

State Through The Sessions Judge vs C.M.L. Bhatnagar, City Magistrate on 24 September, 1951

Equivalent citations: AIR1952ALL56

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. Sri C. M. L. Bhatnagar, Additional District Magistrate, Jhansi, has been called upon, on a report by the Sessions Judge of Farrukhabad, to show cause why he should not be dealt with for having committed contempt of the Court of Session, Farrukhabad, when he was City Magistrate at Farrukhabad.

2. The facts leading to the taking of this action are that Sri Bhatnagar demanded security from Sobaran Singh, against whom a case under Section 19 (f), Arms Act, was under investigation, and also in another case from Lal Mohammad and others, who were prosecuted under Section 13, Gambling Act. The offences against the accused in both the casts were bailable, and Sri Bhatnagar ordered them to furnish bail. He, however, got reports from the Tahsil about the adequacy of the sureties and, even on receipt of a report in Sobaran's case that the sureties had sufficient means, required further reports. The accused in both the oases approached the Sessions Judge, Farrukhabad, In the case of Sobaran Singh the Sessions Judge, after remarking that the non acceptance of his bail by him was scandalous ordered that he be released on bail. A copy of this order was communicated to Sri Bhatnagar with a forwarding note by the Munsarim of the Sessions Court saying "Copy of the order forwarded for comp-liance" This copy of the order described the order to be in a case in which Sobaran Singh had been convicted under Section 19 (f), Arms Act. Due to this wrong heading it appears that the office of Sri Bhatnagar could not put up the necessary papers, and he ordered "Seen. File". On the 27th November the accused approached the Sessions Judge again, intimating that inspite of his orders he was not released. The Sessions Judge ordered the issue of release warrant from his Court and called upon Sri Bhatnagar to explain why his order dated the 23rd November was not complied with. Sri Bhatnagar did not submit any explanation. He just filed this order with the note "Seen. File and include in case file."

3. Similarly when Lal Mohammad and other accused were not released on bail by Sri Bhatnagar upto 4-1-1951 in compliance with the Sessions Judge's order which was forwarded to him with the note "For information and necessary action," (the letters n. a. having been used as abbreviations for necessary action) the Sessions Judge ordered the issue of release warrants and called upon Sri

Bhatnagar to explain why he did not release them.

4. Sri Bhatnagar forwarded his explanation to the Sessions Judge through the District Magistrate, and in this explanation he explained why he could not take action on the orders communicated by the office of the Sessions Judge. His explanation for not complying with the order of the 23rd November was that there was no case with him in which Sobaran Singh had been convicted. This explanation was not considered sufficient by the learned Sessions Judge and we agree with him. It was the plain duty of Sri Bhatnagar to have referred back the matter to the Sessions Judge for further directions. He should have realised that the order related to the release of an accused and that there seemed to have been some mistake in the reference, even if it be believed that he or his office could not have thought of the case of Sobaran Singh in which the bonds filed by the sureties had to be sent to the Tahsil twice for report.

5. His explanation for not sending an explanation which was called for by the Sessions Judge in his order dated the 27th November was that in view of the release of the accused he did not consider any explanation necessary and so did not send any. Practically to the same effect was his explanation with respect to the second case. After saying so much which, as I have already said, was not a satisfactory explanation, he then went on to explain the correct legal position, a conduct which, even if his view of the law was correct, was much open to objection and was a conduct which has been criticised by this Court in some recent judgments. Naturally the learned Sessions Judge had to refer the matter to this Court.

6. Sri Bhatnagar in his affidavit in this Court practically said what he had said in his explanation with respect to his not acting in accordance with the directions of the Sessions Judge. He expressed regret at not furnishing explanations called for from him. Even in this affidavit he took pains to explain his conduct in not accepting the surety bonds in the circumstances in which the orders of the Sessions Judge indicated that they should be accepted. His explanation is that in the district of Farrukhabad accused mostly abscond. I should think that he could have omitted saying anything which can be taken to be a criticism of the views of the learned Sessions Judge in a matter in which he as a Magistrate was bound to follow his directions. He ended his affidavit by expressing that it was not his intention to call in question or disregard in any way any of the orders issued by the learned Sessions Judge or to commit contempt of his authority in any manner. In Para. 20 he tendered an unqualified apology if any action of his, though unintentional, might be deemed to be in contempt of the learned Sessions Judge of Farrukhabad.

7. When the case came up for hearing before us for the first time and we expressed that such a form of apology was no apology at all, Sri Bhatnagar filed an application stating therein that he sincerely felt and realised that he had all along been in error and repented for his attitude and tendered an unreserved and unqualified apology and threw himself at the mercy of this Hon'ble Court.

8. Lest it be that this application was the result of his temporary feeling at the time on account of the expressions made from the Bench and considering it necessary to go into the question how far his action was without any intention to disregard the orders of the learned Sessions Judge, we adjourned the hearing in order to give him time to consider over the matter coolly and to verify the

facts to form an opinion as to his intentions in not complying with the orders of the learned Sessions Judge.

9. We have got the files now and we have also seen another file in which the orders in similar circumstances were communicated by the learned Sessions Judge to him with a forwarding note of the Mansarim that the copy of the order was sent for compliance and in which case Sri Bhatnagar's order was different and was "With file seen. Issue." The order meant that release warrants be issued. It cannot, therefore, be said that he could have reasonably interpreted the orders of the learned Sessions Judge in the two cases of Sobaran Singh and Lal Mohammad and others differently. I find it very difficult to believe that his not taking action on these orders and simply ordering them to be filed was merely because he considered that the orders required no further compliance by him. I am inclined to the view that he probably got annoyed by the opening sentence in the order of the learned Sessions Judge, which spoke of his action as scandalous, and then unfortunately took up an attitude which he ought not to have taken. He disregarded the orders. He could find a pretext for disregarding the order in the case of Sobaran Singh because the heading of the order was wrong. He probably disregarded the order in Lal Mohammad's case because the order had used the words "I order release on bail" and it was communicated to him with a forwarding note which just used the abbreviated expression "n.a." for necessary action. It may be mentioned here that Lal Mohammad and others appeared before him in Court within a few days of the order passed by the Sessions Judge. They appeared before him in custody. I should have expected that he would have recollected this order of the Sessions Judge when the accused appeared before him in custody, and I find it difficult to imagine that the fact that those persons had been ordered to be released would not have been brought to his notice by the accused themselves or their counsel, if they had any. He had no explanation to offer and, therefore, he disregarded the further orders of the learned Sessions Judge for explanation for his not complying with the earlier orders. If his action had been straight, he should have at once utilised that opportunity to send a simple note to the Sessions Judge saying that he did not mean any offence but was unfortunately of a different opinion about the meaning of his orders, and I am sure that the matter would have ended there. I am, therefore, of opinion that he intentionally disregarded the orders of the learned Sessions Judge and thus committed contempt of his Court.

9a. It has not been disputed by Mr. Saran, appearing for him, that the conduct of Sri Bhatnagar did amount to committing contempt of Court. What he submitted for his client was that he did not at the time mean to commit contempt of Court and that he as a public servant could be dealt with departmentally and that, therefore, he should not be dealt with in these contempt of Court proceedings. It has also been argued just as a matter of law that contempt of Court proceedings could not be taken against him without pro-per sanction in view of Section 197, Criminal P. C.

10. I have already dealt with the first point. On the second point, I am of opinion that the mere fact that he could be dealt with departmentally for his conduct in not showing proper respect to the orders of the Sessions Judge should not mean that this Court should not take action against him for the contempt of Court which he has committed. He is not under the administrative control of this Court and the responsibility of taking departmental action against him rests with the Governor. I do not consider it proper that this Court when exercising its powers as a Court of record with respect to

the commission of contempt of Court, should act in cases against public servants as a mere recommendatory body to the authorities who have the necessary powers to take departmental action. It may also be a question for determination how far for such conduct which amounts to contempt of Court departmental proceedings can be taken within the rules or the terms of service of the public servant concerned. It is true that in England it appears that contempt of Court proceedings are not now taken against inferior Courts, and the reason appears to be that the Lord Chancellor has now been given power under the County Courts Act, 1888 to appoint and to dismiss the presiding officers of such Courts. The position in this State is not just the same and, therefore, there seems to me no justification for not exercising this power against public servants or presiding officers of Courts.

11. In exercising these powers against such officers we are not extending the scope of the powers of this Court in such matters. The mere absence of any reported case in which action has been taken against presiding officers of Courts does not necessarily mean that no such jurisdiction ever existed or that no such jurisdiction exists. It really shows that presiding officers of Courts knew in the past what their duties were and what was expected of them in the matter of discipline and show of respect to the orders of superior Courts. It is unfortunate that in recent times the presiding officers of Courts have not shown the same respect and have some times deviated from the right path. But still such conduct has been mostly observed when Magistrates got some opportunity to say something after an order had been passed by a superior Court, and such an occasion arose in criminal revisions. Whenever any Magistrate tried to question the views expressed by the Sessions Judge, this Court took due notice of it and pointed out the extreme undesirability of Magistrates sitting in judgment over their superior officers. Of course no such case, to my recollection, came to notice so far where a Magistrate or any other presiding officer of a Court disregarded the orders of the superior Court and refused to carry them out. In that sense this case probably is the first case, and I hope that it would be the last. What led Sri Bhatnagar to adopt such an attitude is difficult for me to say, except that it may be that he felt that the times are changed and that he might act in this manner with impunity. Whatever is responsible for giving such an impression is deplorable.

12. With respect to the third point about our jurisdiction to take proceedings for contempt of Court against public servants, prosecution against whom cannot be launched in Courts without proper sanction in view of Section 197, Criminal P. C. I am of opinion that these proceedings are not proceedings in connection with an offence. No enactment has laid down what constitutes contempt of Court and would be punishable. The Contempt of Courts Act XII [12] of 1926 does not purport to be an Act for making contempt of Court an offence. It is an Act, as the preamble says, to define and limit the powers of certain Courts in punishing contempts of Courts, and proceeds to say "whereas doubts have arisen as to the powers of a High Court of Judicature to punish contempts of Courts and whereas it is expedient to resolve these doubts it is hereby enacted as follows."

Section 2 of the Act says that "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 same procedure and practice, in respect of contempts of Courts subordinate to them as they have and exercise in respect of contempts of themselves."

This simply makes it clear what jurisdiction, powers and authority High Courts have in matters of contempts of Courts. It does not say that such and such would be contempt of Court and would be punishable by such and such penalty. I, therefore, see nothing in this Act which should lead to the conclusion that contempt of Court is an offence. The whole scheme about these proceedings is against the view that the commission of contempt of Court is an offence as defined under the Code of Criminal Procedure. Contempt of Court proceedings are taken by the High Court. They are not taken on a complaint of the High Court or of a private person by a Magistrate as the Magistrate takes cognisance of all other offences. It follows, therefore, that Section 187, Cr. F. C., can have no application to these proceedings which are not in connection with an offence.

13. Lastly comes the question what action should be taken against Sri Bhatnagar for his committing contempt of the Court of the Sessions Judge, Farrukhabad. This question has rightly led to much anxiety and thought. It goes without saying that the commission of contempt of Court by a presiding officer of a subordinate Court is in a way much more reprehensible than the commission of contempt of Court by another person who usually does it either by publishing facts with respect to a pending suit or usually by maligning the Court or by taking some action against witnesses, etc. In the case of presiding officers of subordinate Courts, it is committed by a person who, in the nature of things, is educated, who as a public servant should have known his duties and who has been discharging those duties normally in the right manner and just for some reason goes on the wrong path. He does it intentionally and, therefore, his conduct is very much open to objection. At the same time, it is to be expected that an apology from him would be a better index of his own feelings than an apology from another person. It is not usual for him to defend himself or to admit himself in the wrong. It is sufficient humiliation for a public servant, and specially for a presiding officer of a Court, to admit publicly that he had been in the wrong and that he had done wrong and, therefore, when an apology springs from such a person, it can be taken to be a genuine apology. In this particular case, as I mentioned earlier, we did not take action on his apology which was furnished on the first hearing, but put off the case. We are assured today that he is still in the same repentant mood. We have observed him sitting in Court and feel that he certainly feels that he had done wrong. It is hoped that he will not go astray again and that his case will not only be helpful to him in his future career, which would extend by no means to any short term, but to others in that service. I am, therefore, of opinion that his apology, which appears to be sincere, be accepted and that he be simply warned not to disregard the orders of superior Courts, I am further of opinion that he should pay the costs of the Government Advocate, which we fix at Rs. 240.

Sapru J.

14. This is a strange case, strange in the sense that the Presiding Officer of a Court had to be sent for by us in an order that we might decide whether he should punish him for contempt of a superior Court. Fortunately in our Courts it is not usual for inferior Courts to disobey the orders of their superior Courts. Perhaps due to arrogance or conceit or a misplaced sense of his own importance this young Magistrate took upon himself to disobey orders of the learned Sessions Judge and the question that we have to consider with some earnestness is what is the punishment to be meted out to him. I confess that I have a strong feeling that his contempt deserves severe notice. I have, however, observed this young man in Court and have come to the conclusion that perhaps the ends

at justice will be met if we were to administer to him a severe warning and tell him in plain language that the conduct which he has been guilty of is unworthy of a member of the Provincial Executive Service to which he belongs. This Court has no desire to unduly enlarge its jurisdiction in matters of contempt. Clearly, however, there are occasions on which it becomes necessary for it to exercise this jurisdiction in the interests of the public weal. One such occasion is the present one. It is regrettable that a person occupying the position of a Magistrate, a person who knows the law and who ought to know to respect the law should have been guilty of the offence of contempt. A contempt committed by an average citizen may be pardonable but a more serious view has to be taken when committed by a Presiding Officer of a Court. The first duty of a Magistrate to learn is to obey those whom the law has set in authority over him. He who cannot obey cannot command. I have a feeling that the proceedings of today will have a salutary effect upon the mind of this young officer. I may say that I am in entire agreement with brother Dayal in regard to the view that he has taken of the non-applicability of Section 197, Criminal P. C. As a Court of record, we have an inherent power to punish. No doubt contempt has not been defined anywhere in the Indian Penal Code but jurisdiction that we exercise. In contempt is a jurisdiction which inheres in us as the highest Court of appeal in this State.

15. I think there is a ring of sincerity in the apology which, though somewhat belated, this young Magistrate has made to this Court and I think, in all the circumstances of this case, the correct order to pass is to administer to him a severe warning and to require him to pay the costs of the Government Advocate which we assess at Rs. 240.