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**(1962) 08 MP CK 0009**  
**In the Madhya Pradesh High Court**  
**In re, Siyaram Hanuman Prasad**

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**Date of Decision :** 28-08-1962

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 523

**Citation :** (1963) CriLJ 219 : (1963) JLJ 155 : (1962) 7 MPLJ 1121

**Hon'ble Judges :** Shiv Dayal, J; S.P. Bhargava, J

**Bench :** Division Bench

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## Judgement

Shiv Dayal, J.

Facts material for this petition may be stated thus. A theft was committed in respect of horse-been (Urad) from the possession of M/s Laxmi-chand Badrinarayan of Rajnandgaon, within the jurisdiction of the Sub-Divisional Magistrate, Rajnandgaon. The case was registered in Police Station, Rajnandgaon, (Crime No. 344/457). During the course of investigation of that crime, on 1-9-1961 S. O., Rajnandgaon seized 213 maunds 10 seers of horse-been from one Siyaram resident of Ramsagarpare, within the jurisdiction of Additional District Magistrate, Raipur, and entrusted the commodity to M/s Sohanlal Munshilal on their undertaking to produce it on demand.

On the 29th September Siyaram made an application to the Sub-Divisional Magistrate, Rajnandgaon, praying that the said commodity be disposed of by auction or through the registered Municipal Dalals in the Raipur market. It was stated that if the seized commodity was kept for a long period in the godown, there was every likelihood of its being infested with insects and, moreover, the market was going down from day to day. The Magistrate called for a report from the Police. The complainant was also noticed. The S.D.O. (Police) in his report dated the 3rd October, stated to the effect that the commodity might be sold and the sale proceeds might be deposited in the Court, but 10 or 15 seers of Urad might be kept as sample, (presumably, for evidentiary purposes), M/s Laxmichand Badrinarayan, however, opposed this and contended that Urad could remain for one year and more without deterioration, and the disposal of the commodity at that stage would create complications in investigation and also in

the trial. They offered to arrange for another Supurddar in case M/s Sohanlal Munshilal were not willing to continue as such. The proceedings remained pending at least upto the 5th December.

In the meantime, during the pendency of those proceedings, Siyaram made another application on the 18th November to the A. D. M., Rai-pur, for an almost identical relief. He alleged that the Urad was fast decaying so that he might be permitted to dispose it of. On this application being received, the A. D. M., Raipur, called a report from the S.D.O. (Police), Rajnandgaon. The case was fixed for the 23rd November. On the last mentioned date the following telegram was sent to the S.D.O. (Police), Rajnandgaon:

Refer copy of Order-sheet in Siyaram v. State, Misc. Cri. Case No. -204 of 1961 forwarded under endorsement No. 367/ADM dated 18th instant. Intimate if you have any objection to Urid being sold by public auction as desired by the parties and sale proceeds kept under revenue deposit before twenty fifth instant as case fixed for disposal on that date.

The S.D.O. (Police), Rajnandgaon, in his report dated the 24th November, submitted as follows:

The case of release of 78 bags of Urad of Siyaram Satyanarayan is at present in the Court of S.D.O. Rajnandgaon and all the papers in this connection have been forwarded to this Court for disposal please.

On hearing from the Court of S. D. M. Raj-nandgaon, I will intimate the result to you in due course if required.

On the 25th November, the A. D. M., Raipur, after considering the question whether he had jurisdiction to entertain the application and to pass an order u/s 523, Criminal Procedure Code, made the following order:

In all fairness, and consideration of equity, it seems necessary to order the Urad to be sold by public auction in Municipal Ganj, Raipur, in the presence of 4 respectable panchas, so as to ensure that proper price of the same is obtained, and I order accordingly u/s 523, Cr. P. C, The auction should be conducted by the Supratdar after due intimation to M/s Laxmichand Badrinarayan of Rajnandgaon and the sale proceeds along with the bid list and the money should be kept by the Supratdar for being disposed of under orders of the S. D. M. Rajnandgaon, for which the Supratdar M/s Sohanlal Munshilal should execute necessary bond". This will hereinafter be called the "impugned order.

It must be mentioned that no notice was given to M/s Laxmichand Badrinarayan by the A. D. M., Raipur, of the proceedings before him and the impugned order was passed behind their back. However, the complainant firm appears to have become aware of the order somehow and they made an application to the S. D. M., Rajnandgaon, on the 28th November informing him that some order had been passed by the A. D. M. Raipur, for the sale of the seized property, while the matter was pending in his (S. D, M's) Court. An exception was taken to the

legality of the A. D. M's order when the matter was pending in the Rajnandgaon Court. They thought that presumably the fact of the proceedings being pending in the Court of the S. D. M, was suppressed from the A. D. M., Raipur. It was prayed that a direction be issued to the Police to produce the Urad and the Supuratdar before the Court. On receipt of this application, the S. D. M., Rajnandgaon, issued an order to the Police to produce the seized property before him on the 5th December. When the matter came up before that Court on the 5th December, it was informed that the commodity had already been sold by auction. It observed that the order of the Court of A. D. M. Raipur has rendered the proceedings in this Court infructu-ous.

By his report dated the 14th December, 1961, the S. D. M., Rajnandgaon, laid the whole mattex before this Court through the District Magistrate, Durg. This Court (Naik and Kekre JJ.) by its order dated 24-1-1962, directed the A. D. M., Raipur, to submit the record of the case with his explanation. This was complied with. The A. D. M., submitted his report dated the 3rd March, to which we will advert later on. By another order of the 26th April this Court directed issuance of notice to the A. D. M., Raipur, for contempt proceedings. This matter was posted for hearing on the nth July. In the meanwhile, on the 25th June, the A. D. M., Raipur, made a submission in writing, tendering an unqualified apology, but, at the same time, placing certain fact for consideration.

It seems clear that on 25-11-1961 the Court of the S. D. M., Rajnandgaon, was the only Court competent to make an order for the sale of the Urad. Sections 516-A and 517 of the Code of Criminal Procedure apply only when the cases have actually come up before a Criminal Court for enquiry or trial. Section 516-A empowers a Magistrate to provide for the interim custody of the property seized "pending" the conclusion of the enquiry or trial. The next Section 517 provides for the disposal of the property when the enquiry or trial is concluded. But, when a property seized by the Police during investigation u/s 550 and an enquiry or trial has not commenced before a Criminal Court, the proper section to apply is Section 523. If the property is subject to a speedy or natural decay, it is open to the Court to make an order for its sale or disposal. Section 525, Criminal Procedure Code, enacts as follows:

525. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is less than ten rupees, the Magistrate may at any time direct it to be sold and the provisions of Sub-section 523 and 524, shall, as nearly as may be practicable, apply to the net proceeds of such sale". Section 523 reads thus:

(1) The seizure by any police officer of property taken u/s 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of

such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such, cases, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

Here, the seizure of the corn fell within the purview of S. 550, Criminal Procedure Code. On Siyarm's application dated the 29th September proceedings u/s 523, Cr. P. C., had started in the Court of the S. D. M., Rajnandagaon. Having received a report dated the 3rd October from Police, that Court was competent to entertain that application. That Court being seized of the matter, it was for that Court alone to dispose of the application one way or the other. The final order on Siyaram's application could be made by that Court only. This is undoubted from the language of Section 525, Cr. P. C. It is:

...if the Magistrate to whom its seizure is reported is of opinion...the Magistrate may...

Likewise, in Section 523(1) the adjective clause "who shall make such order" refers to the Magistrate to whom the matter is reported. It is that Magistrate who is seized of the matter who can make an order for disposal of the property and no other Magistrate.

It is incontestable that the A. D. M., Raipur was well aware of the facts that proceedings for the disposal of the seized goods were pending before the S. D. M., Rajnandagaon. Siyaram's application to the A. D. M., Raipur, as also the reply which was received from the S.D.O. (Police), Rajnandagaon dated the 24th November, made a specific mention of that fact. In fact, the S.D.O. (Police) said nothing on the merits of Siyaram's application made to the A. D. M. Raipur. He did not even say whether he had any objection or not to the goods being sold; he merely reported that the matter was subjudice before the S. D. M. Rajnandagon. Thus, the Police did not report to the A. D. M. of the seizure of the goods within the meaning of Section 523, Cr. P. C. They only informed him about the proceedings pending before the S. D. M., Rajnandagon. That the A. D. M. Raipur was conscious of the proceedings pending before the S. D. M., Rajnandagaon is visible from the impugned order itself. In these circumstances, in our opinion, the A. D. M., Raipur, had no jurisdiction to make the impugned order u/s 523, Cr. P. C.

Now the question is whether the action of the A. D. M. Raipur in making the impugned order, constitutes contempt of the Rajnandagon Court. Neither the statutes nor the jurists have been able to give a definite and clear definition of contempt. The Jurists and commentators merely describe the various instances

of contempt of Courts and comment upon them. Judges have only decided whether a certain act comes within the mischief of contempt or not. However, the offence of contempt is coeval with the administration of law and the paramount idea is that no tribunal can function properly unless it is allowed to keep up its dignity. In its general acceptation, the term "contempt" primarily signifies disrespect to that which is entitled to legal regard. Contempts, "which are criminal", consist in a conduct which offends the majesty of law and undermines the dignity of Court. The gravamen of the offence is interference or the likelihood of interference with due course of justice. It was observed in *Hiralal Dixit v. State of U.P.* AIR 1954 SC 743:

It should no doubt be constantly borne in mind that the summary jurisdiction exercised by superior Courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining authority of law as is administered in the Court and thereby affording protection to public interest in the purity of the administration of justice. This is certainly an extra-ordinary power which must be sparingly exercised but where the public interest demands it the Court will not shrink from exercising it....

In the impugned order the A. D. M., after stating the facts and the stage at which the matter was, observed:

The jurisdiction, therefore, is as much of this Court as of the Court at Kajnandgaon. With the application before this Court and the matter placed before it, this Court will, I feel, be failing, in its duty if it were to direct the applicant to move from one Court to another, the urad deteriorating and losing its value, with avoidable loss not only to the person from whom it was seized, namely, M/s, Siyaram Satyanarayan, but also to M/s Laxmichand Badrinarayan of Rajnandgaon, at whose initiation the Police have-effected the seizure.

In the operative portion of the order, while directing that the commodity be sold by public auction he said:

Auction should be conducted by the Supratdar after due intimation to M/s Laxmichand Badrinarayan of Rajnandgaon and the sale proceeds along with the bid list and the money should be kept by the Supratdar for being disposed of under orders of the S. D. M. Rajnandgaon, for which the Supratdar M/s Sohanlal Munshilal should execute necessary bond". In his report dated March 3, 1962, submitted to this Court, he says:

The order in question is only for sale of Urad while the S. D. M. has been left to pass orders regarding release etc. of the sale proceeds". These observations leave no manner of doubt that there was a, high-handed intrusion in the matter which was pending before the S. D. M., Rajnandgaon. In spite of the fact that the Police did not report the matter to him about the seizure of the goods, not even when the A. D. M. sent for its report, he arrogated to himself the jurisdiction and addressed himself, saying that if the S. D. M., Rajnandgaon, had jurisdiction, he

too had jurisdiction and he would pass an order before the Rajnandgaon Court did, and it was not necessary to ask the applicant to go back to Rajnandgaon Court, The A. D. M., denied to himself the thought that the applicant could move the Rajnandgaon Court for expedition or for another relief and that the applicant could also move the superior Court for a suitable mandate or direction to the S. D. M., or for intervention by such superior Court. To say that "the jurisdiction is as much of this Court as of the Rajnandgaon Court" speaks the mind of the A. D. M. that he did not care for the proceedings already pending in the other Court and he found himself capable of making an order as he liked before the other Court could. He could not be supposed to be ignorant of the fact that he had no appellate or revisional jurisdiction over the Rajnandgaon Court which is situated in a different district (Durg). The attitude and the action taken by the A. D. M. were in utter disrespect and contempt of the other Court. How would it have been if, after the impugned order had been passed and before the commodity was actually sold, the S. D. M. had passed another order to the contrary<sup>1</sup>? Such a situation would create chaos and confusion and would not only be reducing the proceedings in the Courts to mockery but would also bring them to indefensible ridicule. Thus by making the impugned order the A. D. M., Raipur, diverted the due course of justice and flouted the authority of the S. D. M., Rajnandgaon,

In the impugned order the A. D. M. tried to justify his action by holding that he was the Court of concurrent jurisdiction taking aid of Section 181(3), Cr. P. C. which enacts that the offence of theft or any offence which includes theft or the possession of stolen property may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or, the property stolen was possessed by the thief, or by any person who received or retained the same knowing or having reason to believe it to be stolen. But this consideration was irrelevant because it was not as if he was called upon to take cognizance of the offence of theft or house-breaking.

In his report of the 3rd March made to this Court the A. D. M. says:

It was thus clear that the S. D. M. was dealing with the application for releasing of Urad while the instant petition was not for release but for sale of Urad to avoid loss. There was thus to be no conflict between the decision of this Court and that of the S. D. M., the remedy sought before the S. D. M. and before this Court being different. I cannot thus comprehend how the S. D. M. feels that there could have been a clash of decisions when the reliefs sought before the two Courts were totally different". Again, in his return dated June 25, 1962, he reiterates that no conflict of jurisdiction was involved and further says:

This respondent humbly submits that it was never brought to his notice that an identical application, was pending before the S. D. M., Raj-nandgaon or that any objections were filed by the complainant.

We have already said at the outset that Siyaram's application of the 29th September was made to the S. D. M. Rajnandgaon with the prayer that the Urad

be disposed of by auction or through the registered Municipal Dalals in the Rajnandgaon market. It is, therefore, quite wrong to say that Siyaram's applications in the two Courts were not identical. It was immaterial that in the application of the 18th November made to the A. D. M. he prayed that the applicant himself may be permitted or the Court may appoint anybody to sell the same. The relief sought was substantially the same. The A. D. M. did not care to ascertain all the facts which he could have easily done by examining the applicant before him. We, therefore, reject the justification advanced by the A. D. M.

Magistrates and Judges of inferior Courts can. be punished for contempt of Court for acting unjustly, oppressively or irregularly in the execution of their duties by colour of judicial proceedings wholly unwarranted by law, when the same convey disrespect to another Court and divert the due course of justice. We are aware of, their Lordships' pronouncement in *S.S. Roy Vs. State of Orissa and Others*, .

It is not sufficient for the purpose of visiting a judicial officer with the penal consequences of proceedings in contempt simply because he committed an error of judgment or the order passed by him is in excess of authority vested in him. The error must be a wilful error proceeding from improper or corrupt motives in order that he may be punished for contempt of Court.

In the present case there is no material showing a corrupt motive, but there can be no doubt that the impugned order was not merely an error of judgment or in excess of authority, but it was passed knowingly and deliberately, flouting the authority of the S. D. M. The impugned order sabotaged the proceedings before the S. D. M., Rajnandgaon, leaving to the latter only to dispose of the sale proceeds. Such a bravado only entailed indignity and indignation for the Rajnandgaon Court. The motive was certainly improper. This is apparent from the following circumstances, already discussed: (1) The A. D. M. arrogated to himself jurisdiction which he had not. (2) Having been made aware of the proceedings before the S. D. M. and proceedings u/s 523, Criminal Procedure Code, are judicial proceedings -- he consciously and deliberately made the impugned order in utter disrespect to the S. D. M., by not refusing to entertain Siyaram's second application, when it was open to him to move either the S. D. M. for speedy disposal or the superior Court for an appropriate order. The A. D. M. wanted to show that the S. D. M. was lazy and was not conscientious in his duty and further that he (A. D. M.) could give immediate relief to Siyaram by intervening. The words "as desired by the parties" appearing in the telegram issued by the A. D. M. on the 23rd November to the S.D.O. (Police), Rajnandgaon, are misleading inasmuch as they convey a sense that all the parties concerned desired the commodity to be sold by public auction. (3) He made the impugned order to make the proceedings before the S. D. M. in fruituous and thereby diverting the due course of justice. (4) He did not give notice to the complainant-firm at Rajnandgaon. This is indefensible when two communications were addressed by the A. D. M. to the Police at Rajnandgaon. (5) It is clearly perceptible in the

impugned order that he was either aware of the objection raised by the complainant-firm before the Rajnandgaon Court or he was conscious of the probability of such an objection coming forth because he has answered it behind the complainant's back and without giving it an opportunity of being heard.

This brings us to the question whether we should accept the unqualified apology with which the return opens. An apology must be offered at the earliest stage of the contempt proceedings. It must be unconditional, unreserved and unqualified; it must be sincere and an outpouring of a penitent heart and not half-hearted for its mere sake or as a formality. An attempt to justify the act of "contempt should be scrupulously avoided. It must not convey the impression that if the law finds him guilty then he offers or is prepared to tender an apology.

Mr. Dabir, appearing for M/s Laxmi-chand Badrinarayan vehemently urges that the apology in this case must not be accepted because (1) it is qualified; (2) there has been an attempt to distort facts and (3) the A. D. M. deliberately passed the impugned order behind the back of the complainant and it has occasioned disappearance of evidence to the prejudice of the complainant.

In the case of M.Y. Shareef and Another Vs. The Hon'ble Judges of The High Court of Nagpur and Others, , their Lordships observed:

The proposition is well settled and self-evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness.

We have given a considered thought to the meaning and intent of the return filed by Mr. Sharma, A. D. M., Raipur. Every form of defence in a contempt case cannot be regarded as an act of contumacy. It depends on the circumstances of each case. An expression of regret may be sufficient to purge the contempt. While we unhesitatingly deprecate the conduct of Mr. S. R. Sharma, A. D, M., Raipur, we are of the opinion that the dignity of the Court of the S. D. M., Rajnandgaon, would be sufficiently upheld if the unqualified apology tendered in this Court by Mr. Sharma is accepted and that apology is regarded as sufficient to purge the contempt.

Siyaram was also noticed by this Court to show cause why he should not be punished for contempt. But we are of the opinion that he did not commit any contempt, because he made it plain in his application to the A. D. M. that he had already applied to the S. D. M. and that the proceedings were still pending. There was no suppression of the material facts, although his application was ill-advised.

Before we leave this case we must observe that Mr. Jain, S. D, M., Rajnandgaon, kept Siyaram's application of the 29th September unjustifiably pending for an unduly long time. Such delays give rise to a variety of apprehensions, in the mind of the litigant, Siyaram's application was made as back as on the

29th September. It clearly mentioned that ho feared decay and deterioration of the corn. An application of this kind should have been disposed of quickly. All that the Magistrate was required to do was to make a summary enquiry and exercise his discretion, whether status quo was to be maintained or the goods were to be sold. No elaborate enquiry was needed or required. On the 29th September the S. D. M. rightly ordered a report from the police to be summoned and the 4th October was fixed. Since the said report has not been received, the 5th October was fixed.

On the 5th S. D. M. ordered notice to be issued to the complainant and he also sent for the original seizure memo, fixing the 11th October for hearing. On the 11th he found himself busy in some other work and fixed the matter for the following day. On the 12th, the complainant sought time to file a reply whereupon the 17th was fixed. On the last mentioned date the complainant's objection was filed. The S. D. M. directed the station Officer to inspect the spot and report whether the property was deteriorating and the 31st October was fixed. In the order of the 31st it was said that the Station Officer had not been able to go to Raipur.

Applicant's witnesses Radheshyam and Mahabir Prasad were present but the other side opposed their examination on that day. The S. D. M. agreed that as the counsel was not prepared, they should be examined on the next hearing. Another "date after 15 days (15th November) was fixed. As the Presiding Officer did not turn up on the 15th, the case was fixed for the 17th November. Again, on the 17th November the S. D. M. said that the Station Officer had not given the report nor did he send the sample. He examined three witnesses and adjourned the hearing for the 5th December. Then Siyaram, seemingly disgusted, moved the Raipur Court on the following day, i. e., the 18th November. It seems clear to us that the delay in the S. D. M.'s Court was undue and unjustified.

The proceedings are dropped. As regards costs we only order that Mr. Sharma shall pay paper book costs Rs. 9.45 N. P.