1922.

EMPEROR v. AHILYA.

proper course, but the certificate of the Professor is not *per se* admissible in evidence apart from special authority like section 510 of the Code of Criminal Procedure. It seems to me then that without some special authority in that behalf a certificate from a third party like this is only hearsay evidence and is not admissible in the absence of any statutory authority. [His Lordship next dealt with the facts of the cases and confirmed the convictions and sentences. Crump J. delivered a separate judgment agreeing with the above order.]

Convictions and sentences confirmed.

R. R.

CRIMINAL REVISION

Before Mr. Justice Marten and Mr. Justice Crump.

1922.

June 9.

In re SATYABODHA RAMCHANDRA ADABADDI*.

Contempt of Court—High Court—Scandalous attack on the High Court—Jurisdiction to commit for contempt.

Scandalous attacks upon the integrity and impartiality of the High Court, made after it has delivered its judgment in a case, can be punished by the High Court as contempt.

THIS was a rule issued by the High Court calling upon the respondent to show cause why he should not be committed for contempt of Court.

The respondent edited a Kanarese weekly paper called "*Vijaya*" which was published at Dharwar.

At Dharwar, several persons were tried for riot, and convicted. They appealed to the High Court, with the result that the convictions and sentences passed were confirmed.

* Application for Revision, No. 103 of 1922.

The accused published criticism of the High Court adjudication in his paper. [The nature of the comment can be seen from the judgments.]

The Government Pleader, Bombay, obtained a rule against the respondent for contempt.

S. S. Patkar, Government Pleader, in support of the rule. The respondent was present at the first hearing; but on the adjourned hearing he submitted a written statement and was absent.

MARTEN, J. :—This is the hearing of a rule granted by the Chief Justice and Mr. Justice Shah on April 11, 1922, at the instance of the Government Pleader calling upon Mr. Satyabodha Ramchandra Adabaddi, Editor and Printer of the *Vijaya* newspaper, to show cause why he should not be committed for contempt of Court in respect of the publication of the article headed " End of the fifth scene of the First Act of the Painter-Marston-Shivlingappa shooting case " in the issue of the said paper of February 12, 1922.

The newspaper in question is one circulating in the Dharwar District and is a Kanarese newspaper, and the respondent appears to have published in this newspaper an article commenting on the judgments of Mr. Justice Pratt and Mr. Justice Kanga, in what is known as the "Dharwar riot case," which were delivered on February 11, 1922, dismissing certain appeals from the convictions and sentences of the Sessions Judge of Dharwar. The article, it will be observed, appeared on the next day. Whether the newspaper had seen a copy of the judgment before it wrote the article we do not know.

The innuendo which the Government Pleader seeks to put upon the article in question amounts in effect

1922.

SATYABODHA RAM-CHANDRA, *In re.*

to this that the lower Courts were not giving independent and impartial decisions but were merely registering the wishes of the Executive, and were passing sentences already prearranged with the Executive, and consequently it was useless to appeal to the High Court, for no justice could be obtained there either, and that this Dharwar riot appeal was an example of such injustice.

The rule came before us on May 9 last when the respondent appeared in person. But when he then appeared, the official translation of this article was inaccurate and unsatisfactory and accordingly the case stood over to enable a proper translation to be made. On the adjourned hearing of the rule, the respondent did not appear but he has put in a written statement which in effect amounts to this that he had not the least desire, nor has he now, to bring into contempt this Honourable High Court. But he submits that this article read as a whole amounts only to a fair comment on the decision of the Dharwar appeal. We have of course read the whole of his statement, but in effect his answer is fair comment. I may notice that there is no suggestion of an apology supposing it be held that the article is not fair comment.

In this case I am going to refer to principles laid down, I was going to say, many hundred years ago, but at any rate 165 years ago in England governing these matters. This is in no way out of disrespect to the decisions of Judges in India, but I take it that England has always been looked on as the home of liberty—liberty of person and property, liberty of speech, and liberty of the press. Therefore, if I turn to authorities which show the limitations which have been placed in England on the liberty of the subject and on the liberty of the press, that seems to me as fair and impartial a

guide as I can find, and moreover a guide that has stood the test of time. I accordingly turn to *Rex* v. *Davies* [1] and there I find the following in the judgment of Mr. Justice Wills who delivered the judgment of the Court. At page 40 the learned Judge says :

" 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 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".

Then the learned Judge cites from the judgment of Chief Justice Wilmot in *Rex* v. *Almon* (1765) and says as follows. This is the quotation (p. 40) :—

" Attacks upon the Judges, he says, 'excite in the minds of the people a general dissatisfaction with all judicial determinations...and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and dangerous obstruction of justice, and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever ; 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. To be impartial and to be universally thought so are both absolutely necessary for the giving justice that free, open, and unimpaired current which it has for many ages found all over this Kingdom'. "

Then on the same page Chief Justice Wilmot went on :—

" I am as great a friend to trials of facts by a jury, and would step as far to support them as any Judge who ever did or now does sit in Westminster Hall, but if to deter men from offering any indignities to Courts of Justice it is a part of the legal system of justice in this Kingdom that the Court should call upon the delinquents to answer for such indignities in a summary manner by attachment, we are as much bound to execute this part of the system as any other. The several parts of the system act in combination together to attain the only end and object of all laws, the safety and security of the people".

[1] [1906] 1 K. B. 32.

1922.

SATYABODHA RAMCHANDRA, *In re.*

Then in *Reg.* v. *Gray*[1] Lord Russell, the then Lord Chief Justice of England, gave the judgment of the Court; and at p. 40 he says :—

"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. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court".

This former class of contempt, the learned Judge says :—

"Is to be taken subject to one and an important qualification. 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. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen".

I also cite this case because it is an instance where the article was published after the decision of the case.

Turning to our own High Court, a similar instance where an editor was punished for publishing a scandalous criticism of a judgment of this Court will be found in *In re Narasinha Chintaman Kelkar*[2]. The decision of the Court there was given by Sir Basil Scott, and the editor there was Mr. Kelkar. I should say at once in favour of the respondent in the present case that unlike the article in *In re Narasinha Chintaman Kelkar*[2] and unlike the case in *Reg.* v. *Gray*[1] he has not published what I will call filthy personal abuse of the Judge. The abuse I refer to will be found in the report in *In re Narasinha Chintaman Kelkar*[2], at p. 244, and need not be detailed here.

There has recently been a case of *Emperor* v. *Balkrishna Govind*[3] before the Chief Justice and Mr. Justice

[1] [1900] 2 Q. B. 36. [2] (1908) 33 Bom. 240.
[3] (1921) 46 Bom. 592 at p. 631.

Shah where the authorities on the point of jurisdiction were gone into, and there Sir Norman Macleod said with emphasis :—

"Your remarks were calculated to excite in the minds of the people, not only the impression that innocent persons were being prosecuted by the executive authorities and would not get a fair trial at the hands of a Magistrate alleged to be under the influence of those authorities, but also a general dissatisfaction with judicial determinations, so that a danger was created that the people's allegiance to the laws might be fundamentally shaken and a most fatal and dangerous obstruction to the administration of justice erected. The administration of justice within this Presidency has been entrusted to us, and we have the powers in execution of the trust imposed upon us to provide that such dangers when they arise shall be removed, and in exercising those powers we seek not so much to protect ourselves as to protect the people from the evil which will result if their faith in the authority and justice of our tribunals be impaired".

That then is the object which the Court has in view in exercising this powerful remedy of punishing for contempt of Court, viz., the protection of the public.

There was also a case in *In re M. K. Gandhi*[1] before Mr. Justice Hayward, Mr. Justice Kajiji and myself against M. K. Gandhi, the Editor of *Young India*, for contempt of pending proceedings in the High Court, and there the law on the point was once more set out. As far as the question of jurisdiction is concerned, the decision of the Privy Council in *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court*[2] establishes beyond any doubt that the jurisdiction for contempt of Court exists in the High Courts of this country.

Now two points arise here. First of all this article was published after the appeal had been heard. Accordingly we have to deal with the possible suggestion that it can hardly be said to be a comment on any pending proceeding as the possibility of any appeal to

[1](1920) 22 Bom. L. R. 368. [2](1883) 10 Cal. 109 ; L. R. 10 I. A. 171.

1922.

SATYABODHA RAMCHANDRA. *In re.*

the Privy Council in a criminal case is so remote as to be negligible. But assuming for the sake of argument that the proceedings were concluded by the judgment of the Appeal Court, even then, the principles underlying the decisions on contempt in pending proceedings show, in my opinion, that a final judgment does not oust the jurisdiction of the Court to protect its integrity and impartiality against scandalous attacks. In my opinion a scandalous article of that sort still remains an interference with the due course of the administration of justice. The object and intention of such attacks is to induce the public at large to believe that a particular case has been tried by corrupt Judges, and that future cases will also be tried by corrupt Judges. It is sufficient for me to refer once more to the words of Chief Justice Wilmot to show that no High Court can tolerate that sort of abuse.

Holding as I do then that there is jurisdiction to punish for contempt in a case like the present, does the article which we have here amount to contempt of Court? I do not propose to read it in any detail. I personally have read it several times over, and have read it with the intention of grasping its meaning as a whole. Having done that the innuendo which the prosecution alleges is, in my opinion, the proper and correct inference from the article taken as a whole, and it represents what in my opinion the writer of the article really intended to suggest in spite of what he said in his written statement. I may shortly indicate some of the passages to which special attention may be drawn.

The title in the first place is hardly an ordinary way of reporting fair comments on a trial. Then we get :

"We never had any faith in British justice. In the present times of repression however the Goddess of Justice has lost her vigour and depends only

upon the Police and witnesses. At the time of the unjust decision of the Goddess of Justice, the truth speaking non-cooperators gave up the futile attempt of bringing forward evidence and witnesses".

Then further on :

"It is enough if there is evidence of eight or ten witnesses in favour of the complainant. That was what the authorities wanted. The punishment was already decided upon".

Then on the next page :—

"Several others who had some faith in the Goddess of Justice contented themselves with the delusion that a proper decision might be passed".

And further on :—

"Several persons had false hopes about High Court. They used to say 'what if injustice be done here, justice will be done in the High Court.' The faith of those who had some faith in High Court was gone".

"Similarly, any third person also can say that it was quite unjust that the Judges of the High Court who form part of the bureaucracy should confirm the decision of the lower Court without examining the line of argument of the pleaders and the mattress, doors, stones. When decision is given without considering what the pleaders had said and what the papers and documents suggested, how can the Goddess of Justice live" ?

With regard to the word translated "bureaucracy" we have ascertained from the interpreter that that exact word is not used and that the literal translation of the vernacular is "Part of the class who are in power".

Then the article goes on at p. 11 :

"This is disgracing of justice".

Later on :

"Real arrogance is the arrogance of power. Before this arrogance the power of justice as well as of injustice will become blunt. For some time the regime of injustice will prevail. Just persons will have to be like dogs. They will have to bear injustice with folded hands. If this is not done a just person will be unjust. Therefore, oh! my brothers, let there be any kind of injustice, let there be judgments like the judgment in the Dharwar shooting case...let anything happen, do not give up truth, do not take to the path of violence".

1922.

SATYABODHA RAM-CHANDRA, *In re.*

To call that sort of language fair comment is to my mind an entire misnomer, and I cannot for a moment accept the proposition that it would in any way be fair comment. In my opinion that article was a gross and unwarranted attack upon the impartiality and integrity of the learned Judges who heard the appeal in the case in question, and was a contempt of this High Court.

The next thing is what course we should adopt? The editor is a relative of one of the men who has been sentenced and this relative was also a former editor of the newspaper. Therefore one can understand that the respondent might have a strong personal bias, or at any rate a personal interest in the accused. Further, he is, judging by appearances, an old man, and, if I may say so, without any personal disrespect, he gave me the impression of being an obstinate man and that it would be very difficult to disabuse him of any idea which had once entered his head. The newspaper appears to be a small local newspaper with a daily circulation of some couple of hundreds. The accused, therefore, so far as I see appears to be what I may in colloquial language call a "small man". A heavy fine, therefore, would be one which in all probability he would be utterly unable to pay and it would be a crushing punishment. On the other hand, we cannot tolerate this sort of attack, and, though those living in a large city like Bombay amongst a large number of educated people of all communities may smile at these attacks of ignorant or semi-literate people in upcountry districts, one must remember that to people living in these districts it is quite a different matter to experience these attacks. A person who may appear to be a small man in Bombay may be a person with considerable power for evil or for good in a country district.

Further this particular editor has hardly adopted the best way to assist his own case. If he had appeared today, we might have been able to obtain certain information which might have enabled us to excuse still further his conduct. But he has simply said: "This article is fair comment and I have done no wrong." In such a case I think we must pass some punishment which will bring home to his mind the fact that in our judgment he is entirely wrong, and that the course he adopted in publishing this article was an extremely improper one.

There is one further matter which is mentioned to us by the Government Pleader and that is that pending the hearing of this case he republished the article once on the 9th May, viz., the same day we heard the case originally, and that that fact was stated in the newspaper and once more the article was republished. This was in spite of the fact that I warned him personally that he would be well advised not to publish any more articles commenting on the decision in the Dharwar case. However the respondent is entitled to have the matter strictly heard, and we have no rule *nisi* before us in respect of the republication of this particular article. Therefore I dismiss that fact from my mind in considering what course should be taken in the present case. At present I only mention it to say that if the facts, as stated by the Government Pleader, are correct in this respect, and if this editor, notwithstanding the present decision seeks to repeat this article, he will find matters will go hard with him and that a far more severe punishment will be meted out to him than the one we propose to give him to-day.

Our decision will be that he be fined a sum of Rs. 200 and that in default of payment he be imprisoned for one month or until the fine has been paid.

1922.

SATYABODHA RAMCHANDRA, *In re.*

CRUMP, J. :—The principles which should govern our action in this case have been so clearly explained by my learned brother in his judgment that it is unnecessary for me to deal with the authorities upon which these principles are based. It is sufficient for me to say that we act in these matters not to defend the dignity of any Court or Judge but to safeguard the proper administration of justice and to ensure that the confidence of the public in that administration shall not in any way be impaired.

Now what we have to consider in approaching this article is whether the mischief which I have indicated, that is to say, the impairing of the public confidence or the hampering of the due administration of justice, is likely to be caused by the language used by the respondent in this case. I have read that article with care more than once and the general tenor of it appears to be somewhat as follows :—

First the writer sets out that he himself has no faith in the British justice and that truthful non-co-operators have on that ground given up futile attempts to bring forward evidence in any case in which they were concerned. Then the writer goes on to elaborate his theme by pointing out that it was sufficient if the prosecution called eight or ten witnesses whose evidence is necessarily accepted, and that upon such evidence a predetermined penalty follows. That is a general attack on the administration of justice.

He then goes on to point out, in regard to this Dharwar riot case, that, after the convictions in the Dharwar Sessions Court, certain persons were under delusion that a proper decision might possibly be passed on appeal to the High Court. The writer says :

"The delusion of all people became futile like the hopes of a person who pursued the mirage, taking it to be water, like those of the persons who

washed tamarind in the river. Even those who had some hopes as to the appeals, understood to what extent there was justice in the British Goddess of Justice."

Then he goes on to say, and here the meaning is clear enough, that the hopes of certain deluded persons that things would be otherwise in the High Court were frustrated and that the result of the appeal has shown that the High Court is no better in this matter than the lower Court. To make the point further clear, he goes on to say :

"Several persons had false hopes about High Court. They used to say 'what if injustice be done here, justice will be done in the High Court' ".

Then he says that the appeal was a kind of poison but that poison sometimes becomes nectar, and that one good result at least has ensued that certain persons among co-operators being pained by this decision would certainly become non-co-operators. That means of course that the unjust decision of the High Court will pain those persons who hitherto had hopes of justice from the tribunal, that they too will join that body of persons who believe that no justice is to be obtained in the Courts of law in this country.

Finally the innuendo is pointed in these words :

"Similarly any third person also can say [by third person the writer means to say any unprejudiced person not concerned in the matter before the Court] that it was quite unjust that the Judges of the High Court who form part of the bureaucracy should confirm the decision of the lower Court without examining the line of argument of the pleaders and generally without doing that which it was their duty to do as Judges holding judicial offices".

The word "bureaucracy" is unfortunate in the translation. It means, as I understand the Kanarese, that High Court Judges also belong to the class of officials, and that as they belong to the class of officials they too are influenced by official considerations in coming to the conclusion at which they arrive.

1922.

SATYABODHA RAM-CHANDRA, *In re.*

There is nothing more in the article to which attention need be drawn, for the meaning of the whole matter is clear enough. Now, as I understand the law, it is perfectly open to anybody to say that the decision of this Court is a wrong decision and I myself should not object to the use of the term "unjust". But it is not open to any one to say that the decision of this Court has been arrived at upon grounds such as are indicated in this article. Any Judge influenced by such considerations as are here indicated would be a corrupt Judge, and therefore the article practically says that the administration of justice in this Court is not pure. Now, that being so, what is our duty with reference to this matter? Speaking for myself, I find that attacks of this nature are becoming by no means infrequent in the columns of certain journals, and I cannot conceal from myself that such attacks must necessarily create an impression upon the minds of readers of those journals. The mischief, therefore, which I have indicated at the opening of this judgment is, I fear, likely to grow unless criticism of this nature is checked. I would not for a moment do anything to check healthy criticism if such criticism points out the shortcomings of the Courts, without imputing to them motives which can only be regarded as corrupt motives. Such criticism any independent Judge would accept or welcome, but such allegations as are made here transgress the limits of legitimate criticism. Therefore, though this respondent is not a man of any great influence or position so far as can be judged from the facts before us, and though the paper for which he is responsible has a small circulation, I do not myself feel that we should be doing our duty if we allowed such attacks to pass unchecked. Therefore, after giving the matter my fullest consideration, I agree with the order proposed by my learned brother, that is to say, that

1922.

SATYABODHA RAMCHANDRA, *In re.*

there should be a fine of Rs. 200 or in default that respondent should be committed to prison for a term of one month or until payment of fine.

It is not necessary to deal at any great length with the statement which the respondent has put in. For that statement is wholly inadequate as an apology for the offence of which he has been found guilty. Had he expressed his regret in an unequivocal and straightforward manner, he might not, I think, have been dealt with severely in this case. But the absurd suggestion that this is fair comment shows that he is totally unaware of the seriousness of his action if indeed he means to plead that this is fair comment.

Order accordingly.

R. R.

CRIMINAL REVISION.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Crump.

In re KARIYAPPA BIN NINGAPPA*.

1922.

June 15.

Criminal Procedure Code (Act V of 1898), sections 133, 137, 537—Conditional order passed by one Magistrate—Subsequent inquiry transferred with consent of parties to another Magistrate—Passing of the final order.

A Magistrate passed a conditional order under section 133 of the Criminal Procedure Code. When the party appeared to show cause, the Magistrate, with the consent of the parties, sent the case to another Magistrate for inquiry and report, and on receipt of the report so submitted, made the final order :—

Held, that the procedure followed was irregular, and that the irregularity vitiated the proceedings.

THIS was an application against an order passed by G. K. Kumble, Sub-Divisional Magistrate of Dharwar.

The Sub-Divisional Magistrate of Dharwar passed a conditional order, under section 133 of the Criminal