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Debi Prasad Sharma and Others Vs. Emperor

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Court : Privy Council

Decided On : Jun-25-1943

Judge : Lords Atkin, Thankerton, Porter, Sir George Rankin &Amp; Sir Madhavan Nair

Appeal No. : Privy Council Appeal No.31 of 1942 (From Allahabad)

Appellant : Debi Prasad Sharma and Others

Respondent : Emperor

Advocate for Pet/Ap. : D.N. Pritt and R.K. Handoo, for Appellants; Sir Walter Monckton, W.W.K. Page and B. Mackenna, for the Crown. Solicitors for Appellants, Douglas Grant and Dold; Solicitors for the Crown, Solicitor, India Office.

Judgement :

LORD ATKIN:

This is an appeal from a judgment of the High Court of Judicature at Allahabad by which the appellants were severally found guilty of contempt of Court and sentenced to fine or imprisonment and in the case of appellant 3 to imprisonment only. The first two appellants are respectively the printer and publisher and the editor of the Hindustan Times a daily news paper published in Delhi and having a large circulation in the United Provinces. Appellant 3 is the local correspondent of the newspaper at Meerut and at the material date had been so employed for the

past 7 years. In July 1941, the Sessions Judge at Meerut Mr. Hari Shankar Vidyarthi had been engaged in the trial of 20 persons charged with murder, rioting, etc., which ended on 3lst July 1941, when the Judge convicted four of the accused and sentenced them to transportation for life. The remaining sixteen were acquitted. On 1st August appellant 3 Mr. Singhal sent the following news item to the newspaper :

(F.O.C.)

Meerut, 1st August.

With the judicial officers also now co-operating actively in the war efforts, the "efforts" are bound to receive a heavy push forward. The judicial officers all over the Province have been, I reliably learn, asked by the New Chief Justice of the Allahabad High Court, who, it is understood, has been requested by His Excellency the Governor, for cooperation in war efforts, to raise subscriptions for the war funds.

The judicial officers raising money make it quite clear to the persons, whom they ask to contribute, that the donations were voluntary and they were not exercising any compulsion in asking for funds. They could donate as much or as little as they pleased.

On 3rd August the newspaper published the news items with headings as follows:

JUDICIAL OFFICERS FOR WAR WORK.

RAISING SUBSCRIPTIONS,

NEW CHIEF JUSTICE'S CIRCULAR.

(From our Correspondent.)

Meerut, 1st August.

With the judicial officers also now co-operating actively in the war efforts, the "efforts" are bound to receive a heavy push forward. The judicial officers all over

the Province have been, I reliably learn, asked by the New Chief Justice of the Allahabad High Court, who, it is understood, has been requested by His Excellency the Governor for cooperation in war efforts, to raise subscriptions for the war funds.

The judicial officers raising money make it quite clear to the persons whom they ask to contribute that the donations were voluntary and they were not exercising any compulsion in asking for funds. They could donate as much or as little as they pleased.

There followed a short report of the judgment in the murder case headed "Murder Case Judgment." In the issue of the Hindustan Times of 6th August there appeared the following paragraph which appears to be an editorial comment:

If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmad, in his administrative capacity, has issued a circular to the judicial officers under his jurisdiction, enjoining on them to raise contributions to the war funds, then it must be said that he had done a thing which would lower the prestige of the Courts in the eyes of the people. The presiding officer of a Court, while asking for funds, may say that the contribution is voluntary, but he cannot remove the idea from the mind of a person, particularly a litigant, that the request is being made by one whom it may not be safe to dispiease. To be absolutely voluntary, war contributions ought to be raised only by non-official committees or individuals. It was bad enough that the services of the members of the executive were utilized for the purpose, but to make judicial officers do this work is something far worse.

On 8th August Sir Iqbal Ahmad C. J, and Collister J. ordered that notice should be given to the first two appellants to appear in Court on 9th September 1941, to show cause why they should not be punished for contempt of Court for publishing the above comment in the Hindustan Times. Notice of the proceedings was also ordered to be given to the Government Advocate. The notice was duly given entitled "In the matter of Miscellaneous Case No. 8/41 (Contempt of Court) in re King-Emperor, applicant; Devi Prasad Sharma and another opposite parties." When the parties appeared Mr. Gandhi filed an affidavit in which he said that since the notice was issued he had made personal inquiries at Meerut and had

ascertained certain facts which he set out, but desired to assure the Court that it was no part of his intention to cast any reflection upon the conduct of the Chief Justice or to bring the Court into disrepute or contempt, and that he would be sorry indeed if his conduct in publishing the comments, which he did publish as editor relying on the accuracy of his informant, were interpreted as implying any malicious intention on his part or intended to bring the Court or any member of it into disrepute. Their Lordships, for reasons which will appear, do not find it necessary to enumerate the facts alleged in Mr. Gandhi's affidavit. In substance they were that Mr. Singhal had been present in the Court of Mr. Vidyarthi on 31st July when he gave judgment in the murder case, and that after sentencing the four accused to transportation for life the Judge made the following statement in open Court:

Since the Chief Justice, who has been requested by His Excellency the Governor to help in the war efforts, has asked us to raise subscriptions for the war fund, it is incumbent on us to raise subscriptions and you should help me in this work.

Thereupon lawyers and litigants present in Court held consultations; Rs. 200 were collected in Court and placed on the table of the Judge: and according to Mr. Singhal one of the counsel who appeared for some of the accused told the Court that he had collected Rs.150 from his clients as requested by the Judge and that he would present that money the next morning. The Judge then declared the rest of the accused discharged. This statement was said to have been corroborated by various people in Meerut, some present at the trial and some not. At the hearing on 9th September no further evidence was tendered. Sir Tej Bahadur Sapru counsel for the printer and the editor repeated that it was no part of the intention of either to cast any reflection upon the Court. The Chief Justice stated that the information contained in the comment was based upon untrue facts, and that no circular was issued by him, and he would like further discussion to proceed on that basis. This statement was accepted by counsel, and the case has proceeded on the footing that no circular and no request was issued by the Chief Justice to Judicial Officers of the sub. ordinate Courts to the effect stated.

At the end of the hearing on 9th September the Chief Justice addressing counsel said:

We are going to reserve judgment. Having given due weight to what you have said, we have arrived at the conclusion that your clients are guilty of contempt of Court, and in the absence of an apology for which we give time until the day after tomorrow, it shall be our duty to pass sentence according to law.

There then followed a series of transactions on which the appellants in support of their case proposed strongly to rely, but which their Lordships find it unnecessary to discuss in view of their opinion upon the question whether the appellants were guilty of any contempt of Court upon which they ought to have been convicted. The Chief Justice before the day reserved for judgment arrived had with Collister J. interviewed Mr. Vidyarthi and gave notice to the appellants on 11th September that as he had assarted that most of the allegations in Mr. Gandhi's affidavit were untrue, the Court proposed to examine him and another witness in Court on 15th September, and that the appellants would be given the opportunity of calling further evidence. The two witnesses were examined, the case was further adjourned to 25th September, the Chief Justice stating that in a way Mr. Vidyarthi was also on trial, and would be allowed to produce witnesses. At the resumed hearing the Chief Justice said that if Mr. Vidyarthi did not utter the words alleged then Mr. Singhal would primarily be guilty of contempt of Court having sent the information and that it was desirable that the proceedings should continue together. Accordingly it was agreed by Mr. Singhal and all the parties that Mr. Singhal should accept a notice then issued that he should

show cause why he should not be dealt with for contempt of this Court with respect to the news published in the Hindustan Times of Sunday, 3rd August, on information supplied by him.

The case proceeded on this footing on 26th and 27th September and 27th and 28th October when Mr. Vidyarthi appeared by counsel who cross-examined the witnesses called by the appellants. It should be stated that no objection was taken by the appellants' counsel to any of the procedure adopted by the Court. On 14th November the Chief Justice delivered the considered judgment of the Court. He

reviewed the evidence and came to the conclusion that Mr. Vidyarthi had not made the statement imputed to him ; and that Mr. Singhal had founded his report upon "no. thing more substantial than a suggestion or an easy inference from the facts." The Chief Justice then stated that in the opinion of the Court the charge of contempt was established against all three respondents. He proceeded to state what impression in the opinion of the Court an ordinary intelligent reader would receive from reading the editorial comment of 6th August:

The comment contains a clear insinuation that the Chief Justice had issued a circular to all judicial officers to raise contributions from litigants and others to the War Fund, that pressure was thereby being exerted by an authority which it would not be safe to displease' and that the prestige of the Courts would thus be impaired. The implication is that the Chief Justice had done something which was unworthy of a person holding that high office and that as the head and representative of this High Court he had committed the gross impropriety of forcing judicial officers subordinate to this Court to ask for war contributions from litigants, who, notwithstanding that the giving of donations was ostensibly voluntary, were not in a position to refuse.

As to Mr. Singhal the Court found that he sent information which was probably founded either on his own inference from what took place or on a suggestion from other persons, and he had endeavoured to defend his action by giving evidence which they were unable to accept as true. As to the printer and Mr. Gandhi they had no reason to suspect the accuracy of their correspondents' reports, and were acquitted of malice. Nevertheless they erred grievously in publishing the news item and the editorial comment without attempting to verify its truth. Mr. Singhal was committed to prison for two months. The printer was fined Rs.500 or in default a month's imprisonment, Mr. Gandhi was fined Rs. 1000 or in default a month's imprisonment. The Court eventually refused a stay pending appeal, and Mr. Singhal and Mr. Gandhi have both served their terms of imprisonment. At the hearing of the appeal their Lordships intimated that they desired to deal first with the primary question whether in the circumstances the words complained of were capable of being contempt of Court, and counsel for both sides argued his point. On the conclusion of this argument their Lordships intimated that their decision

was in favour of the appellants. The other points therefore raised by the appellants were not further discussed by counsel for the appellants or at all by counsel for the respondent, and their Lordships must not be taken as expressing any opinion one way or the other upon them. In their Lordships' opinion the conviction for contempt of Court cannot stand. The cases of contempt which consists of "scandalizing the Court itself" are fortunately rare, and require to be treated with much discretion. In 1899 this Board pronounced proceedings for this species of contempt, to be obsolete in this country, though surviving in other parts of the Empire: but they added it is a weapon to be used sparingly and always with reference to the administration of justice, 1899 AC 549.(1)In 1898 AC.138 (2) the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the 'law. In(l900) 2 QB 36 (3) it was shown that the offence of scandalizing the Court itself was not obsolete in this country. A very scandalous attack had been made upon a Judge for his judicial utterances while sitting in a criminal case on circuit: and it was with the foregoing opinions on record that Lord Russell of Killowen LCJ adopting the expression of Wilmot C.J. in his opinion in 176S wilm. 243 : 97 Eng. Rep. 94 (4) which is the source of much of the present law on the subject, spoke of the article complained of as "calculated to lower the authority of the Judge." When the comment in question in the present case is examined it is found that there is no criticism of any judicial act of the Chief Justice, or any imputation on him for anything done or omitted to be done by him in the administration of justice. It can hardly be said that there is any criticism of him in his administrative capacity, for as far as their Lordships have been informed the administrative control of the subordinate Courts of the Province whatever it is, is exercised not by the Chief Justice, but by the Court over which he presides. The appellants are not charged with saying anything in contempt of the subordinate Courts or the administration of justice by them. In truth the Chief Justice is alleged untruly as is now admitted to have committed an ill-advised act in writing to his subordinate Judges asking (as the news item says), enjoining (as the comment says) them to collect for the War Fund. If the facts were as alleged they admitted of criticism. No doubt it is galling for any judicial personage to be criticised publicly as having done something

outside his judicial proceedings which was ill-advised or indiscreet. But judicial personages can afford not to be too sensitive. A simple denial in public of the alleged request would at once have allayed the trouble. If a Judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation if he should feel impelled to use them. Their Lordships cannot accept the view taken by the Court as stated above of the meaning of the comment: the words do not support the innuendo. In the opinion of their Lordships, the proceedings in contempt were misconceived, and the appellants were not guilty of the contempt alleged. At the end of the hearing their Lordships intimated they would advise His Majesty that the appeal should be allowed and the fine and the costs ordered to be refunded, and that they would give their reasons for their report later as they have now done.

Appeal allowed.

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