

1961

January 13.

SAIBAL KUMAR GUPTA AND OTHERS

v.

B. K. SEN AND ANOTHER.

(JAFER IMAM, K. SUBBA RAO and RAGHUBAR
DAYAL, JJ.)

Contempt of Court—Special Committee appointed by Corporation to enquire as to conduct of employees—Issue of questionnaire to Commissioner—Pendency of Criminal proceedings in Court—Committee, if functioned as parallel Court of enquiry—Members, if guilty of contempt.

The first respondent, the then Commissioner of the Corporation of Calcutta, was after a protracted trial for an alleged offence under s. 497 of the Indian Penal Code discharged by the Magistrate under s. 253(1) of the Code of Criminal Procedure. The Sessions Judge, on a petition in revision filed by the complainant, holding that the said respondent had suborned the complainant's witnesses, set aside the order of discharge and directed further enquiry by another Magistrate who permitted the complainant to tender further evidence. The respondent moved the High Court in revision and a Division Bench issued a Rule and stayed further proceedings. While the matter was thus pending before the High Court, the Corporation of Calcutta by a resolution appointed the three appellants members of a Special Committee which ran as follows :—

"That a Special Committee consisting of Councillors Shri S. K. Gupta, Shri R. N. Majumdar and Shri S. K. Roy be set up to enquire into the allegations levelled against certain officials of the Corporation who are alleged to have been taking advantage of their high offices in carrying on business in their own names. The Committee will take up only those matters that relate to the Corporation."

Subsequent to the passing of the said resolution, the Mayor handed over to the Committee certain papers from a Councillor containing certain allegations against the Commissioner. It was the case of the said respondent that the Special Committee thereupon examined the complainant and another and issued to him a notice along with a questionnaire, the relevant portions of which were as follows :—

"As you probably know, we have been appointed to make an enquiry into certain allegations relating to the administration of the Corporation of Calcutta and specially into certain steps taken by you in the matter of assessment and appointments and a few other matters, we are giving you a synopsis of the cases in which the enquiry is being held and we shall be glad if you kindly give us some time between 10 a. m. and 11 a. m. tomorrow (the 16th instant) so that we can get the facts from you."

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" III (a). It is alleged that between 4th January, 1956, and 20th September, 1957, i.e., at or about the time when the case under section 497, I.P.C., was being tried, you gave appointments to the following persons: (1) Anil Koyal (2) Jogendra Nath Mondal (3) Ahi Kanta Choudhury (4) Govinda Banerjee (5) Narendra Nath Naskar, who are related respectively to Palan Koyal, Haradhan (alias Haridhan) Mondal, Tripti Choudhury, Thakur Raj Smriti Tirtha and Upendra Naskar, who were cited as witnesses in the case.

(b) It is alleged that about the same time you gave appointments to Tarak Nath Day, Hardhan Day, Pradip Bhaduri, Ardhangsu Mondal etc. and condoned the punishment previously inflicted on Dhiren Mondal as they were helping you in conducting your defence in the case.

(c) It is alleged that you were instrumental in securing the appointment of another probable prosecution witness Kamakshya Chatterjee through one M. L. Ghose against whom a demolition case was pending."

Thereupon the first respondent filed a complaint in the High Court charging the appellants with contempt of the High Court as well as the trial court. The High Court found the appellants guilty and convicted them for contempt of Court. Hence this appeal.

Held (per Imam and Raghubar Dayal, JJ., Subba Rao, J. dissenting), that the appellants were not guilty of contempt of Court and the appeal must succeed.

It could not be said that the Special Committee had constituted itself a court of parallel enquiry with regard to matters in issue either before the trial Magistrate or the High Court.

There can be no comparison between the present case and a trial conducted by a newspaper.

The Special Committee was directed by the Corporation to enquire into malpractices on the part of its employees, necessarily including unworthy appointments, and the ascertainment of the motive could only be incidental to the main purpose of the enquiry and could not lead to the conclusion that the Special Committee was holding a parallel enquiry on matters pending before the Court and thereby intended to interfere with the course of justice.

The record clearly showed that the appellants had at no time intended to interfere with the course of justice, nor had their conduct tended to do so. They had taken care not to comment on any proceedings pending in court or the issues arising out of them.

Per Subba Rao, J.—The appellants obviously initiated an enquiry which went beyond the scope of the resolution passed by the Corporation. With the knowledge that criminal proceedings were pending, they examined witnesses and served the

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questionnaire. They permitted councillors and others to attend the enquiry which was in no sense confidential.

It is settled law that a person is guilty of contempt of court if the act done by him is intended or calculated or likely to interfere with the course of justice.

Re Read & Huggonson, (1742) 2 Atk. 469, *The Queen v. Payne*, [1896] 1 Q.B. 577, *The Queen v. Gray*, [1900] 2 Q.B. 36, *R. v. Odham's Press Ltd.*, [1956] 3 All E.R. 494, *R. v. Duffy & Others*, [1960] 2 All. E.R. 891, *State v. Biswanath Mohapatra*, I.L.R. [1955] Cuttack 305 and *Ganesh Shankar Vidyarthi's case*, A.I.R. 1929 All. 81, referred to.

It could not be said in the instant case that the enquiry initiated by the committee to ascertain whether the first respondent had suborned witnesses cited or examined against him, could not have serious repercussions on the proceedings pending in the Magistrate's court or in the High Court. Although a strong willed Magistrate might not be influenced by the enquiry, it might unconsciously affect a weaker mind and thus obstruct the even course of justice. Even though a judge of the High Court might withstand the effect of such an enquiry, that would not prevent the public and the parties, especially in a criminal case, from reasonably apprehending that the enquiry or the findings made by the committee might affect a fair hearing of the matter.

The contempt, in the instant case, was not merely of a technical nature but of a serious character calculated to interfere with and obstruct the due course of justice and as such was pre-eminently one against which the court must take action.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 100 of 1958.

Appeal from the judgment and order dated April 24, 1958, of the Calcutta High Court in Criminal Misc. Case No. 38 of 1958.

G. S. Pathak and *D. N. Mukherjee*, for the appellants.

L. K. Jha and *R. C. Datta*, for respondent No. 1.

K. B. Bagchi and *P. K. Bose*, for respondent No. 2.

1961. January 13. The Judgment of Imam and Raghubar Dayal, JJ. was delivered by Imam, J. Subba Rao, J. delivered a separate judgment.

Imam J.

IMAM, J.—The appellants were convicted for contempt of court and each of them was sentenced to pay a fine of Rs. 500 by the Calcutta High Court. They applied to the High Court for a certificate that

the case was a fit one for appeal to this Court which was granted. Hence the present appeal.

On March 19, 1955, one Bimala Kanta Roy Choudhury filed a complaint before the Sub-Divisional Magistrate, Alipore, against the respondent B. K. Sen under s. 497 of the Indian Penal Code. The Magistrate after examining numerous witnesses declined to frame a charge and discharged the accused under s. 253(1) of the Code of Criminal Procedure by his order dated July 13, 1957. Against the order of discharge Bimala Kanta Roy Choudhury filed a revisional application before the Sessions Judge of 24 Parganas, who by his order dated November 22, 1957, directed further enquiry. On January 3, 1958, the Magistrate while holding further enquiry, as directed, allowed the prosecution to tender further evidence. On February 3, 1958, the accused B. K. Sen filed a revision petition in the Calcutta High Court against the order of the Sessions Judge directing further enquiry as well as the order of the Magistrate permitting the prosecution to lead further evidence. The High Court thereupon issued a Rule and stayed further proceedings.

The respondent B. K. Sen held the office of Commissioner of the Calcutta Corporation at the time he filed his petition in the Calcutta High Court for proceedings against the appellants for contempt of court. According to that petition, at a special meeting of the Calcutta Corporation held on January 16, 1958, the Mayor suggested the formation of a committee for discussion of necessary and appropriate steps to be taken with a view to eradicate alleged malpractices prevailing in different departments of the Corporation. At this meeting Satyananda Bhattacharjee made certain wild allegations against B. K. Sen. Two resolutions were passed at the meeting, one of which, authorised the Mayor to constitute a Special Committee to give effect to the suggestions and objectives indicated by the Mayor in his statement dated January 10, 1958. On February 14, 1958, at an ordinary meeting of the Calcutta Corporation the aforesaid Bhattacharjee repeated his allegations made at the previous meeting of January 16. At the meeting

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it was resolved that a Special Committee be set up and the appellants were elected as members of the committee. The Special Committee was to enquire into certain allegations made against certain officials of the Corporation who are said to have taken advantage of their office in carrying on business in their own names. The resolution was in the following terms:—

“That a Special Committee consisting of Councillors Shri S. K. Gupta, Shri R. N. Majumdar and Shri S. K. Roy be set up to enquire into the allegations levelled against certain officials of the Corporation who are alleged to have been taking advantage of their high offices in carrying on business in their own names. The Committee will take up only those matters that relate to the Corporation.”

The record of the contempt proceedings in the High Court shows that at a meeting of the Calcutta Corporation, on March 26, 1958, Bhattacharjee informed the Mayor that on February 14, 1958, he had mentioned on the floor of the House certain charges against some high officials of the Corporation and that the Mayor had asked him to submit his papers to the Special Committee. Bhattacharjee further informed the Mayor that the day before, at a sitting of the Special Committee, he wanted to hand over to the Special Committee some papers that were with him, but the Special Committee would not take them and had stated that they would enquire into “open case only”. Bhattacharjee then asked the Mayor to request the Special Committee to enquire into all the allegations made by him. On this, the Mayor asked Bhattacharjee to hand over the papers to him. Then the Mayor stated that if that was not written in the proceedings he would take it that day that all the papers would be sent to the Special Committee.

According to B. K. Sen, on April 11, 1958, Bimala Kanta Roy was examined by the Committee and he admitted that his case against B. K. Sen under s. 497 of the Indian Penal Code was at that time pending consideration before the High Court. Bimala Kanta Roy Choudhury then alleged that either the witnesses

themselves or their near relations got appointments in the Corporation of Calcutta. Bimala Kanta Roy Choudhury had specifically mentioned one Tarak Nath Dey. The entire purpose of the statement of Bimala Kanta Roy Choudhury was to prove the truth of his allegations that B. K. Sen had abused his official position and had created a situation which made it impossible for him to produce relevant witnesses to prove his case. The Special Committee then caused the production of Tarak Nath Dey and confronted him with Bimala Kanta Roy Choudhury. Tarak Nath Dey was then examined but denied that he was the agent of the wife of Bimala Kanta Roy Choudhury or the *Tadbirkar* of B. K. Sen. The Special Committee went out of their way to traverse the grounds and take evidence on matters which were directly and substantially in issue and were pending in the Calcutta High Court. B. K. Sen further alleged in his petition that the appellants had set up a parallel court of enquiry for ascertaining the truth or otherwise of the allegations made by Bimala Kanta Roy Choudhury. That the action of the Special Committee was calculated to create an atmosphere of prejudice against him and amounted to unwarranted interference with the free flow of justice. The action of the Special Committee had a tendency to prejudice the trial and/or to influence the decision of the case by the trial Court or by the High Court. The Special Committee thereafter issued to him a questionnaire. The relevant portions of the questionnaire are in the following terms :—

“ III (a). It is alleged that between 4th January, 1956, and 20th September, 1957, i.e., at or about the time when the case under section 497, I.P.C., was being tried, you gave appointments to the following persons : (1) Anil Koyal (2) Jogendra Nath Mondal (3) Ahi Kanta Choudhury (4) Govinda Banerjee (5) Narendra Nath Naskar, who are related respectively to Palan Koyal, Haradhan (alias Haridhan) Mondal, Tripti Choudhury, Thakur Raj Smriti Tirtha and Upendra Naskar, who were cited as witnesses in the case,

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(b) It is alleged that about the same time you gave appointments to Tarak Nath Dey, Hardhan Dey, Pradip Bhaduri, Ardhangsu Mondal etc. and condoned the punishment previously inflicted on Dhiren Mondal as they were helping you in conducting your defence in the case.

(c) It is alleged that you were instrumental in securing the appointment of another probable prosecution witness Kamakshya Chatterjee through one M. L. Ghosh against whom a demolition case was pending."

The case of B. K. Sen before the High Court was that the action of the appellants as members of the Special Committee amounted to gross contempt of the High Court as well as of the Court of trial.

Accordingly, B. K. Sen filed on April 16, 1958, his petition in the High Court for proceedings against the appellants for contempt of court. Notice was issued to the appellants by the High Court returnable the same day to show cause why they should not be proceeded against for contempt of court. On April 17, 1958, the appellants showed cause. The High Court, however, issued a Rule returnable by April 23. After hearing the parties the High Court on April 24, convicted the appellants as already stated.

The only question for determination is whether the conduct of the appellants as members of the Special Committee amounted to contempt of court. On behalf of the appellants it was urged that the enquiry held by the Special Committee was not to determine the guilt or the innocence of B. K. Sen in the case under s. 497 pending against him. It was impossible to characterise the enquiry by the Committee as a parallel enquiry. The Special Committee had been constituted specially for the purpose of determining whether the employees of the Calcutta Corporation had abused their position in the discharge of the powers vested in them. The Special Committee was not constituted to enquire into the conduct of B. K. Sen only. Even the questionnaire sent to him referred to three incidents which have nothing to do with the case under s. 497 against him pending in the

Magistrate's court. The first incident was concerned with an agreement with some lady to build a house for Rs. 40,000 and to sell it to her for Rs. 50,000 and that thereby he had engaged in a business for profit which was contrary to his conditions of service. The second incident related to the reduction of the valuation of certain premises, belonging to some persons described as the Guptas who were either his relations or friends, long after their appeal had been disposed of and without recording any adequate reasons for such reduction. The third incident related to the assessment of his own house when he had reduced its letting value to Rs. 90 per month and on that basis had been paying the Corporation tax whereas he actually received as house rent for the same at Rs. 250 per month. The opinion expressed by the Land Acquisition Collector was that the proper letting value of the premises would be Rs. 281 per month. The entire purpose of the enquiry was to ascertain whether B. K. Sen, as Commissioner of the Corporation, had been abusing his position as such. Even the questionnaire under III(a), (b) and (c) does not state that B. K. Sen had so acted with a view to suborning prosecution witnesses in the case against him under s. 497 or that he had acted in a manner so as to suppress the evidence which might be led against him. It was pointed out that the questionnaire throughout stated "it is alleged" and there was no assertion therein that B. K. Sen had actually acted in an improper manner. The letter which accompanied the questionnaire expressly requested B. K. Sen to give the Committee some time between 10 a.m. and 11 a.m. on April 16 so that they could get the facts from him. In other words, the Special Committee had not accepted the allegations against B. K. Sen but had merely pointed out to him the nature of the allegations and desired to get from him the actual facts. This conduct of the appellants as members of the Special Committee could not in any way amount to their converting themselves into a tribunal holding a parallel enquiry to the real matter in issue in the case under s. 497 against B. K. Sen.

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It was further urged that if the question at all arose in the enquiry that B. K. Sen had acted with the ulterior motives in the matters stated in questionnaire III(a), (b) and (c) that would be merely incidental to the main purpose of the enquiry whether he, as Commissioner of the Calcutta Corporation, had abused his position. Before the conduct of the appellants could be characterised as contempt of court it had to be established that their conduct tended to prejudice mankind against B. K. Sen or it tended or was calculated to interfere with the due course of justice.

It was further argued that before a person can be convicted for contempt of court it must be found that his act amounted to real contempt and was of a kind that necessitated action being taken by the court against him. In the present case, the incidental question whether B. K. Sen had acted in an improper way in making the appointments under questionnaire III(a), (b) and (c) with a view to suit his own ends was something too remote for a court to hold that it tended to or was calculated to interfere with the course of justice and that it amounted to such contempt which required the taking of proceedings for contempt against the appellants.

Reliance was also placed on s. 99(1) of the Calcutta Municipal Act, 1951, which states that "Every Special Committee shall conform to any instructions that may from time to time be given to it by the Corporation." The appellants as members of the Special Committee had merely performed their public duty in obeying the instructions of the Corporation when at the meeting of the Corporation on March 26, 1958, the papers presented by Bhattacharjee were sent to the Special Committee. If the action of the appellants at all amounted in law to contempt of court it was so slight that it did not call for proceedings for contempt being instituted against them.

The respondents in this appeal are B. K. Sen and the State of West Bengal. On behalf of the State of West Bengal no submissions were made. On behalf of B. K. Sen, however, it was contended that the facts asserted in his petition for contempt filed in the High

Court had not been controverted by the appellants. All that the appellants had stated in their affidavit was that they did not admit the assertions of fact in the petition for contempt other than those stated in their affidavit. It was strongly urged on behalf of B. K. Sen that he protested at the meeting of the Corporation on February 14, 1958, that Bhattacharjee's allegations ought not to be entertained as the subject matter of his allegations was at the time sub-judice in the Calcutta High Court. Several members of the Corporation had also raised a similar objection. Apparently, from Bhattacharjee's statement at the meeting of the Corporation on March 26, 1958, the Committee had refused to take the papers submitted by him and the Committee had stated that they would enquire into "open case only". In spite of the knowledge which the appellants had about the matter being sub-judice in the Calcutta High Court they had none the less at the meeting of the Special Committee on the 11th of April, 1958, examined Bimala Kanta Roy Choudhury, the complainant in the case under s. 497, Indian Penal Code, against B. K. Sen. Furthermore, they had also examined Tarak Nath Dey with reference to the allegations made by Bhattacharjee. The appellants had thus entered into a parallel enquiry into a matter which was at that time in issue in the proceedings in the Calcutta High Court. That Court had before it a petition of B. K. Sen questioning the validity of the order of the Sessions Judge directing further enquiry in the case under s. 497, Indian Penal Code. An important question to be decided in that proceeding was whether it was correct that B. K. Sen had suborned the prosecution witnesses in the case under s. 497, Indian Penal Code, against him or had prevented witnesses for the prosecution from appearing against him. It was clear from paragraphs 7 and 15 of Annex. C, the charges made by Bhattacharjee against B. K. Sen, that his case was that B. K. Sen had been tampering with prosecution witnesses of Garia with the aid of Dhiren Mondal. Some of the acts of alleged adultery are said to have been committed at Garia. B. K. Sen had also won over a

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prosecution witness Kamakshya Chatterjee by procuring an appointment for him in the Central Bank of India Ltd., Calcutta. The action of the appellants in thus holding a parallel enquiry tended to interfere with the course of justice as well as to prejudice mankind against B. K. Sen. The action of the appellants could not be regarded as slight because it had been a deliberate action. It was not enough to say that the appellants had merely sent a questionnaire to B. K. Sen and had not made any comment on the allegations made before them by Bhattacharjee and Bimala Kanta Roy Choudhury. It was the act of holding an enquiry into a matter which was directly in issue and which was pending for determination in the Calcutta High Court which amounted to contempt of court.

Mr. Jha, on behalf of B. K. Sen, further contended that the provisions of s. 99(1) of the Calcutta Municipal Act could not be pleaded in defence to a charge of contempt if the action of the appellants amounted to contempt of court. Furthermore, as the direction given to the appellants was by the Mayor and not the Calcutta Corporation s. 99(1) did not apply.

We would now consider whether the action of the appellants amounts in law to real contempt of the Calcutta High Court and the Magistrate before whom the proceedings under s. 497 were pending at the time the High Court passed its order convicting the appellants for contempt. There is a controversy between the appellants and B. K. Sen whether Bimala Kanta Roy Choudhury and Tarak Nath Dey were examined by the appellants. There is no clear statement on behalf of the appellants in denial. Their mere assertion that "save and except what was stated in their affidavit nothing else was admitted" would not be enough to controvert this assertion of B. K. Sen. Even if it be assumed that these two persons were examined by the appellants what is stated in paragraph 10 of B. K. Sen's affidavit in the High Court is that Bimala Kanta Roy Choudhury had mentioned names of the prosecution witnesses and had alleged that either the witnesses themselves or their near

relations had received appointments in the Corporation of Calcutta. He had also alleged that Tarak Nath Dey was the agent of the wife of Bimala Kanta Roy Choudhury and *Tadbirkar* of B. K. Sen. Tarak Nath Dey when examined denied this. He was certainly an employee of the Corporation. Paragraph 10 further stated that the only purpose for which Bimala Kanta Roy Choudhury was examined was to prove the truth of the allegations made by him that B. K. Sen had abused his official position and had created a situation which had made it impossible for Bimala Kanta Roy Choudhury to produce relevant witnesses in proof of his case. Concerning the examination of Tarak Nath Dey, in paragraph 11, B. K. Sen stated that the idea behind the examination of this individual was to prove B. K. Sen's connection and association with the wife of B. K. Roy Choudhury, and to show that he had appointed Tarak Nath Dey due to services rendered in connection with the case under s. 497, Indian Penal Code, against him. It is clear, however, from the questionnaire III (a), (b) and (c) that the appellants in framing the same did not assert that B. K. Sen's conduct in making the appointments mentioned therein was with a view to suborning prosecution evidence in the case under s. 497, Indian Penal Code, against him or to make it impossible for Bimala Kanta Roy Choudhury to produce relevant witnesses in proof of his case. The combined effect of the letter written by the appellants to B. K. Sen in sending the questionnaire and the manner in which the questionnaire III (a), (b) and (c) were framed would indicate that the appellants did not accept all the allegations made by Bimala Kanta Roy Choudhury or Bhattacharjee.

The record does not establish that at any time the appellants had made comments on the case under s. 497, Indian Penal Code, pending against B. K. Sen or in respect of any matter pending in connection with that case in the Calcutta High Court. It was, however, said that in taking the papers filed by Bhattacharjee and thereupon examining Bimala Kanta Roy Choudhury and Tarak Nath Dey the

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appellants had embarked upon a parallel enquiry on matters which were pending investigation in a court of law. The Special Committee consisting of the appellants was constituted by the Corporation to conduct an enquiry into the conduct of the servants of the Corporation in matters relating to affairs of the Corporation. The Special Committee was enquiring into not only the conduct of the Commissioner of the Corporation (B. K. Sen) but also into the conduct of other servants of the Corporation. The questionnaire sent to B. K. Sen refers to his conduct in relation to matters in questionnaires I and II. These were matters which had no connection whatsoever with the case under s. 497, Indian Penal Code, against B. K. Sen. Regarding questionnaire III (a), (b), and (c) the principal matter which the Special Committee were to enquire into was whether (1) B. K. Sen had made the appointments in question and (2) those appointments were of persons who were either related to the prosecution witnesses in the s. 497 case or were helping B. K. Sen in conducting his defence in that case. The questionnaire nowhere suggested that B. K. Sen had made these appointments in order to suborn prosecution witnesses in that case or that he had made the appointments with a view to preventing Bimala Kanta Roy Choudhury from producing witnesses to prove his case against B. K. Sen. Appointment of persons who were relations of witnesses for the prosecution in the s. 497 case or of those who were helping B. K. Sen in his defence in that case would certainly be a relevant matter in ultimately deciding whether B. K. Sen had taken advantage of his position as Commissioner of the Calcutta Corporation in making undeserving appointments. On the other hand, even if it were established that the appointments were made of relations of prosecution witnesses and of those who were helping him in his defence, the Special Committee may have, at the conclusion of their enquiry, found that the appointments in question were, in fact, of suitable and qualified persons and that B. K. Sen had not in making the appointments abused his position as a servant of the Corporation.

The circumstances do not establish that the Special Committee had constituted itself as a court of parallel enquiry to look into matters in issue in the s. 497 case against B. K. Sen or which were in issue in the pending proceedings in the High Court. What exactly is meant by a court of parallel enquiry is not clear. No doubt it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice whether the investigation tends to prejudice the accused or the prosecution. There is no comparison between a trial by a newspaper and what has happened in this case. The Special Committee had embarked upon an enquiry on the directions of the Corporation in order to discover malpractice on the part of the Corporation's servants. Malpractices on the part of a servant of the Corporation would presumably include making unworthy appointments. The ascertainment of the motive for the appointments would be merely incidental to the main purpose of the enquiry. It would be difficult to conclude therefrom that the Special Committee were holding a parallel enquiry on matters pending decision by a court of law and that thereby their action tended to interfere with the course of justice.

It was not asserted in the affidavit of B. K. Sen that the Special Committee had knowledge that one of the questions to be decided in the proceedings before the High Court was whether B. K. Sen had suborned the prosecution witnesses in the case under s. 497 against him. There is no finding of the High Court in this respect either. If the conduct of a particular party amounts to contempt of court usually lack of knowledge of pending proceedings may not be available to him by way of defence.

We have looked into the record of this case and have no hesitation in saying that the appellants at no

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time intended to interfere with the course of justice and their conduct did not tend to interfere with the course of justice. The appellants had been careful in making no comments on any proceedings pending in a court of law or the issues arising out of them. In these circumstances, we are of the opinion that the offence of contempt of court by the appellants has not been established. The appeal is accordingly allowed and the conviction of the appellants for contempt of court is set aside. The fines, if paid, must be refunded.

Subba Rao J.

SUBBA RAO, J.—I have had the advantage of perusing the judgment prepared by my learned brother, Imam, J. I regret my inability to agree with him. In my view, this is one of the typical cases wherein a group of enlightened men constituting a committee did a purposive act which had a clear tendency to obstruct or interfere with the due process of justice.

On the facts, the following questions fall to be considered: (1) What was the nature of the criminal proceedings pending in the Court of the Sub-Divisional Magistrate, Alipore, and in the High Court at Calcutta and what were the questions that were to be decided therein? (2) What was the nature of the inquiry initiated by the appellants and what was the subject-matter of the said inquiry? (3) Whether the acts attributed to the appellants constituted contempt of court. (4) If the appellants were guilty of contempt of court, was this an appropriate case for taking contempt proceedings against them? (5) Whether the punishment imposed on the appellants was excessive.

The learned Judges of the High Court were in a position to ascertain the scope of the criminal proceedings taken against the appellants, for they had before them the entire record pertaining to the criminal revision case. The judgment of the High Court discloses that the learned Judges had freely drawn from the said record the facts necessary to elucidate the question raised before them; but, unfortunately, none of the parties thought fit to get the relevant portions of the criminal proceedings printed and placed before us.

I would, therefore, proceed on the basis of the allegations made by the respondents in their petition filed before the High Court in so far as they were not specifically controverted by the appellants and on the facts given by the learned Judges in their judgment.

On March 19, 1955, one Bimala Kanta Roy Choudhury filed a complaint before the Sub-Divisional Magistrate, Alipore, alleging that the first respondent, B. K. Sen, the then Commissioner of the Corporation of Calcutta, committed acts of adultery with his wife, Tripti Roy Choudhury and thereby committed an offence under s. 497 of the Indian Penal Code. After protracted trial and on an examination of many witnesses, the Sub-Divisional Magistrate, by his order dated July 13, 1957, discharged the first respondent under s. 253 (1) of the Code of Criminal Procedure. Before the Sub-Divisional Magistrate, it was contended that the case of the complainant was true but he was prevented from proving it by reason of the respondent's interference with the prosecution witnesses. The Sub-Divisional Magistrate in discharging the respondent also found that some prosecution witnesses were won over by the said respondent. Against the said order of discharge, Bimala Kanta Roy Choudhury filed a revision petition in the Court of the Sessions Judge, 24-Parganas, under s. 436 of the Code of Criminal Procedure. The learned Sessions Judge accepted the contention of Bimala Kanta Roy Choudhury that by the influence of respondent No. 1 many prosecution witnesses were withheld from the court, and by an order dated November 22, 1957, he set aside the order of the Sub-Divisional Magistrate and directed further enquiry by Sri C. L. Choudhury, a Magistrate with 1st Class powers at Alipore. On January 3, 1958, the said Magistrate passed an order enlarging the scope of the further enquiry and directed examination of new witnesses; in the result the prosecution was allowed to tender further evidence and the entire case was reopened and it was awaiting the decision of that court.

On February 3, 1958, respondent No. 1 filed a criminal revision, being Criminal Revision Case No. 149 of 1959,

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in the High Court at Calcutta against the order of the Magistrate dated January 3, 1958, directing the examination of new witnesses. A division bench of the High Court issued a rule and stayed further proceedings in the Magistrate's court. It would be seen that one of the questions that fell to be decided by the High Court was whether there was any truth in the allegation that the respondent suborned the prosecution witnesses, with the result that some important witnesses did not attend the court and others perjured themselves to support the respondent. If the criminal revision was dismissed and the trial before the Magistrate proceeded, a similar question would arise before the Magistrate, namely, whether the prosecution witnesses were kept back from the witness-box because they were tampered with by respondent No. 1 and whether the prosecution witnesses examined, or some of them, had been influenced by the respondent. This question would have an important bearing not only on the disposal of the criminal revision petition but also on the appreciation of the evidence before the Magistrate.

It may be recalled that on February 3, 1958, a division bench of the High Court issued a rule and stayed further proceedings in the Magistrate's court. On January 16, 1958, at a special meeting of the Corporation of Calcutta the Mayor suggested the formation of a committee for discussion of necessary and appropriate steps to be taken with a view to eradicate alleged malpractices prevailing in different departments of the Corporation. The Mayor suggested that the Commissioner of the Corporation should place his suggestions on the subject before the Committee. Satyananda Bhattacharjee, one of the councillors, made certain allegations against the Commissioner. The meeting passed two resolutions, one of which authorized the Mayor to constitute a Special Committee. On February 14, 1958, another meeting of the Corporation was held. In that meeting Satyananda Bhattacharjee reiterated his allegations against the Commissioner and particularly referred to the criminal case pending in the High Court. The respondent protested against

reference to matters which constituted the subject-matter of a pending case in court. After some debate the Corporation passed the following resolution appointing a Special Committee consisting of appellants 1, 2 and 3 :

“Resolved : That a Special Committee consisting of Councillors Sri S. K. Gupta, Sri. R. N. Majumdar and Sri S.K. Roy be set up to enquire into the allegations levelled against certain officials of the Corporation who are alleged to have been taking advantage of their high offices in carrying on business in their own names. The Committee will take up only those matters that relate to the Corporation.”

It will be seen from the resolution that the said Committee was only authorized to enquire against officials of the Corporation who were carrying on business in their own names. It was further elucidated that the Committee would take up only those matters that related to the Corporation. Neither expressly nor by necessary implication this resolution authorized the Committee to make an inquiry against the Commissioner of the Corporation in regard to any appointments made by him in the Corporation with a view to suborn witnesses in the aforesaid criminal case. Indeed, the last sentence of the resolution expressly prohibited the Committee from embarking upon any such inquiry in regard to matters that did not relate to the Corporation.

On March 29, 1958, a motion was tabled in the meeting of the Corporation for the removal of the Commissioner from his office under s. 19(3) of the Calcutta Municipal Act, 1951. Out of the 86 councillors only 38 supported the motion and, as the requisite number of votes was not obtained, the motion was dropped.

It appears that Satyananda Bhattacharjee intended to hand over to the Special Committee certain papers relevant to the allegations made against the Commissioner, but in view of the limited terms of the reference they could not be received by the Committee. Thereafter, on March 26, 1958, Satyananda Bhattacharjee made a complaint of the same in his speech in the meeting of the Corporation and the Mayor took over the

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papers from him and promised to send them to the Special Committee and he accordingly handed them over to the Special Committee. Two of the documents handed over by the Mayor to the Special Committee were annexed to the affidavit filed by each of the appellants and marked "C". The first document contained various charges made by the said Satyananda Bhattacharjee against the respondent, and the second document purported to be a copy of the petition filed by Bimala Kanta Roy Choudhury in the Court of the Sub-Divisional Magistrate, Alipore, on May 31, 1955. In the first document Satyananda Bhattacharjee gave, *inter alia*, the names of various prosecution witnesses and the names of persons related to them to whom the Commissioner had given appointments. He had also given the name of another prosecution witness and alleged that the Commissioner procured an appointment for him in the Central Bank Ltd., Calcutta, through the good offices of another officer of the Bank by promising the latter to drop a case in respect of his premises. This document, therefore, contained in unambiguous terms specific allegations against the first respondent in the matter of suborning the prosecution witnesses in the criminal proceeding pending in the Magistrate's court and in the High Court. In the second document also specific allegations were made that the respondent was attempting to influence the witnesses through the Corporation employees. On the basis of the allegations made by Satyananda Bhattacharjee and Bimala Kanta Roy Choudhury, an inquiry was started by the Committee against the first respondent in respect of charges, among others, pertaining to criminal proceedings pending against him in the court. It was disclosed in the affidavit filed in rejoinder by the respondent that the Special Committee held its deliberations in the lady-councillors' room and that from March 25, 1958, on a black-board hung up outside that room it was written in chalk "Allegations Special Committee"; that the first sitting of the Special Committee was held on March 25, 1958; that a Secretary and a stenographer attended the meeting; that the notes of the

proceedings taken by the stenographer were typed and that Satyananda Bhattacharjee, Bimala Kanta Roy Choudhury and other Councillors attended the meetings: (see the affidavit in rejoinder filed by the first respondent in the High Court). On April 11, 1958, Bimala Kanta Roy Choudhury was examined. It was stated in the affidavit filed by the first respondent in the High Court that the said person admitted before the Committee that he had filed a complaint against the first respondent under s. 497 of the Indian Penal Code and that was pending in the High Court and that he also gave the names of the witnesses whom he had cited in proof of his case and that either the witnesses themselves or their near relations got appointments in the Corporation of Calcutta. He also mentioned that one Tarak Nath Dey was the agent of the wife of Bimala Kanta Roy Choudhury and *Tadbirkar* of the respondent. The Committee thereafter examined Tarak Nath Dey and Bimala Kanta Roy Choudhury identified him as the person referred to by him in his statement. Tarak Nath Dey in his examination denied the said allegations made against him. Presumably on the basis of the allegations made by Satyananda Bhattacharjee and the evidence given before the Committee by Bimala Kanta Roy Choudhury, the Committee issued the following notice dated April 15, 1958, to the first respondent:

"As you probably know, we have been appointed to make an enquiry into certain allegations relating to the administration of the Corporation of Calcutta and specially into certain steps taken by you in the matter of assessment and appointments and a few other matters, we are giving you a synopsis of the cases in which the enquiry is being held and we shall be glad if you kindly give us some time between 10 a.m. and 11 a.m. tomorrow (the 16th instant) so that we can get the facts from you."

The synopsis of the cases served upon the first respondent consisted of three questions. We are concerned only with the third question in this case and it reads:

"III (a). It is alleged that between 4th January, 1956, and 20th September, 1957, i.e., at or about the

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time when the case under section 497, I. P. C., was being tried, you gave appointments to the following persons :

1. Anil Koyal.
2. Jogendra Nath Mondal.
3. Ahi Kanta Choudhury.
4. Govinda Banerjee.
5. Narendra Nath Naskar.

(b) It is alleged that about the time you gave appointments to Tarak Nath Dey, Haradhan Dey, Pradip Bhaduri, Ardhangsu Mondal etc., and condoned the punishment previously inflicted on Dhiren Mondal as they were helping you in conducting your defence in the case.

(c) It is alleged that you were instrumental in securing the appointment of another probable prosecution witness Kamakshya Chatterjee through one M. L. Ghosh against whom a demolition case was pending."

Thereafter, on April 16, 1958, the respondent filed a petition in the High Court at Calcutta for contempt of court and the High Court by an order of the same date issued notice to show cause why the rule prayed for should not be issued.

The following crucial facts emerge from the foregoing narration that led to the filing of the contempt petition : The resolution appointing the Special Committee did not authorize it either expressly or by necessary implication to make an inquiry in respect of the activities of the Commissioner in connection with the criminal case pending in the Magistrate's Court as well as in the High Court. The members of the Committee were the councillors of the Corporation, and one of them, namely, Saibal Kumar Gupta, belonged to the Indian Civil Service, another, it was represented, was a practising barrister and the third was also an educated person. Being members of the Corporation, they must have known what all happened at the meeting of the Corporation and particularly the objections raised by the respondent and others that no inquiry should be made in respect of matters that were *sub judice* in courts. They must

have also known that in view of the said objections the resolution was precisely drawn to avoid any encroachment on the matters that were *sub judice*. No further resolution was passed by the Corporation enlarging the scope of the enquiry. Section 91 of the Calcutta Municipal Act, 1951, does not authorize the Mayor to enlarge its scope. The members of the Committee who must be deemed to have had knowledge of the scope of its powers obviously initiated the inquiry which was beyond the scope of the resolution. With the knowledge that criminal proceedings were pending, they examined witnesses, served questionnaire on the respondent, invited or at any rate permitted, apart from the staff which was assisting the committee in the discharge of its duties, councillors and others to attend the meeting. The inquiry could not in any sense of the term be called confidential and was conducted in a manner that it would be known to everybody who was interested in it. The inquiry against the Commissioner of the Corporation in the Corporation building in respect of a criminal case for the offence of adultery alleged to have been committed by him must have been a sensational news-item; at any rate, it must have attracted the attention of the vast staff of the Corporation and its innumerable visitors.

With this background I shall briefly consider the law of contempt relevant to the facts of this case. The Contempt of Courts Act, 1926, has not defined the phrase "contempt of court". The judgment of Lord Hardwicke, L. C., in *Re Read & Huggonson* (1), which has always been regarded as the *locus classicus* on the subject, declared "Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes before the cause is finally heard." The learned Lord Chancellor characterized contempt as of three kinds, namely, scandalizing the court, abusing parties in court, prejudicing mankind against

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parties and the court before the cause is heard. Adverting to the third category, which is germane to the present case, the Lord Chancellor proceeded to state at p. 471 thus :

“ There may also be a contempt of this court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.”

But to constitute contempt of court, in the words of Lord Russel, C. J., “ the applicant must shew that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending ” (See *The Queen v. Payne* ⁽¹⁾). In *The Queen v. Gray* ⁽²⁾, the phrase “ contempt of court ” is defined as, *inter alia*, “ something done calculated to obstruct or interfere with the due course of justice or the lawful process of the courts.” Lord Goddard, C.J., in *R. v. Odham's Press Ltd.* ⁽³⁾, after considering the relevant authority on the subject, laid down the following test to ascertain whether there is contempt of court in a given case, at p. 497 :

“ The test is whether the matter complained of is calculated to interfere with the course of justice
..... ”

Words much to the same effect were used by Parker, C.J., in a recent decision in *R. v. Duffy & Others* ⁽⁴⁾ when he stated at p. 894 that :

“ the question in every case is whether..... the article was intended or calculated to prejudice the fair hearing of the proceedings.”

In Halsbury's Laws of England, 3rd edition, Vol. 8, it is stated at p. 8, “ It is sufficient if it is clear that the comment tends to prejudice the trial of the action.” Adverting to the third category of contempt described by Lord Hardwicke, L. C., the learned author says at p. 8 thus :

“ The effect of such misrepresentations may be not only to deter persons from coming forward to

(1) [1896] 1 Q. B. 577, 580.

(2) [1900] 2 Q. B. 36.

(3) [1956] 3 All E.R. 494.

(4) [1960] 2 All E.R. 891.

give evidence on one side, but to induce witnesses to give evidence on the other side alone, to prejudice the minds of jurors, or to cause the parties to discontinue or compromise, or to deter other persons with good causes of action from coming to the court."

The said view has been accepted and followed also in India: see *State v. Biswanath Mohapatra* ⁽¹⁾ and *Ganesh Shankar Vidyarthi's case* ⁽²⁾.

Learned counsel contends that every such act is not contempt of court, but it is a condition of the exercise of the jurisdiction to commit a person for contempt that it must seriously prejudice the course of justice. It is not necessary to go into the question whether, even though an act constitutes a contempt of court, the seriousness of the offence is a condition of the exercise of the jurisdiction or is only an element that a judge has to take into consideration in exercising his discretion whether to take action for contempt of court or not, for in this case, on the facts, I am satisfied that the act of the appellants had a clear tendency to prejudice the fair hearing of the criminal proceedings pending against the first respondent. In a criminal case, it is more strictly the duty of a court to prevent any interference with the course of justice than in civil cases.

On the said authorities it is settled law that a person will be guilty of contempt of court if the act done by him is intended or calculated or likely to interfere with the course of justice. How can it be said that the inquiry initiated by the Committee to ascertain whether the witnesses cited or examined for the prosecution in the pending criminal case were suborned by the Commissioner by devious methods alleged to have been adopted by him could not have any serious repercussions on the proceedings pending in the Magistrate's court as well as in the High Court? Assume for a moment that the High Court dismissed the revision and, as a result, the Magistrate took over the criminal case before him for trial, and the prosecution examined its witnesses with the knowledge that

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(1) I.L.R. [1955] Cuttack 305.

(2) A.I.R. 1929 All. 81.

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an inquiry would be held by a responsible committee in respect of conduct or credibility of witnesses to be examined in the criminal case. Would it be possible to predicate that the witnesses could be in a position to depose truthfully in the witness-box? A truthful witness, who would otherwise speak in favour of the accused, might be tempted to lie in the witness-box either to avoid an ignominy that he perjured in the witness-box as a relative of his was appointed in the Corporation or to protect the interests of his relation, though as a matter of fact the said relation had been appointed on his own merits. So too, an untruthful witness may perjure himself in the witness-box with a view to harm the Commissioner in the inquiry before the Committee. Some honest witnesses might be afraid to come into the witness-box, for in the inquiry made by the Committee they might be attributed motives. Though a strong willed Magistrate might exclude from his mind the fact that a high power committee is making an inquiry in respect of the witnesses that are being examined before him, the factum of the inquiry might unconsciously operate on a weaker mind. The inquiry would, therefore, have an obvious tendency to obstruct the even course of justice. Assume again that the High Court had not stayed the proceedings before the Committee and the Committee completed the proceedings and exonerated the Commissioner by holding that the witnesses were not suborned by him, even that finding would have an effect on witnesses and the Magistrate, for with the background of such a finding untruthful witnesses would depose to a false case with greater confidence than otherwise they would. This finding might also affect the result of the case. Assume once again that the Committee completed its inquiry but held that the witnesses were suborned; the effect of such finding would certainly have a far reaching impact on the credibility of witnesses and also would deflect the witnesses from speaking the truth. From whatever angle it is looked at, the tendency to prejudice the course of justice is apparent. Now taking the High Court, it may be said that a Judge of a High Court can be relied upon not

to be influenced by what the Committee might or might not say. But that would not prevent the public and the affected parties from reasonably apprehending that the inquiry initiated by a high power committee or the findings given therein would affect the fair hearing of the revision petition.

From the aforesaid facts it is manifest that the contempt in the instant case is not merely a technical but a serious one which is calculated to interfere with or obstruct the due course of justice. In my view, therefore, this was pre-eminently a fit case for the court to take action.

The last question is whether the learned Judges were right in imposing a fine on the appellants. The judgment of the High Court shows that the learned Judges were very considerate to the appellants. They had given them every opportunity to apologize for their conduct. The following passage appears in the judgment :

“It may be observed at this stage that during arguments each of the respondents was asked if he wished to apologize for any contempt that might be found against him. Each of the respondents expressed his inability to apologize. At the conclusion of the arguments we made known to the respondents that in our view they were guilty of contempt and asked if they or any of them desired to tender any apology to Court. Respondent No. 4, Bimala Kanta Roy Choudhury, tendered an apology to the Court, but the other respondents refused to do so.”

In the circumstances the learned Judges, in my view, rightly convicted each of the appellants for contempt of court and sentenced each of them to pay a fine of Rs. 500/-.

In the result, the appeal fails and is dismissed.

BY THE COURT : In accordance with the opinion of the majority the appeal is allowed and the conviction of the appellants for contempt of Court is set aside. The fine, if paid, must be refunded.

Appeal allowed.

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