
(1952) 05 AHC CK 0006

In the Allahabad High Court

Case No : Criminal Miscellaneous No"s. 477, 478 and 479 of 1951

Lal Behari and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-05-1952

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 1, 3
Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1953 All 153

Hon'ble Judges : P.L. Bhargava, J; Beg, J

Bench : Division Bench

Advocate : S.C. Das and J.S. Trivedi, for the Appellant; Additional Government Advocate, Saraswati Prasad, for the Respondent

Final Decision : Disposed Of

Judgement

Beg, J.—These are three applications, one of which is an application for contempt of Court against the Special Manager, Court of Wards, Sitapur incharge Rampur Mathura estate (Criminal Misc. Appln. No. 479 of 1951) and other two are applications for the transfer of two cases pending in the Court of the Sub-Divisional Magistrate Sidhauli, district Sitapur (Criminal Misc. Applns. Nos. 477 and 478 of 1951). The circumstances which have given rise to these applications may be briefly stated as follows:

2. Rampur Mathura estate and Kapurthala estate in Avadh are separated by the river Gogra which constantly changes its course. On account of alluvion and diluvion disputes constantly arise regarding the boundaries of the two estates. Rampur Mathura estate is under the superintendence of the Court of Wards and Sri Balbir Saran Das was the Special Manager of the Court of Wards in the month of October 1951. One Mitunjai Bakhsh Singh, who alleged himself to be the tenant of certain plots situated in Rampur Mathura estate, applied on 15-10-1951, to the Special Manager, Court of Wards, Sri Balbir Saran Das,

stating that he was a tenant of Rampur Mathura estate, and that Sardar Sohan Singh Tehsildar Kapurthala Estate and others were raising a dispute about the possession of the plots and praying that proper steps may be taken against them. The special Manager, incharge of Rampur Mathura estate, directed the said Mirtunjai Baksh Singh to file a complaint under Section 145, Criminal P. C. On 16-10-1951, the said Special Manager, Court of Wards, Rampur Mathura estate, sent a report to the Deputy Commissioner of Sitapur about the proposed application under Section 145, Criminal P. C. by Jagatpal Singh, who was the mukhtar of Mirtunjai Bakhsh Singh and was going to file an application on behalf of his master before the S. D. O., Sidhauri. The last paragraph of this report runs as follows: "The S. D. O., Sidhauri may be asked to look into this matter carefully and do needful." On this report the remark of the Deputy Commissioner was "seen".

On 17-10-1951, the said Mirtunjai Bakhsh Singh through his mukhtar Jagat Pal Singh put in his application for action being taken under Section 145, Criminal P. C. against the applicants in the Court of Sri S. N. Sharma Sub-Divisional Magistrate, Sidhauri. On 18-10-1951, the Special Manager Rampur Mathura resubmitted his report of 16-10-1951. with the remark that "as orders have not been passed on portion marked X of my report hence it is resubmitted." The portion marked X referred to his report of 16-10-1951, in which he had requested the Deputy Commissioner to ask the S. D. O., Sidhauri to look into the matter carefully and do the needful. After the file was submitted to him again the Deputy Commissioner passed the following order:

"This will be done when the S. D. O. comes to see me and you may also bring this fact to his notice."

On 29-10-1951, the Special Manager, Court of Wards, after referring to the various reports and orders mentioned above wrote to the Sub-Divisional Magistrate, Sidhauri as follows:

"Please see this. I will speak to you when we meet. Attachment of crop is absolutely necessary."

On the same date the Sub-Divisional Magistrate, Sidhauri passed a preliminary order attaching the crops. The actual order runs as follows : "Whereas I am satisfied from the report of S. O. Thangaon and of Special Manager Court of Wards that there is dispute likely to result in breach of peace regarding cultivated areas mentioned in Jagatpal Singh's application of plots Nos. 1626 and 1180 situated in village Keora and plot No. 466 situated in village Soharia, I hereby order that the contending parties be called to appear before me on 17-11-51 and put in written statements of their respective claims of possession. I further order that the disputed land along with crops standing thereon be put under attachment at once. The crops should be given in the *supurdagi* of some reliable and independent person of the locality." The above proceedings took place in the case of -- "Jagatpal Singh v. Sardar Sohan Singh", No. 250 of 1951.

3. On 5-12-1951 the applicants made the above-mentioned application in this Court stating the above facts and praying that in view of the facts stated therein Sri Balbir Saran Das, Special Manager, Court of Wards, Rampur Mathura, was guilty of contempt of Court and suitable action be taken against him. This is Criminal Misc. Appln. No. 479 of 1951. The applicants have also filed an application submitting that the above facts and circumstances showed that Sri Balbir Saran Das, Special Manager, Court of Wards, Rampur Mathura. estate and the Deputy Commissioner of Sitapur (incharge of the Court of Wards) had been trying to influence the mind of the court and the Sub-Divisional Magistrate, Sidhauri being subordinate to the Deputy Commissioner of Sitapur, there was an apprehension in the mind of the applicants that they would not receive a fair and impartial trial in his Court. Further in view of the fact that all the Sub-Divisional Magistrates of Sitapur were subordinate to the Deputy Commissioner of Sitapur who was taking interest in the case, it was expedient in the interests of justice that the case be transferred from the district of Sitapur to some other district. This is Criminal Misc. Appln. No. 478 of 1951 and relates to case No. 250 of 1951,

4. On the basis of the same facts another application for the transfer of a similar case under Section 145, Criminal P. C. between Rampur Mathura estate, through the Special Manager Courts of Wards, Sitapur and Lal Behari Inunsarim Kapurthala estate Nanak Prasad Qanungo Kapurthala estate, Sohan Singh, tahsildar Kapurthala estate and others (Case No. 434 of 1951) pending in the Court of Sub-Divisional Magistrate, Sidhauri was filed in this Court. This application is Criminal Misc. Appln. No. 477 of 1951.

5. In view of the fact that the main grounds of the transfer of the two cases are the same as those which have been made the basis of the application for contempt of Court, it would be convenient to take up the application, for contempt of Court first.

6. The offence of contempt of Court has not been defined either in the Contempt of Courts Act or any other Indian Statute. The reason for it is obvious. The offence covers such a wide field of activity that it is very difficult to confine it within the bounds of a definition that would be applicable to all cases. Lord Russell in -- "Reg v. Gray" (1900), 2 Q B 36 at p. 40, defined it as follows:

"Any act done or writing published calculated to bring a Court or Judge of the Court into Contempt, or lower its or his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court."

7. In the case of -- "Read v. Huggonson" (1742) 2 Atk. 469 : 26 E R 683, Lord Hardwicke said :

"There are three different sorts of contempt. One kind of contempt is scandalising the Court itself. There may be likewise a contempt of this Court, in abusing parties who are concerned in causes here. There may be also a

contempt of this Court, in prejudicing mankind against persons before the cause is heard."

The facts of the present case may now be examined in the light of the above exposition of its meaning with a view to ascertain as to whether the offence of contempt has been committed. The chain of events in the present case starts on 15-10-1951, when, it would be remembered, the Special Manager directed Mirtunjai Bakhsh Singh to file a complaint under Section 145, Criminal P. C. Having done so, on the next day, i.e., on 16-10-1951, the Special Manager wrote to the Deputy Commissioner of Sitapur about the application which was going to be filed and asked him in his report to direct the Sub-Divisional Magistrate of Sidhauri to look into the matter carefully and do the needful. This was clearly a request on the part of the Special Manager to the Deputy Commissioner to contact the presiding officer of the Court in an extra-judicial manner and to impress upon him the urgency of the matter and the necessity of special and careful attention. The Sub-Divisional Magistrate of Sidhauri was subordinate to the District Magistrate and there could be no doubt that he was likely to be influenced by any conversation or direction that his higher officer would have with him or issue to him about the case. There is further no doubt that the report in question was written with this mischievous purpose. The request to impress upon him the necessity of careful action in the matter would naturally have the effect of making the Sub-Divisional Magistrate concerned think that there was a foundation in the application which was going to be launched in his Court. The extra care which he was to be enjoined to take into the matter was obviously meant to bring home to him the urgency of the situation. Whatever the merits of the case might have been, it is clear to us that it was an absolutely unauthorised manner of approach to a legally constituted authority and cannot be justified for a moment. It was calculated to prejudice the mind of the presiding officer in favour of a particular party and to prevent the application of that unclouded and impartial attitude to mind which a Court is expected to bring to bear on a case pending before it. The District Magistrate having perused the report seems to have realised his position and he merely wrote the word "seen" on it.

The Special Manager does not seem to have been satisfied with this non-committal reply of the Deputy Commissioner. Accordingly after the application under Section 145, Criminal P. C., was filed on 17-10-1951, he resubmitted the matter to the Deputy Commissioner on 18th October and solicited clearer orders on the request which he had made on 16-10-1951. One would expect that the Deputy Commissioner would have resented this action on the part of the Special Manager. Far from doing it, we find that he approved of it and wrote a remark that indicated that the request of the Special Manager would be complied with when the Sub-Divisional Magistrate came to see him. It is further regrettable to find that a high official like the Deputy Commissioner did not stop there. He directed the Special Manager, Court of Wards, to himself bring this fact to the notice of the said Sub-Divisional Magistrate thereby encouraging him to make a direct approach to the Court by contacting him personally.

Embodied (emboldened?) by the direction received from the Deputy Commissioner, the Special Manager had the courage to write to the Sub-Divisional Magistrate, Sidhauri, before whom the application was pending that he would speak to him personally about the matter. He went to the extent of suggesting the proper order that should be passed in the case by writing to him that "attachment of crop is absolutely necessary". We cannot conceive of a graver and grosser form of the offence of contempt of Court than the one that is manifested in this piece of conduct of the Special Manager. Here is an unabashed and clear attempt to poison the fountain spring of justice at its very source and to divert its flow in a direction polluted with prejudice and coloured with bias.

At this stage again, we may observe that the duty of the Court receiving any such suggestion is clear, definite and admits of no doubt. The only course which should have been adopted by the Sub-Divisional Magistrate was to refer the matter to this Court for necessary action. Again, we regret to note that instead of doing it, we find that the Court on the same day passed an order in terms of the suggestion made by the Special Manager. If it is permissible to read between the lines and if the consequences that flow from an act are an indication of its causes, then the only conclusion that is open to this Court, in view of the circumstances that are staring (staring?) in our face, is that the officer concerned seems to have surrendered his judgment in a manner tantamount to an abdication of his own functions. We have expressed ourselves rather strongly on this point, because it is not the first time that reaction of this nature on the part of the lower court has been brought to our notice when the presiding officer of such Court has allowed himself to be a passive recipient of such requests & has unfortunately succumbed to the force and pressure exercised on him.

We may only refer to a case which only very recently came to our notice and which is reported in -- "State v. Krishna Madho" 6 Dom L R (All) 309 and in which a similar action on the part of presiding officer of the Court was the subject-matter of condemnation and disapproval by a judgment of this Court to which one of us was a party.

8. We have no doubt that any private communication by a party to a case or even a stranger to a cause addressed or made to the presiding officer of a Court, which is calculated to influence his decision in a pending case, constitutes a most serious form of contempt. The following remarks of Norman J. in -- "Taylor v. Asmedh Koonwar" (1865) 4 W R 86 quoted in -- "Additional Sessions Judge, AIR 1948 114 (Oudh) are pertinent in this connection:

"It is contrary to the practice of all Courts and highly dangerous to the administration of justice that a suitor on any pretext whatever should communicate with a Judge either by letter or any conversation or in any manner whatsoever other than by public proceedings in open Court respecting the merits of any case in which he is interested and which is either pending in the Court of such Judge or likely to come before him."

The following observations of Lord Cottentram are also relevant in this connection (Vide Aiyer's Law of Contempt, 1949 edition page 211).

"Every private communication to a Judge for the purpose of influencing his decision upon a matter publicly before him, always is and ought to be reprobated. It is a course calculated, if tolerated, to divert the course of justice, and is considered and ought more frequently than it is to be treated as, what is a high contempt of Court."

Dealing with the effect of certain articles published in a newspaper with a view to create a prejudicial atmosphere. Wills J, in -- "Reg v. Parks" (1903) 2 K B 432 explained the grounds on which such writings are drawn into the category of the offence of contempt in the following words:

"The reason why the publication of articles like those with which we have to deal is treated as a contempt of Court is because their tendency and sometimes their object is to deprive the court of the power of doing that which is the end for which it exists--namely to administer justice duly, impartially and with reference solely to the facts judicially before it. Their tendency is to reduce the court which has to try the case to impotence, so far as the effectual elimination of prejudice and prepossession is concerned. It is difficult to conceive an after description of such conduct than is conveyed by the expression "contempt of Court"." (Vide Aiyer's Law of Contempt pages 75 and 76). It goes without saying that the offence would be a much graver one in cases where instead of being expressed in a newspaper in a general form, such remarks are directed specifically to the particular officer who is seised of the case and responsible for the effectual administration of justice in the matter.

9. In view of the fact that in the present case the ingredients of the offence are made out so clearly, we would have expected that an unequivocal unqualified apology on the part of the contemner offered at the very outset would have provided a relieving feature and a saving grace. On the other hand, the case on behalf of the Special Manager was argued with a determination, zeal and force worthy of a better cause. The District Magistrate in his explanation stated that

"the orders referred to in the application were passed by me in the routine way on the reports submitted by the Special Manager and it is wrong on the part of the applicants to say that I am taking interest in the case and trying to influence the mind of the Magistrate who is seised of the case."

10. The Sub-Divisional Magistrate, Sidhauli, having admitted the correctness of the facts which formed the foundation of the complaint for contempt stated in his explanation that it was not correct that the Special Manager or the Deputy Commissioner in any way tried to influence him in the case and that the inference drawn from those facts in the said application was not justified.

11. The Special Manager himself filed an affidavit raising all kinds of pleas in his defence. They ranged from an expression of his complete ignorance of the law of

Criminal Procedure and the Indian Penal Code to an allegation that it was his duty as Special Manager, Court of Wards, to address the impugned communications and to act in the manner in which he did. We need hardly say that the position adopted by the parties concerned in the matter only adds insult to injury,

12. The learned Additional Government Advocate, who appeared for the Special Manager, vehemently argued on his behalf that throughout his client was acting in a bona fide manner and that he had no intention of interfering with the due process of justice. In view of the facts mentioned by us above, we do not think that there is any vestige of truth in it so far as the factual aspect of the argument is concerned. A person is presumed in law to have the intention conveyed by his words and to intend the consequences which are bound to follow from his own acts. We may observe that the argument itself rests on the mistaken assumption that the test of the offence of the contempt of Courts lies in "mens rea". Whatever the intention of the contemner might have been, he is brought within the clutches of law as soon as the Court finds that by his word or by his conduct he has set into motion a chain of events which is by its very nature likely to interfere with the course of justice. The crucial test of the offence lies not in the object within the mind of the contemner but in the tendency which his manifest and outward acts inherently possess to interfere with the uninterrupted flow of justice in an impartial manner. Reference in this connection may be made to the case -- "In re Subrahmanyam, Editor, Tribune". AIR 1943 Lah 329 (FB). If this test is applied to the present case, we have no hesitation in holding that the offence which he has committed admits of no doubt. In this particular case, however, it may be mentioned that matters had transcended the region of intention and had actually taken the form and shape of action resulting in serious prejudice. It may be remembered that the suggestion of the Special Manager that attachment was necessary was followed by a similar order by the Court, and the fact that the dates of both synchronise leads to a suspicion that the one is merely an echo of the other.

13. It was further argued on the contemner's behalf that he was ignorant of the law of Criminal Procedure Code and the Indian Penal Code, a statement which is incorporated in his affidavit. It would be difficult to credit him with this blissful ignorance considering that he holds the position of a responsible manager of vast estates which are constantly surrounded with cases under Section 145, Criminal P. C. His suggestion to the Sub-Divisional Magistrate, Sidhauri, that attachment under the circumstances was necessary itself speaks eloquently of his knowledge of the law on the subject and shows that he was fully cognizant of the relevant provisions of law. His own conduct, therefore, belies the statement which he has solemnly made in his affidavit. In any case, ignorance of law, cannot be an excuse specially when the per-petrator of the offence is a literate man holding a responsible position. Vide -- "Balkrishna Narayan v. Col. N. S. Jatar AIR 1945 Nag. 33.

14. Next, it was argued on his behalf that no actual damage was done in the case as the matter is still at an initial stage and hence no offence could be said to have been committed. This argument again betrays a misapprehension of the nature of the law of contempt. The damage in such cases is not merely damage to the parties but damage to the reputation of the Court itself. The gravamen of the offence consists in robbing the Court of that confidence which it is the duty of the Court to inspire and the corresponding obligation of the public to repose in the same. In this particular case, it so happened that fortunately the relevant papers were retained on the file as bearing unimpeachable testimony of the ingredients of the offence. The documentary evidence remained on record till it was brought to the knowledge of the applicants (the opposite-parties in the case under Section 145, Criminal P. C.). Its alarming nature naturally impelled the applicants to take the earliest step to move this Court to take action and to transfer the cases from the district. The matters therefore were brought to our notice before any substantial damage to any party accrued. The essence of the offence, however, as observed by us above, lies not in the prejudice that it might cause to the parties but in the damaging nature of the act itself "qua" the administration of justice in the state. In other words, the essence of the offence lies not so much in the capacity of the impugned act to cause damage to the cause of a party as in its tendency to cause damage to the cause of justice itself.

15. At the close of the arguments learned Counsel appearing for the contemner freely suggested that in case the Court held that he had committed an offence, an unqualified apology on his behalf might be accepted. It may be mentioned that in cases of contempt the Court is not bound to accept an apology or even an unqualified apology. The question whether it should do so or not would depend on circumstances of each particular case. In -- "Sub-Judge. First Class, AIR 1940 407 (Nagpur) Vivian Bose J., now a Judge of the Supreme Court of India, observed that

"An Apology is not, a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer's power. Only then it is of any avail in a Court of justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest, and even if wisdom dawns only at the appellate stage, the apology should be tendered unreservedly and unconditionally before the arguments begin and before the person tendering the apology discovers that he has a weak case and before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology."

Everything depends upon the circumstances as well as upon the nature of the apology and the manner in which it is tendered.

16. In -- "Emperor v. P. C. Tarapore AIR 1940 Sind 239 in a Full Bench case

Davis, C. J., laid down that it does not follow that because an apology is offered the Court must accept it and is disarmed. A Court can refuse to accept an apology which it does not believe to be genuine; it can, even when it accepts the apology, commit an offender to prison or otherwise punish him. Furthermore, there cannot be both justification and apology. The two things are incompatible.

17. Similarly, an apology offered by the contemner in a recent case in --"State v. Krishna Madho" 6 Bom L R 309 was rejected by this Court.

18. An apology made in such circumstances does not seem to be so much the outpouring of a penitent heart moved by a feeling of remorse and overcome by a sense of one's own guilt, as a convenient device clutched up by a person driven and compelled by the logic of events to resort to a measure which seems to him to provide the only mode of escape from the impending doom or as a last desperate throw in a game of chance hazarded by him at a time when all else has failed and every thing seems to be lost. Apology tendered under such circumstances should be considered to be merely an apology for an apology. It deserves to be given short shrift at the hands of the Court. We have accordingly no hesitation in treating this belated show of regret as unworthy of consideration and summarily reject the so-called apology thus offered.

19. For the reasons given above, we find Sri Balbir Saran Das guilty of contempt of Court and order him to pay a fine of Rs. 100/- within a month of the date of this order or in default to undergo one month's simple imprisonment. He will also be liable to pay Rs. 150/- as costs to Mr. Das, who appeared for the applicants and Rs. 80/- as costs to Mr. B. N. Roy, Assistant Standing Counsel who appeared for the State.

20. In view of the circumstances discussed above, the grounds of transfer of both the cases are self-evident. The state of affairs disclosed by the narration of events which formed the basis of the application for contempt of Court. provides a sad commentary on the "atmosphere prevailing in that particular area regarding the attitude that is to be adopted by high-placed officials in cases of this nature. We accordingly order that both the cases mentioned above which are pending in the Court of the Sub-Divisional Magistrate, Sidhauri, be transferred from Sitapur district to Lucknow district. The files of the said cases shall be sent to the District Magistrate of Lucknow, who shall either try the cases himself or transfer them to any stipendiary Magistrate authorised by law to try the same.