CRIMINAL RULE.

Before Rankin C. J. and Costello J.

1930

Nov. 14, 21.

ANANTALAL SINGHA

v.

ALFRED HENRY WATSON.*

Contempt of Court—Comments in a newspaper pending trial—Absence of real prejudice—Application to commit.

Comment in a newspaper upon a pending case, which has any tendency to interfere with the due course of justice, or to prejudice mankind against persons who are on their trial, is technically a contempt of court.

Hunt v. *Clarke* (1) followed.

It is not necessary that the court should come to the conclusion that a judge or a jury will be prejudiced; the essence of the offence is conduct calculated to produce an atmosphere of prejudice in the midst of which the proceedings must go on.

Rex v. *Tibbits* (2) relied on.

The King v. *Dolan* (3) discussed.

Aspersions cast upon an advocate, with reference to the conduct of his case, which tends to embarrass him in the further conduct of his client's case is contempt of court.

The court's jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice.

Legal Remembrancer v. *Matilal Ghose* (4) relied on.

APPLICATION to commit by 14 accused persons.

The facts and relevant portions of the articles complained of appear in the judgment.

Narendrakumar Basu (with him *Sukumar De*) for the petitioners. The assumption underlying the article of the 28th August is clearly that counsel is involved in the crime which is presupposed to exist. Apart from the attack on counsel, the article is clearly a gross contempt of court.

It is accepted law that aspersions in a newspaper cast on counsel for undertaking a defence in a

*Criminal Miscellaneous Case No. 168 of 1930.

(1) (1889) 58 L. J. Q. B. 490.
(2) [1902] 1 K. B. 77.
(3) [1907] 2 Ir. 260.
(4) (1913) I. L. R. 41 Calc. 173.

prosecution constitute contempt of court. *Fromberg* v. *Halle* (1). The attack need not take place in court. *In re Johnson* (2). The articles complained of have a tendency to deter Mr. Bose from defending these men and the tendency can be noticed in two ways. Firstly, it assumes that the Chittagong raiders were Congressmen of whom Mr. Bose is the leader and secondly it is suggested that the duty of the Congress, of which Mr. Bose was "the self-appointed leader," was to carry on revolutionary activities.

[RANKIN C. J. But if the *Statesman* says that in criticism of the Congress, as a party, would it amount to contempt of court?]

They do not stop there, they suggest that Mr. Bose is a party to these revolutionary activities or at least cognisant of them.

[COSTELLO J. But can it be said that that interferes with the administration of justice? It may be abusive of Mr. Bose, it may be a libel upon him.]

It does interfere with the administration of justice, as it tends to deter Mr. Bose from continuing as counsel. It has been held that mere vulgar abuse of counsel, which may tend to embarrass him in the conduct of the case, interferes with the administration of justice. *Onslow's and Whalley's* case (3).

[RANKIN C. J. The writer is not trying to deter counsel from defending the accused; that is not his object. Can you go so far as to say that if anybody says that the Congress party is conniving at violence, he is saying something libellous upon the members of the Congress party?]

I have not considered the matter from that point of view. But it does not matter whether the writer intended to prejudice the public against the accused or their counsel, it is enough if there is a tendency to do so. It is really the tendency and not the object of the article that is essential in making it a contempt

(1) (1904) T. H. 54; English and Empire Digest, Vol. XVI, p. 22 (m).

(2) (1887) 20 Q. B D. 68, 73, 74, 75.

(3) (1873) L. R. 9 Q. B. 219, 225.

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of court. It does not matter even if it is perfectly clear that "no one would imagine that the mind of "the judge would or could be induced thereby to "swerve from the right course." *Rex* v. *Tibbits* (1); *Rex* v. *Davies* (2).

Articles such as these are punished because of their tendency to deprive the Court of the power of doing justice impartially. *Rex* v. *Parke* (3).

N. N. Sircar, Advocate-General (with him *Sureshchandra Talukdar*). Upon a fair reading, the articles complained of do not amount to contempt of court. There is really no attack on the accused in the Chittagong case, but on the arguments of the *Advance* regarding the creed of the Congress. On a fair construction it is clear that there is no assumption of guilt.

Secondly, if it was not the intention of the writer to interfere with justice or its administration, then unless there is actually some interference or prejudice there is no contempt. In this case, there is no evidence that the article was calculated to deter Mr. Bose from undertaking the defence of the accused. There cannot be any abstract inference of intention without proof. In fact, in the second article it is definitely stated that there was no intention to suggest that the accused were guilty.

[RANKIN C. J. If it is not assumed that these people are guilty then the writer's argument is bad. In that way, may it not be said, with some degree of truth, whether the writer appreciated it or not, that from the trend of his logic these people cannot very well be anything else than guilty? That, in a sense, tends to prejudice the atmosphere. There is no reason why it should not be Congress business to defend Congress people wrongly accused of violence.]

Assuming that the articles were technically guilty of contempt, the Court should not interfere unless there is a very strong and clear case for committal.

(1) [1902] 1 K. B. 77, 88. (2) [1906] 1 K. B. 32, 40.
(3) [1903] 2 K. B. 432, 436.

The King v. *Dolan* (1), *In re New Gold Coast Exploration Company* (2), *Legal Remembrancer* v. *Matilal Ghose* (3).

The question is, "Is this a case in which the "articles complained of have really and substantially "interfered with the administration of justice?" After an apology, there is no case for committal or invoking summary jurisdiction of the Court.

Basu, in reply. There can be no question that in the articles it is implied that the counsel concerned was involved in the crime. If that is so, it amounts to contempt.

But we do not want to be vindictive, an apology would satisfy us. We want that there should be no repitition of the attack on counsel. We come under Act XII of 1926 and the tendency to interfere with the administration of justice should be judged by the standard of lower courts.

Cur. adv. vult.

RANKIN C. J. This is an application by fourteen persons, who are accused of various offences and are being tried at Chittagong by a Special Tribunal in respect thereof. Their application is for a writ of attachment and committal for contempt of court against three respondents—Alfred Henry Watson, Anathnath Patra and The Statesman, Ltd. The first respondent appears to be the Editor of the *Statesman* newspaper and the second respondent to be the printer and publisher thereof. The application is made in respect of certain comments which were published in the *Statesman* newspaper on the 28th and 31st August of this year in the following circumstances. It appears that, in the course of an editorial published in the issue of the 28th August, 1930, this newspaper was engaged in certain controversy with another newspaper called *Advance* upon the question whether or not the throwing of bombs and other acts of violence, charged against the

(1) [1907] 2 Ir. 260. (2) [1901] 1 Ch. 860, 863.
(3) (1913) I. L. R. 41 Calc. 173, 194, 221-224.

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accused petitioners, in the case at Chittagong were connected with the Congress party and were part of the Congress activities. The newspaper *Advance* had apparently criticised the *Statesman* for suggesting that the Congress party could be identified in any way with these forms of activities. In the editorial complained of, the Editor of the *Statesman* is arguing that the Congress party cannot be acquitted of complicity in or connivance at acts of violence and, after making certain observations in answer to the criticism of the *Advance* newspaper, he goes on to refer to certain matters with which the present application is concerned.

It would appear that a learned counsel of this Court, Mr. Sarat Chandra Bose, had some little time ago let it be known that he was withdrawing from practice at the bar for a time in order that he might devote the whole of his energies to work for and in connection with the Congress party—a political party of which, I understand, he is a member. The editorial having referred to this circumstance, goes on to say: "Does the defence of those charged with terrorist "outrages at Chittagong or elsewhere fall within that "category?" namely, the category of Congress activities. It further goes on to say "When the self-"appointed leader in Bengal of Congress interprets "his vow of devoting himself wholly to Congress "activities as including the defence of those charged "with outrages, the public is wholly justified in taking "him at his word." It appears that, in the course of this article, the petitioners were referred to in passing as "the Chittagong raiders." But, in my opinion, although the word "alleged" is not inserted before this expression, too much should not be made of that circumstance having regard to the context and the other passages in the article.

On the 31st August, by which time it would seem that Mr. Sarat Chandra Bose had objected before the tribunal to the passage which I have read from the issue of the 28th, a further reference was made in the columns of the newspaper to this matter. This

reference notices that the word "raiders" had been objected to and the paper goes on to say: "We need "not say that nothing was further from our mind "than to affect in any way the mind of the tribunal "trying these men nor do we believe that it could be "marred by the use of the word 'raiders' without the "adjective 'alleged'. Where juries are not concerned, "the courts in England have been quick in refusing "to admit that the mind of the bench can be influenced "by an accidental slip in a newspaper. We regret "the slip nevertheless."

Again, on the 2nd of September, the newspaper says: "We have expressed regret for a phrase that, "under an extreme interpretation, might be held to "do an injustice to men under trial. Our original "point remains and is not dealt with by Mr. Sarat "Bose. He threw up his practice at the bar to devote "himself wholly to Congress activities and he is now "defending prisoners charged with complicity in a "terrorist outrage. Is that Congress work or is it "not? The question is a simple one and upon the "answer a great deal must depend."

Now, in these circumstances, we have to consider the fair meaning of the words published and we have, in the first instance, to make up our minds whether the words published have any tendency to interfere with the due course of justice. If we come to the conclusion that there is some tendency to interefere with the due course of justice, we have then to go further and to enquire whether that tendency is a very slight one or whether it is of such a character as justifies and requires interference of this Court by summary jurisdiction in contempt.

Now, it appears to me that the editor of this newspaper was singularly ill-advised in having recourse to comment upon a pending case for the purpose of the general argument which he had in hand. It is no part of my business to say anything about the merits or demerits of the general argument of the editor; but it is very much to be regretted that,

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of all the arguments that were capable of being employed in this not very important controversy between these newspapers, nothing would serve him except a reference to the pending proceedings in the court at Chittagong. I am bound to say that, to the question whether the articles have any tendency to interfere with the due course of justice, I think the answer must be that there is distinctly discernible in the articles a tendency to interfere with the due course of justice. Mr. N. K. Basu who has argued this matter for the petitioners has very reasonably pointed out two ways in which such a tendency can be noticed. It is a very old law that one form of contempt which the court always watches very narrowly is the contempt that takes the form of prejudicing mankind against persons who are on their trial raising an atmosphere of prejudice against them by comment which is addressed to the public at large. I do not think it is in the least degree true that the editor was intending to prejudice the trial of these people. Further, I think it is true that he was genuinely concerned with the argument against the *Advance* newspaper—an argument which is a political argument and which had no particular and direct bearing upon the individual petitioners, but has reference to the character and principles of the party known as the Congress party. At the same time, I think it is true also that he did not appreciate that his comment involved a suggestion that the accused persons at Chittagong were guilty. In this connection, the absence of the word "alleged" before the word "raiders" is, I think, of little importance as the article as a whole satisfies me that it was not the writer's intention to say that the accused petitioners were guilty and he was not really intending to import that as a part of what he was saying to his readers. At the same time, the article refers to the accused persons in such a way that it does tend to raise prejudice against them. It is, I think, a part of the editor's confusion of mind that he has not sufficiently noticed that, if it may be

assumed that the present accused are innocent, then it might very easily be part of the Congress activity to defend members of the Congress party against a charge wrongly brought against them of taking part in violence. Indeed, the whole argument as a matter of logic seems to resolve at once to nothing the moment one removes the implied suggestion that these people are not or are not likely to be innocent. While this, however, is, I think, a very patent and obvious criticism of what the editor was writing, I am quite satisfied that his mind was in a state of considerable confusion and his logic full of gaps, and that it was not his intention to say, nor did he appreciate that the interpretation which his words are liable to was to the effect, that the accused persons were guilty. I think he was quite honest and accurate in saying that the prejudice of a fair trial was no part of his purpose; still if the question be not what he intended but what the tendency of the words which he wrote was, I have no doubt at all that, in that way, Mr. N. K. Basu's argument is correct and that it is technically, at all events, a contempt of court.

Another ground upon which, I think, Mr. N. K. Basu's argument was right was this: He pointed out that, if aspersions are cast upon a particular advocate's party by reason of the fact that the advocate had undertaken to defend certain clients, these aspersions have certainly an effect in tending to deter the advocate from continuing with his duties for his clients and, in certain circumstances, in embarrassing him in the discharge of those duties. One is not so familiar with cases of contempt of court arising out of comments upon advocates as one is with cases arising out of comments upon judicial officers. But it is pointed out by the highest authority that the court's jurisdiction in contempt is not exercised out of any mere notion of the dignity of judicial office but is exercised for the purpose of preventing interference with the due course of justice; and it is quite possible to interfere with the due course of justice by making comments upon an advocate in

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the way of his profession. It goes without saying that, unlike a judge, an advocate is quite entitled to be engaged in politics as much as he likes, and comment upon an advocate's political opinions and activities would in no way be contempt of court: but comment upon an advocate which has reference to the conduct of his cases may amount to contempt of court on exactly the same principle that, while criticism of a judge and even of a judge's judgment in court is permissible, criticism is not permissible if it is made at a time and in such circumstances or is of such a character that it tends to interfere with the due course of justice. Here, again, I think the tendency is very slight. But, if the question be whether this is a proper comment, the answer must be "no". It is a comment which tends to embarrass the advocate in the further conduct of his client's case. I say again that I think the tendency, while it is clearly to be discerned, is not very strong. It could hardly as a matter of reality or business be supposed that, by reason of such a comment, Mr. Sarat Chandra Bose would be minded to throw up his brief or that he would conduct the defence in any different way after the publication of these articles than he would have done if they had not been published.

We have had cited to us certain cases from the English reports and also the case of *Legal Remembrancer* v. *Matilal Ghose* (1) in which Jenkins C. J. gave judgment. Without attempting to go over the case law in any systematic manner, I may say that the present case appears to me to be a case of exactly the same character as the case of *Hunt* v. *Clarke* (2). In that case, certain persons were sued on the ground of alleged misrepresentation in connection with certain companies and a newspaper published an article in which it announced that this case was to be tried in the Queen's Bench Division by a Special Jury, and ended up by saying "Mourners "over the Moldacot fiasco are likely to hear a little

(1) (1913) I. L. R. 41 Calc. 173. (2) (1889) 58 L. J. Q. B. 490.

"inside history of the business." That was a very general depreciatory comment apparently directed against the defendants in the case. It was not exactly a discussion of the merits of the case; but, in the court of appeal, Cotton L. J., Fry L. J. and Lopes L. J. all came to the conclusion that such a comment as that was contempt of court. In their opinion, any comment which tended to raise an atmosphere of prejudice was in itself a contempt of court; and, although the divisional court had not thought that there had been a contempt at all, the court of appeal merely upon that sentence was of opinion that a contempt of court had been committed. Now, Cotton L. J.'s judgment has been followed in a good many cases and it has been followed in cases which are not of the same character as the case before Cotton L. J.; but what he did say—and I think it is applicable to this case—is as follows: "I cannot quite "express my concurrence with the view taken by the "Divisional Court in saying that by no possibility "could what has been done be considered as a contempt, "because I think the rule is laid down by Lord "Hardwicke, and which has often since been acted "upon, that there may be contempt of court of this "kind in abusing the parties or in prejudicing "mankind against persons before a cause is heard, "and, in my opinion, it does technically become a "contempt if pending a cause, or before a cause even "has begun, any observations are made or published "to the world which tend in any way to prejudice the "parties in the case." He goes on, however, to say, when the court is appealed to for the exercise of its jurisdiction to commit "The question is not whether "technically a contempt has been committed, but "whether it is of such a nature as to justify and "require the court to interfere"; and, in that connection, he says: "I cannot agree with this that "any mention in a newspaper of a cause about to be "heard would of itself be a contempt, but here there "are some statements which I regret;" and, again, "It is not necessary that the court should come to the

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"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 punishment in order to restrain such "conduct." And, in the same way, Lopes L. J. held that what appeared in the paper was a contempt. He said: "I think it was calculated to prejudice the "defendant in his trial then pending and, therefore "calculated to interfere with the due course of justice; "but, at the same time, I am also of opinion that the "offence was of a slight kind and I think the applicant "here and in the court below would have been more "discreet if he had permitted it to pass by without "notice."

In my opinion, much as I regret that these references should have been made, I cannot say that I think it even possible to hold that the prejudice in this case arising out of these articles is of a substantial character. It is theoretical and it is, at the highest, slight, and I do not think it is necessary for the protection of the tribunal which is engaged upon hearing the case at Chittagong that this Court's power to commit should be invoked.

The case of *Hunt* v. *Clarke* (1) has been acted upon in two more recent cases as to which I think it necessary to say a word. In the case of *The King* v. *Dolan* (2), reference was made to a then recent case between the *Evening Standard* newspaper and Mr. John Burns, the President of the Local Government Board. In both cases, the principle which I have referred to as having been laid down in *Hunt* v. *Clarke* (1) was applied and the court refused to commit for contempt or to impose a fine. The Lord Chief Justice of Ireland in referring to the English case stated: "I "am very desirous to say that although I approve of "the principle upon which Mr. Justice Darling acted, "I abstain from all observations as to the application "of that principle in the case of Mr. John Burns." I am bound to say that I agree in doubting whether the English Court in that case did properly apply the

(1) (1889) 58 L. J. Q. B. 490. (2) [1907] 2 Ir. 260.

principle laid down in *Hunt* v. *Clarke* (1) and I would go further than that and make the same comment upon *Dolan's* case (2) as the Lord Chief Justice made upon the case before the English Court. The facts in each of these cases were somewhat extraordinary but it appears to me that the ultimate ruling in both the cases was perhaps somewhat more extraordinary than was called for by the facts. Indeed if any one supposes that in India he will be able to do what Mr. John Burns or what Mr. Long did in the cases to which I have referred without attracting the action of this Court in its jurisdiction to punish for contempt, I rather think that he may find that he is making a mistake. It is old law and was laid down by Lord Alverstone C. J. in the case of *Rex* v. *Tibbits* (3): "It would, indeed, be far-fetched to infer "that the articles would in fact have any effect upon "the mind of either magistrate or judge, but the "essence of the offence is conduct calculated to produce, "so to speak, an atmosphere of prejudice in the midst "of which the proceedings must go on. Publications "of that character have been punished over and over "again as contempts of court, where the legal "proceedings pending did not involve trial by jury, "and where no one would imagine that the mind of "the magistrates or judges charged with the case "would or could be induced thereby to swerve from the "straight course." It is to be observed that this language was used with reference to publication or conduct "calculated" to produce an atmosphere of prejudice. I agree, however, that the court's jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. It is not every theoretical tendency that will attract the action of the court in its very special jurisdiction. The purpose of the court's action is a practical purpose and, it is reasonably clear, on the authorities, that this Court will not exercise its jurisdiction upon

(1) (1889) 58 L. J. Q. B. 490. (2) [1907] 2 Ir. 260.
(3) [1902] 1 K. B. 77, 88.

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a mere question of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment is otherwise such that it can properly be ignored. This is no new law. An emphatic statement of it—I am not sure that the statement in some respects is sufficiently guarded—is to be found in the judgment of Jenkins C. J. in the case of *Legal Remembrancer* v. *Matilal Ghose* (1) to which I have already referred.

I am of opinion, therefore, that this Rule should be discharged and that following what was said in *Hunt* v. *Clarke* (2), there should be no order as to costs.

COSTELLO J. I am of the same opinion. For the reasons given by my Lord the Chief Justice, I agree that this Rule should be discharged.

Rule discharged.

S. M.

(1) (1913) I. L. R. 41 Calc. 173. (2) (1889) 58 L. J. Q. B. 490.