

In Re: Hiren Bose

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Court : Kolkata

Decided On : Nov-07-1967

Reported in : AIR1969Cal1,1969CriLJ40,72CWN82

Judge : D.N. Sinha, C.J., ;B.N. Banerjee, ;A.N. Ray, ;Amaresh Roy and ;B.C. Mitra, JJ.

Acts : Contempt of Courts Act, 1952 - Sections 2, 3 and 4; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 480; ;[Constitution of India](#) - Articles 19, 19(1), 19(2) and 215; ;[Indian Penal Code \(IPC\), 1860](#) - Section 228

Appeal No. : Matter No. 588 of 1967

Appellant : In Re: Hiren Bose

Advocate for Pet/Ap. : N. Roy Choudhury, Adv.

Judgement :

Banerjee, J.

1. 'Darpan' is a weekly newspaper, published in the Bengali language. The contemner, Hiren Bose, is the Editor, Printer and Publisher of the weekly, all in one. In the issue of the weekly paper, dated September 15, 1967, there appeared an article headed 'Demonstration in the High Court: Revolt of the exploited masses against the law in force,'

2. At the sitting of the Special Bench on September 19, 1967, then engaged in hearing certain applications against 'gheraos' practised by labourers against the management and the managerial staff of certain concerns, Mr. A. K. Dutt, Advocate, brought the Article to the notice of the Special Bench. The Article was also brought to the notice of the Special Bench by Mr. Samiran Sen, Registrar, Original Side of this Court. The article appeared to have been written in the context of an exhibition of 'gherao' inside court room No. 1 and the noisy demonstration held inside and outside the court premises by certain persons. Upon reading the article the Special Bench felt that the article was contumacious in nature and suo motu issued a Rule against the Editor calling upon him to show cause why he should not be dealt with or committed for contempt of court. The Rule was made returnable on September 26, 1967.

3. On being served with the Rule, the contemner appeared before this Court, on September 26, 1967, and asked for time to use an affidavit showing cause. The matter thereupon adjourned till November 6, 1967, that is to say, until the re-opening of this Court after the long holidays. The contemner did file an affidavit, dated November 4, 1967. In paragraph 2 of the said affidavit he tendered an unqualified apology. In paragraph 3 of the said affidavit, however, he pleaded the following justification for publishing the article :--

'I say that the whole purpose and spirit of the article which appeared in the Bengali News weekly 'Darpan' on 15th September, 1967 hereinafter referred to as 'impugned article' is to focus the attention on the certain inequities of the present legal system which is an inheritance from alien rule and to show that the entire body of law which although has undergone changes from time to time is not in keeping with the aspiration of the people in general or their needs. I feel that the contemporary agitation all over the world is an expression of popular urge for change and the impugned article, if read in its entirety, has expressed its support for such popular urge and was never intended to show any disrespect or disregard to this Hon'ble Court or the judiciary, I did not intend to lower the dignity, honour and authority of this Hon'ble Court or to undermine the confidence of the public in the administration of justice or to lower this Hon'ble Court in the estimation of the public. I did not intend to criticise the Hon'ble Judges of this Hon'ble Court and/or

justice administered by them. Since the impugned article is considered to be disrespectful to this Hon'ble Court I sincerely regret and offer my unqualified, unconditional and genuine apology.' Mr. Roy Choudhury, learned Counsel for the contemner, also verbally tendered apology on behalf of the contemner in his presence. When we pointed out to him that paragraph 3 of the affidavit contained a justification, which ill-matched with the apology, Mr. Roy Choudhury prayed for an opportunity to use a second affidavit and to withdraw the first one. Thereupon, we adjourned the matter till to-day. The second affidavit has been filed to-day. Paragraph 2 of the second affidavit reads :-

'I sincerely and truly regret for writing and publishing the article 'High Courtey Bikshov Prachalita Ainer Birud-he Sosita Janasadharaner Bidroha' in the Bengali Newsweekly 'Darpan' of the 15th September, 1967, the official translation whereof has been annexed with the Rule and served upon me.

I humbly and sincerely tender my unqualified and unconditional apology.'

4. Before I deal with the affidavit filed and the apology tendered by the contemner, I propose to deal with the article published in 'Darpan'. In my reading, the article has been written in bad taste and is the product of confused thinking. The language used in the article is intemperate and disparaging to the dignity of this Court. The article accuses the Chief Justice of this Court, (a) of being a puppet of the law, and (b) of sitting down and getting up (i.e. moving) with the framework of a grinding machine (meaning the present legal system).

5. Of Judges generally, the article says, 'It is just the same legal system which in the pre-independence days helped the judiciary to stifle the just demands of man and the freedom movement. This body of Judges sent thousands of patriots to the gallows and threw many thousands into the prison on the strength of this very legal system. Just a few among the Judges gave vent to their denunciation against it. (We) feel interested to know how many Judges resigned their office in protest against this legal system. They claim to be educated persons, the elite of the society. There is no necessity for this education and (these) elites.'

6. The last paragraph of the article refers to another case in which the present Labour Minister, Mr. Subodh Muk-herjee, was charged with contempt and made amends by offering apology before My Lord S. K. Datta, J. The article takes an adverse view of what happened to the Labour Minister and says 'The respectable Law Minister Sri Subodh Baner-jee is free from doubt as to the inequity of this legal system. In consequence he has had to bow low down before the court to-day. Let him know that this humiliation is not his alone (but) of the people of the country as a whole. It is (Just the beginning of the agitation. History knows its end.'

7. Now, the author of this article does not appear to be a well-informed person. He does not even know that Mr. Subodh Banerjee is not the Law Minister but is the Labour Minister. Then again, his hope that the feeling of the Chief Justice is in favour of an organised agitation against the entire set up (meaning the prevailing legal system in this country) is too much of an assumption.

8. I do not doubt that the press is free to criticise a system. A free press stands as one of the great interpreters between the Government and the people. To allow this to be fettered is to fetter ourselves. This freedom is enshrined in Article 19(1)(a) of the Constitution but is subject to the limitations as in Article 19(2). In the garb of criticism, the press cannot commit contempt of court.

9. I do not claim that justice is a cloistered virtue and should not tolerate adverse criticism. In the case of *Brahma Prakash Sharma v. State of Uttar Pradesh* : 1954 CriLJ238 the Supreme Court emphasised upon the following preliminary considerations which should weigh with the Court when called upon to exercise its summary power in cases of contempt of scandalising the court itself:--

'In the first place, the reflection on the conduct or character of a Judge in reference to the discharge of his judicial duties, would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not by stifling criticism that confidence in courts can be created.....

In the second place, 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.'

10. Now, If the article had been merely libellous to the Chief Justice and the Judges of this Court, we would not have exercised our summary jurisdiction. But the article is more than that. It describes the Chief Justice as a puppet, that is to say, a person who may be pulled and does not act in his judicial discretion. It further describes him as working within the framework of a grinding machine and as such exercising his duties oppressively. About the Judges generally, it says, that the country has no necessity for Judges such as they are. It invokes the dire but untold lesson of history because this Court proceeded against the Labour Minister for contempt for which the latter had to apologise.

11. This picture of the High Court as a Court composed of uselessly educated Judges, presided over by a Chief Justice who is a puppet of law and part of an oppressing machine is a dismal picture of the highest judiciary of the State. Such an article is likely to undermine the dignity of and impair the respect for the High Court. I, therefore, hold that the Editor of the weekly is guilty of contempt.

12. I now turn to his apology. The apology is the product of a second thought. It was at first offered along with a justification which I have already quoted. When it appeared to the contemner that this Court may not accept an apology mated with a justification, he wanted to withdraw the affidavit containing the first apology and only thereafter offered an unqualified and a proper apology.

13. Now, to submit an apology as an apologia to the contemner's other contentions is to exhibit a desire to escape punishment without really being contrite. Courts should not accept such qualified apologies. It is also not a matter of course that a Judge can be expected to accept any apology. Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrong-doer's power. Only then is it of any avail in a Court of justice. But before it can have that effect, it should be tendered at the earliest possible stage, not the latest. Even if

wisdom dawns only at a later stage, the apology should be tendered unreservedly and unconditionally, before the Judge has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology. It ceases to be the full, frank and manly confession of a wrong done, which it is intended to be.

14. I consider the apology tendered by the contemner as bereft of its full grace, firstly, because it was offered coupled with a justification and, secondly, because it was offered at a late stage. The apology certainly has this virtue that it minimises the gravity of the offence committed by the contemner, but it does not wholly absolve him of the guilt. I, therefore, propose that the contemner should not be let off unpunished but should be punished with a fine amounting to Rs. 200 (Rupees Two hundred only).

15. The fine must be paid in course of tomorrow in the office of the Sheriff of Calcutta. In default, the matter be placed for further orders before this Bench. If the fine is paid, the Rule shall be deemed to have been disposed of.

16. The Sheriff to act on a signed copy of the minutes.

Sinha, C.J.

17. I agree.

Ray, J.

18. I agree.

Amaresh Roy, J.

19. : I agree.

B.C. Mitra, J.

20. I agree.

