

relate to cases which came up for decision on the original side of the High Court. The relevant provisions of the Letters Patent referred to in *Karuppayya v. Ponnusami* (1) clearly indicate that such powers can be invoked only on the original side (vide Cl. 21 of the Letters Patent).

I therefore find that this petition is maintainable. The interim order staying further proceedings is hence made absolute.

Before I conclude I will have to express my thanks to Mr. Kasturi Seshagiri Rao who at my request cited and examined all available rulings on the point not only under S. 151 of the Code of Civil Procedure, but also under the Letters Patent and the Government of India Act with reference to the powers of this Court to pass order staying further proceedings in suits and proceedings in execution.

N. R. R.

PRIVY COUNCIL

DEBI PRASAD SHARMA and others
v. EMPEROR.

Lord Atkin, Lord Thankerton, Lord Porter, Sir George Rankin and Sir Madhavan Nair.

25th June, 1943.] [From Allahabad.

Contempt of Court—Criticism of Judge in respect of a non-judicial act—Proceedings for contempt, whether competent.

Where a daily newspaper published a news item from one of its correspondents and an editorial on that item to the effect that the Chief Justice of the Allahabad High Court had committed an ill-advised act in writing to the Subordinate Judges asking or enjoining them to collect for the war fund, (an act which in fact had not been done) and in a proceeding for contempt against the editor, printer and publisher and the correspondent of the paper they were found guilty by the High Court and convicted for contempt of Court, *Held on appeal to the Privy Council*, that there being no criticism of any judicial act of the Chief Justice or any imputation on him for anything done or omitted to be done by him in the administration of justice, nor even a criticism of him in his administrative capacity since the administrative control of the subordinate Courts of the province was exercised not by the Chief Justice but by the Court over which he presided, the proceedings in contempt were misconceived and the persons proceeded against were not guilty of the offence. If the facts were as alleged, they admitted of criticism. No doubt it would be galling for any judicial personage to be criticised publicly as having done something outside his judicial proceedings which was ill-

advised or indiscreet, but judicial personages could afford not to be too sensitive and a simple denial in public of the alleged act would at once have allayed the trouble. If a judge was defamed in such a way as not to affect the administration of justice he had the ordinary remedies for defamation, if he should feel impelled to use them. The cases of contempt which consists of scandalising the Court require to be treated with much discretion and the proceeding in contempt is a weapon to be used sparingly and always with reference to the administration of justice.

Messrs. D. N. Pritt, and R. K. Handoo for Applts.

Messrs. Sir Walter Monckton, W. W. K. Page and B. Mackenna for Respt.

JUDGMENT.

Lord Atkin.—This is an appeal from a judgment of the High Court of Judicature at Allahabad by which the appellants were severally found guilty of contempt of Court and sentenced to fine or imprisonment and in the case of the third appellant to imprisonment only. The first two appellants are respectively the printer and publisher and the editor of the *Hindustan Times* a daily newspaper published in Delhi and having a large circulation in the United Provinces. The third appellant is the local correspondent of the newspaper at Meerut and at the material date had been so employed for the past 7 years. In July, 1941, the Sessions Judge at Meerut Mr. Hari Shankar Vidyarthi had been engaged in the trial of 20 persons charged with murder, rioting, etc., which ended on 31st July, 1941, when the Judge convicted four of the accused and sentenced them to transportation for life. The remaining sixteen were acquitted. On 1st August the third appellant Mr. Singhal sent the following news item to the newspaper:

(F.O.C.)

Meerut, 1st August.

With the judicial officers also now co-operating actively in the war efforts, the "efforts" are bound to receive a heavy push forward. The judicial officers all over the Province have been, I reliably learn, asked by the New Chief Justice of the Allahabad High Court, who, it is understood, has been requested by His Excellency the Governor, for co-operation in war efforts, to raise subscriptions for the war funds.

The judicial officers raising money make it quite clear to the persons, whom they ask to contribute, that the donations were voluntary and they were not exercising any compulsion in asking for funds. They could donate as much or as little as they pleased.

On 3rd August the newspaper published the news items with headings as follows :—

JUDICIAL OFFICERS FOR WAR WORK
RAISING SUBSCRIPTIONS
NEW CHIEF JUSTICE'S CIRCULAR
(From Our Correspondent).

Meerut, 1st August.

With the judicial officers also now co-operating actively in the war efforts, the "efforts" are bound to receive a heavy push forward. The judicial officers all over the Province have been, I reliably learn, asked by the New Chief Justice of the Allahabad High Court, who, it is understood, has been requested by His Excellency the Governor for co-operation in war efforts, to raise subscriptions for the war funds.

The judicial officers raising money make it quite clear to the persons whom they ask to contribute that the donations were voluntary and they were not exercising any compulsion in asking for funds. They could donate as much or as little as they pleased.

There followed a short report of the judgment in the murder case headed "Murder Case Judgment." In the issue of the *Hindustan Times* of 6th August there appeared the following paragraph which appears to be an editorial comment :

If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmad, in his administrative capacity, has issued a circular to the judicial officers under his jurisdiction, enjoining on them to raise contributions to the war funds, then it must be said that he had done a thing which would lower the prestige of the Courts in the eyes of the people. The presiding officer of a Court, while asking for funds, may say that the contribution is voluntary, but he cannot remove the idea from the mind of a person, particularly a litigant, that the request is being made by one whom it may not be safe to displease. To be absolutely voluntary, war contributions ought to be raised only by non-official committees or individuals. It was bad enough that the services of the members of the executive were utilized for the purpose, but to make judicial officers do this work is something far worse.

On 8th August the Chief Justice Sir Iqbal Ahmad and Collister, J. ordered that notice should be given to the first two appellants to appear in Court on 9th September 1941, to show cause why they should not be punished for contempt of Court for publishing the above comment in the *Hindustan Times*. Notice of the proceedings was also ordered to be given to the Government Advocate. The notice was duly given entitled "In the matter of Miscellaneous Case No. 8/41 (Contempt of Court) in re King Emperor applicant,

Devi Prasad Sharma and another opposite parties." When the parties appeared Mr. Gandhi filed an affidavit in which he said that since the notice was issued he had made personal inquiries at Meerut and had ascertained certain facts which he set out, but desired to assure the Court that it was no part of his intention to cast any reflection upon the conduct of the Chief Justice or to bring the Court into disrepute or contempt, and that he would be sorry indeed if his conduct in publishing the comments, which he did publish as editor relying on the accuracy of his informant, were interpreted as implying any malicious intention on his part or intended to bring the Court or any member of it into disrepute. Their Lordships for reasons which will appear do not find it necessary to enumerate the facts alleged in Mr. Gandhi's affidavit. In substance they were that Mr. Singhal had been present in the Court of Mr. Vidyarthi on 31st July when he gave judgment in the murder case, and that after sentencing the four accused to transportation for life the Judge made the following statement in open Court : "Since the Chief Justice, who has been requested by His Excellency the Governor to help in the war efforts, has asked us to raise subscriptions for the war fund, it is incumbent on us to raise subscriptions and you should help me in this work." Thereupon lawyers and litigants present in Court held consultations; Rs. 200 were collected in Court and placed on the table of the Judge : and according to Mr. Singhal one of the counsel who appeared for some of the accused told the Court that he had collected Rs. 150 from his clients as requested by the Judge and that he would present that money the next morning. The Judge then declared the rest of the accused discharged. This statement was said to have been corroborated by various people in Meerut, some present at the trial and some not.

At the hearing on 9th September no further evidence was tendered. Sir Tej Bahadur Sapru counsel for the printer and the editor repeated that it was no part of the intention of either to cast any reflection upon the Court. The Chief Justice stated that the information contained in the comment was

based upon untrue facts, and that no circular was issued by him, and he would like further discussion to proceed on that basis. This statement was accepted by counsel, and the case has proceeded on the footing that no circular and no request was issued by the Chief Justice to Judicial Officers of the subordinate Courts to the effect stated.

At the end of the hearing on 9th September the Chief Justice addressing counsel said, "We are going to reserve judgment. Having given due weight to what you have said, we have arrived at the conclusion that your clients are guilty of contempt of Court, and in the absence of an apology for which we give time until the day after to-morrow, it shall be our duty to pass sentence according to law." There then followed a series of transactions on which the appellants in support of their case proposed strongly to rely, but which their Lordships find it unnecessary to discuss in view of their opinion upon the question whether the appellants were guilty of any contempt of Court upon which they ought to have been convicted. The Chief Justice before the day reserved for judgment arrived had with Collister, J. interviewed Mr. Vidyarthi and gave notice to the appellants on 11th September that as he had asserted that most of the allegations in Mr. Gandhi's affidavit were untrue, the Court proposed to examine him and another witness in Court on 15th September and that the appellants would be given the opportunity of calling further evidence. The two witnesses were examined, the case was further adjourned to 25th September the Chief Justice stating that in a way Mr. Vidyarthi was also on trial, and would be allowed to produce witnesses. At the resumed hearing the Chief Justice said that if Mr. Vidyarthi did not utter the words alleged then Mr. Singhal would primarily be guilty of contempt of Court having sent the information and that it was desirable that the proceedings should continue together. Accordingly it was agreed by Mr. Singhal and all the parties that Mr. Singhal should accept a notice then issued that he should "show cause why he should not be dealt with for contempt of this Court with respect to the news published in the *Hindustan Times* of

Sunday, 3rd August on information supplied by him." The case proceeded on this footing on 26th and 27th September and 27th and 28th October when Mr. Vidyarthi appeared by counsel who cross-examined the witnesses called by the appellants. It should be stated that no objection was taken by the appellants' counsel to any of the procedure adopted by the Court. On 14th November the Chief Justice delivered the considered judgment of the Court. He reviewed the evidence and came to the conclusion that Mr. Vidyarthi had not made the statement imputed to him: and that Mr. Singhal had founded his report upon "nothing more substantial than a suggestion or an easy inference from the facts." The Chief Justice then stated that in the opinion of the Court the charge of contempt was established against all three respondents. He proceeded to state what impression in the opinion of the Court an ordinary intelligent reader would receive from reading the editorial comment of the 6th August. "The comment contains a clear insinuation that the Chief Justice had issued a circular to all judicial officers to raise contributions from litigants and others to the war fund, that pressure was thereby being exerted by an authority which 'it would not be safe to displease' and that the prestige of the Courts would thus be impaired. The implication is that the Chief Justice had done something which was unworthy of a person holding that high office and that as the head and representative of this High Court he had committed the gross impropriety of forcing judicial officers subordinate to this Court to ask for war contributions from litigants, who, notwithstanding that the giving of donations was ostensibly voluntary, were not in a position to refuse." As to Mr. Singhal the Court found that he sent information which was probably founded either on his own inference from what took place or on a suggestion from other persons, and he had endeavoured to defend his action by giving evidence which they were unable to accept as true. As to the printer and Mr. Gandhi they had no reason to suspect the accuracy of their correspondents' reports, and were acquitted of malice.

Nevertheless they erred grievously in publishing the news item and the editorial comment without attempting to verify its truth. Mr. Singhal was committed to prison for two months. The printer was fined Rs. 500 or in default a month's imprisonment, Mr. Gandhi was fined Rs. 1,000 or in default a month's imprisonment. The Court eventually refused a stay pending appeal, and Mr. Singhal and Mr. Gandhi have both served their terms of imprisonment. At the hearing of the appeal their Lordships intimated that they desired to deal first with the primary question whether in the circumstances the words complained of were capable of being a contempt of Court, and counsel for both sides argued this point. On the conclusion of this argument their Lordships intimated that their decision was in favour of the appellants. The other points therefore raised by the appellants were not further discussed by counsel for the appellants or at all by counsel for the respondent, and their Lordships must not be taken as expressing any opinion one way or the other upon them. In their Lordships' opinion the conviction for contempt of Court cannot stand. The cases of contempt which consists of "scandalising the Court itself" are fortunately rare and require to be treated with much discretion. In 1899 this Board pronounced proceedings for this species of contempt to be obsolete in this country, though surviving in other parts of the Empire: but they added it is a weapon to be used sparingly and always with reference to the administration of justice, *McLeod v. St. Aubyn* (1). In the reference from the Bahama Islands (2) the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law. In *Reg. v. Gray* (3) it was shown that the offence of scandalising the Court itself was not obsolete in this country. A very scandalous attack had been made upon a Judge for his judicial utterances while sitting in a

criminal case on circuit; and it was with the foregoing opinions on record that Lord Russell of Killowen, L.C.J. adopting the expression of Wilmut, C. J. in his opinion in *Rex v. Almon* (4), which is the source of much of the present law on the subject, spoke of the article complained of as "calculated to lower the authority of the Judge." When the comment in question in the present case is examined it is found that there is no criticism of any judicial act of the Chief Justice, or any imputation on him for anything done or omitted to be done by him in the administration of justice. It can hardly be said that there is any criticism of him in his administrative capacity, for as far as their Lordships have been informed the administrative control of the subordinate Courts of the Province, whatever it is, is exercised not by the Chief Justice, but by the Court over which he presides. The appellants are not charged with saying anything in contempt of the subordinate Courts or the administration of justice by them. In truth the Chief Justice is alleged untruly as is now admitted to have committed an ill-advised act in writing to his Subordinate Judges asking (as the news item says), enjoining (as the comment says) them to collect for the War Fund. If the facts were as alleged they admitted of criticism. No doubt it is galling for any judicial personage to be criticised publicly as having done something outside his judicial proceedings which was ill-advised or indiscreet. But judicial personages can afford not to be too sensitive. A simple denial in public of the alleged request would at once have allayed the trouble. If a Judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation if he should feel impelled to use them. Their Lordships cannot accept the view taken by the Court as stated above of the meaning of the comment: the words do not support the innuendo. In the opinion of their Lordships the proceedings in contempt were misconceived, and the appellants were not guilty of the contempt alleged. At the end of the hearing their Lordships intimated they

(1) (1899) A.C. 549.

(2) (1890) 2 Q.B. 36.

(3) (1893) A.C. 138.

(4) Wilms. 243, 97 Eng. Rep. 94 (1765).

706

THAKUR SHAH v. THE KING EMPEROR

56 L. W.

would advise His Majesty that the appeal should be allowed and the fine and the costs ordered to be refunded, and that they would give their reasons for their report later, as they have now done.

Messrs. Douglas Grant and Dold : Solicitors for Appellants.

Solicitor, India Office : Solicitor for Respondent.

N. R. R.

PRIY COUNCIL.

THAKUR SHAH v. THE KING EMPEROR

Lord Macmillan, Lord Porter, Lord
Clouston, Sir George Rankin and
Sir Madhavan Nair.

24th June, 1943.] [From Patna.

Criminal Procedure Code, S. 423 and Penal Code, Ss. 108 and 466—Charge of abetment of forgery committed by persons named—Appellate Court amending the charge into one of abetment of forgery committed by persons unknown—Legality.

One T was charged with abetting J and M in forging certain documents and found guilty by the Sessions Judge. On appeal to the High Court J and M were acquitted of the crime of forgery but the High Court on the evidence convicted T and J of abetment of forgery and acquitted M. There was ample evidence to establish the commission of the crime of forgery by some person or persons and its abetment by T and J. Held: by the Privy Council that the High Court had power to amend the charge so as to turn it into a charge of abetment of a person or persons unknown, or, having justifiably found J guilty of abetment of forgery, to accept a charge against T of abetting that abetment under Explanation 4 of S. 108, Indian Penal Code. The amendment sanctioned by the High Court fell within the wide powers given by S. 423 (1) (d) of the Criminal Procedure Code.

Messrs. S. P. Khambatta and G. D. Roberts for Applt.

Mr. W. W. K. Page for Respt.

JUDGMENT.

Lord Porter.—This is an appeal against a conviction for abetment of forgery under S. 466 combined with S. 109 of the Indian Penal Code.

The appellant was charged with abetting one Jagannath Singh and one Matuk Chandra Das in forging a certain decree sheet and compromise petition, which are Court records and was found guilty by the Sessions Judge of the Santal Parganas. This conviction was upheld by the High Court at Patna.

The history of the case has been fully and accurately stated in the judgment of Chatterji, J. in the High Court and need not be repeated at length here. It is only necessary to set out sufficient facts to make this judgment comprehensible.

In 1934, the appellant, one Buchai, and his son Khudi were parties to a suit for the partition of their joint family property, a suit which was eventually compromised. In order to effect their purpose the parties on 13th December 1935, filed a compromise petition in accordance with which a decree of the Court was drawn up and signed on the 23rd of the same month. It is common ground that a certain plot of land situate in Jasidih Bazar and numbered 67 was not part of the joint family property but was purchased by Khudi during the pendency of the suit, and that a registered sale deed assigning the property to him was drawn up dated 22nd January 1935. This plot therefore was not included in the compromise petition or the decree: it was and remained in the possession of Khudi in the sense that he received rent from its tenants.

By an interpolation in each document this piece of property has now been added to the share assigned to Thakur in both the petition and decree. The prosecution's case was and is that the appellant procured this insertion in these two places and abetted the forgery. By the charge they asserted and in evidence they sought to prove that the forgery was carried out as to the decree sheet by Jagannath abetted by Matuk and as to the petition by Matuk abetted by Jagannath. The appellant was accused of abetting both these persons in the offence of forging the two documents. Direct evidence of the commission of the substantive offence by Jagannath and Matuk was given by one Chandrama Singh whose story was to some extent corroborated and was accepted by the Sessions Judge in spite of the view that the witness must be regarded as an accomplice. The High Court also thought him to be in the position of an accomplice but contrary to the view of the trial Judge thought him to be insufficiently corroborated to justify a conviction for forgery against either.