

(1948) 05 CAL CK 0006
In the Calcutta High Court
Case No : Suit No. 547 of 1946

Onkermull Jalan

APPELLANT

Vs

Padampat Singhania and Others

RESPONDENT

Date of Decision : 06-05-1948

Acts Referred:

Citation : (1948) 05 CAL CK 0006

Judgement

Majumdar, J.—On the 16th September, 1947, a rule was issued by this Court calling upon Onkermull Jalan and S.P. Mehra to show cause why they should not be committed to jail for having committed contempt of Court by publishing and/or causing to be published five offending articles on the 12th July, 1947, 19th July, 1947, 9th August, 1947, 23rd August, 1947 and 6th September, 1947, in the weekly paper " Citizen " printed and normally published at Cawnpore. This rule was issued on the application of Lala Luxmipat Singhania one of the Defendants in Suit No. 547 of 1946 pending in this Court. The suit was instituted by the said Onkermull Jalan against eight Defendants of whom three were Sir Padampat Singhania, Lala Kailaspat Singhania and the applicant, whom I shall refer to generally as the Singhania. This suit in substance was for a declaration that the Singhania were and are the sole and absolute proprietors of several concerns mentioned in the plaint including the Mercantile Corporation, Calcutta; that the Plaintiff and the Defendants other than the Singhania never had or have now any right, title or interest therein; the Singhania were liable to meet the liabilities of the said Mercantile Corporation, Calcutta and other concerns: the partnership deed dated 15th September, 1941, is not binding and the partners mentioned in the deed of partnership relating to the Mercantile Corporation were in reality in the employ of the Singhania and that several other firms and fictitious concerns were similarly started in Calcutta from time to time in various names and styles. In their written statement the Singhania disputed those allegations. On or about the 10th February, 1947, the said Onkermull tiled his affidavit of documents disclosing 492 documents in the first schedule and various account books and papers in the second schedule of the said affidavit. The said

documents are the copies of the letters purported to have been written by Messrs. Mercantile Corporation to several parties and/or letters written to or forwarded to or received by the Mercantile Corporation from various parties and/or copies of letters between the said Onkermull Jalan and the Singhanias, as also many other correspondence and copies of telegrams. On the 1st August, 1946, another suit being Suit No. 1420 of 1946 was filed in this Court by Madhoprosad Kejriwal and others against Respondent Onkermull Jalan and another for a declaration that the partnership firm of Mercantile Corporation had become dissolved, and alternatively, for a dissolution of the partnership, for accounts, receiver, injunction and for other reliefs. On the 26th August, 1946, an application was made by Iswari Prosad Priti, one of the Defendants in Suit No. 1420 of 1946, who also happens to be one of the Defendants in Suit No. 547 of 1946 for the appointment of a receiver of the assets and books of account of the said Mercantile Corporation, Calcutta. At the hearing of the application Onkermull attempted to file an affidavit in opposition to which he annexed copies of nearly all the letters disclosed by him in the affidavit of documents mentioned in Suit No. 547 of 1946 which had also been disclosed by him in Suit No. 1420 of 1946. The said affidavit being out of time, Gentle, J., ordered that the affidavits should not be filed. It is alleged that in spite of that order the said affidavit was put into the records of the suit, and the Singhanias having discovered that, made an application for taking off the said affidavit from the file and on the 19th December, 1946, Gentle, J., directed that the affidavit should be taken off the file. Thereafter an application was made by Onkermull for reconsideration of an order on 26th August, 1946, by which the Receiver was appointed and with his petition he annexed his said affidavit in opposition which had been ordered to be taken off the file by Gentle, J. On the 16th May, 1947, Clough, J., ordered the said affidavit which was an annexure to the petition to be taken off the file.

2. It appears that in a series of articles on the dates above-mentioned in the said paper "Citizen" of which the Respondent, S.P. Mehra is alleged to be the editor, printer and publisher, were printed and published the particulars of the two pending suits, the contents of the plaint and written statements in those suits and copies of a number of letters disclosed in the said affidavit of documents. These publications were preceded by head lines and short comments as follows:

3. The article of 12th July, 1947, gave particulars of the two suits mentioned above as also the contents of the plaint in Suit No. 547 of 1946 and the head line; "Another big business headache" and thereafter in prominent letters "Alleged fictitious J. K. Concerns--Bogus partners --suppressed profits." Thereafter the following paragraph is published--"Singhania in Cawnpore take pride in proclaiming to the world the number of concerns owned by them. These number about three dozen including big and small. A Calcutta businessman alleges that Singhanias are masters of at least five more concerns unadvertised and not known to many. The Singhanias deny their ownership. What is the mystery which the Calcutta High Court was called upon to solve." In the issue of 19th July, 1947, the contents of the written statement of the said suit were set

out and reference was made also to the joint written statement of the other Defendants. It mentions the subject-matter of the Suit No. 1240 of 1946 and refers to the Court's order about the appointment of the Receiver with the head-line "Another big business headache," then in prominent letters "Singhania plead innocence. Official Receiver appointed." The article of the 9th of August, 1947, contains the substance of the contention of Onkermull and the Singhania and goes on to say that in support of his contentions Onkermull has filed a large number of letters and thereafter published verbatim copies of some letters This article is preceded by a head-line "Jalan v. Singhania who owns Mercantile Corporation"? The next issue of the 23rd of August, 1947, publishes copies of some letters disclosed in the affidavit of documents preceded by a head-line "Jalan v Singhania 3" followed by another headline with prominent letters "Jalan refuses to destroy papers." In the article of 6th of September, 1947, the head-line is "Jalan v Singhania 5" followed by "Mr. Jalan in revolt" in prominent letters. Then the copies of various letters are set out.

4. It is alleged by the Petitioner that the aforesaid publications have created a prejudice against him and his brothers in the mind of the general public and has rendered it extremely difficult for them to get witnesses to prove their case.

5. The Petitioner charges that by printing and publishing the matters above mentioned Mehra has committed contempt of Court and Onkermull who was in possession of the copies of the plaint, written statement and the letters having supplied the same to Mehra aided and abetted him in committing the contempt.

6. There is no dispute that the publications complained of have been made in the issue of "Citizen" on the dates mentioned above and they consist of comments, pleadings in the pending suits and some letters which are likely to be produced in evidence in course of trial. It is not disputed that Mehra is the editor, printer and publisher of "Citizen." Prima facie, therefore, Mehra has committed contempt of Court. Whether the contempt is technical or otherwise or what degree of seriousness should be attached to it or whether this Court has jurisdiction, are matters which I shall deal with later when discussing the contentions of Mr. S.C. Bose on behalf of Mehra.

7. Onkermull has denied that he aided and abetted Mehra; Mehra has challenged the jurisdiction of this Court and said that the articles were published in good faith as an item of news which would be of general interest to the people of Cawnpore. He has further stated that since the inception of the paper there has been antagonism between him and the Singhania as they have vested interests in all labour, industrial and commercial and civic affairs of Cawnpore and they do not like the hold and honest criticism of "Citizen." The Singhania have a large number of prosecutions against them and raids and enquiries for alleged black marketing were done and they were anxious to suppress publication of these matters and having failed to buy him up they have started harassing him and have started proceedings for contempt in this Court as well as in the Bombay High Court. He states, further, that he had no intention of committing nor did he

commit any contempt of Court but if the Court held otherwise, he tenders unqualified apology. He also states that being a layman and not a lawyer, it did not occur to him that such publications may amount to contempt of Court.

8. On behalf of Onkermull it is contended that (i) there is no proof that he aided or abetted Mehra as alleged and (ii) that the abetment of contempt is not contempt and as such no application against him is maintainable.

9. On behalf of Mehra it is contended that (?) this Court has no jurisdiction as both the publication and residence of Mehra are outside the jurisdiction of this Court (ii) the contempt is technical one.

10. I shall first take up the charge against Onkermull for aiding and abetting Mehra. The only evidence on the point consists in an inference of the Petitioners when he states in his affidavit "that Mehra could not have got possession of either the pleadings or the said correspondence unless the said Onkermull Jalan had furnished or caused to be furnished with the copies thereof." Onkermull in his affidavit states that he refused to let Mehra have any pleading or correspondence inspite of the same being asked for. Mehra states that certain copies of the papers and report were received in his office from one Md. Mustafa of Cawnpore who was a regular correspondent of "Citizen" who left for Karachi and whose present whereabouts are unknown. It is difficult to believe the statements of Onkermull and Mehra on this point and I am inclined to think that the Petitioners' inference is probably correct. Proceedings in contempt are of a criminal nature and it is incumbent on the party who applies to Court to prove conclusively the offence alleged. But inference is no proof and as such I am not prepared to act upon the Petitioners' inference or my belief about its probable correctness. I must, therefore, hold that it has not been proved that Onkermull aided and abetted Mehra. Having regard to the view I have taken above it is no: necessary to consider his other contention. The rule against Onkermull, therefore, is discharged, i do not make any order for costs in his favour.

11. With reference to the charge against Mehra I shall now consider the contentions of Mr. S.C. Bose. The contempt alleged consists not merely in the publication of the pleadings of the pending suits and the evidence, but also, in certain comments which I have already mentioned. Having carefully read and considered the comments separately as also along with the letters published, I am of opinion that although the publications might have been induced by reason of the antagonism existing between Mehra and Singhanias with a view to create an atmosphere of prejudice against them, their inclination was certainly to create an unfavourable impression about the validity or bona fides of the Singhanias' defence in this suit, and an impression that Onkennull's case was true. I have, therefore, no hesitation in coming to the conclusion that the contempt committed is not one of a technical nature.

12. The seriousness of the contempt has been aggravated by the continuation of the publication extending over a considerable time. This must obviously have

tended to keep alive in the public mind the prejudices and impressions formed from time to time by the publications. It also points to the scant courtesy with which this Court was treated. Mehra's defence that it did not occur to him that such publications may amount to contempt of Court cannot be accepted. Ignorance of law is no excuse. Consequently, there cannot be any question that if the publications were made within the jurisdiction of this Court and/or if Mehra resided there this Court would have jurisdiction to punish him for contempt and enforce its order.

13. It is necessary only to find out whether the publications took place at Calcutta within the jurisdiction of this Court as alleged by the Petitioner, as it is admitted that Mehra resides at Cawnpore which is outside the jurisdiction of this Court.

14. The evidence on behalf of the Petitioner as to his case of publication in Calcutta is contained in the affidavits of the Petitioner, of Radheshyam Singhanian and Lachmiprosad Baity and Narsipore L. V. Subramanyam.

15. The Petitioner states that on the 10th September he met Radheshyam Singhanian who was a partner of the firm of Messrs. Mahadaya Premchunder. The said firm was the subscriber in Calcutta of the weekly paper "Citizen," and the said Radheshyam Singhanian informed the Petitioner about the series of articles appearing for some time past in connection with these two suits, and he made over the live copies of the said newspaper to him. In support of this statement Radheshyam Singhanian has filed an affidavit dated the 15th September 1947 in which he has stated that his firm of Mahadaya Premchunder is a regular subscriber of the weekly paper "Citizen" and that he received in due course the publications of this newspaper between the 12th July and 16th September in Calcutta and made them over to the Petitioner. He further states that his friends and relatives and some other members of his office who call at his office in Calcutta in the usual course of business have all read the articles contained in the publications. Mehra in his affidavit in opposition after denying the various charges made against him has stated that no copies of the "Citizen" were sent to Calcutta, nor were Mahadaya Premchunder of which Radheshyam Singhanian is a partner the subscribers of this paper. With his affidavit he exhibited a copy of the letter addressed by one H.S.

16. Bagla to him dated the 17th July, 1947. The letter is set out below:

"MAHADAYAL PREMOHUNDER

187. Harrison Road, Calcutta

17th July. 1947.

My dear Sahib.

Please send your paper Citizen to the above address regularly. These days I am here and our friends are interested in your paper. If possible, please send your

back numbers say of one month. Thanking you.

Yours sincerely,

H.B. Bagla.

Please send the paper in the name of the above firm and not in my name very regularly ".

17. Mehra states that no papers were sent in spite of this letter. The letter speaks for itself and it is not necessary to make any comment on it. It is enough to say that in my opinion this letter disproves the allegation that Mahadaya Premchunder were regular subscribers to the said paper "Citizen" as is alleged by Radheshyam in his aforesaid affidavit. In answer to the affidavit of Mehra and with a view to explain this letter Radheshyam Singhania filed another affidavit affirmed on the 5th January, 1945, in which he stated. "Mr. H.S. Bagla mentioned in the said paragraph is a very influential man of Cawnpore and is one of our relations whose sister has been married to my elder brother. The said Mr. H.S. Bagla is a great patron of the paper "The Citizen", and in compliance of his direction regular copies of the Citizen used to be sent by post to us in Calcutta in the name of our firm Mahadaya till about the end of September, 1947, and all allegations contrary thereto are denied. Since then we have not been receiving any further copies of the paper." This statement in my opinion is in conflict with his previous statement that Mahadaya Premchunder were the regular subscribers of this paper. Subscribership could have been easily established by production of the receipt for the subscription for the paper or any entry in the books of account showing payment of the subscription which must have been paid if Mahadaya Premchunder were the subscribers of this paper; but nothing has been produced so far. In the affidavit in reply two other affidavits were filed, one by Lachmiprosad Baity and the other by Narsipur L.V. Subramaniam, each of whom has alleged that he is a subscriber of the weekly paper ""Citizen" but none has produced any further proof that he is a subscriber. Each of them has produced a copy of the paper wrapped up in a and each of them in his respective affidavit has used the same language which is as follows: "that in the usual course I received in Calcutta an issue of the said paper "Citizen".....and I happen to preserve the postal wrapper in respect thereof. I am still getting issue of the said paper in Calcutta but in respect thereof I do not appear to have preserved the wrappers." No further issues have been produced by either of them to prove that the paper was being regularly sent to them which must have been done if either of them was really subscriber. Further the postal wrappers do not look like those that are ordinarily used by the publishers of newspapers, when they send out the papers by post.

18. The evidence of these witnesses is thoroughly unsatisfactory and I do not accept it. Mehra has stated that the Petitioner and his brothers have a library of the name of "Kamala Town Library" which is a subscriber of this paper. This is not denied. It is not difficult to buy the copies, if one is disposed to do so, or to bring

them over to Calcutta or send them by post, which must have been done in the case, in the interest of the Petitioner with a view to prove publication within the jurisdiction of the Court. On the evidence I hold that none of the issues were published by Mehra in Calcutta as alleged on behalf of the Petitioner.

19. Mr. Bose contends that unless the publication took place within its jurisdiction this Court was powerless. In support of his contention he relies upon the observation of Jackson, J., in the case of *H.D. Rajah v. C.H. Witherington* I. L. R. 57 Mad. 831 (1934) which is as follows:-- "Contempt of Court is not an offence within the ambit of the Penal Code but nevertheless it conforms to the rule that the jurisdiction of the Court is determined by the place where the offender may happen to reside." This observation was made in overruling the contention that though the offence was committed within its jurisdiction the hands of the Court were tied because the offender happened to reside outside its jurisdiction. Now sec. 177, Cr. P. C, to which reference has been made in the judgment is contained in Ch. XV of the Cr. P. C, which deals with "the jurisdiction of Criminal Court in enquiries and trials." High Court which is a Criminal Court within the meaning of sec. 6 of Cr. P. C. is defined therein by sec. 2 (j) as the Highest Court of criminal appeal or revision for any local area. In my judgment the provisions of sec. 177, Cr. P. C. will be attracted only in such matters when the High Court exercises its jurisdiction over criminal cases as the highest Court of criminal appeal or revision.

20. Further if I were to apply to cases of contempt the principle that jurisdiction is purely territorial as in criminal cases, disastrous consequences would follow. A person then residing and committing acts of contempt of a Court beyond its jurisdiction can always escape punishment for that Court cannot punish him having no jurisdiction and any other Court having territorial jurisdiction would have no power to punish him for contempt of the other Court. This cannot be. It is well recognised that in matters of contempt the High Court which has inherited the powers of the Supreme Court exercises somewhat extra-ordinary jurisdiction and the powers are arbitrary. I do not see any reason either why any territorial limitation should be put in cases of contempt which is really a contempt against the sovereign, when neither any statute nor the provisions of the Charters relating to this Court expressly put such limitation.

21. Of the cases cited at the Bar there is none in which the question of jurisdiction directly arose or decided in the form as in the present case. Therefore "they are not helpful. The nearest approach is the case of *Kilachand Devchand & Co. v. Ajudhiaprasad Sukhanand & Co.* I. L. R. 59 Bom. 10 (1934). In this case a Receiver was appointed by the Original Side of the Bombay High Court of certain factories in U. P. which the Receiver took possession of through his men. These men were assaulted and ousted from possession by the two Defendants in the suit and one Sohanlal Gomatwala. The latter was a stranger to the suit, neither did he reside or carry on any business within the jurisdiction of the Bombay High Court and it was contended on his behalf on those facts that the application was

not maintainable against him. From the report it does not appear that the jurisdiction of the Court was challenged on the ground that the application was not maintainable because the acts which are alleged to constitute contempt were done outside the jurisdiction of the Court. Kania, J., held that the High Court had jurisdiction to punish a person who commits contempt of its orders by interfering with the possession of its Receiver even if he is not party to the suit in which the order appointing the Receiver was made and although he was residing outside its Original Jurisdiction provided he was residing in British India. In making that order the learned Judge must have taken into consideration the fact that the offence was committed outside the territorial jurisdiction of the Court. In course of his judgment he said that "all subjects in British India are bound to obey the laws of British India and to recognise the authority of Courts established by the laws prevailing in British India, a British Indian subject is not entitled to commit a breach of that law with impunity so as to defy the orders of the Court." Respectfully agreeing with the observations of the eminent Judge I want to add that those observations would now apply to Dominion of India where persons are not entitled to flout the authority of the Court in violation of its established laws.

22. The case of Chandanmull v. Sardarmull 40 C. W. N. 1285 (1936) which was decided by this Court needs reference. In this case the Plaintiff Receiver applied for committal of the Defendant for contempt of Court for failing to make over certain films to the Receiver at Lahore for which a consent decree was passed and the Defendant in Calcutta in Facie Curie gave an undertaking. No question was raised as regards the jurisdiction of the Court on the ground that the breach of the undertaking took place outside the jurisdiction. McNair, J., held that the Defendant had committed contempt.

23. My view in this case is that although the publications complained of were not made within the jurisdiction of this Court, they amounted to contempt of this Court and it has the jurisdiction to punish the offender for such contempt though he may be residing beyond its jurisdiction.

24. It has been argued before me that I should not make any order in the circumstances of this case inasmuch as there would be difficulty in enforcing the order that I might make by reason of the fact that Mehra resided outside the jurisdiction of this Court. It is true that one of the recognised principles for administration of justice is that no Court should decide a question where it has not the power to enforce its order. I would not have decided the question of jurisdiction if I had any doubt about the enforceability of the order. I am in agreement with the views expressed in the judgment in Kilachand Devchand & Co. v. Ajudhiaprasad Sukhanand & Co. (2) that the order of the High Court in contempt proceedings is an order within the meaning of sec. 2 (14) of the CPC and it would be executed under sec. 36 of the Code which is not limited only to orders made under the Code but applies to all orders which could be included in the definition of order as in the said sec. 2 (14) of the Code. In the case before McNair, J., above referred to, it was contended that so long as the offender was

outside the territorial jurisdiction of the Court it had no seizin over his person and was powerless to enforce its orders. It seems, the point of view expressed in *Kilachand Devchand & Co. v. Ajudhiaprasad Sukhanand & Co.* I. L. R. 59 Bom, 10 (1984) was not considered by McNair, J., when he passed the order for its enforcement relying on the spirit of co-operation existing between the Courts in India. Having regard to the early stage of the suit when the publications were made and when Mehra has offered an unqualified apology which I accept, I shall make no further order except that the costs of this application as of a hearing will be paid by him to the Petitioner.