BATHINA RAMAKRISHNA REDDY

v.

THE STATE OF MADRAS.

1952

Feb. 14.

[PATANJALI SASTRI C. J., MEHR CHAND MAHAJAN, MUKHERJEA, DAS and CHANDRASEKHARA AIYAR JJ.]

Contempt of Courts Act (XII of 1926), s. 2(3)—Indian Penal Code (XLV of 1860), s. 499—Contempt of subordinate Court—Jurisdiction of High Court to take cognisance—Contempt punishable as defamation under Penal Code—Whether jurisdiction ousted—Scope and object of Contempt of Courts Act.

Sub-sec. (3) of section 2 of the Contempt of Courts Act, 1926, excludes the jurisdiction of the High Court to take cognisance of a contempt alleged to have been committed in respect of a Court subordinate to it only in cases where the acts alleged to constitute contempt are punishable *as contempt* under specific provisions of the Indian Penal Code, but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code.

The fact that defamation of a judge of a subordinate Court constitutes an offence under sec. 499 of the Indian Penal Code does not, therefore, oust the jurisdiction of the High Court to take cognisance of the act as a contempt of court.

Defamatory statements about the conduct of a judge even in respect of his judicial duties do not necessarily constitute contempt of Court. It is only when the defamation is calculated to obstruct or interfere with the due course of justice or proper administration of justice that it amounts to contempt.

Kisan Krishna Ji v. *Nagpur Conference of Society of St. Vincent de Paul* (A.I.R. 1943 Nag. 334) disapproved. *V. M. Bason* v. *A. H. Skone* (I.L.R. 53 Cal. 401) explained. *Subordinate Judge, First Class Hoshangabad* v. *Jawaharlal* (A.I.R. 1940 Nag. 407), *Narayan Chandra* v. *Panchu Pramanick* (A.I.R. 1935 Cal. 684), *Naresh Kumar* v. *Umaromal* (A.I.R. 1951 Cal. 489), *Kaulashia* v. *Emperor* (I.L.R. 12 Pat. 1), *State* v. *Brahma Prakash* (A.I.R. 1950 All. 556), *Emperor* v. *Jagannath* (A.I.R. 1938 All. 358), *Bennet Colman* v. *C. S. Monga* (I.L.R. 1937 Lah. 34) approved.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 13 of 1951. Appeal by special leave from the judgment and order of the High Court of Madras (Rajamannar C. J. and and Balakrishna Ayyar J.) dated 10th April, 1950, in Contempt Application No. 10 of 1949.

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S. P. Sinha (*S. S. Prakasam,* with him), for the appellant.

R. Ganapathy Iyer, for the respondent.

1952. February 14. The Judgment of the Court was delivered by

MUKHERJEA J.—This appeal has come up before us on special leave granted by this court on May 23, 1950, and it is directed against a judgment of a Division Bench of the Madras High Court dated April 10, 1950, by which the learned Judges found the appellant guilty of contempt of court and sentenced him to serve simple imprisonment for three months.

The appellant is the publisher and managing editor of a Telugu Weekly known as "Praja Rajyam" which is edited and published at Nellore in the State of Madras. In the issue of the said paper dated 10th February, 1949, an article appeared under the caption "Is the Sub-Magistrate, Kovvur, corrupt?" The purport of the article was that Surya Narayan Murthi, the stationary Sub-Magistrate of Kovvur, was known to the people of the locality to be a bribe taker and to be in the habit of harassing litigants in various ways. He was said to have a broker, through whom negotiations in connection with these corrupt practices were carried on. Several specific instances were cited of cases tried by that officer, where it was rumoured that he had either taken bribes or had put the parties to undue harassment, because they were obdurate enough to refuse the demands of his broker. The article, which is a short one, concludes with the following paragraph:—

"There are party factions in many villages in Kovvur Taluk. Taking advantage of those parties many wealthy persons make attempt to get the opposite party punished either by giving bribes or making recommendations. To appoint Magistrates who run after parties for a Taluk like this....is to betray the public. It is tantamount to failure of justice. Will the Collector enquire into the matter and allay the public of their fears?"

The attention of the State Government being drawn to this article, an application was filed by the Advocate-General of Madras before the High Court on November 14, 1949, under section 2 of the Contempt of Courts Act (Act XII of 1926) praying that suitable action might be taken against the appellant as well as three other persons, of whom two were respectively the editor and sub-editor of the paper, while the third was the owner of the Press where the paper was printed.

On receiving notice, the appellant appeared before the High Court and filed an affidavit taking sole responsibility for the article objected to and asserting that the article was published because of his anxiety to uphold the highest traditions of the judiciary in the land and to create popular confidence in courts, the duty of which was to dispense justice without fear or favour and without any discrimination of caste, creed or community. It was said that before the article was published, numerous complaints had reached him from various quarters imputing corruption and disreputable conduct to this Magistrate and the only desire of the appellant was to draw the attention of the higher authorities to the state of public opinion in the matter and to invite an enquiry into the truth or otherwise of the allegations which were not asserted as facts but were based only on hearsay.

The High Court after hearing the parties came to the conclusion that the publication in question did amount to contempt of court, as it was calculated to lower the prestige and dignity of courts and bring into disrepute the administration of justice. As the appellant was not prepared to substantiate the allegations which he made and which he admitted to be based on hearsay and did not think it proper even to express any regret for what he had done, the court sentenced him to simple imprisonment for three months.

The other three respondents, through their counsel, tendered unqualified apology to the court and the learned Judges considered that no further action against them was necessary.

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The propriety of the decision of the High Court so far as it relates to the appellant has been challenged before us in this appeal and Mr. Sinha, who appeared in support of the same, raised before us a two-fold contention; his first and main contention is that as the contempt in this case was said to have been committed in respect of a court subordinate to the High Court and the allegations made in the article in question constitute an offence under section 499 of the Indian Penal Code, the jurisdiction of the High Court to take cognizance of such a case is expressly barred under section 2(3) of the Contempt of Courts Act. The other contention advanced by the learned counsel relates to the merits of the case and it is urged that in publishing the article objected to, the appellant acted in perfect good faith, and as the article amounted to nothing else but a demand for enquiry into the conduct of a particular person who was believed to be guilty of corrupt practices in the discharge of his judicial duties, there was no contempt of court either intended or committed by the appellant.

So far as the first point is concerned, the determination of the question raised by the appellant would depend upon the proper interpretation to be put upon section 2(3) of the Contempt of Courts Act which runs as follows :—

"No High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code."

According to Mr. Sinha, what the sub-section means is that if the act by which a party is alleged to have committed contempt of a subordinate court constitutes offence of any description whatsoever punishable under the Indian Penal Code, the High Court is precluded from taking cognizance of it. It is said that in the present case the allegations made in the article in question amount to an offence of defamation as defined by section 499 of the Indian Penal Code and consequently the jurisdiction of the High Court is barred. Reliance

is placed in support of this proposition upon the decision of the Nagpur High Court in *Kisan Krishna Ji* v. *Nagpur Conference of Society of St. Vincent de Paul*(1). This contention, though somewhat plausible at first sight, does not appear to us to be sound. In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say "where the act alleged to constitute such contempt is an offence". It is argued that if such was the intention of the Legislature, it could have expressly said that the High Court's jurisdiction will be ousted only when the contempt is punishable as such under the Indian Penal Code. It seems to us that the reason for not using such language in the sub-section may be that the expression "contempt of court" has not been used as description of any offence in the Indian Penal Code, though certain acts, which would be punishable as contempt of court in England, are made offences under it.

It may be pointed out in this connection that although the powers of the High Courts in India established under the Letters Patent to exercise jurisdiction as Superior Courts of Record in punishing contempt of their authority or processes have never been doubted, it was a controversial point prior to the passing of the Contempt of Courts Act, 1926, as to whether the High Court could, like the Court of King's Bench in England, punish contempt of courts subordinate to it in exercise of its inherent jurisdiction. The doubt has been removed by Act XII of 1926 which expressly declares the right of the High Court to protect subordinate courts against contempt, but

(1) (1943) A.I.R. 1943 Nag. 334.

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subject to this restriction, that cases of contempt which have already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court. This seems to be the principle underlying section 2(3) of the Contempt of Courts Act. What these cases are need not be exhaustively determined for purposes of the present case, but some light is undoubtedly thrown upon this matter by the provision of section 480 of the Criminal Procedure Code, which empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under sections 176, 178, 179, 180 or section 228 of the Indian Penal Code in the view or presence of the court. We are not prepared to say, as has been said by the Patna High Court in *Jnanendra Prosad* v. *Gopal*(1), that the only section of the Indian Penal Code which deals with contempt committed against a court of justice or judicial officer is section 228. Offences under sections 175, 178, 179 and 180 may also, as section 480 of the Criminal Procedure Code shows, amount to contempt of court if the "public servant" referred to in these sections happens to be a judicial officer in a particular case. It is well known that the aim of the contempt proceeding is "to deter men from offering any indignities to a court of justice" and an essential feature of the proceeding is the exercise of a summary power by the court itself in regard to the delinquent. In the cases mentioned in section 480 of the Indian Penal Code, the court has been expressly given summary powers to punish a person who is guilty of offending its dignity in the manner indicated in the section. The court is competent also under section 482 of the Criminal Procedure Code to forward any case of this description to a Magistrate having jurisdiction to try it, if it considers that the offender deserves a higher punishment than what can be inflicted under section 480. Again, the court is entitled under section 484 to discharge the offender on his submitting an apology, although it has already adjudged him to punishment under section 480

(1) I.L.R. 12 Pat. 172.

or forwarded his case for trial under section 482. The mode of purging contempt by tendering apology is a further characteristic of a contempt proceeding. It seems, therefore, that there are offences which are punishable as contempt under the Indian Penal Code and as subordinate courts can sufficiently vindicate their dignity under the provisions of criminal law in such cases the legislature deemed it proper to exclude them from the jurisdiction of the High Court under section 2(3) of the Contempt of Courts Act; but it would not be correct to say that the High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code.

This view has been taken and, in our opinion quite rightly, in a number of decisions by the Calcutta,(1) Patna,(2) Allahabad(3) and Lahore(4) High Courts. The only authority which Mr. Sinha could cite in support of his contention is the decision of the Nagpur High Court in *Kisan Krishna Ji* v. *Nagpur Conference of Society of St. Vincent de Paul*(5). The authority is undoubtedly in his favour as it proceeds upon the assumption that the idea underlying the provision of section 2(3) of the Contempt of Courts Act is that if a person can be punished by some other tribunal, then the High Court should not entertain any proceeding for contempt. It is to be noticed that the learned Judge, who decided this case, himself took the opposite view in the case of *Subordinate Judge, First Class, Hoshangabad* v. *Jawaharlal*(6) and definitely held that the prohibition contained in section 2(3) of the Contempt of Courts Act refers to offences punishable as contempt of court by the Indian Penal Code and not to offences punishable otherwise than as contempt. This decision was neither noticed nor dissented from in the subsequent case, and it is quite possible that

(1) *Narayan Chandra* v. *Panchu Pramanik* (A.I.R. 1935 Cal. 684); *Naresh Kumar* v. *Umaromal* (A.I.R. 1951 Cal. 489).

(2) *Kaulashia* v. *Emperor* (12 Pat. 1).

(3) *State* v. *Brahma Prakash* (A.I.R. 1950 All. 556); *Emperor* v. *Jagannath* (A.I.R. 1938 All. 358).

(4) *Bennett Coleman* v. *G. S. Monga* (I.L.R. 1937 Lah. 34).

(5) A.I.R. 1943 Nag. 334. (6) A.I.R. 1940 Nag. 407.

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the attention of the learned judge was not drawn to this earlier pronouncement of his, in which case the matter would certainly have been more fully discussed. We think further that the decision of the Calcutta High Court in *V. M. Bason* v. *A. H. Skone,*(1) which was the basis of the decision of the learned Judge in the subsequent case does not really support the view taken in it. In the Calcutta case what happened was, that a clerk of the Attorney, who appeared for the respondent decreeholder, went to serve a notice under Order 21, Rule 37(1), of the Civil Procedure Code upon the appellant judgment-debtor. The judgment-debtor refused to take the notice and abused and assaulted the Attorney's clerk. Upon that, contempt proceedings were started against him and Mr. Justice C. C. Ghosh, sitting on the Original Side of the High Court of Calcutta, held the appellant guilty of contempt and fined him Rs. 200. On appeal, this judgement was affirmed by the appellate Bench and there was a general observation made by Chief Justice Sanderson at the close of his judgment that it is not desirable to invoke the special inherent jurisdiction of the High Court by way of proceeding for contempt if ordinary proceedings in a Magistrate's court are sufficient to meet the requirements of a case. This was not a case under section 2(3) of the Contempt of Courts Act at all and no question either arose or was decided as to whether if an act is otherwise punishable as an offence under the Indian Penal Code the jurisdiction of the High Court under that section would be ousted. Undoubtedly the High Court had jurisdiction in that case and whether such jurisdiction, which is certainly of a special character and is exercised summarily, should be called in to aid in the circumstances of a particular case would depend upon the discretion of the court. This has, however, no bearing on the point that has arisen for consideration before us. We would hold, therefore, that the right view was taken by the learned Judge of the Nagpur High Court in the earlier case and not in the later one.

(1) I.L.R. 53 Cal. 401.

It is next urged by Mr. Sinha that even assuming that this view is correct, the language of section 499 of the Indian Penal Code is wide enough to cover a case of contempt of court. What is said is, that if a libel is published against a judge in respect of his judicial functions, that also is defamation within the meaning of section 499 of the Indian Penal Code and as such libel constitutes a contempt of court, it may be said with perfect propriety that libel on a judge is punishable as contempt under the Indian Penal Code. We do not think that this contention can be accepted as sound. A libellous reflection upon the conduct of a judge in respect of his judicial duties may certainly come under section 499 of the Indian Penal Code and it may be open to the judge to take steps against the libeller in the ordinary way for vindication of his character and personal dignity as a judge; but such libel may or may not amount to contempt of court. As the Privy Council observed in *Surendra Nath Benerjee* v. *The Chief Justice and Judges of the High Court*(1) "although contempt may include defamation, yet an offence of contempt is something more than mere defamation and is of a different character." When the act of defaming a judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of courts of law which exist for their good. As was said by Willmot, C.J.(2)

"attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determinations.....and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsover; not for the sake of the judges as private individuals but because they are the channels by which the King's justice is conveyed to the people".

(1) I.L.R. 10 Cal. 109 at 131.

(2) Willmot's Opinions page 256 : *Rex* v. *Davies* 30 at p. 40—41.

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What is made punishable in the Indian Penal Code is the offence of defamation as defamation and not as contempt of court. If the defamation of a subordinate court amounts to contempt of court, proceedings can certainly be taken under section 2 of the Contempt of Courts Act, quite apart from the fact that other remedy may be open to the aggrieved officer under section 499 of the Indian Penal Code. But a libel attacking the integrity of a judge may not in the circumstances of a particular case amount to a contempt at all, although it may be the subject-matter of a libel proceeding. This is clear from the observation of the Judicial Committee in the case of *The Matter of a Special Reference from the Bahama Islands*(1). The first contention of Mr. Sinha, therefore, fails.

The second point raised by the learned counsel does not appear to us to have any real substance. The article in question is a scurrilous attack on the integrity and honesty of a judicial officer. Specific instances have been given where the officer is alleged to have taken bribes or behaved with impropriety to the litigants who did not satisfy his dishonest demands. If the allegations were true, obviously it would be to the benefit of the public to bring these matters into light. But if they were false, they cannot but undermine the confidence of the public in the administration of justice and bring judiciary into disrepute. The appellant, though he took sole responsibility regarding the publication of the article, was not in a position to substantiate by evidence any of the allegations made therein. He admitted that the statement was based on hearsay. Rumours may have reached him from various sources, but before he published the article it was incumbent upon him as a reasonable man to attempt to verify the informations he received and ascertain, as far as he could, whether the facts were true or mere concocted lies. He does not appear to have made any endeavour in this direction. As the appellant did not act with reasonable care and caution, he cannot be said to have acted

(1) [1893] A.C. 138.

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bona fide, even if good faith can be held to be a defence at all in a proceeding for contempt. What is more, he did not express any regret for what he had done either in the High Court or before us and his behaviour does not show the least trace of contrition. In these circumstances, we think that the appeal cannot succeed and must be dismissed.

Appeal dismissed.

Agent for the appellant : *S. Subrahmanyam.*

Agent for the respondent : *P. A. Mehta.*

KATHI RANING RAWAT

v.

THE STATE OF SAURASHTRA

1952

Feb. 27.

[PATANJALI SASTRI C. J., FAZL ALI, MEHAR CHAND MAHAJAN, MUKERJEA, DAS, CHANDRASEKHARA AIYAR and VIVIAN BOSE JJ.]

Saurashtra State Public Safety (Third Amendment) Ordinance (LXVI *of* 1949), *ss.* 9, 10, 11—*Law empowering State to constitute Special Courts to try special classes of offences—Constitutional validity—Contravention of fundamental right to equal protection of laws—Essentials of valid classification—Delegation of legislative powers—Constitution of India, Arts.* 13, 14.

The Saurashtra State Public Safety Measures Ordinance, 1948, was passed "to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the State of Saurashtra." As crimes involving violence such as dacoity and murder were increasing, this Ordinance was amended by the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949, which, by secs. 9, 10 and 11, empowered the State Government by notification in the official gazette to constitute Special Courts of criminal jurisdiction for such area as may be specified in the notification, to appoint Special Judges to preside over such Courts and to invest them with jurisdiction to try such offences or classes of offences or such cases or classes of cases as the Government may, by general or special order in writing, direct. The procedure laid down by