

Gobind Ram

Vs

State of Maharashtra

Criminal Appeal No. 51 of 1968

(CJI S. M. Sikri, A. N. Grover, A. N. Ray, D. G. Palekar, M. H. Beg JJ)

21.02.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Bombay High Court finding the appellant, who is an Advocate, guilty of contempt of court and sentencing him to simple imprisonment for a term of four weeks and a fine of Rs. 1,000/-. It was directed that in default of payment of the fine he would have to undergo simple imprisonment for a further period of four weeks. He was also ordered to pay the costs of the Assistant Government Pleader in the High Court and the Government Pleader before the Sessions Judge.

2. The material facts may be stated : In March 1966, a suit was filed against the appellant by D. N. Santani who is also an Advocate for recovery of Rs. 640/- in the court of the Civil Judge, Junior Division, Kalyan. The plaintiff in that suit had engaged H. I. Jagiasi as his Advocate. In the written statement filed by the appellant he made certain allegations against Jagiasi and alleged inter alia that the latter was responsible for the suit. Jagiasi filed a criminal complaint for defamation in August, 1966, against the appellant in the court of Shri P. D. Sayyid, Judicial Magistrate at Kalyan. The appellant has set out a number of incidents and matters in his petition for special leave to appeal which it is not necessary for our purpose to mention. It would suffice to say that on October 15, 1966, the appellant filed an application before the Judicial Magistrate saying that he intended to apply for transfer of the case to some other court. On October 28, 1966, he presented a transfer application in the court of the Sessions Judge, Thana. The transfer application was ultimately dismissed by the assistant Judge and Additional Sessions Judge on March 8, 1967, before whom it came up for disposal. Meanwhile it appears that the appellant applied for transfer of the civil suit which had been filed by D. N. Santani to the court of the District Judge. The suit was stayed and we have been informed that ultimately it was transferred sometime in the year 1967, from the court of Shri M. B. Baadkar from whose court transfer was sought. It has further been stated at the Bar and that statement has not been challenged that the civil suit was ultimately dismissed in August, 1969.

3. While dismissing the transfer application of the appellant in the criminal complaint filed by Jagiasi in the court of Shri P. D. Sayyid the Additional Sessions Judges recorded an order that a report be submitted to the High Court for considering the conduct of the appellant and the course adopted by him in making the transfer application and in making imputations or aspersions against the Judicial Officers and to take action for contempt of court under Section 3(2) of the Contempt of Courts Act, 1952, hereinafter called the 'Act'. This was done after reproducing three paragraphs from the transfer application and expressing an opinion that the appellant had attempted to attack the integrity and honesty of the courts of the Judicial Magistrate and the Civil Judge and to

scandalize and to malign the same. The High Court made an order on December 1, 1967. The following part of that order may be reproduced :

"He made an application to the Sessions Judge for transfer of the proceedings to another Court and the ground objected to by the learned Sessions Judge is as follows :

'The Magistrate below is on friendly relations with the complainant the Respondent No. 1 in the present petition and the even enjoys the hospitality of the Respondent No. 1 some times alone and sometimes in company of the Civil Judge, J. D. Kalyan (Shri M. B. Baadkar) who is also on friendly relations with the Respondent No. 1 and who also enjoys the hospitality of the Respondent No 1'.

The learned Sessions Judge had called for report from the Magistrate Mr. P. D. Sayyid and was apparently satisfied after consideration of all the affidavits produced before him that the allegation was baseless. He, therefore, referred the matter to this Court for suitable action being taken against the respondent-Advocate for his making such allegations and interfering with the course of justice and scandalising or maligning the Courts below."

4. It was further stated in that order that the appellant had asked for an opportunity to establish the truth of the allegation made above which had been made both "because of his personal knowledge and also because of information obtained from others". A list of witnesses was furnished by the appellant whom he proposed to examine. The High Court directed the District Judge to record the evidence and to submit his report along with the evidence and the reports of the two judges. It was expressly stated that the inquiry was to be confined to the allegations which had been quoted above. The show-cause notice which was issued to the appellant by the High Court (omitting unnecessary portions) was as follows :

"Whereas" upon reading letter No. 2434, dated April 5, 1967, forwarded by the Second Additional Sessions Judge, Thana along with the record and proceedings of Criminal Transfer Application No. 108/66 on his file and the record and proceedings in Criminal Case No. 2949 of 1966 of the Court of the Judicial Magistrate, F. C. Kalyan, requesting to take action under the Contempt of Courts Act against the Advocate Mr. G. L. Bhatia, who has made serious allegations against the Judicial Officers Shri Baadkar and Shri Sayyid in Transfer Criminal Application No. 108/66 in para one in the Court of the Second Additional Sessions Judge, Thana, etc.

And whereas this Court has on June 15, 1967, passed the following order :

"Notice to Mr. Bhatia Advocate to show cause why action for contempt of Court should not be taken against him. Notice to G.P., also. A copy of D.J.'s letter to be sent to Mr. Bhatia along with the notice."

5. The District Judge in accordance with the orders of the High Court submitted a report giving his own findings on the evidence recorded by him and also after taking into consideration the reports of Sarvashri Baadkar and Sayyid which had been called for from them apparently after the witnesses produced by the appellant had given their evidence and copies of their depositions had been sent to the two judges. The appellant raised two preliminary objections before the High Court. The first

was that the District Judge could only submit a record of evidence and could not give his findings and secondly he could not take into consideration the reports of the two judges which had not been shown to the appellant. Another objection raised was that the reports of the Judicial Officers could not have been relied upon because the appellant had no opportunity to cross-examine them. The High Court repelled all these objections. From the statement of preliminary facts it is clear that the High Court relied only on the allegations contained in Para I of the application of transfer which have already been set out before and contents of which were that Shri Sayyid was on friendly relations with Jagiasi and that he had even enjoyed his hospitality sometimes alone and sometimes in the company of Shri Baadkar.

6. We have laid a certain amount of stress on the aforesaid allegation made in Para I of the transfer application because that application consisted in substance of three paragraphs. It will be desirable, owing to the nature of this case, to set out all the allegations made in the transfer application :

"(1) The Magistrate below is on friendly relations with the complainant the Respondent No. 1 in the present petition and he even enjoys the hospitality of the Respondent No. 1 sometimes alone and sometimes in company of the Civil Judge J. D. Kalyan (Shri M. B. Baadkar) who is also on friendly relations with the Respondent No. 1 and who also enjoys the hospitality of the Respondent No. 1.

(2) The Magistrate below is prejudiced against the present applicant.

(3) The Magistrate below has not taken and does not appear to take impartial disinterested view of the case in question -

(a) Evidently the complainant was not actuated by mere or bona fide professional interest. He was the author of false litigation for a false and fabricated claim. That matter Suit No. 213 of 1966 was still pending hearing and adjunction. The complaint in question could not as such be filed in all fairness and it ought not to have been entertained atleast without the preliminary enquiries or at any rate it ought to have been stayed.

(b) That was not done and the process was ordained to be urgently issued and served and the so-called summons was served on the applicant a day or two before the date of hearing to harass and handicap him in his professional commitments.

(c) Even the said summons was not accompanied by copy of the complaint as mandatorily required by Section 204(b) of the Code of Criminal Procedure, and the applicant was left guessing as to what the said summons related to.

(d) On October 15, 1966, when the case in question was Sr. No. 10-12 on the Board and it was preceded by even part-heard cases the Trial Magistrate did not permit this applicant even leave for a while to enable him to go to Civil Court at a distance of furlong or so to obtain leave of the Court from his professional engagements and the Trail Magistrate observed that he would "take up the case there and then and just now" and in the next moment the complainant was in the box ready for "finishing" the case as though by previous understanding.

(4) The applicant respectfully refrains from entering into further details in this regard and he would do the same if called upon. For the present suffice to say that in view

of what is stated above there is well-founded apprehension in the mind of the applicant he would not get justice unless the case is transferred to some other Court of the competent jurisdiction."

The question which immediately arises is whether an allegation of the nature made in Para (1) in the circumstances of the present case in a transfer application would amount to contempt of the two judges Sarvshri Sayyid and Baadkar. The High Court made a detailed examination of the evidence adduced before the District Judge and also relied on the reports of Sarvshri Sayyid and Baadkar. It came to the conclusion that the allegations made by the appellant had not been proved. It was observed that these allegations "in the above quoted paragraph" which means Paragraph I were quite serious. The High Court was also influenced by the fact that the appellant had "pitched the case higher and tried to prove that the two judges concerned were continuously receiving from Mr. Jagiasi presents of large value in the shape of sarees and other articles and thus receiving bribes so as to indiscreetly favour Mr. Jagiasi and the litigants whom he represented in their Court". The appellant was not even willing to tender an apology and his position as an Advocate was naturally regarded as making the contempt all the more serious.

7. The appellant, who has argued the case himself, has raised the following main contentions :

- (1) The Act is unconstitutional and invalid. It violates Articles 20 and 21 of the Constitution.
- (2) No procedure has been provided in the Act and therefore it is bad.
- (3) Even the normal procedure which should be followed in such cases has not been followed.
- (4) The High Court was not entitled to call for a report from the District Judge or to delegate its functions including the examination of witnesses to the District Judge.
- (5) The show-cause notice issued by the High Court containing the charge of contempt was confined only to Paragraph 1 of the transfer application. The statements made in that paragraph could not by themselves constitute contempt.

8. In our opinion it is wholly unnecessary to decide points 1 to 4 because the appellant must succeed on the 5th point. This Court has, after a review of all the relevant decisions, laid down in *Perspective Publications (P) Ltd. and Another v. State of Maharashtra*, [(1969) 2 SCR 779] *inter alia*, the following principles :

- (1) It will not be right to say that the committals for contempt for scandalizing the court have become obsolete.
- (2) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.
- (3) It is open to any one to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him.

(4) A distinction must be made between a mere libel or defamation of a judge and what amounts to a contempt of the court.

The test in each case would be whether the impinged publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court. It is only in the latter case that it will be punishable as contempt.

(5) "Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. To borrow from the language of Mukherjea, J., (as he then was) Brahma Prakash Sharma's case, 1953 SCR 1169, the publication of disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties."

In that case it was held that the imputation in an article of impropriety, lack of integrity and oblique motives to a judge of the High Court in the matter of deciding a suit constituted contempt of court.

9. The question whether an action can be taken under Section 3 of the Act if in a transfer application allegations are made against a judge which are of such nature as to constitute contempt of his court does not appear to be res integra. In *State of Madhya Pradesh v. Revashanker*, [1959 SCR 1367] aspersions of a serious nature had been made against a Magistrate in a transfer petition. One of such aspersions was that the Magistrate in whose court the proceedings were pending was a party to conspiracy with certain others the object of which was to implicate the complainant in a false case of theft and that a lawyer appearing for the accused persons in whose favour the Magistrate was inclined, had declared that he had paid a sum of Rs. 500/- to the Magistrate. It was also asserted that the applicant was sure that he would not get impartial and legal justice from the Magistrate. It was held that the aspersions taken at their face-value amounted to what is called 'scandalizing the court' itself and the attack on the Magistrate tended to create distrust in the popular mind and impair the confidence of the people in the courts. This decision is quite apposite for the purposes of the present case. It decides that allegations made even in a transfer application casting aspersions on a judicial officer can constitute contempt of his court within Section 3 of the Act. It is difficult to comprehend that the mere statement that a Magistrate is friendly with a party who happens to be an advocate and enjoys his hospitality or has friendly relations with him will constitute contempt unless there is an imputation of some improper motives as would amount to scandalizing the court itself and as would have a tendency to create distrust in the popular mind and impair the confidence of the people in the courts. The allegations contained in Para 1 of the transfer application may or may not amount to defamation of the two judges, namely, Sarvshri Sayyid and Baadkar but to constitute contempt the other tests which have been discussed above must be fulfilled. As noticed before the High Court confined the action, which was to be taken, only to the matter stated in Paragraph 1 and did not choose or decide to include or consider Paragraphs 2 and 3 either in the show-cause notice or in the judgment the following part of which may be reproduced :

"We have considered the whole of the evidence on record that can be relied upon on the behalf of the contemner on the one side and by the State in support of the case for action against the contemner. We have with some anxiety considered the arguments advanced by the contemner in support of his case that the evidence is sufficient to

prove the allegations made by the contemner in the above quoted paragraph. We find it impossible to hold in his favour that he has proved that Mr. Sayyid had friendly relations with Mr. Jagiasi and was enjoying the hospitality of Mr. Jagiasi either alone or in company with Mr. Baadkar. He has failed to prove that Mr. Baadkar had friendly relations with Mr. Jagiasi and enjoyed the hospitality of Mr. Jagiasi."

10. It is true that a party cannot make such allegations even in a transfer application which may fall within the rule laid down in Revashankar's case (supra) or in the Perspective Publication's case (supra), and which may amount to scandalizing the court in the sense pointed out in these decisions. In *The State v. The Editors and Publishers of Eastern Times and Prajatantra*, [AIR 1952 Ori 318] Jagannadhadas, C.J., (as he then was) delivering the judgment of the Division Bench, after an exhaustive examination of the decided cases where the jurisdiction of the court for this class of contempt had in fact been exercised, observed :

"A review of the cases in which a contempt committed by way of scandalizing the court has been taken notice of, for punishment, shows clearly that the exercised of the punitive jurisdiction is confined to cases of very grave and scurrilous attack on the court or on the Judges in their judicial capacity, the ignoring of which would only result in encouraging a repetition of the same with a sense of impunity and which would thereby result in lowering the prestige and authority of the court."

There are not many decisions in which punishment has been inflicted for committing contempt of court by making scurrilous allegations in an application for transfer of a case from one court to another. Mention may, however, be made of one of such cases : *Swarnamayi Panigrahi v. B. Nayak and Others*. [AIR 1959 Ori 89]. There, during the pendency of certain rent suits filed before the Rent Suit Collector by the landlord, who was the wife of the Chief Justice of the Orissa High Court, the tenant filed certain transfer applications before the Additional District Collector making statements like these :

1. The lower court openly identified himself with the plaintiff Shrimati Swarnamayi Panigrahi and is so partial to her that no justice or impartial decision can be expected from him;
2. He has gone out of the course prescribed by law and has taken over the function of witness and court in himself in such a way that there is no parallel to it in the history of litigation in India; and,
3. That opposite party wields extraordinary influence in the State as she is the wife of Shri Lingarai Panigrahi, Chief Justice of Orissa High Court. It is being openly talked about that the conclusions are foregone."

11. It was observed that though some latitude has to be given in a transfer application but the question was whether or not the applicant in that case had exceeded the limits permissible under the law. As a rule applications for transfer were not made merely because the trying judge was alleged to be incompetent but there may be circumstances beyond the judge's control such as the acquaintance with one of the parties or personal interest in the subject-matter of the proceedings which in law would be considered as preventing him from giving an unbiased decision. It was held that the applicant had exceeded the limits and had gone out of his way not only to malign the personal integrity and judicial honesty of the lower court but had also directly attacked the whole

administration of justice headed by the Chief Justice of the State. It is noteworthy that on an allegation made in a transfer application the judge against whom the allegation made is often afforded an opportunity of giving explanation by the higher court and he can dispel any cloud that might have been cast on his fairness and integrity. The higher court takes action for transfer after full consideration of all the circumstances of the case including the report of the judge against whom the allegations are made. In this way it can well be said that cases in which applications for transfer are made stand on slightly different footing from those where a party makes an allegation, either inside or outside the court of a scandalising nature imputing improper motives to the judge trying the case. The Allahabad High Court in *Emperor v. Murli Dhar and Another*, [ILR 38 All 284] was of the view that where an accused person in an application for transfer of a case made an assertion that the persons who had caused the proceedings to be instituted were on terms of intimacy with the officer trying the case and, therefore, he did not expect a fair and impartial trial was not guilty of offense under Section 228, Indian Penal Code, there being no intention on the part of the applicant to insult the court, his object being merely to procure a transfer of his case.

12. It is true that in the garb of a transfer application a person cannot be allowed to commit contempt of court by making allegations of a serious and scurrilous nature scandalizing the court and imputing improper motives to the judge trying the case. But then the nature of the allegations will have to be closely examined and so long as they do not satisfy the requirements of what may be regarded as contempt of court no punishment can possibly be inflicted. The appellant, in the present case, is an advocate and it is most unfortunate that though at the stage of the transfer application he made certain allegations in Para I about the social intimacy between Jagiasi and Sarvshri, Sayyid and Baadkar, the two judicial officers, with the apparent object of securing a transfer of the case he proceeded to take the highly ill-advised step of attempting to substantiate the allegation so made. We are, however, not concerned with any charge relating to the matters subsequent to the notice which was issued by the High Court with regard to the allegations for which punishment has been imposed on the appellant. That notice on the fact of it discloses no such allegation which could be regarded as falling within the rule laid down by this Court and by a series of decisions of the Privy Council in which this head of contempt, i.e., scandalising the court has come up for examination. Most of those decisions have been referred to in the case of *Perspective Publications (P) Ltd.* (supra). In addition we may mention *Debi Prasad Sharma and Others v. Emperor*, [AIR 1943 PC 202] in which in a newspaper report the Chief Justice of a High Court was untruly alleged to have committed an ill-advised act in writing to his subordinate judges asking them to collect subscriptions for the War Fund. According to Their Lordships there was no criticism of any judicial act of the Chief Justice nor any imputation was made for anything done or omitted to be done by him in the administration of justice nor was there any criticism of him in his administrative capacity. In the opinion of Their Lordships the proceedings in contempt were misconceived.

13. In our judgment the allegations contained in Para I of the transfer application were not such as would amount to contempt of court. We cannot help observing that the appellant did not show the sense of responsibility in making the allegations in question which is expected from an advocate and in further attempting to substantiate them which he failed to do.

14. The appeal is allowed and the order passed by the High Court is hereby set aside. Parties will bear their own costs in this Court.

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