

(1958) 02 MAD CK 0014
In the Madras High Court

E.V. Ramaswami, Leader Dravida Kazhagam
Vs

APPELLANT

Jawaharlal Nehru

RESPONDENT

Date of Decision : 21-02-1958

Acts Referred:

Contempt of Courts Act, 1971 — Section 5
Penal Code, 1860 (IPC) — Section 117

Citation : (1958) CriLJ 1421 : (1958) ILR (Mad) 851 : (1958) 71 LW 527 :
(1958) 2 MLJ 425

Hon'ble Judges : P. Rajagopalan, O.C.J.; Ramachandra Iyer, J

Bench : Division Bench

Judgement

Ramachandra Iyer, J.—This is an application Under Sections 3 and 5 of the Contempt of Courts Act, 32 of 1952, praying that this Court

might be pleased to take such action against the respondent as it thinks fit and necessary and pass suitable orders for contempt of the Sessions

Court, Tiruchirapalli.

2. On 21-10-1957, the District Magistrate of Tiruchirapalli committed the petitioner for taking his trial at the Court of Session, Tiruchirapalli, on a

charge containing three counts u/s 117, IPC read with other sections of the Penal Code. That case was registered as Sessions Case No. 93 of

1957 by the Sessions Judge of Tiruchirapalli. The charges related to three speeches made by the petitioner on 5th, 13th and 20th October, 1957,

at Kulitalai, Pasupathipalayam and Tiruchirapalli Town respectively, wherein the petitioner was alleged to have incited the public to kick, stab and

kill Brahmins and set fire to their houses.

The case was taken up for trial by the Sessions Judge, Tiruchirapalli, on 12-12-1957, and it ultimately ended in conviction. In the meantime, the

respondent paid a visit to Tiruchirapalli on 9-12-1957, and, during the course of his engagements, he addressed a public meeting. In his speech he

is reported to have referred to and condemned certain disruptive forces in the country. The affidavit in support of this petition states that the speech

tended to interfere with the course of justice and prejudiced the petitioner in the Sessions case which was then sub judice. The petitioner has filed

as annexure A to his affidavit a copy of the Dak Edition of the Madras daily "The Hindu" dated 10-12-1957, and in paragraph 5 of the affidavit, he

has set out the following extracts of the speech which he claims as objectionable:

But one of the most remarkable and one of the most foolish agitations that I have experienced in India has recently started in your own State of

Madras. This I believe is known as Dravida Kazhagam agitation and the leader of this movement had said something which cannot be forgiven and

which cannot be tolerated, Apart from actually talking in an unabashed manner about murder, inviting people to murder others - a thing unheard of

in any civilised society he has dared to insult the National Flag and the National Constitution, These are unforgivable offences (cheers).... But, Mr.

Nehru said, "I wondered recently, if the Dravida Kazhagam in Madras is not more primitive than any primitive tribe in India (loud cheers). Because

it talks a language, which is a language unheard of in civilised society. It is a language of murder. It is a language which should either lead one to the

prison or to the lunatic asylum, because society cannot tolerate that language and no civilised State will put up with a deliberate insult to its

Constitution.

In the original affidavit filed by the petitioner in support of this petition, there was no averment or even suggestion imputing any knowledge of the

Sessions case or of its pendency to the respondent. The office of the Registrar therefore felt a difficulty in taking the application on file and returned

the same to the petitioner's advocate to make the matter clear. The advocate for the petitioner represented the application with the endorsement

that "the source which apprised the respondent with the alleged offensive speeches of the petitioner would have also in the normal course disclosed

the pendency of the criminal case.

As it was felt that this was not sufficient compliance of the return, the matter was posted before us for orders as to maintainability of the

application. This defect was pointed out at the hearing. The advocate for the petitioner wanted liberty to obtain and file a supplemental affidavit

from the petitioner, This request we acceded to. K supplemental affidavit was filed on 12-2-1958. We thereupon directed the office to register the

application and heard the petitioner's counsel on it.

3. Even on the assumption that the speech complained of tended to interfere with the course of justice we shall consider later the correctness of the

assumption we hold that the petition must fail, as it has not been even alleged in the affidavit that the respondent had any knowledge of the

pendency " of the Sessions case against the petitioner before he delivered the speech complained of. In paragraph 3 of the supplemental affidavit

filed by the petitioner he has stated.

I learn and believe the same to be true that the respondent had knowledge of the facts of the criminal case pending before the Sessions Judge,

Tiruchirapalli.

This is followed up in paragraph 4, where he stated as follows:

Further the same source of information which apprised the respondent with the alleged offensive speeches, the subject matter of criminal proceed-

ings against me, and about which the respondent made reference in his speech at Tiruchirapalli on 9-12-1957, should have also in the normal

course of events, apprised the respondent about the pendency of the criminal case against me.

4. The statement that the respondent had knowledge of the facts of the criminal case cannot be taken to mean that the respondent was aware that

those facts were the subject matter of proceedings pending in Court. There is no statement imputing knowledge to the respondent of the

proceedings in Sessions case No. 93 of 1957, much less of their pendency. Apart from that, a statement of this kind, which is rested merely on

information and belief, is not legal evidence. In R. v. Stanger (1871) 6 Q.B. 352 (A), Blackburn, J, states as follows ;

Is an affidavit which is made only on information or belief legal evidence to show that the defendant is the publisher of the alleged libel? X think it is

not sufficient legal evidence. This was decided as long ago as Lord Kenyon's time. In Rex v. Willett (1795) 6 T.R. 294 (A), the rule was refused,

because the statement in the affidavit of what the deponent had been informed

was not legal evidence; and the Court said, "If they were to grant a rule calling on the defendant to show cause why an information should not be filed against him, it would be calling on him either to give evidence (on the showing cause) against himself, or leaving the rule to be made absolute on this affidavit alone, which was not legal evidence." So that the ratio decidendi of that case was, that an affidavit made on information or belief was not sufficient evidence to call upon the other side to make an answer to the charge. The same principle was acted on in *Ex parte Williams*, (1860) 5 Tun 1133 (A2).

No particulars are given even in regard to the source and basis of the information. The averment in paragraph 4 leaves the matter for speculation and does not advance the case any further. We have therefore to proceed on the basis that there is no allegation in law that the respondent had any knowledge when he made the speech on 9-12-1957 of the pendency of the proceedings against the petitioner in Sessions case No, 93 of 1957.

5. Realising this difficulty, learned advocate for the petitioner argued before Us that a person would be guilty of contempt of Court irrespective of any knowledge on his part of the pendency of proceedings in Court and he cited the decision in *Rajendra Kumar Garg Vs. Shafiq Ahmad Azad* and *Another*, , in support of his contention. This argument, in our opinion, is not well-founded. Prima facie no one can be guilty of contempt of a thing of which he was not aware.

In the *St. James Evening Post Case*, (1742) 26 ER 683 (C), Lord Hardwicke classified contempt into three groups (1) scandalizing the Court

itself, (2) abusing the parties who are concerned in the process in a Court and (3) prejudicing mankind against persons before the cause is heard. It

is evident that in all the above mentioned cases, knowledge of the alleged contemner of the proceedings in Court is implicit. In regard to a

contempt of Court by interfering with the course of justice, Lord Russel of Killowen, C.J. in *Reg v. Gray* 1900 2 QB 36 (D), stated at page 40.

Any act done or writing published circulated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court.

In *Halsbury's Laws of England*, Simonds Ed. Vol. 8, it is stated at page 11.

The applicant must show that the publication complained of either is clearly

intended, or at least is calculated, to prejudice the pending trial.

Oswald in his standard treatise on Contempt states at page 93.

It must be proved that the comments were made with knowledge of the pending cause.

It is therefore clear that knowledge of the alleged contemner is essential before he can be charged for contempt in regard to proceedings in Court.

In *Rajendra Kumar Garg Vs. Shafiq Ahmad Azad and Another*, , the learned Judges envisage three categories of cases (1) where actual

knowledge of the pending proceedings would be required, (2) where presumptive knowledge of the alleged contemner would be enough, and (3)

where a person could be found guilty of contempt irrespective of any knowledge.

The case before the learned Judges related to certain proceedings for contempt initiated by a private party against the editor of a newspaper in

relation to an article published by the latter, strongly criticising the conduct of the applicant at a certain meeting and in respect of which certain

criminal proceedings were pending in the Courts. The main plea of the editor-respondent was that he had no knowledge of the institution or

imminence of the criminal proceedings, and this plea was accepted by the learned Judges. They held that there was neither actual nor any

presumptive knowledge of the proceedings, and that therefore no contempt application would lie against the editor of the paper.

Referring to the third category, they held that cases in which what the contemner did was itself illegal, and if that illegal act was also a contempt of

Court, the person committing that illegal act would be liable for the contempt irrespective of any knowledge of the proceedings. That principle

which according to the learned Judges was an exception to the general rule as to knowledge would not apply where there was nothing in the act

itself which was inherently illegal. They therefore did not apply that principle to the case before them as the publication of the article by itself was

not illegal.

This decision can hardly assist the petitioner before us in his contention, that knowledge is not pre-requisite in a case of contempt. Even if we

accept the decision in *Rajendra Kumar Garg Vs. Shafiq Ahmad Azad and Another*, , as correctly laying down the principles as to the liability for

contempt of Court, the speech complained of cannot be brought within the third

category of cases. The speech by itself was perfectly legitimate, and that decision itself is an authority for holding that there could be no contempt by reason of it in the absence of knowledge of the proceedings.

That is sufficient to dispose of this case.

6. We are not however prepared to accept the proposition that there can be a case of Contempt of Court even in the absence of any awareness

of the proceedings of the alleged contemner. The learned Judges, who decided *Rajendra Kumar Garg Vs. Shafiq Ahmad Azad and Another*, ,

were evidently having in mind the decision in *Herbert's case*, (1731) 24 ER 992; 3 P. Wms. 110 (E), when they formulated the third category of

cases. That was a case where a minor ward of Court was trapped into a marriage with a servant girl by certain conspirators. (Interference with

wards of Court is one of the recognised kinds of contempt of Court), and the Master of the Rolls stated in that case:

With regard to what is alleged by way of excuse, that the person and the pretended guardian had no notice of the infant's being a ward of the

Court, it is to be observed, that the commitment of the wardship to Sir Thomas Charges was an act of the Court, and in a cause then depending, of

which everyone at his peril is concerned to take notice, in the same manner as of a *lis pendens*. Surely it may be as well presumed every one is

apprised of the proceedings of this Court, as that all executors should be presumed to take notice of all judgments even in the inferior Courts of

law..

7. Whether this principle, which is peculiar to offences against wards in England, should be adopted by our system of law is a matter that does not

arise for decision in this case. Even in the country of its origin it does not appear to have been extended to other cases. No man can be presumed

to be aware of proceedings in Court to which he is not a party. In the *Metropolitan Music Hall Co. v. Lake* (1889) 58 L.J. Ch 513 (F), it has

been held that the principle in 1731-24 ER 992; 3 P. Wms. 116 (E), could not be extended to other cases, and that knowledge of the alleged,

contemner is essential before he can be proceeded against for contempt.

In a later case of the Allahabad High Court reported in *State Vs. Faqir Chand and Another*, , it has been stated that before a person can be

convicted for contempt, the Court should be satisfied (a) that something had

been published which either is clearly intended or at least is calculated to prejudice a trial which is pending; (b) that the offending matter was published with knowledge of the pending cause or with knowledge that the cause was imminent and (c) that the matter published tended substantially to interfere with the course of justice or is calculated" substantially to create prejudice in the public mind. We agree with this statement of the law, and we are of opinion that knowledge of the pendency of the proceedings in Court is an essential pre-requisite for holding that a person is guilty of contempt. There being no such knowledge alleged in this case, the petition discloses no ground for the issue of a notice.

8. learned Counsel then contended on the strength of newspaper reports filed as annexures to the affidavit that after the speech made by the respondent he granted interviews to the District Judge and the Public Prosecutor of Tiruchirapalli, and therefore, he should have been aware of the pendency of the criminal proceedings. We are unable to appreciate this argument. While we are not concerned with what happened after the speech, we hold that that fact is wholly insufficient to prove that he was apprised of the proceedings even then.

9. We have considered the case also on the assumption that the respondent had knowledge of "the case against the petitioner. The question then is, whether there was anything in the speech complained of to warrant the criticism that it was a calculated or even tended to prejudice the trial of the Sessions case against the petitioner. There is no reference in the speech to the criminal case or to the particular speeches of the petitioner which were the subject matter of the criminal charge against him.

The respondent's speech was concerned with certain disruptive movements and forces in the country and the anti-social activities of certain persons and their professed methods to destroy the very fabric of society by committing acts which undoubtedly were offences. The agitation of the Dravida Kazhagam of which the petitioner is the leader and the insult offered to the National Flag were mentioned. Those certainly are matters of grave public concern, and the observation of the respondent is nothing but a legitimate criticism of what, in the opinion of the respondent and of every right-thinking citizen, are forces of evil and disruption. We can see nothing in the speech which can be said to interfere or tend to

interfere with the course of justice.

10. In this view, this petition has to be and is accordingly rejected.