

(1953) 03 OHC CK 0003

In the Orissa High Court

Case No : Original Criminal Miscellaneous Case No. 5 of 1952

Bijoyananda Patnaik

APPELLANT

Vs

Balakrushna Kar and Another

RESPONDENT

Date of Decision : 26-03-1953

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(2), 215
Contempt of Courts Act, 1971 — Section 1, 3

Citation : AIR 1953 Ori 249

Hon'ble Judges : Panigrahi, C.J.; Mohapatra, J

Bench : Division Bench

Advocate : K. Patnaik and B.M. Patnaik, for the Appellant; Asoka Das, for the Respondent

Judgement

Panigrahi, C.J.—These proceedings in contempt have been initiated at the instance of the petitioner Sri Bijoyananda Patnaik, who is the Chairman of the Board of Directors of Messrs. Eastern Mercantile Corporation, Ltd. Opposite Party 1 is the Editor of an Oriya newspaper called "Matrubhumi" and opposite party 2 is its printer and publisher. On 14-6-1952 the business premises of the petitioner were searched by an Inspector of the Special Police Establishment, Government of India, Delhi, under a warrant issued by the Additional District Magistrate, Cuttack, for the recovery of certain documents and letters exchanged between the petitioners and some overseas suppliers, in respect of a license issued by the Government of India for the import of bicycles intended for internal consumption within Orissa State. On 21-6-52 the petitioner moved this Court in Original Judicial Case No. 18 of 1952 praying for the issue of a rule on the Additional District Magistrate and the Inspector, Special Police Establishment, to show cause why the search should not be declared illegal and why the order of the Additional District Magistrate refusing to grant him copies of the warrant should not be set aside. On 27-10-52 the Court granted one of the prayers of the applicant and directed that he should be granted copies of certain documents which were, in the possession of the Additional District Magistrate. The other prayer of the

petitioner, however, namely, for a declaration that the search was illegal was rejected on 2-12-1952 by a Bench of this Court.

2. It is alleged that the opposite parties published certain articles in the daily and weekly issues of the Matrubhumi while proceedings were pending in this Court, vilifying the petitioner. These publications, it is contended, constitute gross contempt of Court. Altogether there were four articles published in the Matrubhumi two in the daily issues dated 17-6-52 and 13-8-52 and two in the weekly issues dated 21-7-52 and 1-9-52. The present petition was presented in Court on 24-10-52 and 20-12-52; this Court issued a rule nisi to show cause why the opposite parties should not be committed for contempt. These proceedings would, therefore, appear to be an off-shoot of Original judicial Case No. 18 of 1952 which had been filed by the petitioner and the impugned articles were published when the initiation of these proceedings was either imminent or pending in this Court.

3. The first article dated 17-6-52 appeared under the caption, in bold headlines, "Extensive searches in the town of Cuttack -- Dangerous fraud and Conspiracy about to be unearthed -- Thief's house does not remain dark always". Among other matters the article says:

"It is reported that the reason for the search is that company by the name of Eastern Mercantile Corporation was formed under the leadership of Sri Bijoyanand Patnaik, and permits for importing several crores rupees worth of cement, maida, sugar, steel-goods umbrella sticks, screws, cycles, and yarn, were obtained from the Central Government in the names of the members of this Company and illegal profits of lakhs of rupees were made by selling these to several persons outside Orissa. It is alleged that by such action they have cheated the Central Government, the State Government, and the people. From the papers it appears that the office of the company is located at Anand Bhawan, Tulsipur, but there does not appear to be any such office in Tulsipur

It is rumored that there have been serious allegations that Sri Patnaik has taken lakhs of rupees from the Government for the development of industries, and has not done anything. It is learnt that the company in whose name import license has been obtained is not an established company, nor is the company assessed to Income Tax. It is being seriously investigated as to how crores worth of permits were granted for transactions from the Central Secretariat to a Company consisting of private shareholders. The mysterious manner in which these permits were sold outside, in Madras and Bengal, and lakhs of rupees worth of profits were made, has already been investigated by the Central C. I.D. in those States".

The article then contains several similar allegations to the effect that fifty bales of yarn were obtained for dyeing purposes although there is no dyeing factory. It is further alleged that "permits for maida were obtained from the central Government but that there was no trace of maida". The article concludes, with

the statement that "the Central C. I. D. will systematically investigate every matter and would prefer charges against some persons". It will appear from these extracts that the writer has given currency to a number of rumors that the petitioner had obtained Import licenses for several articles valued at several crores of rupees although his house was searched only for the purpose of recovering an import license connected with bicycles. The article also alleges that the petitioner had made illegal profits to the extent of lakhs of rupees by selling these import licenses in the black market to several persons outside Orissa State. It is further categorically asserted that there is no office known as Eastern Mercantile Corporation, at Tulshipur.

4. The second article, dated 21-7-52 appeared in the weekly edition of the Matrubhumi and purported to be the re-production of a statement published in another Oriya paper called "Subrati". The headline is:

"Mahatab is at the root of all mischief and he should be arrested with his companions at once". The article then proceeds to say:

"It is a matter of surprise that Bijoyananda Patnaik and others have not been arrested. It is alleged against these people that they floated, fake or fraudulent companies and manoeuvred to obtain from the Central Government permits for lakhs of rupees worth of maicta, cycle, thread, steel and other articles of daily use and made immense money by deals in the black-market. It is known that the name of Bijoyananda Patnaik & Co., is not even known to the Income Tax Department. The Central Government are aware of the detailed activities of these treacherous campaigns If Jawaharlal's Government has actually girded up its loins to stop corruption, then, discarding all pity and compassion they should at once arrest Mahatab, Bijoy and Biren, and they should not at all consider the question of granting bail until the end of the trial".

The editorial note is as follows:

"Under the leadership of Mahatab those people collected vast wealth in this fashion and swindled lakhs of rupees from kendu leaves dealers & thereby created such an atmosphere of bitterness-in the field of politics during election time that people became perturbed with disgust and hatred. The Land Reforms (sic) which were brought through the swindling and cheating of Bijoyananda were sent to different districts as properties of the Congress" "Recently sharp attention of the Central Government C. I. D. was focussed on some of the business organizations of Cuttack. It was rumoured at that time that during Mahatab's time as Industries Minister on the strength of some important permits issued from his Secretariat, lakhs worth of articles were imported and were sold outside in the blackmarket, in Madras and Calcutta. The name of Kalinga Mercantile Corporation was especially mentioned in that connection and the houses of some alleged directors of the Company were searched".

5. The third article published in the same is entitled:

"Fire is smouldering within. It will flare up one day and consume all the black-marketeers of Orissa".

That article reads as follows:

"After the Central C. I. D. left Orissa on finishing their work, it is learnt that a petition has been filed in the Orissa High Court on behalf of Sri Bijoy Patnaik alleging that such investigation and search was without jurisdiction. Whatever that may be some papers and institutions associated with Bijoyananda Patnaik are carrying on propaganda that the allegations on which the Central C. I. D. carried on investigation and; searches in Orissa have no basis whatever, and such action of theirs is totally illegal

But the representative of Mathrubhumi on confidential enquiry has learnt that the propaganda that the fire is extinct is totally false and baseless and that the fire is smouldering and in appropriate time it should flare up with burning flames. The profiteers of Mahatab's camp who, on the strength of import permits let loose in this country a stream of black-marketing, taking advantage of Mahatab's Ministry in the Industry Department, will be caught one by one and will be punished for their corrupt activities. The Central C. I. D. are busy in doing the preliminary works in this connection".

This article was published after the petitioner had filed O. J. C. 18/1952, and, as may be noticed, these publications called for the immediate arrest of the petitioner and alleged in no uncertain terms that the petitioner had been guilty of swindling and cheating and that he should be punished for corrupt activities.

6. The next article is dated 13-7-1952 and is a vitriolic attack on both Sri Mahatab and the petitioner and says:

"As these two are the leaders of the blackmarke-teers their names alone have been mentioned. It is reliably learnt from those who are investigating that Mahatab and his associates shall be tried at the same trial and for the same kind of offence.....".

"It is needless to mention here that when Mahatab was the Commerce & Industry Minister at the Centre he used to get things done at the instrument of middleman. This middleman is Sri Bijoyananda Patnaik of Cuttack. A mere look at the documents seized by the Police would show that Bijoyananda Patnaik is concerned with all of themAs for example, Minister Mahatab gave permission to a businessman of Calcutta, named Bhawalka, to sell to retailers products of mill cloth at a higher rate and in the said letter of permission which he gave in the month of December last year, he directed that he will have to pay Rs. 3,25,000/- to his shikhandi Sri Biju Patnaik. Except Rs. 50,000/- the rest had been paid in cash. In the first week of December last a cheque for Rs. 50,000/- had been issued on the United Bank of India. From this it is known that Mahatab after taking Rs. 2,75,000/- left Rs. 50,000/- to the share of Biju Patnaik".

Here, again is what appears to be a definite assertion of fact that documents

have been seized and that these documents showed that Rs. 50,000/- had been received by Sri Bijoyanand Patnaik through, a shady transaction.

7. The last article was published in the weekly Issue of the Mathrubhumi dated 1-9-1952 and is entitled "Investigation throughout India". The article is as follows:

"Wide publicity is being given in some of the papers of Orissa with vested interests that the investigation which the Central C. I. D. carried on in Orissa regarding the Kalinga Mercantile Corporation proved a fiasco It appears from the account given to the Indian Life by its special representative, that in the course of investigations by the Central C. I. D. against Sri Bijoyananda Patnaik of Orissa, Bhawalka and Purushottam Das of Calcutta, it has been known that Mahatab is involved in their shady transactions So long as Mahatab occupied the gadi of a Minister he used to carry on shady transactions, always through a middleman. The Special Representative of the Indian Life has come to know that this middleman is Sri Bijoyananda Patnaik of Cuttack. It is known that Bijoyananda Patnaik is involved in all the papers and documents which have come into the hands of the Police".

The article concludes with the following words: "Immediately on receipt of the sanction of the Home Minister they will arrest these bribe-givers and will keep them in Preventive Detention till the Preventive Detention Act receives the assent of the President".

8. The petitioner complains that these articles were intentionally published with a view to dissuade him from pursuing his legal remedy in Court and that they have had the tendency to prejudice his case pending before the Court. It is further contended that whether they actually created any prejudice or not the articles have a tendency to prejudice him and his case and as such, constitute contempt of Court.

9. On behalf of the opposite parties it is contended that the publications had no connection with the cause pending in O.J.C. No. 18 of 1952 and as such these proceedings in contempt are not maintainable. Among other contentions raised on behalf of the opposite parties, it is said that the cause before the Court was not one which involved the taking of evidence and there can be no contempt of Court as such. It is also pointed out that since the petitioner has already started proceedings in libel and defamation against the opposite parties and the cause is pending trial this proceeding is not maintainable. At the hearing a new ground was taken and that is based on Article 19 (1) (a) & (2) of the Constitution.

10. I shall take up the last point first, as it relates to the maintainability of the present proceeding and is based upon the right to freedom of speech and expression guaranteed by Article 19. Clauses 1 (a) and (2) of Article 19 as amended by the Constitution (First Amendment) Act, 1951, read as follows:

19 (1) "All citizens shall have the right: (a) to freedom of speech and expression;

..... (2) Nothing in Sub-clause (a) of clause (1) shall affect the operation of any "existing law" or prevent the State from making any law. in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence".

The expression "existing law" has been defined in Article 366 as meaning any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any legislature, authority or person having the power to make such law, ordinance, or bye-law, rule or regulation. The opening words of the article provide that the expression "existing law" shall have the same meaning assigned to it in the Constitution unless the context otherwise requires. The interpretation clause in the Constitution, therefore, should be read subject to the context, and if the context of a particular Article requires a different interpretation, the interpretation clause must be subordinated to it. In other words the interpretation of the expression "existing law" is not the same in every Article or clause of the Constitution and would depend upon the context.

11. The law relating to contempt of subordinate Courts is to be found in the Contempt of Courts Act (Act 12 of 1926 as amended by Act 12 of 1937). Section 2 of that Act says that the High Courts shall have, and exercise the same jurisdiction, power, and authority in respect of Contempts of Courts subordinate to them as they have and exercise in respect of contempt of themselves. There are other provisions relating to contempt of Court committed in the view or presence of civil, criminal, or revenue Courts, and they are to be found in the Civil Procedure Code, and the Indian Penal Code. But so far as contempt of the High Court is concerned, Article 215 makes an express provision for punishing contempt of itself. That Article says:

"Every High Court shall be a Court of record and shall have all the powers of such Court, including the power to punish for contempt of itself."

It would thus appear that whatever meaning is attributed to the expression "existing law" occurring in Article 365, the High Court as a Court of record has the inherent power to punish persons guilty of contempt of itself. This power can be traced to the earliest times since the establishment of the Supreme Courts and their successors, the High Courts, in India. That such a power is inherent in a Court of Record has been recognised from the earliest times in England and the test whether a Court is a Court of record or not, would depend upon whether it has the power to imprison and fine, whether for contempt of itself or for any other substantive offence. Courts of record are such as have been expressly made so by statute or implication of a statute, that is, by having the statutory power to fine and imprison -- See Halsbury Second Edition, Vol. 8, p. 527.

Holdsworth mentions certain instances of proceedings taken to punish a neglect

of public duty in the year 1330 -- See Holdsworth's History of English Law. Vol. III page 312. Coke cited a case of Edward III's reign in which a person was punished for a writing which amounted to Contempt of Court. A Court whose record is incontrovertible is a Court of record. Sir Barnes Peacock defined the status and powers of a Court of record in India in -- *Surendranath v. Chief Justice & Judges of the High Court*", 10 Cal 109 (A) and observed;

"Contempt of Court by libel published out of Court is something more than defamation. It is an offence which by the Common Law of England was punishable by the High Court in a summary manner with fine or imprisonment or both, for part of the Common Law of England was introduced in the Presidency towns when the Supreme Courts were respectively established by the Courts of Justice. High Courts in the presidencies are superior Courts of record and the offence of contempt and the powers of the High Court for punishing it are the same in India as in England, not by virtue of the Indian Penal Code or the Criminal Procedure Code but by virtue of the Common Law of England".

Thus, the High Court's Jurisdiction to punish for contempt has been inherited from the old Supreme Court which was invested with all the powers and authority of the Court of the King's Bench. The Supreme Court was declared a Court of record by the Charter of George III in 1774. The High Courts were created Courts of record by the several Letters Patent issued by the King-in-Council. By the Government of India Act, 1935, all the High Courts were constituted Courts of Record and Article 215 of the Constitution declared the Supreme Court of India and the High Courts to be Courts of record. By the very nature of our Constitution it is necessary, for the administration of justice and protection of individuals, that these Courts should be able to punish summarily for acts of contempt; because, in the words of Blackstone, this power is an "inseparable attendant upon every superior tribunal".

12. The history of the superior Courts established in this Country from the earliest times would show that this jurisdiction was inherited from the King's Bench and was of a special character. The Court's power to punish every kind of misdemeanour was recognised as it was the guardian and protector of public justice -- the "custos morum". Ordinarily misdemeanour was punishable by indictment or information, but when it amounted to contempt of Court it was punishable "brevi manu" by attachment or commitment to prison. The Constitution expressly reserves these powers in Article 215 when it lays down that every High Court shall be a Court of record. It also provides that it shall have power to punish for contempt. This has been done in order to put an end to any possible argument regarding the nature of the powers of a High Court in this respect. I would, accordingly, overrule the preliminary objection raised on behalf of the opposite parties and would hold that Article 19 of the Constitution does not curtail the right of the High Court to deal with contempt of Court.

13. It is necessary, however, closely to examine whether the impugned articles constitute a contempt of Court as it has been seriously urged that the writings

had no relation to the subject-matter of the petition pending before this Court; and secondly, to consider whether this Court shall exercise its extraordinary power to punish the offenders summarily. On a plain reading of the publications no reasonable man can have any doubt that they constituted a gross abuse of the petitioner who has been charged with having swindled public moneys, cheated the Government, and has further been described as a leader among blackmarketeers. Anyone reading these articles cannot but have a feeling of revulsion against the object of these attacks. It is also apparent that the writer of these articles knew that the petitioner had sought relief in this Court and had complained that the search of his house was not only illegal but that it amounted also to an abuse of the powers vested in the Police. These articles certainly do not make any reflection upon the Court or upon any Judge but in order to constitute contempt of Court it is not necessary that the Court or an individual Judge should be attacked.

The very policy of the law is not that the Judges should be protected from attacks, but that the public should be protected from such attacks, so that they may have free access to the Courts for relief. The reason of the rule is that the mind of the public should not be prejudiced against the parties who resort to the Court for a remedy, before their cause is finally heard, for the effect of such attacks may be to deter persons from coming forward for protection for wrongs committed against them, or to cause them to discontinue or compromise, or to deter persons with good causes of action from coming to Court. To constitute a contempt, adverse comment on a party need not refer to the subject-matter of pending proceedings. It is sufficient if it is clear that the comment tends to prejudice the trial of the action -- "*Higgins v. Richards*", (1912) 28 T. L. R. 202 (B). It must, however, amount to contempt of Court and not mere libel on the parties. If the publications do not amount to an interference with the course of justice the party attacked may be left to protect himself by a regular criminal complaint. The view has lately been expressed by Maugham J. in -- "*In re Sir Robert Thomas*, (1930) 2 Ch 363 (C)", that a trial Judge approaches the question of contempt somewhat differently from an appellate Judge. When a case is pending trial, a publication may influence the parties and their witnesses from giving evidence, but where the proceeding is pending before an appellate Court the publication may amount to contempt only in the rarest possible cases. The test, in all these cases, however, is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. It is also well settled that the summary jurisdiction vested in the Court should be sparingly exercised and the Court, discountenances applications for punishment of contempt where it is slight. These, , as I have been able to gather from the decisions, are the broad principles of the law relating to contempt of parties.

14. Learned counsel, however, attempted to introduce a distinction in favour of the Press and claimed that a writing in a newspaper is privileged and that it should not be made the subject of contempt proceedings. I am not aware of any such extraordinary privilege that can be claimed for the Press. In -- *Charming*

Arnold v. King Emperor", AIR 1914 PC 116 (D), their Lordships of the Privy Council laid down, in the clearest possible terms that:

"The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever height the subject in general may go, so also may the journalist, but apart from statute law his privilege is no better, and no higher".

On the other hand, it would appear that the responsibility attaching to the Press is greater than the responsibility of an individual, for the Press has a larger audience and enjoys a circulation far larger than the utterance of an individual. It is true that a free Press is vital to democracy and that the freedom of the Press includes the right to criticise, even the right to criticise severely. But freedom of the Press should not degenerate into a license to attack litigants and close the door of justice. Nor can it include any unrestricted liberty to damage the reputation of respectable persons. If a journalist does not take reasonable care to ascertain the accuracy of facts which he broadcasts, or if he tortures facts and vilifies an Individual, he exceeds the limit of fair comment and becomes accountable to the law. The trial of a cause should be restricted only to the courts and no cause shall be permitted to be tried by newspapers.

15. In support of his contention learned counsel for the opposite parties drew our attention to an American case reported in --"Pennekamp v. Florida", (1946) 328 US 331 (E). That was a case in which a journal published a cartoon showing a man in the robes of a Judge labelled "The Law". He was handing a scroll inscribed "Case dismissed", to a burly fellow who seemed well-pleased, and across, on the other side of the Bench, an under-sized man acting in the public interest was exclaiming "But Judge". The supreme Court observed, that -

"The danger to fair judicial administration had not the clearness and immediacy necessary to close the door of permissible public comment. When that door was closed it closed all doors behind it. Trial by newspaper should be punished and the test is whether the Judge or Jury will be pondering a decision that the comment seeks to effect".

This case, I must say, is no authority for the very wide proposition that public comment in a newspaper can never amount to contempt of Court. It may also be pointed out that the inherent Jurisdiction of a Court of record to punish for contempt which is recognised by British jurisprudence and which is applicable to this country, has been questioned in certain cases under the American system. The American law on the subject has been well summarised in an article in the Yale Law Journal, Vol. 48, page 60, by Robert Hermann. The writer says:

"A few jurisdictions recognise a second class of contempt by publication and punish summarily for scandalising the Court, i.e., ridiculing particular Courts, Judges, counsel, parties, jurors, or judicial officers, or publishing matter calculated to bring the Court into disrepute."

Again, the rule applies to all publications before, during, and after trial, since the

theory of contempt is that, apart from the particular suit, the resulting loss of prestige diminishes the general usefulness of the Courts and obstructs the proper conduct of their proceedings. Most of the conflict, however, centres round the publication of matter, which, regardless of whether it is false or scandalous, has a reasonable tendency to prejudice and obstruct the orderly administration of Justice. There does not appear to be any substantial difference in the American law relating to contempt so far as attacks on parties to litigation are concerned. It is not necessary that the mind of the Judge should be affected. Any step calculated to pervert the course of justice would come within the rule and this includes any writing which has the consequence of prejudicing the mind of the public against the person concerned or the parties in a cause. The stream of justice must be kept clear and pure, so that the parties may proceed with safety, both to themselves and their characters. As Maugham observed in "In re: Sir Robert Thomas (C)", quoted:

"I must express my opinion that the jurisdiction of the Court is not confined to cases where the order of the Court, or the future orders of the Court, are likely to be directly affected in some way. If it were so confined, I doubt whether there would be any limit to what a litigant or some other person might say pending the hearing of an action in the Chancery Division, unless, indeed, it could be shown that, possibly, witnesses in the case were being interfered with. I think that, to punish injurious misrepresentation directed against party to the action especially when they are holding up that party to hatred or contempt, is liable to affect the course of justice, because it may, in the case of a plaintiff cause him to discontinue action for fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to for a like reason."

On going through the authorities placed before me I am satisfied that the opposite parties freely indulged in vilification of the petitioner knowing fully well that he had come to this Court for relief, and the tendency of these articles could only be to prejudice the public against the petitioner. It would, therefore, follow that they do constitute contempt of Court by all recognised canons applied in the reported cases. To call upon the Police or the Courts to arrest the petitioner and not to grant him bail; to impute to him baseness & treachery; and to hold him up to ridicule before the public for alleged cheating & swindling, can, by no canons of the freedom of the Press, be justified. It is not a case of merely exceeding the limits of fair comment; and this Court does not concern itself with the propriety or the character of the language employed by the writer. In this case the writings are clearly such that no man of good taste can view them without a feeling of perturbation, though it should be recognised that that, again, is a matter to be judged by the reading public and not by the Court. But this Court cannot shut its eye to the fact that the litigant before it is entitled to protection from attack so long as his case awaits decision; and the Court will not hesitate to prevent any interference with the course of justice. Considered as a whole the articles doubtless constitute gross contempt of Court and the rule must be made absolute.

16. The question, however, that remains to be considered is whether this Court should take any action against the opposite parties by way of committal or fine. I have given my anxious consideration to the propriety of exercising the summary power of this Court which is, more or less, of an arbitrary character. The newspapers, particularly the vernacular newspapers, enjoy a large latitude in the matter of comments on public men and their public activities and the language employed by them is not always apt or dignified and is sometimes derisively referred to as "journalese". It should not be subjected to minute scrutiny and meticulous examination by the Courts with the precision that is to be expected of a piece of legislative enactment. I am also aware of the fact that journalism in this country is not lucrative and that those who take to the profession of journalism do so with the highest motive and the purest impulse to serve a public cause. The newspaper "Mathrubhumi" is a new venture and professes to present the other side of the picture as most of the older, well-established journals belong more or less to one school of thought and run with the current. The natural tendency of a new journal is to attract a large number of subscribers by resorting to a little sensationalism in the presenting and editing of news.

I am not, therefore, disposed to take a harsh view of the publications as it is not the purpose of this Court to discourage publications made in the public interest. It must also be remembered that there is not the least danger of any Judge of this Court being influenced by the scurrilous writings appearing in the vernacular papers. I am certain that these writings would have gone unnoticed but for the fact that the petitioner has brought them up before the Court. While, therefore, I am satisfied that the opposite parties are guilty of contempt in making hostile animadversions on a litigant at a time when his cause was pending, the mischief in the instant case so far as it affects the proceedings in this Court, has been trifling. It is, therefore, not necessary to invoke the extraordinary powers of this Court and visit the opposite parties with severe punishment. It would be enough, in my opinion, -- and I hope my learned brother will agree -- if we adopt a course which will have the effect of restraining their conduct in the future. I would, accordingly, while holding the opposite parties technically guilty of contempt, express the earnest hope that the public press will not indulge in writings of this character, and would warn newspapermen that it may become the duty of this Court to act in a more severe manner than it will in the present case.

In making this order we have gone to the extreme of moderation and if, upon a future occasion a proceeding of this kind is repeated, the full power of this Court to restrain and prevent such proceedings by adequate and commensurate punishment will be exercised with a stern hand. We have been informed that the petitioner has also started a regular criminal case for alleged defamation and that case is still pending. Having regard to all the circumstances I am inclined to adopt the course taken by Jessel, M. B. in "In re: Clements (1877) 46 LJ Ch 375 (P)" in which he made the following observations:

"Now that I apply and adopt as the principle which ought to regulate these

applications --that there should be no such application made unless the thing done is of such a nature as to require the arbitrary and summary interference of the Court, in order to enable justice to be duly and properly administered, without any interruption or interference, that is what we have to consider and, in my opinion, although I say there is here that which is technically a contempt -- and may be such a contempt as to be of a serious nature -- I cannot think that there is any such interference or any such fear of interference with the due conduct of this action, or any such prejudice to the defendant who is applying here, as to Justify the Court in interfering by this summary and arbitrary process".

I think every word of this passage applies to the present case. I would, therefore, express my extreme displeasure at the conduct of the opposite parties and warn them that a repetition of such conduct in the future will be dealt with severely.

I would, therefore, make the rule absolute but would inflict no punishment beyond making the above observations. The opposite parties will however, pay the costs of the petitioner. Hearing fee Rs. 100/- (Rupees one hundred only).

Mohapatra, J.

17. I agree.