

ALLAHABAD HIGH COURT

Radhey Lal

Vs

Niranjan Nath

(Bajpai, J.)

02 .10.1940

JUDGMENT

Bajpai, J.

1. Lala Radhey Lal, a moneylender of Agra, is the applicant before us. He prays (1) that Niranjan Nath, the opposite party, may be dealt with and punished according to law for contempt of Court of the insolvency Court of Agra which is seized of the insolvency case filed by the petitioner against Ram Chand Niranjan Nath and (2) that the proceedings in the criminal case under Section 500, Penal Code (Seth Niranjan Nath, complainant versus Lala Radhey Lal, accused) pending in the Court of the City Magistrate of Agra be stayed till the decision of this application. The facts seem to be that Niranjan Nath carries on business at Agra as a bookseller and is also a military contractor. He had occasion to borrow money on negotiable hundis in the market of Agra. The hundis were drawn in favour of creditors and such hundis sometimes used to be endorsed in favour of other persons. In the month of April 1940, some of the hundis drawn by Niranjan Nath fell due and although some of them were paid by the endorsers they were not paid by the drawer Niranjan Nath, whereas some others were not honoured at all. On 25th May 1940 Lala Radhey Lal filed an application in the Court of the insolvency Judge of Agra against Ram Chand Niranjan Nath through Niranjan Nath praying that the opposite party be declared insolvent and a receiver be appointed of his property and his estate be administered according to law. In this application Lala Radhey Lal makes mention of five hundis which came to be held in due course by Lala Radhey Lal the amounts of which hundis were not paid by Niranjan Nath. It was stated in para. 5: That the business of the opposite party failed and he suspended payment on or about Chait Sudi 5, Sambat 1997, corresponding to 11th April 1940, and has as a matter of fact given notice to his creditors that he cannot pay his debts for the last time again on or about the second week of May 1940.

2. In para. 6 it was said:

That with the object of bringing pressure on the creditors the opposite party also gives out that he has transferred his property to his relations. The applicant does not admit this but in any view if there is any such transfer it is entirely bogus farzi and fraudulent.

3. Notice of this application was issued to Niranjan Nath and was served some time in the first

week of June. It is however admitted that Niranjana Nath came to know of this application on 26th May 1940 through one of his servants and he then obtained a copy of the application in order to file his objections in the civil Court, but such copy was delivered to him on 2nd June 1940 and the civil Courts had by that time closed for the long summer vacation. On 10th June 1940, Niranjana Nath filed a complaint in the Court of the City Magistrate of Agra under Section 500, I.P.C., against Lala Radhey Lal. He alleged in this complaint that he was a rais and an approved Government military contractor and a reputed business man of Agra coming from a respectable and rich family and that he was a fellow of the Royal Society of London and paid substantial amount of income-tax and last year was assessed to income-tax of Rs. 867-3-0 on an income of Rs. 11,500. The complainant said that the accused was a near relation of the complainant's rivals in his trade of books and with a view to affect his credit in the market adversely made the following false statements in the course of an insolvency petition filed by him without justification and with absolutely false allegations on 25th May 1940 and thereby caused the complainant's credit to fall in the estimation of his fellow business men and in the money market generally: That the business of the opposite party failed and he suspended payment on or about Chait Sudi 5, Sambat 1997 corresponding to 11th April 1940 and has as a matter of fact given notice to his creditors that he cannot pay his debts.

4. The allegations aforesaid regarding failure of business, suspension of payment and giving notice to creditors intimating inability to pay were absolutely false and malicious and had been made solely with the object of lowering his credit and as the insolvency petition containing the aforesaid defamatory allegations was presented by the accused in open Court on 25th May 1940 and as it was pressed in open Court by his counsel on the aforesaid date within the hearing of persons present in Court and as it was given publicity by the accused and his agents, the accused was guilty of an offence punishable under Section 500, I.P.C., and therefore a warrant of arrest should issue against the accused and he be tried according to law. The City Magistrate issued a bailable warrant fixing 26th June 1940. The complainant was examined on 10th June 1940 on the back of the complaint and he corroborated the statements made in the complaint and said that his business had not failed at all and that he had given no notice of suspension of payment to his creditors, but that, as a matter of fact, the complainant had sent money to the accused after 11th April 1940 and had got receipts by him. The complainant further stated that he had been defamed in general because the accused person made the statement in the presence of people as well as spread it among people in various other ways and he therefore desired that the accused might be arrested by means of a warrant and punished. It is stated by the learned Counsel for the applicant that on 18th June 1940 the complainant Niranjana Nath applied for a search warrant for the seizure of the account books of Radhey Lal for the year 1996-97 and the books were actually seized on 20th June 1940, and later, on 22nd June 1940, Niranjana Nath submitted for the information of the criminal Court an application that the accused had defamed him not only in the complaint, but also on previous occasions the accused had defamed the complainant with similar applications and the allegations in the insolvency case were simply repetitions and that the accused persisted in defaming the complainant.

5. On 27th June 1940 a regular application was filed by the complainant in Court to the same effect and it was prayed that either the Court be pleased to consider the said petition as a part of the complaint already filed or it may be pleased to treat this as a separate complaint and amalgamate this with the previous one so as to avoid multiplicity of complaints. Niranjana Nath was also examined by the criminal Court on 27th June 1940 when he made a fuller statement as

to the defamatory statements made by Radhey Lal in Court in the insolvency petition of 25th May 1940 and before that on earlier occasions in the presence of persons and it was stated therein that when the accused Radhey Lal made defamatory statements prior to 25th May 1940 and had expressed his intention of getting Niranjn Nath declared an insolvent, Niranjn Nath had sent word to Radhey Lal that if he would do so Niranjn Nath would bring a case for defamation. This message was sent through one Jwala Prasad. The accused had then said that if Niranjn Nath liked he was at liberty to do so. Niranjn Nath further stated that on 12th April 1940 he had paid the money of a hundi to the accused and he had paid the money of another hundi to the accused in the month of Baisakh.

6. The present application for contempt of Court was filed in this Court on 3rd July 1940, and one of us issued notice to Niranjn Nath to reply to the application and the proceedings in the criminal Court were stayed. Niranjn Nath has appeared in response to the notice, and learned Counsel for the parties have argued the case at length. Our attention has been drawn to three cases of this Court and to a case in Oudh. One of the cases cited at the bar was decided by ourselves and we shall refer to the various authorities at this stage and in the light of those authorities proceed to determine "whether the acts of the opposite party which are complained of by the applicant were calculated to prejudice a fair trial" in the insolvency proceedings pending before the insolvency Judge of Agra or were intended to "exert pressure upon the applicant in respect to those proceedings and if so, whether they amounted to a contempt of Court." The contention of the opposite party is that they could not in any way prejudice a fair trial of the insolvency proceedings and that they were filed with the sole object of clearing his character and with that object alone the protection of the criminal Court was sought.

7. It cannot be doubted for a single moment that it is of great importance to the administration of justice that it should be allowed to take an unfettered course and not be sullied and besmirched in any manner. The essence of an offence of contempt of Court lies in the fact that the person complained of has done something which might have the effect of prejudicing the fair trial of a pending case. *In Rajender Singh v. Uma Prasad*¹ a plaintiff after the settlement of issues gave notice to the defendant's guardian drawing attention to a certain plea taken in the written statement and alleged that the said plea was defamatory per se of the plaintiff's deceased father and lowered his reputation in the estimation of his fellowmen and caused him harm in various ways and then added that unless within a week of the receipt of the notice an unqualified apology was sent and the aforesaid statement was withdrawn by putting an application to that effect in the said Court and also by publishing the said withdrawal and apology in such newspapers as were required by the sender of the notice in order to clear the character and the conduct of his late father and unless further within the same one week the sum of Rs. 10,000 was paid as damages, action would be taken by him in civil and criminal Courts as advised; and it was held by a Bench of this Court that the sending of the notice 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 defendant from the consideration of the Court and, as such, the plaintiff and his counsel were guilty of contempt of Court. It is of importance to note that the notice complained of and the threat held out was after the filing of the civil suit and "was intended to put extraneous pressure on the defendant in order to compel him to withdraw the plea contained in his written statement."

8. In *Baldeo Sahai v. Shiva Datt*² the facts were that a suit had been instituted for possession of land and for removal of certain constructions. In the written statement the defendant alleged that the suit had been brought at the instance of the brother of the plaintiff who was awara. The plaintiff then filed an application for striking out the word awara and asked for an apology stating that on failure of the apology proceedings would be taken. The Munsif passed an order stating that the defendant's vakil had stated that the word awara be substituted by the word awaragard which simply meant an aimless wanderer while awara might also mean a vagabond and therefore an amendment should be made. The plaintiff then sent a notice to the effect that the use of the word awara in the written statement was without justification and defamatory and therefore a sum of Rs. 1000 should be paid as damages, otherwise action would be taken in law. The defendant then applied to this Court that the application to strike out the word awara and the notice demanding damages amounted to a contempt of the civil Court where the original suit was pending. It was held that the plaintiff of the suit was not guilty of contempt of Court and it was observed by Bennet J., that a distinction was to be drawn between *Rajender Singh v. Uma Prasad* (35) 22 A.I.R. 1935 All. 117 (Supra) and the case before them because the notice in the former case required that the plea in the written statement was to be withdrawn, whereas in the case before them there was nothing in the notice asking that any action should be taken in the conduct of the civil suit and the notice was merely the usual notice which was given as a preliminary to filing a suit for damages for libel. In *Mahomed Yusuf v. Initiyaz Ahmed*³ the facts were that one Imtiyaz Ahmad Khan filed a complaint under Section 500, I.P.C., against Nur Muhammad who was a prosecution witness in a case proceeding against Imtiyaz Ahmad Khan under Sections 420 and 406, I.P.C., and had made certain statements which might be said to be defamatory of Imtiyaz Ahmad Khan, and the question for consideration before the learned Judges was whether Imtiyaz Ahmad Khan was guilty of contempt of Court where the proceedings under Sections 420 and 406, I.P.C., were pending. The complainant of that case filed an application before the Oudh Chief Court praying that Imtiyaz Ahmad Khan should be punished for contempt. The argument was that Imtiyaz Ahmad Khan should have waited until the case under Sections 420 and 406, I.P.C., had terminated. The learned Judges observed: In the first place, we do not think that he was bound to do so, and in the second place that case has been kept dragging on already from 1936 to 1939, and the implication of the argument is that Imtiyaz Ahmad Khan is to put up with defamatory statements being made without protest until such time as those proceedings terminate which might not be for several years to come. It is the existence of uncontradicted defamatory statements which damages a man's reputation beyond repair, and we are not prepared to hold that the circumstances being as they were, Imtiyaz Khan was precluded from taking action.

9. In *Hrishi Kesh Sanyal v. A.P. Bagchi*⁴ we had to deal with a contempt matter and we in the end discharged the rule that was issued and held that the opposite party to the rule was not guilty of Contempt of Court. The facts were that one Mr. Bagchi, an advocate of this Court, had applied to the District Judge of Allahabad for his appointment as guardian of certain minors and notice of the application was issued to certain relations including one Hrishi Kesh Sanyal. Sanyal then filed an objection accompanied by an affidavit in which he made various imputations against the character and conduct of Mr. Bagchi. Mr. Bagchi then moved the District Judge of Allahabad for proceedings under Section 476, Criminal P.C., against Sanyal praying that an inquiry be made into certain of the allegations in the affidavit of Sanyal which were alleged to be absolutely false and Bagchi further preferred a complaint against Sanyal before the City Magistrate under Section 500, Penal Code. Sanyal then moved this Court for taking proceedings for contempt of Court against Bagchi, and we held that under the circumstances the application under Section 476,

Criminal P.C., and the complaint under Section 500, Penal Code, did not amount to a contempt of Court. We discussed the previous Allahabad cases to which reference has already been made in this judgment, and we held that there were no sufficient materials before us upon which we could find as a fact that the motive which actuated the opposite party in filing this complaint when 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 and whatever the opposite party's real motive might 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, Penal Code.

10. We have considered with anxious care the circumstances under which Niranjana Nath filed his complaint under Section 500, Penal Code, against Radhey Lal and we have also taken account of the various steps which Niranjana Nath took in connexion with his complaint and we find that it would be fruitless to speculate into the motives of Niranjana Nath. Learned Counsel on his behalf has argued that Niranjana Nath was a military contractor and a man dealing in the business of books, and it was not expected that he should wait for the termination of the insolvency proceedings before he should seek the protection of the criminal Courts for the clearing of his character and that if he did so wait and the insolvency proceedings had taken their dreary course for a year or so, his reputation would be damaged irretrievably and his contract in the army department might have been cancelled. The argument is that it was, therefore, necessary for him to vindicate his reputation at the earliest possible opportunity and there was nothing in what he had done which would justify the inference that the object of the criminal complaint was to handicap Radhey Lal in the insolvency proceedings and thus prevent Radhey Lal from conducting with safety his insolvency proceedings. We have come to the conclusion that nothing was done by Niranjana Nath from which it could be gathered that if Radhey Lal withdrew the allegations which he had made against Niranjana Nath's character in the insolvency proceedings Niranjana Nath would drop the complaint which he had preferred under Section 500, I.P.C. In at p. 584 of the reports we said: 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.

11. Learned Counsel for the applicant before us contends that in the present case it is clear from the statement of Niranjana Nath made on 27th June 1940 in support of his complaint that before the institution of the insolvency proceedings Niranjana Nath had come to know that Radhey Lal intended to file insolvency proceedings and Niranjana Nath had then and there said that if insolvency proceedings were taken a case for defamation would be brought. The following passage occurs in the statement of Niranjana Nath: From April 1940 the accused person began to tell me and the bazar people that I would not pay the money due to a large number of people and that I had given notice to my creditors to the effect that I would not pay anyone's money. My business had failed and that he would have me declared insolvent. Thereupon I sent word to the accused that if he would do so I would bring a case for defamation. I sent this word through Jwala Prasad. Thereupon the accused said that if I liked to do so I was at liberty to do so.

12. The contention therefore is that the opposite party in the present case had tried to intimidate the applicant by holding out a threat of prosecution and thereby brought pressure to bear upon him and therefore the case before us assumes a different aspect and the opposite party is guilty of

contempt of Court. We did not intend to say that in every case where proceedings are intended to be taken against a person and if that person on coming to know of the intention holds out a threat that if such proceedings are taken he himself would take counter-proceedings to protect himself, the latter person is guilty of contempt of Court if both persons institute proceedings and Counter-proceedings. If when the earlier proceedings have been taken a threat is held out then to the person who institutes the proceedings by the opposite party to the effect that unless the proceedings are withdrawn drastic action would be taken, the holder of the threat would be guilty of contempt of Court; but where the threat is held out before the institution of the proceedings it amounts only to a warning so that an unguarded action may not be taken. We may well conceive of a contemplated action in the nature of a blackmail and it would be dangerous to hold that if the person attempted to be blackmailed were to hold out a counter-threat, he would be guilty of contempt of Court. There is a difference between a threat before proceedings are instituted and a threat after proceedings have been instituted, and in the present case we find that all that Niranjana Nath did was to warn the applicant that if insolvency proceedings were taken by Radhey Lal, Niranjana Nath would take proper action. This does not, to our minds, amount to a contempt of Court, nor does the filing of the criminal complaint amount to a contempt of Court, and we therefore discharge the notice. It was then said that we should order the stay of the criminal complaint and our attention has been drawn to the order that we made in *Hrishi Kesh Sanyal v. A.P. Bagchi* ('40) 27 A.I.R. 1940 All. 4979(*Supra*). We find that in matters like these no hard and fast rule can be laid down to indicate the considerations by which a Court ought to be guided in considering the question of the stay of a criminal proceeding, pending the disposal of a civil suit, and each case must be determined upon its own facts, vide the case in *Gopalchandra Chakravarti v. Emperor*⁵ In *Hrishi Kesh Sanyal v. A.P. Bagchi* ('40) 27 A.I.R. 1940 All. 497(*Supra*) we held the view that the interests of the minors which were of paramount importance and which ought to be zealously guarded by Courts ran the risk of being jeopardized owing to the squabbles of their relations and we therefore thought that the guardianship proceedings should be conducted in an atmosphere of perfect serenity and for aught we knew the guardianship proceedings would come to a termination, at least so far as the original Court was concerned, soon and we therefore stayed the criminal complaint. Here we find that the insolvency proceedings were started on 25th May 1940 and in connexion with a preliminary matter, namely the appointment of an interim receiver, the record has come to this High Court and at this rate it is not likely that the insolvency proceedings would be over at an early date. The findings in the criminal Court will not be of any importance in the insolvency proceedings and vice versa, and in the circumstances of the case we think that it is not desirable that the criminal complaint should be stayed. We dismiss this application, but in the circumstances make no order as to costs.

Cases Referred.

- 1('35) 22 A.I.R. 1935 All. 117
- 2('40) 27 A.I.R. 1940 All. 114
- 3('39)26 A.I.R. 1939 Oudh 225
- 4('40) 27 A.I.R. 1940 All. 497
- 5('29) 16 A.I.R. 1929 Cal. 563