

(1958) 08 MP CK 0012

In the Madhya Pradesh High Court

Case No : Criminal Miscellaneous Case No. 47 of 1957

Chunnilal Ken

APPELLANT

Vs

Shyamlal Sukhram and Others

RESPONDENT

Date of Decision : 13-08-1958

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 3, 4
Representation of the People Act, 1951 — Section 116A

Citation : AIR 1959 MP 50 : (1959) CriLJ 199 : (1958) 3 MPLJ 820

Hon'ble Judges : H.R. Krishnan, J;A.H. Khan, J

Bench : Division Bench

Advocate : A.B. Mishra, for the Appellant; P.L. Dubey, for the Respondent

Judgement

A.H. Khan, J.

The petitioner was a candidate for a seat of Lok-Sabha, the Parliament of India. He was, however, defeated and his rivals (it was a double constituency) Shri Radha Charan Sharma and Shri Surya Prasad were elected to the seat. On being unsuccessful, the petitioner filed an election petition-before the Election Commissioner of India, who appointed the District Judge, Gwalior, as an Election Tribunal and the case is now pending before the said Election Tribunal. The petitioner has alleged that non-petitioner Nos. 1 and 2, are related to Shri Surya Prasad, that they had had a pamphlet printed by non-petitioner No. 3, who is both the printer and proprietor of Maharashtra Press, Janakganj, Lashkar.

It is stated that this pamphlet has been published to prejudice the case of the petitioner in the eyes of the Election Tribunal. It is contended that Non-petitioner Nos. 1 and 2 as the author of the pamphlet, and, Non-petitioner No. 3 as its printer have committed contempt of the Election Tribunal and must therefore be punished.

A preliminary objection is raised by Mr. P.L. Dubey, learned counsel for Non-

petitioner Nos. 1 and 2 (Non-petitioner No. 3 though served with notice has not cared to put in appearance), that though the High Court is competent to punish for its contempt as well as the contempt of Courts subordinate to it, yet, an Election Tribunal is not a Court and is not subordinate to it, and, therefore the High Court cannot punish for contempt of the Election Tribunal. We must therefore first of all decide whether the Election Tribunal is a Court subordinate to High Court or not.

The word "Tribunal" has not been defined anywhere. But in its origin, the word is Latin and it is derived from "tribunus" which means pertaining to "tribe". The name "tribunus" was assigned to Officers of different description in ancient Rome and the word "Tribunal" came to mean the seat of a Judge or the Bench on which the "tribunus" or a Judge and his associates sat for the administration of justice. Thus the word "tribunal" means a Court or forum of Justice. In Webster's Dictionary, it has been defined as

"a person or body of persons having authority to hear and decide disputes so as to bind the disputants, such as the Supreme Court (of America) which is the highest Tribunal of United States."

The use of the word "tribunal" has been the subject of some comment in England. In *Royal Aquarium v. Parkinson* 1892 1 QB 431, it is said

"that the word "Tribunal" is ambiguous, because it has not, like Court, any ascertainable meaning in English law."

Whatever the ambiguity about the word "tribunal" may have been in the past, to me it seems that having been borrowed by Latin, it is a sort of a grandiloquent term for a forum of justice and for all practical purposes, it is synonymous with a Court, where disputes between parties are heard and decided. In Wharton's Law Lexicon a "Tribunal" has been defined as a seat of a "Judge" or a Court of Justice. The present trend seems to be to use the term "Tribunal" in order to distinguish it from regular civil and criminal Courts. But the functions which a "tribunal" performs are similar to that of a Court, in that it has the authority to hear and decide disputes so as to bind the disputants. It has all the trappings of a Court of law.

I feel fortified in taking this view by some observations of their Lordships of the Supreme Court. In Criminal Appeal No. 25 of 1954, *Brajnandan Sinha Vs. Jyoti Narain*, it is observed that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial Tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness. Judged from this standard there is hardly any doubt that an Election Tribunal is a Court.

In another case *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, their Lordships while considering whether proceedings u/s 36 of the Representation of the People Act were before a Court or not, observed :

"While the proceedings before the Election Tribunal approximate in all essential matters to proceedings in Civil Courts, the proceedings u/s 36 present a different picture."

Their Lordships seem to regard an Election Tribunal as a civil Court.

Therefore both on authority and reason I hold that an Election Tribunal, is a Court.

The second question to be considered is whether this "tribunal" is subordinate to High Court or not? In a case, Advocate-General, Burma v. Maung Chit Maung 1940 Rang LR 188 : (AIR 1940 Hang 68), it has been observed by a Special Bench that

"the words subordinate court in the Contempt of Courts Act, are used in a wide sense so as to indicate any Court over which the High Court has superintendence and all courts, for the time being, subject to its appellate jurisdiction".

Section 116A of the Representation of the People Act (XLIII of 1951) provides for appeal from an order made by an Election Tribunal. In Clause 2 of Section 116A of the above Act, it is laid down that

"the High Court, shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority and follow the same procedure with respect to an appeal under the Chapter as if the appeal were an appeal from an original decree passed by a Civil Court situated within the local limits of its civil appellate jurisdiction."

This section does not only constitute the High Court an appellate authority over an Election Tribunal, but it further directs that the appeal will be treated as if it is an appeal from an original decree passed by a Civil Court. Since the orders of an Election Tribunal are subject to the appellate jurisdiction of the High Court, I have no hesitation in holding that an Election Tribunal is a Court subordinate to High Court.

The act complained of is that Non-petitioners Nos. 1 and 2 in the pamphlet in question published the following :--

"Election petition

es dksbZ rar ugha gS ;g rks iSlk mBkdj cMh nqdku Hkksiky esa [kksyuk pkgrs gSA

Translated in English, the above passage means that there is no substance in the election petition. The idea behind it is to raise money in order to open a big shop in Bhopal.

Although with a view to check the summary and unrestricted jurisdiction of courts in treating contempt, the Indian Legislature has enacted "The Contempt of Courts Act (Act No. 12 of 1926)", yet what constitutes "Contempt of Court" has

not been defined. In England the law has its roots in Common law. Blackstone in his commentaries referred to the doctrine in the following words : --

"The process of attachment for these and the like contempts must necessarily be as ancient as the laws themselves A power therefore in the Supreme Courts of Justice to suppress such contempts by an immediate attachment of an offender results from the first principles of judicial establishment and must be inseparable attendant upon every superior tribunal."

The right of the Indian High Courts to punish for "contempt, was in the first instance recognised by the Judicial Committee of the Privy Council in *Surendranath Banerjee v. Judges of High Court Calcutta* ILR Cal 109, wherein their Lordships of the Privy Council observed that the offence of contempt of Court and the powers of the High Courts to punish it are the same in such courts as in the Supreme Court in England. We have therefore to see how the English Judges have construed the offence of contempt. Lord Hard-wick L. C. in his classical judgment, *St. James Evening Post* case (1742) 2 Atk 469, has observed that

"there are three different sorts of contempt. One kind of contempt is scandalising the Court itself. There may likewise be a contempt of this Court in abusing the parties who are concerned in causes here. There may also be a contempt of Court in prejudicing the mankind against persons before the cause is heard."

In the instant case, we are concerned with the third kind of contempt, namely, that of prejudicing mankind against persons, who are parties to a proceeding. Any writing, which is calculated to poison the mind of a Judge or witnesses and which tends to create an atmosphere, which imperils a fair and impartial trial constitutes contempt. In the case under consideration the Non-petitioners in the pamphlet said that the election petition was void of substance and there is no doubt that this imputation creates an atmosphere, which obstructs fair trial of the issues before the Election Tribunal.

The learned Counsel for the non-petitioners Nos. 1 and 2, contends that the passage, which I have quoted above, does not bear any imputation. But he has ignored the meaning of the word "Tant". In fact on a perusal of the entire pamphlet, I have no hesitation in saying that it is published to create an atmosphere prejudicial to the petitioner while the case is still pending. I, therefore, hold non-petitioners Nos. 1 and 2 guilty of "contempt".

On the principle enunciated above, the printer and publisher of an article or a pamphlet, which tends to influence the mind either of the Court or witness or the general public is equally guilty of contempt, in that he prejudices the public against the merits of the case. Non-petitioner No. 3, who is the printer and publisher of the pamphlet, is also held guilty of "Contempt",

Before I proceed to sentence the non-petitioners, I must refer to one fact. After the argument in this case was over and it was reserved for orders, Non-

petitioners Nos. 1 and 2, went to Deputy Registrar's office and presented him with two written apologies.

Shamlal, Non-petitioner No. 1 said in his apology that he was an illiterate man, denied publishing the pamphlet and tendered an apology. But his counsel, whom we had heard, did not state any of the things mentioned in the apology. The written apology presented to the Deputy Registrar by non-petitioner No. 2 (Jagram) follows the pattern of the apology of Non-petitioner No. 1. But when Mr. Dubey argued before us, he did not only not refer to the facts mentioned in the application, but insisted that the pamphlet did not create a prejudicial atmosphere against the petitioner.

The third non-petitioner (Laxman Rao), who is the printer and publisher of the pamphlet did not appear before us in response to notice issued to him. But curiously enough he also went to the Deputy Registrar and handed over to him his apology, in which he denied printing the pamphlets and tendered his apology. The so-called apologies were placed before the Court on 21-7-58 but none of the contemnors appeared before us on that date. Even their counsel did not appear.

An apology usually mitigates the offence and if it is unreserved, the Court may accept it. But it does not follow that because an apology is offered, the Court must accept it. I have my, own doubt whether the apologies tendered in this case can be deemed to be an apology at all. Instead of tendering apology in the open court, the three non-petitioners have resorted to a procedure which detracts from the merits of it. They quietly go to the Deputy Registrar's office, and hand over petitions, purporting to be their apologies. This sort of behaviour is an after-thought of the contemnors, conceived in the hope of avoiding consequences. There is no evidence of real contriteness and the manner in which the contemnors have acted leaves much to be desired.

In the end, holding all the three non-petitioners guilty of contempt of the Election Tribunal, I sentence them each to a fine of Rs. 100/-. In default of payment of fine each of them is sentenced to a month's simple imprisonment. The non-petitioners shall pay Rs. 50/- each to the petitioner as costs.

H.R. Krishnan, J.

I agree.