State of Madhya Pradesh

Vs

Revashankar

Criminal Appeal No. 103 of 1956

(S. K. Das, Syed Jafar Imam, J. L. Kapur JJ)

24.09.1958

JUDGMENT

S. K. DAS, J. -

This is an appeal by special leave from the judgment and order of the then Madhya Bharat High Court, dated February 9, 1955, in Criminal Miscellaneous Application no. 2 of 1954. Originally, the appeal was filed on behalf of the State of Madhya Bharat, now substituted by the State of Madhya Pradesh. The appeal raises an important question with regard to the interpretation of section 3(2) of the Contempt of Courts Act, 1952 (XXXII of 1952), hereinafter referred to as the Act, which repealed the earlier Contempt of Courts Act, 1926 (XII of 1926), as also the Indore Contempt of Courts Act (V of 1930) which was earlier in force in the State of Madhya Bharat.

The facts so far as they are relevant to this appeal are these. One Ganga Ram, stated to be the landlord of the respondent Revashankar, instituted a suit, which was numbered as 1383 of 1952 in the court of the Additional City Civil Judge, Indore, for ejectment and arrears of rent against Revashankar. It was stated that the suit was filed in the name of Ganga Ram and his wife Chandra Mukhi Bai. It was further alleged that one Mr. Uma Shankar Chaturvedi, a lawyer acting on behalf of Ganga Ram, advised the latter to sign the name of his wife Chandra Mukhi Bai though Chandra Mukhi Bai herself did not sign the plaint or the vakalatnama. In this suit Chandra Mukhi Bai filed an application for permission to prosecute her husband for forgery. Another application was filed by certain other persons said to be other tenants of Ganga Ram in which some allegations were made against Revashankar. On June 29, 1953, Revashankar filed a complaint against five persons for an alleged offence under section 500, Indian Penal Code. This complaint was verified on July 13, 1953, and was registered as Criminal Case no. 637 of 1953 in the court of one Mr. N. K. Acharya, Additional District Magistrate, Indore. In that case one Mr. Kulkarni appeared on behalf of the complainant Revashankar. The accused persons appeared on August 8, 1953, through Messrs. Mohan Singh and Uma Shankar Chaturvedi. An objection was raised on behalf of the accused persons to the appearance of Mr. Kulkarni as the latter's name appeared in the list of witnesses. This was followed by a spate of applications and counter-applications and on October 12, 1953, the learned Additional District Magistrate passed an order to the effect that the copies of the applications as well as of the affidavits filed by both parties should be sent to the District Judge for necessary action against the lawyers concerned. In the - meantime a criminal case was started against Revashankar in the court of the Additional City Magistrate, Circle No. 2, for an alleged offence under section 497, Indian Penal Code. The case was started on the complaint of Ganga Ram. That case was numbered as 644 of 1953. We then come to the crucial date, namely, December 17, 1953. On that date Revashankar filed an application in the court of the Additional District Magistrate who was in seizin of Criminal Case no. 637 of 1953. The application purported to be one

under section 528, Code of Criminal Procedure. This application contained some serious aspersions against the Magistrate, Mr. N. K. Acharya. The aspersions were summarised by the learned Judges of the High Court under the following four categories. The first aspersion was that from the order dated October 12, 1953 it appeared that Mr. N. K. Acharya wanted to favour Mr. Uma Shankar Chaturvedi. The second aspersion was that from certain opinions expressed by the Magistrate, Revashankar asserted that he was sure that he would not get impartial and legal justice from the Magistrate. The third aspersion was of a more serious character and it was that the Magistrate had a hand in a conspiracy hatched by Messrs. Mohan Singh and Uma Shankar Chaturvedi regarding certain ornaments of Chandra Mukhi Bai with the object of involving, Revashankar and his brother Sushil Kumar in a false case of theft of ornaments. The fourth aspersion was that Mr. Uma Shankar Chaturvedi had declared that he had paid Rs. 500 to the Magistrate through Ganga Ram. These aspersions were later repeated in an affidavit on December 21, 1953. On January 11, 1954, the learned Magistrate reported the aforesaid facts to the Registrar of the Madhya Bharat High Court and prayed for necessary action against Revashankar for contempt of court. On this report the High Court directed the issue of notice to Revashankar to show cause why action should not be taken against him under the Contempt of Courts Act, 1952 and Criminal Miscellaneous Application no. 2 of 1954 was accordingly started against Revashankar. On March 3, 1954, Revashankar showed cause. The case was then heard by a Division Bench consisting of V. R. Newaskar and S. M. Samvatsar, JJ. and by an order dated February 9, 1955, the learned Judges held that by reason of the provisions in section 3(2) of the Act the jurisdiction of the High Court was ousted inasmuch as the act complained of constituted an offence under section 228 of the Indian Penal Code. The question for consideration in the present appeal is if the aforesaid view of the High Court is correct.

Mr. H. J. Umrigar, who has appeared on behalf of the appellant, has very strongly submitted before us that the High Court has erred in holding that the act of the respondent complained of constituted an offence under section 228, Indian Penal Code, and the jurisdiction of the High Court was, therefore, ousted by reason of the provisions in section 3(2) of the Act. It is necessary to read first section 3(2) of the Act. We may state here that the corresponding section in the earlier Contempt of Courts Act, 1926 was section 2(3) and in the judgment under consideration there is some confusion as to the correct number of the sub-section. Section 3(2) of the Act is in these terms :-

> "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 (Act XLV of 1860)."

The sub-section was considered in two decisions of this Court, Bathina Ramakrishna Reddy v. The State of Madras ([1952] S.C.R. 425) and Brahma Prakash Sharma v. The State of Uttar Pradesh ([1953] S.C.R. 1169). In the earlier case of Ramakrishna Reddy ([1952] S.C.R. 425) the appellant was the publisher and managing editor of a Telugu Weekly known as "Praja Rajyam". In an issue of the said paper dated February 10, 1949, an article appeared which contained defamatory statements about the stationary Sub-Magistrate, Kovvur, and the point for consideration was if the jurisdiction of the High Court to take cognisance of such a case was expressly barred under section 2(3) of the earlier Contempt of Courts Act, when the allegations made in the article in question constituted an offence under section 499, Indian Penal Code. On behalf of the appellant it was argued that what the sub-section meant was that if the act by which the party was alleged to have committed contempt of a subordinate court constituted offence of any description whatsoever punishable under the Indian Penal Code, the High Court was precluded from taking cognizance of it. This argument was repelled and this Court said (at page 429) :-

> "In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say "where the act alleged to constitute such contempt is an offence."

On an examination of the decisions of several High Courts in India it was laid down that the High Court had the right to protect subordinate courts against contempt but subject to this restriction, that cases of contempt which have already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court. This, it was stated, was the principle underlying section 2(3) of the Contempt of Courts Act, 1926. This Court then observed that it was not necessary to determine exhaustively what were the cases of contempt which had been already provided for in the Indian Penal Code; it was pointed out, however, that some light was thrown on the matter by the provision of section 480 of the Code of Criminal Procedure which empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under sections 175, 178, 179, 180 or section 228 of the Indian Penal Code in the view or presence of the court. The later decision of Brahma Prakash Sharma ([1953] S.C.R. 1169) explained the true object of contempt proceedings. Mukherjea J. who delivered the judgment of the Court said (at page 1176) :

> "It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened."

It was also pointed out that there were innumerable ways by which attempts could be made to hinder or obstruct the due administration of justice in courts and one type of such interference was found in cases where there was an act which amounted to "scandalising the court itself" : this scandalising might manifest itself in various ways but in substance it was an attack on individual Judges or the court as a whole with or without reference to particular cases, causing unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for the reason that it tends to create distrust in the popular mind and impair the confidence of the people in the courts which are of prime importance to the litigants in the protection of their rights and liberties.

Bearing the aforesaid principles in mind, let us now examine the case under consideration. The High Court expressed the view that the act of the respondent complained of merely amounted to an offence under section 228, Indian Penal Code. Nevaskar J. said :

> "It appears to me that the application, though it was stated to be an application for transfer, was intended to offend and insult the Magistrate. A man's intention can be judged by the nature of the act he commits. The application directly and in face attributes partiality and corruption to the Magistrate. It was not an application made bona fide to a court having jurisdiction to transfer the case from that Court to some

> other Court. It was an application thrown in the face of the Magistrate himself. The action is no better than telling the Magistrate in face that he was partial and corrupt. The allegations in the application no doubt are insulting to the Magistrate and he felt them to be so and at the time the application was submitted on 17th December, 1953, when he was sitting as a Court and dealing with the case of the opponent."
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> "Thus, since I hold that the opponent intended to offer insult to the Magistrate concerned there is no doubt that the act would fall within the purview of section 228, Indian Penal Code, and this Court will be precluded from taking action for the contempt committed before the Court of the Magistrate by reason of section 2(3) of the Contempt of Courts Act."

The other learned Judge also expressed the same view in the following words :

> "The subordinate Courts can sufficiently vindicate their dignity by proceeding against the offenders under the provisions of criminal law in such cases. Legislature has deemed it proper to exclude such cases from the jurisdiction of the High Court under section 2(3) of the Contempt of Courts Act. This, however, does not mean that High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code."
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> "The question to be considered in this case is whether the act complained of is punishable as contempt under any one of the specific provisions of the Indian Penal Code. In other words whether it falls under any one of the sections 175, 178, 179, 180 or 228 of the Indian Penal Code."
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> "If the act complained of constitutes an offence under any of these sections, it can be dealt with by the subordinate Court itself under section 480 of the Criminal Procedure Code and the High Court will have no power to take cognizance of it under the Contempt of Courts Act."

We are of the opinion that the learned Judges were wrong in their view that prima facie the act complained of amounted to an offence under section 228, Indian Penal Code, and no more. We are advisedly saying prima facie, because the High Court did not go into the merits and we have no desire to make any final pronouncement at this stage on the merits of the case. Section 228, Indian Penal Code, is in these terms :

> "Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which they extend to one thousand rupees, or with both."

The essential ingredients of the offence are (1) intention, (2) insult or interruption to a public servant and (3) the public servant insulted or interrupted must be sitting in any stage of a judicial proceeding. In the present case there is an initial difficulty which has been pointed out to us. The respondent was sought to be proceeded against by reason of the aspersions he made in the application dated December 17, 1953, and the affidavit dated December 21, 1953. It is not very clear from the record if the learned Magistrate was sitting in any stage of a judicial proceeding when

the application and the affidavit were filed. The High Court no doubt says that the Magistrate was sitting as a court at the time; but there is no reference to the particular work, judicial or otherwise, which the Magistrate was doing at the time. The practice as to the filing of applications and affidavits varies from court to court and in some courts applications and affidavits are filed within stated hours before the reader or the bench clerk; they are so filed even when the Judge or Magistrate is in chamber or pre-occupied with some administrative duties. So far as the present case is concerned, it is not at all clear, from the record as placed before us, as to what was the judicial work which the learned Magistrate was doing when the application and affidavit were filed. If he was not doing any judicial work at the relevant time, then the third essential ingredient mentioned above was not fulfilled and the act complained of would not amount to an offence under section 228, Indian Penal Code.

We are not, however, basing our decision on the mere absence of materials to show that particular judicial work the learned Magistrate was doing when the application dated December 17, 1953, and the affidavit dated December 21, 1953, were filed. If that were the only infirmity, the proper order would be to ask for a finding on the question. Our decision is based on a more fundamental ground. Learned counsel for the parties have taken us through the application dated December 17, 1953, and the affidavit dated December 21, 1953. The aspersions made therein prima facie showed that they were much more than a mere insult to the learned Magistrate; in effect, they scandalised the Court in such a way as to create distrust in the popular mind and impair the confidence of people in Courts. Two of the aspersions made, taken at their face value, were (1) that the learned Magistrate had joined in a conspiracy to implicate the respondent in a false case of theft. In the affidavit it was stated that the learned Magistrate had sent for the respondent and his brother and had asked them to make a false report to the police that the ornaments of Chandra Mukhi Bai had been stolen. The learned Magistrate characterised the aspersion as totally false and said that he neither knew the respondent nor his brother and had no acquaintance with them. Another aspersion was that the Magistrate had taken a bribe of Rs. 500. This aspersion was also stoutly denied. We must make it clear here that at this stage we are expressing no opinion on merits, nor on the correctness or otherwise of the aspersions made. All that we are saying is that the aspersions taken at their face value amounted to what is called scandalising the court itself, manifesting itself in such an attack on the Magistrate as tended to create distrust in the popular mind and impair the confidence of the people in the courts. We are aware that confidence in courts cannot be created by stifling criticism, but there are criticisms and criticisms. "The path of criticism", said Lord Atkin in Ambard v. Attorney-General for Trinidad and Tobago ([1936] A.C. 322, 335), "is a public way : The wrong-headed are permitted to err therein : provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune". If, therefore, the respondent had merely criticised the Magistrate, no notice need have been taken of such criticism as contempt of court whatever action it might have been open to the Magistrate to take as an aggrieved individual; but if the respondent acted in malice and attempted to impair the administration of justice, the offence committed would be something more than an offence under section 228, Indian Penal Code.

Learned counsel for the respondent has contended before us that as soon as there is an element of insult in the act complained of, section 228, Indian Penal Code, is attracted and the jurisdiction of the High Court to take cognizance of the contempt is ousted. We are unable to accept this contention as correct. Section 228 deals with an intentional insult to a public servant in certain circumstances. The punishment for the offence is simple imprisonment for a term which may extend to six months or with the fine which may extend to one thousand rupees or with both. Our attention has been

drawn to the circumstance that under section 4 of the Act the sentence for contempt of court is more or less the same, namely, simple imprisonment for a term which may extend to six months. The fine is a little more and may extend to two thousand rupees. Section 4 of the Act contains a proviso that the accused person may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. We do not, however, think that a similarity of the sentence in the two sections referred to above is a real test. The true test is : is the act complained of an offence under section 228, Indian Penal Code, or is it something more than that ? If in its true nature and effect, the act complained of is really "scandalising the court" rather than a mere insult, then it is clear that on the ratio of our decision in Ramakrishna Reddy's case ([1952] S.C.R. 425) the jurisdiction of the High Court is not ousted by reason of the provision in section 3(2) of the Act.

Mr. Umrigar has urged a further point in this connection and has contended that for an offence under section 228, Indian Penal Code, the insult must be an intentional insult. The first essential requirement of the offence, according to him, is that the insult must be offered intentionally. He has pointed out that the application which the respondent filed purported to be an application under section 528, Criminal Procedure Code, and though it is difficult to see how that section applied in the present case, the intention of the respondent was not to insult the Magistrate, but merely to state the circumstances in which the respondent was praying for a transfer of the case. Mr. Umrigar has pointed out that in the reply which the respondent gave to the notice issued from the High Court, he said that he had no intention to insult or show disrespect to the learned Magistrate. Mr. Umrigar has further submitted that the decision in Narotam Das v. Emperor (A.I.R. 1943 All. 97), (on which the learned Judges of the High Court relied) where in somewhat similar circumstances it was held that section 228, Indian Penal Code, applied, does not correctly lay down the law. In that case Yorke J. observed that it would be a matter for consideration in each individual case how insulting the expressions used were and whether there was any necessity for the applicant to make use of those expressions in the application which he was actually making to the court. While we agree that the question of intention must depend on the facts and circumstances of each case, we are unable to accept as correct the other tests laid down by the learned Judge as finally determinative of the question of intention. In two earlier decisions of the same High Court, in Queen Empress v. Abdullah Khan ([1898] A.W.N. 145) and Emperor v. Murli Dhar, ([1916] 38 All. 284) it was held that where an accused person made an application for transfer of the case pending against him and inserted in such application assertions of a defamatory nature concerning the Magistrate who was trying the case, there was no intention on the part of the applicant to insult the court, but the intention was merely to procure a transfer of the case. We do not think that any hard and fast rule can be laid down with regard to this matter. Whether there is an intention to offer insult to the Magistrate there is an intention to offer insult to the Magistrate trying the case or not must depend on the facts and circumstances of each case and we do not consider it necessary, nor advisable, to lay down any inflexible rule thereto.

Taking the aspersions made by the respondent in the application dated December 17, 1953, and the affidavit dated December 21, 1953, at their face value, we have already expressed the view that they amounted to something more than a mere intentional, personal insult to the Magistrate; they scandalised the court itself and impaired the administration of justice. In that view of the matter section 3(2) of the Act did not stand in the way and the learned Judges of the High Court were wrong in their view that the jurisdiction of the High Court was ousted.

We accordingly allow the appeal and set aside the order of the High Court dated February 9, 1955. In our view, the High Court had jurisdiction to take cognizance of the act complained of and the case must now be decided by the High Court on merits in accordance with law. It is only necessary

to add that the act complained of was committed as far back as 1953 and it is desirable that the case should be dealt with as expeditiously as possible.

Appeal allowed.

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