

The present case is fully governed by the recent ruling in the case of *Salig Ram, vendee v. Badhawa and others, and Mangal vendor* (1). In our opinion the learned Judge of the Court below has arrived at a correct conclusion.

The appeal fails and is dismissed with costs.

N. F. E.

Appeal dismissed.

SPECIAL BENCH.

*Before Mr. Justice Broadway, Mr. Justice Addison and
Mr. Justice Coldstream.*

THE CROWN.

versus

SAYYAD HABIB.

Original Criminal No. 1 of 1925.

Contempt of Court—Newspaper article containing an attack upon High Court—Commenting on a decided case—Jurisdiction of High Court to deal summarily with contempts—What amounts to contempt of Court—Principle underlying cases of attacks upon Courts—Apology—whether a sufficient ground for immunity from punishment.

A Judge of the Lahore High Court dismissed a petition for revision *in limine*. "The Siasat", a daily paper of Lahore, in the course of an article called the Judge "sycophantic" and accused him of having decided the case under comment not according to the dictates of justice but in order to please and curry favour with others. Proceedings for contempt of Court were taken against the accused (editor, printer and publisher of the said paper) for the article in question.

Held, that the Lahore High Court as a Court of Record has jurisdiction to deal summarily with contempts of the above nature.

(1) (1923) I. L. R. 4 Lah. 254.

Surendra Nath Banerjee v. The Chief Justice and Judges of the High Court (1) and *In the matter of Sashi Bhushan Sarbadhicary* (2), followed.

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The publication of an article referring to a case which has been decided may amount to and be treated as contempt.

Queen v. Gray (3), and *In re Satyabodha Ramchandra Adabaddi* (4), followed.

Held also, that an article scandalising a Court or a Judge is a contempt of Court.

In re Read and Huggonson (5), per Lord Hardwicke L. C. and *Queen v. Gray* (3) per Russell C. J., followed.

The principle underlying the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders is not the protecting of either the Court as a whole or the individual Judges of the Court from a repetition of them, but the protecting of the public and especially those who either voluntarily or by compulsion are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired. It is most necessary not only that the Judges should be impartial but that their impartiality should be recognised by the public at large.

Rex v. Davis (6), per Wills J. and *Rex v. Almon* (7), per Wilmot C. J., referred to.

The mere fact that an apology has been tendered by the accused is not a sufficient reason for securing immunity from punishment for him.

Queen v. Gray (3), referred to.

In the matter of the contempt of the High Court of Judicature at Lahore by Sayyad Habib, the editor, printer and publisher of the daily paper "Siasat", Lahore.

GOVERNMENT ADVOCATE, for the Crown.

Sayyad HABIB, in person.

(1) (1883) I.L.R. 10 Cal. 109 (P.C.) (4) (1922) I. L. R. 47 Bom. 76.
 (2) (1906) I.L.R. 29 All. 95 (P.C.) (5) (1742) 2 Atk. 291, 469.
 (3) (1900) L. R. 2 Q. B. D. 36. (6) (1906) I. K. B. D. 32.
 (7) (1765) Wilmot's Opinions 256.

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The judgment of the Court was delivered by—

BROADWAY J.—On the 13th of July this Court was moved by the Government Advocate to grant a rule against Habib, son of *Sayyad* Sadullah Khan, the editor, printer and publisher of a daily newspaper, known as the 'Siasat', to show cause why he should not be committed, or otherwise dealt with, in accordance with law, for contempt of Court in respect of two articles published in the said newspaper on the 28th and 30th of June, 1925, respectively. As the articles complained of contained certain scandalous matters reflecting on a Judge of this Court, as well as on the Court itself, the rule was issued by a Division Bench of the Court. The rule was returnable on the 17th of this month. On the date fixed the said Habib appeared in person and filed an affidavit in which he states that there was nothing objectionable in the article published in the issue of the 28th of June and that the article in the issue of the 30th of June, 1925, had been published during his absence from Lahore but he admits his legal responsibility for the same. He further admits that in this latter article there are "expressions, words and sentences" that are "unfortunate" and of which he felt "ashamed". He goes on to say: "It is my duty to withdraw the same and apologise, which I hereby do and express heartfelt and sincere regret for the same." He concludes by saying as follows: "Undefended as I am, I leave myself entirely at the mercy of this Hon'ble Court."

It will be seen that no objection has been taken to the jurisdiction of this Court. It is, therefore, unnecessary to discuss this point at any length. The authorities on the subject have been carefully examined by me and I am satisfied that this Court

as a Court of Record has jurisdiction to deal summarily with contempts of this nature. In this connection reference may be made to the case of *Surenāra Nath Banerjee v. The Chief Justice and Judges of the High Court at Fort William in Bengal* (1) and the remarks of their Lordships of the Privy Council in *In the matter of Sashi Bhushan Sarbadhicary* (2).

Further, having regard to the decisions in *The Queen v. Gray* (3) and *In re Satyabodha Ramchandra Adabaddi* (4), there can be no doubt that the publication of an article referring to a case which has been decided may amount to, and be treated as contempt.

The next question for determination is whether the articles complained of amount to contempt, and before proceeding further it is material to state the circumstances under which these articles came to be published. Certain riots had taken place in Delhi and nine Muhammadans had been found guilty of having been concerned in the said rioting and had been convicted and sentenced. Their appeals had been dismissed by the learned Sessions Judge and they had moved this Court on the revision side for reconsideration of their case. This revision came up as a petition before Mr. Justice Zafar Ali on the 26th June, 1925. After hearing the learned counsel for the petitioners Mr. Justice Zafar Ali dismissed the petition *in limine*. As stated above this was on the 26th of June, 1925. In the issue of the "Siasat" newspaper, dated the 28th of June, 1925, appeared an article referring to this case. It is headed: "The Noted Delhi Affray Case; Heavy

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(1) (1883) I.L.R. 10 Cal. 109 (P.C.) (3) (1900) L. R. 2 Q. B. D. 36.
(2) (1906) I.L.R. 29 All. 95 (P.C.) (4) (1922) I. L. R. 47 Bom. 73.

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punishments to nine Muhammadans; Appeal of the oppressed Muhammadans dismissed." In the course of this article the decision of the Hon'ble Judge was referred to as having been arrived at "hastily". The argument of the learned counsel for the petitioners was given, or purported to be given, in considerable detail. Surprise was expressed at the circumstance that the extraordinarily able arguments advanced by the learned counsel had not achieved success. The article shows a certain want of knowledge on the part of the writer, for instead of "a revision" the matter before the Court is described as an "appeal." Although the language employed is a little unhappy, had matters stopped there no notice would have been taken of the article. It has, however, a bearing on what followed, for in the issue of the "Siasat" newspaper, dated the 30th of June, 1925, appeared a leading article. This was headed as follows: "*Insaf kush be iltifati. Ek khushamadi Judge ka nawajib faisla,*" which has been translated in the translation filed with the application as "Indifference resulting in injustice. Improper decision of a parasitic Judge." The learned Government Advocate has suggested that a more appropriate translation of the word "*khushamadi*" would be "Sycophantic". This article was read at length by the learned Government Advocate and it is not necessary to read it again. It contains expressions, words and sentences, which have been described by Habib in his affidavit as "unfortunate", and he has further stated that he is ashamed of them. As a matter of fact, there can be no doubt from a perusal of this article that it is a very grave and serious contempt of this Court. The inuendo is clearly that which is contended for by

the learned Government Advocate and, put briefly, it accuses a Judge of this Court of having decided the case under comment not according to the dictates of justice, but in order to please and curry favour with others. It further says that the door of justice (clearly including the door of this Court) has, been closed against Muhammadans in the Punjab.

As was pointed out in *The Queen v. Gray* (1) by the Lord Chief Justice Russell, "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court". And this class of contempt belongs to the category which Lord Hardwicke L. C. in *In re: Read and Hug-gonson* (2), characterised as "scandalising a Court or a Judge." There can be no doubt that the article now under consideration falls within that category and does scandalise the Court and a specific member of this Court. Doubtless Judges and Courts are alike open to criticism, and "if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court." As stated above, however, Habib has not suggested that this is not contempt of Court, nor has he claimed that this article falls within the right of public criticism.

In Rex v. Davis (3), Mr. Justice Wills made the following remarks :—

"What then is the principle which is the root of and underlies the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders? It will be

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(1) (1900) L. R. 2 Q. B. D. 36. (2) (1742) 2 Atk. 291, 469.

(3) (1906) I. K. B. D. 32.

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found to be, not the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of them, but of protecting the public, and especially those who, either voluntarily or by compulsion, are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired."

There can be no doubt that it is most necessary that Judges should not only be impartial but that their impartiality should be recognised by the public at large, and as pointed out by Chief Justice Wilmot in *Rex v. Almon* (1), "attacks upon the Judges excited in the minds of the people a general dissatisfaction with all judicial determinations and whenever men's allegiance to the laws was so fundamentally shaken, it is the most fatal and dangerous obstruction of justice calling out for a more rapid and immediate redress than any other obstruction; not for the sake of the Judges as private individuals but because they are the channels by which the King's justice is conveyed to the people." Having regard to these remarks there can be no doubt whatever that this article amounts to a very serious contempt, and one calling for prompt and efficient action. The learned Government Advocate urged that the contempt committed by Habib in this case was of such a serious nature as called for exemplary punishment. He urged that the mere fact that an apology had been tendered was not a sufficient reason to secure for Habib immunity from punishment. In Surendra Nath Banerjee's case a very full apology had been tendered, nevertheless he was sentenced to imprisonment. In *Queen v. Gray* (2), again a full apology

(1) (1765) Wilmot's Opinions 256.

(2) (1900) L. R. 2 Q. B. D. 36.

was made at the first possible opportunity. Gray was, however, sentenced to pay a fine of £100 and £25 as costs. According to the affidavit filed by Habib, he was away from Lahore at the time when this particular leading article was published. In addressing the Court he stated that he was a stout supporter of Hindu and Muslim unity, but that unfortunately among his employees there was one who did not see eye to eye with him and that it was this person (unnamed) who had taken advantage of his temporary absence from Lahore and had published this leading article. It appears, however, that this particular employee has been in Habib's employ for over a year. Further, the affidavit shows that Habib returned to Lahore on the morning of the 2nd July. He has not, however, brought to our notice any issue of his paper in which he repudiates this leading article or in any shape or form expresses his regret at its contents. In these circumstances the fact that he was absent when the article was published does not, to any material extent, relieve him from the serious responsibility that rested upon him as the editor, printer and publisher of the newspaper in question. I take into account the fact that this is the first occasion that this Court has been compelled to exercise this particular jurisdiction, and further I also bear in mind that Habib has tendered an apology in his affidavit and has made that apology a much fuller one in addressing the Court. Nevertheless, I think the scandalous nature of this article calls for punishment that shall be a deterrent not only to the offender in this case but to all others and I therefore direct that Habib be imprisoned for a period of one month (simple) and do also pay a fine of Rs. 1,000 and a further sum of Rs. 100 as costs of these pro-

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ceedings. He will remain imprisoned until the said fine and costs are paid.

ADDISON J.—I concur.

COLDSTREAM J.—I concur.

A. N. C.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Coldstream.

HUSSAIN BAKHSH (PLAINTIFF) Appellant,

versus

SARBULAND (DEFENDANT) Respondent.

Civil Appeal No. 55 of 1924.

Colonization of Government Lands (Punjab) Act V of 1912, section 19—Tenant's agreement to transfer a grant of land—Commissioner's consent not obtained—Agreement void.

A tenant, bound by the provisions of Punjab Act V of 1912, executed a document purporting to transfer his grant of land to himself and his brother, H. B., jointly, in consideration of their alleged joint purchase of a mare required in connection therewith. H. B. relying on the document, sued for a declaration of his rights under it.

Held, that in view of the express provision contained in section 19 of the Act, the agreement by a tenant (who had not acquired proprietary rights) was void, and its enforcement by declaratory suit was rightly refused.

Ali Mardan v. Balsar Khan (1), *Hussain Khan v. Jahan Khan* (2), and *Nathu v. Allah Ditta* (3), distinguished.

First appeal from the decree of Lala Khan Chand Janmeja, Senior Subordinate Judge, Shahpur, at Sargodha, dated the 30th November, 1923, dismissing the claim.

J. L. KAPUR, for MUHAMMAD ALAM, and MAYA DAS,
for Appellant.

M. L. PURI and BAL KISHAN, for Respondent.

(1) 13 P. R. 1913. (2) 58 P. R. 1913.
(3) (1921) I. L. R. 3 Lah. 92.

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