Supreme Court of India
Abdul Karim vs M. K. Prakash And Ors on 30 January, 1976
Equivalent citations: 1976 AIR 859, 1976 SCR (3) 276
Author: R S Sarkaria
Bench: Sarkaria, Ranjit Singh

PETITIONER:
ABDUL KARIM

Vs.

RESPONDENT:
M. K. PRAKASH AND ORS.

DATE OF JUDGMENT30/01/1976

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
BEG, M. HAMEEDULLAH
BHAGWATI, P.N.

CITATION:
1976 AIR 859 1976 SCR (3) 276
1976 SCC (1) 975

ACT:
Contempt of Court's Act 1971-Sec. 2(c)-Standard of proof for Criminal contempt-contempt by a judicial officer-Assumption-If should be willful of jurisdiction erroneously or passing a wrong order.

HEADNOTE:
The appellants in Criminal Appeals 195 and 196 are the owner and Manager of a timber depot respectively (hereinafter referred to as appellants). Appellants complained to the Police that Respondent No. 1 had collected a large number of persons with deadly weapons and that the sheds constructed by the appellants were attacked and that there was apprehension that the shed would be demolished. The Police seized the disputed timber. The appellants made an application praying that the seized logs may be handed over to them. Respondent No. 1 also made an application claiming the timber to be his property. After perusing the Police Report and hearing the counsel for the claimants, the Magistrate directed the Forest' Range officer to keep the timber in his custody pending the further investigation by the Police. Respondent; No. 1 filed a Revision in the High Court against the said order of the Magistrate. The High

Court did not grant stay of the order of the Magistrate. The High Court, however, observed that as the rainy season was approaching it was necessary that the timber should be removed from the place as early as possible. Thereafter, the Police officer submitted the final report stating that the earlier Police report was biased and that the appellants were the owners of the disputed timber arid that the timber might be released to them. On that the Magistrate passed an order directing that the timber should be returned to the appellants. The Magistrate also issued. a letter to the Forest Range officer directing him to hand over the seized timber to the appellants, urgently.

Respondent No. 1 filed a contempt petition in the High Court against the appellants, as well as against the appellant in Appeal No. 118 of 1971, the Magistrate. The charge against the Magistrate was that he passed the second order without giving notice to respondent No. I and directed the Forest Range officer to release the timber urgently and thereby defeated whatever order the High Court might have finally passed in revision and that he permitted process of the court to be abused and that he impeded the course of justice. The Magistrate filed his affidavit and stated that the High Court had not stayed his order and that he ordered the delivery of the disputed timber in the bona fide discharge of his official duty after accepting in good faith the final report made by the Police in which it was indicated that its notice had been given to the complainant and a copy of such notice was also enclosed.

The High Court did not find the appellants guilty of contempt. The High Court, however, found the Magistrate guilty of 'Criminal contempt' on the following grounds:

1. The case between the parties had gained notoriety in the State and attracted a good deal of public attention.
2. The certified copy of the order was taken only by appellant No. I, and since the case was not posted in the open court, appellant No. I must have shown the order to the Magistrate at a place other than the open court.
3. The Magistrate passed the order in spite of the fact that he was aware that the revision application was pending in the High Court which was seized of the matter of determining the question of the custody of the timber.

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4. The Magistrate did not give notice to the other side before passing the A order. The procedure adopted by the Magistrate in writing the letter to the Forest Range officer asking him to release the timber urgently is very strange and reveals an anxiety on the part of the Magistrate to help the appellants. The urgency can only be to circumvent any possible orders of stay that might be passed

by the High Court.

In appeal filed by the Magistrate.

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HELD: (1) Section 2(c) of the Contempt of Courts Act 1971 codifies the definition of criminal contempt which had previously been crystallized by judicial decisions. The broad test to be applied in such cases is whether the act complained of was calculated to obstruct or had an intrinsic tendency to interfere with the course of justice and the due administration of law. The standard of proof required to establish a charge of criminal contempt is the same as in any other criminal proceeding. It is all the more necessary to insist on strict proof of such charge when the act or omission complained of is committed by the respondent under colour of his office as a Judicial officer. Wrong order or usurpation of jurisdiction by a Judicial officer owing to an error of judgment or to a misapprehension of the legal position, does not fall within the mischief of 'criminal contempt'. Human judgment is fallible and a judicial officer is no exception. Consequently, so long as a Judicial officer in the discharge of his official duties acts in good faith and without any motive to defeat, obstruct or interfere with the due course of justice, the court will not, as a rule, punish him for a criminal contempt. Even if it could be urged that mens rea as such is not an indispensable ingredient of the offense of contempt, the courts are loath to punish a condemner if the act or omission complained of was not willful. [203B D-G] D

(Case of Debabrata Bandopadhyay A.I.R. 1969 S.C. 189. cited with approval.)

(2) The main ground which influenced the High Court was that the case '` had gained certain amount of notoriety. This was a very vague, indefinite and nebulous circumstance. In the instant case, the prejudice generated by this creeping circumstance has unmistakably vitiated the approach of the High Court. 1284 C-D]

(3) The explanation given by the Magistrate was at least sufficient to dispel the suspicion that the Magistrate while passing the order was actuated by a motive to impede or obstruct or defeat the course of justice. It was immaterial as to who showed the certified copy of the order of the High Court to the Magistrate. On reading the final report of the Police and the order of the High Court the Magistrate mist have honestly formed the opinion that there was no need to give the notice to the other party and that it was necessary to direct the Poorest officer to deliver the timber urgently to the appellants. It is true that under the circumstances, the prudent course for the Magistrate would have been to postpone the making of any final order in regard to the delivery of the timber till the final disposal of the revision petition by the High Court. It would have been also proper for him to have given opportunity of being heard to the other side before making any order.

Nevertheless it was evident from the stark circumstances of the case, that in failing to do so, the Magistrate was not actuated by any improper motive or deliberate design to impede, obstruct or interfere with the course of justice or to circumvent or defeat the proceedings in the Revision pending before the High Court. Consequently the penal action taken by the High Court was not justified. [284 H, 285A, B, F, 286A-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 118 of 1971.

From the Judgment and order dated 15th October, 1970 of the Kerala High Court at Ernakulam in O.P. No. 4879 of 1969 and Criminal Appeals Nos. 195 and 196 of 1971. Appeals by special leave from the judgment and order dated the 15th October, 1970 of the Kerala High Court at Ernakulam in O.P No. 4879 of 1969.

A.S.Nambiar for the Appellant in Crl. A.118/71. Kunhiraman Menon and A. 5. Nambiar for the Appellants in Crl A. Nos. 195 and 196 of 1971.

For the respondents in all the appeals: Nemo. the Judgment of the Court was delivered by-

SARKARIA, J.-These three appeals arise out of a common judgment of the High Court of Kerala holding the appellants guilty of contempt of court.

S. Abdul Karim, the appellant in Criminal Appeal 118 of 1971. was, at the material time, a Munsif-Magistrate posted at Perambra. He was Respondent No. 3 in the contempt petition filed in the High Court and will hereafter be referred to as R. 3.

A. P. Parukutty Mooppilamma and A. P. Achuthankutty Nair, appellants in Cr. Appeal No. 195 of 1971 were respondents 1 and 2 in the original petition before the High Court, and will be hereafter be called R. 1 and R. 2. The appellant K. P. Ramaswami in Criminal Appeal No. 195 of 1971 was Respondent 4 before the High Court. He will, for short, be called R. 4.

M. K. Prakash, Respondent No. 1 in all these appeals before us, was the petitioner in the contempt petition before the High Court. He will hereafter be called as 'P'.

The facts are these:

R-1 is the owner of the olathooki Ariyalakkan Malavaram in Kayanna Amsom which is managed for and on her behalf by her son, R-2. On March 28, 1969 R-I presented a petition through R-2, to the Superintendent of Police, Kozhikode alleging that the accused persons (P and his men) were likely to trespass into the olathukki Arialakkan Malavaram to remove her timber. It was alleged that 'P' had

collected a large number of persons and equipped them with dangerous weapons, unlicensed guns. swords etc.; that the sheds constructed by the petitioner and occupied by his workers and watchmen were being attacked and there was an apprehension that P and his men would demolish the sheds. The Superintendent of Police appears to have forwarded this petition to the Police Station Kayanna where, on its basis, a case under ss. 143, 147 and 506, Penal Code was registered against 'P' and others.

The Sub-Inspector in-charge of the Police Station, went to the spot and took into possession the disputed timber comprising of 587 logs and entrusted the same on a kychet to two strangers. On April 22, 1969, R-l made an application, Ex. P-3, before the Magistrate (R-3) praying that the seized logs be handed over to him. Thereafter, 'P' also made an application to the Magistrate claiming the timber to be his property and prayed for delivery of its possession to him. The Magistrate thereupon issued notice to the Police who made a report. After hearing the Counsel of the rival claimants and perusing the police report (Ex. P-17) and other material, the Magistrate on April 28, 1969, passed an order, directing the Forest Range officer to keep the logs in his custody pending further investigation by the Police. Against this order 'P' filed Cr. Revision Petition No. 176 of 1969 in the High Court. No interim order directing the Magistrate to stay further proceedings or defer further action regarding the delivery of the disputed timber was issued by the High Court.

While P's Revision application was pending in the High Court, the Police officer, R-4, after completing the investigation, obtained the opinion of the Assistant Public Prosecutor on September 20, 1969 and submitted a Final Report on September 24, 1969 to the Magistrate (R-3). The material part of this Final Report runs as under:

> "On 16-7-69 a petition from the complainant was received alleging that the investigation conducted by my predecessor was one-sided and biased against him and he had produced certain documents to support his contention that the property belongs to him and which were not considered by my predecessor. Based on this petition I continued the investigation and in the course of my investigation, I questioned the Divisional Forest officer, Collect and the Forest Range officer, Kuttiady. They stated that the permit issued to M. K. Prakash in Kalpaidiyan Thirumudiyan Malavaram was stayed by the Government and hence not operated upon till now. They also stated that the 587 logs of timber seized by my predecessor were from olathukku Arialakkan Malavaram in the possession and ownership of the mother of the complainant and those logs were cut by Smt. A. R. Parukutty Amman's workmen and for which proceedings have 1 been taken against them under the M.P.P.F. Act. To the same effect the Range officer Kuttiady had fired an affidavit heifer the High Court in O.P. 2045/69 filed by the accused in this case. In the' said O.P. the accused had questioned the validity of the Government order allowing Smt. Parukutty Amma to remove timber` cut from the permitted and non- perrnitted area of olakhukki Arialakkan Malavaram and the High Court had upheld the order of the Government and the complainant's mother was allowed to transport all timber cut from the Malavaram, both from the permitted and non-permitted area. According to the Divisional Forest officer there is no Malavaram known as Kalpidiyan

> Thirumudiyan Malavaram in Pilliperuvnna Amsom as per the Registration Manual. I also questioned the complainant and his workmen and they stated that there was no trespass as such by the accused or his henchmen. They did not enter the Malavaram, nor have they intimidated any of them and as such no offense has been made out u/s 447 or 506 (1) IPC.
>
> Under the above circumstances, it is clear that Shri M.

K. Prakash accused in this case was not allowed to operate his permit and the 587 logs of timber seized by my predecessor were cut by the complainant's mother and the same belong to her. These logs are now in the custody of the Range officer, Kuttiady as per the order of the Munsiff Magistrate Perambra and the same may be ordered to be released to the mother of the complainant and the case is referred as mistake of fact."

Upon this report the Magistrate (R-3) passed this order:

"Notice given Case referred as mistake Of fact.

Further action dropped. Return timber logs to complainant." Sd/-M. M. 26-9-1969 In pursuance of this order, the Magistrate issued a letter (Ex. P-10) dated September 26j 1969, to the Forest Range officer Kuttiady, directing him that 587 logs seized by the Inspector of Police, Quilandy, then in his custody, be urgently released to R-1 (the mother of the complainant) .

In compliance with the order of the Magistrate, the Range officer symbolically handed over the charge of the timber to R. 1.

On the preceding facts, 'P' on November 26, 1969, made a petition in the High Court complaining that R-1, R-2, R-3, R-4 and R-5 (Sri P. K. Appa Nair, Advocate) had committed contempt of the High Court within the meaning of s. 3 of the Contempt of Courts Act, 1952 and prayed that the respondents be punished for committing that contempt. The High Court issued notice to R-l to R-5 who filed affidavits in reply.

The Magistrate (R-3) stated that he had passed the order directing delivery of possession of the disputed timber to R-l in the bona fide discharge of his official duty, after accepting in good faith, the final report made by the police in which it was indicated- that its notice had been given to the complainant, and a copy of such notice was also enclosed. - He further averred:

> "The purchase of the petitioner's rights by the 1st Respondent referred to in the F.I.R. and Ex. P-3 petition was not denied by the petitioner. on the other hand, his counsel during the hearing of Exts. P-3 and P-4 petitions had admitted the same. even though he had a case that the petitioner was duped to sign the same and receive part of the consideration. Under the circumstances, I had no reason to reject P-6 report, it was accepted in its entirety and final orders were passed bona fide directing return of the logs to the complainant. The criminal revision 176 of 1969 itself is only against

> Ext.(1)order directing entrustments of the logs to the Forest Range officer pending further investigation. The order in revision that may be ultimately passed by the Hon'ble Court can have reference only to what should be done with the logs pending investigation. The order in revision would not and cannot relate to the disposal of the logs after the completion of the investigation. It is therefore wrong to suggest that the final order is calculated to over-reach the possible orders in the pending Cr. Revision Petition."
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> In his affidavit, the Magistrate emphasised that in Cr.

Revision 176 of 1969, the High Court had not issued any interim order staying further proceedings.

R-1, R-2, R-4 and R-5, also, in their reply affidavits denied the allegations made against them by 'P' in the contempt petition.

The Advocate-General assisted the High Court and filed a statement of facts on February 16, 1970.

After considering the replies, a memoranda of charges was drawn up against R-1 to R-5 on February 10, 1970. The material part of the charges served on R-3 ran as under:

> "That you, on receipt of the final report, even without giving notice to the petitioner, not only passed an order on 26-9-69 on the final report directing the return of the timber logs to the complainant but also wrote a letter (copy of which is Ext. P-10) to the Forest Range officer, Kuttiadi, directing him urgently to release the timber logs to the 1st respondent-thereby effectively defeating whatever order the Honourable High Court may finally pass in Criminal Revision Petition 176 of 1969 and Criminal Miscellaneous Petition 309/69, and that in consequences of your order the timber logs were actually handed over to the 1st respondent; That in so doing:
>
> (a) you have acted unjustly, oppressively and irregularly in the execution of your duties, under colour of judicial proceedings wholly unwarranted by law and procedure,
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> (b) you have also permitted the process of your court to be abused by the other respondents and thereby diverted the due course of justice and
>
> (c) you have also impeded the course of justice by defeating the final orders that are liable to be passed by the High Court in Criminal Revision Petition 176/69 and Cr. Misc. Petition 309/69; thereby committing gross contempt of the Honourable High Court, to which you are subordinate."
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> The Magistrate (R-3) submitted a further counter-

affidavit denying the charges.

The High Court rejected the Magistrate's explanation and found him guilty of contempt on grounds which may be summarised as below :

> (1) "The case between the Petitioner and the 1st and the second respondent had gained certain amount of notoriety not only in the area but also in the State".
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> Allegations were being made "that even the then Minister of Forests was unjustly favouring R-1 and R-2. The case before the Munsiff-Magistrate would naturally have attracted quite a good deal of public attention."
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> (2) R-3 permitted R-1 and R-2 to approach and influence him. This inference was available from the circumstance that in his affidavit, R-3 has said that an order dated May 2, 1969, passed by the High Court in C.M.P. 5869/69 in O.P. 2405/69 was shown to him and the certified copy of this order was obtained from the High Court only by R-1. The copy must therefore have been shown to the Magistrate by R-1 or her Advocate or by R-2 or his agents. "This could not have been in the open court. There was no posting of the case to 26-4-1969".
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> (3)(a) R-3 was aware that Criminal Revision 176/69 and Cr. M.P. 309/69 against his earlier order, was pending in the High Court which was "seized of the matter of determining the question of custody of the timber. His explanation that he felt that he was free to pass an order because only the question of interim custody was involved in Cr. Rev. Petition No. 176 of 1969..... was puerile". (3)(b) R-3 passed the order on the Final Report, directing the release of the logs, without caring to issue notice to the petitioner (P). (4) In the letter Ex. P-10, dated 26-9-1969, the Magistrate wrote to the Range officer that the logs should be released to R-1, urgently. "This is a very strange procedure, unheard of, and reveals an anxiety on the part of the Munsiff-Magistrate to help R-1 and R-2. The urgency can only be to circumvent any possible orders of stay that may be passed by (the High) Court".

We have heard R-1 and the Counsel for the other appellants. R-1 has argued his case in person because, according to him he has no funds to engage a Counsel. His submissions are straight and simple. He has reiterated what he had stated in his further affidavit filed in reply to the memorandum of charge in the high Court.

In sum, his defence is that in all the proceedings relating to the disposal of the disputed timebr including the making of the order dated September 26, 1969, the issuing of the letter, Ex.-10, of the same date, and in failing to issue notice to 'P', he acted in the bona fide discharge of his duties; that even if what he did or omitted, was wrong, it was no more than an honest error of judgment on his part. In particular, it is submitted that Ground No. 1(1) is not based on any cogent or legal evidence but on mere rumours and hearsay and it is too vague and general; that even so, it was not incorporated in the charges against him. It is further maintained that the inferences of ulterior motives on the part of the appellant vide Grounds (2) and (4) drawn by the High Court were wholly unjustified. It is contended that the approach of the High Court, is not in consonance with the law

laid down by this Court in Debabrata Bandopadhyay and ors. v. State of West Bengal and anr.(1) Before dealing with the contentions canvassed by the appellant, it will be useful to recall the law on the point.

Clause (c) of s. 2 of the Contempt of Court Act, 1971 merely codifies the definition of "criminal contempt" which had previously been crystalised by judicial decisions. It defines 'criminal contempt' to mean publication of any matter, or the doing of any other act which-

> "(1) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings;
>
> (iii)interferes or tends to interfere, or obstructs or tends to obstruct, the administration of justice in any other manner."

The broad test to be applied in such cases is, whether the act complained of was calculated to obstruct or had an intrinsic tendency to interfere with the course of justice and the due administration of law. The standard of proof required to establish a charge of 'criminal contempt' is the same as in any other criminal proceeding. It is all the more necessary to insist upon strict proof of such charge when the act or omission complained of is committed by the respondent under colour of his office as a judicial officer. Wrong order or even an act of usurpation of jurisdiction committed by a judicial officer, owing to an error of judgment or to a misapprehension of the correct legal position, does not fall within the mischief of "criminal contempt". Human judgment is fallible and a judicial officer is no exception. Consequently, so long as a judicial officer in the discharge of his official duties, acts in good faith and without any motive to defeat, obstruct or interfere with the due course of justice, the courts will not, as a rule, punish him for a "criminal contempt". Even if it could be urged that mens rea, as such, is not an indispensable ingredient of the offence of contempt, the courts are loath to punish a contemner, if the act or omission complained of, was not wilful.

In Debabrata Bandopadhyaya's case (supra), Hidayatullah C.J. speaking for the Court elucidated the position, thus:

> "A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behaves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate (1) (A.I.R. 1969 S.C. 189.) practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemner must be punished. It must be realised that our system of courts often results in delay of one kind or another. The remedy for it is reform and punishment departmentally. Punishment under the law of contempt is called for when the lapse is deliberate and is in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt

> do duty for other measures and is not to be encouraged."

The judgment of the High Court is to be tested in the light of the above enunciation.

The main ground, as already noticed, which greatly influenced the decision of the High Court, was that this case between the parties had gained a certain amount of notoriety and allegations were being openly made that the then Minister for Forests was out to favour R-1 and R-2 against 'P'. This was a very vague, indefinite and nebulous circumstance which had no better status than any other general rumour, gossip or talk in the town. Courts have to guard against cognizance of such rumours and general allegations as they prejudice an objective treatment and a fair determination of the problems before them. In the instant case, the prejudice generated by this creeping circumstance has unmistakably vitiated the approach of the High Court. It has hindered a correct appreciation of the submissions made by R-3 in reply to the charges. In his counter-affidavit R-3 stated:

> "In the final report filed by the 4th respondent which is marked in these proceedings as P-6, there is reference to an order passed by this Honourable Court allowing the 1st respondent to remove the cut timber. The order aforesaid is the order dated 2-5-1969 in C.M.P. 5869/1969 in o.P. 2405/1969, wherein it is said that it is necessary that the timber should be removed from the place as early as possible certified copy of this order was also shown to me and that was the reason why I wrote Ext. P-10 letter to re lease the cut logs without delay. The reason that prompted me to pass the final orders are therefore (1) there was no stay of further proceedings pending Crl.R.P. 176/1969 (2) the Crl.R.P. itself related only to Ex.R. Order for custody pending further investigation, and can have no reference to the ultimate result of investigation (3) it was admitted before me that the 1st respondent had purchased the alleged rights of the petitioner and part of the consideration was already paid, even though he had the case that the assignment is not valid, and (4) this Honourable Court had in C.M.P. 5869/1969 aforesaid directed the speedy removal of the timber from the place by the 1st respondent."

In our opinion, the above reply given by the Magistrate was at least, sufficient to dispel the suspicion that in making the order dated. September 26, 1969, in regard to the delivery of the timber to R-1 he was actuated by a motive to impede or obstruct or defeat the course of justice. The notoriety of the case looming large in their minds, the learned Judges of the High Court without due consideration rather hastily rejected the explanation of the Magistrate that he had directed (vide his letter Ex.P-10), urgent delivery of the timber to R-1 because on seeing the copy of the High Court's order, dated May 2, 1969, which was shown to him, he was of the opinion that t such a course was indicated therein. The point of substance was, whether such an order was made by the High Court and had been shown to the Magistrate before he made the order for urgent delivery of the timber. It was immaterial if certified copy of that order was shown to the Magistrate by R-1 or her Counsel or her agent.

Ex.R-1 is a certified copy of that order dated May 2, 1969 which was passed by the High Court in C.M.P. 5869/1969 in O.P. 2405/1969, M. K. Prakash v. R-1 to R-4, C.M.P. 5869/69 was a petition

made by `P' before the High Court praying that the operation of the order of the then Respondent 1 be stayed and the other respondents, including the Magistrate, be directed not to cause the removal of the felled trees pending disposal of the original petition.

After hearing arguments of the Counsel for the parties, the High Court made an order, the material part of which reads as under:

> "As the rainy season is fast approaching it is necessary that the timber should be removed from the place as early as possible. Otherwise, the same would be lost to all concerned. It is seen from the counter affidavit of the 4th respondent that she had already given an undertaking to the Government to pay the compounding fee, if any that may be fixed by the Forest Authorities. In the circumstances it appears to be only just to vacate the order of interim injunction passed on this petition. Accordingly the order of interim injunction passed on this petition is vacated and this petition is dismissed but in the circumstances without costs.

On reading a copy of this order, and hearing the persuasive arguments of the party or her Counsel, the Magistrate might have honestly, albeit wrongly, formed the opinion that there was no need to give notice to the other party (`P') and that it was necessary to direct the Forest officer to deliver the timber in question urgently to R-1. We are therefore unable to agree with the High Court that by his letter Ex.P-10, the Magistrate directed urgent delivery of the logs to R-1 because "there was an anxiety on his part to help R-1 and R-2 and to circumvent any possible orders of stay that may be passed by the High Court". If the Magistrate had read the High Court's order, dated May 2, 1969, before making this order of urgent delivery and this fact has not been disputed then his explanation can not be dubbed as wholly puerile".

Rather, the order dated May 2, 1969, whereby P's request for ad-interim stay or injunction with regard to these logs was declined by the High Court, could have induced the Magistrate to go ahead with the making of the ex-parte final order in regard to the delivery of the logs to R-1.

3-L522SCI/76 It is true that the Magistrate was aware that P's criminal revision petition against his interim order, dated April 28, 1969, was then pending in the High Court. In such a situation, the prudent course for him was to postpone the making of any final order in regard to' the delivery of this timber till the final disposal of the revision petition by the High Court. It would also have been proper for him to issue notice to 'P' and give an opportunity of being heard before making any order. That would have been the ideal. But the point for consideration is whether the Magistrate deliberately did not follow this prudent course or whether he misdirected himself owing to an error of judgment. The stark circumstances viz. that the High Court had declined to issue any interim injunction or stay order in favour of `P' in the criminal revision pending before it; that there was an observation in the High Court's order, dated May 2, 1969, stressing the need for speedy removal of the cut timber and the possibility of its being damaged by the in-coming rainy season; that he was labouring under the impression, though wrongly, that the order, dated April 28, 1969, was merely an interim order which had exhausted itself on the completion of the police investigation and the presentation of the Final Report by the police in which there was a positive finding that the timber

belonged to R-1 and R-2 and they were entitled to its restoration-taken in their totality, go to show that in making the wrong order regarding delivery of the timber, the Magistrate was not actuated by any improper motive or deliberate design to thwart, impede, obstruct or interfere with the course of justice or to circumvent or defeat the proceedings in revision pending before the High Court.

In the absence of any mens rea, the Magistrate had at the most committed only a technical contempt of the High Court, in such a case, as was pointed out by this Court in Debabrata Bandhopadhyay's case (supra), penal action was not called for.

We therefore allow R-3's appeal and set aside his conviction and sentence.

No conviction for contempt of court has been recorded against the appellants in the companion appeals by the High Court. All that we would observe in their (R-1 and R-2) case is that the High Court has made sweeping observations with regard to the civil rights, which might prejudice them in establishing their claims by a regular suit. They shall therefore not be taken into account by any court before which the dispute with regard to this timber may come up for adjudication in due course. Similarly any adverse remarks made against the Police officer (R-4) will not by themselves be taken conclusive as to his conduct in handling this case. Subject to these observations we dismiss Criminal Appeals Nos. 195 and 196 of 1971.

P.H.P Criminal appeal 118 of 1971 allowed.

Criminal appeals 195 & 196 dismissed.