Priyanath Prodhan who describes himself as Head Pundit, Deshbandhu Vidyapith--P.O--Belda--District Midnapore.

5. Two persons named Sri Bankim Chandra Poiria and Sri Hara Prasad Jana sent by post an application addressed to the Registrar, Original Side drawing attention to the fact that the aforesaid publications related to matters which were awaiting

decision by the Sub-divisional Officer, South Midnapore. The complaint made in the petition is to the effect that in the aforesaid publications the accused persons have been described as communists, although they had no affiliation with any communist organisation and in the second place there was a recommendation for the cancellation of the bail bonds of the accused persons on the ground that they had created a panic in the locality after their release on bail. The two petitioners accordingly apprehend that the publications may have the effect of creating an atmosphere of prejudice not only in the mind of the witnesses but also in the mind of the trying Magistrate.

6. Under the Rules of Business of this Court this petition was sent to us to be dealt with according to law. As from the petition it does not appear whether the two petitioners are on their trial we directed the original petition to be sent to the S. D. O. (South) Midnapore requesting him to inform us if the two petitioners mentioned above are on their trial before him and, if so, whether the signatures appearing on the body of the petition tally with the signatures of the prisoners before him. By his letter dated 5th August 1949 the S. D. O. Sadar (South) Midnapore has informed us that the signatory Bankim Chandra Poiria is an under-trial prisoner in case No. G. R. 913 (S)/49 u/s 148/461/380, Penal Code pending in his Court and that the signature of the accused on the bail bond tallies with his signature on the petition to this Court. Secondly, the signatory Haraprasad Jana is also an under-trial prisoner in case no. 914 (S) of 49 under Sections 148, 342, 363, 307, Penal Code and that his signature on the muktearnama tallies with his signature on the petition to this Court. It is clear therefore that the two petitioners are on their trial before a Court of law for offences which may or may not involve trial by a Jury. The S. D. O. has further reported that both the cases are under investigation by the police and that the two petitioners have been enlarged on bail. On receipt of this report we issued the present Rule.

7. The Ananda Bazar Patrika has been represented before us by Mr. Sudhangau Sekhar Mookerjee and the Swaraj O Sangathan by Mr. Manmathanath Das. At the hearing of the Rule the petitioners prayed for permission to be re-presented by Mr. Sisir Kumar Das which was granted and the Government of West Bengal was represented by the Senior Government Pleader.

8. Mr. S. S. Mookerjee has argued in the first place that the information published in the Ananda Bazar Patrika is too vague to give any indication as to the identity of the case to which it relates, as it does not mention the names of the accused; consequently the publication does not, according to Mr. Mookerjee, amount to contempt of Court. We regret we cannot accept this contention. The publication gives the name of the place of occurrence, the date of the occurrence and also the name of the person whose paddy is alleged to have been looted. This description leaves us in no doubt as to the "cause" to which it relates and under the law that is all that is necessary. What is punishable under the law is comment on a cause while it is pending actually prejudicing or calculated to prejudice any party. If the party is named it adds to the gravity of the offence

but the naming of the party is not an essential ingredient.

9. The second point raised by the Ananda Bazar Patrika is that the publication does not amount to contempt because according to the celebrated utterance of Lord Atkin in the case of *Ambard v. A. G. of Trinidad* 40 CWN 801 : AIR 1936 PC 141

"the path of criticism is a public way: the wrong headed are permitted to err therein provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice..... Justice is not a cloistered virtue: She must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."

It was argued that the passage lays down the law with regard to pending cases. If that had been the case, the entire law of contempt of Court in this country would have to be re-written: but an examination of the facts will show that Lord Atkin was making the observations in connection with a public criticism of a judgment after it had been delivered. A proceeding for contempt was drawn up against the defendant of that case for criticising a judgment which was under appeal, and the proceeding as drawn up included charges of contempt of the appellate Court as well as of the Court of first instance. The Supreme Court of Trinidad and Tobago acquitted the defendant of contempt in respect of the pending appeal but found him guilty of contempt of the Subordinate Court and the appeal to the Privy Council was directed against that order. So the only matter that was before the Judicial Committee was whether the defendant was justified in criticising the judgment of the Subordinate Court after it had been delivered and the Privy Council held that he was as he did not exceed the limits of legitimate criticism. This contention must therefore be overruled.

10. The next argument advanced by Mr. Mookerjee was that the principle enunciated by Jenkins C. J. in the case of *In The Matter of The Amrita Bazar Patrika* should apply to the facts of the present case and it should be held that there was no contempt. This case was decided in 1913 long before the enactment of the Contempt of Courts Act (XII [12] of 1926) at a time when there was a considerable doubt as to whether the High Court had any jurisdiction to punish for contempt of a Subordinate Court situate beyond, the limits of the Presidency Town. Section 3 of Act XII [12] of 1926 invested the High Courts established by Letters Patent with the same jurisdiction, power and authority in respect of contempt of Courts subordinate to it as it has in respect of contempt of itself. Sir Lawrence Jenkins pointed out that the High Court might possibly have the power to punish for contempt of a Mofussil Court only when the acts complained of amounted to deterring witnesses from giving evidence or prejudicing the Jury. It is fairly clear that the jurisdiction which this Court possesses under Act XII [12] of 1926 is considerably wider than the jurisdiction which it possessed in 1913. On the merits of the *Amrita Bazar Patrika* case it appears that the conduct of the Criminal Investigation Department was bitterly criticised by the Editor in connection with certain house searches and the

treatment of the accused. Sir Lawrence Jenkins observed :

"I am unable to hold that witnesses would be deterred from giving evidence by reason of this attack on the police. I have examined and re-examined the articles to see if they could reasonably produce this consequence but I come without doubt to the conclusion that they could not."

Mookerjee J. went a step further and said

"I must emphatically repudiate the astonishing proposition that the Criminal Investigation Department is the prosecutor in this case."

It is extremely difficult for us to see how the facts of the Amrita Bazar Patrika case can have the remotest analogy to the facts of the case with which we have to deal. This argument based upon this ruling must accordingly be held to be entirely misconceived.

[11] The fourth point argued by Mr. Mookerji that the contempt, if any, in the present case is of such a technical and trivial character that no action is necessary. Mr. Mookerji has relied upon the cases of *King v. Dolan* 1907 2 IrR 260 and *Ananta Lal Singh and Others Vs. Alfred Henry Watson and Others*, , in support of this point. The facts of both the cases appear to us to be entirely different from the facts of the present case. In the former case, Mr. Walter Long, a member of the Parliament who had filled many important offices of the State in the past delivered a speech criticising the Parliamentary policy of Mr. Bryce, the then Chief Secretary of Ireland with regard to certain Irish questions and more particularly the attitude of the Parliament in minimising acts of intimidation prevalent in certain parts of Ireland. Mr. Long's point was that on account of the unsatisfactory policy of the Parliament acts of intimidation had become very common and as an illustration of this point, Mr. Long referred to a case recently tried in Ireland in which the Jury had returned a divided verdict on a charge of unlawful assembly and criminal intimidation, as a result of which the presiding Judge discharged the jury and ordered a new trial. Mr. Long concluded his speech by saying that if the Parliamentary policy of the Chief Secretary continued to be what it was, it was not a matter of surprise that the jury would return a divided verdict in an indictment for the offence of criminal intimidation. The speech was extensively reported in certain newspapers as a sequel to which a proceeding for contempt was started both against Mr. Long and the newspapers concerned. The defence of Mr. Long which was accepted by the Court was that his dominant object was political, viz., to bring about a change in the policy of the Parliament and the reference to the case was made incidentally without any realization of the fact that the case was pending in the sense that a new trial had been ordered. In these circumstances the Court held that though technically both Mr. Long and the newspapers had been guilty of contempt no action was required to be taken. A remarkable feature of this case was that the Attorney-General when moved to take action against Mr. Long and the newspapers refused to do so on the ground that the speech as reported could not have any effect upon the

jurors. Though the refusal of the Attorney General was by no means a conclusive or decisive factor in the case--Lord O'Brien L. C. J. observed as follows :

"There is no instance in our books in the whole range of criminal law, from the Year Books to the present day when on a summary motion of this sort, the Attorney General having refused to interfere, the Court inflicted punishment either by committal or by fine."

12. In the case of Ananta Lal Sing v. A. H. Watson 35 CWN 189 : AIR 1931 Cal 267 : 32 CriLJ 675, the conduct of counsel for the defence in the Chittagong Armoury Raid case was criticised by the Editor of the Statesman, because counsel after having made a public declaration of his intention to give up practice at the Bar to devote himself exclusively to the service of the Indian National Congress subsequently accepted the brief of the accused and the Editor of the Statesman ironically asked whether the defence of the accused in that case was a part of the work of the Congress. In a subsequent issue of the Statesman, the Editor expressed his regret if that criticism was interpreted in such a way as to prevent counsel from undertaking the defence and pointed out that his intention was merely political, i. e., to criticise the policy of the Congress party and not to prevent counsel from accepting the brief of the accused. Upon these facts Rankin C. J., pointed out that the action of the Editor was "singularly ill advised" and amounted to a contempt but it was of such a technical character as not to call for any action. Sir George Rankin further pointed out in this case that the law of contempt was the same whether the proceeding pending involved trial by jury or trial by a Judge or Magistrate.

13. None of the exceptional circumstances present in Dolan's case : (1907-2 Ir. Rule 260) or Ananta Lal Singh and Others Vs. Alfred Henry Watson and Others, appear to be present in the case before us. As we shall presently show, the description of the accused as communists is, in our judgment, certainly a matter of great prejudice in the present political atmosphere of the country and a recommendation for cancellation of their bail bonds is a direct interference with the judicial discretion of the trying Magistrate. It has been said by high authorities that if trials of individuals by Courts of law are not to be replaced by trials by anonymous and irresponsible correspondents of newspapers publications of the present description have to be deprecated.

14. After an exhaustive review of the English and Indian authorities on the law of contempt Sir Arthur Harries as Chief Justice of the Lahore High Court laid down the law in the following terms in delivering the judgment of the Full Bench in the case of In the matter of Tribune ILR (1944) Lah 111 : AIR 1943 Lah 829 : 45 CriLJ 445 .

"Any publication which is calculated to poison the minds of the jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible, amounts to contempt."

Again at p. 123 :

"It is also clear that a person may be guilty of contempt though there was no intention to commit contempt. It is sufficient if the effect of the article complained of is to create prejudice and to interfere with the due course of justice."

15. We respectfully propose to apply the above principles to the facts of the present case and the result at which we have arrived can be summarised as follows: (a) The publication commences with the sub-heading "Trouble created by communists" and then goes on to state "the communists looted away about 70 maunds of paddy in broad day light" etc. If we attach to these words their plain and natural meaning without the assistance of laborious commentary the passage means that whoever may have done the act or acts, is a communist. To say that this description does not refer to the accused is to trifle with truth; because whatever doubt may arise upon the opening sentence is completely dispelled by the following sentences where express reference is made to the accused persons. This description, in our judgment, is certainly calculated to create a lot of prejudice against the accused in the mind of the local public and may have the effect of deterring a person from deposing in favour of the defence, if the accused choose to call any defence evidence. (b) The writer then says "At present 60 accused persons who are on bail are creating panic in various ways in the village." This is another attempt to create local prejudice against the accused and amounts to real interference with the course of justice. (c) The writer concludes by saying :

"It is desirable that either the bail bonds of the accused should be cancelled till their trial is finished or arrangements made for providing police guards."

This passage has the effect of interfering with the free exercise of his judicial discretion by the trying Magistrate.

16. It cannot and has not been suggested that the anonymous writer of the Ananda Bazar Patrika had any alternative motive of furthering a public or political cause as was held in the cases of King v. Dolan : 1907 2 IrR 260 and Ananta Lal Singh and Others Vs. Alfred Henry Watson and Others, . We accordingly hold that the offence in the present case is more than technical and is of such a character as to call for action.

17. The Editor, printer and publisher of the Swaraj O Sangathan has filed through Mr. Manmatha Nath Das an affidavit expressing sincere regret for the publication of the letter and offering his unqualified apology for the same. In the circumstances of the case we accept this apology u/s 8 of the Act XII [12] of 1926 and direct that he may be discharged.

18. With regard to the Ananda Bazar Patrika Mr. Mookerjee said in opening the case that in case it was held that the action of his client amounted to contempt and in case it was further held that the contempt was of such a character as to call for action his client was prepared to express regret for what was done through inadvertence and absence of supervision. Before the commencement of

the second day of the hearing, we pointed out that if the Ananda Bazar Patrika was sincere in its expression of regret we might at once accept it and dispose of the matter on that footing: but Mr. Mookerjee expressed his embarrassment whereupon he was allowed full opportunities of advancing his arguments on all the points. Mr. Mookerjee was certainly within his rights in placing all the points that could possibly be urged in support of his client and he has done it. At the conclusion of his arguments, Mr. Mookerjee again said that his client was prepared to offer apology and pointed out that the publication was the result of inadvertence and appeared in an obscure place of the newspaper. It is not for us to say whether it is proper for a newspaper of the eminence and influence of the Ananda Bazar Patrika to publish a news item on the basis of a report received from an anonymous reporter over whom, presumably the paper has no control, all that we can say is that if such a report is published it is published at the risk of the Editor, printer and publisher. The essence of the offence being publication, we do not for a moment encourage the belief that lack of supervision is any defence to a proceeding for contempt, but nevertheless, we have to take into account the fact that the present publication may have been the result of an accidental slip over which nobody can have any control. We have accordingly come to the conclusion that the present one is not a case for committal or fine and we accept the apology u/s 3 of Act XII [12] of 1926; but in the circumstances of the case we direct that the editor, printer and publisher of the Ananda Bazar Patrika, should pay the costs of this proceeding to the two petitioner to be divided equally between them. Hearing fee is assessed at 20 gold mohurs.

19. The rule is accordingly made absolute in the manner indicated above.

Blank, J.

20. I agree.

(8th September 1949.)

21. Order.-- By consent of the parties expressed through their learned advocates, we order that the Editor, Printer and Publisher of "The Ananda Bazar Patrika" pay to the learned Advocate for the petitioner the amount of the costs including the hearing fee. Mr. Benode B. Haldar is authorised to grant a receipt which, when granted, will be kept on the record.