

(1967) 09 AHC CK 0015

In the Allahabad High Court

Case No : Criminal Miscellaneous (Contempt) Case No. 98 of 1966

Mohammad Ahmad Siddiqui

APPELLANT

Vs

The Provincial Cooperative Union Ltd., Lucknow and others

RESPONDENT

Date of Decision : 07-09-1967

Acts Referred:

Citation : (1968) 38 AWR 23

Hon'ble Judges : J.N. Takru, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.N. Takru, J.—Mohammad Ahmad Siddiqui has filed this petition praying that the opposite party No. 1 be punished for committing contempt of Court.

2. The case for the Petitioner as set out in his petition and the supporting affidavit, supplementary affidavit, and rejoinder affidavit, is that he was appointed a Go-operative Supervisor in 1956 and, in November, 1961 he was posted to Anapur in the district of Allahabad. In that month one Chandrabali Lal was posted as Co-operative Inspector to the Kaurihar Block, and he was the Petitioner's immediate superior Officer. For some reason or the other, Chandra Bali Pandey began bearing a grudge against the Petitioner and he made several complaints against the Petitioner to the superior authorities. Not content with making complaints, he also concocted a number of false cases against the Petitioner and made false reports regarding them to the authorities. Finally on 11-5-1962 he filed a FIR against the Petitioner at PS Nawabganj as a result of which Crime No. 52 was registered against him. Later, on the basis of this report four Sessions Trials were started against the Petitioner being Sessions Trials Nos. 153 of 1964, 242 of 1965, 287 of 1965 and 288 of 1965, but even before the Police had submitted the charge-sheets of those trials against the Petitioner, the departmental authorities issued a charge-sheet against him on 21-2-1963 requiring him to submit his written statement by 15-3-1963. The Petitioner filed his written statement on 30-4-1963. Thereafter on 22-10-1965, the Petitioner

was convicted and sentenced in Sessions trial No. 153 of 1964. On 26-10-1965, the Petitioner filed an appeal against his aforesaid conviction and sentence in this Court and the same is still pending. Subsequently Sessions trials Nos. 287 of 1965 and 288 of 1965 were also decided on 27-5-1966 and 3-6-1966 respectively and the Petitioner was acquitted in both of them. The fourth trial namely, S.T. No. 242 of 1965 was, however, still pending in the court of the 1st Temporary Civil and Sessions Judge, Allahabad. During the pendency of that trial, opposite parties Nos. 2 to 4 who are the members and officers of the local Disciplinary Committee, in order to cause harassment to the Petitioner, and without notice to him, considered the charges against him on merits, and on or about 20-6-1966, recommended to the Provincial Co operative Union, UP, Lucknow, opposite party No. 1 to terminate the Petitioner's services, who till then was only under suspension. Pursuant to that recommendation, opposite party No. 1, gave a notice to the Petitioner, requiring him to appear before it on 9-11-1966, and to show cause against the proposed recommendation. The Petitioner replied to that notice on 4-11-1966 whereby he informed opposite party No. 1, that as the matter was still subjudice both in the trial court and in the High Court it should stay its hands, but it did not pay any heed to the reply and terminated the Petitioner's services. On these allegations the case for the Petitioner is that the opposite parties are liable to be punished for committing contempt of court.

3. On this petition, notice was issued to the opposite parties and in response to it they put in appearance and filed their joint written-statement. Briefly stated their case is that when the Co-operative Inspector reported that the Petitioner was responsible for a number of embezzlements and misappropriations of the assets and properties of the Co-operative Society at Anapur, the Assistant Registrar suspended him and later when the audit report revealed an embezzlement to the tune of about Rs. 35,000/- , charges were framed against the Petitioner on 21-2-1963 and he was called upon to submit his explanation thereto by 15-3-1963. Earlier on 11-5-1962, a report about the said embezzlements had also been lodged with the police on the basis of it the latter started a number of Sessions trials against the Petitioner. The opposite parties' case further is that although they had nothing to do with the Petitioner's prosecution they nevertheless stayed the departmental enquiry when the Petitioner made a request to them to that effect. However, when the Sessions trials ended on 22-10-1965, they resumed the departmental enquiry in order to determine whether the Petitioner was a fit and proper person to be retained in service, irrespective of the results of the criminal cases which were concerned with the question whether the offences with which the Petitioner was charged had been brought home to him or not?. The opposite parties denied that the Petitioner was at any stage required to disclose his defence in the criminal cases which were pending against him, and they maintained that the departmental proceedings were not public.

4. Now from what has been stated above it is clear that the only question which

falls for consideration is whether the acts of the opposite parties in giving notice to the Petitioner requiring him to attend the meeting on 9-11-1966 and to show cause against the action proposed to be taken against him, and in terminating his services at that meeting amount to contempt of Court. Before, however, I proceed to deal with this question, it would be more appropriate to set out the law bearing upon it beginning with the three decisions of the Supreme Court. The earliest decision is to be found in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, . It was held in this case that:

It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair, but we cannot say that principles of natural justice require that an employer must wait for the decision at least of the criminal trial before taking action against an employee. We may however add that if the case involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced.

No doubt this case is not under the Contempt of Courts Act but it will be noticed that it does not prohibit the employer from holding a departmental enquiry during the pendency of a criminal trial, as it would have most certainly done if such an enquiry had per se attracted the provisions of the Contempt of Courts Act.

The second case to which reference has to be made is that of *Pratap Singh and Another Vs. Gurbaksh Singh*, . The rule of law enunciated therein is as follows:

The question is not whether the action in fact interfered but whether it had the tendency to interfere with the due course of justice. The action taken in this case against the Respondents by way of proceeding against him has only one tendency, namely, the tendency to coerce the Respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakeable tendency of the proceedings taken against the Respondent, then the officials concerned had been guilty of contempt of court, though they were mainly carrying out the instructions contained in the circular letter" (the italicising is mine). The third case is that of *Gurcharan Das Chadha Vs. State of Rajasthan*, . It was held in this case:

...that by charging the Petitioner with proceedings of a different kind there was if not direct, at least indirect pressure brought upon him in the prosecution of his petition for transfer... If the Petitioner was guilty of any lapse under the Services (Conduct) Rules or even guilty of an offence the action to which he would be otherwise subject could wait till the present proceedings had terminated and there was really no reason to hurry with a charge against the Petitioner which charge would have put him under duress of some kind...(the italicising is mine).

5. After the decisions of the Supreme Court cited above it is really unnecessary to refer to the decisions of the High Courts, but as reliance was placed upon them by one party or the other, reference to them might also be made in this

connection.

The first case of this kind is that of the Patna High Court in *The King Vs. Parmanand and Others*, . It was held in this case that:

It is a cardinal principle that when a matter is pending for decision before the Court of justice nothing should be done which might disturb the free course of justice. Any enquiry with regard to a case which is sub-judice by the Government for the purpose of satisfying themselves whether the prosecution is likely to end in conviction or not so that they might instruct the Public Prosecutor for withdrawal from prosecution is bound to interfere with the even and ordinary course of justice and the High Court will discountenance any attempt on the part of any executive official however high he may be, to prejudice the merits of a case and to usurp the functions of the court which has got seisen of the case. Such a practice is fraught with immense danger. It is wrong to contend that a parallel enquiry can be started by the Government.

The next case is that of *Sukhdeo Thakur and Another Vs. J.W.S. Atkin and Another*, . This also is a decision of the Patna High Court in which it was held, that:

The employer has a legal right to hold an enquiry about his employee with a view to finding for himself if the employee is guilty of any misconduct. By the mere institution of a case in a court of law, all legal rights of all persons in respect of the parties are not to be automatically suspended. Exercise of such a right by itself is not illegal. It is true that if such exercise tends to interfere with the due course of justice it has to be suspended till the disposal of a case in a Court or Tribunal. Contempt of Court is an offence purely sui juris and its punishment involves in most cases an exceptional interference with the liberty of another person or authority....

The last case to which reference has to be made is that of *In Re: Shri Mehra, Senior Supdt. of Post Offices and Another*, . This case laid down that:

During the pendency of a criminal proceeding against a Government servant the mere holding of a departmental enquiry in respect of the same matter and even passing an order therein of punishment would not amount to contempt. The departmental authorities were free to exercise such lawful powers, as are conferred on them by the departmental rules and regulations. Such exercise of powers bonafide can not come within the mischief of the law of contempt unless the departmental authorities publicise any departmental orders which might have a tendency to influence the mind of the Court.

This decision of the Madhya Pradesh High Court was based upon the earlier decision of the same Court, in *Narain Singh v. Satya Narain Dubey* MPLJ (1953) HCR 164.

6. Thus from the authorities cited above it is manifest that the mere holding of a departmental inquiry in respect of a matter which is also the subject matter of a

criminal case would not per se amount to contempt of court, so long as (1) the departmental enquiry is held bonafide and the departmental authorities do nothing to publicise their findings or orders which might have a tendency to influence the mind of the Court, and (2) the said inquiry does not have the tendency to force or coerce the person complaining about it to withdraw or not press his case, or to put him under some kind of duress or pressure in the prosecution of his case. Thus the short question of fact which presents itself for consideration in this petition is whether the acts of the opposite parties in issuing the notice, and passing the order of termination of the Petitioner's service, can be held to have had any of the objectionable tendencies mentioned above.

7. Now it is common ground that the departmental enquiry against the Petitioner started before his prosecution for the offence of embezzlement and misappropriation took place and that as soon as he submitted his explanation in the departmental enquiry and requested for its stay on the ground that criminal cases in regard to the same matter were going on against him, the departmental authorities suspended the enquiry as desired by him. Those enquiries were, however, resumed after the termination of three of the Sessions Trials but during the pendency of the fourth trial. The certified copy of the Petitioner's statement which was filed before me yesterday however shows that he had made his statement in the fourth trial as far back as 28-8-1965. Consequently the act of opposite parties Nos. 2 to 4 of issuing the notice calling upon the Petitioner to appear before them on 9-11-1966 and to show cause why his services should not be terminated could not have the tendency of forcing or coercing him not to enter upon or to withdraw from, his defence since that stage was over long ago. Hence when the said notice was given and the order terminating the Petitioner's service was passed there was no question of his being put under any kind of duress with either of the objects mentioned above. On the contrary the said acts would have goaded him to prosecute his defence with greater tenacity. Hence while it is true that, given favourable circumstances, the notice and the order in question were capable of having the tendency deprecated by the Supreme Court, in the instant case they cannot be held to have been fraught with that tendency. It seems to me of the cardinal essence of a contempt of the present kind that the person who is accused of commuting it should be in a position to do good or harm to the complainant--good, if he withdraws his suit or does not enter upon his defence or having entered upon it withdraws it, harm if he does not. A person who is incapable of doing either of these things, or who does them when it is, too late, cannot, in my opinion, be held to have said or done anything which can have the tendency of forcing, coercing or inducing the complainant to do any of the things mentioned above. As in the present case the stage, when the acts of the opposite party could have had the undesirable tendency mentioned above had been left far behind and they were incapable of having that tendency, on 9-11-1966 and thereafter, I am satisfied that the notice and the order in question cannot be held to fall within the rule laid down in the Supreme Court's decision in Pratap Singh (2) and Gur Gharan Das Ghadha (3).

8. So far as the first test mentioned above is concerned, in view of the uncontroverted averment of opposite parties that they neither called upon the Petitioner to disclose his defence, nor did they make the departmental proceedings public, the said proceedings could not have had any tendency to influence the mind of the court before which the last of the Sessions trials against the Petitioner, namely, sessions trial No. 242 of 1965 was still then pending. I am, therefore, satisfied that the Petitioner has failed to make out his case against the opposite parties with the result that his petition is liable to be dismissed. I, therefore, dismiss the petition and discharge the notice issued to the opposite parties with Rs. 150/- as costs to them. The Petitioner is granted two months' time for paying up the costs.