State vs Brahma Prakash And Ors. on 5 May, 1950

Equivalent citations: AIR1950ALL556, AIR 1950 ALLAHABAD 556

JUDGMENT

Mootham, J.

1. In this ease notice has been issued to three office-bearer and five members of the executive committee of the District Bar Association, Muzaffarnagar, to show cause why they should not be dealt with for contempt of Court.

2. On 20th April 1949, the executive committee held a meeting at which several resolutions were passed- The opening paragraphs of the first resolution were in these words :

> "Resolved that :
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> Whereas the members of the Association have had ample opportunity of forming an opinion of the judicial work of Shri Kanhaiya Lal, Judicial Magistrate, and Shri Lalta Prasad, Revenue Officer.' It is now their considered opinion that the officers are thoroughly incompetent in law, do not inspire confidence in their judicial work, are given to stating wrong facts when passing orders and are overbearing and discourteous to the litigant public and the lawyers alike."

Then followed a number of allegations which were described as "other defects" which were in addition to the defects common to both of them" referred to in that part of the resolution which has been quoted. On the following day a copy of the resolutions was forwarded by the President of the Bar Association to the District Magistrate, Muzaffarnagar, together with a covering letter in which the President said :

> "The complaints against them" (That is against the said Shri Kanhaiya Lal, Judicial Magistrate, and Shri Lalta Prasad, Revenue Officer) "as catalogued would suggest that they are incapable of improvement and thus instead of proving an acquisition to the bench, as these new cadres are expected to be, they are already discrediting it by deliberately perverting facts whenever it suits them."

A copy of the resolution was at the same time sent to the Commissioner of the Division, to the Chief Secretary of the United Provinces Government and to the Premier of the United Provinces. It is in respect of that part of the resolution of 20th April and of the President's letter of the following day which we have quoted that these proceedings have been instituted.

3. The opposite parties have entered an appearance and each of them has filed an affidavit. In the case of two of them, Shri Sharvan Deo and Shri Sheo Shanker Lal, it now appears that they were not members of the executive committee of the Bar Association on 20th April 1949, and did not associate them, selves with the above mentioned resolutions. In the circumstances we are of opinion that there is no case for them to answer, and the notice to them must be discharged.

4. The case of the remaining six opposite parties is this : Shri Lalta Prasad was posted at Muzaffarnagar as Revenue Officer on 21st January 1949, and Shri Kanhaiya Lal was posted there as Judicial Magistrate on 22nd January 1949. These were the first appointments of these two officers. From the very commencement of their appointment complaints began to be made against them, and thereupon the Executive Committee of the District Bar Association took up the matter and made enquiries into the various grievances entertained by the members of the Bar and the litigant public. The sole object of the members of the Executive Committee in making these enquiries was to secure the proper administration of justice, and when the committee was satisfied that the complaints were well founded the aforesaid resolution was proposed and passed in the bona fide belief that the Association had a right to seek the redress of its grievances, and that the only way for it to do so was to pass such a resolution and forward it to the authorities. It is further said that the members of the Executive Committee bona fide believed that the executive authorities to whom the copies of the resolution had been despatched wore the proper authorities to whom complaints against these officers should be made, and that this belief was strengthened by the fact that the term e of office of these two officers was temporary, being terminable by the Government without notice. The members of the Executive Committee were not actuated by any personal motive, and the resolution was not calculated either to bring undue pressure on the two officers, or to terrorise them, or to scandalise them, or to lower their prestige in the eyes of the public, or to shake its confidence in their capacity to do justice or to impede the course of the impartial administration of justice. The object was to serve the administration of justice and the members of the Executive Committee took care to ensure that the Association's deliberations were held in private and that the communication sent to the authorities concerned were marked 'confidential'. As for the covering letter of the President, it is said that the President merely acted as the mouthpiece of the Association when he forwarded a copy of the resolution with his covering letter.

5. Mr. Pathak, who appeared for the opposite parties, stated at once that if the Court was of opinion that a contempt had been committed his clients expressed their regret and tendered an unqualified apology. He submitted however, that this Court had now no jurisdiction to punish for contempt, and that, even if it had, the circumstances of this case were such that in law no contempt had been committed. We, therefore, propose to examine these contentions,

6. Mr. Pathak's argument on the question of jurisdiction was divided into four parts. In the first place, he contended that although Article 215, Constitution of India gave power to a High Court as a Court of record to punish for contempt of itself, it made no provision for punishment by a High Court of contempts of Courts subordinate to it, and that, therefore, after 26th January 1950, it no longer had that power. We are of the view that there is no substance in this argument. Prior to 26th January 1960 the power of the High Court to punish for contempt of Courts subordinate to it was not to be found in the Government of India Act. 1935, but in the Contempt of Courts Act: that Act

has been preserved by the Constitution of India, and in our opinion, as we shall show later, the power of the High Court to punish for contempt of Courts subordinate to it remains intact.

7. The second argument is that as the two officers concerned are respectively a Judicial Magistrate and a revenue officer their Courts are not subordinate to the High Court and consequently contempt of their Courts, cannot be punished under the Contempt of Courts Act. For this purpose Mr. Pathak relied on Chap. VI of Part VI, Constitution of India, a Chapter which is entitled "Subordinate Courts". His contention was that in view of the provisions of this Chapter it is only the Courts of District Judges and of members of the Judicial Service of a State other than District Judges which are Courts subordinate to the High Court, and that as Courts of Judicial Magistrates or Revenue Officer do not come within this class they are not so subordinate. Mr. Pathak particularly relied on Article 237 which he argued, showed that until such time as the Governor by public notification applied (with such modifications as may be specified) the provisions of Chap, VI to any class or classes of Magistrates, the Courts of Magistrates were not Courts subordinate to the High Court. We are however unable to accept this argument. Articles 233 to 236 of chap. VI provide for the administrative control of certain Courts subordinate to the High Court by the High Court, and Article 237 provides, in certain circumstances, for the administrative control by the High Court of any class or classes of Magistrates. This Chapter has nothing to do with the subordination of Courts for judicial purposes. Section 2, Contempt of Courts Act, when it speaks of Courts subordinate to the High Court, clearly, in our opinion, refers to judicial subordination. Judicial Magistrates are Magistrates of the first class whose judgments come before Sessions Judges and the High Court in appeal and revision, and their Courts, are, we think,, clearly subordinate to the High Court within the meaning of Section 2, Contempt of Courts Act. Similarly, the Courts of Revenue Officers, many of whose judgments come before District Judges and the High Court in appeal and second appeal, are subordinate to the High Court foe the purposes of Section 2.

8. The third point that was urged by Mr. Pathak is based on Section 2. Sub-section (3), Contempt of Courts Act which provides that "No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code."

It is argued that the effect of this sub-section is that if the alleged contempt of the Subordinate Court is an offence of any description under the Indian Penal Cede the High Court is precluded from taking cognizance of it, and reliance if placed on the decision of Sulaiman C. J., in the case of Ziaul Hasan v. Aziz Ahmad, 1935 A. L. J. 950 : (A. I. R. (22) 1935 ALL. 896). This decision supports Mr. Pathak s argument, but it was expressly dissented from by a bench of two Judges of this Court in the later case of Emperor v. Jagan Nath, 1938 A. L. J. 430 : (A. I. R. (25) 1938 ALL. 858 : 39 Cr. L. J. 677), in which it was held that for the jurisdiction of the High Court to be ousted under Section 2, Sub-section (3), of the Contempt of Courts Act the alleged contempt must be an offence punishable as a contempt under Penal Code. The decision in Jagannath Prasad Swadhin's case, (1938 A. L. J. 430: A. I. R. (25) 1938 ALL 358: 39 Cr. L. J. 677) has not only been consistently followed by this Court but the same view has been taken in Kaulashia V. Emperor, 12 pat. 1. (A. I. R. (20) 1933 Pat 142: 34 Cr. L. J. 770), Dharnidar Singha v. Satish Chandra, 36 C. W. N. 645: (A. I. R. (19) 1932 Cal. 705: 33 Cr. L. J. 945), Bennett Coleman and Co. Ltd. v. G. S. Monga, A. I. B. (23) 1936 Lah. 917: (38

Cr. L. J. 73) and in Sub-Judge, First Class Hoshangabad v. Jawahar Lal Ram Chand A. I. R. (27) 1940 Nag. 407: (42 Cr. L. J. 237). We are of the opinion that Jagannath Prasad Swadhin's case, (1938 A. L. J. 430 A. I. R. (25) 1938 ALL. 358: 39 Cr. L. J. 617) (ubi supra) was correctly decided and that Section 2, Sub-section (3), Contempt of Courts Act applies only to oases in which the alleged contempt is punishable under the Penal Code as a contempt. It is not contended that the alleged contempt in this case is punishable as a contempt under that Code.

9. The last argument of Mr. Pathak on the question of jurisdiction is this. He says that under the Constitution of India, the High Court is devoid of all power to punish for contempt of subordinate Courts until the State makes a law defining contempt of Court. Reliance is placed primarily on Article 19(1)(a) of the Constitution which provided that "All citizens shall have the right (a) to freedom of speech and expression". This right of freedom of speech and expression is restricted by Clause (2) of that Article which enacts that "Nothing in Sub-clause (1) of Clause (1) shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of or tends to overthrow the State."

No law relating to contempt of Court has been made after 26th January 1950, and unless, therefore, the right to freedom of speech and expression is curtailed by the operation of an existing law, the opposite parties cannot, it is argued, be held to have committed contempt of Court in this case. Reference is then made to Article 13(1) of the Constitution which reads thus.

> "All laws in force in the territory of India immediately before the commencement of this Constitution in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

Under Article 18(3)(b) "laws in force" include laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas. "Existing Law" has been defined in as Article 366(10) meaning:

> "Any law, Ordinance, order, bye-law, rule or regulation parsed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation."

In the light of these provisions Mr. Pathak's argument is that whereas the expression "laws in force" embraces the whole of the law, whether written or unwritten, the expression-"existing law" has a narrower meaning and refers only to the written law: in particular it does not include the unwritten or case-law; It is then said that as the definition of contempt of Court" is to be found only in the unwritten law it follows that, until a new law be made, there is nothing in Article 19, Clause (2) which can have the result of constituting any thing said or expressed by a citizen as contempt of Court.

10. So surprising a result is not one which" we should be prepared to accept unless we were satisfied that such indeed was the present state of the law: but we do not think it is. Assuming, without deciding, that the expresion "existing law" as used in Article 19, Clause (2), means only the written law, it is clear that nothing in that clause affects the operation of the Contempt of Courts Act. Section 2, Sub-section (1) of that Act is as follows:

> "Subject to the provisions of Sub-section (3) the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the tame procedure and practice, in respect of contempts of Courts subordinate to them as they have and exercise in respect of contempts of themselves".

Subject, therefore, to the provisions of Sub-section (3) which are not here material--this Court has exactly the same powers in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempt of itself But Mr. Pathak says that although the Contempt of Courts Act is in force, and although the High Courts are invested with power to punish for contempts of Courts Subordinate to them, they cannot, in practice, do so because there is to be found no definition of 'contempt of Court' either in the Constitution or in the Contempt of Courts Act. The whole argument, therefore, reduces itself to this, that though the power is there, it cannot be exercised because of the want of a definition of "contempt of Court". We are not prepared to accept this argument for a number of reasons.

11. In the first place, Article 215 of the Constitution expressly provides that every High Court shall be a Court of record and shall have all the powers of such a Court, including the power to punish for contempt of itself. It is difficult to accept an argument that although the Constitution gives power to a High Court to punish foe contempt of itself, it cannot exercise that power because 'contempt of Court' has not been defined anywhere in the Constitution. The framers of the Constitution were not making it at a time when the meaning of 'contempt of Court' was not known. The contrary was in fact the case, and it seems to us that when these words were used the makers of the Constitution must have intended them to mean what they were well known to mean up to 26th January 1950. There is a similar provision in Article 129 giving power to the Supreme Court to punish for contempt of itself. It cannot, in our opinion be seriously contended that though the power had been given, the Supreme Court had no jurisdiction to punish for contempt of itself because 'contempt of Court' had neither been defined in the Constitution nor in any written law. It is true that Parliament has been given power under item 77 of List I in the schedule 7 to the Constitution to legislate in respect of contempt of the Supreme Court, and the State Legislature has been given power under item 14 of List III of the same Schedule to legislate for contempts of other Court: but that does not mean that until such legislation is undertaken the Courts are powerless. We are of the opinion that as the power of the High Courts to punish for contempt both of itself and of the subordinate Courts has been preserved, it is open to the High Courts to draw upon the existing case law to decide what "contempt of Court" is. It could never, we think have been the intention of the makers of the Constitution that the Court should be debarred from ascertaining in a judicial manner what is the meaning to be attributed to an expression used in the Constitution but neither defined therein nor in any written law.

12. Secondly 'contempt of Court' is not the only expression which has been used but not defined in the Constitution, Article 17 refers to "Untouchability" and provides that 'untouchability" is abolished and its practice in any form is forbidden. But the word "Untouchability" has not been defined anywhere in the Constitution, even though it has been put within inverted commas. Then again Articles 129 and 215 use the expression "Court of record", and Articles 139 and 226 use the terms habeas corpus, mandamus prohibition, quo warranto and certiorai. But none of these expressions has been defined and the Court has to turn to the common law of England to ascertain their meaning. The use of the word 3 "in the nature of" in the latter Articles does not do away with the necessity of definition, if definition is so essential before a power can be exercised. We hold that Article 19(2) of the Constitution of India preserves the powers of a High Court to punish contempts of Courts subordinate to it, and that it is the duty of this Court to ascertain from the decided cases what 'contempt of Court' is.

13. This therefore we now propose to do. In Reg v. Gray (1900) 2 Q. B. 36 : (69 L. J. Q. B. 502) Lord Russell of Killowen, C. J., said that 'any act done or writing published calculated to bring a Court or Judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Farther, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwioke, L. C., characterised as "scandalising a Court or a Judge."

The law as laid down in Reg. v. Gray, 1900 2 Q. B. 36 : (69 L. J. Q. B. 502), was applied by the Privy Council in Ambard v. Attorney General for Trinidad and Tobago, 1936 A. C. 322; (A. I. R. (23) 1936 P. C. 141) and had earlier been referred to with approval in a Full Bench decision of this Court: In re Abdul Hasan Jauhar, 48 ALL. 711: (A. I. R. (13) 1926 ALL. 623 F. B.)

14. It cannot, we think, be doubted, that, prima facie, the extract from the resolution of 20th April 1919, and from the President's letter of the following day constitute that kind of contempt known as scandalising the Court, and indeed it was not disputed that the extracts, taken by themselves, did amount to contempt. But Mr. Pathak has further argued that in the particular circumstances of this case no con-tempt was committed because, first, there was no publication and, secondly, the opposite parties were merely exercising the right possessed by every citizen of making a representation to the proper authorities in order that a grievance might be redressed.

15. As to the first point it is common ground that copies of the resolution were seat to the District Magistrate of Muzaffarnagar, to the Commissioner of the Meerut and Agra Division to the Chief Secretary to the United Provinces Government and to the Premier of the United Provinces; and that the President's letter was sent to the District Magistrate. The submission was that although the communication of the resolution and the President's letter to these gentlemen would ordinarily amount to publication of the contents of the documents to the recipients, it did not have that result in the present sage as the opposite parties were exercising no more than their right of making a representation. The question whether there was publication of the alleged contempt depends, therefore, upon whether the second contention is well founded. On that point it was argued that a citizen has always a right, if he has a legitimate grievance, to make a representation to the

Government; and that if that representation is made in good faith it could not, when the conduct complained of was that of a Court or Judge, constitute contempt of Court, In our opinion, this proposition is expressed in terms which are too wide.

16. No case was cited by counsel in support of the proposition that such a representation was immune from the ordinary law of contempt, but after the argument had concluded or attention was down to the case of Rex v. B. S. Nayyar, A. I. R. (37) 1950 ALL. 549. In that case notice had been issued to the opposite party to show cause why he should not be punished for contempt of Court in respect of certain statements made by him in a communication sent to the Private Secretary to the Premier of the United Provinces. In the course of his judgment (with which Chandiramani J. concurred) Kidwai J. made certain observations with regard to representations against those Magistrates who are known in this province as Judicial Officers. After pointing that these Magistrates have no security of office and that they may be removed or transferred at the discretion of the Government, that learned Judge says ;

> "However unsatisfactory this state of affairs might be considered to be--it is a part of the established order and, so long as it exists, complaints against Judicial Officers must go to the Government. If those complaints are genuine and are made in a proper manner with the object of obtaining redress, and are not made mala fide with a view either to exert pressure upon the Court in the exercise of its judicial functions or to diminish the authority of the Court by vilifying it, it would not be in furtherance of justice to stifle them by means of summary action for contempt, but rather the reverse.
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> The learned Government Advocate was unable to point to any decision in which action might have been taken for contempt of Court in such circumstances'. All the oases that were placed before us were oases in which public criticism was made of the conduct of a Judicial Officer in the newspapers or in speeches. It would indeed, be extraordinary if the law should provide a remedy and the conduct of even a member of the highest Judicial Tribunal in the exercise of his Judicial Office may be the subject of enquiry with a view to see whether he is fit to continue to hold that office--and yet no one should be able to initiate proceedings for an enquiry by a complaint to the appropriate authority by reason of a fear of being punished for contempt, and I can find no justification for this view.
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> We think that the second of these passages may possibly be the cause of some misapprehension for, taken by itself, it might be construed to imply that if criticism of the conduct of a Judge or Magistrate takes the form of a representation to the Government it is outside the ambit of the law of contempt of Court. Such a proposition is not, in our opinion, well founded.

17. In Reg. v. Gray, (1900) 2 Q. b. 36 : (69 L. J. Q. B. 502), the Lord Chief Justice pointed out that the class of contempt which was known as "Scandalising the Court" was subject to one important qualification, namely that:

> "Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court would or could treat that as contempt of Court. The law ought not to be astute in such oases to criticise adversely what under such circumstances and with such an object is published."

More recently, in Ambard's case, 1936 A. C. 822: (A. I. R. (23) 1936 P. C. 141), Lord Atkin drew attention in a well-known passage to the citizen's right to criticise a judicial act. Lord Atkin said: "But whether the authority and position of an individual Judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way : the wrong-headed are permitted to err therein : provided that members of the public abtain from imputing motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

18. No Judge is immune from criticism, but the criticism must take the form of reasonable argument or expostulation; it must be made in good faith, and it must be free from the imputation of improper motives. The right of public or private criticism within these limits is the right possessed by every citizen. Criticism of a judicial act which cannot reasonably be said to be within these limits will, however, be contempt and it matters not, in our opinion, through what medium that criticism finds expression, whether it be in the press, a speech, a resolution or a representation. We do not doubt the right of a citizen to make a representation to the executive authorities in respect of a judicial act; but we know of no authority, and none was cited to us in the course of argument, which makes such representations immune from the ordinary law of contempt. In our opinion, a representation stands on the same footing as any other statement and must be judged by the same standards. At the same time it must ever be borne in mind that the Court's jurisdiction must be exercised with scrupulous care, and that proceedings in contempt ought not to be instituted unless there is a real likelihood of an interference with the due course of justice. A technical contempt is no ground for the invocation of the Court's jurisdiction, and there is indeed judicial authority for the view that the attempt in such a case to invoke that jurisdiction is itself a contempt because it tends to waste the public time (Per James L. J., in Plating Co. v. Farquharson, (1881) 17 Ch. D. 49 : (50 L. J. Ch. 406). Criticism of a Judicial Officer which takes the form of a representation to the Government expressed in terms which do not overstep the limits to which we have referred is no contempt; it is only when those limits are transgressed that the question of contempt can arise; but we desire to state plainly that so long as the contempt is merely technical, and there is no interference, or likelihood of interference, with the due course of justice, the Court will not exercise its jurisdiction. We desire to adopt the words of Sir George Rankin C. J. in Ananta Lal Singh v. A. H. Watson, 58 Cal. 884 : (A. I. R. (18) 1931 Cal. 257 : 32 Cr. L. J. 675) :

> "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 where the tendency of the article to do harm is slight and the character

and circumstances of the comment is otherwise such that it can properly be ignored."

19. In the case before us we are unable to hold that the right of criticism has not been exceeded. The remarks made in the resolution and by the President in his forwarding letter, in our judgment, go beyond the limits of "reasonable argument or expostulation.". It was suggested that members of the Bar have some undefined right, in the interest of the "proper administration of justice, to animadvert on defects therein, which come to their notice. We do not think this is so. Their duty in this respect may well, we think, be higher but their rights, like those of the press, are no more--and no less--than those of the ordinary citizen.

20. We do not think that the opposite parties were actuated by any personal or improper motives, and we accept the statement made on their behalf that their object was not to interfere with, but indeed to improve the administration of justice. The terms used, in the resolution were however but little removed from personal abuse, and, whatever may have been the motive, they clearly were likely to bring the Magistrates into contempt and lower their authority. Had the resolution received wider publicity the conduct of the opposite parties would have deserved severe censure; and we feel bound to say that the action of the opposite parties in sending copies of the resolution to four different persons' could not, on any view, be justified, We think the opposite parties acted under a misapprehension as to the position; but they have expressed, their regret and tendered an unqualified apology. In the circumstances we accept their apology, but we direct that they pay the costs of the Government Advocate which we assess at Rs. 300.