

ALLAHABAD HIGH COURT

Hrishikesh Sanyal

Vs

A.P. Bagchi

(Collister)

09.08.1940

JUDGMENT

Collister, J.

1. Upon an application by one Hrishikesh Sanyal notice was issued to A.P. Bagchi, a practising lawyer of Allahabad, to show cause why he should not be committed for contempt of Court. The notice has been duly served, and we have heard counsel for both parties. It is necessary to state a few preliminary facts. The parties are related to each other by marriage. The opposite party's younger brother-who died in 1928-had married the applicant's sister, and there are five children of that union, all minors. The mother-who had been appointed guardian of the minors after the death of her husband, died on 24th December 1939. The applicant lives at Benares and the opposite party at Allahabad. On 2nd January 1940, the opposite party applied to the District Judge of Allahabad praying for his appointment as guardian of the minors. He also prayed that he be appointed ad interim guardian and that an inventory of the property in the hands of the applicant be taken. Notice was issued and various steps were taken, which it is not necessary to particularize. On 23rd January 1940 the applicant filed an objection, accompanied by an affidavit in which he made various imputations against the character and conduct of the opposite party. He also applied for stay of the inventory proceedings at Benares. Notice was issued, and the proceedings at Benares were meanwhile stayed. On 5th January 1940, the opposite party filed a counter-affidavit in which he traversed the allegations of the applicant and in which he in his turn assailed the latter's character. On 2nd March 1940 the District Judge of Allahabad took up a plea of jurisdiction which had been raised before him and decided that his Court had no jurisdiction to try the case. The application was accordingly returned to the opposite party for presentation to the proper Court, which was held to be the Court of the District Judge of Benares. On 4th March 1940, the opposite party presented his application in the aforementioned Court. Two days later, on 6th March 1940, the opposite party moved the District Judge of Allahabad under Section 476, Criminal P.C., praying that an inquiry be made into certain of the allegations in the applicant's affidavit of 23rd January 1940, which he alleged to be absolutely false. Then on 8th March 1940, the opposite party himself preferred a complaint against the applicant before the City Magistrate under Section 500, I.P.C.

2. It is contended on behalf of the applicant that the opposite party's application under Section 476, Criminal P.C., and his complaint under Section 500, I.P.C., amount to contempt of Court

inasmuch as the opposite party's object was to exert pressure upon the applicant and paralyse him, so to speak, in the prosecution of his objection in the guardianship proceedings, and thus interfere with the administration of justice. For the opposite party it is pleaded that there was no contempt of Court; or if there was it was inadvertent. What we have to determine is whether the acts of the opposite party which are complained of by the applicant were calculated to prejudice a fair trial in the guardianship proceedings before the District Judge of Benares or to exert pressure upon the applicant in respect to those proceedings; and if so, whether they amount to a contempt of Court. In the year 1742 in *Read and Huggonson's case* (1742) 2 Atk 469 Lord Harkwicke in defining various kinds of contempt said:...There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.

3. This observation was quoted by Maugham, J. in *In re the William Thomas Shipping Co.* (1930) 2 Ch 368. More recently Lord Alverstone observed that the essence of the offence is conduct calculated to produce, so to speak an atmosphere of prejudice in the midst of which the proceedings must go on: *Rex v. Tibbitt*¹

4. So far as the facts of the case with which we are now dealing are concerned, there is no authority directly in point; but learned Counsel for the applicant relies on a decision of this Court in *Rajendra Singh v. Uma Pershad*² The facts of that case were as follows: A civil suit was pending against a minor upon a mortgage executed by the deceased father of the minor defendant. In para. 9 of the written statement which was filed in the suit it was pleaded: That some unscrupulous money-lenders, taking advantage of the dissolute habits of the defendant's father, began running him into indebtedness and the said defendant believes that the plaintiff's father also colluded with some of these money-lenders with a similar object....

5. When the hearing of the suit had begun, the plaintiff sent a notice to the defendant's guardian complaining that the allegation in para. 9 of the written statement was defamatory. The notice went on to say: Unless within a week of the receipt of this notice you send an unqualified apology and withdraw the aforequoted statement by putting an application to that effect in the said Court and also by publishing the said withdrawal and apology in such newspapers as my client requires in order to clear the character and conduct of his late father and unless further within the same one week you pay to my client a sum of Rs. 10,000 only as damages, which sum is only a rough figure for the purposes of this notice and by which he is in no way bound if litigation becomes necessary in this regard, he will take action against you both in civil and criminal Courts as advised, in which event you will further be liable to pay such damages and costs incidental thereto as may be claimed.

6. It was held by this Court that the notice amounted to a direct interference with the administration of justice and that the plaintiff and his counsel were both guilty of contempt of Court. At p. 31 the learned Judges say: Undoubtedly it is the right of every defendant to take every legitimate plea and submit his defence before the Court for its consideration. If the pleas are in any way unnecessary, irrelevant or scandalous, there is ample provision in the Code of Civil Procedure for an application being made to the Court to have such scandalous, unnecessary or irrelevant matters struck out. But where no such attempt is made, defendants are not to be deterred from pressing their pleas and submitting them to the Court of adjudication. Of course, if the pleas are not substantiated and amount to false pleas supported by false evidence, they run

the risk of being prosecuted under the criminal law.

7. Then they say: Now the notice in this case undoubtedly was intended to put extraneous pressure on the defendant in order to compel him under threat of drastic action being taken against him to withdraw the plea which had been taken by him specifically in the written statement. An offer was also made to desist from taking legal action if, within a certain time fixed the defendant withdrew the plea contained in his written statement. There can be no doubt that the effect that was intended to be produced on the mind of the defendant's guardian by this notice was to compel him to abandon the plea which might well have been a legitimate plea. It is unnecessary for us to express any opinion whether in the circumstances of this case the plea was relevant or irrelevant. That is a matter exclusively for the consideration of the Subordinate Court. But it is our duty to protect defendants from being cowed down to submission and under pressure of threat and menace being made to abandon pleas which they can legitimately take in a pending action.

8. Then at p. 32 the learned Judges observe: The present case is one where an attempt was made to put pressure on the defendant to withdraw a plea which had been taken in the written statement duly filed in Court, which was the subject of consideration by the Subordinate Judge of Dehra Dun. We think there can be no doubt that such an action amounted to a direct interference with the administration of justice in preventing the defendant from pressing his defence and putting forward the plea which might, if established, prove fatal to the suit; and in that way an indirect attempt was made to exclude the plea taken on behalf of the minor from the consideration of the Court.

9. In *Baldeo Sahai v. Shiva Dutt*³ a suit had been instituted for possession of land and removal of certain constructions. The defendant filed a written statement in which he alleged that the suit had been brought at the instance of the brother of the plaintiff, who was described as "awara." Thereafter, the plaintiff filed an application for striking out the word "awara" and asking for an apology and stating that on failure of apology proceedings would be taken. The Munsif substituted another word for "awara." Subsequently the plaintiff's brother sent a notice demanding Rs. 1000 as damages for defamation. The applicant thereupon claimed that both the application to strike out the word "awara" and the notice demanding damages, constituted a contempt of Court in regard to the civil suit. It was held by this Court that the notice did not amount to contempt of Court, as there was nothing in the said notice asking that any action should be taken in the conduct of the civil suit. At p. 1159 Bennet J., who delivered the judgment, in distinguishing the case in *Rajendra Singh v. Uma Pershad* (35)22 AIR 1935 All 117 (*Supra*), says: To put pressure on a party to withdraw a plea in a civil suit is quite different matter from a notice stating that a suit for defamation or libel will be brought.

10. Further on the learned Judge says: Learned counsel for the applicant admits that the opposite party would be within their rights in bringing this suit for libel and that the bringing of such a suit for libel would not amount to contempt of Court. He is not able to explain how the notice for such a suit could amount to contempt of Court if the filing of the suit itself would not amount to contempt of Court.

11. As we have seen, in the case with which we are dealing the applicant in his affidavit of 23rd January 1940 made certain imputations against the character of the opposite party. Whether those

allegations were true and capable of proof is a matter with which we are not concerned in these proceedings; but it is contended on behalf of the applicant that a motion for his prosecution for perjury and the filing of a complaint against him under Section 500, I.P.C., in respect to allegations which were under investigation in a pending guardianship proceeding would be calculated to put pressure upon him and also to prejudice a fair trial of the matter in dispute in the Court of the District Judge of Benares. Now, in *Rajendra Singh v. Uma Pershad* (35)22 AIR 1935 All 117(Supra) there was a threat that if the defendant did not withdraw a legitimate plea which he had taken in his written statement, he would incur serious consequences. In the case now before us there was no such threat; there was no intimidation outside the Court with a view to compel the applicant to take certain steps in connexion with the guardianship proceedings. What the opposite party did was to move the District Judge of Allahabad under Section 476, Criminal P.C., with a view to having a formal complaint preferred under Section 193, I.P.C., after inquiry by the Court, and then he himself filed a complaint in a Magistrate's Court under Section 500, I.P.C. If a person has or thinks he has a cause of action or a ground of complaint, he is in ordinary circumstances at liberty to have recourse to the Courts. Learned counsel for the applicant concedes that if the opposite party had waited until the guardianship proceedings were over, he would have been justified in doing what he did; his grievance is that the opposite party did not wait for that indefinite date, but preferred his application and complaint while the proceedings were pending in the Court of the District Judge of Benares. And according to learned Counsel, it is this fact that constitutes the element of contempt.

12. As regards the application under Section 476, Criminal P.C., we are clearly of opinion that it did not amount to a contempt. If, as alleged by the opposite party, the allegations in the affidavit of 23rd January 1940 were false, it was perfectly open to him to move the Court of the District Judge as soon as the proceedings terminated in that Court. What he did in effect was to draw the attention of the Court to those allegations in the affidavit which he claimed to be false and thereafter the responsibility lay with the Court which, after inquiry or otherwise, might or might not decide to prefer a formal complaint.

13. There remains the matter of the complaint under Section 500, I.P.C. It is not our business in these proceedings to say whether the allegations in the affidavit were or were not privileged or to express any opinion on the merits in respect to those allegations even if we were in a position to do so, which we are not. There are no sufficient materials before us upon which we can find as a fact that the motive which actuated the opposite party in filing this complaint which he did instead of waiting until the conclusion of the guardianship proceedings was to harass and handicap the applicant in those proceedings and so interfere with the administration of justice. Whatever the opposite party's real motive may have been, there was nothing in his action to suggest to the applicant that, if he withdrew any of his pleas regarding the opposite party's character, the latter would drop the complaint which he had preferred under Section 500, I.P.C., and so it cannot be said that pressure was being exerted upon the applicant in respect to the guardianship proceedings. Had the opposite party first tried to intimidate the applicant by holding out a threat of prosecution, thereby bringing pressure to bear upon him, the matter would have had a very different aspect. But he did not do this; he took immediate action in the Courts, thereby exercising a right which every individual has of having recourse to a Court of justice. Nor do we think that the applicant would necessarily be handicapped in the proceedings before the District Judge at Benares by the circumstance of a complaint under Section 500, I.P.C., having been filed in a Magistrate's Court at Allahabad; a proceeding which, upon a motion by the

applicant, would almost certainly be stayed by any Court competent to do so.

14. We think that the opposite party would have been better advised to wait a while before preferring his complaint under Section 500, I.P.C., in the hope that the guardianship proceedings might terminate within a reasonable time; but upon the whole matter we are of opinion that the mere act of preferring a complaint in the Court of a Magistrate at Allahabad under Section 500, I.P.C., in respect to allegations which have been made against him in a guardianship proceeding which was pending in the District Judge's Court at Benares does not amount to a contempt of Court. This being our view, we discharge the notice. In all the circumstances we make no order as to costs. As regards the proceedings under Section 476, Criminal P.C., and the complaint under Section 500, I.P.C., we think it is desirable that they should not be proceeded with until the conclusion of the guardianship case in the Court of the District Judge of Benares, and we accordingly direct that the aforesaid proceedings be meanwhile stayed.

Cases Referred.

1(1902) 1 KB 77

2(35)22 AIR 1935 All 117

3(40) 27 AIR 1940 All 114