CIVIL RULE.

Before Jack and Khundkar JJ.

SURESH CHANDRA MUKHERJI

v.

BISWA NATH CHAKRABARTI.*

1938

April, 6, 7, 8.

Contempt of Court—Public meeting relating to a pending suit, when amount to contempt of Court.

During the pendency of a suit instituted on behalf of the local public for a declaration that a certain piece of land claimed by the defendant in that suit was a public pathway, certain persons convened a public meeting in which a resolution was passed to the effect that the defendant in the suit was trying to close up the disputed land which was being used by the general public for the past forty or fifty years and the said resolution was published in the newspapers.

Held, such action was calculated to prejudice the public against a party litigant during the pendency of a suit. It would embarrass, even if it did not imperil, the defendant's cause and as such amounted to contempt of Court.

To convene a meeting requesting the local public to come and decide what was to be done about a suit to establish a public right or to express a personal belief in the existence of such right might not be objectionable, but a positive assertion that the defendant in such suit was closing up a right of public way where the question whether the such right existed or not was still *sub judice* amounted to contempt of Court.

In re *The William Thomas Shipping Company, Limited. H. W. Dillon and Sons, Limited* v. *The Company.* In re *Sir Robert Thomas* (1); *Onslow and Whalley's* case (2); *Plating Company* v. *Farquharson* (3) and *In re New Gold Coast Exploration Company* (4) distinguished.

Sathappa Chettiar v. *C. Ramachandra Naidu* (5); *Rex* v. *Tibbits* (6) and *Velugoti Sarvangna Kumara Krishna Yachendra* v. *N. V. Rama Naidu* (7) relied on.

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The material facts of the present case were as follows. In July, 1935, one Hira Lal Agarwala brought a suit against Suresh Chandra Mukherji

*Civil Rule No. 1356 of 1937, issued under s. 2 of the Contempt of Court Act.

(1) [1930] 2 Ch. 368.
(2) (1873) L. R. 9 Q. B. 219.
(3) (1881) 17 Ch. D. 49.
(4) [1901] 1 Ch. 860.
(5) (1931) I. L. R. 55 Mad. 262.
(6) [1902] 1 K. B. 77.
(7) [1938] A. I. R. (Mad.) 248.

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and others for a declaration that his tenants had an easement right of way across a certain plot of land on Kamardanga Road. In October, 1935, the said suit was withdrawn and on March 9, 1936, Hira Lal brought another suit purporting to be on behalf of the local public under O. I, r. 8 of the Code of Civil Procedure praying for practically similar reliefs as before. While the said suit was pending, a notice was circulated to the effect that a public meeting would be held on June 27, 1937, in connection with the said dispute. The notice was issued over the signature of certain persons including opposite parties Nos. 2 to 7. Cpposite party No. 1 presided over the meeting held pursuant to the said notice, which opposite parties Nos. 2 to 7 attended and it was alleged that the meeting was brought about at the instance of Hira Lal who was opposite party No. 8. His employee (opposite party No. 9) and an added plaintiff in the suit (opposite party No. 10) were alleged to have circulated the notice. At the meeting a resolution was passed concerning the right claimed by the petitioners over the land in dispute. Copies of the notice and the resolution are set out in the judgment of the Court. Later opposite parties Nos. 1 and 2 caused a report of the proceedings of the meeting to be published in the newspapers. Thereupon Suresh Chandra Mukherji and others, the defendants in the suit, obtained the present Rule under s. 2 of the Contempt of Court Act against the ten opposite parties.

Sarat Chandra Basak, Panchanan Ghose and *Sourindra Nath Ghosh* for the petitioners.

Atul Chandra Gupta, Sibapati Bagchi, Sudhir Krishna Chaudhuri and *Bijan Behari Das Gupta* for the opposite party.

Cur. adv. vult.

JACK J. This is an application under s. 2 of the Contempt of Courts Act (XII of 1926). The petitioners have obtained a Rule upon the opposite

parties to show cause why they should not be committed or otherwise dealt with according to law for contempt of Court inasmuch as during the pendency of Title Suit No. 46 of 1936 of the Second Court of the Munsif at Sealdah, opposite parties Nos. 2 to 7 published a certain notice. Opposite party No. 1 presided over and opposite parties Nos. 2 to 7 and 9 and 10 took part in a meeting, at which certain resolutions were passed. Opposite party No. 9, an employee of the plaintiff, who is opposite party No. 8, and opposite party No. 10, an added plaintiff in the suit, took part in circulating the notice and these proceedings are said to have been instigated by opposite party No. 8, the plaintiff, in whose interest they took place. Opposite party No. 1 caused an article, drafted by opposite party No. 2 and purporting to be a report of the proceedings of the meeting, to appear over his signature in the newspapers "Advance" and "Ananda Bazar Patrika" (Exhibits C and D).

It appears from the affidavit of the petitioners that the suit in question was instituted on March 9, 1936, purporting to be on behalf of the local public under O. I, r. 8 of the Civil Procedure Code for a declaration that certain land claimed by the petitioners was a public pathway and that an injunction was issued by the Court directing that the plaintiff and his tenants should not use the disputed path till the hearing of the suit. The notice, Exhibit B, is as follows:—

The residents of Pottery Road, Hajrabagan Lane, Kamardanga Road, Seal Lane, Convent Lane and Tangra Road are aware that the road adjoining the busti, 7, Kamardanga Road and Hajrabagan Lane, which has been and is being used by the general public from time immemorial is now under the risk of being closed. A meeting of the general public will be held at 5 p.m. on Sunday next, the 27th June, at Pottery Road (the *Bârwâri Durga Pujâ maidân*) for determining the course of action to be followed by residents of the quarter in order that the general public may use the said road in accordance with established usage. Srijukta Babu Biswa Nath Chakrabarti, B.L., Congress Secretary of ward No. 19 will adorn the presidential chair. The presence of the public is earnestly solicited.

(Sd.) Amiya Ranjan Das Gupta,
President, Congress Committee of ward No. XIV.
B. K. Pal, B.Sc. (Glasgow), and others.

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The resolution of the meeting which is objected to, *viz.*, resolution No. 1 is as follows :—

On Sunday, the 27th day of June last, a public meeting of the residents of Pottery Road, Kamardanga Road, Hajrabagan Road of Entally and the neighbouring places was held at Kamardanga K. C. Girls' High School premises. Sj. Biswa Nath Chakrabarti, B.L., took the presidential chair. A resolution was passed at the meeting protesting against the attempts of Suresh Chandra Mukherji and others to close up the road or land to the west of No. 7, Kamardanga Road and adjoining Hajrabagan Lane which is being used by the general public for the past forty or fifty years.

The article in "Advance" described the resolution as protesting against the attempts of Babu S. C. Mukherji and others to close the land in question which was being used by the public for the last forty or fifty years openly and publicly. The other newspaper article (Ex. D) was similarly worded. The petitioners maintained that this was done in pursuance of a scheme to defeat justice and create prejudice against the defendants in the suit and that the notice of the meeting and the newspaper articles are in fact calculated to obstruct and interfere with the due course of justice and to prejudice mankind against these defendant petitioners before the case was heard and are thus in contempt of Court. In support of their contention the petitioners have referred to the case of *In re Sir Robert Thomas* (1) in which it was held that—

The publication of injurious misrepresentation concerning parties to proceedings in relation to those proceedings may amount to contempt of Court, because it may cause those parties to discontinue or to compromise, and because it may deter persons with good causes of action from coming to the Court, and is thus likely to affect the course of justice.

That case is not entirely in point inasmuch as it has not so far been proved that any misrepresentation has actually been made in this case.

The next case referred to for the petitioners is the case of *Velugoti Sarvangna Kumara Krishna Yachendra* v. *N. V. Rama Naidu* (2). In this case it was held that a newspaper article making accusations against a party to a pending suit and prejudicing the public against him amounts to

(1) [1930] 2 Ch. 368. (2) [1938] A. I. R. (Mad.) 248.

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contempt of Court. That suit was to restrain forty people from entering the petitioner's forest and cutting the produce there, in which they claimed they had a right to cut and sale. The article dilated on the grievances of these people and alleged that they were being ruined by the petitioner by his taking away their occupation and also by concocting false cases against them. That decision has some bearing on the present case, if it can be shown that, by the action of the opposite paties, the public will be prejudiced against the petitioners during the pendency of the suit. That, in fact, prejudice would be created against the defendant, I think there can be no doubt. It is alleged that they are closing up a public right of way, though whether it is a public right of way or not is a matter which is *sub judice*. It is not as if the notice stated that a suit had been brought on behalf of the public for a declaration that this was a public right of way and asking those interested to meet and decide what was to be done about it. To such a notice there could be no objection.

There is the same objection to the newspaper reports for which opposite parties Nos. 1 and 2 are responsible. The reports were drafted by opposite party No. 2, the president of the Congress Committee of ward No. XIV and sent to the "Amrita Bazar" and "Ananda Bazar Patrika" by opposite party No. 1 as secretary to the local Congress Committee for publication over his signature. The reports describe the resolution as protesting against the attempts of Mr. S. C. Mukherji and others to close a pathway which was being used by the public for forty or fifty years.

To the resolution itself, it appears to me, there is not so much objection, in so far as it is, or purports to be, merely a resolution of the residents of the locality to support the cause of establishing the right of the public over the land in suit. But it is still objectionable to put forward in the resolution of a public meeting a positive assertion of a public right

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of way against the exercise of which the Court has granted a temporary injunction and the existence of which is a matter *sub judice*, since it was likely to prejudice the community against the party who are said to be closing the public way and so causing much inconvenience to the public.

On behalf of the opposite party *Onslow and Whalley* (1) has been referred to. In that case it was held that it is contempt of Court to address public meetings alleging that a defendant against whom a true bill has been found is not guilty and that there is a conspiracy against him and that he cannot have a trial. In the course of his judgment his Lordship Cockburn C. J. said :—

> We quite agree that it would be a harsh and unnecessary proceeding to interfere with the expression of an opinion honestly entertained, and *bona fide* expressed for a legitimate purpose,.........

The facts of that case were of an entirely different character to those of the present case, but, assuming that that dictum is equally applicable in the present case, we are not convinced that the opinion expressed in the publications referred to was honestly entertained and expressed for a legitimate purpose. Considering the previous conduct of opposite party No. 8, Hira Lal Agarwala, and his officers as set forth in the petition, I think that in spite of the denial of the opposite party it is extremely probable that these publications were made solely for the purpose of creating a prejudice in their favour. Another case referred to for the opposite party is the case of *Plating Company* v. *Farquharson* (2). The facts of that case are totally different, and it is obvious that it was not contempt to publish advertisement inviting the trade to subscribe towards the expenses of an appeal and offering a reward for the production of evidence.

Finally, for the opposite party the case of *In re New Gold Coast Exploration Company* (3) is referred to. There, while proceedings for the

(1) (1873) I. L. R. 9 Q. B. 219. (2) (1881) 17 Ch. D. 49.
(3) [1901] 1 Ch. 860.

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removal of a voluntary liquidator were pending a circular was issued asking the shareholders to support the application. It was held that the circular could not in any way interfere with or prejudice the due trial of the matter, and it was not a contempt of Court. That case is distinguishable as there the circular was issued not to the public at large or persons in any way interested, but to two individuals who were co-applicants with the petitioners. On the other hand, the case of *Sathappa Chettiar* v. *C. Ramachandra Naidu* (1) is in point though it is a more extreme case. In that case Sathappa, the manager of certain cotton mills, was on his trial for criminal breach of trust when a newspaper poster proclaimed as follows :—

> Sathappa Chettiar in trouble. Police search at Tirupur. Thousands of rupees missing, Cotton Mills in danger.

It was held that this was contempt and the observation of Lord Alverstone in *Rex* v. *Tibbits* (2) was referred to with approval, *viz.*, that—

> 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.

This is in accordance with the law as laid down in Oswald's Contempt of Court (3rd Ed., p. 91) in which he notes as one kind of contempt the publication of "anything which tends to excite prejudice "against the parties or their litigation while it is "pending".

It is clear that opposite parties Nos. 1 to 7 have been guilty of this kind of contempt.

As regards opposite parties Nos. 9 and 10, in view of the affidavits which have been filed and the probabilities of the case, we think they should also be held responsible for the publication and distribution of the notice and the resolution passed at the meeting.

As regards opposite party No. 8, in his affidavits, he denies having had anything to do with these

(1) (1931) I. L. R. 55 Mad. 262. (2) [1902] 1 K. B. 77, 88.

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proceedings, and the only allegation against him is that contained in para. 14 of the petition which is as follows :—

> That realising full well that he has a very weak case on merits the said Hira Lal thought of other means in order to defeat justice and create prejudice against the defendants.

It is not definitely alleged what part he took in those proceedings and, therefore, in view of his definite denial on affidavit of having taken any part, we think that, although the circumstances against him are extremely suspicious, there is no proof that he took part in the proceedings and he should not, therefore, be held liable.

Since apologies have been tendered and since it is probable that the parties did not realise that their conduct amounted to contempt, we think it will be sufficient to direct that each of them, except Hira Lal Agarwala, opposite party No. 8, must pay one gold *mohur* as costs of the action.

KHUNDKAR J. I agree and desire only to add a few words with special reference to the resolution passed at the public meeting which was convened by opposite parties Nos. 1 and 2 and attended by opposite parties Nos. 1 to 7. The argument on behalf of the opposite parties Nos. 1 to 7 is that, in doing what they did, these opposite parties were acting well within their rights and that their conduct in no way embarrass the petitioners' defence in the Title Suit No. 46 of 1936. It is contended that their only object in convening and holding the public meeting was to take counsel with one another for the concerting of measures to vindicate their common right. To deny them such liberty of action would be to deprive them of means and methods which were entirely legitimate. It is further contended that the notice convening the public meeting and the resolution passed at that public meeting did no more than express the belief which these opposite parties entertained in the existence of their rights and that the manner of that expression was fair and temperate.

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In my judgment, there would have been considerable force in this argument but for one circumstance. It is that in the expressions used the opposite parties do not merely allege their personal belief in the existence of a right. They assert affirmatively and categorically that the petitioner has been guilty of violating an immemorial right of the public. The language of the resolution, responsibility for which attaches to all the opposite parties Nos. 1 to 7, is as follows :—

In view of the fact that the residents of Seal Lane, Pottery Road, Kamardanga Road, Hajrabagan Lane, Tangra Road, Convent Lane, Ananda Palit Road and other neighbouring places have been using the strip of land on the west of the No. 7, Kamardanga *busti* and adjacent to Hajrabagan Lane as a public lane, publicly, openly as of right and without any interruption from anybody for over forty or fifty years and the same having been closed by Babus Suresh Chandra Mukherji and others causing such inconvenience to the public, the residents of the locality assembled in this meeting to-day (June 27, 1937) do hereby resolve to support the cause of establishing the right of the public over the said strip of land in Title Suit No. 46 of 1936 pending before the Second Court of the Munsif at Sealdah.

Now the defence of the petitioner in the Title Suit is that the land is his own and that no person and far the less the public have enjoyed any right of way over it. What would be the effect and tendency of the resolution quoted above upon the petitioner's ability to establish his defence in the title suit? In my opinion, it would be to hamper and circumscribe. Such a resolution passed at a public meeting would predispose people to a belief, right or wrong, that the petitioner was an invader of the public's right. It undoubtedly conveys the impression of a public denunciation of the petitioner's conduct and such a denunciation might well deter inhabitants of the locality from bearing testimony in support of the petitioner's case. As already indicated in the judgment just pronounced by my learned brother, certain passages in the judgment of Cockburn C.J. in *Onslow and Whalley* (1), though the facts of that case were very different, may be referred to for the purpose of illustrating the boundary between public utterances which are justifiable and those which are not.

(1) (1873) L. R. 9 Q. B. 219, 225-226.

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We quite agree that it would be a harsh and unnecessary proceeding to interfere with the expression of an opinion honestly entertained, and *bona fide* expressed for legitimate purpose; but when, at a meeting, held, it may be, for the purpose only of providing funds, language is used which amounts to an offence against the law and contempt of a Court which has to administer the law, the motive or purpose for which the meeting was held affords no excuse whatever, still less any justification, for the improper language used.. ...... It has been attempted to be contended to-day on your behalf that the meetings in question were convened solely for the purpose of obtaining money in order to enable the accused to carry on his defence, with the additional purpose of removing any prejudice which the result of the former trial may have produced against him. But that, as I have said, affords no excuse, if the language used on these occasions has been such as to amount to an unwarrantable interference with the course of justice with reference to the coming trial......

In *Sathappa Chettiar* v. *C. Ramachandra Naidu* (1) which has also been referred to by my learned brother, Chief Justice Beasley quoted the language of Lord Alverstone in the case of *Rex* v. *Tibbits* (2).

"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..........".

Chief Justice Beasley then went on to say:—

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.

Now for the reasons already stated I am clearly of opinion that the proclivity of the resolution which was passed at the public meeting which opposite parties No. 1 and 2 convened and which the opposite parties Nos. 1 to 7 attended would be to embarrass if indeed not to imperil the petitioner's cause and that being so the passing of that resolution amounted to contempt.

Opposite party found guilty of contempt.

A. C. R. C.

(1) (1931) I. L. R. 55 Mad. 262, 266. (2) [1902] 1 K. B. 77, 88.