

CRIMINAL REVISION.

Before Pearson and Jack JJ.

SUPERINTENDENT AND REMEMBRANCER OF
LEGAL AFFAIRS, BENGAL

v.

KHAGENDRANATH DAS GUPTA.*

1930

May 26, 27, 29.

Contempt—Proceeding in contempt, how can be dealt with—Right of audience, if exclusive to an advocate instructed by an attorney—Contempt of Courts Act (XII of 1926), s. 2 (1).

An application in contempt made to the High Court, for the contempt of itself and of a subordinate court, need not necessarily be dealt with by the Court on the Crown Side and in such a case it is not necessary that a party, if represented, must appear through an advocate represented by an attorney.

CRIMINAL RULE in contempt obtained by the Superintendent and Remembrancer of Legal Affairs, Bengal, to show cause why the opposite party should not be committed to prison.

The facts appear sufficiently in the judgment of the High Court.

Susilkumar Sen for the Incorporated Law Society.

Narendrakumar Basu for the Bar Association.

PEARSON J. In this matter a Rule was issued by us upon the opposite party to show cause why he should not be committed to prison or otherwise dealt with for the contempt of this Court and of the court of Akshaykumar Basu, Deputy Magistrate of Jalpaiguri, in printing and publishing and allowing to be published certain articles on the 6th March, 1930, entitled "The Sedition Case at Jalpaiguri" and "Bichar" and why he should not pay the costs.

The articles related to the trial of certain accused persons under section 124A of the Indian Penal Code, which started in November, 1929, and went on until February, 1930. On the 28th February, they were found guilty and sentenced, and, on the 7th March,

*Criminal Miscellaneous, No. 81 of 1930.

they appealed to this Court. The articles in question were published at Jalpaiguri on the 6th March, and the opposite party is resident there.

The Chief Justice has directed that we should exercise the jurisdiction vested in this Court by the Contempt of Courts Act, 1926, but when the Rule first came on for hearing, the point was raised by Mr. Sen, appearing as representing the Incorporated Law Society, that the matter was one of such a nature that the party must be represented by an advocate of the court instructed by an attorney, which was not the case. We directed notice to be given to the Bar Association, and Mr. N. K. Basu has now appeared in their interests.

In so far as the contempt of a subordinate court is concerned, the matter is now governed by the provisions of the Contempt of Courts Act, 1926, enacted, as the preamble states, because doubts had arisen as to the powers of a High Court to punish contempts of subordinate courts. Section 2 (1) of the Act, so far as material, provides that "The High Court of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves."

Mr. Sen has referred, in aid of his argument, to the decision of the Special Bench in the case of *Re Barristers and Vakils* (1), which, however, only decided actually that where a magistrate had committed an accused for trial to the High Court under the provisions of the Criminal Law Amendment Act, 1908, barristers would have the exclusive right of audience before the Special Tribunal at the trial of such cases in the High Court. The reasons for the decision are not given. Mr. Sen also referred to the provisions of clauses 22, 23 and 24 of the Letters Patent of 1865 as to the Criminal Jurisdiction of this Court, and to Rule 2 of the Crown Side Rules laid

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down in Chapter XXXVII of the Rules and Orders, as regards the trial of cases at the Crown Side under the Extraordinary Original Criminal Jurisdiction.

He also referred to Chapter XI, Rule 4 of the Rules and Orders regarding the exclusive right of audience in any matter on the Original Side.

Mr. Basu, on the other hand, has argued that the Court has power to dispose of the matter in its Criminal Appellate Jurisdiction; though it may be that the Crown Side would also have jurisdiction to deal with it. Even under Chapter XXXVII, Rule 2, if the matter is one within the Extraordinary Criminal Jurisdiction, he points out that applications for its exercise are to be heard and disposed of at the Appellate Side.

The matter is one that is by no means free from difficulty. The power of the High Court to commit for any contempt of itself is inherent in the Court and arises from the fact that it is a Court of record. The power is one that is ancillary to the exercise of the various jurisdictions of the High Court, and it may be expedient to exercise it in or in relation to any one of those jurisdictions. As regards the nature of such proceedings taken in contempt, I do not consider it necessary or desirable to lay down any general rule that such proceedings must necessarily and exclusively fall under any particular one of the different jurisdictions conferred on the court by its Letters Patent; though it may be that the Court on its Crown Side would have the power to deal with such a matter as the present: See per Jenkins C. J. in *Legal Remembrancer v. Matilal Ghose* (1). On the other hand I am not satisfied that that must be the exclusive way of dealing with such a matter as an application in contempt. Upon the whole I am not prepared to uphold the contention that in this case the party if represented must appear through an advocate instructed by an attorney.

JACK J. I agree.

A. C. R. C.