

## MISCELLANEOUS CRIMINAL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Harries

EMPEROR v. JAGANNATH PRASAD\*

1938

March, 2

*Contempt of Courts Act (XII of 1926), section 2(3)—Meaning—Same act amounting to contempt of court and also to defamation under the Indian Penal Code—Question whether act punishable qua contempt under the Indian Penal Code—Jurisdiction.*

The meaning of section 2(3) of the Contempt of Courts Act is that if the act complained of is punishable under the Indian Penal Code as contempt of court, e.g. under section 228 of the Code, then that act cannot form the subject of contempt proceedings by the High Court under the Contempt of Courts Act. But when the act is punishable under the Indian Penal Code not as contempt of court but as some other offence, e.g. defamation, the jurisdiction under the Contempt of Courts Act is not barred by section 2(3) thereof and the act is one punishable both under that Act and under the Indian Penal Code.

The object of proceedings under the Contempt of Courts Act is to vindicate the dignity and honour of the courts subordinate to the High Court and this purpose cannot be served by the institution of complaints for defamation by the judicial officers in cases where the contempt of court also amounts to defamation.

The Government Advocate (Dr. M. Wali-ullah), for the Crown.

Mr. G. Agarwala, for the opposite party.

IQBAL AHMAD and HARRIES, JJ.:—Jagannath Prasad Swadhin opposite party has appeared in this Court in response to a notice directing him to appear to show cause why he should not be punished for contempt of court in respect of two applications, one of which was written and sent by him to the Judge, small cause court, Cawnpore, and the other to the Munsif, Akbarpur, in connection with civil case No. 2059 of 1937, Jagannath Prasad Swadhin *versus* Shambhoo Dayal.

The opposite party was plaintiff in the suit referred to above and the suit was pending in the court of the small

\*Criminal Miscellaneous No. 1 of 1938.

cause court Judge of Cawnpore. During the pendency of that suit the opposite party sent an application by post to the address of the small cause court Judge in the course of which he made *inter alia* the following remarks: [These remarks, which have been omitted here, contained baseless, contemptuous and scandalous allegations against the presiding officer of the court in his judicial capacity and clearly amounted to gross contempt of the court.]

On receipt of this application the learned small cause court Judge, on the 11th of September, 1937, submitted a report to the District Judge and annexed the application to that report. By his report the learned Judge invited the District Judge to bring the matter to the notice of this Court for necessary action. The District Judge accordingly brought the matter to the notice of this Court.

In his report the learned small cause court Judge stated that he was not at all keen to try the case of the opposite party as it appeared that the opposite party apprehended that he will not have justice from his court. The learned Judge, however, pointed out that he had no power to transfer the case from his file and observed that the applicant should move the District Judge for the transfer of the case. The District Judge, presumably in view of this observation contained in the report submitted by the small cause court Judge, transferred the case to the file of the Munsif of Akbarpur. The learned Munsif dismissed the suit of the opposite party and then on the 1st of October, 1937, the opposite party filed an application, purporting to be an application for review of judgment, before the learned Munsif of Akbarpur. In the course of that application he made *inter alia* the following remarks: [These remarks, again, contained baseless and scandalous allegations and imputations against the presiding officer of the court in his judicial capacity, amounting to gross contempt of court.]

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The opposite party has today filed a written statement in Hindi language and has read the same in open court and the written statement has been translated to us by the reader of the Court. The opposite party is also represented by counsel who in the course of his argument has raised a question of law which shall presently be considered. The learned counsel has further stated that his client tenders an apology and throws himself on the mercy of this Court. The written statement also purports to contain an apology. We are, however, for the reasons to be presently stated, unable to accept the apology.

It is needless to observe that the two applications referred to above contain baseless, contemptuous and scandalous allegations against the presiding officers of two courts and clearly amount to gross contempt of those courts. Further, the petition presented before the learned Munsif of Akbarpur contains a deliberate threat to resort to what the opposite party characterises as picketing and hunger-strike. Again, the remark contained in the application sent to the small cause court Judge concerning the Judges of the High Court amounts to clear contempt of this Court.

The groundless attacks made by the opposite party on the judicial conscience and independence of the presiding officers of the two courts were as unwarranted as they were uncalled for and we cannot but take serious notice of the same. It is imperative in the interest of ordered progress of society that the judicial independence of the presiding officers of the courts below be maintained with a strong hand and scandalous attacks on those officers should not be allowed to pass unnoticed. It is further imperative in the interest of the administration of justice that politics should be sternly kept out of the precincts of the court and that the public must be made to feel that the courts are not amenable to political or executive influence. These facts render it imperative that the opposite party must be dealt with according to law.

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It is, however, contended by the learned counsel for the opposite party that as the allegations contained in the two applications amounted to the offence of defamation, which offence is punishable under section 500 of the Indian Penal Code, this Court is not competent to take proceedings for contempt of court against the opposite party with respect to those allegations. In support of this contention reliance is placed on clause (3) of section 2 of the Contempt of Courts Act (Act No. XII of 1926). Clause (3) runs as follows: "No High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code."

The contention of the learned counsel is that if the acts alleged to constitute contempt also constitute an offence punishable under the Indian Penal Code the jurisdiction of this Court to take proceedings under the Act is barred. We are unable to agree with this contention.

Clause (3) of section 2 has been judicially interpreted by the Patna High Court in *Kaulashia v. King-Emperor* (1) and *Jnanendra Prasad Bose v. Gopal Prasad Sen* (2). In both these cases it was held that the true interpretation of the clause is that where there is already a provision in the Indian Penal Code for punishing a contempt of court as a contempt of court, the Contempt of Courts Act itself shall have no application. The learned Judges of the Patna High Court further observed that clause (3) does not mean that when the act which has constituted the contempt of court also constitutes an offence under the Penal Code it may not be punished under the Contempt of Courts Act. To the same effect is the decision of the Lahore High Court in *Bennett Coleman and Co. v. G. S. Monga* (3).

(1) (1932) I.L.R. 12 Pat. 1.

(2) (1932) I.L.R. 12 Pat. 172.

(3) A.I.R. 1936 Lah. 917.

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The interpretation put on clause (3) of section 2 by the Patna and the Lahore High Courts commended itself to the learned Judges of the Calcutta High Court though they did not express a definite opinion on the point, vide *Dharnidhar Singha Roy v. Satish Chandra Giri* (1). The words, "is an offence punishable under the Indian Penal Code", in clause (3) are preceded by the words "such contempt". This in our judgment shows that the clause is applicable only to cases in which the offence referred to in that clause is punishable under the Indian Penal Code as contempt. Prior to the passing of the Contempt of Courts Act there was divergence of judicial opinion on the question as to whether the High Courts of Judicature established by Letters Patent, which are superior courts of record, have jurisdiction to take cognizance of and to punish contempt of courts subordinate to the High Courts, and it was with a view to remove this conflict that the Contempt of Courts Act was passed. The Act now removes any doubt as to the powers of High Courts of Judicature in regard to the protection of their subordinate courts from contempts. An act may amount to an offence under the Indian Penal Code and it may also amount to contempt of court. In such case the act will be punishable both under the Indian Penal Code and as contempt of court. The only exception to this rule that has been enacted by the Contempt of Courts Act is that if the act is punishable by the Penal Code as contempt of court then that act cannot form the subject of contempt proceedings by the High Court. Section 228 of the Indian Penal Code provides for punishment of intentional insult or interruption to a public servant sitting in judicial proceedings. This section provides for punishment of contempt of court and the offence contemplated by that section cannot, therefore, in view of the provisions of clause (3) of section 2, form the

(1) A.I.R. 1932 Cal. 705.

subject of proceedings for contempt by this Court. Similarly if there be any other provision in the Penal Code about the punishment of an offence as contempt of court then that offence cannot be made the subject of contempt proceedings by this Court.

In the case before us the allegations and insinuations contained in the two applications did no doubt amount to the offence of defamation as defined by section 499 of the Indian Penal Code. But the offence of defamation is made punishable by the Code not as an offence of contempt of court but as an offence of defamation. In the case before us it was no doubt open to the judicial officers concerned to file complaints for the offence of defamation as against the opposite party. But the institution of such complaints would have vindicated the character of those judicial officers in their individual and judicial capacity. The purpose of contempt proceedings is, however, entirely different. The object of such proceedings is to vindicate the dignity and honour of the courts subordinate to this Court and this purpose could not have been served by the institution of complaints by the judicial officers.

For the reasons given above we hold that clause (3) of section 2 of the Contempt of Courts Act is no bar to the present proceedings. The view that we take does not appear to be in consonance with the decision of SULAIMAN, C.J., in *Ziaul Hasan v. Aziz Ahmad* (1). In that case his Lordship dismissed an application praying for proceedings to be taken for contempt of court with the observation that "This is clearly a defamatory statement against the presiding officer, which would be a criminal offence under the Indian Penal Code and for which the officer concerned has a remedy by way of filing a complaint. I would not take cognizance of this offence as one falling under the Contempt of Courts Act." It

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(1) [1935] A.L.J. 950.

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does not appear from the judgment of the learned CHIEF JUSTICE whether he dismissed the application on the ground that this Court had no jurisdiction to take proceedings for contempt when the subject of those proceedings amounted to the offence of defamation under the Penal Code, or whether he, in the exercise of his discretion, refused to initiate proceedings for contempt of court. But if the learned CHIEF JUSTICE took the view that this Court under the circumstances has no jurisdiction, we, for the reasons already stated, respectfully dissent from that view.

Apart from this, as we have already observed, the remarks contained in the application sent to the small cause court Judge concerning the Judges of this Court clearly amounted to contempt of this Court, and, as such, we, in any view of the matter, have jurisdiction to punish the opposite party in these proceedings.

We now pass to a consideration of the written statement filed by the opposite party. It starts with the statement that the opposite party tenders an apology with respect to his acts, but this apology is followed by a long sermon in the course of which it is pointed out that corruption is prevalent in the courts below on a large scale and that the Hon'ble the Chief Justice, His Excellency the Governor, the Hon'ble the Premier and the Hon'ble Ministers are devising means to put an end to this evil. Then the opposite party narrates the various forms of corruption that he alleges prevail in the courts below. It is then stated in the written statement that the opposite party is not only a supporter but the chief worker of the Congress and an advocate of "change in administration". It is then pointed out that the realisation of court fees for administering justice and the decision of 100 or 125 cases by small cause court Judges in 4 or 5 hours results in denial of justice. The law of limitation is stigmatised as a law based on dishonest principles. Further it is stated that it is the duty of this Court to go into facts in revision. In the written

statement it is again asserted that the presiding officers concerned are mere puppets in the hands of their staff and do not administer justice.

This written statement, far from containing a genuine apology, reiterates to some extent the charges contained in the two applications. We cannot treat the written statement as a genuine apology as the opposite party even now does not admit his guilt and does not unconditionally throw himself on the mercy of the Court. Further, we shall be failing in our duty to uphold the legitimate dignity of the courts below if in a case like the present, which is a glaring example of gross contempt of the subordinate courts, we were to accept this apology. We have therefore unhesitatingly come to the conclusion that the opposite party must be committed to civil prison for contempt of court. In our judgment the proper sentence to pass in such a case is the maximum sentence allowed by law, viz. a sentence of imprisonment for six months. But having seen the opposite party we are inclined to the view that he is endowed with a somewhat excitable temper and this fact in our judgment constitutes a justification for mitigation of sentence. Accordingly we direct that Jagannath Prasad Swadhin be committed to civil prison for a period of three months. The imprisonment will be simple.

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