Sammbhu Nath Jha

Vs

Kedar Prasad Sinha and Others

Criminal Appeal No. 30 of 1969

(J. M. Shelat, H. R. Khanna JJ)

24.01.1972

JUDGMENT

KHANNA, J. -

1. This is an appeal by special leave by Sammbhu Nath Jha who along with two others has been found by the Patna High Court to be guilty of contempt of court. In view of the fact that the contempt, in the opinion of the High Court, was of a technical nature, the contemners were let off with a warning.

2. On January 2, 1966, a report was lodged with the police by Lachho Paswan that when he and his brother Dwarka Paswan were going to Jamui market, Kedar Prasad respondent abused them. Kedar Prasad also exhorted others to assault Dwarka Paswan. An assault was then made upon Dwarka Paswan and he was surrounded. Arjun Pandey thrust Saif in the chest of Dwarka Paswan, as a result of which he died on the spot. The motive for the assault was stated to be that Lachho Paswan and Dwarka Paswan had voted against Kedar Prasad in the election to the office of Mukhia. The police on the basis of that report investigated the case and submitted a charge-sheet for offences under Sections 148 and 302 read with Section 149, I.P.C., against a number of persons. No charge-sheet was submitted against Kedar Prasad and Arjun Pandey. During the course of commitment proceedings, the committing magistrate ordered that Kedar Prasad and Arjun Pandey be summoned for May 15, 1966 as accused.

3. Kedar Prasad and Arjun Pandey filed revision petitions against the order of the committing magistrate, but the same was dismissed by the Additional Sessions Judge, Monghyr as per order, dated May 5, 1967. It was held that Kedar Prasad and Arjun Pandey had been rightly summoned.

4. After the dismissal of the revision petition, an application was filed by the Assistant District Prosecutor on September 18, 1967, in the court of the learned magistrate for withdrawal of the case against Kedar Prasad and Arjun Pandey on the ground that it was inexpedient for State and public policy to prosecute them. After hearing the counsel for the complainant and others, the committing magistrate dismissed the said application on October 6, 1967. It was observed that the application for withdrawal of the prosecution amounted to an abuse and improper interference in the normal course of justice.

5. Two revision petitions were filed against the above order, dated October 6, 1967. One of the revision petitions was filed by the State of Bihar and the other was filed by one Abani Kumar Mandal. Both the revision petitions were admitted by the High Court on November 30, 1967.

6. During the pendency of the above mentioned criminal revision petitions, the Governor of Bihar as per notification, dated March 12, 1968, appointed a Commission of Inquiry consisting of Shri T. L. Venkatarama Aiyer, retired judge of the Supreme Court, under Section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952) to inquire into a number of charges against 14 persons who had earlier held the offices of Chief Minister and Ministers in the State of Bihar. One of the persons against whom inquiry was ordered was Shri Hasibur Rahman who had held the office of Minister during the period from March 16, 1967 to January 28, 1968. The allegations which were the subject-matter of the inquiry were set forth in the schedule annexed to the notification. Allegation No. J-4 which was the subject of inquiry against Shri Hasibur Rahman was as under :

> "Shri Kedar Prasad Sinha and Shri Arjun Pandey were facing prosecution along with nine others in a serious case of rioting with murder which was pending before the Munsif-Magistrate, Jamui. They filed a revision petition before the Additional Sessions Judge, Monghyr against their prosecution, which was dismissed. Thereupon on June 6, 1967, they presented an application direct to the then Minister for Law, Shri Hasibur Rahman, who directed that the Law Secretary should examine the matter and report and in the meanwhile the District Magistrate was requested to take two month's adjournment of the case and also send the case diary with his report.
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> On August 17, 1967, the District Magistrate sent his report opposing withdrawal of the case. Even before the District Magistrate's letter was diarised in the Law Department, Shri Hasibur Rahman called for the file directly from the dealing assistant and ordered that a telegram should be sent to the District Magistrate to take further adjournment for a fortnight. The matter was then examined thoroughly by the officers of the Law Department and in his note, dated August 30, 1967, the Law Secretary recommended against withdrawal of the prosecution pointing out that there was a prima facie case and justice demanded that it should be thrashed out in court.
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> Shri Hasibur Rahman, however, ignored the advice of the District Magistrate as well as of the Law Secretary and ordered, on September 10, 1967, that the case should be withdrawn. A petition for withdrawal was accordingly filed, on September 18, 1967, but was rejected by the trial court. Thereupon Shri Hasibur Rahman directed that a revision should be filed in the High Court against the refusal of the trial court to allow withdrawal of the case. A revision was accordingly filed, which is still pending before the High Court.
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> Shri Hasibur Rahman thus by misuse of his official position and power unnecessarily interfered with the administration of justice in a serious case of rioting with murder."

7. The notification relating to the appointment of the Commission of Inquiry along with the schedule containing the different allegations was published in the Bihar Gazette Extraordinary, dated March 12, 1968. The same day the appellant, who was one of the ministers of Bihar, gave for publication to the press a copy of the notification, including the schedule of allegations. The said notification along with the schedule of allegations was published in the Searchlight of Patna in issues, dated March 13, March 14 and March 15, 1968. Allegation No. J-4 relating to the withdrawal of case regarding Kedar Prasad Sinha was published in the issue of Searchlight, dated March 14, 1968. Application, dated March 25, was thereafter filed by Kedar Prasad and Arjun Pandey for initiating contempt of court proceeding against 25 persons, including the State of Bihar, the Chief Minister and Ministers of Bihar, the Chief Secretary of the Bihar Government as well as

Shri Subhash Chandra Sarkar, Editor and Shri Awadesh Kumar, Tiwari, printer and publisher of the Searchlight. The appellant was impleaded as respondent No. 3 in the application. It was urged that the publication of allegation No. J-4 related to a matter which was the subject-matter of criminal revision petitions in the High Court and had the result of interfering with the course of justice and prejudicing the mankind against the two applicants.

8. The learned Judge who dealt with the application held that no case for contempt of court had been proved against 22 out of 25 persons. The appellant was, however, found to be guilty of contempt of court, because it was he who handed over the offending matter to the press for publication in the newspaper. The editor as also the printer and publisher of the Searchlight too were found guilt because of the publication of the news item in the aforesaid paper.

9. We have heard Mr. Basudev Prasad on behalf of the appellant. No one has appeared on behalf of the respondents. After giving the matter our consideration, we are of the opinion that the present is not a fit case wherein action should be taken for contempt of court.

10. The law relating to contempt of court is well settled. Any act done or writing published which is calculated to bring a court or judge into contempt or to lower his authority or to interfere with the due course of justice or the lawful process of the courts is a contempt of court Reg v. Gray. [(1900) 2 QB 36]. The law of contempt as observed by this Court in the case of E. M. S. Namboodripad v. T. N. Nambiar, [(1970) 2 SCC 325 : 1970 SCC (Cri)] stems from the right of the courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in facie curaie and by the superior courts on their own behalf or on behalf of courts subordinate to them even if committed outside the courts. Formerly, it was regarded as inherent in the powers of a Court of Record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempts. The chief forms of contempt are insult to judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court and scandalising the judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority.

11. The matter was also dealt with by this Court in Re : P. C. Sen, [(1969) 2 SCR 649 : AIR 1970 SC 1821] and it was observed :

> "Contempt by speech or writing may be by scandalising the court itself, or by abusing parties to actions, or by prejudicing mankind in favour of or against a party before the cause in heard. It is incumbent upon courts of justice to preserve their proceedings from being misrepresented, for prejudicing the minds of the public against persons concerned as parties in causes before the cause in finally heard has pernicious consequence. Speeches or writings misrepresenting the proceedings of the court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources. The question

> in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. The question is not so much of the intention of the contemner as whether it is calculated to interfere with the administration of justice."

12. Reliance in the above cited case was placed upon the following observations of the Judicial Committee in the case of Debi Prasad Sharma and Others v. The King Emperor [LR 70 IA 224] :

> ".....the test applied by the.... Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of law."

13. It has also to be borne in mind, as observed in Re : P. C. Sen (supra), that ordinarily a court will not initiate proceedings for commitment for contempt where there is a mere technical contempt. This Court referred in the above context to the observations of Jenkins, C.J., Legal Remembrancer v. Matilal Ghose and Others, [ILR 41 Cal 173] that proceedings for contempt should be initiated with utmost reserve and no court in the due discharge of its duty can afford to disregard them.

14. It would follow from the above that the courts have power to take action against a person who does an act or publishes a writing which is calculated to bring a court or judge into contempt or to lower his authority or to obstruct the due course of justice or due administration of law. As intention of the contemner to cause those consequences is not a necessary ingredient of contempt of court and it is enough to show that his act was calculated to obstruct or interfere with the due course of justice and administration of law, there would be quite a number of cases wherein the contempt alleged would be of a technical nature. In such cases, the court would exercise circumspection and judicial restraint in the matter of taking action for contempt of court. The court has to take into account the surrounding circumstances and the material facts of the case and on conspectus of them to come to a conclusion whether because of some contumacious conduct or other sufficient reason the person proceeded against should be punished for contempt of court.

15. Let us now examine the facts of the present case in the light of what has been stated above. The gravamen of the charge against the appellant is that during the pendency in the High Court of the two revision petitions mentioned earlier, he handed over to the representatives of the press for publication in the newspapers the notification, including the schedule of allegations, which had been issued under Section 3 of the Commissions of Inquiry Act. The learned judge in holding the appellant guilty of contempt of court observed :

> "But the mischief in this case was committed by publicizing the said allegations with full knowledge that the two criminal revision petitions were pending in this court and the question as to whether the withdrawal petitions were bona fide or not was still to be considered by this Court. I have not been shown any statutory provision which lays down that allegations of the nature contained in the offending matter must be printed in the Official Gazette or in the public press."

16. It would follow from the above that the decision of the High Court was based upon the assumption that there was no statutory provision which required that allegations of the nature contained in the offending matter should be printed in the Official Gazette. Such an assumption in our view was incorrect. The material part of sub-section (1) of Section 3 of the Commissions of Inquiry Act reads :

> "The appropriate Government may, if it is of opinion that it is necessary so to do, and shall if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly."

17. Plain reading of the above sub-section makes it manifest that the notification appointing a commission of inquiry must be published in the Official Gazette. It is an imperative requirement and cannot be dispensed with. The commission of inquiry is appointed for the purpose of making an inquiry into some matter of public importance. The schedule containing the various allegations in the present case was a part of the notification, dated March 12, 1968 and specified definite matters of public importance which were to be inquired into by the Commission. As such, the publication of the schedule in the Official Gazette should be held to be in compliance with the statutory requirement. The object of publication in an Official Gazette is twofold : to give publicity to the notification and further to provide authenticity to the contents of that notification in case some dispute arises with regard to the contents.

18. What was given to the press for publication in the present case was the notification issued under Section 3 of the Commissions of Inquiry Act. The present is not a case wherein only part of the notification or some portions of the allegations were given for publication to the press with a view to give emphasis to any part of the allegation. On the contrary what was given to the press was the entire notification.

19. The subject-matter of the inquiry before the Commission as set forth in allegation No. J-4 was whether there was any misuse of official position on the part of Shri Hasibur Rahman when he directed against the recommendation of the Law Secretary and the District Magistrate, the withdrawal of the prosecution against Kedar Prasad and Arjun Pandey. The question for decision which, however, was the subject of criminal revision petitions pending in Patna High Court was whether the order of the magistrate dismissing the application for withdrawal of prosecution was contrary to law. The two matters were distinct and separate and not identical. It may be that some of the matters which were connected with the criminal revision petitions were the subject of inquiry by the commission of inquiry, but that would not attract liability for contempt of court. In the case of Jagannath Rao v. State of Orissa, [(1968) 3 SCR 789 : AIR 1969 SC 215] the appellant had challenged a notification issued under Section 3 of the Commissions of Inquiry Act appointing a Commission of Inquiry to inquire into certain allegations against persons who had held the offices of Chief Ministers and ministers in Orissa. An argument was advanced in that case that one of the items of charges which were to be inquired into by the commission was the subject-matter of an appeal pending in the High Court. Question arose in that context whether the setting up of the commission of inquiry by the State Government or the continuation of the inquiry by the commission would be tentamount to contempt of court. This court held that the above acts would not constitute contempt of court and observed :

> "It was pointed out by this Court Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendulkar, [1959 SCR 279 : AIR 1958 SC 538] that the inquiry cannot be looked upon as a judicial inquiry and the order ultimately passed cannot be enforced proprio vigore. The inquiry and the investigation by the Commission do not therefore amount to usurpation of the funtion of the courts of law. The scope of the trial by the courts

of law and the Commission of Inquiry is altogether different. In any case, it cannot be said that the Commission of Inquiry would be liable for contempt of Court if it proceeded to inquire into matters referred to it by the Government Notification. In appointing a Commission of Inquiry under Section 3 and in making the inquiry contemplated by the notification, the Commission is performing its statutory duty. We have already held that in the appointing of the Commission of Inquiry the Government was acting bona fide. It is, therefore, not possible to accept the argument of the appellants that the setting up of the Commission of Inquiry

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