

K. T. Chandy

Vs

Mansa Ram Zade

Criminal Appeal No. 129 of 1970

(S. N. Dwivedi, Y. V. Chandrachud JJ)

11.12.1973

JUDGMENT

DWIVEDI, J. –

1. Seemingly it is a small case. It has not hit the headlines in the news media. Nor it has gripped the public mind. The pecuniary stake is trivial. A tiny sum of Rs. 200 is payable as costs by the appellant. However, this case brings in to the flash point an issue of great consequence to liberty of contract. Where to draw the dividing line between the area of contempt of Court and the area of operation of contractual rights.

2. The appellant is the Chairman of the Hindustan Steel limited (hereinafter referred to as the company). The respondent was employed in the company on a contract of service. The contract provided for termination of his service by giving three months' notice or three months' pay in lieu thereof and without assigning any cause. On February 21, 1968, the company gave him this notice :

"It is found that your performance and conduct in this plant have not been good and that you have not proved useful for the company. You are hereby advised to note this position and also to try for alternative employment elsewhere. You may be released from this company at your request on payment of the amount required under the bond executed by you on prorata basis as a very special case taking into account the period of service that may be rendered by you at the time of release. In other words, if you choose to leave the service of the company before expire of bond period, you will be required to pay the company a sum not exceeding Rs. 20,000 reduced by the amount calculated on pro-rata basis in respect of the service you may render after completion of your training."

3. Soon thereafter he rushed to the Court. On May 27, 1968 he instituted a suit in the Court of the second Munsif, Asansol. The material reliefs claimed in the plaint are :

(1) a declaration that the notice dated February 21, 1968 is illegal, bad, mala fide, without jurisdiction, void and inoperative and is not binding on the plaintiff;

(2) a declaration that the charge-sheet dated July 1, 1966, confidential character report dated April 27, 1967, are ultra vires, unenforceable, illegal, unsustainable, mala fide and opposed to rules and natural justice and are not binding on the plaintiff;

(3) a declaration that the plaintiff is entitled to promotion to the next higher grade, namely, foreman, from October 10, 1966;

(4) a mandatory injunction directing the defendant to promote the plaintiff to the grade of foreman; and

(5) a permanent injunction restraining the defendant from giving effect to the notice dated February 21, 1968.

He did not ask the Munsif to grant an interim injunction restraining the appellant and the company from terminating his service during pendency of suit. So no such interim injunction was operating at the relevant time. Nor did the appellant and the Company give undertaking to refrain from terminating his service during pendency of the suit. Forgetting the suit for a moment, there was no impediment in their way of terminating his service according to the contract. And on February 26, 1968, the company gave him this notice :

"(T) he services of the (respondent) are hereby terminated with effect from the date of service of this order on him and payment of three months' pay in lieu of notice terms of clause (vi) of his appointment letter..... dated January 29, 1962."

4. The Calcutta High Court (R. N. Dutt and B. Banerji, JJ.) has held that the act of giving this notice amounts to contempt of Court. The learned Judges said :

"It seems that he (plaintiff) was more or less non-suited.... There is no doubt that since his services have been terminated, some of the reliefs which are prayed for in the suit could become infructuous. On these considerations, we think that the action of the Chairman in terminating the service of the (plaintiff) does amount to obstruction or interference with due course of justice in the petitioner's suit before the Munsif... and so it amounts to contempt of the said court."

5. When asked, counsel for the respondent could not cite any decision holding a Muslim husband's act of divorcing his wife during pendency of her suit for future maintenance as contempt of Court. The divorce completely affects her suit. It is true that the law of contempt of Court is essential for keeping the administration justice pure and undefiled. It is also well to remember that our society is also interested in the fulfillment of a man's expectations under a contract. To that end we have a law of contract in our country. Assigning an unlimited and undefined area to either of them would unduly curtail the area of the other. Each should have a viable area so that justice may hold high her head and contract is not cribbed and cramped. But what is the yard-stick to measure their area of operation ?

6. It has been held that 'initiation in good faith' of a departmental enquiry under the Customs Act by the Customs authorities on the basis of facts which are the subject of a criminal prosecution under that Act against the appellant would not amount to contempt as the authorities, 'are acting bona fide and discharging their statutory duties'. (Tukaram G. Gaokar v. R. N. Shukla. See also Jang Bahadur Singh v. Baji Nath Tewari). In another case it was held that the issue of a notification under the Abolition of Jagirs Act for resumption of Jagirs during pendency of a jagirdar's writ petition for restraining such resumption of jagirs during pendency of a jagirdar's writ petition for restraining such resumption is not contempt, because the Government was acting bona fide in the exercise of a statutory rights : See Malojirao Shitole v. C. G. Matkar. These cases establish that bona fide exercise

of a statutory right by a party to a proceeding is not contempt in the absence of an interim injunction against or undertaking by that party. There appears to be no sound reason why this principle should not extend to the exercise of rights under contract. The rights of a party under a contract are his legal rights. In our view bona fide or honest exercise of a right under a contract should be the yardstick for allocating their respective area to contempt and it gives to each its proper sphere. So where a party to a suit, as here, terminates the service of the adversary party in the honest exercise of his rights under the contract of service and in the absence of any interim injunction or undertaking, his act would not constitute contempt of Court. We are satisfied from a combined reading of the two notices relating to termination of service that the appellant had terminated the service of the respondent in the honest exercise of the right vested in the company by the contract of service. So he has not committed contempt of the Munsif's Court.

7. The order terminating his service does not threaten the respondent to withdraw the whole or part his suit. The mere circumstance that one or more of the reliefs claimed in the plaint have become infructuous on account of the termination order would not establish contumacy. The respondent is free to amend his plaint and ask for a relief against the termination order.

8. Counsel for the respondent has relied on *Pratap Singh v. Gurbaksh Singh and Govind Sahai v. State of U.P.* These cases are clearly distinguishable on facts. In the first case a Government employee had instituted a suit as well as a writ petition against the Government in respect of his service conditions. Thereupon the appropriate authority started a departmental proceeding against the employee. The charge-sheet stated that he had gone to a court of law before exhausting all his department remedies and that his action was contrary to official propriety and subversive of good discipline. This charge was framed on the strength of a circular letter issued by the Chief Secretary of the Government on June 25, 1953. It emphasized that "any attempt by a Government servant to seek a decision on such issues in a Court of law without first exhausting the normal official channels of redress could only be regarded as contrary to official propriety and subversive of good discipline and could well justify the initiation of disciplinary action against him. This Court held that the authorities have committed contempt of Court. In the second case while the respondent's suit challenging the election of his opponent to a committee of a political party was pending, the appellant issued letters expelling him from the party on the strength of an earlier resolution of the party which barred deference of such disputes to a law Court and provided for summary removal of any member who initiated a suit. This Court held that the action of expulsion amounted to contempt of court. It should be observed that in both cases the complainant had a right to institute a legal proceeding in a law court for redress of his grievance. This legal right could be taken away only by a valid law. But there was no such law in operation. So neither the officers of the Government nor the political party had a legal right to take any action for punishing the suitor for his mere act of instituting a legal proceeding in a law Court. In our case the appellant had a right under the contract to terminate the service of the respondent.

9. Counsel for the respondent has submitted that as the appellant had tendered an unconditional apology in the High Court, we should not interfere with the High Court's Order. We are unable to appreciate the submission. Apology goes to sentence and may be accepted only upon a finding that contempt has been committed. The High Court has in fact held that the appellant has committed contempt. But it has accepted his apology and refrained from awarding any punishment. Moreover, the appellant has been directed to pay Rs. 200 as costs to the respondent. So the appellant is entitled to have the order of the High Court set aside.

10. We allow the appeal and set aside the order of the High Court.

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