

In Re: Kaluram

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Court : Madhya Pradesh

Decided On : Apr-30-1962

Reported in : AIR1966MP342; 1966CriLJ1448

Judge : N.M. Golvalker and ;C.B. Kekre, JJ.

Acts : Contempt of Court Act, 1952 - Sections 3

Appeal No. : Misc. Criminal Case No. 238 of 1960

Appellant : In Re: Kaluram

Advocate for Def. : K.K. Dube, Dy. Govt. Adv.

Advocate for Pet/Ap. : R.P. Chopra, Adv.

Judgement :

Kekre, J.

1. A notice was issued at the instance of Shri B.C. Chaturvedi, Magistrate First Class, Jabalpur, to the non-applicant, Kaluram, to show cause why he should not be convicted for contempt of Court under Section 3(1), Contempt of Courts Act, 1952

2. The non-applicant Kaluram, who is a Janpad Councillor, and who belongs to Congress Party, was being tried in four criminal cases pending before Shri B.C.

Chaturvedi, Magistrate First Class, Jabalpur, for offences of thefts. He was on bail and was being represented by a counsel. One of those cases (Criminal Case No. 57 of 1960) was fixed for 31-8-1960 for recording evidence of witnesses for the prosecution. In the course of cross-examination of one of the witnesses for the prosecution, the magistrate severely reprimanded the non-applicant Kaluram, the accused in that case.

3. The Magistrate, in his application moving this Court to take action against the non-applicant Kaluram, for contempt of Court, has stated that the non-applicant, in the course of cross-examination of that prosecution witness, adopted a threatening attitude towards the witness and shouted in loud voice, for which he was reprimanded and told to behave properly. According to the version given in that application, in spite of this warning and reprimand, the non-applicant continued in his unruly attitude, and, hence, the magistrate sent for police guards to take suitable action against him for causing disturbance in the proceedings. The non-applicant then quietned down, and the police guards were sent back. The version of the incident, as given by the non-applicant Kaluram, is different.

4. The next day, 1-9-1960, the non-applicant sent a written notice to the magistrate that in the course of the trial of that criminal case, he had been insulted by the magistrate calling him 'Badtamiz', and threatening to send him to jail, whereby, the non-applicant had suffered in reputation. By that notice, the non-applicant called upon the magistrate to withdraw the words complained of and to apologize to him, else, suitable action would be taken against him. It is because of this service of notice on him that the magistrate has moved this Court to take action for contempt of Court against the non-applicant.

5. The non-applicant, in his return, has denied that he was guilty of rowdy behaviour or had adopted a threatening attitude towards the witness. The version of the incident as given by him is:

Earlier during the Court hours on that day, he had seen the Sub-Inspector of Police and A.P.P. showing record of the criminal case to the witness, which fact was brought by him to the notice of his counsel. The witness, during his cross-examination, was questioned on that point by the counsel for the non-applicant,

but he denied that suggestion.

The non-applicant then addressed the magistrate by saying that he desired to say something. The magistrate lost his temper and, addressing him as 'Badtamiz', told him to keep quite, and to submit whatever he had to submit through his counsel. The non-applicant again requested the Court and asked whether he would not be allowed to make a submission. The magistrate then threatened to send him to jail and sent for police guards.

6. The non-applicant has further stated in his return that thereafter he wrote out an application regarding his intention to apply for transfer of the case from the Court of the magistrate. The application was to be presented to the magistrate, when he would resume work after midday recess. The magistrate left the Court after the recess, and, hence, that application could not be presented to the magistrate that day.

7. The stand of the non-applicant is that he, having been insulted by uncalled for remark and action of the magistrate, had recourse to the remedy available to him under the law to obtain redress, and, hence, had committed no contempt of Court.

8. 'Contempt' in its legal conception means disrespect to that, which is entitled to legal regard. The offence of contempt of Court is an offence against a Court or a person to whom judicial functions are assigned and whose acts in such capacity are subject to supervision of the High Court. No tribunal can function properly, unless it is allowed to keep up its dignity and unless it has power to enforce discipline and respect in its administration of justice.

9. The Legislature has not defined the offence of contempt of Court obviously because it manifests itself in a multiplicity of ways. The Supreme Court, in a recent decision, *Pratap Singh v. Gurbaksh Singh* Cri Appeal No 128 of 1959 D/-29-1-1962 : (AIR 1962 SC 1172), has observed:

'What, after all, is contempt of Court? 'To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or

prejudice parties litigant or their witnesses during the litigation.'

10. To explain what 'authority' means, it would be pertinent to quote Justice Wilmot's opinion in *The King. v. Almon*, (1765) 97 ER 94, which is considered to be the source of much of the law now obtaining on the point of contempt.

'The word 'authority' is frequently used to express both the right of declaring the law, which is properly called jurisdiction, and of enforcing obedience to it, in which sense it is equivalent to the word 'power'; but by the word 'authority', I do not mean that coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity.'

11. The intention or motive, with which the act said to constitute offence of contempt of Court is committed, is hardly relevant, though lack of intention to bring about a particular result may have bearing on the punishment to be inflicted. In *T.B. Hawkins v. Pandit D.P. Mishra*, ILR (1949) Nag 640 at p. 660 : (AIR 1952 Nag 259 at p. 265) it was pointed out:

'I may say here again that the intention of the person making the comments is no more relevant than the occasion on which they are made.'

The same view was reiterated in *Wasuderao v. Gopal*, AIR 1951 Nag 368 and *Ratnakar Jha v. K. S. Agarwal*, AIR 1954 Nag 99.

12. Similarly, in *State v. Editors and Publishers of Eastern Times and Prajatantra*, AIR 1952 Orissa 318 Narsimham J. observed:

'The essence of the offence of contempt lies in the tendency to interfere with the due course of justice, and motive, good faith or absence of knowledge of the tendency are immaterial.'

Again in *The State v. Biswanth Mohapatra*, AIR 1955 Orissa 169, the same learned Judge said:

'He might also have acted in good faith. But these considerations are immaterial.....'

13. It will be assumed for the purposes of these proceedings that what the non-applicant has stated in his return regarding what transpired between him and the magistrate in the Court on that day, is the correct version. The learned counsel for the non-applicant has urged that all that the non-applicant did by sending the notice in question, which act is said to constitute the offence of contempt of Court, was to seek redress for the wrong done to him by the magistrate in making the uncalled for remark, referring to him as 'Badtamiz' (guilty of improper or disrespectful behaviour) and in calling police guards.

14. In re, Sudhir Chandra, AIR 1952 Cal 258 which was relied on for the non-applicant, was a case where the Judge, while hearing an application in a pending suit, had severely criticised the conduct of the attorney for a party in unnecessarily exhibiting a number of documents, and had remarked that it appeared to him that it had been done for the purpose of costs. No order on the application had then been passed. The attorney, a week later, addressed a private letter to the Judge, bringing certain facts, which were not placed before the Judge during the hearing, to his notice, and also included certain other matters, such as, relationship with the Judge's family and his own importance in political and professional field. The majority decision in that case that such a communication did not amount to contempt of Court, was based on the conclusion that the letter did not tend either directly or indirectly 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 V and prestige of the Judge and the Court. In that case, there was no demand for withdrawn by the Judge of remarks made by him, or for an apology; nor was there a threat of action at law, as obtains in this case.

15. In the case under consideration, it can hardly be contended that the communication of the nature written by the non-applicant was not an act, which tended to lower the authority of the magistrate by requiring him to apologize for what he did while discharging his judicial functions.

16. Rizwan-ul-Hasan v. State of Uttar Pradesh, AIR 1953 SC 185 another decision relied on for the non-applicant, was concerned with facts, which are very different

from those obtaining in the present case. There, an application containing allegations against a Sub-Divisional Magistrate, before whom proceedings under Section 145, Criminal Procedure Code, were pending, was made by a third party to the District Magistrate, who forwarded it to the Sub-Divisional Magistrate for report. The District Magistrate was proceeded against and was convicted by the High Court of offence of contempt of Court. The Supreme Court held that in forwarding the application to the Sub-Divisional Magistrate for report, the District Magistrate, who was the superior officer of the Sub-Divisional Magistrate and was under duty to supervise his work, acted in the usual and normal course of official practice, and, hence, was not guilty of the offence of contempt of Court.

17. If a threat of action at law is held out to a magistrate, as in this case, unless he apologizes, for what he did acting in his judicial capacity, even if what he did was not strictly justifiable, that would amount to interfering, with the administration of justice, because the magistrate or the Judge would be embarrassed in further handling of that case, or controlling the proceedings. The fact that the non-applicant intended to apply for transfer of the case from the file of the magistrate, which intention was not communicated to the magistrate, would make no difference. The maintaining of discipline and orderliness in the proceedings in Court is as much the duty and function of a magistrate or a Judge, as to decide matters in issue.

18. In *Subordinate Judge First Class, Hoshangabad v. Jawaharlal*, 1940 Nag LJ 425: (AIR 1940 Nag 407) a letter sent to the Judge seised of the case, containing imputation that the Judge had acted unlawfully with a view to cause the party loss, was held to amount to contempt of Court, Though the communication in that case was in respect of something done by the Judge while deciding matters concerned with the execution proceedings pending before him, what was said in that case would be true even of what a Judge or a magistrate does in discharge of his duty to maintain order in his Court.

19. In his opinion in (1765) 97 ER 94 (supra), Sir John Wilmot said :

'But it is said that the course of justice in those cases is obstructed and the obstruction must be instantly removed; that there is no such necessity in the case

of libels upon the Courts or Judges which may wait for the ordinary method of prosecution, without any inconvenience whatsoever. But when the nature of the offence of libelling Judges for what they do in their judicial capacities, either in Court or out of Court, comes to be considered, it does, in my opinion, become more proper for an attachment than any other case whatsoever.'

'The arraignment of the justice of the judges excites in the minds of the people a general dissatisfaction with all judicial administrations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most 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 Judge, as private individuals, but because they are the channels by which justice is conveyed to the people. To be impartial and to be universally thought so, are both absolutely necessary for giving justice . . . free, open and uninterrupted current.'

20. Certain observations in *Brahma Prakash v. State of U.P.* AIR 1954 SC 10 at p. 14 were relied on for the non-applicant. They are:

'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 libeller in a proper action if he so chooses.'

In the very next sentence, however, their Lordships of the Supreme Court said:

'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 or 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.'

21. Applying that test, we have no doubt that the notice sent to the magistrate, in this case, would have embarrassed him in the trial of the case. We have no doubt that the act of the non-applicant is sending the notice, calling upon the magistrate to apologize, constitute the offence of contempt of Court, punishable under Section 3 of the Contempt of Courts Act, 1952, and we convict him accordingly.

22. It is unnecessary for the purposes of these proceedings to consider whether the non-applicant could have successfully maintained an action at law against the magistrate for what, according to the non-applicant, the magistrate had done. It may, however, be mentioned that for an action like that there might conceivably be available to the magistrate the defence of absolute privilege.

23. The non-applicant appears to have, been under a misapprehension as regards his rights. The circumstance that he intended to have his case transferred from the file of the magistrate would be relevant for deciding upon punishment to be awarded. We think that a sentence of fine would be the proper one. We sentence the non-applicant Kaluram to pay a fine of Rs. 100/-. In default of payment of fine, he shall suffer simple imprisonment for fifteen days. Costs of the paper book shall be payable by the non-applicant.