

**In Re: BenjamIn Guy Horniman**

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**Court :** Mumbai

**Decided On :** Sep-17-1943

**Reported in :** AIR1944Bom127; (1944)46BOMLR94

**Judge :** John Beaumont, Kt., C.J. and ;Sen, J.

**Appeal No. :** Criminal Application for Revision No. 410 of 1943

**Appellant :** In Re: BenjamIn Guy Horniman

**Disposition :** Application allowed

**Judgement :**

John Beaumont, Kt., C.J.

1. This is an application in revision against an order made by the Chief Presidency Magistrate. The circumstances giving rise to the order are these.

2. On April 28, 1943, the applicant, Mr. Horniman, who is a journalist in Bombay, published under the heading of editorial comments in the Bombay Sentinel, which is a paper circulating, certainly in Bombay, and possibly to a limited extent in the United Provinces, these words :

The Allahabad High Court, where an Indian happens to be the Chief Justice, alone refused to take any action until it sees with its own eyes a certified copy of the whole Federal Court's judgment.

It would not even accept the word of Sir Tej Bahadur Sapru nor trust the newspaper reports. At any rate, it will have to act when the certified copies are furnished to it.

It is always within the power of a Court to take judicial notice of an evident fact which nobody can deny.

Perhaps in this instance the denial of Mr. Amery disturbed the equanimity of the Court.

We have not succeeded in ascertaining what denial of Mr. Amery is referred to, or how it is suggested that it could have disturbed the equanimity of the Allahabad High Court, and without that information it is a little difficult to appreciate the last sentence in the passage I have read, or to understand in what respect the words are considered objectionable. However, on September 3, the Allahabad High Court issued a bailable warrant over the signature of two Judges of that Court, addressed to the Commissioner of Police, Bombay, in these terms :

Whereas Mr. Benjamin Guy Horniman, Editor, Printer and Publisher of ' The Bombay Sentinel', Bombay, residing at the ' Bombay Chronicle' Press, Red House, Parsi Bazar Street, Fort, Bombay, stands charged with the offence of contempt of this Court, you are hereby directed to arrest the said Mr. Benjamin Guy Horniman and to produce him before this Court. He may, however, be released on bail if he enters into his own recognizance in Rs. 1,000 with one surety in a like sum to appear before this Court on the 18th of September, 1943 at 10-30 a.m. as mentioned above.

3. It appears from the petition that it was the publication of the passage quoted which constituted the alleged contempt. On the next day the Assistant Registrar of the Allahabad High Court wrote to the Chief Presidency Magistrate, Bombay, a letter stating that this warrant had been issued, and requesting the Chief Presidency Magistrate to return the same duly endorsed after execution to the Court before September 15, 1943. On September 14, the learned Chief Presidency Magistrate made an order that

Mr. Horniman be enlarged on bail of Rs. 1,000 without deposit with one surety in a like amount to appear before the High Court of Judicature at Allahabad on or before the 18th September 1943 at 10-30 a.m.

The question is whether that order of the learned Chief Presidency Magistrate is a valid order.

4. Now, in so far as we are dealing with a pure question of contempt of the Allahabad High Court, and on such a matter the opinion of the Allahabad High Court as to whether or not the act complained of amounts to contempt is conclusive, it seems to me that the procedure adopted was erroneous and misconceived. The power to punish for contempt of Court is a power inherent in superior Courts of Record, which in this country are the High Courts. Each High Court has inherent power to punish contempt of itself. That is necessary in order to ensure that the orders of the Court are enforced, and that the administration of Justice is not interfered with. But no other Court has any power to deal with contempt of Court. High Courts, apart from their inherent power to deal with contempt of themselves, have statutory power under the Contempt of Courts Act, 1926, to punish contempt of Courts subordinate to them, but we are not concerned with that power, I have no doubt that, if the Allahabad High Court considers that Mr. Horniman has committed contempt of that Court, although the contempt may have been committed outside the jurisdiction of that Court, it, could deal with Mr. Horniman, if he were within its jurisdiction. That was decided in *Rajah v. Witherington* I.L.R. (1934) Mad. 831. But in my opinion there is no power in the High Court of Allahabad itself to arrest for contempt of Court a man outside the jurisdiction of that Court. It was held by a Judge of the Calcutta High Court in *Chandan Mall Karnani v. Sardari Lal Thapar* [1937] 1 Cal. 345 that the High Court of Calcutta could not take action for contempt of Court against a man who was not within its jurisdiction, nor do I know of any power in this Court to arrest for contempt of Allahabad High Court. If this Court cannot take action in respect of contempt of the Allahabad High Court, a fortiori the Chief Presidency Magistrate cannot do so; he has no power to take action for contempt of any Court, even his own Court. And most certainly the Commissioner of Police cannot deal with the matter. Indeed, the police are not concerned with the cases of contempt of Court.

Arrests for contempt of this Court are made by its own officer, the Sheriff. Therefore, regarding this matter as one solely of contempt of the Allahabad High Court, I am of opinion that the order of the learned Chief Presidency Magistrate was without jurisdiction.

5. It would appear, however, that both the Allahabad High Court and the Chief Presidency Magistrate dealt with this matter, as though Mr. Horniman had committed an offence which could be disposed of under the Criminal Procedure Code. A warrant issued under the Criminal Procedure Code, must, by virtue of Section 75 and Form II in the Fifth Schedule, specify the offence which has been committed, and the warrant in this case specifies the offence as contempt of the Allahabad High Court. If that were an offence under the Code, then, no doubt, the Chief Presidency Magistrate's order could be justified under Section 83 of the Criminal Procedure Code, or the corresponding section of the Bombay City Police Act, 1902. But there are two difficulties in dealing with Mr. Horniman under the Criminal Procedure Code. In the first place, the Privy Council have held in *Surendranath Banerjea v. Chief Justice and Judges of the High Court of Bengal* that contempt of Court is not an offence which is dealt with by the Indian Penal Code, or the Code of Criminal Procedure; nor is it an offence under any other law, within Section 5(2) of the Code. That seems to follow from the nature of proceedings in contempt. No doubt, an act may amount to contempt of Court, and may also amount to an offence under some Act. As was pointed out by Sir George Rankin in *Salamchand Kannyram v. Joogul Kissore Ramdeo*, there may be contempt of Court by breach of an injunction, which can also be dealt with under the Civil Procedure Code; but one must keep those two aspects of the matter entirely separate. Similar observations apply in cases of criminal contempt alleged to fall within the Criminal Procedure Code.

6. The second objection to treating this case as one, not merely of contempt of Court, but as constituting an offence which can be dealt with under the Code of Criminal Procedure, is that no such offence is specified in the warrant, which is confined to contempt of Court. Nor do I see what offence the words complained of can constitute. They can hardly be described as defamatory or seditious.

7. In my opinion, the order made by the learned Chief Presidency Magistrate, in whichever way it is regarded, is without jurisdiction, and must be set aside, and the rule made absolute. Bail bond cancelled. Surety discharged.

**Sen, J.**

8. I agree.

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