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Court : Mumbai

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Judge : Lallubhai Shah, Kt., Acting C.J. and ;Crump, J.

Appeal No. : Criminal Application No. 113 of 1922

Appellant : In Re: Marmaduke Pickthall

Judgement :

Lallubhai Shah, Kt., Acting C.J.

1. This is a rule issued on the application of the Government of Bombay against Marmaduke Pickthall, the Editor, Printer, and Publisher of the Bombay Chronicle to show cause why he should not be committed for contempt of Court in respect of the article headed 'The Malegaon Appeals' published in the issue of the said paper of April 24, 1922.

2. The article in question relates to what may be briefly stated as the Malegaon riot cases. The original trial was held by the Sessions Judge of Nasik against one hundred and thirteen persons; out of whom sixty-six persons were convicted by him, and the rest acquitted. Sixty-four persons appealed to this Court. These appeals were heard by Marten and Crump, JJ. for several days and they delivered their judgments on April 18. A few of the appellants were acquitted: and in the case of the remaining appellants the convictions were confirmed. On the whole it

may be said that in the main the conclusions of the trial Court were accepted. The record was exceptionally heavy and the difficulty of handling the appeals unusual. The case was undoubtedly important and difficult. The article in question was written by way of criticism shortly after the judgments were delivered.

3. I may note at the outset the objection raised by Mr. Jinnah to any reference being made to the interlocutory judgment of Marten J. when the rule was granted, on the ground that it has the effect of prejudging the points which we have to decide. We have overruled the objection : it does not prejudge the issue in any sense, and speaking for myself it has been helpful to me in knowing the general features of the case without having to turn to the bulky record for the information. It is obvious that we have to decide the questions arising on the rule, and the interlocutory judgment does not in the slightest degree affect that position.

4. In this case we are concerned with a contempt of this Court and not of any Subordinate Court; and no question of jurisdiction such as arose in Emperor v. Balkrishna Govind I.L.R. (1921) 46 Bom. 592 : 24 Bom. L.R. 16 arises in this case.

5. The publication we are concerned with refers to the proceedings which had ended : and it will not be inappropriate to refer briefly to the considerations applicable to a publication of that kind. I take them as stated in the following extracts from the judgment in McLeod v. St. Aubyn [1899] A.C. 549:

Committals for contempt of Court are ordinarily in cases where some contempt ex facie of the Court has been committed, or for comments on cases pending in the Courts. However, there can be no doubt that there is a third head of contempt of Court by the publication of scandalous matter of the Court itself.... The power summarily to commit for contempt of Court is considered necessary for the proper administration of justice. It is not to be used for the vindication of the Judge as a person.... Committal for contempt of Court is a weapon to be used sparingly, and always with reference to the interests of the administration of justice. Hence, when a trial has taken plane and the case is over, the judge or the jury are given over to criticism. It is a summary process, and should be used only from a sense of duty and under the pressure of public necessity, for there can Le no landmarks pointing out the boundaries in all cases.

6. I may also refer to the following passages in the judgment of Lord Russell of Killowen C. J. in Reg. v. Gray [1900] 2 O.B. 36. 40:

Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or tie lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke L. C. characterised as a 'scandalising a Court or a judge.' That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. The law ought not to be astute in such cases to criticise adversely what under such circumstances end with such an object is published; but it is to be remembered Mat in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen.... It is a jurisdiction, however, to be exercised with scrupulous care, to be exercised only when the case is clear and beyond reasonable doubt.

7. The questions that arise for our consideration are : first, whether the case of contempt is clearly made out against the opponent; and, secondly, whether having regard to all the circumstances it is necessary to take action against the opponent in the interests of the administration of justice.

8. As regards the first point the materials that we have to consider principally are the article itself and the affidavit of the opponent. It is urged by the learned Advocate General that the article attributes to the Judges of the High Court who decided the appeals an improper desire to uphold the convictions on evidence, which would be ordinarily considered clearly insufficient, to punish persons for their political views and, activities rather than for the crimes committed by them and to give effect to the plea of exceptional times rather than to vindicate justice. It is also suggested by him that the article insinuates that the Judges were influenced by some outside agency in arriving at their conclusions. On the other

hand it is urged by Mr. Jinnah that the article suggests no such outside influence and it would be wholly unreasonable to read it in that sense. He contends that the writer suggests nothing more than an error of judgment in convicting some innocent persons, that the inaccuracies in the statement of the evidence and the charges are not intentional, that the article attributes at the most an unconscious political bias to the Judges in the appreciation of the evidence and that it is a fair criticism open to his client to offer on a political case of importance. In other words he has argued in favour of the plea put forward by his client in the affidavit in these words:

It is not the policy of the Bombay Chronicle to lower the dignity of this Honourable Court as the Government Pleader imagines, it has done. But I say that after the conclusion of the trial and appeals I felt justified in criticising the decision and in doing so I did not moan to show any disrespect to this Honourable Court or to its dignity. The article in question is merely a criticism of the decision of Judges concerned and expresses an opinion to the effect that the lower and the Appeal Courts committed an error of judgment in attaching importance to the political character of the trial.

9. We have considered the article and the affidavit in the light of the arguments urged before us. I am prepared to concede that the article does not constitute a personal abuse of the Judges such as we find for instance in Reg v. Gray or in In re Narsinha Chintaman Kelkar I.L.R. (1908) 33 Bom. 240 : 10 Bom. L.R. 1040 nor does the article contain such comprehensive condemnation of Courts including this Court and British justice as is to be found in the recent case of In re Satyabodha : (1922)24BOMLR928 . I also pass over as immaterial or insignificant for our present purposes the mistakes pointed out by the Advocate-General in the statements in the articles as to the charges and the evidence in the case against the several accused. Taking the article as a whole, and making due allowance for the style, the view point and the possible political bias of a journalist, I find it difficult to avoid the conclusion that the article does attribute improper motives and political bias to the Judges in upholding the several convictions. I reject as wholly improbable under the circumstances the suggestion that the writer meant to imply that some extraneous influence was at work. But the article begins by a clear

expression that the cause of justice was not vindicated by the Bombay High Court, and a clear implication that the vindication of justice is possible only when persons are acquitted and not if they are convicted. It clearly suggests that some innocent persons have been convicted not on account of a mere error of judgment but because of their active association with the Khilafat movement, and that they were singled out for exemplary punishment and made to pay the penalty for a cause rather than for any crime they committed. The article ends with a clear implication that the Judges were influenced by the consideration of exceptional times not of course expressly urged by the prosecution but impliedly taken into consideration by the Court and upheld the convictions on the evidence which according to the writer ought never to be accepted as sufficient. The article as a whole would leave on the mind of an ordinary reader the clear impression that injustice had been deliberately done on political grounds to some of the accused who were apparently innocent. In other words it attributes judicial dishonesty to the Judges. I am unable to accept the contention that such an article does not constitute a contempt of Court. We have to consider the natural and probable effect of the article and not only the avowed intention of the editor as indicated in his affidavit. I think that the publication of the article in question constitutes a contempt of Court.

10. The second question is more difficult. I am slow to hold that any unfair criticism of Courts or Judges constitutes such an interference with the administration of justice as should be punished. I am willing to act upon the view that the confidence of the public in Courts rests mainly upon the purity and correctness of their pronouncements and that such confidence is not lightly shaken by a mistaken or unfair criticism of this kind. At the same time it is clear that the tendency of such criticism is to undermine the dignity of the Court and in the end to embarrass the administration of justice. The faith of the public in the fairness and incorruptibility of Judges is a matter of great importance. On the other hand I take into consideration the circumstance that the attitude of the opponent before us has not been unreasonable, particularly if due allowance is made for his natural partiality for the publication in question in his own paper, though the writer of it was a different person. I attach due weight to his statement, that the policy of his paper is not 'to lower the dignity of this Hon'ble Court.' There is no allegation in the petition to suggest anything to the contrary. I also take into account that he has expressed

his 'sincere regret' for the publication if it is held to constitute a contempt of this Court, as we hold it now. On the whole I think that the ends of justice will be satisfied in this case if we order that he should pay a fine of Rs. 200 (rupees two hundred).

Crump, J.

11. The short facts of this matter are as follows :- On April 18, 1922, a Divisional Bench of this Court delivered judgment in Criminal Appeal No. 776 of 1921 and other connected appeals. These cases dealt with what may be called the Malegaon riots which took place on April 25, 1921. The record was voluminous and the appeal was possibly the heaviest that has been heard on the Criminal Appellate Side of this Court. The hearing lasted thirteen days. Put shortly the riots arose in consequence of the inflamed state of feeling among the Mussalmans of Malegaon and were of a serious nature. Two Police officers were murdered, and many other persons were injured. Much damage was also done to property. These cases were thus important merely as criminal cases but further in the public eye they were held to have a political aspect.

12. On April 24, 1922, there appeared in a newspaper styled The Bombay Chronicle an article headed 'The Malegaon Appeals.' This article contains a criticism of the conduct of the Judges of this Court who heard the appeals. At the instance of the Government of Bombay the Government Pleader moved this Court to take proceedings for contempt. A rule was issued and arguments were heard.

13. The affidavit put in by the editor of the newspaper comes shortly to this. That the article is fair comment; that the liberty of the press demands that there should be freedom to point out errors in judgments, and to criticise judgments after they are delivered, and that there was no contempt. In the final sentence regret is expressed 'if this Honourable Court is of opinion that the article in question does constitute contempt.

14. It is not disputed that this Court has jurisdiction to take proceedings for contempt of Court : nor is it disputed that comments on a case after the hearing is completed may amount to contempt. As to the latter proposition it is sufficient to

cite the case of Reg. v. Gray [1900] 2 Q.B. 36 39. The questions which arise are whether the language used in this article amounts to contempt, and, if so, whether this Court should take notice of it. The principle is clear enough. The Court will not act so much to protect the dignity of its Judges, as in the interests of the administration of justice. This Court may rightly hold itself to be above such criticism as this article contains, but if the public confidence in the impartial administration of justice is in danger of being impaired it may be the duty of the Court to exercise its powers.

15. The nature of the defence has been indicated but with reference to paras 3 and 16 of the affidavit the following remarks of their Lordships of the Privy Council are pertinent (p. 169):

Their Lordships regret to find that there appeared on the one side in this case the time-worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go so also may the journalist but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position.

Upon the other side it would appear...that this false and dangerous doctrine may have been hinted at, that some privilege or protection attaches to the public acts of a judge which exempts him, in regard to these, from free and adverse comment. He is not above criticism, his conduct and utterances may demand it. Freedom would be seriously impaired if the judicial tribunals were outside of the range of such comment.' Arnold v. The King-Emperor (1914) L.R. 41 IndAp 149 : 16 Bom. L.R. 544.

16. Though the case in which these remarks are to be found was not one of contempt, nevertheless they furnish a valuable guide in dealing with such matters as that which is here before the Court. No one, whether he be a Judge or not,

ought to take exception to fair criticism, nor should any journalist be hindered from offering such criticism. Nevertheless there is a limit which must not be passed. A journalist may say that a Judge is wrong, or ignorant of law, but if he accuses a Judge of dishonesty or corruption he transgresses the limit. And if it appears to this Court that such criticism must hinder the proper administration of justice, then it may be the clear duty of this Court to exercise its powers. The article in question must be considered from this stand-point.

17. The first paragraph of the article deals with the case of Wolfe Tone. The substance is that the Judges 'who detested the rebels' nevertheless protected Wolfe Tone; and this was 'a splendid assertion of the supremacy of law.' The second paragraph opens with these words 'we wish we could say of the Bombay High Court judgment that it was a splendid assertion of the supremacy of the law.' The innuendo is that the Judges of this Court did not rise above political considerations. The point is made clear in para 10 of the affidavit where it is said that Wolfe Tone's case is cited to show that 'the administration of justice should be pure and not tainted with extraneous considerations.' The writer then proceeds to deal with the facts of the case. There has been some question as to the accuracy of this recital, but it is not necessary to go into this beyond remarking that the writer deliberately ignores the largest and most important part of the evidence. Then follows this passage:

In a case like the one under notice to which the authorities apparently attached considerable political significance it was hardly likely that the defence of the accused, especially 'the tallest poppies among them' would easily be accepted even where it was sufficiently clear and emphatic.

18. The plain meaning is that the learned Sessions Judge convicted against the weight of the evidence.

19. The writer then points out that the majority of these convictions were confirmed by this Court. The passage which follows gives the reasons which, according to the writer, influenced the Judges of this Court:

Some of these may have undoubtedly been guilty of the charges brought against them; but of the rest it is difficult to believe the same, and the impression in the public mind is that certain prominent people, because of their active association with the Khilafat movement, were singled out for exemplary treatments and made to pay the penalty for a cause rather than for any crime they have committed. We have heard it said that Indian Judges are always out for convictions but it can hardly be the duty or the pleasure of the High Court to uphold them.

20. The plain meaning is this. The Sessions Judge convicted though the defence was clear and emphatic. The High Court confirmed the convictions contrary to 'their duty and their pleasure.' It was argued that nothing more was meant than that the Judges being human were swayed by some subconscious political bias. But the words mean more than this. A man so influenced does not act against 'his duty and his pleasure.' He believes that that which he does is right and he is not reluctant to do it.

21. The article closes with the following words:

It was an eminent English Judge-Justice Buckland-who said that the administering of 'pure unadulterated justice,' is the only duty of the Courts and they have no right to take into consideration 'the plea of exceptional times' brought forward by the executive to secure convictions against the politically minded.

22. The ingenuity of counsel has failed to discover where and in what context 'that eminent English Judge, Justice Buckland-' used these words. But here and in this context the meaning is plain. 'Justice was not pure and unadulterated because the High Court gave effect to the plea of exceptional times.' It is unnecessary to ascribe to these words the grosser meaning suggested by the Advocate-General. They do not fairly bear the construction that outside influence was brought to bear upon the Judges. It is enough to say that no plea of 'exceptional times' was ever raised on behalf of the prosecution, nor would any such plea have been tolerated by this Court.

23. Such is the article and it is impossible to doubt that it charges the Judges of this Court with conscious dereliction of duty. But the further question remains

whether it is necessary to act. Unfortunately the effect of such writing as this cannot be ignored, and however unwilling this Court may be,-for indeed all Courts are unwilling to take proceedings in contempt unless compelled-it is impossible to permit the public to be poisoned with such calumnies as these. In a country such as this where more importance is attached to the printed word than it perhaps at times deserves, it would be difficult for the average reader to read the language used without conceiving grave doubts as to the integrity and impartiality of the Judges of this Court. Therefore in the interests of the administration of justice the Court cannot overlook this contempt.

24. Something has been said as to the apology set at the close of the affidavit; that expression of regret is conditional and such as the Judges of this Court declined to consider in the case of In re Narasimha Chintaman Kelkar : (1908)10BOMLR1040 . The reasons assigned in that case are equally applicable here.

25. AFTER the above judgments were delivered the Acting Chief Justice, addressed the respondent thus:

26. MARMADUKE PICKTHALL:

We find you guilty of contempt of Court and order you to pay a fine of Rs. 200 (two hundred) : in case you fail to pay it in two days, we shall make such further order as may seem appropriate.