A. K. Gopalan and Another

Vs

Noordeen

Criminal Appeal No. 71 of 1969

(S. M. Sikri, G.K. Mitter, P. Jagmohan Reddy JJ)

15.09.1969

JUDGMENT

SIKRI, J. –

1. In this appeal by certificate of fitness granted by the Kerala High Court two questions arise : (1) whether on the day when the appellant, A. K. Gopalan, made the statements complained of or when it was published in "Deshabhimani" any proceedings in a court could be said to be imminent; and (2) whether this statement amounts to contempt of court.

2. The facts in brief are that on September 11, 1967, the ruling parties in Kerala State staged what is called 'Kerala Bandh'. A serious incident took place on that day during the course of which one C. P. Karunakaran lost his life at a place called Kuttoor. A First information report was lodged on that very day. On September 12, 1967 the first information report was transferred to another police station. On September 20, 1967, the appellant, A. K. Gopalan, made the following statement :

> "Tearful story
>
> It was the story of a young man who had to sacrifice his life to the naked goondaism of Congressmen, that was heard from the trembling lips of so many people in Kuttoor. Had this tragedy occurred in the course of a sudden fight one could have understood it. But what I was able to make out was that it was in prosecution of a deliberate conspiracy to commit murder. It appears that a prominent Congress leader of the Cannanore District had given instructions for this the previous day. It was as a result of being pounced upon and stabbed while he was in a peaceful and disciplined manner calling for the observance of the Bandh by the closure of shops that Comrade C. P. Karunakaran suffered martyrdom. Comrade Kunhikannan who was with him also suffered serious injuries. The police have seized an unlicensed loaded gun and other weapons from the shop of a Congressman at the scene of occurrence.
>
> Murder too was planned.
>
> Is it not to be inferred from all this that there was a pre-arranged plan to commit murder ? The enlightened people of the locality were determined to press forward to the chosen destination of that class for whom Comrade Karunakaran has sacrificed his life."

3. On September 23, 1967, K. P. Noordeen was arrested alongwith his two brothers. On September

24, 1967 the Magistrate remanded the accused to police custody. In its issue, dated September 25, 1967, the Malayalam Daily newspaper called "Deshabhimani" of which P. Govinda Pillai, the second appellant, was the editor and M. Govindankutty was the printer, printed the statement which we have reproduced above. On September 29, 1967, all the three accused were produced before the Magistrate. On October 5, 1967, bail was refused by the District Magistrate but was granted by the Sessions Judge. On November 1, 1967, Noordeen filed the petition under Sections 3 and 4 of the Contempt of Courts Act (32 of 1952) impleading the three respondents, A. K. Gopalan, P. Govinda Pillai and M. Govindankutty.

4. The High Court held all the three respondents guilty of contempt of court and convicted them accordingly. The High Court imposed a sentence of fine of Rs. 200/- on the first respondent and of administering an admonition to Respondents 2 and 3. The High Court discharged Respondents 2 and 3 after due admonition. The appellants A. K. Gopalan and p. Govinda Pillai having secured certificate of fitness under Article 134(1)(c) the appeal is now before us.

5. This Court in Surendra Mohanty v. State of Orissa (Criminal Appeal 107 of 1956; judgment dated 23-1-1961) examined the question whether the publication of a statement at a time when the only step taken was the recording of first information report under Section 154, Cr. P. C., could be contempt of court. As the judgment in this case has not been reported we think that we should reproduce the main portion of the judgment. Kapur, J., speaking on behalf of the court, observed :

> "Before the publication of the comments complained of, only the first information report was filed in which though some persons were mentioned as being suspected of being responsible for causing the breach in the Bund, there was no definite allegation against any one of them. In the charge-sheet subsequently filed by the police these suspects do not appear to be amongst the persons accused. It was, therefore, argued that by the publication there could not be any tendency or likelihood to interfere with the due course of justice. The learned Additional Solicitor-General for the State submitted on the other hand that if there was a reasonable probability of a prosecution being launched against any person and such prosecution be merely imminent, the publication would be a contempt of court.
>
> The Contempt of Courts Act confers on the High Courts the power to punish for the contempt of inferior courts. This power is both wide and has been termed arbitrary. The courts must exercise this power with circumspection, carefully and with restraint and only in cases where it is necessary for maintaining the course of justice pure and unaffected. It must be shown that it was probable that the publication would substantially interfere with the due course of justice; commitment for contempt is not a matter of course but within the discretion of the court which must be exercised with caution. To constitute contempt it is not necessary to show that as a matter of fact a judge or a jury will be prejudiced by the offending publication but the essence of the offence is conduct calculated to produce an atmosphere of prejudice in the midst of which the proceedings will have to go on and a tendency to interfere with the due course of justice or to prejudice mankind against persons who are on trial or who may be brought to trial. It must be used to preserve citizen's right to have a fair trial of their causes and proceeding in an atmosphere free of all prejudice or prepossession. It will be contempt if there is a publication of any news or comments which have a tendency to or are calculated to or are likely to prejudice the parties or their causes or to interfere with due course of justice.

> As to when proceedings begin or when they are imminent for the purposes of the offence of contempt of court must depend upon the circumstances of each case, and it is unnecessary in this case to define the exact boundaries within they are to be confined.
>
> The filing of a first information report does not, by itself, establish that proceedings in a court of law are imminent. In order to do this various other facts will have to be proved and in each case that question would depend on the facts proved."

Then Kapur, J. examined the facts of that case and observed :

> "In the present case all that happened was that there was a first information report made to the police in which certain suspects were named; they were not arrested; investigation was started and on the date when the offending article was published no judicial proceedings had been taken or were contemplated against the persons named in the first information report. Indeed after investigation the suspects named in that report were not sent up for trial. At the date this offending publication was made there was no proceeding pending in a court of law nor was any such proceeding imminent."

6. On the first point it seems to us clear that on the facts of this case it cannot be said that any proceedings were imminent on September 20, 1967 in a court. It is true that the first information report was lodged on September 11, 1967, but this court has definitely held in Surendra Mohanty's case that lodging of a first information report does not by itself establish that proceedings in a court were imminent. This court further said that it would depend on the facts proved in a particular case whether the proceedings are imminent or not. There are no other facts which tend to establish the imminence of proceedings in a court. Even the accused were not arrested till September 23, 1967, and even if it be relevant there is no proof that arrest was imminent on September 20, 1967. Ordinarily until an accused is arrested it cannot be said that any proceedings in a court are imminent against that person because he may never be arrested or he may be arrested after a lapse of months or years.

7. It would be a undue restriction on the liberty of free speech to lay down that even before any arrest has been made there should be no comments on the facts of a particular case. In some cases no doubt, especially in cases of public scandal regarding companies, it is the duty of a free press to comment on such topics so as to bring them to the attention of the public. As observed by Salmon, L.J., in R. v. Sayundranaragan and Walker ((1968) 3 All ER 439) :

> "It is in the public interest that this should be done. Indeed, it is sometimes largely because of facts discovered and brought to light by the press that criminals are brought to justice. The private individual is adequately protected by the law of libel should defamatory statements published about him be untrue, or if any defamatory comment made about him is unfair." Salmon, L.J., further pointed out that "no one should imagine that he is safe from committal for contempt of court if, knowing or having good reason to believe that criminal proceedings are imminent, he chooses to publish matters calculated to prejudice a fair trial".

8. The learned counsel for the State urges that the crucial date is not September 20, 1967, when the statement was made, but September 25, 1967, when the newspaper published the statement. The

latter date may be relevant in the case of the other appellant as far as Gopalan is concerned it is September 20, 1967, which is the relevant date. There is no evidence that he was instrumental in getting this statement published on September 25, 1967.

9. We are accordingly of the opinion that the appellant Gopalan was wrongly convicted by the High Court. There is no evidence that any proceedings in a court were imminent.

10. Let us now examine the case of P. Govinda Pillai, the second appellant. The statement was published, as we have already said, in the daily newspaper called "Deshabhimani" on September 25, 1967. Were any proceedings in a court imminent on that date ? The accused had already been arrested on September 23, 1969, in a serious cognizable case. Arrest means that the police was prima facie on the right track. The accused must have been produced before a magistrate within 24 hours of the arrest in accordance with Article 21 of the Constitution, and the magistrate must have authorised further detention of the accused. In these circumstances it is difficult to say that any proceedings in a court were not imminent on that date. The fact that the police may have after investigation come to the conclusion that the accused was innocent does not make the proceedings any the less imminent. Proceedings in a court may be imminent on one day and yet not be brought the next day. For instance, the accused may in the meantime die or he may be proved innocent. To advance the day of imminence to the day when the police makes a report under Section 173, Cr. P.C., would do untold harm to those who may actually be ultimately prosecuted. Not only will it tend to harm the accused but would also tend to subvert the scheme of our criminal law and procedure. It would subvert it because it would tend to encourage public investigation of a crime and a public discussion of the character and antecedents of an accused in detention. The investigation of a cognizable case is eminently the province of the police, and if a person has information relevant to the commission of a particular crime there is nothing to prevent him from transmitting it to the police. This it seems to us would be the ordinary rule in the case of an investigation of a murder. It may be that in an investigation involving prolonged examination of account books of companies and the ramifications of a conspiracy, proceedings may not be said to be imminent as soon as the accused is arrested. Some of these cases take a long time to investigate and as observed by this court, it is difficult to lay down any inflexible rule. But as far as an investigation of a charge of murder is concerned once an accused has been arrested proceedings in court should be treated as imminent.

11. In view of this conclusion we must hold that as far as the appellant P. Govinda Pillai is concerned proceedings in a court were imminent on September 25, 1967.

12. It has not been argued that Govinda Pillai did not know of the arrest if the accused or that he had good reasons to believe that no arrest had been effected by September 25, 1967. It is true that the statement does not mentioned the name of the accused but it does suggest that the person who committed the deliberate murder was acting as a result of a conspiracy and it was not a case of a sudden fight. It seems to us that the statement would tend to prejudice mankind against the accused.

13. In the result we maintain the conviction entered by the High Court against the appellant P. Govinda Pillai.

14. Accordingly the appeal of A. K. Gopalan is allowed and the appeal of P. Govinda Pillai dismissed. The fine, if already paid by A. K. Gopalan, shall be refunded.

15. MITTER, J. –

With respect I agree with the order proposed as regards Govinda Pillai but I am unable to concur in allowing the appeal of the first appellant. The facts are stated sufficiently in the judgment of my learned brother and need not be repeated. He had held and indeed there can be no doubt that any publication or comment which has a tendency to or is calculated or likely to prejudice the parties or their causes or with the due course of justice in pending proceedings would constitute a contempt of court. It is also universally accepted that even if proceedings, have not actually begun but are imminent conduct of the kind referred to above would be punishable. In my view the consensus of authorities both in England and in India is that contempt of court may be committed by any one making a comment or publication of the exceptionable type if he knows or has reason to believe that proceedings in court though not actually begun are imminent. There does not appear to be any decision of this Court on the last aspect and it is therefore necessary to make a brief reference to the authorities.

16. It is agreed that there were no proceedings pending in a court when the first appellant made his statement on September 20, 1967 which was actually published in the Malayalam daily newspaper in its issue dated September 25, 1967. In my view although no criminal proceedings were actually pending in any court on 20th September, it is not possible to hold that at that time such proceedings were not imminent or that the first appellant had no reasonable cause to believe that they were not imminent.

17. The Contempt of Courts Act, 1952, does not purport to define what actually constitutes such contempt. This was done with a purpose as a attempts to interfere with the course of justice are of so many different kinds and may be committed in circumstances so various that the Legislature possibly though it unwise to define the limits thereof. Courts in India have referred to the manifold aspects of the law of Contempt of Court and accepted the principles laid down in English decisions which go back to a date well over a century. Early in the present century in Rex v. Parkes (1908-2 KB 432) one Dongal was brought up before the petty Sessions of Saffron Walden charged with forgery and remanded without any evidence being taken. Articles to his disadvantage appeared in a newspaper of which the defendant was the editor. A rule was issued by the High Court to show cause why he should not be committed for contempt of court. A point was taken that the jurisdiction would not be attracted if at the time of the publication of the article complained of there were no proceedings actually pending in any court but the petty sessions court and that the jurisdiction to punish the publishers of articles of the kind before the court was confined to cases in which at the moment of publication there was some cause actually pending in the High Court. In rejecting this contention Wills J. observed :

> "The reason why the publication of articles like those with which we have to deal is treated as a contempt of court is because their tendency and sometimes their object is to deprive the court of the power of doing that which is the end for which it exists - namely to administer justice duly, impartially, and with reference solely to the facts judicially brought before it. Their tendency is to reduce the Court which has to try the case to importance, so far as the effectual elimination of prejudice and prepossession is concerned..... If it is be once grasped that such is the nature of the offence, what possible difference can it make whether the particular Court which is thus sought to be deprived of its independence, and its power of effecting the great end for which it is created, be at that moment in session or even actually constituted or not."

Dealing with the argument that the remedy only existed where there was a cause pending in the

court the Judge said :

> "..... in very nearly all the cases which have arisen there has been a cause actually begun so that the expression quite natural under the circumstances, accentuates the fact, not that the case has been begun, but that it is not an end. That is the cardinal consideration. It is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do so when the stream has ceased."

In a recent judgment of the Court of Appeal in England observations have been made which run counter to the dictum in the last sentence.

18. The last extract from the judgment of Wills, J. was quoted by Lord Hewart C.J. in R. v. Daily Mirror (1927-1 KB 845 at 851) and by Lord Goddard C.J. in Regina v. Odhams Press Ltd. (1957-1 QB 73 at 81). Dealing with the question whether mens rea was necessary to constitute the offence the learned Chief Justice said :

> "It is obvious that if a person does not know that proceedings have begun or are imminent, he cannot by writing or speech be said to influence the course of justice or to prejudice a litigant or accused person, but that is no answer if he publishes that which in fact is calculated to prejudice a fair trial."

In R. v. Savundranayagan and Walker (1968-3 All ER 439 at 441) to be referred to in detail later the Court of Appeal in England expressed similar views in no unmistakable terms.

19. We may now turn to the decisions of our High Courts. In Tuljarama Rao v. Sir James Taylor (ILR 1939 Mad 466 at 476) and in the matter of "Tribune" Lahore (ILR 25 Lah 111), opinions were expressed that a comment on proceedings which were imminent but not yet launched in court with knowledge of the fact was as much a contempt as a comment of a case actually launched. According to the Lahore High Court it was sufficient that the proceedings were imminent to the knowledge of the person charged with contempt.

20. It was pointed out in Surendra Mohanty v. The State of Orissa (Criminal Appeal No. 107/1956 decided on 23-1-1961) that :

> "As to when proceedings begin or when they are imminent for the purposes of the offence of Contempt of Court must depend upon the circumstances of each case, and it is unnecessary in this case to define the exact boundaries within which they are to be confined.
>
> The filing of a First Information Report does not, by itself, establish that proceedings in a court of law are imminent. In order to do this various other facts will have to be proved and in each case that question would depend on the facts proved."

The facts in Surendra Mohanty's case were that there was a breach in a bund in a big reservoir between August 12 and 13, 1953 as a result of which some fields were flooded. On August 13, 1953 a first information was lodged at a police station stating that it had been cut and the cutting was suspected to have been done by one or more of the persons whose names were therein mentioned. The police thereupon started investigation and on the 24th September under the orders of the Sub-Divisional Magistrate statements of five witnesses were recorded presumably under Section 164

Criminal Procedure Code. On October 26, 1953 a report called the charge sheet for an offence under Section 430 I.P.C., was received by the Magistrate who took cognizance and summoned the persons accused therein and the proceedings were continued in the court of the Magistrate. Between August 14 and October 26, 1953 two Oriya papers published comments in regard to the incident thus :

> "In the year 1952, a water reservoir had been constructed at Dangarpara in the Titlagarh Sub-Division of the District of Bolangir by the Government at a cost of Rs. 33,000/-. This has been breached due to heavy rainfall. It is heard that 15 days before the breach of this bund, Abhut Sankh, Chintamani Subudhi and Bhagaban Das and others of Lakhana on seeing the condition of the reservoir apprehended a breach and brought it to the notice of the S.D.O., and requested him to open an escape for the discharge of the surplus water. But in spite of hearing this, the S.D.O. did not open an escape. When there was excessive accumulation of water, the Bund was unable to withstand and gave way.
>
> It is heard that the S.D.O in order to conceal his own fault is accusing Mangra Najhi of Bana Bahal, Nilamani Mahakud of Kumanbahal and Satya Gonda, Banamald, Nariha and others of Dangarpara of the offences of cutting the bund and trying to create evidence by assaulting them through the police and by keeping watch (over the locality).
>
> If actually the aforesaid persons had reported to the S.D.O. regarding the said bund and the S.D.O. neglected in taking proper steps himself, why he should not be responsible for this."

This Court held that the order of conviction by the High Court could not be sustained in view of the facts that on the date when the offending article was published no judicial proceeding had been taken or were contemplated against the persons named in the first information report. According to the report the breach was not caused through any natural cause but was due to cutting by some persons who were suspected. Indeed, after investigation the suspects named in that report were sent up for trial. On the date when the offending publication was made, there was no proceedings pending in a court of law nor was any such proceeding imminent.

21. It is difficult to hold on the facts of this case that the first appellant did not know or had no reason to believe that proceedings in court were not imminent when he made the statement on 20th September. It is common knowledge that whenever a man loses his life through a cause other than natural the police will invariably come to the scene, take custody of the dead body and start investigations. Indeed under Section 174 Cr. P.C. even when information is received that a person has died under circumstances raising a reasonable suspicion that some other person has committed an offence, it is the duty of the officer in charge of the police station within whose jurisdiction the death occurs to give intimation thereof to the nearest Magistrate empowered to hold inquest and to proceed to the place where the body of such deceased person is, to make an investigation and draw up a report.

22. Here a person lost his life in broad day light not by accident but by stabbing when two groups of people clashed. One of the groups was charged by the statement of the first appellant to be guilty of deliberate conspiracy to commit murder and it was further alleged that a prominent member of that party had given instructions for this, the day prior to the violent disturbance. The first appellant was not an illiterate person who could not be reasonably expected to know that ceiminal proceedings

were bound to be launched in respect of the affair : whether anybody would be successfully prosecuted is a different matter, but that would depend upon the evidence which would be brought before the court. But no person with any experience of worldly affairs, much less a person of the standing of the first appellant, a member of Parliament and a leader of a political group - could be ignorant of the fact that a murder in a broad daylight when two groups of people clash is sure to be investigated into and made the subject of criminal proceedings. The statement of the appellant suggests that he had made some personal enquiries in the matter and had come to gather therefrom that certain members of a particular political party had entered into a conspiracy to murder and had actually carried their plan into execution. He had also charged a leader of a rival party, who was not named, with having given instructions the previous day. There can be no doubt that the motive and the object was not only to further the cause of a particular political party but also to create an atmosphere of prejudice against members of that party and charge some of them with one of the most serious offences known to law, namely, that of conspiracy to murder followed by actual homicide.

23. In the case of R. v. Suvundranayagan and Walker (supra) the Court of Appeal in England although of opinion that a free press had the right and duty to comment on topics of public interest so as to bring them to the attention of the public like the failure of an insurance company in which the moving figure was a man with an unsavoury record who appeared to have used large sums of the company's money for his own purposes and disappeared abroad at a point of time when there was nothing to suggest that criminal proceedings were even in contemplation, yet took a different view of the television programme depicting an interview with the appellant shortly after his return to England, when according to the Court :

> "It must surely have been obvious to everyone that he was about to be arrested and tried on charges on gross fraud."

Salmon, L.J., added :

> "It must not be supposed that proceedings to commit for contempt of court can be instituted only in respect of matters published after the proceedings have actually begun. No one should imagine that he is safe from committal for contempt of court if, knowing or having good reason to believe that criminal proceedings are imminent, he chooses to publish matters calculated to prejudice a fair trial."

How jealously courts of law regard the preservation of the purity of the course of justice and the prevention and punishment of any attempt at pollution or perversion thereof as a solemn obligation will appear from a recent decision of the English Court of Appeal in Attorney-General v. Butterworth and Others (1962-3 AER 326). The words of Lord Denning, M.R., are worth repeating. He said :

> "I have no hesitation in declaring that the victimisation of a witness is a contempt of court, whether done while the proceedings are pending or after they have finished. Such a contempt can be punished by the court itself before which he has given evidence : and so that those who think of doing such things may know where they stand, I would add that if the witness has been demnified by it, he may well have redress in a civil court for damages."

24. In my view, we should hold that a contempt of court may be committed by a person when he

knows or has good reason to believe that criminal proceedings are imminent. The test is whether the circumstances in which the alleged contemnor makes the statement are such that a person of ordinary prudence would be of opinion that criminal proceedings would soon be launched. In my way of thinking the first appellant must have realised on September 20, 1967, that the investigation by the police was sure to lead to cognizance of the offence being taken by a Magistrate and the prosecution of some persons for the offence of culpable homicide. His statement itself shows that to his knowledge the police were on the track of the guilty and had seized an unlicensed loaded gun and other weapons from the shop of a person belonging to a political party some members whereof were being accused of the crime. I would therefore dismiss the appeal by the first appellant also.

25. Order. In accordance with the opinion of the majority, the appeal of A. K. Gopalan is allowed and the appeal of P. Govinda Pillai is dismissed. The fine, if already paid by A. K. Gopalan, shall be refunded.

</html