SPECIAL BENCH (CRIMINAL).

1939

July 17.

Before Mr. Justice Mya Bu, and Mr. Justice Mosely.

THE ADVOCATE-GENERAL, BURMA

v.

MAUNG CHIT MAUNG AND ONE.*

Contempt of Court—Inquiry by magistrate as to cause of death—Necessity of finding cause and persons responsible for death—"Judicial proceeding"—"Subordinate Court"—Object of punishment for contempt of Court—Criminal Procedure Code, ss. 4 (1) (m), 176—Contempt of Courts Act, s. 2—Government of Burma Act, s. 85.

An inquiry or inquest held by a magistrate under s. 176 of the Criminal Procedure Code as to the cause of death of a person is a "judicial proceeding" within s. 4 (1) (*m*) of the Code, and a magistrate holding judicial proceedings in which it is necessary for him to come to a finding as to the cause of death and as to the persons responsible, if any, for the death, acts as a "court" subordinate to the High Court.

The words "subordinate Court" in the Contempt of Courts Act are used in a wide sense so as to include any Court over which the High Court has superintendence for the purpose of s. 85 of the Government of Burma Act, that is to say, all Courts for the time being subject to its appellate jurisdiction.

In re Laxminarayan, 30 Bom. L.R. 1050; *Nanda Lal* v. *Khetra Mohan*, I.L.R. 45 Cal. 585; *In the matter of Troylokhanath*, I.L.R. 3 Cal. 742, referred to.

The object of punishing an offender under the Contempt of Courts Act for speaking or writing contemptuously of Courts or Judges acting in their judicial capacity is not to protect either the Court or the Judge as an individual from a repetition of the attack, but to protect the public, and specially those who, either voluntarily or by compulsion, are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the tribunal be undermined or impaired.

Crown v. *Sayyad Habib*, I.L.R. 6 Lah. 528; *Emperor* v. *Jagannath Prasad*, I.L.R. [1938] All. 548; *In re Murli Manohar*, I.L.R. 8 Pat. 323, referred to.

E Maung for the respondents. A magistrate acting under s. 176 of the Criminal Procedure Code is not acting as a "Court". The nature of an inquest proceeding is such that no final judgment can be passed, and therefore it is merely an inquiry. Witnesses are not put on oath. See *In the matter of Troylokhanath*

* Cr. Misc. Application No. 19 of 1939 of this Court arising out of Cr. Misc. Trial No. 4 of 1939 of the Eastern Subdivisional Magistrate of Rangoon.

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Biswas and Ram Churn Biswas (1). The definition of "judicial proceeding" in the Criminal Procedure Code was different when this case was decided, but the principle is still applicable. A coroner acting under the Coroners Act would be a Court, but there is no such Act in Burma.

Further, in order to bring a case within the Contempt of Courts Act the Eastern Subdivisional Magistrate must be acting as a Court subordinate to the High Court. In holding an inquest he acts merely as an executive officer, and no report need be made to any one. Even if a report is made it is not subject to revision. See however *In re Laxminarayan Timmanna Karki* (2) which has taken a contrary view.

[MOSELY, J. Is it not axiomatic that if the magistrate were holding a judicial proceeding (as the magistrate in this case undoubtedly was doing) he is acting as a Court? If this is conceded he is a Court subordinate to the High Court.]

In view of the Bombay case this view appears to be possible.

The article in this case is couched in unfortunate language, but the authors had no intention of committing the offence. The article was written in a moment of excitement and that fact may be taken into consideration in mitigation of the punishment. The contempt was not such as to obstruct the course of justice, and the form of contempt of scandalizing the Court has to some extent become obsolete.

Thein Maung (Advocate-General) for the Crown. The object of punishing an offender under the Contempt of Courts Act is not merely to protect subordinate

(1) I.L.R. 3 Cal. 742. (2) 30 Bom. L.R. 1050.

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Courts, but also to see that the confidence of the public in Courts of Justice is not shaken. Judged in the light of that principle a deterrent sentence is called for in this case. *In re Murli Manohar Prasad* (1) ; *The Crown* v. *Sayyad Habib* (2) ; *Emperor* v. *Jagannath Prasad* (3).

MYA BU and MOSELY, JJ. - The preliminary point in this case is whether the proceedings in question which were criticized in the newspaper were the proceedings of a Court subordinate to the High Court.

The Contempt of Courts Act XII of 1926 as amended by the Government of Burma Adaptation of Laws Order of 1937 reads as follows :

" The High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself ;

Provided that the High Court shall not 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. "

Section 4 (*m*) of the Criminal Procedure Code defines " judicial proceeding " as including any proceeding in the course of which evidence is or may be legally taken on oath.

The proceedings in question were Criminal Miscellaneous Trial No. 4 of 1939 of the Eastern Subdivisional Magistrate, Rangoon, where an inquiry or inquest was held into the cause of death of one Aung Gyaw under section 176 (1) of the Code of Criminal Procedure. This inquest was held on a report made by a police officer under section 174 of the Code, and was held in addition to the investigation held by the police officer. Section 176 enacts that the

(1) I.L.R. 8 Pat. 323, 336. (2) I.L.R. 6 Lah. 528.
(3) I.L.R. [1938] All. 548.

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magistrate holding the inquiry shall have all the powers in conducting it which he would have in holding an inquiry into an offence. He shall record the evidence taken by him in any of the manners hereinafter prescribed, that is to say, either summarily or fully, as in a warrant case. It appears, as a matter of fact, that the evidence was not recorded on oath nor read over to the witnesses, but that is immaterial, as all that is required by the definition of " judicial proceeding " is that it shall be one where evidence may be legally taken on oath.

A finding was arrived at by the Magistrate in this enquiry that Maung Aung Gyaw's death was due to a fracture of the skull caused by an injury received during a clash between the police and the general crowd of people on the scene, and that death was due to misadventure. For the respondent *In the matter of Troylokhanath Biswas and Ram Churn Biswas* (1), was quoted, where it was held that a report made by a Magistrate in an inquest held by him could not be considered part of a " judicial proceeding " as that was defined in section 4 of the Criminal Procedure Code of 1872. The definition there is " any proceeding in which any judgment, sentence, or final order is passed." The definition has since been changed, but as was said in a subsequent case, *In re Laxminarayan Timmanna Karki* (2) that former case being confined to the question whether the report was part of a judicial proceeding cannot be considered to be an authority for the proposition that the inquiry of which the report is no part under section 176 is not a judicial proceeding.

This last case was one of 1928 and governed by the wording of the present Code of Criminal Procedure. It was said there that the Magistrate is empowered to hold an inquiry into the cause of death, and if he does

(1) (1878) I.L.R. 3 Cal. 742. (2) 30 Bom. L.R. 1050.

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so, is invested with all the powers which he would have in holding an inquiry into an offence. That would bring the proceedings within the meaning of an " inquiry " as defined by section 4 (1) (*k*) of the Criminal Procedure Code, and of a " judicial proceeding " as defined by section 4 (1) (*m*). It was pointed out that clause (3), section 435 of the Code of 1898, expressly excluded from the revisional powers of the High Court inquiries under section 176. By so doing the Legislature, it was said, seemed to have recognized the fact that those proceedings being judicial would fall within the scope of section 435, unless they were expressly excluded. Clause (3), section 435, has since been repealed by Act XVIII of 1923, section 116, and no longer forms part of section 435 of the Code. The learned Judge said that in his opinion there was nothing to debar the High Court from exercising its jurisdiction under sections 435 and 439 of the Criminal Procedure Code in matters falling under section 176. With these propositions of law we would respectfully concur. It might be added that ordinarily it would be rare for the High Court to interfere in revision with proceedings held under section 176 of the Code, but the case dealt with in *In re Laxminarayan Timmanna Karki* (1) was an exceptional case where the Magistrate's proceedings had unwarrantably been stopped by the Collector and District Magistrate, and that interference was itself put a stop to in revision by the High Court.

There can be no doubt, and it is not now seriously contended to the contrary, that the proceedings of the Magistrate holding this inquiry under section 176 of the Code were judicial proceedings.

In our opinion, a Magistrate holding judicial proceedings in which it is necessary for him to come to a finding as to the cause of death and as to the person

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or persons, if anybody, responsible for that death, must be considered to be acting as a Court. "Court" is not defined in the Criminal Procedure Code. It is defined in the Evidence Act as including all Judges and Magistrates and all persons except arbitrators legally authorized to take evidence. "Court of Justice" has been defined in the Penal Code, section 20, as denoting a Judge or body of Judges, and the word "Judge" itself includes, *vide* section 19, every person empowered to give in a criminal proceeding a definitive judgment. The illustration shows that a Magistrate exercising jurisdiction in cases where he can pass sentence is a "Judge" though not when he is merely committing to Sessions. It is clear that this definition, though sufficient for the purposes of the Penal Code is not wide enough here.

For the purposes of section 195 of the Criminal Procedure Code, (which lays down the cases where sanction of a Court is necessary for cognizance of an offence, such as perjury), it has frequently been held that the word "Court" has a wider meaning than that defined in the Penal Code, see for example *Nanda Lal Ganguli* v. *Khetra Mohan Ghoose* (1), and must include a tribunal empowered to deal with a particular matter and authorized to receive evidence bearing on that matter in order to enable it to arrive at a determination.

It is evident that a Magistrate holding an enquiry into the cause of death who must come to a finding as to what caused that death comes within this definition.

We have no doubt that the word "Court" is used in the Contempt of Courts Act in this latter wide sense.

It is not contended that if the Court of the Eastern Subdivisional Magistrate was a Court for the purposes of this section, it was not a Court subordinate to the High Court. It is clearly a Court inferior to the High

(1) (1918) I.L.R. 45 Cal. 585, 588.

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Court for the purposes of section 435 of the Code of Criminal Procedure, and we have no doubt that the words "Subordinate Court" in the Contempt of Courts Act were used in a wide sense as including any Court over which the High Court has superintendence for the purposes of section 85 of the Government of Burma Act 1935, that is to say, all Courts subject for the time being to its appellate jurisdiction.

We would, therefore, hold that the Eastern Subdivisional Magistrate when holding an inquiry under section 176 of the Criminal Procedure Code was acting as a Court subordinate to this Court for the purposes of the Contempt of Courts Act.

[Their Lordships delivered the next day their judgment on the merits of the case.]

MYA BU and MOSELY, JJ.—The newspaper article which has given rise to this proceeding is the editorial in the Burmese newspaper, the *New Light of Burma*, dated the 5th April 1939, of which the first and second respondents are the Publisher and Editor-in-Chief respectively. The article contained comments on the finding of the Eastern Subdivisional Magistrate of Rangoon in his Criminal Miscellaneous Trial No. 4 of 1939 in which the Magistrate held an inquest under section 176 of the Code of Criminal Procedure into the death of one Maung Aung Gyaw which had provoked widespread public interest in this country. The Magistrate's finding was that the death was due to misadventure. The article in question was entitled "Insult to the whole Burmese Nation", and in it it was asserted that the Magistrate's finding was entirely different from that of the eye-witnesses and of the whole country, and that it was a view which was an insult to the whole Burmese Nation, and also that an officer who had so much confidence in and reliance on

the police, as the Magistrate in question, was scarcely found. These and the other statements set out below show the true character of the article. After referring to the action of a Deputy Commissioner

"who, when a big mob of people attempted to manhole him refrained from calling in military aid or dispersing the mob by ordering a baton charge but released arrested persons as desired by the mob, thereby putting the matter to an end."

[Their Lordships set out a portion of the article in question characterizing it as follows :]

These remarks are tantamount to imputations of deliberate perversity, incapability and partiality to the police on the part of the Magistrate in question. There can be no doubt that they are calculated to bring into contempt, U Sein Daing, the Eastern Sub-divisional Magistrate, in his capacity as such. For the publication of this article the respondents are liable to be dealt with for contempt of Court.

Their learned advocate does not contest the proposition that the article *prima facie* amounts to contempt of Court, but he explains that the article was written in a moment of excitement and it was not the intention of the respondent to make deliberate charges of perversity, incapability and partiality against the Magistrate in question. What the intentions of the respondents were must, in the first place, be judged from their own acts, and considering that the article was written more than 3½ months after Maung Aung Gyaw's death, it is difficult to comprehend what the moment of excitement that is said to be prevailing at the time when the article was published was. The main question for consideration then is what is the suitable form of punishment. In this connection the respondents have stated through their advocate that in so far as the article suggests perversity, dishonesty

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and partiality of the Magistrate and his incapacity for holding his office, they unreservedly express regret and withdraw any such imputation on the Magistrate, and have reiterated the assertion of the absence of intention on their part to make those imputations.

The object of a proceeding for contempt of Court and the object of punishment for attacks of this character upon Courts can be clearly understood from quotations of Sir Courtney Terrell in his judgment in *In re Murli Manohar Prasad* (1) :

> " Blackstone, in a celebrated passage of his commentaries (Volume IV, page 285) which will be found quoted in *Legal Remembrancer* v. *Matilal Ghose* (2) specifies in his description of contempts of Court, contempts which arise 'by speaking or writing contemptuously of the Court or Judges, acting in their judicial capacity and which demonstrate a gross want of that regard and respect, which when once Courts of Justice are deprived of, their authority, so necessary for the good order of the kingdom is entirely lost amongst the people.' Sir John Wilmot C.J. in *R.* v. *Almon* (3) justifies a similar view. After quoting the opinion of Wilmot C.J. and giving a list of recent authorities Mr. Justice Mukherji continues, 'The principle deducible from these cases is that punishment is inflicted for attacks of this character upon Judges, not with a view to protect either the Court as a whole or the individual Judges of the Court from a repetition of the attack but with a view to protect the public, and specially those who, either voluntarily or by compulsion, are subject to the jurisdiction of the Court, from the mischief they will incur, if the authority of the tribunal be undermined or impaired.' "

In *The Crown* v. *Sayyad Habib* (4), a special Bench of the High Court of Lahore laid down that 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

(1) (1928) I.L.R. 8 Pat. 323.
(2) (1914) I.L.R. 41 Cal. 173.
(3) (1765) Wilmot 243, 255.
(4) (1925) I.L.R. 6 Lah. 528

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 was also pointed out in that case that the mere fact that an apology has been tendered by the accused is not a sufficient reason for securing immunity from punishment for him. That was a case in which a daily newspaper of Lahore in the course of an article called the Judge " sycophantic " and accused him of having decided the case not according to the dictates of justice but in order to please and curry favour with others. The special Bench considered that the scandalous nature of that article called for punishment that shall be a deterrent not only to the offender in the case but to all others. Similarly in *Emperor* v. *Jagannath Prasad* (1) a Bench of the Allahabad High Court dealing with the case in which, for groundless attacks made by the respondent on the judicial conscience and independence of the presiding officers of certain Courts, the learned counsel for the respondent stated that his client tendered an apology and threw himself on the mercy of the Court, observed :

" We shall be failing in our duty to uphold the legitimate dignity of the Courts below if in a case like the present, which a glaring example of gross contempt of the subordinate Courts we were to accept this apology."

Bearing all these judicial principles in mind, we are of the opinion that we shall be failing in our duty if we, accepting the apology tendered, as stated above, allow the respondents to go unpunished. The nature of the attacks made upon the Magistrate in this case is far worse than those which were the subject matter of the

(1) I.L.R. [1938] All. 548.

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proceeding in *The Government Advocate, Burma* v. *Saya Sein* (1).

Considering all the circumstances of the case, we order that the respondents do pay a fine of Rs. 250 each in default each to suffer three months' simple imprisonment. The respondents are granted one week's time to pay their fines.

(1) (1929) I.L.R. 7 Ran. 844.