

(1964) 02 PAT CK 0002

In the Patna High Court

Case No : Original Criminal Miscellaneous Case No. 9 of 1963

Sukhdeo Thakur and Another

APPELLANT

Vs

J.W.S. Atkin and Another

RESPONDENT

Date of Decision : 17-02-1964

Acts Referred:

Contempt of Courts Act, 1971 — Section 4, 5
Industrial Disputes Act, 1947 — Section 26, 27

Citation : AIR 1964 Patna 368 : (1964) CriLJ 180

Hon'ble Judges : Tarkeshwar Nath, J;H. Mahapatra, J

Bench : Division Bench

Advocate : B.C. Ghose and Radha Raman, for the Appellant; Lal Narain Sinha, G.P. Sahi and Bindabasini Prasad Sinha, for the Respondent

Judgement

Mahapatra, J.—This is an application under Sections 4 and 5 of the Contempt of Courts Act, 1952, on behalf of the petitioners against two officials of the Indian Explosives Ltd., Gomla, in the, district of Hazaribagh. The petitioners are employees in the Indian Explosives Ltd. and have been working as process workers since 1958. On the 17th of May, 1963, the State of Bihar filed a complaint against them and some others u/s 26 of the Industrial Disputes Act in the Court of the Subdivisional Officer, Hazaribagh, on the allegation that they had taken part in an illegal strike on the 11th of May 1963. After taking cognizance, the Sub-divisional Officer transferred the case to a Munsif Magistrate at that place and the case was numbered as Tr. 500 of 1963. Another complaint was also filed against them by the State u/s 27 of the Industrial Disputes Act on the same day and that was transferred to another Munsif Magistrate and registered as Tr. 470 of 1963.

While these two cases were pending, a departmental enquiry was started and the petitioners were called upon to explain in writing why disciplinary action should not be taken against them for their misconduct consisting in their joining an illegal strike and wilfully absenting themselves from work and inciting the

workers to join the same illegal strike. This notice was served upon them on the 28th May 1963. This was also pasted on the notice board of the Company. Dr. K.B. Mathur, Chief Chemist of the Company, who is opposite party No. 2, was appointed Enquiring Officer to investigate into the charges contained in those notices. The petitioners represented before him that any departmental enquiry would prejudice the criminal cases pending against them in the Court of the Magistrate and, therefore, the proceeding of the enquiry should be dropped; but that was not acceded to and the Enquiring Officer examined some witnesses named in the petitions of complaint filed in the Criminal Court. The petitioners also alleged that they were being forced to disclose their defence in this departmental enquiry and the witnesses were influenced to depose against the petitioners in the enquiry also. These acts were bound to prejudice the case in the Criminal Court.

2. In reply, the two contenders stated that the departmental enquiry against the petitioners was started and chargesheets were framed on the 13th and 15th of May 1963. They were served on the petitioners on those days by pasting the same on the doors of the quarters of the petitioners. Copies of those chargesheets were again sent to the petitioners on the 16th of May 1963, by registered post acknowledgment due, but as they were not accepted, again on the 28th of May 1963 postal letters were sent to them enclosing copies of those charge-sheets. The Enquiring Officer concluded taking the evidence by the 27th of June 1963, sometime before the petitioners asked for dropping the proceedings on the ground of prejudice to their criminal trial. They also denied that the petitioners were forced to disclose their defence and asserted that no person, was influenced to depose against them. They also pressed that the departmental enquiry had no concern with any of the matters raised in the criminal case.

3. Learned counsel for the petitioners contended that any departmental enquiry during the pendency of a criminal case or for the matter of that any case in any Court of Law amounts to a contempt of Court inasmuch as it is likely to prejudice the parties and interfere with the due course of justice. This broad proposition can hardly be accepted. 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 rights 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.

If two cases are instituted one in the Criminal Court and the other in the Civil Court, over the same cause, the proceedings in one Court will not amount to contempt of the other Court; that is, because both the Courts have proper jurisdiction to proceed with the cause before them. But in cases of dual fights like that, ordinarily proceedings in one are stayed or can be stayed at the instance of

any of the parties till the other proceedings terminate. Similarly, after a case is brought to Court, any of the parties or anyone on his behalf may enquire into the Incident which is the subject-matter of the case with a view to finding out correct details and the possible witnesses and the line of their evidence. A departmental enquiry may be more or less, of the same nature. Before any such action will amount to contempt of Court, it has to be found to be likely to interfere with the due course of justice. 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. It is, therefore, necessary to carefully examine the allegations about such an offence.

In the present case the enquiry conducted by opposite party No. 2 was not made public. There is at least no allegation that any part of that proceeding was published. The petitioner did not submit any explanation in the enquiry. They did not have to disclose their defence which they can take in the criminal cases. Thus no part of the enquiry was likely to prejudice the petitioners in their trial in the criminal Court in any way, nor did it tend to interfere with or obstruct the proceedings in their trial or to influence the mind of the Magistrate. From the affidavit of the opposite party it appears that charges were framed for the purpose of departmental enquiry on the 13th and 15th of May 1963, and they were served on the petitioners on those days by causing them to be pasted on the doors of their quarters. Thus the enquiry had started earlier than the two criminal cases were instituted on the 17th of May 1963 by the State of Bihar through their Labour Officer, Hazaribagh, under Sections 26 and 27 of the Industrial Disputes Act. The employer did not start those cases.

4. Learned counsel for the petitioners relied upon the case of *The King Vs. Parmanand and Others*, where one of the learned Judges observed that any enquiry with regard to a matter which is sub-judice is bound to interfere with the even and ordinary course of justice. It is a cardinal principle that when a matter is pending before a Court of justice nothing should be done which might interfere with the free course of justice and any attempt on the part of any executive official, however high he may be, to prejudge the merits of a case and to usurp the functions of the Court which has got seisin of the case will be discountenanced as such a practice is fraught with immense danger. If a parallel enquiry can be started, that will open the doors for contempt and impediment in the course of justice. The facts of that case were very much different. On the 18th of May 1947 a first information was laid by the Assistant Store-keeper of Jugselal alleging that 88 bags of rice had disappeared from the Tisco Grain store. The rice was public property and was not due to be sold.

After investigation the police submitted a charge-sheet against six persons for offences under Sections 381, 411 and 120-B, Indian Penal Code, and for an offence under the Hoarding and Profiteering Ordinance. Eventually on the application of the accused, the case was transferred for trial to the Court of Mr. R.K. Lall, a Magistrate of the first class, on the 7th September, 1947, and on the

9th of that month summonses were issued to all the accused who had in the meanwhile been released on bail fixing 20th for trial. On that day (20th September) the Magistrate noted an order in the order-sheet to the effect that in accordance with the Government letter from the Political Department (Police Branch) dated the 17th September 1947, the case was adjourned to the 3rd November 1947. As no further instructions had been received the case was again adjourned to the 15th December 1947 on which date the ordersheet again showed that the record of the case had already been sent to the Deputy Commissioner on the 3rd December 1947. For six months thereafter there was no order in the ordersheet and on the 13th May 1948, the Court noted that the record had been submitted to Government in correction with their application praying to withdraw the case and that record was now received back with a copy of a letter dated the 14th April 1948 and with the Deputy Commissioner's order dated the 3rd May 1948 to the effect that the case against two of "the accused persons (Parmanand and Sham Lal) was ordered to be withdrawn,

The Magistrate further directed summonses to be issued to all accused persons to appear on the 20th May 1948 when effect of the order of withdrawing the case against two accused persons would be given and steps would be taken against the rest of the accused persons. In their application to the! Prime (Chief?) Minister of Bihar two of the accused persons had prayed for stay of the proceedings in the Court of the Sub-divisional Officer and for the entire record to be called for from that Court. Obviously this request was acceded to by the executive authority for the facts disclosed in the case show that the Chief Secretary to the Government of Bihar had issued a letter on the 17th of September 1947 to the Additional Deputy Commissioner of Jamshedpur asking him to get the criminal case adjourned until further orders.

That letter was forwarded to the Sub-divisional Officer with a direction that the case should be adjourned) until further orders. The Sub-divisional Officer in his turn sent that letter to the City Magistrate of Jamshedpur with a request to him to prepare a report by the 23rd as to whether that case was likely to succeed on a careful examination of the police papers submitted in that case. The City Magistrate made his own endorsement to that letter and directed the Bench Clerk of the trying Magistrate to show that letter to Mr. Lall who will please adjourn the case as directed". The result was indefinite adjournment of the criminal trial and submission of records of the case to the Deputy Commissioner. When the instructions, rather orders from the executive Government came for withdrawal of the case against two of the accused persons, the trying Magistrate completely surrendered to that without exercising his" judicial mind and discretion, and on a date (11th June) to which the case was not adjourned, he recorded an order of discharge u/s 494, Criminal Procedure Code, of those two accused persons as the case was withdrawn against them, in this background the High Court was called upon to consider in the case the justifiability and legality of the submission of records by the trying Magistrate to the executive Government, such as, the Sub-divisional Officer, District Magistrate, Deputy Commissioner or

the Commissioner on their requisition and the automatic discharge of the accused persons on instructions from the executive for withdrawal of the case against them. Both the practices were seriously disapproved. Agarwala, C. J. delivered the main judgment and condemned the action of the trying Magistrate as well as of the executive Government. Narayan, J. while agreeing with that referred to the argument of the Advocate General that the Government could order a summary or full-dress enquiry for the purpose of satisfying themselves whether the prosecution was likely to end in conviction or not, and observed that any enquiry with regard to a matter which is sub judice is bound to interfere with the even and ordinary course of justice and once the principle is accepted that the Government is free to hold a separate enquiry, it would be Impossible to impose any limit as to the nature and the scope of such an enquiry.

With regard to the chance of success of the prosecution case against the two accused persons, the Court found from the materials available from the record and other materials placed before them that there was a prima facie case against those two accused persons and the executive officers, who concluded in favour of the withdrawal of the case against those two accused persons were in error. Accordingly the order of discharge of those two persons was quashed and they were put on trial. What the executive Government did in that case was a blatant interference with the actual trial of the case. That would have amounted to contempt of Court of the Magistrate but that was not in issue before the special Bench. The observations of Narayan, J. were to point out the gross objectionable nature of the executive Government's action in that case. In Agarwal, C. J.'s judgment it was made clear that that action was illegal and not supported by any provisions of law or rules. In my view, the observations of Narayan, J. will not assist the petitioners in the present case.

5. Another case was also cited for the petitioners: Pratap Singh and Another Vs. Gurbaksh Singh, . A forester in the Punjab Forest Department came to know that orders had been passed by the State Government directing the Chief Conservator of Forests to recover Rs. 1,136 and odd annas from his salary as there had been a short supply of timber by him to the Ordnance Department. He, Gurbaksh, filed a suit in the Senior Subordinate Judge's Court, Amritsar, for a declaration that, the order of recovery was void and without effect. He also filed a petition under Article 226 of the Constitution which was, however, dismissed by the High Court: When the summonses in the civil suit were served on the State Government, the Under Secretary in the Department of Forest and Animal Husbandry sent a memorandum to the Chief Conservator of Forests drawing the latter's attention to a circular issued by the Chief Secretary in 1953, observing that Gurbaksh had not exhausted the department remedies open to him before going to a Court of law and that, by that he had rendered himself liable to disciplinary action according to that circular.

Following that, the Conservator of Forests, South Circle, was directed for instituting a departmental proceedings of enquiry against Gurbaksh. Chargesheet

was drawn up by another officer who was appointed enquiring officer and 15 days" time was allowed to Gurbaksh to submit his explanation. The Chargesheet showed that Gurbaksh had gone to a Court of law before exhausting all his departmental remedies and that was contrary to official propriety and subversive of good discipline. On this Gurbaksh made an application to the High Court to the effect that the officers concerned had committed contempt of Court inasmuch as the enquiry started amounted to interfering with the legal rights of Gurbaksh Singh to seek his redress in a Court of law and it also amounted to exerting pressure on him with the intent of restraining him from pressing his suit. This was obstruction to the judicial process and interference with the course of justice in respect of the suit which was pending in the Court of the Senior Subordinate Judge, Amritsar.

The High Court found that the officers were guilty of an offence punishable u/s 3 of the Contempt of Courts Act, 1952. But as they were merely endeavouring to comply with the instructions of the Government the High Court thought that the ends of justice would be amply met if they were directed to abandon the departmental proceeding and were warned against complying with the instructions contained in the circular letter of the Government. Against that, the officers came to the Supreme Court in appeal. Their Lordships on a consideration of the facts of that case came to the conclusion that the institution of the departmental proceedings at a time when the suit in the Court of the Senior Subordinate Judge, Amritsar, was pending would be to put pressure) on the respondent to withdraw his suit or face the consequence of a disciplinary action. This in their Lordships' view amounted to contempt of Court as obstructing due process of Justice. Their Lordships observed:

"The question is not whether the action to fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have 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 unmistakable tendency of the proceedings taken against the respondent, then there can be no doubt that in law the appellants have been guilty of contempt of Court, even though they were merely carrying out The-instructions contained in the circular letter."

In the instant case before us the departmental enquiry against the petitioners can never be said to have any effect or coercion on the petitioners to desist from pursuing their case in any Court. The likelihood of obstruction to the due course of justice will amount to contempt, but where there is no such likelihood or tendency, there cannot be any such offence. In the present case I have already observed that there was or has been no such tendency in fact.

6. I may refer here to the case of *Delhi Cloth and General Mills Ltd. v. Kushal Bhan*, AIR 1960 SC 805. A peon employed by the Textile Manufacturing Company committed theft of a cycle of the head clerk of one of the departments of that

Company. The matter was reported to the police and the cycle was recovered. The Company came to know of that incident in October 1957 and thereupon a chargesheet was served on the peon to the effect that he had stolen the cycle and that it had been recovered at Ms instance and that a criminal case was pending against him with the police. He was asked to show cause why he should not be dismissed for this misconduct. An explanation was given by him but he represented that as a criminal case was pending against him in Court, he did not want to produce any defence before the enquiring officer. He did not take any part thereafter in the enquiry, nor answered any question put to him. The Company completed the enquiry and directed dismissal of the peon on account of his misconduct.

Thereupon, an application was made u/s 33(2) of the Industrial Disputes Act by the Company to the Tribunal for approval of the action of dismissal taken against the peon. Before the matter came before the Tribunal the peon had been acquitted by the Criminal Court in April 1958 on the ground that the case against him was not free from doubt. The Tribunal on a perusal of the Judgment refused to approve the order of dismissal of the Company. Thereupon the Company obtained special leave to appeal to the Supreme Court. The main argument on behalf of the Company was that it was not bound to wait for the result of the trial in the criminal Court and that it could and did, hold a fair enquiry against the peon and if he refused to participate in it, the Company could do no more than to complete it in the best way it could do so and come to the conclusion as was possible on the evidence available. For the other side it was argued that on principles of natural justice the employer should wait at least for the decision of the criminal trial before taking disciplinary action. The Supreme Court finally observed:

"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 Court before taking action against an employee We may, however, add that if the case is of a grave nature or 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. The present however is a case of a very simple nature and so the employer cannot be blamed for the course adopted by him."

The appeal was allowed. The order of dismissal passed by the Company was approved. It is true, that case was not under the Contempt of Courts Act and the consideration of the Court was not on that basis, yet the observations quoted above will clearly indicate that an employer has got the right to hold a departmental enquiry about any alleged misconduct of an employee even when any case is pending in any Court relating to that allegation. That is not inconsistent with the principles of natural justice in all cases irrespective of the facts and the points involved in any particular case.

7. Learned counsel for the opposite parties placed before us an unreported Bench decision of the Calcutta High Court, *Mata Prasad Ram v. S. L. Banerjee*, Criminal Misc. Case No. 92 of 1960, D/ 24-114960 (Cal). There the Head Darwan of the Imperial Chemical Industries Company was assaulted by a driver and three darwans employed in the same Company in the night of the 24th June 1960. Following that, the injured Head Darwan made a complaint to an officer of that Company against those four assailants. The Company appointed a board of enquiry consisting of three officers of the Company and called for explanation from the four alleged assailants on a chargesheet. The police also had taken up the investigation of the case against the four assailants. When the enquiry by the Company's three officers proceeded, the alleged assailants represented before them on the 14th July 1960, that the enquiry should be suspended as the police investigation was in progress and the case was likely to come before a Court of law.

The Enquiry Committee did not agree to that and concluded the enquiry *ex parte* and found the four persons concerned guilty whereupon they were punished by the Company, the driver was dismissed and others increment of salary stopped. Following this, they filed a petition in the Calcutta High Court for committal of the three officers of the Company for contempt of Court. The position in law is not different in a case where the case is pending in a Court or where It is likely to come to Court or is in the stage of investigation when a parallel or departmental enquiry is held. The Calcutta High Court held in the above case that by conducting the enquiry, that officers were not guilty of contempt and that enquiry was not likely to prejudice the due process of justice. The learned Judges considered the case of *The King Vs. Parmanand and Others*, and held that the observations of Narayan, J. were on the facts of that case and were not applicable to the facts of the case before the Calcutta High Court This decision is on all fours with the case before us. Another case that supports my view is *Jhulan Singh v. D. C. Ghatak*, AIR 1952 Cal 386.

8. I am, therefore, of the view that in the instant case the enquiry complained of did not amount to any contempt of Court of the Magistrate in which the cases under Sections 26 and 27 of the Industrial Disputes Act were pending against the petitioners.

9. The rule is, therefore, discharged. There will be no order for costs of this Court.
Tarkeshwar Nath, J.

10. I agree.