Lakhan Singh vs Balbir Singh And Anr. on 30 April, 1952

Equivalent citations: AIR1953ALL342, AIR 1953 ALLAHABAD 342

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Bench: Raghubar Dayal

JUDGMENT

Agarwala, J.

1. This is an application praying that the opposite parties be committed for contempt of Court and be dealt with according to law. The opposite parties are two persons, Chau-dhari Balbir Singh and Sri Balswarup Gupta. Chaudhari Balbir Singh is the Managing Editor, publisher and printer of an Urdu Weekly known as 'Hindustan Weekly, Meerut' and opposite party 2, Balswarup Gupta is alleged to be the Editor in charge of the paper. The applicant is a thekedar of a country liquor shop at Muzaffar-nager. He acquired the theka at a public auction held on 22-3-1951, for a period of one year. He was the thekedar of country liquor in the previous year also. On 6-2-1951, the Tahsildar seized some bottles containing liquor on suspicion that the liquor was diluted. As dilution of liquor was in contravention of the terms of the licence, a case under Section 64, Excise Act, was started on 6-4-1951 against the applicant after permission had been obtained for the same from the District Magistrate. The case is still pending in the Court of the Magistrate, Sri Uma Shanker. The Hindustan Weekly in a noto dated 6-6-1951 referred to this case against the applicant in these words :

> "We are informed that on 6-2-1951, Sri Khalaq Singh Tahsildar Muzaffarnagar, seized some bottles of liquor and the liquor was found to be diluted with water. Sri D. P. Singh, Collector of the District has made over charge of that case on 7th April to Sri S. N. Singh, Magistrate, First Class, under Section 04, Excise Act. The Collector has now transferred the case to the file of Sri Uma Shanker. The result of the case is being awaited with interest."

2. In its issue of 27-6-1951 it published a note headed 'Zilla Muzaffarnagar ke thekedaran sharab'. It was in these terms:

> "A correspondent informs us that the thekadaran of liquor at Muzaifarnagar have taken the theka at a very high price, \vhicli fact raises a suspicion that dishonesty and illegality will be committed, as there is no method by which the price may be paid to Government except by earning it by illegal means. It has also come to knowledge that although these thekedars obtained liquor at Es. 2-4-0 per bottle they charge fancy prices from customers. People do not complain for the price so much as for the fact

> that even after paying a handsome price they do not get liquor of the strength which, the Government has fixed, namely, 65 per cent. Tlisit the liquor is being diluted with water is proved by the fact that the liquor which, was seized by the Collector in the preceding days contained diluted liquor of the strength of 46 per cent. It is hoped that the Excise Commissioner, U. P. will attend to this matter."

Again in its combined issue of 11 and 18-7-1951 it published an editorial note in which after pointing out how liquor was being openly sold in the district and city of Muzaffarnagar contrary to rules, it was stated:

> "Some time ago the Collector and the Chairman, District Board, seined some liquor from, the thckedar's place. It was proved to be diluted with water."

3. The applicant's case is that the matter published in the issue of 27-6-1951 and 11/18-7-1951 was published with a view to prejudice the applicant before the public and before the Court and there was an attempt to fore-judge the case against the applicant while it was pending in Court. On behalf of the opposite parties it has been contended that the articles complained of do not constitute contempt of Court and that, in any case, after the amendment of Article 19(2) the restrictions placed upon the right of freedom of expression by the old law of contempt of Court could not be said to be reasonable within the meaning of the amended Article 19(2) and as such the opposite parties could not be held guilty of contempt of Court. After hearing arguments of the learned counsel for the opposite parties a petition accompanied by an affidavit has been sent to the Court by post by opposite party 2 in which it is stated that the opposite party 2 is a Secretary of the Saharanpur National Trading Co. Ltd., Meerut--the company which manages and conducts the paper "Hindustan Weekly Meerut" and that he is concerned only with the general office routine of the newspaper office in his capacity as Secretary of the company and is not concerned with the publication of the offending items; that under Article 215 of the Indian Constitution the High Court can punish for contempt of itself and cannot commit for contempt of Courts subordinate to it; that the affidavit of Lakhan Singh is incomplete inasmuch as it has not been mentioned therein as to who was in contempt and what are the attending circumstances and lastly that if contempt was at all committed it was of a very minor and technical nature and was likely to be overlooked.

4. Wo have already quoted the publications against which objection has been taken by the applicant. Although the name of the applicant was not specifically mentioned in the note published in the issue of 6-6-1951, it is quite clear that the case against the applicant was referred to therein because it is not alleged that anybody else's liquor was seized and that anybody else was prosecuted on 7-4-1951 in the Court of the Magistrate mentioned in the note. In argument before us, no attempt was made to suggest that the article did not refer to the case against the applicant. In the article there was a clear reference to liquor having been seized from the possession of the "thekcdar". This clearly referred to the applicant as he is the sole thekedar of country liquor at Muzaffarnagar. In the articles in question it has been stated that it has been established that the liquor seized from the applicant's possession was diluted, whereas this was the very fact which was in dispute in the case pending against the applicant. An assertion that a fact exists and has been established as correct when the existence of that fact is in dispute in a pending case and its existence is yet to be determined, is likely

to prejudice a fair trial of the case when the assertion assumes the shape of the opinion of persons unconnected with the case, like the editor of a news-paper.

5. It is well settled that a publication which prejudiced mankind against a party before the cause is heard amounts to contempt of Court. The famous statement of Lord Hardwicke, L. C. in St. James's Evening Post case, (1742) 2 Atk. 469, at p. 471 will bear quotation :

> "There are three different sorts of contempt. One kind of contempt is scandalising the Court itself. There may be likewise a contempt of this Court, in abusing parties who are concerned in causes here. There may be alao a contempt of this Court, in prejudicing mankind against persons before the case is heard." Bee also R. v. Gray, (1900) 2 Q. B. 36 at p. 41 per Lord Bussell of Killowen C. J., McLeod v. St. Aubyn, (1899) A. C. 549.

6. It is not necessary that a comment on a pending case must actually prejudice the judge or jury before it can be said to amount to contempt, it is enough that it is calculated to create prejudice against the applicant. In Hunt v. Clarke, (1889) 58 L. j. Q. b. 490, Cotton L. J. observed :

> "No doubt there may very well be observations made of such a character as that not only would they be technically a contempt, but such as that the Court, in order to secure causes being properly tried before it, ought to interfere. If any one discusses in a paper the rights of a case or the evidence to be given before the case comas on, that, in my opinion, would be a very serions attempt bo interfere with the proper administration of justice. It is not necessary that the Court should come to the conclusion that a Judge or a jury will be prejudiced, but if it is calculated to prejudice the proper trial of a cause, that is a contempt and would be met with the necessary punish-ment in order to restrain such conduct."

7. Administration of justice by an impartial judiciary is the basis of our system of jurisprudence and indeed of the jurisprudence of any civilised State. It is the concern not merely of immediate litigants. Its assurance is every one's concern. The method of administering justice prevalent in our Courts is that a conclusion to be reached in a case will be induced only by evidence and argument in open Court and not by outside influence whether of private talk or public print. To quote the words of Frankfurter J. and the other dissenting Judges in Bridges v. California, (1941) 83 Law Ed. 192 at p. 214, "A trial is not a 'free trade in ideas', nor is the best test of truth in a Courtroom 'the power of the thought to get itself accepted in the competition of the market'."

Comment, however, forthright is one thing. Identi-fication with respect to specific matters still in judicial suspense is quite another.

8. In Pennekamp v. Florida, (1946) 90 Law Ed. 1295 at p. 1313, it was observed by Frankfurter J. :

> "The press does have the right, which is its professional function, to criticise and to advocate. The whole gamut of public affairs is the domain for fearless and critical

> comment, and not least the administration of justice. But the public function which belongs to the press makes it an obligation of honour to exercise this function only with the fullest sense of responsibility. Without such a lively sense of responsibility a free press may readily become a powerful instrument of injustice. It should not and may not attempt to influence judges or juries before they have made up their minds on pending controversies. Such, a restriction, which merely bars the operation of extraneous influence specifically directed to a concrete case, in no wise curtails the fullest discussion of public issues generally. It is not suggested that generalised discussion of a particular topic should be forbidden, or run the hazard of contempt proceedings, merely because some phases of such a general topic may be involved in a pending litigation. It is the focussed attempt to influence a particular decision that may have a corroding effect on the process of justice, and it is such comment that justifies the corrective process ....
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> If men, including judges and journalists, were angels, there would be no problems of contempt of Court. Angelic Judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on bshalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of Court is a safeguard not for judges as persons but for the function which they exercise. It is a condition of that function indispensable for a free society that in a particular controversy pending before ft Court and awaiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertow of extraneous influence".

9. Holmes J. laid down in Patter son v. Colorado, (1907) 205 U. S. 454 at p. 463 : 51 Law Ed. 879, that :

> "When a case is finished, Courts are subject to the criticism as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."

It is clear to us that apart from any consideration of the effect of amended Article 19(2), accord- ing to the well established principles of the law of contempt of Court the articles of 27-6-1951 and 11/18-7-1951 constitute a contempt of Court.

10. It has been contended, however, that the Indian Constitution as amended by the Constitution (First Amendment) Act, 1951, has altered the situation and the previous law of contempt is no longer in force. Clause (1) (a) of Article 19 of the Constitution grants to all citizens the right to freedom of speech and expression. This right is, however, subject to the provisions of Clause (2) of that Article. Before its amendment Clause (2) stood as followa :

> "(2) Nothing in Sub-clause (a) 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".

The existing law relating to contempt of Court was, therefore, saved from the operation of Article 19(1)(a). Clause (2) of Article 19 was, however, amended by the Constitution First Amendment Act, 1951. After the amendment the clause reads as follows :

> "(2) Nothing in Sub-clause, (a) of Clause (1) shall .affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exerciso of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence."

It will be observed that before the amendment the entire law relating to 3ibel, slander, defamation, contempt of Court, decency or morality or any matter which undermines the security of, or tends to overthrow, the State was excluded from the operation of Article 19(1)(a). There was no question of any reasonableness of the law relating to the matters specified in Clause (2). After the amendment, if the existing law or. future law relating to the matters mentioned in Sub-clause (2) contravenes the limits of 'reasonable restrictions' on the exerciso of the right of freedom of speech, such law will be void. While in this regard the amended clause has restricted the scope of the said clause, it has extended its scope in another direction inasmuch as laws relating to friendly relations with foreign States, to public order and to incitement to an offence have been added. No doubt the expression 'reasonable restrictions' refers not merely to future laws but also to existing laws. We consider, however, that the law of contempt as laid down by British and Indian Courts imposes nothing but reasonable restrictions on the exercise of the right of freedom of speech and expression and therefore the previous law continues in force even after the amendment.

11. Our attention has been drawn to the American view on the subject. Before we discuss the American view, however, it will be pertinent to notice that while the Indian Constitution speci-fically limits the right of freedom of speech in the manner already mentioned, the guarantee of freedom of speech and expression is not specifically restricted in the American Constitution. The First Amendment of the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech or of the press." The Fourteenth Amendment provides that "nor shall any State deprive any person of life, liberty, or property, without due process of law". The due process clause was interpreted by the-United States Supreme Court as covering protection of the freedom of speech and of the press.

12. The American Courts were, however, not slow to recognise the necessity of limiting the freedom of speech and expression. They evolved restrictions on the right of freedom of speech and expression under the doctrine of what is known as the "police power" of the State. The Federal Congress was held to possess an implied power to restrict the freedom guaranteed by the Constitution if it was necessary "for the exercise of other express powers given to the United States as in connection with

war power, and the Supreme Court has finally held that the provision against abridging the freedom of speech or of the press does not prohibit all legislation by Congress. (Willis, Constitution Law, 489.)"

> As a result of approximating the law for the Federal Congress under the First Amendment and the law for the States under the Fourteenth Amendment, the American Courts have evolved the test of "clear and present danger" Shenck v. United States, (1919) 249 U. S. 47. The question was when do words give rise to unlawful acts ? Three possible answers were suggested: (1) when they directly urge or cause such acts, (2) when they might have an indirect or remote tendency to cause such acts, and (3) when there is a clear and present danger that they will cause such acts. The "clear and present danger" test is the test now applied.

13. In Bridges v. California, (1941) 8G Law Ed. 192, Black J. delivering the opinion of the Supreme Court said (at page 203), "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."

The publication in question (at p. 208) :

> "after vigorously denouncing two members of a labour union who had previously been found guilty of assaulting non-union truck drivers closes with the observation. 'Judge A. A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignment to the jute mill.'"

The trial Court had punished the publisher bo-cause the publication had an "inherent tendency" to interfere with fair trial of a pending case and State Supreme Court punished him because the publication had a "reasonable tendency" to interfere with the orderly administration of justice. Black J. of the Supreme Court (Federal) observed (at p. 208):

> "In accordance with what we have said on the 'clear and present danger' cases, neither 'inherent tendency' not 'reasonable tendency' is enough to justify a restriction of free expression."

Four Judges of the Supreme Court, however, gave a dissenting opinion and held that the publication amounted to contempt of Court. As regards the phrase "clear and present danger" they observed (at p. 221) :

> "The Constitution, as we have recently had occasion to remark, is not a formulary. Nor does it require displacement of an historic test (the test of reasonable tendency) by a phrase which first gained currency on 8-3-1919, Schenck v. United State, (1919) 249. U.S. 47 : 63 Law. Ed. 470 : 39 S. Ct. 217. Our duty is not ended with the recitation of phrases that are the shorthand of a complicated historic process. The

> phrase 'clear and present danger' is merely a justification for curbing utterance where that is warranted by the substantive evil bo be prevented. The phrase itself ia an expression of tendency and not of accomplishment, and the literary difference between it and 'reasonable tendency' is not of constitutional dimension."

14. In Graig v. Harney, (1947) 91 Law Ed. 1546, a Judge was criticised in strong language as to his decision and procedure followed by him in a particular trial still pending before him. It was held :

> "The vehemence of the language used is not alone the measure of the power to punish for contempt of Court. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or oven probable; it must immediately imperil."

With this opinion of the Court, Frankfurter J. and the Chief Justice dissented, and observed that the publication in question was contempt of Court.

15. It is interesting to note what was stated by certain Judges about the phrase "clear and present danger" which was first used by Holmes J. in Schenck's case (1919-249 U. S. 47 : 63 Law Ed. 470 : 39 S. ct. 247). The minority of the Judges remarked in Graig v. Harnay, (1947) 91 Law Ed. 1546 that :

> "Only the pungent pen of Holmes J. could adequately comment on such a perversion of the purpose of his phrase,"

16. From the above it will be clear that strong difference of opinion exists oven in America, about the application of the clear and present danger test. We are not bound to apply any such teat. Conditions in India are different from those prevailing in America. The language of our Constitution after the amendment of Article 19 requires us to see whether the restrictions are "reasonable." As we have already stated we think the restrictions placed by the law of contempt as it is understood in England and in this country arc "reasonable."

17. AS regards the plea that Article 215 of the Constitution impliedly debars the High Court from punishing contempts of subordinate Courts, it is enough to say that the plea has no force. Article 215 vests in the High Court all the powers of a Court of record and all the powers of such a Court including the power to punish for contempt of itself. The phrase "the power to punish for contempt of itself" does not limit such powers of the High Court as it possesses as a Court of record or other powers with which it may be invested by law. The phrase has been used merely by way of extra precaution---ex abundanti cautela. The power to commit for contempt of subordinate Courts had been expressly conferred upon it by the Contempt of Courts Act, 12 of 1926 which has been recently replaced by Act 32 of 1952.

18. The plea that the affidavit of Lakhan Singh is incomplete has no force. It is clear thai: the applicant alleged that both the opposite parties were guilty of contempt of Court. The circumstances in which contempt was committed wore mentioned in the affidavit.

19. Opposite party 2 Balswarup Gupta was alleged by the applicant to be the editor-in-charge of the paper. This allegation, supported as it was by the applicant's affidavit, was not challenged before us by the learned counsel for the opposite parties. A belated attempt was made by opposite party 2 to challenge this fact after the reservation of judgment in the case by means of an application sent by post. Wo are not prepared to allow this question of fact to bo agitated before us in this manner when the applicant has had no opportunity to meet it. We hold that opposite party 2 was the editor-in-charge of the paper as alleged by the applicant and is equally guilty of contempt along with opposite party 1. "

20. Opposite parties were on a previous occasion dealt with for similar contempt and were lined Rs. 50 and in default of payment were ordered to undergo simple imprisonment for a period of two weeks. It appears that the previous order of fine has had no effect on them. More deterrent sentence is, therefore, called for. It was stated in the affidavit filed on his behalf that if the Court considered that the articles amounted to contempt of Court he was extremely sorry and withdraws the articles. This is not an unconditional apology and does not show a change of heart and contempt cannot bo purged by it.

21. We, therefore, order that each of the opposite parties shall pay a fine of Rs. 250 and shall also pay costs of the applicant which wf. assess at Rs. 100 and costs of the Assistant Government Advocate which we assess at RS. 80. One month is allowed to pay the fine and costs. In case of default of payment of fine the opposite parties shall undergo simple imprisonment for one month.