

(1961) 02 CAL CK 0007
In the Calcutta High Court
Case No : Criminal Misc. Case No. 120 of 1960

Jhulan Singh

APPELLANT

Vs

D.C. Ghatak and Another

RESPONDENT

Date of Decision : 09-02-1961

Acts Referred:

Contempt of Courts Act, 1971 — Section 1

Citation : AIR 1962 Cal 386 : (1962) 4 FLR 336 : (1962) 1 LLJ 731

Hon'ble Judges : S.K. Sen, J;K.C. Sen, J

Bench : Division Bench

Advocate : A.P. Chatterjee, for the Appellant; S.K. Bose, Nirmal Choudhury and S.D. Majumdar, S.N. Banerjee (D.L.R.), for the Respondent

Judgement

S.K. Sen, J.—This Rule was issued on apposite party No. 1, D. C. Ghatak, Assistant Factory Manager, Messrs. Jay Shree Textiles Ltd., and opposite party No. 2 Shri Sohan Dutta Vashist, Labour Officer, Messrs. Jay Shree Textiles Ltd., to show cause why they should not be committed for contempt of Court. The petitioner Jhulan Singh was employed in the Spinning department of Jay Shree Textiles Ltd., as a Reeler. One Sambhunath Ghose, the Assistant Spinning master of Jay Shree Textiles Ltd., lodged a First Information Report on 27-6-1960, at the Serampore Police Station to the effect that on Saturday 25th June, 1960, he had taken the petitioner to task for neglecting his duty and the petitioner had replied at the time in a rude and unmannerly way and that when Sambhu Nath Ghose was leaving the mill premises in the evening to catch the train, the petitioner suddenly attacked him with a knife and it was only due to timely intervention by other people that the petitioner could not inflict any actual injury. The police arrested the petitioner on 29-6-1960, and ultimately submitted a charge-sheet on 21-8-1960. In the meantime, Sohan Dutta Vashist opposite party No. 2, submitted a departmental charge-sheet against the petitioner on 27-6-1960, on the ground that on 25-6-1960, the petitioner had whipped out a knife and attacked Sambhu Nath Ghose. A copy of the departmental charge-sheet was served on the petitioner and he was informed on 28-6-1960, that the charge

against him would be investigated and decided on 30-6-1960, and that the petitioner should appear with his witness on that day. The petitioner did not appear with the witnesses, and after an inquiry opposite party No. 1, D. C. Ghatak, passed an order of dismissal against the accused on the 3rd July, 1960.

2. According to the petitioner the action of opposite parties Nos. 1 and 2 in drawing up a departmental charge-sheet and in proceeding with the inquiry and passing an order of dismissal against the petitioner when the police case was pending, amounts to contempt of Court. Mr. A. P. Chatterjee, appearing for the petitioner, has sought strenuously to support this position. There is however, a decision of the Supreme Court viz. *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, in which it was held that though very often employers stay inquiry into the mis-conduct of employees pending the decision of the Criminal Court dealing with the same matter, it cannot be said that the principles of natural justice required that an employer must wait for the decision of the criminal trial court before taking action against an employee. Thus the Supreme Court decided that the employer has the authority to deal departmentally with allegations against an employee, even though a criminal case is pending over the same subject-matter. Mr. Chatterjee has tried to distinguish this case, by submitting that the initiation of departmental proceedings when a criminal case is pending is not per se contempt of Court, but that the finding of the departmental inquiry amounts to a comment on pending proceedings and therefore amounts to a contempt of Court, on the same principle as Newspaper comments on pending proceedings are held to be contempt of Court. In this connection Mr. Chatterjee has referred to Halsbury's Laws of England, 3rd edition, Volume 8, P. 7 paragraph 11. Paragraph 11 starts by saying that speeches or writings misrepresenting proceedings of Court or prejudicing the public for or against a party are contempts. There is however no question of misrepresenting the proceedings of the Court in the present case. In the above paragraph it is further observed that comments on pending proceedings, if emanating from the parties or their solicitors are generally a more serious contempt than those coming from independent sources. It is also observed that for a criminal prosecution to be pending for the purpose, it is not necessary that the accused person should have been committed for trial or brought before a Court of summary jurisdiction, provided that he has been arrested and is in custody. In the present case the accused was arrested on 29-6-1960 after the departmental proceeding had been started, but before the hearing of the departmental proceeding commenced. Mr. Chatterjee has therefore urged that in the circumstances the finding in the departmental proceedings, being in the nature of a comment on the pending proceedings, must be held to be contempt.

3. In view of the fact however, that it has been decided by the Supreme Court that an employer has the right to deal with the misdemeanour of his employees even when a criminal case is pending over the same subject-matter, we are unable to accept the contention of Mr. Chatterjee that even though such a departmental proceeding is not per se contempt of Court still the finding in the

departmental proceedings being in the nature of comment on a pending proceeding amounts to contempt of Court. There is really no reason why the departmental proceeding or the finding made therein should affect the mind of the Magistrate who may ultimately have to deal with the case that may arise from the charge-sheet submitted against the petitioner. There is no reason to think therefore that the departmental proceeding will, or will tend to, prejudice the accused petitioner in any way in respect of the criminal case.

4. This Rule is therefore discharged.

K.C. Sen, J.

5. I agree.