HOSHIAR SINGH

v.

GURBACHAN SINGH

1962

February 8.

(S. K. DAS, K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Contempt of Court—Issue of prohibitory order—Knowledge aliunde—Disobedience—Absence of official communication, if a proper defence—Sentence.

The appellants, one a Sub-Divisional Officer and the other a Naib Tehsildar, were entrusted with the duty of allotting land to displaced persons. The first respondent forcibly occupied the land allotted to B. On May 9, 1958, the first appellant ordered that B and other allottees similarly situated would be given possession of lands allotted to them on May 20, 1958. On May 16, 1958, the first respondent and others threatened with dispossession filed petitions in the High Court under Art. 226 of the constitution and obtained interim stay of delivery of possession till May 19, 1958, when the petitions would come up before the Division Bench for admission. On May 19, 1958, the Division Bench extended the operation of the stay order until May 23, 1958. The notice of the first stay order reached the appellants on May 19, 1958, but no notice of the second order was officially communicated to them till May 21, 1958. It was alleged that on May 20, 1958, the appellants, although informed of the second stay order by certain interested persons and the Advocate for one of the parties, formally dispossessed the respondent in disobedience of the Court's order and handed over possession of the land to B. On the complaint of the respondent the High Court held that the appellants were guilty of contempt of court and, instead of committing them for contempt, administrated a warning as the appellants honestly believed that they were not bound to stay delivery of possession in absence of an official communication. The appellants appealed by special leave.

Held, (per Das and Subba Rao, JJ.)that in a case of contempt for disobedience of a prohibitive order, as distinguished from an order of affirmative nature, it was not necessary to show that notice of the prohibitory order was served upon the party against whom it was granted. It would be sufficient if it was proved that the party had notice of it *aliunde*.

N. Baksi v. *C. K. Ghosh*, A. I. R. (1957) Patn. 528, referred to.

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There may be circumstances where officials entrusted with the carrying out of a legal order might have valid reasons to doubt the authenticity of the order conveyed to them by interested parties. But in the present case there could hardly be any such reasons. The appellants had really no justification for doubting the authenticity of an order communicated to them by an Advocate.

Held, further, that in a matter relating to contempt of court, there cannot be both justification and apology.

M. Y. Shareef v. *The Hon'ble Judges of the High Court of Nagpur*, [1955] 1 S. C. R. 757, referred to.

Although the appellants might have honestly believed that they were not bound to hold their hand in absence of an official communication, that would be no defence to the charge of contempt of court, but only a relevant consideration in awarding the sentence.

Per Dayal, J.—Contempt proceedings are criminal or quasi criminal in nature and it is essential that before any action can be taken the accusation must be specified in character. In the instant case, the respondent did not state that he was formally dispossessed. This would be for some reason if actual possession had been delivered. He could not be said to have come to court with clean hands. Further, the finding of the High Court that the appellants delivered possession honestly believing that they were not bound not to do so in the absence of the official communication meant that there was no defiance of the High Court's order. There could be no wilful disobedience since there was no belief in the existence of the order.

It may not be necessary that the party against whom a prohibitory order was made must be served with the order, but it should have notice of the order before it could be expected to obey. Such notice must be from sources connected with the court passing the order. The alleged knowledge of the party cannot be made to depend on the veracity of the witnesses examined by the party praying for action.

In re Bryant L.R. (1876) 4 Ch.D. 98. *In Ex Parte Langley, Exparte Smith. In re Bishop* L. R. (1879) 13 Ch. D. 110 and *The Seraglio*. L. R. (1885) 10 P. D. 120, discussed.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 187 of 1959.

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Appeal by special leave from the judgment and order dated August 18, 1958, of the Punjab High Court in Criminal Original No. 20 of 1958.

Gopal Singh and *P. D. Menon*, for the appellants. *R. S. Gheba*, for respondent No. 1.

1962. February 8. The Judgment of Das and Subba Rao, JJ., was delivered by Das, J., Dayal, J. delivered a separate judgment.

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S. K. DAS, J.—This is an appeal by special leave from the judgment and order of the Punjab High Court dated August 18, 1958 by which the said Court found the two appellants guilty of contempt of court and instead of committing them for such contempt, administered a warning to them and directed them to pay Rs. 50/- each as costs of the respondent Gurbachan Singh.

The two appellants before us bear the same name. One of them was the Sub Divisional Officer, Sirsa, District Hissar and the other Naib Tehsildar-*cum*-Managing Officer, Sirsa, same district at the relevant time. In this judgment we shall call the Sub Divisional Officer as the first appellant and the Naib Tehsildar as the second appellant. The facts alleged against the appellants were these. One Budh Singh, a displaced person, was allotted some land in village Jagmalera, Tehsil Sirsa, District Hissar. The land allotted to Budh Singh was, it was stated by the appellants, forcibly occupied by the respondent Gurbachan Singh. The respondent was not a legitimate allottee and the appellants, who were concerned in their official capacity with the allotment and management of land for displaced persons, were naturally anxious to oust the respondent and deliver possession to Budh Singh of the land allotted to him. On May 9, 1958 appellant No. 1 made an order that Budh Singh and other allottees like him would be given possession of the land, allotted to them. The date fixed for such

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delivery of possession was May 20, 1958. On May 16, 1958 Gurbachan Singh and a number of other persons who were similarly threatened with dispossession filed petitions to the High Court under Art. 226 of the Constitution challenging the legality of the action threatened against them. These petitions were put up before the learned Chief Justice on that very day, namely, May 16, 1958, when he issued an order staying delivery of possession till May 19, 1958, when the petitions were to come up for admission before a Division Bench. On May 19, 1958, the Division Bench extended the operation of the stay order until May 23, 1958. In the High Court the appellants did not dispute that the first order staying delivery of possession up to May 19, 1958 was communicated to them on May 19, 1958 on which date the notice from the High Court reached Sirsa. It appears that a notice of the second order extending the stay of delivery possession till May 23, 1958, was not officially communicated to the appellants till May 21, 1958. The allegation on behalf of the respondent was that on May 20, 1958, which was the relevant date, the two appellants were informed by certain interested persons, to whom we shall presently refer, that an extension of the stay order up to May 23, 1958, had been granted by the High Court. In spite of this information, however, the second appellant, in consultation with and under instruction, of the first appellant, formally dispossessed the respondent and handed over possession of the land to Budh Singh.

In these circumstances the allegation on behalf of the respondent was that the two appellants had committed contempt of court by disobeying the order of the High Court staying delivery of possession till May 23, 1958. The respondent made an application to the High Court for taking suitable action against the two appellants. This application was made on May 27, 1958. On this application the High Court

issued notice and after hearing the parties, Falshaw, J. (as he then was) who dealt with the application came to the conclusion that the two appellants were aware of the order of the High Court extending the operation of the stay order and yet they disobeyed the said order by dispossessing the respondent and handing over possession to Budh Singh. He held them guilty of contempt of court, but at the same time expressed the opinion that the appellants honestly believed that they were not bound to hold their hands in the absence of an official communication of the High Court's order extending the operation of the stay order. In this view of the matter, the learned Judge instead of committing the two appellants for contempt of court merely administered a warning to them and directed them to pay the costs of the respondent.

On behalf of the appellants several points have been urged in support of their contention that they were not guilty of contempt of court. Firstly, it has been contended that on the materials on the record, the High Court was wrong in proceeding on the footing that the two appellants were informed by the interested parties that an extension of the stay order up to May 23, 1958, had been granted in the case of the respondent. It has been argued before us that on May 20, 1958, the appellants did not know that the stay order had been extended till May 23, 1958, in the writ petition filed on behalf of the respondent Gurbachan Singh, though in another case of Didar Singh relating to allotted land in the same village, the appellants were informed by an advocate that the stay order had been extended till May 23, 1958. It has been contended before us that in the absence of positive evidence fixing the two appellants with knowledge of the extension of the stay order in the particular case of the respondent, the High Court was wrong in finding that the two appellants had wilfully disobeyed the order of the High Court.

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In order to appreciate this argument urged on behalf of the appellants it is necessary to state some more facts. In para. 17 of the application which the respondent made to the High Court for taking necessary action against the appellants for alleged contempt of court, it was stated that at 6-30 a.m. on May 20, 1958, two persons named Bir Singh and Avtar Singh went personally to the house of appellant No. 2 and told him that the stay order had been extended by the High Court and that they had been informed by the advocate on telephone. This allegation was supported by an affidavit made on behalf of the respondent. Appellant No. 2, however, denied this allegation in his counter-affidavit. In paras. 18, 19 and 20 of his petition the respondent stated that at about 7-40 a.m. on May 20, 1958 a written application was filed before appellant No. 2 in which it was stated that the High Court had stayed delivery of possession till May 23, 1958; this application was drafted by an advocate named Ganga Bishan, who acted on behalf of Didar Singh. The application was presented to appellant No. 2 in presence of two other persons named Mastan Singh and Teja Singh. Thereafter, an affidavit was also made on behalf of Didar Singh. This affidavit was presented to appellant No. 2 at about 8-15 a.m. Thereafter, appellant No. 2 went in a 'jeep' to appellant No. 1 in order to consult the latter. Appellant No. 2 saw appellant No. 1 in the latter's court room. He came out within a few minutes, and told Ganga Bishan that the affidavit should be presented to appellant No. 1. Thereupon, another application was written on behalf of Didar Singh and this was presented to appellant No. 1 supported by the affidavit already made on behalf of Didar Singh. Appellant No. 1 did not, however, pass necessary orders on the application till about 10 a.m., when he made an endorsement to the effect that the Tehsildar, Sirsa, should take

necessary action. When the application was taken to the Tehsildar, he noted on it that the Naib Tehsildar, namely, appellant No. 2 had already left for the village to deliver possession. Thereupon Avtar Singh, Bir Singh, Didar Singh and Mastan Singh went to village Jagmalera where the lands lay and again met appellant No. 2. The application made to appellant No. 1 with his orders thereon was shown to appellant No. 2. It was alleged that appellant No. 2 was also shown the wording of the stay order as received by the party through a special messenger. Appellant No. 2, however, replied that he had been ordered to dispossess the respondent and insisted on his proceeding with the dispossession.

In his counter-affidavit appellant No. 2 admitted that on May 20, 1958 an application was presented to him by Didar Singh at about 7-40 a.m. He further admitted that an affidavit in support of the application was also presented to him. Appellant No. 2 then made the following significant statements.

> "On receipt of these documents I told Shri Didar Singh that I could not act on the application and suspend the proceedings for dispossession unless I was shown the order of stay alleged to have been made by the High Court."

Appellant No. 2 explained his conduct by referring to the background of quarrel and enmity between the parties which had led to several criminal cases between them. Appellant No. 2 said in his counter-affidavit that with this background of enmity he felt that though Didar Singh was an interested party, it would not be safe to accept the statements of facts contained in the application or affidavit made on behalf of Didar Singh at their face value. Appellant No. 2 also admitted that he consulted appellant No. 1, who also advised that it would not

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be safe to act on the statements made in the application or affidavit. Appellant No. 2 also admitted that Ganga Bishan Advocate, presented the applications to him. He also admitted that the application which was filed by Ganga Bishan to appellant No. 1 was received back with the orders of appellant No. 1 thereon at about 6 p.m. on May 20, 1958, while appellant No. 2 was returning from the village. Appellant No. 2 denied that he was shown the wording of the stay order of the High Court. He admitted, however, that he was asked not to proceed with delivery of possession on account of the High Court. Appellant No. 1. also made similar statements in his counter-affidavit. He admitted that at about 9 a. m. on May 20, 1958 an application supported by affidavit was made to him on behalf of Didar Singh and he then endorsed the application to the Tehsildar for necessary action.

Unfortunately, the applications which were made to appellants 1 and 2 have not been filed and we do not know the precise contents of the two applications. We have, however, affidavits made on behalf of Didar Singh, Teja Singh, Ganga Bishan and Avtar Singh. The learned Advocate for the parties have taken us through those affidavits. The argument presented on behalf of the appellants is that though they knew of the extension of the stay order in Didar Singh's case by reason of the application and affidavit filed on his behalf before them, they did not know that a similar extension of the stay order had been granted by the High Court in the other cases as well. This argument has been pressed before us with some vehemence and we proceed now to consider it. It is worthy of note that such an argument which goes to the very root of the matter was not presented to the High Court. It is not disputed that "disobedience of a judgment or order requiring a person to do any act other than the payment of money, or to

abstain from doing anything is a contempt of court punishable by attachment or committal"; but disobedience, it is argued, if it is to be punishable as a contempt, must be wilful; in other words, the party against whom a proceeding by way of contempt is taken must know the order before it can be said that he has disobeyed it. It is somewhat surprising that if the stand of the appellants was that they did not know of the order made by the High Court on May 19, 1958, in the respondent's case, such a point was not urged in the High Court. Falshaw, J., (as he then was) said in his judgement that it was not in dispute before him that on the morning of May 20, 1958, both the appellants were informed that an extension of the stay order upto May, 23, 1958, had been granted by the High Court. This statement of the learned Judge must have reference to the case of the respondent which he was considering. Apart, however, from the point that such an argument on behalf of the two appellants was not presented in the High Court, it appears to us that on the affidavits made available to the Court, the only reasonable inference is that though the application and the affidavit were made on behalf of Didar Singh, both the appellants were informed that the High Court had granted an extension of the stay order in all the cases. It is admitted on both sides that there were three cases in which delivery of possession had to be given of lands in village Jagmalera. It is also not seriously in dispute that on May 9, 1958, appellant No. 1 made an order directing that delivery of possession should be given to the allottees of their respective areas and persons in unauthorised occupation would be dispossessed. On May 16, 1958 three writ petitions were made which were placed before the Chief Justice who made an interim order of stay lasting for three days. On May 19, 1958 the writ petitions were placed before a Division Bench for admission and that Bench

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extended the stay order till May 23, 1958. These are the admitted facts. It is also admitted that the respondent Gurbachan Singh did not appear before the appellants on May 20, 1958, a fact which has been emphasised by the learned Advocate for the appellants. Let us, however, see what the affidavits filed in the case show. Teja Singh said in his affidavit that Harbans Singh Gujral, who was the advocate acting on behalf of the petitioners in all the cases, told him on the telephone on May 19, 1958 that the High Court had extended the stay order in all the cases upto May 23, 1958. Teja Singh accompanied Didar Singh, Ganga Bishan, Mastan Singh and others to the village on May 20, 1958, and he said that an application was made to appellant No. 2 in which it was stated that the stay order had been extended by the High Court. The affidavit of Ganga Bishan is very significant in this connection. He said that on May 20, 1958, he drafted the application which was later made to appellant No. 2. Ganga Bishan said that it was stated to appellant No. 2 that the stay order made by the High Court related to all the cases of village Jagmalera. He further said that appellant No. 2 was informed that stay of delivery of possession had been extended by the High Court upto May 23, 1958; appellant No. 2, however, wanted to be shown the order of the High Court; thereupon an affidavit of Didar Singh to the effect that the stay order had been extended by the High Court upto May 23, 1958, was filed. Ganga Bishan also said that appellant No. 1 was also informed that the High Court had extended the stay order upto May 23, 1958. The affidavits made on behalf of Didar Singh and Avtar Singh were also to the same effect. In view of these affidavits we find it very difficult to hold that the appellants knew of the stay order only in Didar Singh's case but did not know of the stay order in the other cases. It is worthy of note here that

in the counter-affidavits filed on behalf of the appellants the point that was made on their behalf was that they considered it unsafe to rely on the applications and affidavits made, in view of the background of enmity between the parties. The two appellants did not say in their counter-affidavits that they came to know of the stay order only in one case and not in the others. Such a point does not appear to have been specifically made on behalf of the appellants at any stage of the proceedings in the High Court. Therefore, we have come to the conclusion that the appellants knew of the order of the High Court in all the cases and it is not correct to say that the appellants knew of the order of the High Court only in one case and not in the others. We find it difficult to believe that Ganga Bishan would not tell the appellants that the High Court had extended the stay order in all the three cases of the village Ganga Bishan says in his affidavit that he did tell the appellants of the extension of the stay order in all the three cases and there was no counter-affidavits on behalf of the appellants traversing the statements made by Ganga Bishan. We must, therefore, overrule the first point urged on behalf of the appellants.

The second point which has been urged on behalf of the appellants is that in the absence of an official communication of the order, they were justified in not acting on what they came to know from interested parties and their advocate. The learned Advocate for the appellants has submitted that in a case of this nature, before wilful disobedience of the order of the High Court could be imputed against the appellants, it was legally essential that the order should be officially communicated or served on the appellants and in the absence of such communication or service, the proceeding for contempt must fail. We are unable to accept this contention as correct.

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The legal position has been very succinctly put by Oswald:

> "The judgment or order should be served on the party personally, except in the following cases: (1) prohibitive orders, the drawing up of which is not completed; (2) orders embodying an undertaking to do an act by a named day; (3) orders to answer interrogatories or for discovery or inspection of documents: (4) where an order for substituted service has been made; (5) where the respondent has evaded service of the order.....
>
> In order to justify committal for breach of a prohibitive order it is not necessary that the order should have been served upon the party against whom it has been granted, if it be proved that he had notice of the order *aliunde*, as by telegram, or newspaper report, or otherwise, and knew that it was intended to be enforced, or if he consented to the order, or if he was present in Court when the order was pronounced, or when the motion was made, although he left before the order was pronounced."

(Oswald's Contempt of Court, 3rd Edn. pp. 199 and 203). The order in the present case was a prohibitory order and if the appellants knew that the High Court had prohibited delivery of possession till May 23, 1958, it was undoubtedly the duty of the appellants to carry out that order. We do not think that the appellants can take up the plea that as the order had not been officially communicated to them, they were at liberty to ignore it. The appellants were officers whose duty it was to uphold the law and if they knew that a valid order had been made by the High Court staying delivery of possession, they disobeyed that order at their peril. There may be circumstances where officials

entrusted with the duty of carrying out a legal order may have valid reasons to doubt the authenticity of the order conveyed to them by interested parties and in those circumstances it may be said that there was no wilful disobedience of the order made. We do not, however, think that the appellants in the present case had any real justification for doubting the authenticity of the order made by the High Court, even though the order had not been officially communicated to them. The appellants knew that an interim order of stay had been made by the High Court on May 16, 1958; that order was in force till May 19, 1958. Thereafter the appellants were informed not merely by interested parties but by an Advocate, who was an officer of the Court, that the High Court had extended the stay order upto May 23, 1958. A formal application supported by an affidavit was made to that effect. Despite the reason alleged by the appellants that there was a background of enmity between the parties, we do not think that the appellants have given any good reasons on which they were entitled to doubt the authenticity of the order communicated to them by Ganga Bishan, an Advocate acting on behalf of Didar Singh. It is worthy of note that the appellants did not deliver possession in Didar Singh's case. They were content with delivering possession in the case of the respondent only. Taking into considerations all these circumstances we are satisfied that there was in this case in the eye of the law, a wilful disobedience of the order of the High Court staying delivery of possession, even though the appellants might have wrongly but honestly believed that it was not safe to act on the information given to them by Ganga Bishan.

The learned Advocate for the appellants has referred us to a number of decisions, English and Indian, relating to mandatory orders, or

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orders for the payment of money, or orders which require under the rules of the Court to be served in particular manner. *In re: Holt (an Infant)*(1); *Ex-parte Lingley* (2); *In re: Tuck Murch* v. *Loosemore* (3); *Dwijendra Krishan Datta* v. *Surendra Nath Nag Choudhury* (4): and *Gordon* v. *Gordon* (5). In those decisions it was held that it was necessary to have the order properly served before charging a person with disobedience of it. We do not think that those decisions are in point, because we are dealing with a prohibitory order and in the matter of a prohibitory order it is well-settled that it is not necessary that the order should have been served upon the party against whom it has been granted in order to justify committal for breach of such an order, provided it is proved that the person complained against had notice of the order *aliunde*. The distinction between prohibitory orders and orders of an affirmative nature was adverted to in *N. Baksi* v. *O. K. Ghosh* (6) and a large number of decisions were referred to in support of the rule that in respect of a prohibitory order, service of the order was not essential for founding an action in contempt. We do not think that any useful purpose will be served by examining those decisions over again. We are content to adopt for the purposes of this case the rule as succinctly put by Oswald and quoted earlier in this judgment.

Lastly, our attention has been drawn to the statements made by the respondent in para. 22 of his petition to the effect that though appellant No. 2 made a report about delivery of possession in respect of the land of the respondent, no actual dispossession could be made because cotton crop was standing on the land and a large number of persons had gathered there. The argument before us is that if, according to the respondent

(1) (1879) 11 Ch. D. 168.
(2) (1879) 13 Ch. D. 110.
(3) (1906) 1 Ch. 692.
(4) A.I.R. 1927 Calcutta 548.
(5) (1946) 1 All E.R. 246.
(6) A.I.R. 1957 Patna 528.

himself, no actual dispossession took place then this is not a fit case in which action for contempt should be taken against the appellants. It has been submitted on behalf of the appellants that contempt proceedings are of an extraordinary nature and the Court should be reluctant to exercise its extraordinary power if the action complained of is of a slight or trifling nature and does not cause any substantial loss or prejudice to the complainant. It has been argued that if the respondent himself said that he had not been actually dispossessed, then there was no reason for proceeding against the appellants for contempt of court. Secondly, it is pointed out that the appellants offered an apology in case the High Court held that they should have taken action on the information given to them by Ganga Bishan. As to the second submission, it is enough to point out that in a matter relating to contempt of court, there cannot be both justification and apology. (See *M.Y. Shareef* v. *The Hon'ble Judges of the High Court of Nagpur* (1). As to the first submission we may draw attention to the statements of appellant No. 2 in para. 21 of his affidavit in which he said that so far as the respondent's land was concerned, possession was delivered to Budh Singh. This statement of appellant No. 2 clearly shows that the two appellants took the very action which was prohibited by the High Court by its order dated May 19, 1958. We are, therefore, unable to accept the submission that there was no foundation for taking action against the appellants for contempt of court. This disposes of all the points urged on behalf of the appellants.

As to the punishment imposed, the learned Judge took into consideration that the appellants wrongly but honestly might have believed that they were not bound to hold their hands in the absence of an official communication of the order

(1) [1955] 1 S.C.R. 757.

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of the High Court. That belief afforded no defence to the charge of contempt of court, but was a consideration relevant to the sentence. In our opinion, there are no grounds for interference with the order of the High Court. The appeal accordingly fails and is dismissed.

Raghubar Dayal J.

RAGHUBAR DAYAL, J.—I have had the previlege of perusing the Judgment of my learned brother S. K. Das, J., but regret my inability to hold that the appellants committed contempt of Court.

I need not repeat the facts set out in the majority judgment.

No conviction for committing contempt of Court can be based on the finding of the High Court that the appellants delivered possession believing that they were not bound to hold their hands in the absence of the official communication of the High Court's order. The finding means that they delivered possession not in defiance of the High Court's order, but because they honestly thought that in the absence of the official communication of the order, they could not act on the supposition that the original stay order, which was to be effective up to May 19, 1958, continued to be effective. If in their honest opinion no stay order existed at the time, their conduct cannot be said to amount to wilful disobedience of the High Court's order extending the stay order up to May 23, 1958. No question of wilful disobedience can arise when the very existence of the order is not believed. The question of obedience or disobedience arises only after the party knows of the order and if the party does not know the order, no such question can arise.

The allegations in the petition by the first respondent, filed in the High Court, did not make out that the appellants delivered possession, the

delivery of which had been stayed upto May 23, 1958, by the High Court by its order dated May 19, 1958. This is clear from the statements in paragraphs 21 and 22 of the petition. They are :

> "21. However, when actually he attempted to start the work of dispossession, he found that a large number of people were collected at the spot and apprehending that the police force already taken to the spot might not be sufficient to cope up with the situation if some trouble arose, he withdrew from the spot.
>
> 22. That although in the land possessed by the petitioner in Jag Malera, cotton crop was standing in some of the fields and no proceedings for dispossession of the petitioner could be taken by respondent No. 2 on account of the presence of a large number of persons at the spot, respondent No. 2, however, made some report later on that the petitioner had been actualy dispossessed of his lands and the same was given over to Budh Singh at the spot. In the other cases, however, he made a report that he could not deliver possession on account of the presence of a mob at the spot and that the police force with him being too small, was not sure to cope up with the situation."

These paragraphs can only mean that appellant No. 2 attempted to start the work of dispossession, but did not proceed further, and withdrew from the spot in view of an apprehension of breach of peace and that he made some report of a fictitious kind to the effect that the petitioner had been actually dispossessed of his land and possession had been given over to Budh Singh at the spot. It was emphasized that actual possession could not have been delivered on account of the standing cotton crop. It follows that even on the statements

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of the first respondent in his petition for action against the appellants for contempt of Court, there was no assertion that they had disobeyed the stay order by delivering possession to Budh Singh. In the absence of such an assertion, no action could have been taken or ought to have been taken against the appellants.

Contempt proceedings are criminal or quasi-criminal proceedings. It is essential that the accusation made against the opposite party by the petitioner for taking action against him should be precise and should clearly make out that the opposite party had, by some specific act, committed contempt of Court. The conviction of the opposite party must rest on the facts alleged and proved by the petitioner. A conviction may also rest on the sole admission of the alleged contemner if that establishes his committing contempt of Court, but, in that case, his admission should be taken as a whole and not that its incriminating part be taken out of the context and made the basis for conviction.

It is immaterial that appellant No. 2 stated in his reply that actual possession of the land in the unauthorised possession of the first respondent was delivered to Budh Singh and that at the time no cotton crop was standing and that the respondent was adopting a contradictory position.

The High Court did not give any finding on this question. It simply said in its judgment, due to the misreading of the allegations in the petition.

> "In spite of this fact it is alleged that in the village the Naib Tehsildar formally dispossessed the present petitioner and handed over his land to one Budh Singh..."

The respondent made no statement about the Naib Tehsildar formally dispossessing him and handing over the land to Budh Singh.

A clear-cut finding on the disputed fact whether actual possession had been delivered or not is not to be given in summary proceedings for contempt of Court.

If actual possession had been delivered to Budh Singh, there must have been some good reason for the respondent not to admit it in his petition and that can only be that in any future dispute where the question of possession of the respondent or of the Budh Singh be in question, the respondent be not confronted with his own admission in his petition and affidavit accompanying it. It may be mentioned that identical statements where made in paragaraphs 21 and 22 of the affidavit. There might be some other reason for the respondent not to admit the delivery of possession, but it is clear that the respondent did not come to Court with clean hands and, in the circumstances, proceedings for contempt of Court on his application was wrong exercise of discretion. However, the main fact remains that no allegation was made in the petition that the respondents had delivered possession.

The appellants were not served, by the time the delivery of possesion may be supposed to have taken place, with the order of the High Court extending the stay order up to May 23, 1958. The telegram sent by the counsel of Gurbachan Singh from Chandigarh, recached the first appellant, the Sub Divisional Officer, at 1-30 p.m., on May 10, 1958, and any order of his on it did not reach appellant No. 2 till 6 p.m., by which time, according to him, possession had been delivered. The formal stay order from the High Court reached much later.

It may not be necessary to serve prohibitive order on the party against whom it is granted, but that party must have notice of the order before it can be expected to obey it can be committed for contempt of Court for disobeying it. This is what

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Oswald states at page 203 of his book on 'Contempt of Court', III Edition. He says:

> "In order to justify committal for breach of a pohibitive order it is not necessary that the order should have been served upon the party against whom it has been granted, if it be proved that he had notice of the order *aliunde*, as by telegram, or newspaper report, or otherwise,...."

It would appear from the later part of the observation that it was sufficient that the party concerned gets notice of the prohibitive order by any means, specially by telegram or newspaper report. This is however not what was held in the cases referred to by Oswald in support of his statement. Notice to the party concerned, of the prohibitive order, in those cases was communicated by the Court through its regular procedure or by a Solicitor of the Court.

In *In re Bryant* (1) the parties concerned were informed by the solicitor of the judgment-debtor that the debtor had filed a liquidation petition in the London Bankruptcy Court and that application would be made at the next sitting of the Court to restrain further proceedings under the execution. The auctioneer concerned received a telegram from Bryant's solicitors referring to the parties to the case and stating that injunction staying sale and further proceedings had been granted that morning and that the order would be served as soon as possible. The auctioneer, however, proceeded with the sale. It was in these circumstances that the parties concerned were held to have disobeyed the order of the Court and to have committed its contempt. The solicitor was an officer of the Court.

This case is no authority for the proposition that information conveyed to the party concerned

(1) L.R. (1876) 4 Ch. D. 98.

by telegram from a person who is not an officer of the Court would amount to the requisite notice of the prohibitive order by the party concerned.

In Ex parte Langley, Ex parte Smith, In re Bishop (1) the facts were as follows. Bishop filed a liquidation petition in the London Bankruptcy Court on August 6, 1879. The same day the Court passed an order restraining until the 8th of September, further proceedings in several actions which had been commenced against the debtor and, *inter alia*, restraining the sheriff of Kent, his officers and servants, from taking any further proceedings in an action which had been brought against the debtor by Messrs. Wade and Thurston. The sheriff had fixed the sale of the attached furniture of the debtor on the 6th of August, having adjourned it from the 5th in order to afford an opportunity to the debtor to pay the debt. Smith was the sheriff's officer who was in charge of the sale. His assistant, Emmerson and Langley, an auctioneer, were to carry out the sale. Emmerson had directions to start the sale at 11 o'clock and not a moment later. Langley, however, postponed the same to 12 o'clock, on his own responsibility, due to paucity of persons present. Langley received a telegram from one Matthews, the manager of the hotel in which the debtor was carrying on business as a licensed victualler, saying:

> "Smith gone to Canterbury. You had better stop sale on your own account, as I know it is all right."

The auctioneer was also informed by the debtor's son and another person between 11 and 12 o'clock that the debtor would come down by the mid-day train from London with the money to pay the execution debt. The sale was again put off to 1 o'clock when it did start. After a few lots had been sold, Emmerson received a telegram purporting to be

(1) L.R. (1979) 13 Ch. D. 110

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from Learyod & Co., Solicitors, London, to the sheriff's officer in possession stating:

> "Take notice, the London Court of Bankruptcy has made an order restraining you from selling or taking any further proceedings in the action against Bishop".

The telegram was shown to Langley who thought it to be a ruse on the part of the debtor but was prepared to stop the sale temporarily till instructions from Smith. Emmerson sent a telegram to Smith saying:

> "Langley just received telegram to stop sale. Shall we proceed? People are waiting your reply."

Smith's reply was:

> "If telegram to Langley does not state Defendant filed petition or money paid, sell at once."

The sale thereafter proceeded. Langley and Smith were committed for contempt by Bacon C J. But on appeal they were acquitted. James, L. J., said at page 116:

> "With regard to the sheriff's officer, he does not seem to have been a party to the alleged contempt at all, because I do not think the mere fact of the telegram is sufficient to bring home to him any participation in the supposed contempt."

He further said at page 117, in considering the case of the auctioneer.

> "It appears to me that he might have taken some steps (though I do not know what steps I should have taken if I had been in his position) to ascertain whether an order had really been made by the Court. Perhaps some auctioneers would have done so. But he has taken upon himself to swear positively (and he

has not been cross-examined) that which Lord Eldon, in *Kimpton* v. *Eve* (1813 2 V. & B. 349= 35 E.R. 352), held to be sufficient. He swears that he did not believe that there had been any proceedings whatever in the Bankruptcy Court, or that any such order had been made. A person in such a position, and a sheriff's officer is placed in great difficulty upon receiving a telegram of this kind, knowing nothing at all of the person who may have gone to the post office and sent it, a telegram which might just as well have been sent by the debtor or by Matthews, or any one else on behalf of the debtor, in the name of Messrs. Learoyd. I am very far from saying that notice of an order cannot be given by telegram. But it is very difficult to commit for contempt where a man says that which the auctioneer does here, under circumstances which certainly give colour to his assertion, and there is some amount of probability that he may, having regard to what had already taken place that day, not have belived that any order had been made by the Court, and have had no suspicion whatever that he was disobeying any order of the Court when he continued the sale."

Thesinger, L. J., said at p. 119:

"...I in no way dissent from the proposition laid down by him(Bacon, C.J.) in this case and also in *In re Bryant* (supra), that, under certain circumstances, a telegram may constitute such a notice of an order of a Court as to make a person who disregards the notice and acts in contravention of the order, liable for the consequences of a contempt of Court..... But the question in each case, and depending upon the particular circumstances of the case must be, was there or was there not such a notice given to the person who is charged with

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contempt of Court that you can infer from the facts that he had notice in fact of the order which had been made? And, in a matter of this kind, bearing in mind that the liberty of the subject is to be affected, I think that those who assert that there was such a notice ought to prove it beyond reasonable doubt."

He further stated at page 121:

> "But, on the other hand, he has positively sworn that, coupling what had happened before with the telegram, he *bona fide* believed that he was not bound to act upon the telegram which he had received, and that there had been no proceedings which would justify him in stopping the sale. He has not been cross-examined, and nothing has been proved to show that his affidavit is not true. Under such circumstances the observations of Lord Eldon, in *Kimpton* v. *Eve* (supra) seem to me pertinent and material, and I may add that in a case like the persent the benefit of any doubt ought to be given to the person charged with contempt."

The further remarks of James L. J., at page 122 point out the proper way of communicating a notice about injunction orders to the parties concerned by the solicitor of the party obtaining the order from the Court. He says:

> "I wish to add this, that when parties who obtain an injunction wish to communicate it by telegram, there is a very obvious mode by which they can prevent difficulties like this. If the solicitor, instead of telegraphing to the sheriff's officer, were to telegraph to some solicitor as his agent at the place, and tell him to go and give notice of the order, then the person affected would have the responsibility

> of an officer of the Court for what he was doing."

This case well illustrates the difficulties of the parties against whom a prohibitive order is made when they are informed by a telegram about these orders having been made by the Court even when the telegram was from a solicitor of the Court. The difficulties would be still greater if the telegram was one from a person who is not a solicitor and therefore an officer of the Court.

In *The Seraglio*(1) notice of the issue of warrant which was subsequently disobeyed was sent by telegram by the marshal to the custom-house officer at Plymouth who went on board the Seraglio to inform those in charge of the ship. The master of the Seraglio, however by the owner's order, left Plymouth with the custom-house officer on board. The warrant was served on him subsequently. Sir James Hannen said at page 121:

> "It must be understood that a litigant cannot be disregard a notice sent to him by telegraph by an officer of the Court."

In none of the cases referred to, a party is said to have received information of the Court's injunction order through any source having no connection with the Court passing the order. I would not like an extension of this practice of holding a person guilty of contempt even though he is not served with the order, to cases in which his alleged knowledge of the order is dependent on the veracity of the witnesses examined by a party praying for action against the other. Conviction for contempt of Court must depend on unimpeachable evidence of the knowledge of the alleged contemner about the order said to have been disobeyed.

In support of the note that it could be proved that the party proceeded against had notice of the

(1) L.R. (1885) 10 P.D. 120.

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order by newspaper report or otherwise, Oswald has referred to Daniell's Chancery Practice, Vol. I, Edition 7, page 1368. That edition is not available, but in the 8th edition of that book, Vol. II, at page 1413, is noted the practice in urgent cases thus :

> "In such (urgent) cases, the practice is to serve the party enjoined personally with notice in writing that the injunction has been granted, and that the order will be drawn up and served as soon as it can be passed through the offices ; or else to procure a transcript of the minutes of the order signed by the Registrar, and to serve the same personally by delivering a copy of it, showing at the same time the original transcript so signed ; and either the notice or the copy of the minutes will be sufficient to render the defendant or other person enjoined guilty of a contempt, if he acts in opposition to the injunction."

I do not find any reference that knowledge of the party proceeded against through a newspaper report or otherwise, and not through Court, has been considered sufficient for contempt proceedings.

Again, at page 1419, have been mentioned certain other means through which the party proceeded against could have been informed of the injunction order. They are practically those summarized in Oswald's note.

In the appeal before us, I am not satisfied that the appellants had been informed that the High Court had passed an order staying the delivery of possession in proceedings on the writ petition filed by respondent Gurbachan Singh. The communication made to the appellants about the stay order of the High Court is said to be through the applications and affidavit presented by Didar Singh to the appellants on May 20, 1958, and through a

chit said to have come from the advocate of the High Court regarding the injunction order.

Didar Singh had put in another writ petition against his threatened dispossession by appellant No. 1 through appellant No. 2. There is said to have been a third writ petition by another person praying for similar relief. All these petitions were separately dealt with by the High Court. Separate stay orders were passed on them. These five affidavits, in view of their contents, are not sufficient to prove that the appellants had been informed through these documents that the High Court had extended the stay orders in all the three cases, viz., the cases on the writ applications of Gurbachan Singh, Didar Singh and another third person. No statement is made in any of the affidavits that the applications and affidavits presented to the appellants mentioned that the High Court had stayed the delivery of possession in all the three cases. It is not stated by Didar Singh and Mastan Singh what was written on the chit sent by the advocate of the High Court and whether that chit related to the order in the case of Didar Singh alone or referred to the orders in all the cases.

As Didar Singh claimed a receipt for the presentation of the application and affidavit to appellant No. 2, the latter, after consulting the prosecuting inspector, went to appellant No. 1 for consultation and was advised to return the application to Didar Singh if he insisted on getting a receipt. The application and the affidavit were therefore then returned to one Ganga Bishan.

The chit alleged to have been sent by the High Court advocate has not been produced. The application presented to appellant No. 2 in the village and returned by him in the Sub-Divisional Officer's Court, though presumably in possession of Didar Singh, has not been filed. They would have indicated what their contents were. That

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would have been the best evidence of what was conveyed to appellants Nos. 1 and 2. Ganga Bishan's statement that he had drafted the application addressed to appellant No. 2 to the effect that the stay order issued by the High Court in Jag Malera Namdhari cases had been extended, is not the best evidence of what the application (a fair copy presumably), actually contained, an application which is in the possession of Didar Singh. Of course, the application and affidavit presented to the Sub-Divisional Officer, are in the possession of the State. No attempt was made by the respondent to summon them or to file certified copies of those documents in these proceedings. In the absence of the best evidence, the documents, I am not prepared to hold that the application and affidavit filed by Didar Singh must have referred to all the cases. Normally, he had no business to refer to the stay orders in the other cases and to make prayer for the stay of delivery of possession in all the cases. He had to restrict his application and affidavit to his own case.

Further, whatever was stated in the application and the affidavit, in the nature of things, was not on the basis of personal knowledge of Didar Singh. Didar Singh himself did not even have the telephonic communication with his counsel at Chandigarh. The telephonic communication was between Teja Singh and that counsel. Appellant No. 2 states—and I see no reason to doubt that statement—that in the background of the facts about the possession over the land he did not consider it advisable and safe to accept the statement of facts contained in the application or affidavit on its face value.

Lastly, the presence of Ganga Bishan, Advocate, on the occasions of the presenting of the application and affidavit to appellants Nos. 1 and 2, is

stated in all the affidavits. But it is only in paragraph 5 of Didar Singh's affidavit that it is stated that Babu Ganga Bishan, Advocate, presented the application and the affidavit to the Sub-Divisional Officer. Ganga Bishan himself does not state so. It is not stated anywhere that Ganga Bishan had been engaged as counsel by Didar Singh. It would appear a bit unusual that in the presence of a duly appointed advocate, applications and affidavits be presented by Didar Singh personally and not through his counsel. On the basis of the statements and the affidavits, I am not prepared to hold that Ganga Bishan was the duly appointed counsel for Didar Singh. He may be accompanying Didar Singh like other persons on account of his interest in the matter.

Further, any request by him to the Sub-Divisional Officer for passing the necessary orders on the application of Didar Singh, as stated by him in paragraph 3 of his affidavit, cannot lead to the conclusion that he professionally represented Didar Singh, as similar requests were made, according to his own affidavit, by the other persons also, who had accompanied Didar Singh to the Sub-Divisional Officer's Court. The Sub-Divisional Officer, therefore, could not have treated his request to be a statement of fact about the High Court's extending the stay order up to May 23, 1958.

Ganga Bishan does not state that he told the Court that the High Court had extended the duration of the stay order or that he requested the Sub-Divisional Officer, who is also the Sub-Divisional Magistrate, to stay the delivery of possession in view of the application filed by Didar Singh. He simply states:

> "Several requests were made to the Sub-Divisional Magistrate by us that necessary orders on the application presented to

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him be made and the Managing Officer be called back."

Even if Ganga Bishan had stated that the High Court had extended the order, his statement too, had no better value when he could not speak about that order on the basis of personal knowledge or on the basis of any communication to him by the Advocate of the High Court. He has not stated in his affidavit that he was present when the order was passed or that he had received any communication from the High Court Advocate. I am therefore of opinion that his merely accompanying Didar Singh and others did not invest any greater weight to the correctness of the statements made in the application and the affidavit.

The public officers are not to blame if they do not take at face value what is contained in deliberatley prepared applications and affidavits. I have already mentioned of the way in which the crucial basic fact to be mentioned in the petition for contempt proceedings against the appellants had not been mentioned and statements were made in a way which at first sight could lead to the impression that the delivery of possession had been made in defiance of the order of the High Court.

I am therefore of opinion that it is not established the respondents did not rely on the statements in the application and the affidavit *mala fide* because they were bent upon delivering possession in defiance of the orders of the High Court.

I find in this case that on May 16, orders of the High Court were obtained for serving the stay order upon the appellants through the petitioner-respondent, but no such order was obtained for serving the order dated May 19. In view of the urgency of the matter, the respondent and others who had obtained extension of the stay orders on

the 19th could have and should have obtained similar orders of the High Court for serving them. If that precaution had been taken again on May 19, 1958, probably what happened subsequently on the spot and thereafter, would not have taken place.

I am therefore of opinion that the appellants committed no contempt of Court, and would allow their appeal.

BY COURT : In accordance with the opinion of the majority, the appeal fails and is dismissed.

Appeal dismissed.

THE NATIONAL UNION OF COMMERCIAL EMPLOYEES AND ANOTHER

v.

M. R. MEHER, INDUSTRIAL TRIBUNAL, BOMBAY AND OTHERS

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February 13.

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Solicitor's profession—Work of solicitor, if an industry—Dispute with employee—Reference to Tribunal—Competence—Industrial Disputes Act, 1947 (14 of 1947), s. 2 (j).

The respondents were a firm carrying on the work of solicitors in Bombay. For the years 1956 and 1957 a claim for bonus was made against them by their employees. Before the Industrial Tribunal to which the dispute was referred by the State Government for adjudication under the provisions of the Industrial Disputes Act, 1947, the respondents contended that the profession followed by them was not an industry within the meaning of s. 2(j) of the Act, that the dispute raised against them was not an industrial dispute under the Act, and that, therefore, the reference made by the Government was incompetent.

Held, that the work of solicitors is not an industry within the meaning of s. 2(j) of the Industrial Disputes Act, 1947, and that, therefore, any dispute raised by the employees of