

to the Sub-Divisional Magistrate, Hardoi, in the following terms:

1939

RAM
SHANKAR
v.
V. N.
SHUKLA

"MY DEAR RESPECTED DEPUTY SAHIB,

"I am sorry I could not see you again yesterday as your honour was very busy at 4 p.m. and my train was due to arrive at 4.15. I do not want to present my anxieties and troubles again before your honour. Those were well mentioned in my respected S. D. O., Malihabad's letter.

Ziaul
Hasan
and
York,
J.J.

"I however submit the programme of our *Krishna Janma Ashtmi* festival and hope your honour will kindly take necessary steps for saving our religion and culture well.

"Sir, my father Pandit Bhoop Narain Shukla of Bawan is an old man of about 70. He is a true devotee of Lord Krishna and has a good faith in him. He was much shocked last year when certain troubles regarding *dadhi* procession were created and when as a result that was stopped. Being in service here I cannot help him. He is a peace-loving gentleman and this is why that he last year preferred it well to stop his procession and seek police help than to join in a hand-to-hand fight. Hundreds of devotees go there from the nearby villages and if any trouble will arise from the side of the *goondas* who have some malice against us, it would be very difficult to pacify them and have an immediate control over them."

"Now I hope your honour will do the needful and oblige.

Yours obediently,

V. N. SHUKLA,

Assistant Station Master,
Rahimabad, District Lucknow.

It is on the basis of this letter that the present application has been brought and it is said that the letter constitutes interference with the administration of justice and amounts to contempt of Court.

The reply of the opposite party is that he never intended by the letter in question to interfere with the course of justice and that all that he meant was that the Magistrate should take steps in his executive capacity to ensure a peaceful celebration of the ceremonies organised by his father.

After hearing the counsel for parties we have come to the conclusion that it is very doubtful that the

1939

RAM
SHANKAR
v.
V. N.
SHUKLA

Ziaul
Hosain
and
Yorke,
J.J.

opposite party intended by the letter of the 9th August, to influence the learned Magistrate in his judicial capacity. In fact there are indications to the contrary and in support of the opposite party's reply.

In the first place the application of the opposite party's father dated the 20th July, 1938, does not contain any prayer that the persons named therein be bound over under section 107, Criminal Procedure Code. On the other hand the application is headed "Informatory application for the arrangement of the *Utsav of Janam Ashtmi and Dadh* in village Bawan, thana Kotwali, Hardoi", and the prayer is merely that necessary arrangements be made and proper steps be taken. It is also noteworthy that in this application the applicant did not name all the persons against whom he wanted steps to be taken but mentioned them as "Ram Shankar, Ram Saran and others". If the applicant's intention had been that the persons complained against should be bound over to keep the peace he would naturally have named and described each and every one of those persons. It is true that proceedings under section 107, Criminal Procedure Code, were started against the applicant and some others but that was on the report of the police and not on account of any prayer on the part of Pandit Bhoop Narain. Then again, those proceedings were started as already noted on the 12th August, 1938, and the letter in question was written by the opposite party on the 9th August, so that when that letter was written, no judicial proceedings were pending before the learned Magistrate to whom the letter was addressed. Of course every private communication to a judge for the purpose of influencing his decision upon a pending matter is contempt of Court as tending to interfere with the course of justice (*vide* Halsbury's Laws of England, Volume 7, page 7), and if at the time that the opposite party wrote the letter in question proceedings under section 107, Criminal Procedure Code, had been pending before the learned Magistrate and if the intention of the opposite party

had been to influence the Magistrate by means of that letter, he would undoubtedly have been guilty of contempt of Court. We are of opinion, however, that there was no such intention on the part of the opposite party. Nor were proceedings under section 107, pending at that time.

We therefore accept the explanation of the opposite party and reject this application.

Application rejected.

MISCELLANEOUS CRIMINAL

Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke

MAHABIR PRASAD (APPLICANT) v. MR. C. B. GUPTA
(OPPOSITE PARTY)*

1939
April, 24

Contempt of Court—Member of Legislative Assembly writing letter to Magistrate not to proceed with cases under section 107, Criminal Procedure Code, pending in his court and to take action against a particular person—Member, whether guilty of contempt of Court.

Where the accused, a member of the Legislative Assembly wrote a letter to a Magistrate complaining that the Superintendent of Police and Deputy Commissioner had not, on his letter to them, taken any steps against the ziladar of a zamindar and requesting him to take immediate steps against the said ziladar and not to proceed with the cases pending in his court against certain tenants under section 107, Criminal Procedure Code, held, that the letter grossly offends against the law of Contempt of Court and it is in the clearest terms an attempt to prejudice the mind of the Magistrate in regard to the trial of the case pending against the tenants in which the said ziladar was a witness for the prosecution, and he is guilty of contempt of Court.

Mr. Hargovind Dayal Srivastava, for the applicant.

Mr. R. F. Bahadurji, for the opposite party.

ZIAUL HASAN and YORKE, JJ.:—This is an application under section 2 of the Contempt of Courts Act read with sections 219 and 220 of the Government of India Act by one Mahabir Prasad against Mr. C. B.

*Criminal Miscellaneous Application No. 112 of 1938, under section 2 of the Contempt of Courts Act read with section 219 and 220 of the Government of India Act.

1939

MAHABIR
PRASAD
v.
MR. C. B.
GUPTA

*Ziaul
Hasan
and
Yorke,
JJ.*

Gupta, an advocate of this Court and a member of the Legislative Assembly, arising out of the following circumstances:

In July, 1938, there is said to have been some ill-feeling between the tenants of villages Nayagaon and Kampta on the one hand and Mahabir Prasad, the present applicant, who is the zildar of Chaudhri Gajadhar Prasad zamindar of those villages on the other. The villagers, we are told, approached the opposite party Mr. C. B. Gupta, and in consequence he wrote to the Superintendent of Police a letter dated the 26th July, 1938, of which he sent copies to the Deputy Commissioner and the Sub-Divisional Officer for information and necessary action, mentioning the complaints made by the villagers against Mahabir Prasad, and further stating that he had information that a previous Sub-Divisional Officer of the Lucknow tahsil had on some previous occasion got the said Mahabir Prasad suspended. The request in this letter to the Superintendent of Police was that he should take such steps as were necessary and as might enable the tenants of that locality to live peacefully. Our information on this point is derived from Mr. Gupta himself. It appears from the record that on the previous day, the 25th July, the Naib-Tahsildar of Lucknow had gone to the same villages of Nayagaon and Kampta, and on the occasion of this visit, which was in the performance of his official duties in connection with the realisation of revenue, there was some trouble, as a result of which a report was made by the tenants at police station Mandiaon at 3 a.m. on the 26th July, and a report made by the Naib-Tahsildar to the Tahsildar on the same day, and subsequently proceedings under section 107 of the Code of Criminal Procedure were instituted against some of the tenants. These proceedings were pending in the court of the Sub-Divisional Officer, Lucknow, Rai Sahib Mr. Anand Swarup when on the 6th September, 1938, the opposite party Mr. Gupta wrote the letter which

is the subject of the present proceedings. This letter is headed "urgent" and runs as follows:

"DEAR MR. ANAND SWARUP,

On the 26th of July, 1938, I sent a letter to Mr. Parkin, the Superintendent of Police, complaining against the conduct of one Mahabir Prasad, ziladar of Ch. Gajadhar Prasad, zamindar of the villages, Kampta and Nayagaon, in the Lucknow District. A copy of that letter was sent to the Deputy Commissioner, Lucknow, as well, which I think, must have been sent to you for necessary action. I did not hear anything since then as to the steps that were taken in the matter.

This morning an army of villagers, residents of villages Kampta and Nayagaon, have raided my house and are bitterly complaining against the action of the authorities in having prosecuted tenants under section 107 without caring to investigate into the complaint alleged against the ziladar, Mahabir Prasad. This is very strange. I know it for certain that the said Mahabir Prasad was suspended for his misbehaviour on the recommendation of the previous S. D. O., Mr. Sapru, who had investigated certain facts against the said gentleman. It pains me to find that the authorities have not taken any steps against Mahabir Prasad and instead have issued orders for binding down some 20 tenants of the said village. I shall request you, therefore, to take immediate steps against the said Mahabir Prasad and not proceed with the cases under section 107, Criminal Procedure Code. I am forwarding a copy of this letter to the Deputy Commissioner as well.

Hoping to hear soon from you on the subject.

Yours sincerely,

(Sd.) C. B. GUPTA."

On a reading of this letter, particularly on putting it side by side with the letter dated the 26th July, 1938, a copy of which has been furnished to us by Mr. Gupta himself, we are of opinion that the writing of this letter grossly offends against the law of Contempt of Court. It is in the clearest terms an attempt to prejudice the mind of the Magistrate in regard to the trial of the case pending against the tenants under section 107 of the Code of Criminal Procedure, in which Mahabir Prasad was a witness for the prosecution. It assumes that the writer without having made any complaint in

1939

MAHABIR
PRASAD
v.
MR. C. B.
GUPTA

Ziaul
Hasan
and
Yorke,
JJ.

1939

MAHABIR
PRASAD
v.
MR. C. B.
GUPTA

Ziaul
Hasan
and
Yorke,
JJ.

Court against Mahabir Prasad has a right to request a Magistrate to take immediate steps against Mahabir Prasad in respect of his conduct, whatever that conduct may be, and it assumes that the writer is entitled to direct the Magistrate not to proceed with the cases under section 107. It is, and indeed it is no longer denied to be, a clear case of contempt of Court.

Learned counsel for Mr. Gupta has urged before us that this application against Mr. Gupta is not a *bona fide* application but has been filed by Mahabir Prasad in revenge for the attacks made on him by Mr. Gupta in these two letters. We are not really concerned with the question of the *bona fides* of Mahabir Prasad but with the question whether the letter written by Mr. Gupta is or is not an offence against the law of contempt of Court. The fact relied upon by learned counsel that the letter was not brought to our notice by the Magistrate himself does not seem to us to be a fact at all helpful to learned counsel's client. It may be that the Magistrate thought, that as he was not at all swayed by the remarks of Mr. Gupta in this letter, it was unnecessary for him to take any action in regard to it. We would, however, point out that in our opinion it was the bounden duty of the Magistrate (and of the Deputy Commissioner, if, as would appear from the concluding remarks in this letter, he actually received a copy of it) to bring this matter to the notice of this Court, and we would like to emphasise very strongly the point that it is the duty of all Magistrates who receive such letters or upon whom any attempt is made to bring improper influence to bear in connection with their magisterial work to bring the fact to the notice of this Court.

When this matter came up for disposal on the 6th April, 1939, learned counsel for Mr. Gupta, who was not himself present, put before us a petition by way of apology from his client. In this petition he says, after reciting facts which we have mentioned earlier in this order, "In order to remind the authorities of my

previous letter dated the 26th of July, I wrote a letter to Mr. Anand Swarup in his capacity as Sub-Divisional Officer within whose jurisdiction the tenants were residing. The letter was written with the solitary view of bringing to his notice the grievances of the tenants against the ziledar." We regret that we are unable to accept this as a true statement of facts. He goes on to say: "At the time when this letter was dictated by me to my stenotypist I was in a great hurry to proceed to the Council Chamber to attend to some business. The letter of the 6th September was dictated in a great hurry and I signed it without reading it over again." Again we have to regret that Mr. Gupta's statement in this connection is not true. An examination of the original letter on the file of the proceedings under section 107, Criminal Procedure Code, shows that Mr. Gupta corrected this letter in his own handwriting in the middle and near the end. It is quite clear that these corrections could not have been made without his having read over what he had dictated and read it with some care. Mr. Gupta tells that the explanation of this admittedly incorrect statement made by him is that he made it by a reference to the copy which he had in his possession which showed these corrections in the handwriting of his clerk, and that the explanation therefore of his making an incorrect statement is that he had forgotten that he had in fact read over the letter. We accept his explanation but we do not think that Mr. Gupta, who is an advocate of this Court, being in the position of having to furnish an explanation of a letter written by him, should have put before the Court an explanation based on facts not properly verified by him.

The petition of the 6th April, 1939 continues as follows:

"It was never my intention to interfere with the administration of justice, and at that time I little thought that by writing this letter I would be committing contempt of Court. The letter was dictated in absolutely good faith.

1939

 MAHABIR
 PRASAD
 v.
 MR. C. B.
 GUPTA

*Ziaul
 Hasan
 and
 Yorke,
 JJ.*

1939

MAHABIR
PRASAD
v.
MR. C. B.
GUPTA

Ziaul
Hasan
and
Yerke,
J.J.

I am sorry that in the letter I have addressed to Mr. Anand Swarup I have been led unconsciously to use certain sentences contrary to my intention which I am informed brings me within the provisions of the Contempt of Courts Act. I had not the slightest intention to prejudice the Sub-Divisional Officer in arriving at true conclusions. Now I know that I have committed a mistake and I must suffer for it. I leave the matter in the hands of the Court."

In view of the facts in regard to this explanation and apology to which we have drawn attention above, we indicated to learned counsel appearing for Mr. Gupta that we were not satisfied with the apology, and on the 9th April, Mr. Gupta, who was again not present, added a rider to his previous written statement in the following terms:

"I express my sincere regret and apology to the Honourable Court for having committed contempt of Court and I undertake not to repeat the same in future."

As Mr. Gupta was not himself present in Court to explain the matters mentioned above, we postponed the final disposal of the matter until the 19th April and requested counsel to produce his client on that date. Mr. Gupta has appeared before us and we have heard what he had to say in explanation of the incorrect statement about not reading over the letter again contained in his first apology. Mr. Gupta has again pressed before us the point that he did not realise that he was committing an offence of contempt of Court because he regarded himself as writing to Mr. Anand Swarup in the latter's executive capacity of a Sub-Divisional Officer and not as the Magistrate trying a case under section 107 of the Code of Criminal Procedure. We think it is a pity he made this statement because it is in fact contradicted by his request to the Magistrate not to proceed with the cases under section 107 which were pending in his court. If Mr. Gupta's statement is true that he, an advocate of this Court, is incapable of realising that after a Magistrate has started proceedings in a case under section 107 and has issued notices under

section 112, it is impossible to address to him in connection with those cases a letter of the type of Mr. Gupta's letter of the 6th September, 1938, it is quite time that both he and any other persons who may be likely to be under a similar misapprehension should realise fully that it is in the highest degree dangerous to write a letter of any kind to a Magistrate seized of a case which can possibly be construed as calculated in any way to influence him in his handling and disposal of that case.

The question, which remains for consideration, is whether we should act under the first proviso to section 3 of the Contempt of Courts Act which provides that "the accused may be discharged or the punishment awarded may be remitted on apology being made by it to the satisfaction of the Court" or whether we should compel Mr. Gupta to purge his contempt by payment of a fine or the undergoing of a sentence of imprisonment. The only case of a similar nature to which we have been referred in this connection is *Emperor v. Gajadhar Prasad* (1). In that case the gentleman concerned immediately on the issue of the notice appeared in court and made a very complete apology and gave an undertaking, and in consequence the apology was accepted. In the present case the Court did not insist on the personal appearance of Mr. Gupta and Mr. Gupta never did appear until we called on his counsel to produce him personally before us. Further than this the first apology which he tendered was unsatisfactory as we have made clear earlier in this order, and it was only when we pressed his learned counsel in the matter that a full and proper apology and undertaking was furnished to the Court. Moreover Mr. Gupta, though he has not been practising recently, is an advocate of this Court according to his own statement of some 10 years' standing and became a pleader as long ago as 1925. He is the last person therefore who should have allowed himself to be guilty of an offence of this kind.

1939

 MAHABIR
 PRASAD
 v.
 Mr. C. B.
 GUPTA

*Ziaul
 Hasan
 and
 Yorkc,
 JJ.*

(1) (1939) A.L.J.R., 99.

1939

MAHABIR
PRASAD
v.
MR. C. B.
GUPTA

In these circumstances we do not feel that we should be justified in accepting his apology as fully meeting the requirements of justice, and we think it is necessary to sentence him according to law.

We accordingly direct that Mr. C. B. Gupta shall pay a fine of Rs.200. In default he will undergo one month's simple imprisonment. We allow one week for deposit of the fine.

Application allowed.

Ziaul
Hasan
and
Yorke,
JJ.

APPELLATE CRIMINAL

Before Mr. Justice A. H. de B. Hamilton

1939
May, 20

SUNDER SINGH AND OTHERS (APPELLANTS) v. KING-EMPEROR (COMPLAINANT-RESPONDENT)*

Indian Penal Code (Act XLV of 1860), sections 34, 299 and 300—Several persons attacking one person with lathis and causing his death—Person inflicting the fatal blow, when guilty of murder—"Common intention" under section 34, Indian Penal Code—"Common intention" and "knowledge" under sections 299 and 300, Indian Penal Code—Section 34, Indian Penal Code, applicability of—Co-assailants, guilt of.

When a number of assailants inflict *lathi* blows on one person some of which blows are fatal and some of which are not, the first thing to do is to see whether the assailant who has inflicted the fatal blow is guilty of murder or not.

A common intention under section 34, Indian Penal Code, is an intention shared by the person who has caused death and by the other assailants who did not themselves cause death. If the act which caused death is neither murder nor culpable homicide because the person who dealt that blow did not have such intention as is specified under sections 299 or 300 of the Indian Penal Code but had only the knowledge which is specified in either of these two sections, there is no intention which can be shared by all the assailants who did not strike the fatal blow and, therefore, section 34 cannot apply. The knowledge referred to in sections 299 and 300 is personal knowledge of the person who struck the blow and it is difficult to see how it

*Criminal Appeal No. 45 of 1939, against the order of Mr. Bhagwat Prasad, Sessions Judge of Bara Banki, dated the 19th January, 1939.