

(1953) 02 OHC CK 0004

In the Orissa High Court

Case No : Original Criminal Miscellaneous Case No. 4 of 1952

State

APPELLANT

Vs

Radhagobinda Das and Others

RESPONDENT

Date of Decision : 09-02-1953

Acts Referred:

Contempt of Courts Act, 1971 — Section 3, 4
Criminal Procedure Code, 1898 (CrPC) — Section 561A

Citation : AIR 1954 Ori 1

Hon'ble Judges : Jagannadhadas, C.J; Mohapatra, J

Bench : Division Bench

Advocate : M.S. Rao, Amicus curiae, for the Appellant; P.V.B. Rao, for the Respondent

Judgement

Mohapatra, J.—The present contempt proceedings arise under the following circumstances : -- Sri Sripati Nanda, IPS.. Deputy secretary to the Government of Orissa (Enforcement), Cuttack, on 5-4-1952, wrote a demi-official letter to Radhagobinda Das, IAS., District Magistrate, Cuttack. The letter is D. O. No. 12533/Enf. 59/52. The letter runs to the effect:

"Sri S. Nanda, I. P. S.,

Deputy Secretary to Govt.

GOVERNMENT OF ORISSA

(Enforcement), Orissa,

SUPPLY DEPARTMENT

Cuttack.

(ENFORCEMENT & ANTICORRUPTION)

D. O. No. 12533/Enf. 59/52

Dated, Cuttack, the 5th April, 52.

Mr. Dear Das,

A prosecution report against M/S. Nathmal Sitaram, cloth dealer of Bakharabad, Cuttack town is being sent to you. This is a spectacular case in which a large quantity of clothes was hoarded by the accused dealer (a Marwari merchant) by fabricating a false account of sale.

I am, therefore, to request you to please ensure speedy trial of this spectacular case and intimate the result.

Yours faithfully, Sd/- S. Nanda. 4-2-52. (S. Nanda)

To

Sri R. G. Das, I. A. S.,

District Magistrate, "Cuttack".

2. On that very day, that is, on 5-4-1952, Sri R. G. Das made an endorsement on the letter "Show this to S. D. M. Sadar for needful". Sri S. N. Patnaik, opp. party 3 who was in charge of the duties of the Sub-divisional Magistrate, Sadar, Cuttack, made an endorsement on the letter on 9-4-1952, "Put up after the P. R. received". Again on 28-4-1952 while he was also in charge of the duties of the Sub-divisional Magistrate, Sadar, Cuttack, he made another endorsement "To Trying "Magistrate for needful". On that very day, that is, on 28-4-1952, the Criminal Case against Nathmal Jajodia and Sitaram Jajodia u/s 7 of Act 24 of 1946 was transferred to the file of Sri C. V. Murti, Magistrate First Class, for favour of disposal according to law. After several dates, the Trying Magistrate Sri C. V. Murti on 28-7-1952, wrote a letter to the Registrar of our High Court requesting him to place the letter before the Hon"ble Judges of the Court for proper action to be taken for contempt of Court.

On receipt of this letter of Sri Murty, notices were issued, in the first instance to Sri Das, District Magistrate of Cuttack, and to Sri Nanda, Deputy Secretary to the Government of Orissa (Enforcement), Cuttack, to show cause why they should not be punished or suitably dealt with according to law for contempt of Court. It having transpired from the explanation, submitted by Sri Das, that he did not transmit the letter to the Trying Magistrate but only to the Sub-divisional Magistrate and that Sri Patnaik, who was in charge of the duties of the Sub-divisional Magistrate, Cuttack, on the date the case was transferred to the Trying Magistrate, that is, on 28-4-1952, had transmitted the letter to the Trying Magistrate, notice also was issued to Sri Patnaik to show cause why he should not be suitably dealt with according to law for contempt of Court and notice was issued also giving Sri Das a fresh opportunity to produce further explanation, If he so desires.

3. The written explanation, submitted by Sri Nanda, is to the effect that, he being the Superintendent of Police, Enforcement, and Ex-officio Deputy Secretary

to Government, Supply Department, and opp. party 1, Sri Das, being the District Magistrate of Cuttack, he had written the demi-official letter to the District Magistrate, who is the Head of the Criminal as well as Civil Supplies Administration of the District, in due course of discharge of his official duties as Superintendent of Police, Enforcement, for the state. Under Book Circular no. 6 of the Government of Orissa, Home Department, Notification No. 2616-A, the District Magistrate should not concern himself with Court work, whether Criminal or Revenue or Miscellaneous and that he must have time fully to carry out the functions laid down for him in connexion with the execution of Post War Development plans in his District, general matter relating to law and orders,, Civil Supplies &c.

The letter was, therefore, written with the full knowledge and belief that he was also not to try the case. It was simply meant to expedite its hearing. He (Sri Nanda) has also referred to Rule 19, Orissa Police Manual, that the Superintendent of Police is required to remain in touch and in constant personal communication with the District Magistrate whenever possible. It is also a-part of his duty to keep the District Magistrate fully informed of all matters coming to his knowledge affecting the peace of the District, The D. O. letter was never meant to be transmitted to the Trying Magistrate, and, as such, it was never meant to affect the fair trial of the case in anyway whatsoever.

4. Sri Das, in his two explanations, submits that he had no knowledge at the time when he made the endorsement on 5-4-1952, that the case had already been taken cognisance of by the Sub-divisional Magistrate on 29-3-1952. According to the distribution of work made under the rules, cognisance of criminal cases is not taken by the District Magistrate but by the Sub-divisional Magistrate, and, later, when the accused appears, the Sub-divisional Magistrate generally transfers the case to some Magistrate competent to try it; he, in usual course of routine business, made the endorsement "Show this to S. D. M. Sadar for needful"; he never intended that the D. O. letter should be forwarded to the Trying Magistrate; and that he had absolutely no intention to interfere with the fair trial of the case by ordering the letter to be shown to the Sub-divisional Magistrate. His. only intention was that the hearing might be expedited.

5. Sri S. N. Patnaik, in his explanation, submits that he was in charge of the current duties of the Sub-divisional Magistrate on 9-4-1952 and he made the endorsement on the letter on the said date. He was also in charge of the current duties of the Sub-divisional Magistrate on 28-4-1952 and. transferred the case to Sri Murty, Magistrate, for favour of disposal according to law. He also forwarded that D. O. letter with the remark "To Trying Magistrate for needful". This, as he states, he did in due course as the District Magistrate had ordered "Show this to S. D. M. for needful". By this endorsement, he explains, he only meant speedy disposal of the case, but he had never meant to influence the fair trial of the case.

6. Taking up the case of Sri Nanda first, we find that it was a D. O. letter ordinarily meant as "confidential" even though there was no endorsement on the

letter as "confidential". We are disposed, to take it that he had never meant that the letter would be transmitted to the Trying Magistrate.

From Book Circular No. 6 of the Government of Orissa, Home Department, Notification No. 2616-A, it transpires that the District Magistrate should not concern himself with Court work and that he must have time fully to carry out the functions of Post War Development plans in his District &c. Sri Nanda could have fairly expected that the District Magistrate was not to take cognisance of the case and was not to try it himself. Further, as it appears from Rule 19, Orissa Police Manual, that it is practically a part of his duty to be in constant touch with the District Magistrate who is the Head of the Criminal Administration of the District and of the civil Supplies Department, he would be writing this letter in due course of discharge of his official duties. We will, therefore, accept the explanation submitted by Sri Nanda and drop the proceedings against him.

7. But the case of Sri Das and Sri Patnaik stands on a different footing. The passage in the letter "This is a spectacular case in which a large quantity of clothes was hoarded by the accused dealer (a Marwari merchant) by fabricating a false account of sale", in our opinion, has a substantial tendency to interfere with the fair trial of the case, specially when the opinion of a very responsible and superior officer "that the accused has fabricated a false account of sale" reaches the Magistrate trying the case.

8. The explanation, submitted by Sri Das and Sri Patnaik, that they were not at all actuated by any motive or intention to impede the fair trial of the case and that their only intention was that the trying Magistrate should expedite the hearing, are not very material for the purpose of deciding the present case inasmuch as the position of law is very well settled in India that, for contempt proceedings, the intention or motive of the contemner is not essential if really the writing has a tendency, or, in other words, is calculated to impede the fair trial of the case.

9. I would first refer to a passage at p. 91 of Oswald on Contempt (3rd Edn.). The passage runs thus:

"All publications which offend against the dignity of the Court, or are calculated to prejudice the course of justice, will constitute contempt. Offences of this nature are of three kinds --namely, those which (1) scandalise the court; or (2) abuse the parties concerned in causes there; or (3) prejudice mankind against persons before the cause is heard. Under the first head fall libels on the integrity of the Court, its Judges, officers, or proceedings; under the second and third heads anything which tends to excite prejudice against the parties, or their litigation, while it is pending."

It appears from this that the writings, which are calculated to prejudice the Court of Justice, will constitute contempt. An intention is not an essential part of it. The matter stands more fully discussed, after review of many decisions of Indian High Courts, by V.G. Ramachandran, in his Book on Contempt of Court. At page

411, he says:

"Good motive or intention for a publication which is in Contempt of Court does in no way purge the contempt. The test is not if one intended to prejudice the case but if the words themselves tend to interfere with the due course of justice and calculated to prejudice the public or the " Court."

He has, for this proposition, very much relied upon a decision of Mr. Justice Dawar of Bombay High Court -- "In re Claridge 13 Cri LJ 461 (Bom) (A). We also get the same view expressed in the case of -- Demibai Gengji Sojpal Vs. Rowji Sojpal and Others And In Re: Cooverji Keshavji Shah, . Wadia J., in that case, held that the intention of the writer might often be of secondary importance, that the question was always what would be the effect of the articles, if they would tend to distract and interfere with due and proper course of administration of justice. The same view also has been taken in the two Full Bench cases we will cite in the next point.

10. We do not think it necessary to discuss the matter any further and take it to be a settled position of law in India in view of the fact that Mr. P. V. B. Rao concedes before us that the intention to impede fair trial of the case is not essential if the writing is likely, or has a tendency, to so interfere.

11. Mr. Rao strongly urges that Sri Das has committed no offence inasmuch as he had no knowledge of the pendency of the case which is essential for proceedings in contempt. We are definitely of the view that this position of law is not acceptable. If a person making a publication, or responsible for the act, which is likely to interfere with the fair trial of the case, is aware that a proceeding is imminent, then the offence is complete and it is not essential that the case must be pending. A passage in the case of -- "Rex v. Parke", (1903) 2 KB 432 (C) is very much telling in this connexion. At page 437, Wills J. observes:

"It is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do when the stream has ceased."

12. This position of law was for examination in two Full Bench decisions in India reported in --"Tuljaram Rao v. Governor of Reserve Bank of India", AIR 1939 Mad 257 (D) and In re -- "Subral manyan Editor, Tribune", AIR 1943 Lah 329 (E). Leach, C. J. in AIR 1939 Mad 257 (D), observes:

"To comment on a case which is sub-judice or to suggest that the Court should take a certain course in respect of a matter before it undoubtedly constitutes contempt and honesty of motive cannot remove it from this category.....

The criterion is not whether the Court will be influenced, but whether the action complained of is calculated to prejudice the course of justice."

His Lordship, relying upon the English case, categorically observes:

"Similarly, to comment on a case which is about to come before the Court with knowledge of the fact is just as much a contempt as comment on a case actually

launched."

The matter was more fully discussed and the opinion was more clearly expressed by Harries, C. J. in the Lahore case, referred to above. The pertinent observations are:

"In the class of cases of contempt of Court where anything is done which is calculated to interfere with the due course of justice or is likely to prejudice the public for or against a party the essence of the matter is the tendency to interfere with the due course of justice..... The offence of contempt may be committed even if there is no proceeding or cause actually pending provided that such a proceeding or cause is imminent and the writer of the offending publication either knew it to be imminent or should have known that it was imminent. The question is discussed by Lord Hewart C.J. in --"Rex v. Daily Mirror (Editor)", (1927) 1 KB 845 at p 851 (F):

"We are not called upon to consider the question whether there may be contempt of Court when proceedings are imminent but have not yet been launched. In the present case the question did not arise, for there was a charge and there had been an arrest, and proceedings, therefore, had begun. Some day that question may have to be decided, and for the moment I will only refer to a passage in the judgment of the Court, consisting of Lord Alverstone C. J., Wills & Channel JJ., delivered by Wills J. in -- "(1903) 2 KB 432 at p 437 (C): Great stress has been laid by Mr. Danckwerts upon an expression which has been used in the judgments upon questions of this kind -- that the remedy exists when there is a cause pending in the Court. We think undue importance has been attached to it. It is true that in very nearly all the cases which have arisen, there has been a cause actually begun, so that the expression, quite natural under the circumstances, accentuates the fact, not that the case has been begun, but that it is not at an end. That is the cardinal consideration. It is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do so when the stream has ceased."

13. The point again came up for discussion in the case of -- Emperor Vs. J. Choudhury and Others, . Their Lordships, in that case, after discussing the position, did not express their opinion inasmuch as it was not necessary for them to dispose of the matter. Respectfully agreeing with the two Full Bench decisions, referred to above we are of the view that pendency of proceedings is not essential if the proceedings are imminent to the knowledge of the contemner.

14. The letter itself shows that the prosecution report is being sent herewith and there is a request for speedy trial of the spectacular case. From this, it is absolutely clear that Sri Das must have the knowledge that the proceedings were, at least, imminent even though, in fact, he had not till then known that the proceedings were pending, while, in fact, the case had been taken cognisance of by the Sub-divisional Magistrate since 29-3-1952.

15. Mr. P.V.B. Rao contends that, according to the usual practice, the Sub-

divisional Magistrate is simply to transfer and does not ordinarily try cases; as such, it cannot be said, according to him, that the District Magistrate was intending that the contents of the letter should reach the Magistrate, who was put in charge of the case for trial. It is well known here that the Sub-divisional Magistrate, Cuttack, does, in fact, try cases after he finishes his day's work of taking cognisance and transferring cases, and specially when a case is of some importance. The District Magistrate, therefore, ought to expect that the Sub-divisional Magistrate is likely to try this case. Furthermore, as it appears from the contents of the letter, the District Magistrate ought to have expected that the cognisance had not till then been taken of the case & this letter is very likely to influence the Sub-divisional Magistrate in taking cognisance of the case, which act is a judicial act, and, as appears from the provisions of Section 204, Criminal P. C., is discretionary with the Sub-divisional Magistrate.

Mr. Rao contends, in any view of the case, while Sri Das had not the intention of influencing the trial of the case in any manner whatsoever, it was after all a careless act on his part to have transmitted the letter to the Sub-divisional Magistrate with the endorsement "show this to S. D. M. for needful", and that he was not then aware of the far reaching effect of the contents of the letter. While we appreciate the position that the District Magistrate had to pay attention to the multifarious duties arising during the course of his functions as the Executive Head of the District, it is not possible for us to ignore his responsibilities of paying adequate attention and care in the discharge of his functions as the Head of the Judicial Administration of criminal cases of the District. He, being a very experienced officer, must realise that any lapse on his part, in paying due attention to the daily duties in that capacity, may lead to serious complications and repercussions, viewed from the higher standards of judicial administration.

16. The endorsement, "show this to S. D. M. for needful" on a letter with the contents that the case is a spectacular one in which large quantities of clothes were hoarded by the accused dealer (a Marwari merchant), by fabricating a false account of sale, of course with a request for speedy trial may well mean to the Trying Magistrate that the case ought to end in conviction.

17. The act of Sri Patnaik, who was in charge of the current duties of the Sub Divisional Magistrate on 28-4-1952, in transmitting this letter to the trying Magistrate, while he was on that very day transferring the case with an endorsement "To Trying Magistrate for needful" is more serious. In usual course, he must have read the letter, and, as is expected, he ought to have realised the implications of the contents and the influence it might exert upon the Magistrate before whom the accused, as recognised by all civilised jurisprudence, is certainly entitled to the fairest trial in a perfectly unbiased atmosphere.

18. I am, therefore, definitely of the view that the letter expressing the opinion of a superior Officer of the position of the Deputy Secretary to the Government (Enforcement) of Orissa that it is a spectacular case in which a large quantity of clothes was hoarded by the accused by fabricating a false account of sale, with

the endorsement of the District Magistrate "Show this to S. D. M. Sadar for needful", and further containing similar endorsement of the Sub-divisional Magistrate, when it reaches the Trying Magistrate, is bound to embarrass him and has a definite tendency of seriously affecting the fair trial of the case. The contemner No. 1, in having forwarded this letter to the Sub-divisional Magistrate when it is manifest from the contents of the letter that the filing of the case was at least imminent if cognisance had not already been taken with the endorsement, as quoted above, knowing that the Sub-divisional Magistrate was to exercise a judicial discretion u/s 204, Criminal P. C., in taking cognisance of the case and that it is quite likely that the Sub-divisional Magistrate may himself try the case, "has undoubtedly committed the offence of contempt of Court."

19. The contemner No. 3, Sri S. N. Patnaib, is also guilty of the offence of contempt of Court in having forwarded this letter to the Trying Magistrate simultaneously while transferring the case for trial.

20. This is not the first instance of its kind. We had had the sad experience of several cases during the recent years with such attempt at extra-judicial interference with the administration of justice. This Court had to issue General Letter No. 1 of 1949 (Criminal), dated 26-4-49 giving directions against any such extra-judicial interference. The Home Department of the Government also had issued letter dated 24-8-50 with similar directions. But in spite of our repeated warnings and directions, if such an act comes to our notice which has a definite tendency of interfering with the fair trial, we are definitely of the view that if we do not take any serious notice of such an act we would be failing in our duties if we do not maintain an atmosphere of complete assurance to the public of the State of a fully unbiased and fair trial of the case free from any extra-judicial interference whatsoever. I, therefore, entirely agree with the order which is being passed by My Lord the Chief Justice.

Jagannadhadas, C.J.

21. The facts of the case have been fully set out in the judgment of my learned brother, who has also given in extenso the contents of the letter which is alleged to constitute contempt and has summarised the gist of the explanation furnished by the three alleged contemnors. It is, therefore, unnecessary to repeat the same. There can be no reasonable doubt that the communication of this letter to the Magistrate who was simultaneously being placed in charge of the then pending criminal case for trial thereof constitutes serious contempt of Court. As the order-sheet in the Criminal case, filed before us, shows that cognizance of the case was taken by the Sub-Divisional Magistrate, Shri K.C. Das, on 29-3-1952, on the report of the Supervisor of Supplies, Enforcement Department, and that on that very day, the summonses to the accused therein were issued for 28-4-1952. It also appears from the order-sheet that on 28-4-1952, the accused persons appeared in Court and that the third contemner Shri S. N. Patnaik, who was in charge on that day of the current duties of the S. D. M., made over the case to Shri C. V. Murty, Magistrate, 1st class, for disposal

according to law. On that very day, he also forwarded to the same Magistrate the letter in question with the endorsement "to trying Magistrate for needful".

22. The mischief of the letter arises from the statement therein that "this is a spectacular case in which large quantity of clothes was hoarded by the accused dealer (a Marwari Merchant), by fabricating false accounts of the sale." Here are two categorical assertions as of fact, viz., (1) that large quantity of clothes was hoarded, and (2) that the modus operandi was the fabrication of false accounts for the sale. Obviously, these two are issues of fact involved in the very case which was sent up to the 1st class Magistrate Shri C. V. Murty, for trial. A communication, therefore, of this letter to him through the channel of superior higher authorities, to whom in his executive capacity he is subordinate, is a course which has the necessary tendency to embarrass and hamper the trying Magistrate in the free and unbiased exercise of his judicial function.

23. Having regard to the contents of the letter, therefore, it is quite clear that the communication thereof to the trial Magistrate at the very time when the case was to be taken up constitutes a clear contempt of Court. The only question is who out of the three alleged contemnors can be said to have been guilty of the contempt.

24. As regards the second alleged contemner, Shri S. Nanda, Deputy Secretary to the Government, Enforcement Department, I am prepared to accept his explanation that in view of the Book Circular No. 5 of the Government of Orissa, Home Department, marked Ext. A he addressed the letter to the District Magistrate not with reference to his judicial capacity but with reference to his executive capacity and in order to convey the request for a speedy trial having regard to the circumstances. But I am not quite satisfied that it was proper for him to have made the request to the District Magistrate for intimating the result.

In the context of the previous contents of the letter and the statement that it was a "spectacular case" it might well be taken to convey a hint that the District Magistrate is to keep an eye on the result of the case, though ostensibly, it may pass off as a routine matter, having regard to what he states to be his normal duty to keep in touch with the District Magistrate with reference to his branch of the work. Even the request for a speedy trial emanating from a Deputy Secretary to the Government to the District Magistrate and intended to be communicated to the trial Magistrate, might well be a source of serious embarrassment to the trial Magistrate and affect the judicial discretion that he may be called upon to exercise when one or other of the parties to the case feel the necessity to ask for adjournments.

The proper course to adopt in such situations where a speedy trial was called for, is to instruct, the prosecutor to apply in Court openly and formally, rather than to move through the executive machinery. This has been repeatedly pointed out by this Court. On the whole, however, since so far as the main portion of the letter, viz., the intimation of the opinion as regards the merits of the case are

concerned, there is nothing to show that Sri Nanda wanted or knew it to be likely that it would be communicated as such to the trying Magistrate, I would give him the benefit of doubt and agree that the proceedings against him should be dropped, and it is ordered accordingly.

25. As regards the first & the third alleged contemnors, the case stands on a different footing. The third alleged contemnor is clearly guilty of contempt of Court in forwarding the letter in question to the trial Magistrate. He should have realised that the contents of the letter have a clear tendency seriously to hamper the judicial function of the Magistrate who was to try the case, inasmuch as it conveys the expression of opinion of the Deputy Secretary of the Government as to the alleged truth of the case, and as to the alleged false *modus operandi* for the commission of the offence. The case of the alleged first contemnor the District Magistrate, is sought to be distinguished on the ground that what he did, was only to forward the letter to the Sub-Divisional Magistrate, with the endorsement "for needful" and that it was thereby only intended that the Sub-Divisional Magistrate, who was not ordinarily expected to try the case, should bear the request as to speedy trial in mind, and transfer the case to a Magistrate whose file would not be heavy and who would be able to dispose of the case expeditiously.

But as pointed out by my learned brother, it is the Sub-Divisional Magistrate that takes cognizance of a case and exercises the preliminary function of summoning the accused to appear as, in fact, he has done in this case (*vide* the ordersheet). Taking cognizance is not a mere routine or ministerial function. Section 204, Cr. P. C., shows that the Magistrate who takes cognizance of an offence is to issue summonses to the accused only if, in his opinion, there is sufficient ground for proceeding. He, therefore, exercises a judicial function even at that stage. As pointed out in -- "*Boywalla, J. D. v. Sorab Rustomji Engineer*", AIR 1941 Bom 294 at p. 295 (H), the wording of Section 204, Cr. P. C., seems to suggest that there may be a case in which a Magistrate has taken cognizance, but in which, in his opinion, there "is no sufficient ground for proceeding. It seems to follow by necessary implication that the Magistrate in such a case has the power to discharge the accused. If this view be correct --and I am respectfully inclined to agree with it -- it is quite clear that the communication of this letter even to the Sub-Divisional Magistrate himself with the knowledge that in the ordinary course he is at least bound to take cognizance clearly constitutes contempt of Court.

26. Both the District Magistrate contemnor No. 1 and the Sub-Divisional Magistrate, contemnor No. 3 justify their action by suggesting that they forwarded the letter sent by the Deputy Secretary to the Government to the trial Magistrate, as a routine measure, in order to convey the request of the Deputy Secretary for ensuring the speedy trial. They assert that they had no intention of prejudicing the fair trial of the case on its merits. But, as pointed out by my learned brother, it is well settled that it is the clear tendency of the letter and not the intention with which the sender has sent it, that is the determining criterion

in such cases. Some further question has been raised that the District Magistrate was not aware at the time that the case was already taken cognizance of by the Sub-Divisional Magistrate. But this clearly is also immaterial as shown by my learned brother. I have, therefore, no hesitation in agreeing with my learned brother in adjudging both the District Magistrate, contemner No. 1 and the Sub-Divisional Magistrate, contemner No. 3, as being guilty of the offence of contempt of Court in respect of the criminal proceeding then pending or at least known to be imminent.

27. The only question that remains for consideration is, as to the nature of the punishment to be awarded. We are prepared to accept the statements of both the 1st and the 3rd opposite parties that they had no intention of prejudicing the fair trial of the case. But that cannot, by itself, be an extenuating circumstance. This is not the first instance of the kind that has come to the notice of this Court. In "Original Cr. Misc. case Nos. 3 and 5 of 1951 (Ori) (I)", this Court had occasion to draw up proceedings in contempt against the then District Magistrate of Cuttack, and then Civil Supplies Officer, Cuttack, in connection with (1) a letter dated 24-2-51 addressed by the District Magistrate, Cuttack, to the Sub-Divisional Magistrate, Athagarh, enclosing a complaint by the Assistant Civil Supplies Officer, Cuttack, for prosecution of an accused, and (2) another letter dated 19-3-51, addressed by the Civil Supplies Officer to the same Sub-Divisional Magistrate in connection with the same case. This Court while finding that these letters constituted contempt of Court, accepted the assurance of the respective contemnors that they had no intention to prejudice the course of fair trial, and in view of the apology tendered by them, directed the dropping of the proceedings by its order dated 1-8-51. (It may be noticed that in the present case before us any apology is conspicuous by its absence).

Some other instances of the kind have come up to the notice of the Court on its administrative side. In the year 1949, it was brought to the notice of this Court by the judgment of the Additional Sessions Judge, Gangam Nayagarh, dated 14-5-1949, in Cr. Misc. Case No. 20/49 that the Superintendent of Police, Puri, wrote a letter to the District Magistrate, while the criminal case was still pending in the investigation stage on the question whether the bail already granted to the accused was or was not to be cancelled on an application on that behalf. That letter stated as follows: "Under the circumstances, I request you to give necessary instructions to the S. D. M. to cancel the bail-bonds of the accused." On this, the judicial peskar of the District Magistrate put up a "note that the trial Magistrate may be informed to do the needful." The additional District Magistrate appears to have passed on that letter to the trial Magistrate with the order "Yes". This matter was brought to the notice of the Court on its administrative side, but it being one of the earliest cases in this Court of such extra-judicial interference with the pending magisterial proceedings, this Court did not initiate any contempt proceedings but thought it sufficient to issue a General Letter No. 1 of 1949 (Criminal dated 26-4-1949) drawing the attention of the District Magistrates in the State to the position which arises in such cases, for their

future guidance.

That position was clarified there in the following terms:

"Any extra-judicial interference whatsoever directed towards influencing the manner of disposal of a pending case amounts to serious contempt of Court. A Court can be approached in one way only, that is, by a judicial application in proper form. Any instance of approach with reference to a pending case in any other manner must be immediately Reported to the High Court."

It would appear that thereupon the Government also in the Home Department letter dated 24-8-1950, drew the attention of the Magistrate to the General Letter No. 1 of 1949 (Criminal) of this Court above referred to, and instructed that it should be duly observed. Once again so recently as in June 1952, the Sub-Divisional Officer, P. W. D., Gangpur, Sub-Division, wrote a letter to the 2nd class Magistrate, Panposh, Sundergarh, about a case relating to theft of some Government Telephone Wire during the pendency of that case.

This matter was brought to the notice of this Court on the administrative side, and once again this Court did not take notice of it to the extent of initiating proceedings in contempt. The Court contented itself with bringing the same to the notice of the State Government. If, in spite of such repeated instructions from the Court and of a previous instance when assurances of bona fide intention and apology were accepted, once again similar instances come to the notice of the Court, this Court would be failing in its responsibility towards the criminal judicial administration of the State, if it took such instances lightly and dropped the proceedings without serious notice or merely accepted the assertion of bona fides and of absence of any deliberate intention. Indeed the very absence of deliberate intention pleaded which means the absence of deliberation, is the most insidious and disquieting feature in cases of this kind, and only shows a deplorable mental attitude on the part of the Magistrates who are responsible for such instances. They do not seem to realise that whenever in the course of their official duties they have to send a communication to a subordinate Magistrate relating to a criminal case pending before him, it is their primary responsibility to make sure that nothing is conveyed which may have a tendency to embarrass such subordinate Magistrate in the discharge of any part of his judicial function.

This Court realises that so long as there is a common machinery combining both the magisterial and executive functions the position of officers in that dual situation is one of very great difficulty. But this difficulty itself calls for greater vigilance on their part and on the part of the Government so long as the dualism is permitted to continue. Neither the existence of this dualism, nor the inherent difficulty of an officer placed in that situation, can be taken to be an excuse or extenuation. On the other hand, it is a stronger reason for expecting from the executive officers concerned greater discrimination and care, in such cases, and for the Court to take effective steps to take serious notice of such instances so as to prevent the recurrence thereof.

28. In the present case, we recognize that unlike in some of the instances previously noticed the letter concerned does not contain any direct instructions to the trial Magistrate as to any part of the judicial function which he has to discharge, but as already pointed out, it has the clear tendency seriously to affect the impartial trial of the case. There has been some attempt to show that the trial Magistrate was not in fact affected by the result in the discharge of his judicial function, but that is absolutely an irrelevant consideration in such cases. In the circumstances, above noticed, we consider that we should give the contemnors an opportunity of making their representation as regards the sentence to be awarded.

29. We accordingly adjudge both opposite party No. 1 and No. 3 guilty of contempt of Court, and have decided to direct them to appear in person before this Court to submit what they have to represent as regards the nature of the punishment to be awarded and to receive the judgment of this Court in so far as the sentences are concerned.

30. This will be posted on the 9th instant, for personal appearance and for passing of the sentence. Issue notices for personal appearance at once. (On appearance of party No, 1 and party No. 3 on 9-2-1953 the Court ordered the following:)

Jagannadhadas, C.J.

31. Mr. Das and Mr. Patnaik, the Court had a judged both of you as having been guilty of contempt. The considerations which have led us to the conclusion that a serious view thereof must be taken, have been fully set out in our judgment delivered last week. The Court will be failing in its duty towards the subordinate Courts, if it did not strive effectively to prevent the pollution of the stream of justice in those courts. We have accordingly thought it right to call upon you to explain why you should not be punished by a sentence of imprisonment. We have heard the Advocate-General on your behalf, & we have heard both of you personally. We do not find, however, that any adequate expression of regret has been expressed either by the Advocate-General on your behalf or by yourself. You have both only said in effect that if the law finds you to be guilty of contempt, you bow down to the judgment of the Court. We do not consider that to be any adequate expression of apology.

In the circumstances, we have felt constrained to take a serious view of what has been done. We have accepted your explanation that it was unintentional and in the course we propose to take, we do not wish to be understood as finding any of you guilty of any personal blemish or moral turpitude. The serious view we take, however, is due to our feeling that the gravity of such an offence is not sufficiently appreciated in general. In order, therefore, to quicken the conscience and ensure the diligence of persons to whose lot it falls to discharge such functions but without sufficient deliberation, a sentence of imprisonment appears to be the only appropriate course. We wish, however, to make it a token

punishment in this case. Hence we sentence each of you to simple imprisonment till the rising of the Court, and we rise now.

Mohapatra, J.

32. I agree.