ALLAHABAD HIGH COURT

Emperor

Vs

Benjamin Guy Horniman

(Collister , J.)

08.11.1943

JUDGMENT

Collister, J.

1. On 10th May 1943 we issued notice to the editor, publisher and printer of a daily newspaper known as the "Bombay Sentinel" in respect to a comment which appeared in its issue of 28th April 1943. The respondent is a gentleman named Mr. B.G. Horniman, and apparently he combines in himself the functions of editor, publisher and printer of the aforesaid paper. He failed to appear in response to two successive notices from this Court, and accordingly on 2nd September 1943 we issued a bailable warrant of arrest against him. The warrant was addressed to the Commissioner of Police at Bombay. The latter produced the respondent before the Chief Presidency Magistrate, who released him on bail in terms of our order. The respondent then went in revision to the High Court at Bombay against the order which had been passed by the Chief Presidency Magistrate and in which the latter approved the respondent's surety and released the respondent on bail and directed him to appear before this Court on the appointed date. On 17th September 1943 See ('44) 31 A.I.R. 1944 Bom. 127 a Bench of the High Court at Bombay, composed of the learned Chief Justice and Sen J. heard the application in revision and in the result the Chief Justice held that the order of the Chief Presidency Magistrate should be set aside as being without jurisdiction. Sen J. expressed agreement with the judgment of the learned Chief Justice. The order of the Chief Presidency Magistrate against which the respondent went in revision was in the following terms: Mr. Horniman be enlarged on bail of Rs. 1000 without deposit with one surety in a like amount to appear before the High Court of Judicature at Allahabad on or before 18th September 1943 at 10-30 A.M.

2. This was of course nothing more than giving effect to the order of this Court; it was not an independent order by the Chief Presidency Magistrate. The learned Chief Justice of Bombay has expressed the opinion that the order of this Court was "erroneous and misconceived." I make no comment on this language as used by one High Court in respect to an order passed by another High Court and I will proceed at once to consider whether or not I am able to agree with the

order which has been passed by the learned Judges at Bombay. The comment in the "Bombay Sentinel" in respect to which we issued notice for contempt was in the following terms : -

The Allahabad High Court, where an Indian happens to be the Chief Justice, alone refused to take any action until it sees with its own eyes a certified copy of the whole Federal Court's Judgment. It would not even accept the word of Sir Tej Bahadur Sapru nor trust newspaper reports. At any rate it will have to act when the certified copies are furnished to it. It is always within the power of a Court to take judicial notice of an evident fact which nobody can deny. Perhaps in this instance the denial of Mr. Amery disturbed the equanimity of the Court. The learned Chief Justice of Bombay says: We have not succeeded in ascertaining what denial of Mr. Amery is referred to, or how it is suggested that it could have disturbed the equanimity of the Allahabad High Court, and without the information it is a little difficult to appreciate the last sentence in the passage I have read, or to understand in what respect the words are considered objectionable.

3. But the respondent was presumably before the Court-or at least his counsel must have been there - and he was the best person to explain the meaning of the comment in the paper of which he was the editor, publisher and printer. It appears that on 22nd April 1943 a judgment was pronounced by the Federal Court in which the validity of Rule 26, Defense of India Rules was called in question. On 27th April 1943 an application was preferred to this Court by Sir Tej Bahadur Sapru on behalf of a certain person. Sir Tej mentioned the judgment of the Federal Court, but the learned Chief Justice of this Court, who was seized of the application, naturally declined to pass any order until a certified copy of the judgment had been produced; and he accordingly adjourned the proceedings. A certified copy was produced on 30th April, but meanwhile ordinance 14 of 1943 had been promulgated on 28th April and the application was accordingly dismissed. Our attention has been drawn to the "Leader" of 28th April, in which what purports to be an official statement issued by the India Office was published and the last few lines of the statement read as follows: It is understood that the issue of an Ordinance to remove the technical defect is under urgent consideration and no practical question arises of the release of the detinues.

4. Whether we shall or shall not ultimately find that the last paragraph in the comment appearing in the "Bombay Sentinel" of 28th April 1943 in respect to a pending case amounts to a contempt of Court and what degree of seriousness we shall attach to it are matters which will have to be decided if and when the respondent appears before this Court; but the comment appears to have contained an implication that when the Chief Justice of this Court declined to accept the word of the eminent counsel who was appearing before him or to trust reports in the press, this was a mere pretext. The suggestion is that in refusing to decide the case in favour of the applicant and release him out of hand the Chief Justice was influenced by what Mr. Amery is supposed to have said or deniedeas regards the question of releasing the detenus and that he lost his judicial equipoise and allowed his judgment to become unbalanced; in other words that he was actuated

by extra-judicial considerations. Prima facie this appears to be contempt - whatever view we may take of the matter if and when we have the advantage of hearing arguments on behalf of the respondent. The question is whether we are able to agree with the finding of the High Court at Bombay that we had no jurisdiction to issue a warrant against the respondent and what is the proper order which should now be passed, and this I will proceed to do, though we are unfortunately deprived of the benefit of arguments on behalf of the respondent. We understand that a copy of the "Bombay Sentinel" is daily sent to the office of the "Leader" a news-paper which is published in Allahabad - and that a copy of the issue of 28th April 1943 was so sent. If this is so, the contempt, if any, was actually committed within the local jurisdiction of this Court. But having regard to the inherent powers of a High Court, it may well be argued that it is immaterial whether the contempt was committed within or without the local limits of this Court. The learned Chief Justice of Bombay says:

I have no doubt that if the Allahabad High Court considers that Mr. Horniman has committed contempt of that Court, although the contempt may have been committed outside the jurisdiction of that Court, it could deal with Mr. Horniman, if he were within its jurisdiction. That was decided in H.D. *Rajah v. C.H. Witherington*[1] But in my opinion there is no power in the High Court of Allahabad itself to arrest for contempt of Court a man outside the jurisdiction of that Court.

5. He then goes on to say that he knows of no power in his Court to arrest a person for contempt of the Allahabad High Court and a fortiori there is no such power in the Chief Presidency Magistrate or in the Commissioner of Police. The learned Chief Justice then considers the applicability of the Code of Criminal Procedure and he says that, since the alleged contempt was not an offence under the Penal Code or under any other law within the meaning of Section 5 (2), Criminal P.C. this Court had no jurisdiction to issue process against the respondent. If the view taken by the learned Judges at Bombay is correct, it may lead to somewhat startling results. A person may commit the grossest contempt of one of the High Courts and may then slip across the boundary into the territorial limits of an adjoining High Court and, so long as he remains there, he will enjoy complete immunity. However, it does not necessarily follow from this that the view of the High Court at Bombay is erroneous, for does sometimes happen that anomalous results arise from a correct interpretation of the law and where these are sufficiently serious action may have to be taken by the Legislature. As we have already seen, the learned Chief Justice of Bombay has referred to H.D. *Rajah v. C.H. Witherington ('34) 21 A.I.R. 1934 Mad. 423(Supra).* In that case the offence was apparently committed at Madras-or so I infer, but the persons committing it were residing at Calcutta. At p. 831 the learned Judges say:

...the learned Advocate-General argues that because the offenders happen to reside in Calcutta the hands of this Court are tied...We find no warrant for this view of the law. Contempt of Court is not an offence within the ambit of the Penal Code, but nevertheless it conforms to the ordinary rule that the jurisdiction of the Court is determined by the place where the offence is committed

and not by the place where the offender may happen to reside.... If an offender has removed himself beyond the territorial jurisdiction of the Court, there may be difficulty both in securing his appearance and in executing his sentence, but that is not to deprive the Court of jurisdiction over the offence.

6. Further on they say: The only possible difficulty that can arise is if they succeed in removing themselves from the Court's jurisdiction before the execution of the penalty, and that is not a matter which need be considered at this stage.

7. Thus the view taken by the learned Judges was that the High Court has jurisdiction if the contempt is committed within its local limits, but they expressed a doubt as to the practicability of securing the attendance of the offender if he has removed himself beyond the local limits of that Court. The learned Judges at Madras appear to have been of the opinion that a High Court can only punish for contempt if the offence is committed within its local limits but this is not a matter which need be further discussed at present, for the case of the Advocate-General is that the con- tempt with which we are concerned was committed in Allahabad. The learned Chief Justice of Bombay has also referred to Chandan Mall Karnani v. Sardari Lal ('37) I.L.R. (1937) 1 Cal. 345, in which a learned Judge of the High Court at Calcutta sitting singly, held that that Court was not competent to order the arrest for contempt of a person living in any part of British India other than within the local limits of such Courts.

8. As regards the applicability of the Code of Criminal Procedure the principal authority on which the learned Judges of the Bombay High Court have relied is a decision of their Lordships of the Privy Council passed in 1883. This was Surendra Nath Banerji v. The Chief Justice and Judges of the High Court at Fort William in Bengal and it is reported in ('83) 10 Cal. 109. In that case a Judge of the High Court at Calcutta had been grossly scandalised in a newspaper; and the Judicial Committee held that, notwithstanding the Code of Criminal Procedure, the High Court had jurisdiction to commit the offender. The argument advanced before their Lordships was that the offence, if any, was defamation, which is provided for in chap. 21, Penal Code; but it was held that a contempt by libel such as the one before their Lordships was something more than defamation and was of a different character and was punishable by the High Court of Calcutta under the common law of England inasmuch as that part of the common law had been introduced into Presidency towns when the Supreme Courts were established by the Charters of Justice. It was held that the provisions of Section 5, Criminal P.C. 1882, relating to the procedure under which "all offences under the Penal Code" and "all offences under any other law" are punished, do not include a contempt of the High Court committed by the publication of a libel out of Court when the Court is not sitting, although such contempt may include defamation. The contempt which their Lordships were considering was not an offence under the Penal Code-although it may have involved defamation-and also of course it was not at that time an offence under any other specific law; it was an offence which was punishable by the High Court of Calcutta under the common law of England. The question is whether the law as laid down by the Judicial

Committee in 1883 is applicable now, having regard to the Contempt of Courts Act which was passed in 1926 and was amended in 1937. Section 4 (o), Criminal P.C. of 1898 defines an offence as "any act or omission made punishable by any law for the time being in force." The Contempt of Courts Act-which, as I have said, was passed in 1926-defined the powers of a High Court in respect to contempt of Courts subordinate to such High Court. Section 3 provides:
Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Then comes a proviso, which it is unnecessary to cite. Apparently doubts arose as to whether the provision as regards the amount of punishment was applicable in the case of a contempt of a High Court or whether it was only meant to apply to a contempt of a subordinate Court and accordingly a second proviso was inserted by the Contempt of Courts (Amendment) Act 12 of 1937 as follows: Provided further that notwithstanding anything elsewhere contained in any law no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.

9. It would thus appear that a contempt of the High Court is an "act made punishable under a law for the time being in force" within the meaning of Section 4 (o), Criminal P.C., and such offence can be inquired into according to the provisions of that Code as set out in Section 5 (2). I am, therefore, strongly inclined to the opinion that, at least where a contempt has been committed within the territorial jurisdiction of a High Court in India, such Court is competent to issue process to secure the attendance of the offender wherever he may be residing in British India, as in the case of an offence under the Penal Code or under any other Act for the time being in force. It is true that "contempt" is not defined in the Act, but the same can be said as. regards the word "insult" in Section 228 of the Penal Code, and obviously these words are hardly susceptible of definition. In my judgment and with all respect to the view taken by the High Court of Bombay, the warrant issued by this Court was legally issued and was executable at Bombay under Sections 83 and 86, Criminal P.C. All that remains for us to decide is what is the proper order for this Court to pass. It is obviously useless to re-issue process to Bombay and I think that the best course would be to issue a warrant to the Inspector-General of Police of the United Provinces with a request that he will have it executed if and when the respondent sets foot within the local jurisdiction of this Court.

Allsop J.

10. I agree.

11. It appears prima facie that the Bombay Sentinel suggested that a learned Judge of this Court was influenced by some remarks made by the Secretary of State for India when he passed an order in a criminal case of a class which had given rise to some political feeling. If that was the suggestion it would seem to constitute a mischievous and harmful contempt. In my judgment

contempt of Court is now an offence within the meaning of the Code of Criminal Procedure. An offence is defined in that Code as "any act or omission made punishable by any law for the time being in force." Section 5 is as follows:

(1) All offences under the I. P.C. shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained. (2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

The definition was the same in the Code of 1882. The provisions of Section 5 were much the same but did not contain the words 'investigated' or 'otherwise dealt with.' There was, however, no Contempt of Courts Act in 1883 when their Lordships of the Privy Council decided the case in 10 Cal. 109. The argument addressed to their Lordships was that the Indian Penal Code and the Code of Criminal Procedure had taken away the jurisdiction of the High Court to punish contempt. Their Lordships said:

The only question to be determined is whether the High Court had jurisdiction to commit the petitioner for a contempt of Court. Their conclusion was that the offence of contempt and the powers of the High Court for punishing it were the same in India as in England 'not by virtue of the Penal Code for British India and the Code of Criminal Procedure but by virtue of the common law of England' and that 'the words "all offences under any other law" cannot be intended to include a contempt like the present for which no provision is made by the Code'. There is now an enactment which has taken away the unrestricted common law powers of the High Courts to commit an offender to prison for contempt, has substituted for it a power to sentence the offender to simple imprisonment for a period of six months and a fine of Rs. 1000 and has at the same time recognised the special jurisdiction of such Courts to deal summarily with the offence. Contempt is now punishable under an Indian Penal statute and there is an enactment within the meaning of Section 5 (2), Criminal P.C. In my judgment the basis for the decision in 10 Cal. 1093 no longer exist.

12. It is doubtless true that the Contempt of Courts Act when it recognised our jurisdiction also recognised our procedure and practice, but once we hold, as I think we should, that a contempt is an offence within the meaning of the Code of Criminal Procedure we can exclude from operation only those portions of the Code which are positively repugnant to existing procedure and, as at present advised, I see no reason for thinking that it was ever illegal for this Court to seek the assistance of the appropriate officers of the Crown for the purpose of attaching the person of an offender and that the provisions of the Code for the issue of warrants of arrest are now inapplicable. I understand that a warrant of attachment in England would issue to the Sheriff who is not an officer of the Court but an official of the Crown. Although the learned Chief Justice of the Bombay High Court quoted the offending passage from the Bombay Sentinel and made some

comment upon it, he conceded that it was within our province to decide whether it amounted to contempt. With the greatest respect I should have thought that it was equally within our province to decide whether contempt was an offence to which certain provisions of the Code of Criminal Procedure could apply. Our criminal and civil processes and those of the Courts subordinate to us are to be executed throughout British India and I should not have thought that it was the business of the police officers or Courts executing them to sit in judgment upon their validity. However as the learned Judges of the Bombay High Court seem to have come to the opposite conclusion the only course left open to us is the one proposed by my brother Collister.

13. We direct that a bailable warrant on the same terms as on the last occasion be sent to the Inspector General of Police, United Provinces, with the request that he will have it executed if and when the respondent may at any time be found within the local limits of this Court's jurisdiction.

Cases Referred.

1(34) 21 A.I.R. 1934 Mad. 423