
(1967) 08 AHC CK 0030
In the Allahabad High Court

Tribeni Singh

APPELLANT

Vs

Dr. Radha Raman Agarwal

RESPONDENT

Date of Decision : 03-08-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 468

Citation : (1968) 2 LLJ 154

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.N. Takru, J.—This is a petition by Tribeni Singh praying that the opposite party be punished for committing contempt of Court.

2. The allegations on which this petition is based are as follows.

3. The petitioner was appointed as assistant agricultural inspector on 27 August 1958. On 12 July 1964 he was served with a suspension order dated 4 July 1962. Later the same day he was served with a chargesheet dated 11 July 1962 in which he was accused of having dishonestly misappropriated huge quantities of gram belonging to the Government. The petitioner submitted his reply on 26 August 1962 denying the charge leveled against him whereupon a departmental enquiry was started against him. During the pendency of that enquiry, on 20 April 1965, a first information report was also lodged by the District Agricultural Officer against the petitioner under Sections 409 and 468, Indian Penal Code. The police investigated the case and on 29 March 1966 submitted a chargesheet u/s 409 Indian Penal Code, against the petitioner in the Court of the Judicial Officer, Etah. While the investigation was going on the opposite party on 14 February 1966, passed an order of dismissal against the petitioner which was received by him on 3 March 1966. According to the petitioner as the matter was sub-judice the opposite party committed contempt of Court by passing the order of dismissal referred to above.

4. On behalf of the opposite party a counter-affidavit was filed admitting the facts mentioned above but stating that as there was no case pending against the petitioner in any Court on the date on which the order of dismissal was passed, he could not be held to have committed contempt of Court. The petitioner filed a rejoinder-affidavit.

5. Now from the rival contentions noted above, the short point which arises for consideration is whether the act of the opposite party in passing the order of the petitioner's dismissal during the investigation proceedings can be held to amount to contempt of Court. At the hearing of this application Sri Mandhyan, the learned Counsel for the petitioner, took up a slightly different position from that taken in the petition. He conceded that on the date on which the order of dismissal was passed, there was no cause pending against the petitioner, but he contended that as by that time the investigation was nearly complete and the prosecution of the petitioner was imminent and certain, the opposite party, who was in the know of these facts, committed contempt of Court by passing the order of dismissal in the meantime. Reliance for this contention was placed on the decisions in *Mankan Prabodh Chandra v. Shah Paranlal Nanchand* AIR 1954 Cut 2 and the *The King Vs. Parmanand and Others*, while on behalf of opposite party reliance was placed on the decision in *Dwarka Prasad Agarwal Vs. Krishna Chandra and Others*, for the contrary proposition. No doubt the two cases relied upon by the learned Counsel for the petitioner support his contention, but in my opinion it is unnecessary to make any further reference to them, as the view of this Court as enunciated in *Dwarka Prasad* case (vide supra) apart from the fact that I respectfully agree with it is binding upon me. In this case a Division Bench of this Court held that

(1) contempt proceeding cannot be taken in connection with the publication of any news or articles as long as a criminal case is during the course of investigation and has not actually come to the Magistrate's Court for enquiry and trial. The case does not come to Court by the issued of a warrant of arrest, and

(2) the extending of the punishment for contempt to cases which are only imminent, is not justified on the circumstances as exist in this country.

It will be noticed that the aforesaid decision is on all fours with the present case. In reply Sri Mandhyan fell back upon the decision of this Court in *State Vs. Faqir Chand and Another*, . This case, however, is basically different, as in it the offending article was published after the Magistrate had taken cognizance of the case. Thus in this the matter was clearly sub-judice when the article in question was published. The learned Counsel, however, relied upon an observation made in it to the effect that if a person with knowledge that a cause is imminent does anything which tends to interfere with the due course of justice and which creates prejudice in the public mind, then he also is guilty of contempt of Court. This observation, it will be noticed, is clearly in the nature of an obiter dictum and consequently has no binding force, It does not possess any persuasive force either as the judgment does not contain a single reason in support of it. And

finally it makes no reference to the case of Dwarka Prasad Agarwal Vs. Krishna Chandra and Others, which lays down a contrary proposition. For all these reasons the observation relied upon by State Vs. Faqir Chand and Another, cannot be of any avail to him I am, therefore, of opinion that as no cause was pending on the date, the opposite party cannot be held to have committed contempt of Court. The fact that the petitioner surrendered during investigation and was enlarged on bail by a judicial officer makes no difference to the view taken by me above, since the matter was still under investigation and no Magistrate had taken cognizance of it in any of the manners known to law. Thus for the reasons stated above, I am satisfied that this petition has no force. It accordingly fails and is dismissed party is discharged, There will be no order as to costs.