

SPECIAL BENCH.

Before Costello, Biswas and Lodge J.J.

In the Matter of NAGENDRA NATH DAS.*

1938

Dec. 2.

Contempt of Court—Publication of a booklet in relation to a pending proceeding, when amounts to contempt.

A person is guilty of contempt of Court if, in respect of a pending proceeding in the Court, he publishes a writing—

(a) in which he assumes the truth of certain facts connected directly or indirectly with matters awaiting the decision of the Court ; or

(b) in which he attacks the conduct and the character of the parties to the proceeding or similarly attacks a person who is one of the principal figures and a witness in the proceeding though not a party to it ; or

(c) in which he forecasts the probable judgment of the Court and makes the comment that law and justice would be defeated by such judgment.

Roach v. Garvan (or *Hall*) (1) and *Tichborne v. Tichborne* (2) referred to.

CONTEMPT PROCEEDING.

This was an application by the appellants in First Appeal No. 1 of 1937, popularly known as Bhowal Raj case, to commit for contempt one Nagendra Nath Das, who had published, hawked about and offered for sale a booklet in Bengali entitled "Fight between Rani and Sanyasi (New Series) : Bridegroom of Second Rani of Bhowal."

The appellant Bibhabati Debi has been referred to in this case as "Second Rani" or merely "Rani" and the plaintiff is popularly known as the Bhowal "Sanyasi".

The plaintiff's case was that he is the Second Kumar of Bhowal, Ramendra Narayan Ray. In April, 1909, the Kumar was induced by his brother-in-law, Satyendra Nath Banerji, to go to Darjeeling

*Contempt proceedings in the matter of Appeal from Original Decree No. 1 of 1937.

(1) (1742) 2 Atk. 469 ; 26 E.R. 683.

(2) (1870) 22 L. T. 55.

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for his health. He went with his wife Bibhabati, Satyendra and the family doctor, Ashutosh Das Gupta, and stayed at a house named "Step Aside". There he fell ill and the defendants state that he died on May 8, 1909, late at night and was cremated the next morning in due course.

The plaintiff's case is that while he was in a state of collapse in the evening of May 8, 1909, he was taken as dead and that at about 9 p.m. his body was carried in procession to the old cremation ground of Darjeeling. Upon arrival there, the persons who had carried the body abandoned it during a sudden rain-storm and when, after the storm, they returned, the body had disappeared. Thereafter Satyendra arranged to have another dead body carried in procession in the following morning and such substituted body was burnt to ashes as that of the Second Kumar.

The plaintiff's case further is that Satyendra and Ashu amongst others, unknown to Bibhabati, had conspired to poison Ramendra, and as a result of such poisoning the plaintiff had lost his memory and was in a state of collapse on the evening of May 7.

The plaintiff further alleged that after his body had been abandoned in the storm it was recovered by some Naga *sanyasis* (a sect of hermits) who found him alive. It is stated that the plaintiff was nursed by these *sanyasis* and when he recovered he lived as a *sanyasi* for many years. Later on, his memory gradually revived and he then claimed to be entitled to a third share in the Bhowal Estate.

The defendants, Bibhabati and the widow and adopted son of the youngest Kumar of Bhowal, resisted the plaintiff's claim and denied that he was Kumar Ramendra as alleged. The remaining defendant, the widow of the eldest Kumar, however, supported the plaintiff's claim.

The plaintiff's suit was decreed by the Subordinate Judge of Dacca. The unsuccessful defendants appealed to the High Court, and while the appeal

was being heard from day to day, the booklet complained of was published and sold.

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The respondent in this application, Nagendra Nath Das, did not deny the allegations contained in paras. 11 and 12 of the application, which were as follows :—

11. That among other things the booklet states that the Bhowal Rani is displaying great effrontery in carrying on litigation and would appeal to England even if she lost in the High Court; that she, a daughter of West Bengal, was showing round the High Court to people of East Bengal, at the sacrifice of honour and prestige; that she was in dread of the *sanyasi* to which was added the pressure of the charge of criminal conspiracy against her brother; that she would not accept the well-reasoned decision of a judge of mature judgment; that in spite of the public scandal and shame heaped on her by the people in general, she was not acknowledging her husband and one wondered what the real matter was; that she was completely under the thumb of her brother who was keeping her under mesmerism and himself enjoying the "kingdom"; that so unfortunate was the king's son (*i.e.*, plaintiff) that his own wife had turned against him; and that the prosecution of the appeal suggested that brother and sister were desperately jumping and frisking about like fish trying to burst through nets into which they had fallen.

12. That the third part of the booklet is in the form of an imaginary conversation between brother and sister, in which, among other things, appellant No. 1 (Bibhabati) is represented as admitting the plaintiff to be Ramendra Narayan Ray as recognised by herself and also by her relatives and thousands of tenants; pleading with the brother to be permitted to acknowledge the plaintiff to be her husband; reminding the brother of his guilt in having secretly conspired to compass her husband's death; and stating that she had surrendered to the brother all she had in order to appease his hunger and slake his thirst; and the booklet further represents the brother as impressing upon the sister that relationship by blood was higher and more to be sustained than the relationship by marriage and that "here" (meaning, evidently, in the High Court) she would triumph by defeating law and overcoming fear of calumny and scandal.

On the above facts, the Court hearing the appeal issued the present Rule and called upon Nagendra Nath Das to show cause why he should not be dealt with for contempt of Court.

Phani Bhusan Chakravarti for the petitioner. I would refer your Lordships to the contents of the offending booklet. I submit that the publication of this booklet takes the matters in controversy as settled facts when they are really awaiting the decision of your Lordships. The booklet casts grave reflections on the character and conduct of the appellant and says that the appellants and Satya are prosecuting

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the appeal to bolster up a false case with the full knowledge of its falsity. Again it says that the appellants would win the appeal and says this would mean defeat of justice. I submit that the publication of this booklet is calculated to impede the due course of justice, creates an atmosphere of prejudice against the appellants and offends against the dignity of the Court, and on all these grounds the writer of the booklet is guilty of contempt of Court. I refer to Oswald on "Contempt of Court" 3rd Ed., pp. 5, 6, 91 and 97 and cases therein cited.

Sarat Chandra Jana for Nagendra Nath Das. Though I do not admit that the publication of the booklet amounts to contempt in all respects as contended for, yet I admit that in some respects the publication amounts to a contempt. The writer is a young man and is uneducated. I have been asked by him to state that he tenders an apology to the Court and undertakes to destroy all copies of the booklet which are still with him.

COSTELLO J. This is an application made on behalf of Bibhabati Debi who is one of the appellants in the appeal now pending before this Court or rather not only pending but proceeding day by day before this Court. The application is also supported by or on behalf of the respondents in the appeal and in effect, therefore, it is a joint application by the principal parties in the appeal. We were asked to issue a Rule calling upon one Nagendra Nath Das to show cause why he should not be dealt with by the Court for a contempt constituted by or contained in a pamphlet printed in the Bengali language, the title of which rendered into English is "Fight between the "Rani and Sanyasi (New Series)". The pamphlet relates to what is commonly called the Bhowal Raj case and upon the outside page or cover of the pamphlet there appears a portrait of the plaintiff in that case in the dress of the Second Kumar of Bhowal. That portrait is one of the actual exhibits

in the case, being Ex. No. LVIII. The pamphlet is, beyond all question, defamatory both of Bibhabati Debi and her brother Satya. I think I should not be overstating the matter to say that it is both disgraceful and dastardly. Our task in adjudicating on this matter is rendered easier from one point of view by the fact that Nagendra Nath Das is not only himself present in Court but is represented by an advocate, Mr. Jana, and Mr. Jana stated at the outset of the hearing that his client pleaded guilty to the charge brought against him in these proceedings. He clearly and frankly admitted on behalf of the respondent that the pamphlet complained of is undoubtedly a contempt of Court. We have, therefore, not to consider in any detail the contents of this document which may be described as being in the highest degree scurrilous and contemptible. If, however, this publication had merely amounted to a libel upon Bibhabati and her brother Satya, it might have been possible to argue that it was not a matter which could be dealt with in proceedings for contempt of Court and that the persons aggrieved ought to be left to pursue the appropriate remedy in another place. But this publication contains statements and innuendoes which undoubtedly transcend the character of a libel only. Mr. Chakravarti to whom we are indebted for his very clear and able argument before us contended, and in our opinion rightly, that this pamphlet comes within the definition of contempt of Court on three grounds. First of all, it assumes the truth of certain facts which are connected directly or indirectly with the matters under consideration and awaiting decision in the appeal itself. Secondly, the document contains reflections of the gravest possible nature upon the conduct and the character of certain of the persons in the appeals, *viz.*, Bibhabati Debi herself and her brother Satya, who, though not technically a party, is a person whose name figures very largely throughout the proceedings. Lastly, the pamphlet purports to predict that the appellants will be or are likely to be successful in the

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appeal and adds the comment in effect that if they are successful, law and justice will be defeated. These are the points put forward by Mr. Chakravarti.

We have been taken through the pamphlet and we have considered it carefully from the beginning to the end and we have no doubt whatever that the first part of it and the last part of it, that is to say, the part which is in a sort of doggerel verse and the part which is in blank verse both contain statements which entirely justify the propositions put forward by Mr. Chakravarti. We are of opinion that this matter falls within the ambit of the classic definition of "contempt of Court" which is contained in the judgment of Lord Hardwicke (who was then the Lord Chancellor of England) in the *St. James Evening Post* Case: *Roach v. Garvan (or Hall)* decided in the year 1742 (1). The passage is this:—

There are three different sorts of contempt :

One kind of contempt is, scandalizing the Court itself.

There may be likewise a contempt of this Court, in abusing parties who are concerned in causes here.

There may be also a contempt of this Court, in prejudicing mankind against persons before the cause is heard.

And then follows this pregnant observation:—

There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.

Those observations of the learned and noble Lord find a place in some of the judgments given in cases of contempt of Court decided subsequently, notably in the case of *Tichborne v. Tichborne* (2) where Stuart V. C., after citing the passage to which I have referred, came to the conclusion that by a publication commenting on the position of the claimant in the well-known *Tichborne* case there had been a contempt of Court. I desire to say that we are not in this present proceedings concerned with the dignity or prestige of the Court itself. The publication of the pamphlet now complained of can have

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(2) (1870) 22 L.T. 55.

and will have no possible influence upon the proceedings or the decision in the appeal. But what we are concerned with is to take measures to stop as far as possible attacks upon parties to legal proceedings and to prevent irresponsible and scandalous comments on proceedings pending before a Court of law. Mr. Jana having stated that his client pleaded guilty to having committed a contempt of Court endeavoured to urge in mitigation of the offence that his client is a young man of no great education in that he had only read as far as the seventh standard. It appears, however, that Nagendra Nath Das is not only the printer and publisher of this offending pamphlet, but he is the actual writer of it. The words used are his words. If his ability as a poet or rhymester is not of a very high order, that in our opinion is no reason whatever why he should use such ability as he does possess to compose a pamphlet of this character. It was brought to our knowledge by an admission made voluntarily by the respondent that this is not the first time he has indulged in the malpractice of publishing scurrilous and defamatory pamphlets or, at any rate, commentaries on proceedings pending before a Court. He admitted that he has published a document, apparently more or less similar in character to the one now before us, commenting upon a case now pending in a Court at Alipore. The offence with which we are now dealing, therefore, is not his first offence. Mr. Jana further urged in mitigation that the respondent is a young man. We ascertained that he has reached the age of thirty years and one would have thought that that might be taken to be an age of some discretion and some common sense when he must have known perfectly well that what he was doing was, to say the least of it, a most improper and a risky thing. At the very end of the proceedings Mr. Jana on behalf of his client tendered an apology to the Court and stated that Nagendra Nath Das would give an undertaking to destroy such copies of this production as are still in his possession. We should have appreciated that

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attitude better, had he also given an undertaking not to repeat an offence of that kind in the future. It is perhaps not without some significance that no written answer to the charge has been put before us and the apology was merely a verbal one given, as I have stated, at a somewhat late stage of the proceedings.

We regard this matter in the gravest possible light and we desire to make these proceedings an opportunity of letting it to be known publicly and as widely as possible that comments of this kind on pending proceedings or indeed comments of any kind on pending proceedings will not be tolerated. In order to mark our sense of gravity of this offence, after having taken into careful consideration all that has been urged by Mr. Jana on behalf of his client, we are of opinion that we must deal with this man in a way which will not only punish him personally but—and this is even, in a sense, of greater importance—will also deter other evilly minded persons from committing an offence of this kind in the future. We, accordingly, direct that Nagendra Nath Das be committed to civil prison for a period of three calendar months. He will be taken into custody by the Sheriff.

We further direct that the copies of the offending pamphlet be made over to the Sheriff.

Rule absolute.

N. C. C.