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Court : Rajasthan

Decided On : Mar-07-1955

Reported in : 1955CriLJ1108

Judge : Wanchoo, C.J. and; Modi, J.

Appellant : Giani Ram

Respondent : Ramnath Dutt

Judgement :

Modi, J.

1. This is an application by one Gianiram under the Contempt of Courts Act, and has arisen under the following circumstances.

2. The petitioner was a sub-post-master in Bikaner City and was under suspension, and was being prosecuted Under Section 409, IPC in the court of the City Magistrate, Bikaner, for having embezzled certain money under his charge. The opposite party Ramnathdutt is the Superintendent f Post-offices, North Rajasthan Division, Bikaner and the petitioner was prosecuted on his report.

At the trial one P.W. Rameshwar Prasad, now sub-postmaster, Bikaner City, but a clerk earlier, was examined as a prosecution witness on 28-11-1953, and it is said that during the course of his crossexamination, Rameshwar Prasad gave replies to

certain questions which were favourable to the petitioner and which went to show that the opposite party Ramnathdutt was on terms of en-raity with the petitioner. Rameshwar Prasad had yet to be cross-examined after charge, and such cross-examination actually took place on 24-6-1954, but in the meantime on 5-4-1954, the opposite party served a charge-sheet on him to show cause why he gave a false statement in court and why disciplinary action should not be taken against him for, what the opposite party characterized in the charge to be 'a vicious statement'.

It is contended that before Rameshwar Prasad was called for his cross-examination after charge, he met the petitioner and told him not to put any questions relating to enmity which the opposite party bore towards him, and also warned that if that course was persisted in, the witness would have to give answers which would be unfavourable to the petitioner. It is further stated that under these circumstances the petitioner instructed his counsel to refrain from putting questions on that aspect of the matter.

Hence the present application. It is prayed that the action of the opposite party in serving Rameshwar Prasad with a charge-sheet while the case was pending against the petitioner was calculated to interfere with the due course of justice and hampered the petitioner in his defence and clearly amounted to contempt of court.

3. The opposite party in reply has sought to justify the action taken by him and stated that Rameshwar Prasad had during his examination made certain false statements in court, which were false to the knowledge of the opposite party, and had falsely made imputations against him and that the opposite party was, therefore, entitled to take departmental action against the petitioner for what was a breach of departmental rules, and that such action on his part as he had taken had nothing to do with the merits of the case pending against the petitioner in court, and therefore, he was not guilty of any contempt.

It was also submitted that the petitioner had already been convicted by the court Under Section 409 IPC It is thus claimed that there was no intention whatsoever on the part of the opposite party to overawe Rameshwar Prasad, or to interfere in any way with the due course of justice but that he had acted bona fide in the

discharge of his official duties, which, as a superior officer of the postal department he was entitled to do.

After an attempt was thus made to justify his conduct, the opposite party further prayed that if this Court was of the view that the respondent's action in giving a charge-sheet to Rameshwar Prasad under the circumstances was improper and constituted a contempt, the opposite party wished to tender his unqualified apology and that we should accept the same.

4. We may point out at once that we are not concerned in the present case with the fact that the petitioner has been convicted of the offence with which he was charged or that the replies given by Rameshwar Prasad in the course of his statement in court were true or false. These were matters for the determination of the court where the case was pending.

5. Now, the first question to which we must address ourselves is whether the conduct of the opposite party in serving Rameshwar Prasad with a charge-sheet, in the circumstances explained above, constitutes contempt. Before proceeding further, we think it proper to state that learned Counsel for the opposite party at the very outset of his argument offered to us an unconditional apology on behalf of the opposite party in this matter and thereafter sought to make his submissions in defence of his conduct.

We take this opportunity of pointing out that this was the proper method for tendering an apology and not the one which was adopted by the petitioner in his written reply where he has sought to justify his action in the first instance and then in the alternative offered an apology. The reason to our mind is simple and that is that the opposite party could not both justify his conduct and offer an apology, the two things being incongruous.

Be that as it may, we consider it necessary at this stage to refer to the charge-sheet which was delivered by the opposite party to Rameshwar Prasad. The charge-sheet consists of four paragraphs and is as follows:

You had stated in the court on being cross-examined by the defence counsel that you did not check the articles of stock and did not prepare a list of missing articles. As per departmental Rules and orders you should have checked and verified the stock of articles on assigning over charge. :

You also stated in the court that Shri Gianiram was not in the post office when, you arrived at Bikaner City at about 10.00 hrs., on 7-3-54 whereas he was actually in the Post Office and helping in filling the receipts for Regd. articles.

You further stated that Shri Gianiram was the Joint Secretary of the U. P. T. W. and you were the Secretary and I was angry with the members of the union, I had no information there was a branch of the union as no Secretary or Office bearer of the U. P. T. W. saw or wrote to me. Had I been angry with you I would not have posted you as an Incharge of Bikaner City. You were found to be neglecting your work, when your office was visited by me. You were verbally told that you were not able to manage the work.

Please explain as to why you made a false statement in the court and why disciplinary action should not be taken against you for making a vicious statement in the court.

It was submitted before us on behalf of the opposite party that paragraph 1 of the charge-sheet was directed against the non-performance of an official duty devolving on Rameshwar Prasad himself and had really nothing to do with the case pending against the petitioner Gianiram. This appears to be correct.

But, obviously, the same thing could not be said about paragraphs two and three which clearly made reference to the petitioner and to certain matters which had been deposed to by Rameshwar Prasad with reference to the petitioner during the course of his examination in the case Under Section 409, IPC In para two the suggestion was that Rameshwar Prasad had perjured himself in court when he said that the petitioner was not present in the post office on a particular day while he actually was there.

Then there is a clear reference in para 3 to the effect that the witness had stated in his deposition in court that the petitioner was one of the office bearers of the union and that the opposite party was angry with them among others and so on and so forth.

The opposite party then clearly called upon Rameshwar Prasad to show cause why he made a false statement in court and why disciplinary action be not taken against him for making a vicious statement in court.

We have no manner of doubt that we must look at this matter from Rameshwar Prasad's angle or that of any other person in like situation, and the impression which such a proceeding, in the midst of a case during which he was appearing as a witness, was likely to create upon his mind. We cannot forget for a moment that the opposite party was the Superintendent of Post Offices, and it was conceded before us that the latter had full disciplinary control over the witness in the sense that he was competent to dismiss him from service provided of course the legal requirements for such a course were fulfilled.

The circumstance that only an explanation had been called for and no action had actually been taken against Rameshwar Prasad is beside the' point and does not affect the question before us. We must also bear in mind that Rameshwar Prasad had yet to be cross-examined after charge and in that sense his testimony in court had not been brought to a stage of completion.

The important fact, therefore, remains that the action taken by the opposite party was certainly' likely to have the tendency of interfering with or obstructing the free and fair course of justice. Now it is well settled that a contempt is conduct which is calculated to interfere or has the tendency of interfering with, the ordinary course of justice, and we are disposed to think that the opposite party was in contempt in pursuing the course which he did.

6. We were referred to a number of cases in this connection on his behalf, namely, - 'Baldeo Sahai v. Shiva Datt' AIR 1940 All 114 (A); - 'Hrishikesh Sanyal v. A. P. Bagchi' AIR 1940 All 497 (B); - 'Emperor v. V. B. Kolte' AIR 1941 Nag 241 (C); - 'K. S. Vasan v. Arthur H. E. Taylor' AIR 1953 Mys 103 (D) and - 'Rizwan-Ul-Hasan v.

State of Uttar Pradesh' : 1953 CriLJ911 . We may state at once that the facts of these cases are different and they are wholly distinguishable from the case before us.

Thus in 'Baldeo Sahai v. Shiva Datt (A), a suit was filed by A against B, and the latter in the course of his written statement described As son with a defamatory and abusive epithet. An application was made by A in court praying for striking out the defamatory epithet, and a notice was given by A's son calling upon B to pay damages for defamation or to face a suit. It was held that the application and the notice did not amount to contempt of court.

In 'Hrishikesh Sanyal v. A. P. Bagchi (B)', the guardian of a minor in a guardianship proceeding, against whom certain allegations had been made by the objector moved the court Under Section 476, Cr.PC and also filed a complaint Under Section 500, Penal Code whereupon the objector contended that the action of the guardian amounted to contempt of court. It was held that the action of the guardian did not constitute contempt, although it is significant that the High Court directed that the proceedings Under Section 476, Cr.PC or Section 500, IPC be not proceeded with until the conclusion of the guardianship case.

Similarly,' in 'Emperor v. V.B. Kolte (C)', where a person who was not a party to certain criminal proceedings sent a notice to the accused demanding damages and apology for the latter having made references about him in the written statement, it was held that his action did not amount to contempt of court, The facts of the 'Mysore case (D)', are entirely different and need not detain us.

In 'Rizwan-Ul-Hasan v. State of Uttar Pradesh iE)', their Lordships of the Supreme Court held that the conduct of the District Magistrate in sending an application filed by the opposite party along with a recommendatory letter from a Congress Secretary in a proceeding Under Section 145, for report to the Sub-Divisional Magistrate did not amount to contempt of court as such action cannot be characterised as tending to interfere with the course of justice.

Their Lordships further approved the observations of Rankin C. J. in - 'Ananta Lai Singh v. A. H. Watson' AIR 1931 Cal 257 (F), where the learned Chief Justice

remarked that'

the Court's jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. It is not every theori-tical tendency that will attract the action of the Court in its very special jurisdiction. The purpose of the Court's action is a practical purpose and it is reasonably clear on the authorities that this Court will not exercise its jurisdiction upon a mere question of propriety.

We would respectfully adopt these observations but are clearly of opinion that the case before us is of an entirely different character from all the cases referred to above and to which our attention was invited on behalf of the opposite party.

One outstanding feature which distinguishes almost all the cases cited above from the case before us is that in all of them the party complained against sought to move a court or warned that it would do so and, therefore, it is plain that the ultimate decision would rest in the hands of the court and not in the hands of the person complained against.

In the present case, a charge-sheet was handed over by a person who was an official superior to his subordinate. The subordinate had been examined in court and had given a certain statement. He was further to be examined, and in that sense his examination was not complete and yet while this was so, the official superior (who is the opposite party) thought fit to question certain statements which had been made by the subordinate in the course of his statement in court.

It is impossible for us to come to any other conclusion in such circumstances than to hold that the action taken by the opposite party was a most [misguided one and was clearly bound to interfere with the even course of administration of justice. Such conduct on the part of the opposite party was a clear invasion on the freedom of his subordinate who was appearing as a witness, to give a (free and a frank statement regarding a matter which was in a court of law.

We wish to point out in this connection that a number of agencies or persons have their own contributions to make in carrying a judicial proceeding to its proper

conclusion the object where-; of undoubtedly is to ascertain the true facts and to do justice and that the law of contempt throws a ring of protection around the entire course of litigation,

Witnesses no less than Judges and counsel axe, an integral part of this process and they must be left unhampered to perform their respective duties with frankness and without interference of any kind. We have, therefore, no doubt whatever that anything which tends to impair the legitimate: freedom of any of these cannot but result in ob- structing the course of justice and such interference must be reprobated.

The action of the opposite party in this view clearly amounts to contempt of court, and we would add that it is a contempt of a substantial character and not a mere technical one.

7. The next question is what punishment who should mete out to the opposite party. Ordinarily we should have been inclined to take a severe view of conduct like this as we cannot but uphold the principle that the stream of justice must remain pure and un interfered with under all circumstances. We wish to say, however, that a full and frank apology was offered to us on behalf of the opposite party at the very commencement of the hearing, and we are disposed on the whole to take the view that the conduct of the opposite party was the outcome of excess of zeal rather than of bad faith.

We are, therefore, prepared to take a lenienf view, and we consider that it would meet the requirements of justice in all the circumstances of the case if the opposite party is made to pay the costs of these proceedings to the petitioner. We order accordingly.

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