

Dinabandhu Sahu

Vs

The State of Orissa

Santosh Kumar Sahu

Vs

The State of Orissa

Criminal Appeal Nos. 39 and 40 of 1969

(P. Jagmohan Reddy, D.G. Palekar JJ)

17.11.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. These two appeals are by Certificate against the judgment of the Orissa High Court convicting the Appellants for contempt of the High Court and imposing a fine of Rs. 300 on the Appellant Santosh Kumar Sahu and Rs. 100 on the Appellant, Dinabandhu Sahu. It appears that Santosh Kumar Sahu who was a party to a Writ Petition 418 of 1967 on the file of High Court of Orissa filed a petition described as 'representation petition' before the Chief Justice Hon'ble Shri S. Barman and his Companion Justices, praying that their Lordships may consider if it amounts to a contempt of High Court and to take whatever steps the law of the land calls for. It appears that this petition was in respect of the Flag Hoisting function held in the High Court of Orissa on the Republic Day January 26, 1968 at about 11.30 a.m. at which the Governor of Orissa Dr. Khosla, Chief Minister Shri Singh Deo, Dr. Mahtab, an ex-chief Minister of that State any many others including the president of the Advocates Association, the Advocates of the High Court, Dinabandhu Sahu who was ex-Minister and ex-Advocate General of Orissa and others were present. At that function the chief Justice made a speech at which he commenced the address any particular reference to the Governor Dr. Khosla, Chief Minister Shri Singh Deo and Dr. Mahtab. In the speech he also made a pointed reference to the presence of Dr. H. K. Mahtab, the former Chief Minister of Orissa and said that he had played an effective part in having a separate High Court for Orissa. The Chief Justice seems to have had a tower constructed in the High Court and had been instrumental in renovating and adding to the present High Court with laws and a fountain on the completion of which he took great pride. The Republic Day was made an occasion for the speech at which he traced the process through which the judiciary in the State developed culminating in the process of steady progress, "came the dream of the present Chief Justice-myself for a High Court with a Tower and a Fountain surrounded by green lawns and flower gardens as in a Temple with "Fountain of Justice". It is unnecessary to further examine the speech made by him except to say that this gave rise to certain misunderstandings in the public mind particularly among the rival political factions in the Orissa state which as Mr. Chari, the learned Advocate for the Appellants described were at that time locked up in a bitter political struggle. About this time a Commission of Enquiry had been appointed by the Government of Orissa which was headed by Mr. Justice H. R. Khanna of the Delhi High Court, as

he then was to enquiry into the conduct of 15 persons who at one time or the other were Ministers between 1961-66. Three of these persons against whom the enquiry was being conducted had filed Writ petitions in the High Court of Orissa, one was filed by Mr. Jagannatha Rao, former Minister in that State, being O.J.C. 396 of 1967, the second was by Mr. Biren Mitra, a former Chef Minister, being O.J.C. 408 of 1967 and the third by Mr. Santosh Kumar Sahu, a former Deputy Minister of Co-operative, Mining and Forest, being O.J.C. 418 of 1967. In this latter Writ Petition Mr. B. N. Singh Deo, Chief Minister and Dr. H. K. Mahtab, former Chief Minister and leader of the party which was supporting the coalition were two of the respondents. From January 9, 1968 to January 17, 1968 the arguments in these petition were heard and on the latter date the judgment was reserved. Two of the Judges who heard these petition were also present at the Flag Hoisting function on the Republic Day at the time when the Chief Justice made the speech, which was the subject-matter of the representation petition. It appears news of the speech of the learned Chef Justice on the Republic Day was given in the 'Kalinga' an Orissa newspaper on January 28, 1968. On January 30, 1968 Santosh Kumar Sahu filed the alleged offending representation petition. On January 31, 1968 there appears to have been an editorial comment in the 'Kalinga' newspaper. On February 1, 1968 there was another news item and on February 2, 1968 one Sarat Chandra Biswal filed a petition in the High Court for action being taken against the Editor of the 'Kalinga'. On the representation petition addressed to the Chief Justice and his companion Judges by the Appellant Santosh Kumar Sahu certain objections were raised by the Stamp Examiner and when the matter came up before the Chief Justice and A. Misra, J. it was rejected with the observations that the petition contained derogatory statements in paragraph 3.7, 12 to 17 and 20 to 25 against the Orissa High Court in general and the Chief Justice in particular, scandalising or having a tendency to scandalise the Orissa High Court and its Honourable Judges, undermining its dignity in the estimation of the public, and impeaching its impartiality in dispensation of justice. As the Stamp Reporter had pointed out among other defects, that no opposite party has been mentioned and that the relief sought for is vague, it was observed that it was not a question or removal of defects, but of the petitioner's liability in filing such a petition containing derogatory statements and accordingly a notice was directed to be issued against Shri Santosh Kumar Sahu and also against Shri Dinabandhu Sahu as advocate for the petitioner for supporting the edition and against Shri B. H. Das and Shri S. F. Ahmad, Advocates who alongwith Dinabandhu Sahu had signed the Vakalatnama in the aforesaid case, to show cause why they should not be committed for contempt. These notices were made returnable on February 15, 1968. It is not necessary in view of the statements made by Mr. Chari on behalf of his clients before us to set out the details of what happened on February 9, 1968 or February 15, 1968 except to say that after the returns were filed and the matter came up on February 15, 1968 the learned Chief Justice though it necessary to give an account of how the "events happened on January 26, 1968 at function and specifically stated that if he had not listed the case before him, he would not have been in a position to explain the circumstances and remove certain misapprehensions in the mind of the public."

2. After this explanation was given the Appellants say that they had stated before the learned Chief Justice and A. Misra, J., who were hearing the petition that they would not have filed the representation petition had they known all the circumstances which were explained by the learned Chief Justice and prayed through Mr. Chari appearing on behalf of the opposite party that they may be forgiven. This fact emerges also from the judgment of the learned Chief Justice who in paragraph 57 said that Mr. Chari appearing on behalf of all the opposite parties asked for forgiveness of the Court as he put it publicly in open Court. The other learned Judge A. Misra, J. also stated that this was so and that it was given particularly in view of the strained relations which existed between the rival political parties and which led to some misunderstanding of the whole situation, but he pointed

out that except for this the respondents at no stage have chosen to express any regret or tender apology. The learned Chief Justice also stated that there was nothing in writing either by way of an apology nor has regret been tendered in the Court. Mr. Chari before us pointed out, with some justifications that if all that the Court wanted was a written apology but the appellants there would have been no hesitation in their giving it as the very cause for their apprehension had been removed, by the explanation given by the learned Chief Justice to remove any misunderstanding in the public mind, which misunderstanding no longer existed after that explanation. Though the case was fully argued, even before us the learned advocate on behalf of his clients made the following statements expressing their apology :

My client had already expressed that the misunderstanding which caused them to file the petition - the subject-matter of the contempt proceedings had been removed by the explanation given by the learned Chief Justice and stated that if they had known this, they would never have written it. In view of this they had also asked for the forgiveness of the Court out of its generosity. I have, therefore, no hesitation at all in offering unconditional apology on their behalf for having written the petition. On behalf of my clients, I again repeat that and tender an unqualified eulogy for presenting the petition.

The learned Advocate for the State of Orissa Mr. Chatterjee frankly conceded that having regard to this apology which has again been reiterated the proceedings may be dropped. We think that this is a correct and proper attitudes to adopt in respect of these proceedings. Whatever may have been the justification for the High Court to initiate the proceedings in respect of a matter, which in the state of the atmosphere then prevailing was likely to create a suspicion, whether justifiable or imaginary, in the public mind and particularly in the mind of the litigants, by the circumstance that a person who is a respondent in a case where a judgment was reversed was given prominence and referred to in terms of praise of eulogy that situation had changed after the learned Chief Justice had given an explanation for the reasons why Dr. Mahtab was given a seat among the few selected persons at the Buffet lunch and other matters incidental thereto. The apology tendered was not merely an apology but was something more than an apology because what was asked of the Court out of its generosity was forgiveness; that this was sincerely meant is amply demonstrated by its being repeated again before us. We think that the contempt, if any, has been certainly purged in the manner in which the apology was given and the matter should have been set at rest there. It is no part of the judicial function to be vindictive or allow any personnel or other consideration to enter in the discharge of its functions and since both learned Chief Justice and Misra, J. would have been prepared to accept that apology if it was given by the appellants themselves and in writing and since Mr. Chari said that the appellants would have been prepared to give such an apology in writing, if that was the only thing that was required and even now are ready and are ready and willing to do so we feel that the apology tendered on their behalf by their Senior Advocate can well be accepted and the proceedings closed. We accordingly allow the appeals, set aside the convictions and direct the repayment of the fine, if any, and close the proceedings.

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