

In Re: an Advocate of Allahabad

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Court : Allahabad

Decided On : Oct-09-1934

Reported in : AIR1935All1

Appellant : In Re: an Advocate of Allahabad

Judgement :

ORDER

1. On 27th August 1934, this Court directed notices to issue to Mr. Kapil Deo Malaviya, Advocate, Allahabad, Mr. C.Y. Chintamani, Chief Editor, Leader Newspaper, Allahabad, and Mr. Krishna Ram, printer and publisher of the Leader Newspaper, Allahabad, to show cause why they should not be convicted and punished for the offence of contempt of the High Court committed by the publication of a passage in an article written by Mr. Kapil Deo Malaviya and published in the Leader on 10th June 1934. The particular passage appeared in an article headed as 'A scandalous situation : The Bar Council Election,' of which Mr. Malaviya is the author. The passage referred to in the notices is as follows:

In this connection it is amusing to note that when a comparatively undeserving lawyer is raised to the Bench, which is a fairly frequent occurrence in our judicial history, it is generally claimed, etc.

2. It is not disputed that Mr. Kapil Deo Malaviya is the author of the article in which this passage appears nor is it denied that the article was published in the Leader newspaper on 10th June 1934. Learned Counsel for Mr. Malaviya, Mr. Chintamani

and Mr. Krishna Ram moved the Court to discharge the notices to his clients. In support of this motion he contended that : (1) Inasmuch as the passage in respect of which notices were issued is not a reflection upon the conduct of a particular Judge or Bench in connexion with the trial of a particular case it does not amount to a contempt of Court as that offence has been defined by the Courts. (2) The article does not overstep the bounds of legitimate criticism of the conduct of a Judge or the Court and does not therefore amount to contempt of Court. (3) Even if the passage in respect of which notice has issued does technically amount to contempt of Court in respect that it contains a reflection upon a Judge or a number of Judges of the High Court, the reflection is so mild and the article itself so innocuous that the Court should not exercise its summary powers for the purpose of punishing so minor a delinquency.

3. We shall deal with the contentions of learned Counsel in order. In support of his contention that the Court has no jurisdiction to convict for contempt of Court where the aspersion which is alleged to amount to contempt, is not a reflection upon a particular Judge or a particular Bench in connexion with the conduct of a particular case, learned Counsel relied strongly upon two cases : one reported in *In the matter of Special reference from the Bahama Islands* (1893) AC 138, the other in *Mcleod v. St. Aubin* (1899) AC 549. We have considered the decisions in these two cases and we are clearly of opinion that they do not support the contention of learned counsel. In *In the matter of Special reference from the Bahama Islands* (1893) AC 138, it is obvious from a consideration of the report that the publication, which it was alleged amounted to a contempt, was in fact an attack upon the Chief Justice of the colony in his personal capacity. It appears that the Chief Justice had written an article in a newspaper upon a question which was engaging public attention. This article drew a reply from one Mr. Moseley. In the course of the argument before the Judicial Committee, according to the report, Lord Watson, who was one of the members of the Committee remarked:

The substantial question is: Does the letter refer to him in his official capacity.

4. The Judicial Committee were of the opinion that the attack upon the Chief Justice was not upon him in his official capacity and they accordingly held that Mr.

Moseley was not guilty of contempt of Court. In *McLeod v. St. Aubin* (1899) A.C. 549, it was decided that contempt of Court may be committed by publication of scandalous matter in respect of a Court after the adjudication as well as during the pendency of a case before it. The Judicial Committee held upon a consideration of the facts of the case that there had been no contempt of Court, inasmuch as Macleod, against whom contempt proceedings had been directed, had not published the article in which the alleged contempt appeared. Learned Counsel for the opposite parties however relied upon certain observations by Lord Morris who delivered the opinion of the Court and which are clearly obiter. Especially did he rely upon the following passage:

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 be no landmarks pointing out the boundaries in all cases. Committals for contempt of Court by scandalising the Court itself have become obsolete in this country.

5. The concluding observation of Lord Morris on which counsel specially relied is obiter and is as clearly erroneous. The decision in Macleod's case was in the year 1899. In the following year in the case of *R. v. Gray* (1900) 2 Q.B. 36, proceedings were taken against the person who had scandalised the Court. Since 1900 there have been a number of cases where proceedings against persons who have scandalised the Court have been instituted. We are of opinion therefore that these cases upon which learned Counsel relied are no authority for the proposition that proceedings for contempt do not lie where the aspersion on the Court is not against a particular Judge or Bench and in connexion with a particular case.

6. Learned Counsel in support of his contention relied further upon the fact that there is no record of any case in which proceedings for contempt were instituted in respect of a general reflection on the character and capacity of a Court. We are unable to say definitely whether the claim that there is no record of such cases is strictly accurate, but assuming that it is, we are of opinion that it does not in any way advance the case of the opposite parties. Cases of general attack upon the character and capacity of the Court in the very nature of things must be few and far between. Most offences of contempt of Court have been, as is to be expected,

committed by parties who have considered themselves to have been aggrieved by the conduct and decision of a particular Court or Bench in a particular case. Because a particular type of contempt of Court is unusual or unprecedented it does not follow that the Court has no power to punish such a contempt if it is committed. It is true that the power to punish for contempt of Court is a drastic power exercisable summarily and should not therefore be resorted to lightly, but to argue that, because a particular act has not been punished in the past as contempt where there is no proof that the act has ever been committed or, at any rate, formed the subject of proceedings, it may not be punishable as contempt when the act has been committed and brought to the notice of the Court, is clearly to confuse the principle with the application of the principle. Once it is conceded that to scandalise the Court is a contempt, then any publication which scandalises the Court and lowers its prestige is clearly a contempt, even, though there is no record that similar publications have been held by the Courts in the past to constitute contempt. As we have already observed general aspersions upon the character and the capacity of the Court must be comparatively rare and the absence of any report of such cases in our view affords no support for the contention of learned Counsel for the oppo - Judges have been defamed.

7. Learned Counsel further contended that the remedy where a Court and not a particular Judge has been defamed should not be by way of proceedings for contempt of Court, but by criminal proceedings at the instance of the Government Advocate under the provisions of Section 194, Criminal P.C. We are unable to agree with this contention. The fact that proceedings may be directed against a person who has defamed the Courts generally is no reason for holding that he may not be proceeded against for contempt of Court. Criminal proceedings as well as contempt proceedings lie against a person who has committed contempt of Court by indulging in illegitimate criticism of the conduct of a particular Judge, and we see no reason in principle for holding that where a Court generally has been defamed proceedings for contempt of Court do not also lie against the delinquent. We would further observe in this connexion that proceedings under Section 194, Criminal P.C., are initiated by the representative of a Government with the previous sanction of the Governor-General in Council or the Local Government. It is for the Government to decide whether such proceedings be instituted or not. If

the contention of learned Counsel for the opposite parties is sound then the High Court would be powerless to protect itself in a case where the grossest allegations against the Courts had been made, but where the Government refused, it might well be for purely political considerations, to sanction a prosecution. We are clearly of the opinion that the inherent power of the Court to punish for contempt of Court is a power which is essential in the interests of the administration of justice and that that power is not restricted in any degree by the provisions in the Criminal Procedure Code, relating to proceedings which may be instituted with the sanction of the Government where the Courts or His Majesty's Judges have been defamed.

8. In our opinion the law upon this matter is not in doubt. It has been clearly enunciated in a number of decisions to many of which we were referred by learned Counsel for the opposite parties and by the learned Government Advocate. We do not consider it necessary in this judgment to cite all these cases. We will refer however to one or two authorities which, in our opinion, put the question as to the power of the Court to punish for contempt, where a general aspersion is made upon the Court, beyond all question. In *R. v. Gray* (1900) 2 Q.B.D. 36, it was held that the publication in a newspaper of an article containing scurrilous abuse of a Judge, with reference to his conduct as a Judge in a judicial proceeding which had terminated, is a contempt of Court punishable by the Court on summary process. In the course of his judgment in this case Lord Russell of Killowen, C.J., stated:

Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower its 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 the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke, L.C., characterised as 'scandalising a Court or a Judge.' That description 'of that class of contempt has 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, 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 and with such an object is published; but it is to be remembered that in this matter the liberty of the

press is no greater and no loss than the liberty of every subject of the Queen.... We have therefore to deal with it as a case of contempt, and we have to deal with it brevi manu. This is not a new-fangled jurisdiction; it is a jurisdiction as old as the common law itself, of which it forms part. It is a jurisdiction the history, purpose, and extent of which are admirably treated in the opinion of Wilmot, C.J., then Wilmot, J., in his Opinions and Judgments.

9. It will be observed that in this judgment the statement of law by Lord Chancellor Hardwicke and Wilmot, C.J., is approved. According to Lord Chancellor Hardwicke one species of contempt is 'scandalising the Court.' According to Wilmot, C.J., libel upon a Court is:

a reflection upon the King and tolling the people that the administration of justice is in weak or corrupt hands.

10. In *King v. Davies* (1906) 1 K.B. 32, it was held that the King's Bench Division of the High Court in England has power to punish by attachment contempts of inferior Courts. In the course of the judgment which was delivered by Wills, J., the statement of the law by Wilmot, C.J., was approved. In the judgment at p. 40 the following exposition of the law appears:

What then is the principle which is at the root of and underlies the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders?

11. It will be found to be, not for the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of them, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to its jurisdiction, from the mischief they will incur if the authority of the Tribunal be undermined or impaired. See the judgment prepared by Wilmot, C.J., in *Rex v. Almon* (1765), but not delivered because the case was allowed to drop: Wilmot's Opinions, p. 256. The word 'authority' is used by him to express 'deference and respect which is paid' to the Judges of a Court and their acts 'from, an opinion of their justice and integrity....' A considerable part of the undelivered judgment of Wilmot, C.J., to which we have referred is devoted to showing that the

real offence is the wrong done to the public by weakening the authority and influence of a Tribunal which exists for their good alone. He adds that such conduct is pre-eminently the proper subject of a summary jurisdiction. Attacks upon the Judges, he says:

excite in the minds of the people a general dissatisfaction with all judicial determinations...and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction of justice, and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial and to be 'universally thought so are both absolutely necessary for giving justice that free, open, and unimpaired current which it has for many ages found all over this kingdom.' With a few verbal alterations those eloquent words will apply with equal force to writings the direct tendency of which is to prevent a fair and impartial trial, or at least one that can be so considered from being had in Courts of inferior jurisdiction which have not the power of protecting themselves from such encroachments upon their independence.

12. It is clear from the quotation we have given from the judgments in *R. v. Gray* (1900) 2 Q.B. 36 and *King v. Davis* (1906) 1 K.B. 32, that the Courts in England have approved of the statement of the law by Wilmot, C.J. Learned Counsel for the opposite parties contended that Wilmot, C.J.'s statement of law was not based upon authority, and in support of this argument he quoted from Professor Holdsworth's *History of England*, Vol. 3, at p. 374. We have not the slightest doubt that when Wilmot, C.J., recorded his decision in the case of *Rex v. Almon*, he was stating what was regarded by the Courts at that time to be the law of contempt. Learned Counsel did not indicate what authority for the considered statement of the law by Wilmot, C.J., would have given that statement greater weight. The earliest judicial interpretation of the principles of the Common law must always be open to the criticism that it is not based on authority. Subsequent acceptance is not of less importance than prior authority and Wilmot, C.J.'s enunciation of the law of contempt has more than once been approved by high judicial authority. Learned Counsel for the opposite parties in support of his argument quoted the

observation of an eminent lawyer to the effect that the language in which Wilmot, C.J.'s opinion is couched is somewhat archaic. This, in our view, does not detract from, the authority of the principles enunciated. It is true that the language used by Wilmot, C.J., may be described as somewhat archaic. So may the language of Magna Charta.

13. We would refer finally to a Full Bench decision of this Court, namely, *In re Abdul Hasan Jauhar* 1926 All 623. In this case the decision of the Court was that any conduct that tends to bring the authority of a Court into disrespect or which amounts to a false and scandalous attack upon the administration of justice or an insult offered to the Judge or the dignity of the Court, even though it may be after the termination of a pending case, amounts to a contempt of Court; that contempt is not confined to cases which directly interfere with the administration of justice in a pending case, that the High Court as a Court of record and as the protector of public justice throughout its jurisdiction has power to deal with all contempts directed against the administration of justice, whether those contempts are committed in face of the Court or outside it, and independently of whether the particular Court is sitting or not sitting, and whether those contempts relate to proceedings directly concerning itself or whether they relate to proceedings concerning an inferior Court, and in the latter case whether those proceedings might or might not at some stage come before the High Court.

14. We are therefore clearly of opinion that neither on general principle nor in a recorded decision is there any support for the contention of the learned Counsel for the opposite parties that the Court is not empowered to punish for contempt where the alleged contempt consists of a general defamation or aspersion of the Court and not of a particular Judge in regard to his conduct of a particular case. Learned Counsel has been unable to cite one single relevant authority in support of his argument, nor has he been able to suggest any cogent reason for differentiating between the cases of a defamation of a particular Judge or a particular Bench and the defamation of the Court generally. The distinction which he has attempted to draw is in our judgment clearly illogical and unsound. Learned Counsel for the opposite parties contended in the second place that the article in which the offending passage appears was not intended to convey any aspersion

upon the High Court or any of the Judges of the High Court and that, in fact, it does not amount to a contempt of Court. We have already quoted authority for the proposition that no Judge or Court is immune from criticism. A reasonable argument or expostulation against an act of the Court as contrary to law or the public good is permissible under the law. The main question for consideration therefore is whether the article in question contains an unwarranted defamation of the High Court likely to lower its prestige in the eyes of the public and to shake their confidence in its capacity to administer justice.

15. In the article which is headed 'A scandalous situation - The Bar Council Election' Mr. Kapil Deo Malaviya criticised the failure of the members of the Bar in the past to elect responsible and capable persons to represent them on the Bar Council. Why he should have made any reference to the High Court in the course of his argument, it is somewhat difficult to understand. Upon the face of it would appear that Mr. Malaviya in the course of the article has gone out of his way to make a deliberately offensive observation as to the constitution of the High Court. It was contended by learned Counsel for Mr. Malaviya that reference to the High Court in the article was made for the purpose of pointing the argument of the writer as to the necessity of selecting more desirable persons from the Bar to the Bar Council. But the offending passage in our opinion clearly conveys that in recent years lawyers lacking in capacity or character or in both have been elevated to the High Court Bench. The expression used is 'a comparatively undeserving lawyer' and the suggestion is that the claim alleged to have been put forward by members of the Bar in the past that they could have selected better Judges is absurd in view of the fact that they have been content to allow themselves to be represented on the Bar Council by persons who were unfit for their responsibilities. Learned Counsel has argued that all that the passage implies is that if the selection of Judges had been left to the Bar Council they would have selected lawyers whose qualifications were more outstanding. We are unable to accept the contention. The expression 'a comparatively undeserving lawyer' is a particularly offensive one. It connotes a lawyer who is lacking either in capacity or in character or in both, and to say that the elevation of such lawyers to the High Court Bench is a fairly frequent occurrence in our judicial history, is clearly to defame the High Court and to injure its prestige in such a way as to shake the public confidence in its ability to

administer justice. We are unable to accept the innocent interpretation which learned Counsel has suggested. We are clearly of opinion that the words in the passage convey unwarranted and defamatory aspersion on the character and ability of a number of Judges of the High Court who have recently been elevated to the Bench. The remarks of the writer of the article cannot in any sense be regarded as legitimate criticism of the High Court or of any of the Judges of the High Court in the discharge of their duties. The passage in question does not contain a fair criticism or comment. It is nothing more or less than an insulting reference to the character and capacity of His Majesty's Judges in an article in which any reference to the High Court was entirely out of place. That the reference amounts to contempt of Court we have not the slightest doubt.

16. Learned Counsel for the opposite parties contended finally that the Court should not attach undue importance to the article in which the offending passage appears. Even though, he argued, there was technically a contempt of Court, it was of such a mild nature as to be beneath the notice of the Court, which could safely ignore such references and rely upon public opinion to vindicate its reputation. The article in question was written by an advocate of standing and repute practising in the Allahabad High Court and it may reasonably be assumed therefore that special importance and significance are attached by the public reading the article to his opinions. It is admitted that the 'Leader' has a wide circulation in this and other provinces. That the article was widely read we have no doubt. It is impossible to say what the exact effect of the article has been, but we are of opinion that it tends to lower the High Court in the eyes of the public. Learned Counsel has urged that the Court should not be over-sensitive in the matter and that the article could not have done any damage to the prestige of the Court as a very large proportion of the population of the province in which the Court administers justice is illiterate and could not have read the article. We would repeat that proceedings for contempt are not brought to vindicate the character of any particular Judge or Judges who have been assailed, but to protect the administration of justice. The question of sensitiveness does not arise. The only question which the Court has to decide is whether the published article lowers or tends to lower the dignity and prestige of the High Court. Of that in our judgment there can be no doubt. The fact that a large proportion of the population who resort

to the Court for the decision of their disputes are illiterate is of little importance. Once the impression gains ground that the High Court is to a certain, extent composed of lawyers who are deficient in character or capacity that impression will soon be conveyed to the section of the populace which is illiterate. We have given careful consideration to all that learned Counsel has urged in defence of his clients and with some knowledge of the conditions which exist and of the effect that such an article is likely to produce in the minds of the public, we are clearly of opinion that the passage in respect of which notice to the opposite parties has been issued constitutes a contempt of Court of which the High Court in the interests of the administration is bound to take cognizance.

17. Mr. Chintamani and Mr. Krishna Ram have filed affidavits in which they candidly state that they had no intention of defaming the High Court and that had they thought that the article in question contained passages which might be construed as contempt of Court they would not have published it. No doubt Mr. Chintamani and Mr. Krishna Ram, not unreasonably, relied upon the fact that the article in question was written by an advocate of standing at the Bar. Mr. Malaviya has also filed an affidavit which is not so candid as that of Mr. Chintamani and Mr. Krishna Ram. In his affidavit Mr. Malaviya contends that he had no intention of writing anything and had not written anything which would defame the High Court.

18. Although affidavits have been filed by each of the three opposite parties, they have made no apology or expression of regret that the article had been written and published, if in the judgment of the Court it did amount to contempt of Court. This, in our opinion, is to be deplored. The Court cannot compel a party against whom proceedings have been instituted for contempt of Court to apologise, and the opposite parties are within their rights in adopting the attitude which they have done. We are constrained however to express our opinion that it is a matter for regret that an apology has not been tendered in this instance. The article in which the offending paragraph appears was written by an advocate practising in this High Court. In our opinion an advocate should be as solicitous and jealous of the dignity and reputation of the Court in which he practices as the Judges themselves. As a lawyer practising in the High Court what he writes about the High Court must inevitably attract attention. In the present instance Mr. Malaviya has

gone out of his way to make a highly improper, unwarranted and offensive reference to the High Court. The fact that he has refused to apologise will not lessen the effect of his offence. Mr. Malaviya cannot be compelled to make amends by way of apology, but we are of opinion that in the attitude he has adopted he has not observed the high traditions of the Bar.

19. In the circumstances we are prepared to take a lenient, view of the conduct of Mr. Chintamani and Mr. Krishna Ram. They have clearly stated that they had no intention of publishing anything which was derogatory of the High Court. Their responsibility in connexion with the offence committed is less than that of the author of the article in question. We are of opinion that in the case of Mr. Chintamani and Mr. Krishna Ram a warning by this Court is sufficient in the circumstances. We hold that they are guilty of contempt of Court. We consider it unnecessary to inflict punishment. But we order them each to pay Rs. 100 towards the Government's costs in these proceedings.

20. We cannot take so lenient a view of the conduct of Mr. Malaviya. We convict him of contempt of Court and we sentence him to a fine of Rs. 150.

21. Mr. Malaviya will further pay Rs. 100 towards the costs of the Government in connexion with these proceedings. In default of the payment of fine and the costs within a period of one month from this date we sentence Mr. Malaviya to a term of one month's simple imprisonment.