Dwarka Prasad Agarwal vs Krishna Chandra And Ors. on 16 March, 1953

Equivalent citations: AIR1953ALL600, AIR 1953 ALLAHABAD 600

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Chaturvedi, J.

1. This is an application filed by Dwarka Prasad Agarwal for taking contempt proceedings for alleged contempts of Court said to have been committed by the opposite parties. In the application the alleged contempts are said to have been committed on three occasions. The first was an article published in a daily newspaper, known as 'Jagram', on 6-6-1952. The second act of contempt was committed on 8-6-1952 when opposite party No. 2 through Babu Lal, along with certain other persons, sent a resolution passed by the City Congress Committee to the District Magistrate and to the Superintendent of Police. The third contempt was said to have been committed on 9-6-1952 when the opposite parties Nos. 1 and 2 are said to have organized a public meeting at which speeches were delivered. The writing and the printing of the article as well as the passing of the resolution and sending it to the District Magistrate and the Superintendent of Police are not denied on behalf of the opposite parties, but the delivering of speeches at a public meeting on 9-6-1952 has not been admitted and the learned counsel for the applicant withdrew his complaint with respect to this third act. He has confined his case to the first two acts of alleged contempt.

2. An incident happened on 2-6-1952, at the shop of one Jagdish Prasad Sharma in Manik Chowk, Jhansi. Two reports of the incident were lodged in the police station, one by Sumer Singh servant of Jagdish Prasad and the other by Dwarka Prasad applicant. A reading of these two reports shows that there was a quarrel at the shop of Jagdish Prasad, and simple injuries were also caused but the versions of the two informants are naturally different. As a consequence of the reports Jagdish Prasad applicant was arrested by the police on 2-6-1952, but was released on bail the same day. On the 3rd of June one Satya Narayan alias Sathoo was arrested and was released on bail on 4-6-1952. On 6-6-1952 Ram Swarup presented himself in Court and was released on bail the same day. Satya Narayan and Ram Swarup are co-accused with Dwarka Prasad. On 11-6-1952, Dwarka Prasad filed a complaint concerning this incident before a Magistrate and the police sent a charge sheet against Dwarka Prasad, Satya Narayan and Ram Swarup on 4-7-1952 charging the three persons of having committed offences under Sections 323, 326 and 452, I. P. C.

3. Prom the narration of facts given above it would appear that the two alleged acts of contempt in publishing the article and sending a resolution concerning this incident were committed on 6th of June and 8th of June, 1952 respectively.

They were thus committed after the incident and also after Dwarka Prasad and Satya Narain had been arrested and released on bail and also after Ram Swamp had been released on bail, but before either Dwarka Prasad filed the complaint or the police sent up the charge sheet prosecuting Dwarka Prasad and others. The first question, therefore, that arises in the case is whether contempt proceedings can be taken in respect of offensive articles or resolutions etc., before the institution of any proceeding actually in Court. The contentions of the learned counsel for the applicant on this point are two. He first contends that offensive statements would amount to contempt even if certain proceedings in Court are imminent though they have not actually started, and secondly that proceedings in criminal Court start at least from the date that the accused are brought before the Magistrate and are granted bail or remanded to custody. These are, therefore, the two questions that we have to consider as regards this preliminary point.

(4) It is certainly desirable that people do not publish or resort to any other propaganda concerning matters which are likely to be 'sub judice'; at the same time, regard must be had for the liberty of speech of the citizen. Our Constitution guarantees to the citizen liberty of speech with certain safeguards including a safeguard against committing contempts of Courts. On the one hand, as stated above it is desirable that the parties or their friends do not indulge in any propaganda, but the difficulty is to what length a Court of law should go in stopping this type of propaganda. Should all speeches concerning a particular incident be prohibited as soon as the incident has occurred, or the prohibition should be imposed at some later stage but before the matter has come to Court? In the present case we have to consider whether the publishing of an article in a cognizable case, in which the police are proceeding with the matter, is a contempt or not, before actually the police send up the charge-sheet. It very often happens that even in cognizable cases the police make arrests and continue investigations for months, but ultimately they drop the proceedings when they find that there is not sufficient evidence to go to Court, or the allegations of the complainant are incorrect.

(5) In this connection, we propose to consider certain provisions of the Criminal Procedure Code which Jay down the procedure to be followed by the investigating authorities before actually sending up the case to the Court for trial. Section 156, Criminal P. C., lays down that any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case. Under Section 157 he is entitled to investigate into facts where he has reason to suspect the commission of a cognizable offence though no report has been made to him about the occurrence. Under section 160, Cr. P. C., an investigating officers authorised to require the attendance of all witnesses before him by-orders in writing, and under Section 161 examine such witnesses. Section 165, Cr. P. C. gives power to an officer in charge of a police station to make search under certain circumstances, and under Section 167 he is directed to forward the accused and the copy of the entries in the diary of the case to the nearest Magistrate. Under Section 169 if it appears to the officer that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond to appear before a Magistrate if and when so required. Under Section 170 the officer is directed to send

the accused, if in custody, to the Magistrate entitled to try the accused if the officer finds that there is sufficient evidence against the accused, or there are reasonable grounds of suspicion to continue investigation. Section 173 directs an officer in charge of the police station to forward a report to the Magistrate concerning every investigation made by him giving in detail the names of the parties, the names of the witnesses and also stating whether the accused has been released on bail or not. Under Sub-section (3) of this section, the Magistrate is authorised to pass such orders for the discharge of the bail bonds or otherwise, in case the accused has been released on bail.

(6) We have given above the powers of the investigating officer conferred upon him by certain sections of the Code of Criminal Procedure. We might also mention here the powers of a Magistrate before he takes cognizance of a case. Section 155, Sub-section (2), authorises a Magistrate to direct investigation by the police even in a non-cognizable case and Sub-section (3) empowers the Magistrate to direct investigation concerning a cognizable case. Under Section 157 the officer in charge of a police station is directed to send, the report to a Magistrate having jurisdiction to take cognizance of the offence, where the officer suspects the commission of a cognizable offence. Where a cognizable case has not been investigated into because it was of a trivial nature or because there was not sufficient ground for entering on an investigation, the reasons for dropping the investigation have to be mentioned in the report sent to the Magistrate under Section 157. Section 159 empowers the Magistrate to direct an investigation into a matter which the station officer proposes to drop and for which he has sent in his report. Where an investigation has not been completed within twenty-four hours and the police officer wants more time to investigate into the matter, but there are grounds for believing that the accusation or information as well-founded, the police officer is to send a copy of the case diary and the accused to the nearest Magistrate; and the Magistrate may authorise the detention of the accused for a term not exceeding fifteen daye. But the Magistrate is to send a copy of his order to the District Magistrate or the Sub-Divisional Magistrate containing the reasons for his further detention. We have already stated that after conclusion of the investigation if' the police officer thinks that there is sufficient evidence against the accused, the accused, if in custody, shall be forwarded to the Magistrate authorised to take cognizance of the offience. Sections 170 and 173 of the Code appear to refer to the concluding stage of enquiry by an officer in charge of the police station. Section 170 refers only to those cases where it appears to the officer that there is sufficient evidence against the accused or reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate; whereas Section 173 appears to refer to all investigations irrespective of the fact whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to the Magistrate or not. It may be noticed that under both these sections the accused is to be sent to the Magistrate empowered to take cognizance of the offence, whereas under Section 167 the accused is forwarded to the nearest Magistrate.

7. A resume of the powers of the investigating officer as well as the Magistrate shows that the Magistrate is not only a court but also a person in charge of the administration of the district or the local area, and he is to be kept informed of all investigations being made by the police officers under his jurisdiction. He has further the right to direct further investigation into any case cognizable or otherwise, and the police officer is to act according to the directions given by the Magistrate. The same Magistrate who has directed the investigation and has been informed of its result is authorised to try the case himself, in this state of affairs a confusion arises as to when a Magistrate is acting as

an Executive Officer in charge of the administration of a district or a local area, and when he acts as a Court and not as an Administrative Officer. The learned counsel for the applicant has argued that whenever the accused is taken before a Magistrate or papers are sent to him concerning a case, any order passed by a Magistrate must be taken to be an order passed by a criminal Court. But we find ourselves unable to agree with this contention, because we find from the different provisions of the Code of Criminal Procedure given above that the Magistrate has actually been given power to direct investigations, and also to accept or not to accept a report of a police officer dropping the proceedings against a particular accused. It is quite obvious that an investigation is certainly the stage or proceeding before the case is taken to the Court, and the argument of the learned counsel would lead to the result that the 'Court' is required to pass orders, even before a case has been launched before it. The learned counsel for the applicant contends that as soon as a person had been arrested as a result of a report made against him, the case starts and any matter published with respect to that incident must be taken to have been published during the pendency of proceedings in a Court of law. In support of his contention, the learned counsel has cited a number of cases of English Courts, but before proceeding to consider those cases it would be better to briefly mention the salient points of criminal procedure obtaining in England, as the procedure obtaining there is different in material particulars from the procedure obtaining in this country. The first step in the ordinary course of criminal procedure in England is to bring a person charged with a crime before a justice or justices of the peace in order that the charge may be investigated. This attendance is secured either by summons or by arrest under a warrant or otherwise. Summonses and warrants of arrest are issued by a justice on an information being laid before him, (vide Halsbury's Laws of England, Hailsham Edition, Volume 9, para. 102). Such information is sufficient if it contains a statement of the specific offence with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge. A warrant cannot issue unless there is an information in writing and on oath. A summons may be issued on an oral and unsworn information.

8. Criminal prosecutions, except where there are statutory provisions to the contrary, may be commenced at any time after the commissions of the offence. A prosecution is commenced, when an information is laid before a justice, or the accused is brought before him to answer the charge, or when an indictment is preferred, (vide para. 100).

9. It would thus appear that a prosecution commences in England as soon as an information has been laid before a justice, or the accused has been brought to answer the charge, or, if there is no preliminary examination before the justice, when an indictment is preferred. The cases cited by the learned counsel are cases where an information was laid on oath before a justice, and a warrant was issued on the basis of such information. It is quite obvious that in such a case, according to the English procedure, a prosecution is started immediately; But it may be noted that in cases where there is no preliminary examination before a justice, a prosecution only starts when an indictment has been, preferred. Justices of the peace sit in England either as Courts of summary jurisdiction or to hold preliminary enquiries when a person is charged with an indictable offence. They clearly act as Courts of law, and, when holding a preliminary (enquiry into an indictable offence, are practically in the same position as a Magistrate in India holding an enquiry into a case triable by the Court of Sessions. When doing such work, the Court of the justices is known as Court of petty sessions.

10. In -- 'Bex v. Parke', (1903) 2 KB 432 (A), it was held that where a matter was published in a nawspaper tending to interfere with the fair trial of the charge after the accused has been charged before the petty sessions with an indictable offence triable only at the assizes, the Court of King's Bench had jurisdiction to punish the publisher for contempt, even though the person charged had not till then been committed for trial. After saying that publications like the one in question in that case had a tendency to reduce the Court which had to try the case to impotence, so far as the effectual elimination of prejudice and prepossession is concerned, the learned Judge remarks:

> "If it be once grasped that such is the nature of the offence, what possible difference can it make whether the particular Court which is thus sought to be deprived of its independence, and its power of effecting the great end for which it is created, be at that moment in session or even actually constituted or not? It is perfectly certain that by law it will & must be constituted, and that when constituted it and it alone can take cognizance of the particular offence which is the subject of the preliminary inquiry." Later on the learned Judge says: "It is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do so when the stream has ceased."

A number of authorities were cited, but the main point argued appears to be that the King's Bench Division could not take cognizance of a contempt of court of the petty sessions, and the decision was against this contention. It would thus appear that before the publication of the article the accused had been charged before the petty sessions, and it appears from a reading of the judgment that the proceedings before the petty sessions were treated as proceedings before a Court. No question appears to have been raised that the proceedings before the petty sessions were not proceedings before a Court and, as a matter of fact, no such question could have been raised. The case, therefore, is no authority for the proposition that the publication of an article concerning a matter before it has come to Court at all can amount to contempt. As stated above, this case only lays down that the High Court can deal with contempts of subordinate Courts and there appears to be no doubt that the Court of petty sessions is a Court.

11. The next case cited by the learned counsel is reported in -- 'Rex v. Daves', (1906) 1 KB 32 (B). In this case also the main point decided was that the King's Bench Division had jurisdiction to punish for contempt of inferior Courts, including the Court of petty sessions; and it appears to have been assumed that the proceedings before the petty sessions were proceedings before a Court. The case of --'Rex v. Parke', (A) was followed and it was further held that the King's Bench Division had also the power to punish for contempts of inferior Courts.

12. In -- 'Rex v. Clarice', (1910) 103 LT 636 (C), it was held that after an information on oath had been laid against a person charging him with an offence which may ultimately be tried in the High Court, and after a warrant had been issued and the accused arrested, any statement published which tends to prejudice the fair trial of the charge amounted to contempt of Court. In this case information on oath was laid before one of the metropolitan police Magistrates, and warrants were issued commanding the arrest of Harvey Crippen. Crippen was arrested somewhere outside Quebec. While Crippen was still detained in Quebec and his case had not been disposed of by the Judge who

was to act under the Fugitive Offenders Act, the newspaper published an offensive article. While dealing with this point the learned Judge remarked:

> "No case has been cited to us which says that where the person has been arrested and is in custody upon a warrant, proceedings are not pending against him. The warrant has been declared by my brother A. T. Lawrence in a case before the Divisional Court, which has been mentioned by my brother Pickford, to be of itself a judicial act; and yet we are asked to say that after the Magistrate performed a judicial act upon sworn information laid before him there are no proceedings against the accused person ....In my opinion it would be gravely to narrow the jurisdiction of this Court to lay down any such rule as that."

The decision of this case was based on the practice in England of lodging information on oath before issue of a warrant by a Magistrate, and the act of the Magistrate in issuing the warrant has been held to be a judicial act by itself. After this procedure had been followed, it was held that the proceedings in the case had been started. Under the Code of Criminal Procedure there is no such laying of information on oath and in the initial stages before the case has to come to Court, the Magistrate is authorised to supervise even the investigation. Under Section 167, Cr. P. C., he issues a warrant on a police report and, in our opinion, while issuing such a warrant, the Magistrate does not act as a Court but as an officer superior to the officer conducting the investigation. The investigating police officer has also an authority to arrest persons without a warrant and also to release persons on bail and the Magistrate has only given wider powers. The procedure in England being different from that in India, we find ourselves unable to follow the decision in the above noted English case, and to hold that proceedings in Court start, as soon as a warrant has been issued or an arrest made.

13. The next case referred to is one reported in -- 'Rex v. Daily Mirror', (1927) 1 KB 845 (D). In this case one Edgar William Smith had been arrested upon a charge of shooting a police officer and had been brought before the justices upon that charge. But before those proceedings had been completed, the articles in question had been published giving photographs of the accused per son. It was held that the publishing of photographs was likely to prejudice the accused in his identification by the witnesses and was as much contempt of Court as the publication of an article giving the facts of the case. In the course of the judgment Hon'ble Chief Justice Lord Hewart says: .

> "We are not called upon to consider the question whether there may be contempt of court when proceedings are imminent but have not yet been launched. In the present case the question did not arise, for there was a charge and there had been an arrest, and proceedings, therefore, had begun. Some day that question may have to be decided."

The above passage will show that it was taken for granted in the case that proceedings had actually begun, and our comments with respect to this case are the same as with respect to the case of -- 'Rex v. Clarke', (C).

14. The next case cited is -- 'Rex v. Davies', (1945) KB 435 (E). This case merely lays down that a criminal cause remains 'sub judice' until the time has expired within which notice of appeal to the Court of Criminal Appeal may be given until the appeal has been heard and determined. This case does not touch the point arising before us and need not be considered in any detail.

15. We might now come to the cases of Indian Courts cited before us. The first case cited is the one reported in 'In re Subrahmanyan AIR 1943 Lah 829 (F.B.) (F)'. This is a Full Bench case and a number of authorities are considered, but proceedings for contempt were dropped and the application dismissed on the ground that the contempt was merely a technical one and not a substantial contempt; and, also, on the further ground that the proceedings before the Court were not imminent to the knowledge of the editor and publisher at the time when the articles were published. Both Hon'ble Harries C. J. and Munir J. referred to some of the English cases cited above, and were inclined to take the view that it was not necessary in a case of a criminal trial for a publication to be classed as contempt of Court that the accused should have been committed for trial or even for him to have been brought before a Magistrate provided that he has been arrested and was in custody. The learned Judges actually decided the case on different points, and they accepted the decisions of the English Courts without considering the question as to whether the procedure provided in the Criminal Procedure Code is the same as the procedure obtaining in England. We have already made our comments on the English cases on which the observations in this case are based; and, as stated above, the decision of the case was on different points.

16. The other Lahore case cited is also a Full Bench case reported in -- 'Homi Rustomji v. Sub-Inspector Baig', AIR 1944 Lah 196 (SB) (G). In this case the counsel for the accused had been arrested by the police while he was preparing to move a Habeas Corpus application before the Court. This action was held to amount to a contempt of Court. The action here complained of was depriving the party of having recourse to a Court of law. The case is no authority for the proposition advanced by the learned counsel for the applicant, in the present case.

17. In -- 'Supdt and Remembrancer of Legal Affairs Bihar v. Murali Manohar Prasad', AIR 1941 Pat 185 (H), out of the two articles complained of one was published before the criminal proceedings started and the other was after the proceedings had actually commenced in Court. It was held that the opposite parties were guilty of contempt and the articles tended to interfere with the proper administration of justice. One article having been published after the case had come to the Court of the Committing Magistrate, the question whether the first article also constituted contempt of Court did not really have any importance; and the point whether the first article also constituted contempt because it was published before the case came to the Court of the Committing Magistrate has not been considered.

18. The last case cited by the learned counsel for the applicant is --'Emperor v. J. Choudhury', AIR 1947 Cal 414 (I), in, this case it was held that an article commenting 011 an incident which Was under police investigation and which was written before any arrest was made in connection with the incident, could not be made the subject of contempt of Court proceedings, provided the editor had neither knowledge nor reasonable grounds for believing that proceedings were about to be launched in respect of the incident. In the course of the judgment Biswas J. remarked:

> "As a general rule, it may be laid down, the essence of the offence in this class of cases is that proceedings should be pending when the offending publication appears, but the question as to from what stage and up to what stage a proceeding will be deemed to be pending for the purposes of this rule, has been the subject-matter of considerable discussion."

After this the learned Judge considered the English decisions mentioned above and also most of the Indian decisions already mentioned by us. In the end he was of the opinion that it was not necessary that the accused should be committed for trial or have been brought before the Magistrate and it would be sufficient if he had been arrested and was in custody. Further on the learned Judge remarks that it was not shown that the opposite parties knew or had reason to believe that the proceeding was about to start in connection with the said incident. The other learned Judge, Roxburgh J., also considered the English cases but he did not clearly express any view of his own. After summarising the facts of the English cases, the learned Judge has simply stated that in some of those cases the knowledge of the proceedings and the knowledge that they were imminent was, therefore, clear and the imminence was of a very certain character. The third learned Judge, Akram J. simply said that in the circumstances in which the article appeared to have been published he agreed that the rule should be discharged. The order which their Lordships actually passed could have been passed assuming that the decisions of the English Courts laying down when a proceeding should be taken to have commenced were applicable to proceedings in India also. One of the learned Judges considered it necessary to say that the proceedings in one of the English cases were imminent and this imminence was of a very certain character; the third learned Judge did not express any opinion on this point.

19. We have considered above all the cases cited by the learned counsel for the applicant; and, as stated above, in none of those cases the position of a Magistrate during the course of the investigation proceedings was considered, nor did the decision of any of the Indian cases depended on a decision of the point which we are called upon to decide in this case. As stated above, we are of the opinion that contempt proceedings cannot be taken in connection with the publication of news or articles as long as a criminal case is during the course of investigation and has not actually come to the Magistrate's Court for enquiry or trial. We might in this connection refer to certain observations made by Holmes J. in --'Craig v. Hechf, (1923) 68 Law Ed 293 (J). At page 301 the learned Judge observes:

> "I think that the sentence from which the petitioner seeks relief was more than an abuse of power. I think it should be held wholly void. I thins in the first place that there was no matter pending before the Court in the sense that it must be to make this kind of contempt possible. It is not enough that somebody may hereafter move to have something done. There was nothing then awaiting decision when the petitioner's letter was published."

The case cited above also arose out of contempt. proceedings though the actual point that arose in the case was different.

20. The Hon'ble the Supreme Court of India has laid down in --'R. R. Chari v. The State of Uttar Pradesh', AIR 1951 SC 207 (K) that a Magistrate takes cognizance when the police have completed their investigation and come to the Magistrate for the issue of a process. It has further laid down that when the Magistrate applies his mind for the purpose of ordering investigation under Section 156 (3), or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of the offence. In this case the above observations were made in connection with the question as to whether the sanction to prosecute the applicant had been obtained before the Magistrate took cognizance of the case or it was subsequently obtained and the argument on behalf of the applicant Was that the Magistrate took cognizance as soon as the Magistrate issued a warrant for his arrest, The learned Judges repelled this plea and held that a Magistrate does not take cognizance of a case simply because he has issued a warrant of arrest. We are further of the opinion that a case does not come to Court by the issue of such processes and the publication of an article concerning the incident before the case has come on the file of a Magistrate, as a Court, does not amount to contempt of Court.

21. We might now consider the question as to whether the publication of an article would amount to contempt when the institution of proceedings is imminent and the publisher has knowledge that they are so imminent. Excepting the observations in some of the Indian cases cited above, none of the English cases have laid down that the publication would amount to contempt if the prosecution was imminent.

22. In '(1927) 1 KB 845 (D)' cited above, Lord Chief Justice Hewart observed as follows:

> "We are not called upon to consider the question whether there may be contempt of Court when proceedings are imminent but have not yet been launched. In the present case the question did not arise, for there was a charge and there had been an arrest, and proceedings therefore had begun. Some day that question may have to be decided."

After this case no case has been brought to our notice in which this question has been decided by the English Courts. But in one of the Indian cases reported in --'Tuljaram v. Governor, Reserve Bank of India', AIR 1939 Mad 257 (L) it was remarked that comment on a case which is about to come before the Court with knowledge of the fact is just as much a contempt as comment on a case actually launched. This case arose out of the publication of a letter in the Madras Mail during the course of the pendency of liquidation proceedings for the compulsory winding up of the Travancore National and Quilon Bank, Limited. The application for winding up was presented on 22-6-1933 and the letter was published on 22-7-1938. The petitioner's complaint in the case was that the letter in question constituted contempt of Court inasmuch as it expressed an opinion that the winding up petition should be granted and it was held that there was much force in this contention. There was a scheme of reconstruction under consideration at the time, though the scheme was actually put up before the Court after the publication of the letter; but the winding up proceedings were already pending and the question under consideration by us, in our opinion, did not really arise in that case. In the subsequent case of --'Rex v. Daily Mirror', (D) reference is made to 'Parke's case (A)' but the case is not taken as finally laying down the proposition that contempt proceedings can be taken even

in respect of articles published when a cause is imminent. On the other hand, it was remarked that that question will have to be decided some day and the observations made in 'Parke's case (A)' were cited and distinguished. We have already mentioned the grounds on which, in our opinion, Parke's case (A)' can be distinguished from the present case.

23. It would be very difficult to draw a line and to say that cases falling towards one side of the line are cases in which the cause was imminent and the cases falling on the other side are the cases in which the cause was not imminent. Extending the rule for the punishment of contempt of Court to cases which are imminent would unduly hamper with the freedom of speech of the citizen. In many cases, the citizen will have to take the risk of the Court coming to the conclusion that the case had become imminent, while he himself thought that it was not so imminent. It is a matter of every day occurrence that a civil suit is thought of; but, ultimately, for various reasons, the idea has to be given up and the case is never taken to the Court at all. Similarly in criminal cases, the accused persons are arrested by the police and at one stage the police is of the opinion that it would prosecute the arrested person; but subsequently, on the disclosure of some further fact or event, they decide not to take the case to the Court at all. At one time the case may appear to be imminent but subsequently it may transpire that it was not fit for the charge sheet to be submitted to Court. An arrest in England might necessarily mean the institution of criminal proceedings subsequently, but it is not so in our country. The extending of the punishment for contempt to cases which are only imminent, in our opinion, is not justified on the circumstances as they exist in this country. We, therefore, come to the conclusion that the preliminary objection should prevail; and no proceedings for contempt can be taken against the opposite parties, as the alleged acts were committed before Dwarka Prasad's complaint had been filed and long before the charge sheet had been submitted by the police to the Magistrate.

24. We consider it desirable to discuss the other point also, as to whether the article dated the 6th of June published in Jagran and the resolution dated 8-6-1962 sent to the District Magistrate and the Superintendent of Police contained matters tending to interfere with the proper administration of justice and would have been punishable as contempt of the Magistrate, before whom the cases are pending, in case they had been published after the cases had come to Court. In our opinion, both the article and the resolution contained improper matter and would have merited punishment for contempt of Court. The article recites the incident giving the version of the opposite parties as the true facts of the case, and tries really to exaggerate it much beyond the allegations made in the police report by Sumer Singh. In this article it is said that 12 or 15 rioters attacked the shop of a businessman destroyed the goods, removed cash from cash-box, turned out the shop-keeper and his servants from the shop, and beat them mercilessly before hundreds of people. It is then said that the shop-keeper had given prior intimation to the police of the apprehended danger, but the police took no action and the persons against whom the complaint was made had committed similar incidents even before. Then it says that a few 'gundas' and rioters could after organizing themselves disturb the peace and administration of the city. The report made to the police by Sumer Singh only speaks of the beating of his master and of himself, and of the kicking of the cash-box which resulted in the dispersal of some small change and some notes. We do not want to go into any further detail, because the case is 'sub judice'. We have mentioned the contents of the article and the police report to show that the article did tend to prejudice the case against the applicant, and it very much

exaggerated the offence and purported to support the version of the opposite parties. The resolution also purports to give the version of the opposite parties as the true facts of the occurrence and has tried to exaggerate the case. It also tended to interfere with the proper administration of justice and to prejudice the witnesses and others. In our opinion, the opposite parties would have been liable to punishment for contempt of Court in case the article had been published and the resolution had been passed after the institution of criminal proceedings in Court. But as they were of a prior date they do not amount to contempt of any Court. In this connection, we might also consider the question whether the prosecution of the applicant on the dates of the article and the resolution was imminent and the opposite parties knew that it was so imminent. As stated above, the police sent up the charge-sheet on 4-7-1952 nearly four weeks after the dates of the article and the resolution. The affidavit filed by the applicant does not disclose any facts which would show that the prosecution of the applicant and his companions was imminent on the 6th and 8th of June, excepting that three of the accused persons had been arrested and released on bail. It very often happens that even after such arrests, the proceedings are dropped and the case is not actually sent to court. The allegations in the report made by Sumer Singh did not disclose the commission of any serious offence, and nobody could be certain that the police would prosecute the applicant and his companions on a report containing such allegations. The very contents of the article and the resolution show that the opposite parties and then friends were not at all certain that the police would prosecute the applicant and the article as well as the resolution were written and published, or sent to the Superintendent of Police and the District Magistrate, in order that the accused might be prosecuted. The article and the resolution actually contain criticism of the inactivity of the police, and give reasons why the police should take action when offences like this are committed. They by no means show that the prosecution of the applicant's party was imminent and was known by the opposite parties to be imminent. The affidavit itself does not disclose any other fact to prove this, nor has any other evidence been led on behalf of the applicant to prove the said fact. As regards the complaint filed by the applicant on 11-6-1952, the opposite parties might very well have thought that the applicant would not like to go to Court at all; and he actually filed a complaint after nine days of the incident, which is an unusually long period taken for filing the complaint. No facts have been disclosed in the affidavit which would show that the opposite parties knew that the applicant was going to file a complaint on 11-6-1952. There is thus no proof of the fact that the institution of the complaint by the applicant was imminent on the 6th and 8th June, 1952, or the opposite parties knew that it was imminent, in our opinion, the applicant has totally failed to prove that the institution of any proceeding concerning this incident was imminent oa the dates when the article was published or the resolution was passed. Nor could the opposite parties be said to have the knowledge on those dates that the proceedings were imminent. We, accordingly, dismiss this application, but taking into consideration all the facts of the case, we think the parties should bear their own costs.

25. The learned counsel for the applicant has prayed for leave to appeal to the Hon'ble the Supreme Court. The question of law decided by us is one of general and public importance; but we have also held, on facts, that it has not been proved that any proceedings were imminent on the relevant dates, or that the opposite parties knew that any proceedings in Court were imminent on those dates. We, therefore, refuse to grant the leave prayed for.