

State Vs. Kulmani Singh

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Court : Allahabad

Decided On : Feb-22-1965

Reported in : 1966CriLJ1106

Judge : Gyanendra Kumar, J.

Appellant : State

Respondent : Kulmani Singh

Judgement :

Gyanendra Kumar, J.

1. In this case the opponent, who is a member of the Socialist Party, had addressed a personal letter dated 25.7.1964 in a closed envelope to Sri Mathuresh Narain, Judicial Magistrate, Bijnor. However, it was written on the official letter-head of the Party. It made reference to three cases - two of which had already been decided by the Magistrate, while the third one was still pending. The letter stated that in the complaint case of Alladia v. Mahkar Singh, Sub-Inspector, Police Station, Seohara, the opponent had appeared as a witness for the complainant under Section 202 of the Code of Criminal Procedure. The opponent alleged that the Magistrate did not like his appearing as a witness against the Police Sub-Inspector. He further alleged that in spite of the fact that there was prima facie evidence in the case, the Magistrate did not summon the Sub-Inspector as an accused, with the result that notwithstanding that his complaint

was true, the said Alladia had to get his complaint dismissed for want of prosecution.

2. The second allegation in the opponent's letter was that in the case of State v. Harsarup under Section 452 of the Indian Penal Code, the Magistrate had himself asked the accused of that case to get the opponent summoned as witness on his behalf, but when the opponent appeared in his court, it was clear from the behaviour of the Magistrate that he was bent upon convicting the accused, so much so, that he had to take necessary steps in the matter. The opponent further stated that it was in his personal knowledge that the Superintendent of Police had got that case challaned on special recommendation, but he could not say whether any recommendation had been made to him (the Magistrate) as well.

3. The third allegation was with respect to an enquiry for an offence under Section 436 of the Indian Penal Code State v. Umrao, in which the opponent himself was the complainant. According to the opponent, the said Umrao who was a lad of about 14 years, had entered the court room, when the case was called and had presented an application duly thumb marked by himself, saying that he had committed the offence and may be pardoned. However, in spite of the protest by the opponent, the Magistrate wrongly made a note thereon saying that it was the opponent, who had presented that application after taking the same from the accused. This clearly showed that the Magistrate had personal bias and hatred towards the opponent, inasmuch as he had made the said note on the application, which was entirely against the facts. The letter further stated that the Magistrate had acted in the above manner, simply because the opponent belonged to a group which was in opposition to the ruling party. It was further mentioned therein that the members of the opponent's party were always prepared to risk their lives, and during the British regime, he had himself boldly faced the frowning brows of the rulers. In the end the letter contained a threat to the effect that officials like him (Magistrate concerned) were likely to come to grief some day by getting involved in party politics.

4. On notice of contempt of Court being issued to him, the opponent filed his written statement, justifying his act and conduct, without expressing a word of

regret or remorse.

5. On behalf of the opponent, it has been vehemently argued by Mr. S.C. Khare that reference to the first two decided cases could not amount to despising or scandalising the Court, inasmuch as the contents of his letter have not been published in any manner, but had been conveyed in a private communication addressed to the Magistrate under a closed cover. In support of his contention Mr. Khare had relied upon the following four cases:

1. Rex v. B.S. Nayyar : AIR1950 All549 ; 2. Brahma Prakash Sharma v. State of Uttar Pradesh : 1954 CriLJ238 ; 3. State of Uttar Pradesh v. Shyam Sunder Lal Jain : AIR1954 All308 ; 4. In re. Sudhir Chandra Ray : AIR1952 Cal258 .

In the first case, it was observed by the Lucknow Bench of this Court that 'no proceedings should be taken for contempt, even though a Judge or a Judicial act of his was criticised, except in so far as it interfered with the administration of justice either by shaking public confidence in the court or in any other manner.... Where the words objected to were not published in any newspaper, article or in any other writing meant for the perusal of the public generally, nor were they used to influence the Magistrates said to be concerned in them, but were used in representations made to authorities which had power to redress the grievances of which the user of the words complained and if the complaint was genuine and was made in a proper manner with the object of obtaining redress, and was not made mala fide with a view either to exert pressure upon the Court in the exercise of its judicial functions or to diminish the authority of the Court by vilifying it, it was not in furtherance of justice to stifle them by means of summary action for contempt.

6. In Nayyar's case above : AIR1950 All549 there was some dispute between certain tenants leading to criminal proceedings in the court of the S.D.M., who later on transferred them to the Judicial Officer, Bahraich. During those proceedings certain representations were made to the Prime Minister of India as well as to the President of the All India Congress Committee by B.S. Nayyar, one of the tenants, asking for action against the S.D.M. and the Judicial Officer, inasmuch as they were not acting impartially but under certain influences, which did not 'inspire faith in the public'. It was under the above facts and circumstances that Kidwai and

Chandiramani, JJ. had made the above quoted observations in that case. It cannot be doubted that derogatory remarks made against Judicial Officers or courts in representations addressed to higher authorities cannot be considered to be contempt of their courts, if the representations are made bona fide. But, in the instant case, no representation was made to any higher authority to redress the grievances of the contemner. On the other hand, grievances against the court were made before that court itself.

7. In the third case it was observed by Sapru and V. Bhargava, JJ. that 'the object of contempt proceedings was not to afford protection to Judges personally from imputations in which they may be exposed as individuals. On the other hand it was intended as a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the Court was lowered and the sense of confidence which people have in the administration of justice by it was weakened'.

8. In Shyam Sunder Lal's case : AIR1954 All308 (supra) a complaint had been filed under Section 500 of the Indian Penal Code, which was dismissed on the ground that the case had not been established against the accused. The complainant then wrote a letter under registered cover to the Prime Minister of India in the form of petition or representation making serious allegations of corruption and partiality against the Magistrates. It was in the above circumstances that it was held:

Although the attack on the Magistrate was of a vile character, yet it did not amount to contempt of court as the grievances were made in a representation made to a higher authority.

9. The second case is a well known pronouncement of the Supreme Court, where the six appellants were the members of the Executive Committee of the Bar Association at Muzaffarnagar against whom contempt proceedings had been taken because of certain resolutions passed by the Committee, copies, of which were forwarded to the District Magistrate and other Officers under closed covers by appellant No. 1, who was the President of the Bar Association. The resolution had condemned the judicial conduct of two Judicial Officers, namely, Kanhaya Lal

Mehra and Lalta Prasad, then posted at Muzaffarnagar. The resolution was in the following words:

Whereas the members of the Association , have had ample opportunity of forming an opinion of the judicial work of Sri Kanhaya Lal, Judicial Magistrate and Sri Lalta Prasad, Revenue Officer:

It is now their considered opinion that the two Officers are thoroughly incompetent in law, do not inspire confidence in their judicial work, are given to stating wrong facts when passing orders and are overbearing and discourteous to the litigant public and the lawyers alike....

xx xx xx xx xxResolved further that copies of the resolution be sent to the Hon'ble Premier, the Chief Secretary of the Uttar Pradesh Government, the Commissioner and the District Magistrate for suitable action.

In the above case, it was observed by their Lordships of the Supreme Court:

When attacks or comments are made on a Judge or Judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the Judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the Judge is concerned does not necessarily make it a contempt.... The position therefore is that a defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the liabeller in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the Judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability of fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with

the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law.... The question of publication also in the technical sense in which it is relevant a libel action may be inappropriate to the law of contempt. No doubt, there was publication as is required by the law of libel, but in contempt proceedings, it is not by any means conclusive. What is material is the nature and extent of the publication and whether or not it was likely to have an injurious effect on the minds of the public or of the judiciary itself and thereby lead to interference with the administration of justice.

On the materials before us, it is difficult to say that the circumstance under which the representation was made by the appellants was calculated to have such effect. There might have been some remote possibility but that cannot be taken note of. We are clearly of the opinion that the contempt, if any was only of a technical character....

Therefore, the observations in the Supreme Court case quoted above also related to derogatory remarks made against Judicial Officers in representations sent to higher authorities. This case is, therefore, clearly distinguishable from the present one.

10. At this stage, it might be pointed out that their Lordships of the Supreme Court in the case of *Brahm Prakash* : 1954 CriLJ238 (supra) had clearly observed that the question of publication was not technically applicable to actions for contempt of court. Thus the mere fact that in the instant case the opponent had chosen to send his letter to the Magistrate in a closed cover and had not published the same would not save him from the clutches of the law of contempt of court.

11. The fourth case that has been relied upon by the learned Counsel for the contemner is more akin to the point involved in the present case. In : AIR1952 Cal258 while hearing an application in a pending suit the Judge had severely criticised the conduct of the Attorney. A week later, the Attorney addressed a typed letter to the Judge explaining his conduct and bringing certain facts to his notice, which had not been placed before him during the hearing. He also included certain other matter in the letter such as, his relationship with the Judge's family

and his importance as a political and professional figure. A perusal of the letter, which has been quoted in the said judgment, does not show any derogatory or insulting remarks against the Judge, particularly relating to his judicial work. The Attorney had only protested against the remarks made by the Judge about him during the trial of the suit, while the Attorney himself was not present in court.

It was in the above setting that it was held by the Calcutta High Court 'that the Attorney was not guilty of contempt of court as the letter did not tend either directly to interfere with the decision in the suit or in any proceedings connected therewith or indirectly to interfere with the due course of justice by reason of scandalising the learned Judge or lowering the dignity and prestige of the Judge and the court'. However, the learned Judges were still of the opinion that writing to a Judge privately concerning any thing which he had said in open court was a conduct which the High Court strongly deprecated. The proper course to follow, if any one believed himself to have been harshly and unjustly criticised, was to move the Judge in open court and to explain to him that the true facts were not placed before the Court. Thus the facts and circumstances involved in the Calcutta case *supra* were quite distinct from those in the present case.

12. In the present case, the remarks contained in the letter of the contemner clearly related to the judicial work of the Magistrate concerned, and attributed judicial dishonesty to him. Under the circumstances, it is not possible to hold that the opponent was not guilty of contempt.

13. With regard to the remarks relating to the pending case in which the contemner himself was the complainant, it was argued by Mr. Khare that the Magistrate concerned was acting in his capacity as a committing court and was not competent to decide the case himself one way or the other. That being the position, the Magistrate was not a court within the meaning of Section 3(1) of the Contempt of Courts Act, nor was he a 'Judge' as understood in Section 19 of the Indian Penal Code, particularly illustration (d), which specifically says that the Magistrate exercising jurisdiction in respect of a charge of which he has power only to commit for trial to another court is not a Judge. He has further relied on the definition of the words 'court of justice' as given in Section 20 of the Indian Penal

Code, which denote a 'Judge' or 'Judges'. In support of his contention Mr. Khare has placed reliance on certain observations made by their Lordships of the Supreme Court in *Brajnandan Sinha v. Jyoti Narain* : 1956 CriLJ156 . In that case their Lordships were dealing with the case of alleged contempt of a Commissioner appointed under Section 37 of the Public Servants (Inquiries) Act, 1850. Such a Commissioner is only appointed for submitting a fact-finding report and has no power to give a decision or a definite judgment having finality and authoritativeness, which are the essential tests of a judicial pronouncement. Thus the Commissioner was obviously not a 'court' subordinate to the High Court, inasmuch as after the close of the enquiry the Commissioner has to furnish a report to the Government concerned together with the record and his opinion and observations on the case (See Section 21). The said report is not appealable to or revisable by the High Court. Thus, a distinction has to be made between 'courts', and 'tribunals'. It is significant that Section 3 of the Contempt of Courts Act does not use the words 'Judge' or 'court of justice' or 'tribunal'. It contemplates only contempt of the High Court or the courts subordinate thereto. On the other hand, a Magistrate seized of commitment proceedings as a Magistrate is a court and falls within the purview of Section 6 of the Code of Criminal Procedure, which sets out a hierarchy of criminal courts. The Section runs as under:

Besides the High Courts and the courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in India, namely:

I-Courts of Sessions; II-Presidency Magistrates; III-Magistrates of the First Class; IV-Magistrates of the Second Class; V-Magistrates of the Third Class.

Thus a Magistrate of the first class when making an enquiry and proceeding under Sections 207-A, 209 and 210 of the Code of Criminal Procedure acts as a criminal court, and is subordinate to the High Court, In fact there is a clear provision in Section 215 of the Code of Criminal Procedure authorising the High Court to quash commitment proceedings, whether made by a Magistrate under Section 213 or by a civil or revenue court and Section 478, Cri.P.C. The plain reading of Sections 213 and 215 indicates that a Magistrate making an enquiry for the

purposes of commitment acts as a court like any other civil or revenue court. It is true that the order of commitment or discharge made by the committing Magistrate is not a final decision of the case in the sense that the accused is either acquitted or convicted. Nevertheless the proceedings before the committing court are a part and parcel of the preliminary procedure for the trial of an accused in sessions cases. Subject to its being quashed by the High Court under Section 215, Cri.P.C. or being set aside on revision, the order of commitment or discharge passed by the committing Magistrate is final and, in this limited sense, amounts to a decision of the matter pending enquiry before the Magistrate.

14. The learned Counsel for the parties have not invited my attention to any case law exactly on the point. However, my attention has been drawn to certain observations made by the High Courts of Bombay and Saurashtra in somewhat similar proceedings taken by the Magistrate in which he did not finally acquit or convict an accused yet he was held to be a court within the meaning of the Criminal Procedure Code. In *Bajaji Appaji v. Emperor* AIR 1946 Bom 7 a Division Bench of the Bombay High Court dealing with Section 195 of the Code of Criminal Procedure observed as under:

A Magistrate passing an order on a final report of the police sent after investigation under Section 173, Cri.P.C. should be deemed to be a court passing a judicial order disposing of the information given to the police.

Likewise in *State v. Vipra Khimji* AIR 1952 Sau 67 a Division Bench of the Saurashtra High Court fully approved of the observations made in *Bajaji Appaji Kote's case* AIR 1946 Bom 7 above and expressed themselves as under:

An order passed by the Magistrate on such reports would dispose of the complaint made to the police. That order is not merely an administrative order but a judicial order of the Court.... The Magistrate passing an order on the report of the police sent after the investigation under Section 173, Cri.P.C. should be deemed to be a court passing a judicial order disposing of the information given to the police.

15. In this view of the matter the allegations of bias and partiality against the contemner attributed to the Magistrate as well as the allegation of his having

deliberately made a wrong note on the application of Umrao was bound to cause impediment and embarrassment to the Magistrate in discharging his judicial duty even-handedly. Therefore, I am clearly of the opinion that the act and conduct of the opposite party amount to contempt of court, inasmuch as the allegations made of the contemner attributed bias, prejudice and judicial dishonesty to the Magistrate by making a false note on the application of Umrao.

16. As observed earlier, the penultimate paragraph of the contemner's letter addressed to the Magistrate also held out a warning and a threat to him to act in a different manner in future, failing which he was likely to come to grief. These warnings and threats were of general nature and were not confined to the pending enquiry before him. There can be no speck of doubt that a threat held out to a Judicial Officer in respect of the attitude he was advised to adopt in the discharge of his judicial functions would amount to grossest contempt. Unfortunately such a tendency on the part of the pseudo political and social reformers is on the increase. It is high time that to so-called leaders of the type of the contemner disabused themselves of such conduct and activity in the interests of pure and even-handed administration of justice and in the larger interests of democracy as a whole.

17. I have already observed above that in the written statement filed on behalf of the opposite party the contemner had not expressed any regret or remorse for his action and conduct. During the arguments as well no such offer was made. On the other hand, his conduct and action were sought to be justified. Under the circumstances, a somewhat strict view of the matter has to be taken. I think the ends of justice would be met if the contemner is called upon to pay a fine of Rs. 500 by way of punishment. I order accordingly and direct that he shall further pay a sum of Rs. 150 towards costs of the State counsel (Shri Sushil Kumar), who had appeared on three different dates in the case. The fine and costs aforesaid shall be paid within a period of two months.