

In Re: G.W. Claridge

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Court : Mumbai

Decided On : Feb-02-1912

Reported in : (1912)14BOMLR231

Judge : Dinsha Davar, J.

Appellant : In Re: G.W. Claridge

Judgement :

Dinsha Davar, J.

1. One Mahomed Khan of Hoti is the third accused in a case that has been committed by the Chief Presidency Magistrate for trial at this Sessions and Monday next has been fixed for the trial of that case.

2. On the 5th of February his counsel applied to me for a Rule against Messrs. G. W. Claridge and A. E. Claridge, who are the publishers of a weekly newspaper known as 'The English Mail' calling upon them to show cause why they should not be committed for contempt or why such other order as to the Court may seem fit should not be made against them. The learned Counsel drew my attention to the second paragraph in the column of 'Bombay Notes' in the issue of the 19th of January of that newspaper, and a rule was granted which has been argued before me to-day.

3. The respondents have put in an affidavit in which an apology is tendered, 'if the Court is of opinion that any part of the paragraph would prejudice the Khan of Hoti.' This the respondents have no right to ask. The Court's opinion would not be expressed till after the respondents had done what they may be advised to do or what they may think fit to do at the arguments of the Rule. However, on my pointing this out to Mr. Binning, the learned Counsel for the accused, he, with great wisdom, has tendered an unqualified apology for the publication. I accept the respondents' explanation in their affidavit and I absolve them from all intention to prejudice the trial of this accused. But the consideration of this question does not depend on mere intentions. It depends on what the probable effect of a publication of this kind would have on the trial of the accused, which is still pending. Knowing that this rule was coming on, I have been looking at the authorities, the principles of which have been enumerated in Oswald on Contempt of Court, 3rd edition, beginning with page 91, and the authorities leave no doubt that the Court will resent any comment on a pending case, where these comments could in the least be taken to have the effect of prejudicing the fair trial of an accused person.

4. Mr. Binning has pointed out to me that this is one of a number of paragraphs which form the subject-matter of columns of humorous writing. The column is not composed of all humorous paragraphs. On the contrary, as pointed out by the learned Counsel for the accused, the column begins with a very melancholy subject-the death of the late Duke of Fife-and the third paragraph, that immediately follows the second paragraph in question, deals with a very very sad accident that took place at Mahableshwar in connection with a well-known Jewish family at Bombay.

5. But assuming that this was a part of the humorous columns of the newspaper, I emphatically disapprove of any journalist treating a pending criminal trial as a forthcoming humorous event in Bombay. Comments on pending trial are at all times most objectionable. But when a serious charge made against an accused person is treated as a humorous event on which the public are invited to laugh, I think it is a matter that must be dealt with very seriously.

6. Now, what are the comments in this paragraph? Are they likely to prejudice a fair trial of the accused person or are they not I assume that when a paper is published in Bombay, it is likely to be read by any member of the public. It must be remembered that nine citizens of Bombay will have to be empanelled to try this case. Is it likely to have an effect on their minds? Take for instance, the sentence beginning with this:- 'The prosecution story was long and circumstantial.' The use of the word 'circumstantial' is most unfortunate, because it involves an inference that the story commanded a certain amount of credibility by its being circumstantial even if actual proof was absent. Leaving that aside, we have the accused referred as 'a very clumsy Lothario,' and the learned Counsel for the respondents says that this is only a repetition of what some body else said. I think that a repetition of an offensive epithet against an accused person under trial is quite as objectionable as the original assertion of that epithet) besides which I am not aware that anybody in the course of his or her deposition before the Magistrate, has used the words 'clumsy Lothario' in connection with the third accused. Assuming that some body did use these words in the course of the inquiry before the Magistrate, a journalist has no business to repeat the epithets which are likely to influence the public mind adversely to the accused.

7. The last and the worst offence is that the accused made the most of his ill-health and appeared in Court on a sofa and secured the privilege of being under arrest in his own house. The Magistrates' Courts do not extend privileges to the accused but they give them their rights, and, when the Magistrate made the order referred to, I take it he had good grounds for believing that that order was necessary in respect of the accused, having regard to his health. To make light of a serious matter of the kind and to talk humorously of an accused person's ill-health is, to say the least of it, a most objectionable practice on the part of journalists.

8. Having said this, it follows that the only conclusion I can come to is that the publication of the paragraph in question is a contempt of Court. It must be remembered, and I do remember, that the power of committing a citizen or a journalist to jail or of inflicting a fine on him, or punishing him in any Other way such as making him pay costs, is, as stated in the English cases cited before me,

rather an arbitrary power in the hands of the Court. That power should be exercised with the greatest of caution.

9. In this case the respondents, both of them, have acted like gentlemen. They have realized that it is possible that the publication was not what should have appeared in their paper, and they have explained the circumstances under which that objectionable paragraph got in. I am quite willing, under the circumstances, to take all that into consideration and absolve them from any intention wilfully to - commit any contempt of Court or to prejudice the third accused in his trial. The unqualified apology tendered by Mr. Binning on behalf of the respondents is,. I think, under the circumstances sufficient for the Court. Contempt matters are matters not between parties but are matters between respondents and the Court, and I do not propose to deal harshly with the respondents. I accept their apology and make no order on the Rule 86 far as any punishment to them is concerned. I think the third accuse 1 in this case was perfectly justified in drawing the Court's attention to the publication of the paragraph in question. He was perfectly justified in coming to this Court and asking the Court to take notice of this publication, and under the circumstances he is entitled to be placed in the same position in which he would be if the publication had not been made. He has incurred costs which I think the respondents must pay.

10. I discharge the Rule and make no order on the Rule except that the respondents do pay the costs of the third accused in the case before me. These costs to be taxed by the Taxing Master as on the original side.

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