Thakur Lal And Ors. vs Mahabir Prasad Sharma And Anr. on 6 August, 1954

Equivalent citations: AIR1955ALL391, 1955CRILJ1023, AIR 1955 ALLAHABAD 391

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. Thakur Lal and others were prosecuted for several offences, including the offence under Section 302, I. P. C. They were committed to the Court of Sessions. Eechu Pande and Pashupati Pande were two of the prosecution witnesses in that casa Their statements were recorded under Section 164, Criminal P. C., on 3-10-1952. They were later examined before the committing Magistrate on 24-6-1953. The sessions trial started on 14-9-1953.

2. On 20-8-1953, the opposite party Sri Mahabir Prasad Sharma, Public Prosecutor, Ghazipur, filed an application before the committing Magistrate for filing a complaint against Bechu Pande and Pashupati Pande for an offence under Section 193, I. P. C. on the ground that they had made contradictory statements in their statements recorded under Section 164, Criminal P. C., and later in the. Court of the Magistrate, The Magistrate issued notices to those witnesses and the proceedings under Section 476, Criminal P. C., remained pending till 28-12-1953, when the Magistrate ordered that they were premature and that an application to that effect could be made after the decision of the sessions case. He accordingly discharged those persons. The sessions case was decided in January 1954 and resulted in the acquittal of the applicant and his co-accused.

3. Thakur Lal filed his application before the decision of the sessions case for taking action against Mahabir Prasad Sharma for his committing contempt of Court of the Sessions Judge, Ghazipur, before whom the case under Section 302, I. P. C. was pending. The opposite party in his reply stated that he had put in the application for action under Section 476, Criminal P. C., on the report of B.B. Singh, Inspector, Criminal Investigation Department, and that, if he had committed any contempt, he threw himself at the mercy of the Court and tendered unconditional apology.

4. Notice was then Issued to B. B. Singh to show cause why he be not punished for committing contempt of Court. In reply he stated that he had requested the Public Prosecutor to move in the matter not with the intention to interfere with the fair trial of the case or to put pressure on the

witnesses, but to bring those per sons to book for their committing perjury. He also tendered unqualified and sincerest apology for any contempt that had been committed by him unwittingly.

5. On the last date of hearing the learned counsel for the applicant stated that his client did not want to pursue the matter; but considering the matter of great importance we had the question whether the conduct of the opposite parties amounted to the committing of contempt of Court discussed at length, and we have had the help of the learned counsel for the parties in that connection.

6. On the one hand what has been shown is that it has been held in several cases that it is not desirable that complaint for perjury against a witness be made by a Court before the termination of the case, as such an early action was likely to result in the intimidation of witnesses to be examined and to defeat the object of the trial. Each such case relating to the prosecution for perjury was with respect to the alleged falsity of the statement made by the witness before that Court and did not relate to the case where a witness had made two contradictory statements either in the same Court in the course of the same proceedings or on two different occasions. It has been urged that this distinction, however, does not affect the consideration that Courts should not order prosecution under Section 193, I. P. C., till the termination of the proceedings. No case is, however, cited in which it has been held that such a conduct of the Court or of the party moving the Court for taking action for the prosecution of a witness would amount to contempt of Court.

7. On the other hand, it is urged, and reliance Is placed on several cases decided by this Court, that a person is free to take legal action in a Court of law which is open to him for the redress of the wrong which he considers to have suffered from and that the conduct of the party in taking legal action in a Court of law cannot amount to the commission of contempt of Court, even if it can be said that it has some tendency to affect the decision of a pending case. It is further urged that the opposite parties merely suggested and moved the Court to take action under Section 476, Criminal P. C., and such mere action cannot amount to contempt of Court, even if actual prosecution of a party for making false statements during the pendency of the case be held to amount to contempt of Court.

8. We agree with the contention for the opposite parties and are of opinion that no contempt has been committed by the opposite parties. We may refer to the case reported in -- 'Hrishi Kesh Sanyal v. A. P. Bagchi', AIR 1940 All 497 (A). The facts of the case were that an objector in proceedings for the appointment of a guardian made defamatory statements with respect to the applicant for guardianship. That application waa returned for presentation to the proper Court. It was re-presented to the proper Court and thereafter the original applicant moved the first Court to take action against the objector with respect to certain statements in the affidavit filed by the objector which were alleged to be completely false. The applicant also filed a complaint under Section 500, I. P. C. against the objector. This Court was moved to take action against the applicant who had filed the complaint Under Section 500, I. P. C. for punishing him for the contempt of Court he committed both by his moving the first Court to enquire about the falsity of the allegations in the affidavit and for his filing the complaint under Section 500, I. P. C., when the guardianship proceedings were pending in the other Court. It was held in this case that no contempt of Court was committed. It was observed:

> "If a person has or thinks he has a cause of action or a ground of complaint, he is in ordinary circumstances at liberty to have recourse to the Courts".

It was further observed at page 500:

> "Had the opposite party first tried to intimidate the applicant by holding out a threat of prosecution, thereby bringing pressure to bear upon him, the matter would have had a very different aspect. But he did not do this: he took Immediate action in the Courts, thereby exercising a right which every individual has of having recourse to a Court of justice."

It would appear, therefore, that what was held was that unless the alleged contemner acts in s manner which coerces the other party from freely proceeding in the litigation, that party cannot commit contempt of Court merely on account of his taking some legal action open to him in a Court of law.

9. It was further held in that case that the application under 476, Criminal P. C., did not amount to contempt because the alleged contemner merely drew the attention of the Court to the allegations in the affidavit which he claimed to be false and thereafter the responsibility lay with the Court which after enquiry or otherwise, might or might not decide to prefer a formal complaint. The mere application to take action in no way would amount to such action of the applicant as to coerce the party to be proceeded against to act in a manner which would hamper the due administration of justice.

10. Subsequent to this case similar view was expressed in -- 'Deep Chand v. Raizada Sumer'. Misc. Case No. 5 of 1948 (All) (B). In that case some defamatory statements which could have a bearing on the subject-matter of the suit were made against the plaintiff in a suit before the Court of small causes. The plaintiff during the pendency of that suit filed a complaint Under Section 500, I.P.C., against the defendant. Both the criminal Court and the Court of Small Causes would have had occasions to determine certain common points. The defendant moved this Court against the plaintiff for action with respect to the alleged contempt of Court committed by him. It was held that no contempt was committed. One of us observed in that case after referring to the various cases:

> "All these cases go against the petitioner and tend to support my view expressed in the very beginning that a party is free to have recourse to such redress in a Court of law, as he be entitled to, irrespective of the fact that the wrong complained of is based on something which had transpired in the proceedings of a pending suit and be a matter for decision in that suit."

Wanchoo J. to, whom the case went on difference of opinion expressed himself thus:

> "On a consideration, therefore, of these authorities, I am of opinion that in a case where a party files a complaint in Court and there is no direct threat held out to another party to withdraw a certain plea or to desist from carrying on a certain case

> in Court and where there are no sufficient materials to come to the conclusion that the filing of the complaint was only to harass and handicap the other party and so interfere with the administration of justice, it cannot be held that the filing of the complaint would amount to contempt of Court, even though there might be some identity between the points that might arise for determination in the complaint and in the earlier suit."

He also referred to the observations of Lord Alverstone C. J. in the case of the -- 'King v. Tibbits and Windust', (1902) 1 KB 77 at p. 87 (C), which are:

> "But, if the judgment of Lord Ellenborough is examined, it will be noted that the main ground of the judgment is that the publication would tend to pervert the public mind and disturb the course of justice and therefore be illegal, and we cannot doubt that, if the attempt so to do be made, or means taken, the natural effect of which would be to create a widespread prejudice against persons about to take their trial, an offence has been committed, whatever the means adopted, provided there be not some legal justification for the course pursued."

(sic) observed that those observations suggested that where there was some legal justification for the course pursued, what might appear to Courts to be contempt might not really amount to it.

11. Similar views were expressed in -- 'Jagannath Prasad v. Ram Chandra'. AIR 1952 All 408(D). It was observed at p. 412:

> "We are clearly of the opinion that if the notice was lawful and in protection of the natural right of the notice-giver and it could net possibly have the effect of interfering with the true course of justice, the giving of the notice would not make the filing of the criminal complaint any more a contempt of Court than it would have been if there were no notice."

12. The nest case is -- 'Kamta Prasad v. Ram Agyan', AIR 1952 All 674 (E), which was decided by us. The law was summarised at the end of the case and proposition No. 2 expressed as settled law was:

> "If the threat is not express, but is implied in the fact of a party instituting a criminal complaint or taking some civil proceeding which puts the former party to loss, there is no interference with the administration of justice because everybody is entitled to take recourse to law."

13. It is clear, therefore, that if a person takes legal action in a Court of law which be open to him, he cannot commit any contempt of Court unless the action be held to be not an approach to the Court for redress of the wrong but was really such as can be said to be abusing the process of the Court as was visualised by Marten C. J. in -- 'In re, shamdasani (No. 1)', AIR 1930 Bom 477 (FB) (F) at p. 480, where he observed:

> "Accordingly, if the complainant repeats what he has done in the past, namely that as soon as one application for a transfer is refused by the High Court he promptly makes another, then I must warn him that if the matter comes up again before the High Court he will be in grave risk not only of having an order under Section 561-A passed against him but also of having proceedings directed against him for contempt of Court."

14. We, therefore, discharge the notice issued to the opposite parties and direct the. applicant to pay the costs of the Government Advocate and opposite party No. 1, Shri Mahabir Prasad, Public Prosecutor. We do not award costs for the hearing subsequent to the last hearing as that had been done at our request for the elucidation of the law point which was of importance and to elucidate which we have had the advantage of the able arguments of the learned counsel for the parties. We, therefore, order the applicant to pay Rs. 80/- costs of the Government Advocate and Rs. 100/- costs of opposite party No. 1.