
(1954) 04 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition No. 22 of 1953

State of Himachal Pradesh

APPELLANT

Vs

Sri Raghunandan Lal Gupta

RESPONDENT

Date of Decision : 14-04-1954

Acts Referred:

Contempt of Courts Act, 1971 — Section 3

Citation : AIR 1954 HP 70

Hon'ble Judges : Ramabhadran, J.C.

Bench : Single Bench

Advocate : B. Sita Ram, for the Appellant; Party in Person, for the Respondent

Judgement

Ramabhadran, J.C.

1. This is a petition u/s 3 of the Contempt of Courts Act, wherein I am requested to take action under that Act, against the respondent in respect of certain passages in his speech allegedly made at a public meeting held at the Bara Chowk of Nahan Bazaar on 22-9-1953. The facts giving rise to this petition may be stated briefly. On 6-5-1953, three persons were murdered at village Sanog, ilaqa Pajhota, P. S. Pachhad, district Nahan. As a result of police investigation, one Devnu was sent up by the police charged u/s 302, I. P. C. There was another case under Sections 194 and 201, I. P. C., against one Chunchu Ram and seven others. The latter challan was filed in the Court of Sri K. R. Chandel, Magistrate first class, Nahan (exercising Section 30 powers) on 21-9-1953, while the former case was filed in his Court three days later. It is alleged that on 22-9-1953, during the course of public meeting held at Bara Chowk of Nahan Bazaar, respondent, inter alia, uttered the following words:

" "Raja ke raj men insaf ki tawaqua ho sakti thi ab bilkul nahan. Pajhota qatal case men police ne cha adami Kanait party ke giriftar keya aur jhuti sahadat kalamband karne ki koshisis ki gai magar kamyabi ne hui. Ab jin ke qatal huai unke hi kuch adami giriftar ker liai hain. Aurtaun ki bezzati ker ke marpeet ker

aur dhamkakar jis tareh unke bayan kalamband police karwa rahi hai oh sarmnak hai".

It is urged in the petition that by uttering these words the respondent wanted to prejudice the mind of the Court and of the general public against the prosecution and in favour of the accused persons and as such he is guilty of contempt.

2. Notice was issued to the respondent, who filed a reply contesting the petition on various grounds. "Inter alia", he contended (a) the Government Advocate was not competent to file the petition; (b) the petition was filed after considerable delay and therefore should be thrown out. (c) The respondent did not utter the words attributed to him. On the other hand, the words uttered by him were

" "hal hi ka waqa hai ke yek advocate sahib ne kaha ke Himachal men judiciary ka standard riyasat ki judiciary ke standard se bahut low ho gaya hai. Dukh ki bat yeh hai ke hamare M.L.A. sahib Th. Tapendar Singhji jo wahan maujod the, jinohne yeh lafaz apne kano se sune aur jo hamare Himachal ki Legislature ke Legal Adviser khayal kiye jate hain, ne koi tardid nahen ki yeh kahana ke judiciary ka standard gir gaya durust nahen Adalaton ke fasalon ka daromadar gawahan per hai jaise gawah pesh honge, adalaton ne unki sahadat ko chanbinker ke fasale dene hain, isliye litigant parties ka faraz hai ke oh insaf ki garaz ke liye sachchi sahadaten adalaton men pesh keren, Pajhota qatal durghatna men police ne pahile kuch adami Kanaiton ke giriftar keye lagbhag ek mah oh hawalat men rahe, unke khilaf hamari police sahadat paida kerne men kamyab ne ho sakin unko chor diya gaya, ab ek Devnu Mian ko giriftar kiya uske khilaf kuch sahadaton ke bayan zer dafa 164 zabta fauzdari sahib magistrate darza doyam Sarahan se kalamband karaye do tin roz se hamari police ek Mt. Murto ke bayan zer dafa 164 zabta fauzdari kalamband karane ki garaz se uske piche thi, usko tang kiya gaya daraya dhamkaya gaya aaz police uske bayan kalamband karane men kamyab ho gai zer dafa 164 zabta fauzdari, police ke istareh bayan kalamband karana, khilaf qanun hai zb police istareh ki khilaf qanun karrawaiyan kere, to adalaton ka ismen kya dosh ho sakta hai".

The respondent urged he had no intention to affect the administration of justice, or to prejudice the Pajhota case one way or the other. The respondent claimed he acted "bona fide" and without improper motive. In the end, the respondent tendered an unqualified apology and threw himself at the mercy of this Court.

3. The following points arise for determination in this case-

- (1) Whether this petition is competent?
- (2) Whether the respondent did utter the words attributed to him?
- (3) If so, is he guilty of contempt?
- (4) In case issue No. 3 is found against him, what action should be taken against him?

4. FINDINGS: Issue No. 1--The respondent argued that the Government

Advocate had no "locus standi" to make this petition, and, if at all the petition was moved, it should have been made by the Magistrate first class Nahan. Reliance was placed on--" Amulya Chandra Bhaduri Vs. Satish Chandra Giri and Others, where a Division Bench of that High Court observed as follows:

"In cases of contempt of Court in which the mofussil Court has no jurisdiction the correct procedure in ordinary cases is to make an application to the High Court direct and not an application to the mofussil Court and then reference by it to the High Court."

This ruling, in my opinion, will not help the respondent. In the present case, the Government Advocate moved the petition, not before the Magistrate, first class, Nahan, but before this Court. The Contempt of Courts Act, 1952, does not contain any provision which would support the view of the respondent, i.e. to the effect that a Government Advocate cannot bring an alleged contempt to the notice of the High Court. All that is necessary is that the facts, constituting a contempt, should be brought to the notice of the High Court and, therefore, this plea must fail.

In the second place, it was urged that the petition has been made after undue delay. The speech complained of was made on 22-9-1953 and the present petition was filed on 5-11-1953. Respondent urged that the petition should be dismissed on grounds of laches. He cited--"Vasan K. S. v. Arthur H. E. Taylor" AIR 1953 Mys 103 (B). There, the speech complained of was made on 27-12-1951, while the petition was made to Court on 24-10-52 and no explanation was offered for the long delay in filing the petition. In those circumstances, their Lordships of the Mysore High Court held that it was an additional ground for not proceeding further in the matter. Here, the speech complained of was made on 22-9-1953. The Government Advocate has filed an affidavit to the effect that he received necessary instructions from the District Magistrate, Nahan, on 9-10-1953, while he was on his way to Chamba to fetch his luggage. The Government Advocate returned to Nahan on 24-10-1953 from Chamba and Simla. After consulting the local officers, he filed the petition before the Court. There has been no undue delay in lodging the petition. I, therefore, overrule this contention also.

5. ISSUE NO. 2: The respondent admits having been present in the meeting and having made a speech. He has further admitted, that he made a reference to alleged irregularities and illegalities committed by the police during investigation of cases generally. In that connection, he also referred to the recording of statements of witnesses in the Pajhota murder case u/s 164, Criminal P. C. Admittedly, the respondent attributed the lack of confidence in the public to such "tactics." We have, therefore, to see whether the version given in the petition is correct, or the one set up by the respondent. To support the petition, there is not only the affidavit of Sri V. K. Ahluwalia, S. I. Nahan, who was present at the meeting and took down notes of speeches made by various speakers at the meeting. The original notes have been filed in Court. There is also another affidavit by Sri

Janardhan Singh, a clerk in the office of the Conservator of Forests, Nahan. According to this deponent also, the respondent had uttered the words attributed to him. He has refuted the statement of the respondent to the effect that he had advised the litigant public to produce only true evidence before Courts. The respondent's version rests on his sole testimony. There is no corroboration. I am, therefore, obliged to find that the respondent did utter the words attributed to him.

6. ISSUE NO. 3 : It was argued by the respondent that on the day the speech was made, no case was pending and, therefore, there could be no contempt. Reliance was placed on-- Rex Vs. B.S. Nayyar, where a Division Bench of that High Court observed:

"Courts are not concerned with contempt of any authority except Courts of law, in the exercise of their judicial functions. Moreover, no proceedings should be taken for contempt, even though a Judge or a judicial act is criticized, except in so far as it interferes with the administration, either by shaking public confidence in the Court or in any other manner."

He also cited--"Andre Paul Terence Ambard v. Attorney General of Trinidad Tobago" AIR 1936 PC 141 (D), wherein their Lordships of the Privy Council pointed out:

"Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat it as contempt of Court. In applying the law the Courts should not lose sight of local conditions. But whether the authority and position of an individual Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public Act done in the seat of justice. The path of criticism is a public way: the wrongheaded are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune."

In my view, both these rulings are inapplicable to the facts of this case. As already stated, one challan had been filed in the Court of the Magistrate on 21-9-1953, i.e., a day prior to the day when the speech was made. The other challan was put in two days later. In-- State Vs. Radhagobinda Das and Others, a Division Bench of that High Court pointed out:

"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 (P) is very much telling in this connection. 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".

7. In the present case, as is already pointed out, one case had actually been filed in the Magistrate's Court and another was filed two days later. Dwarka Prasad Agarwal Vs. Krishna Chandra and Others, relied upon by the respondent, does not help the respondent because, there, the case had not actually come to the Magistrate's Court for inquiry and trial when the offending article was published. In--"Mankad Prabodh Chandra v. Pranalal Nanchand" AIR 1954 Kut 2 (H), it was held by Judicial Commissioner's Court, Kutch:

"In contempt cases, for a proceeding to be pending, it is not necessary that an accused should be charge-sheeted or committed for trial. It is enough if he is arrested and is either in custody or released on bail. Emperor Vs. J. Choudhury and Others, Poll.

The reason is that a person who is arrested is in all probability likely to be prosecuted and therefore, though the case may be under police Investigation, it is a case pending. In a case where the petitioner avoids the impending arrest by surrendering himself to the Court and applies for bail, that is tantamount to arrest and custody. But even assuming that by mere surrendering oneself to the Court, it cannot be said that there was a pending case; according to law, knowledge on the part of the person, making objectionable publication, that a case is about to be launched is sufficient to call it a pending case, for the purpose of considering whether contempt of the Court was committed."

A careful perusal of the passage complained of would show that the respondent wanted the audi-ence to believe that the police had caught hold of some innocent persons and were trying to fabricate false evidence against them. In his affidavit, the respondent has alleged that he was not aware that one challan had been filed in Court and the other was about to be filed. According to him, all that he knew was that the police had submitted an incomplete challan in the Court of the Magistrate first class, Nahan, against six persons, that these accused persons had been released after some weeks" detention and the police were re-investigating the case and getting statements of witnesses recorded u/s 164. As was pointed out in--"Hargowandas v. Chimanlal Vadilal", AIR, 1942 Bom 86 (J):

""In contempt of Court proceedings the Court is not concerned with the motives of the writer but is concerned with the effect which the publication is likely to cause."

8. Similarly, in--"Sunnulal v. Yeshwantsingh" AIR 1951 Mad 98 (K), it was held that:

"The gist of the offence does not lie in the intention of the author; the guilt is to be determined from the effect of the article published.

The gravamen of the offence of contempt of Court is any interference or the likelihood of interference with the course of justice. If the flow of the stream of

justice is obstructed for any reason, that obstruction whether resulting from a proper motive or from indifference or from disregard of the consequences or from accidental omission, cannot be excused. Motive of the contemner cannot be considered in determining his guilt."

9. In-- Bijoyananda Patnaik Vs. Balakrushna Kar and Another, it was held by the Orissa High Court that:

"In order to constitute contempt of Court it is not necessary that the Court or an individual Judge should be attacked. The policy of the law is that the public should be protected from attacks.

To constitute a contempt, adverse comment on a party need not refer to the subject-matter of pending proceedings. It is sufficient if it is clear that the comment tends to prejudice the trial of the action."

I may also refer to--"State v. Bhawani Prasad", AIR 1954 Nag 36 (M), where a Division Bench of the Nagpur High Court observed that:

"Where the gist of a news item was that a criminal case pending against a woman was false and that the complainant himself was the real culprit:

Held the publication amounted to contempt of Court."

10. Reference may also be made to-- The State Vs. Ram Briksh Benipuri and Another, where a Division Bench of the Patna High Court observed that:

"Where the inevitable effect of the facts mentioned in the newspaper report would be to incline anybody who reads them to become prejudiced against the accused during the pendency of a criminal proceeding, the publication of the report would amount to contempt of Court."

11. My attention was also invited to-- Umar Ali and Another Vs. Asmat Ali and Others, where a Division Bench of the Calcutta High Court pointed out that:

"One form of contempt which the Court always watches very narrowly is the contempt that takes the form of prejudicing mankind against persons who are on their trial raising an atmosphere of prejudice against them by comment which is addressed to the public at large."

12. In the present case, the effect of the speech was that the audience was likely to be prejudiced,, not against the accused persons awaiting trial but against the prosecution. Under these circumstances, it can be said, not unreasonably, that the effect of the speech would be that the public in general would get the impression that some innocent persons had been unnecessarily dragged before the Court by the police. This would certainly interfere with the due course of justice. Obviously, only the Courts could adjudicate on the guilt of the accused. The result is: I must find that the respondent, by uttering these words, committed contempt.

13. ISSUE NO. 4: The respondent has, very properly, tendered an unqualified

apology and thrown himself at the mercy of the Court. I have no reason to doubt that he is anything but penitent. It seems to me that he was carried away by his feelings. I trust this case will be a lesson to him. The Government Advocate argued that in case the apology was accepted, the respondent should be burdened with costs. Ordinarily, an order about costs in these terms would have followed, but I find that the Government Advocate has adopted the extraordinary procedure of filing his personal affidavit in this case. The respondent would have been within his rights in claiming right of cross-examination. Further, he might have, not without justification, contended that Sri B. Sita Ram could not proceed with arguments, as Government Advocate, after filing a personal affidavit. It must be said to the credit of the respondent that he did not make the latter claim, because, had he done so, an adjournment would have been inevitable and the State would have been put to the necessity of engaging another advocate to conduct this case. This would have meant further expense to the State. By not pressing this point, the respondent has saved the State considerable expenditure. Under these circumstances, I would leave the parties to bear their respective costs.

ORDER

14. The apology tendered by the respondent is accepted and the notice issued to him is discharged. Parties will bear their respective costs of this petition.