

ALLAHABAD HIGH COURT

Kamta Prasad

Vs.

Ram Agyan

Criminal Ref. No. 10 of 1948

(Raghubar Dayal and Agarwala, JJ.)

28.04.1949

JUDGMENT

Raghubar Dayal, J.

1. This is an application by two persons, Lala Kamta Prasad and Shiva Sagar Pandey, residents of Kanpur asking the Court to take proceedings for contempt of Court, against the two opposite parties Ram Agyan and R.S. Singh, residents of Ghazipur. The applicants are concerned with a Firm Sri Ram Mahadeo Oil Mills, Kanpur : applicant 1 is one of its proprietors and applicant 2 is its Manager. Ram Agyan, opposite party 1 is the proprietor of Regal Talkies of Ghazipur and R.S. Singh, opposite party 2 is the brother of opposite party 1. On 23-4.1948 Ram Agyan, opposite party 1 purchased 14 ceiling fans and one table fan, all second hand, from Sri Ram Mahadeo Oil Mills for Rs. 1930-4-0 and paid Rs. 500 as part purchase money at once and promised to pay the balance at Ghazipur. A servant of the vendor was sent along with opposite party 1 to Ghazipur to fetch the balance. Ram Agyan, opposite party 1, gave a crossed cheque, dated 24.4.1948 for the balance of the price to the servant. The aforesaid cheque was sent for collection by the applicants but was returned with the remark that the payment, had been stopped by the drawer. So far the facts are admitted. Opposite parties explained that what had happened was that, before they took delivery of the fans, they had got the fans tested in their presence but, when they opened the parcel at Ghazipur, they found that five fans were defective and were not the same as had been tested and so they stopped the payment of the cheque which they had given. However that may be, the applicant's case further is that as a transaction of said had taken place through one Prem Shanker they sent Prem Shanker to Ghazipur to settle up the matter with opposite party 1. His efforts proved unsuccessful and Ram Agyan refused to pay the balance of the money. In this state of affairs, applicant 2, as a manager of the firm, filed a complaint on 18.5.1948 against Ram Agyan Singh, opposite party 1, under Section 406, Penal Code, for criminal breach of trust in the Court of Sri J.K. Pandey, Magistrate First Class, Kanpur. At first the learned Magistrate issued a bailable warrant but, as opposite party 1 did not appear on the

date fixed, he issued a non-bailable warrant. Opposite party was arrested in pursuance of the warrant but was released on bail on 12.8.1918 when he appeared in Court. During this interval, however, that is to say, between 18.5.1948 and 12.8.1948 some thing else happened, which must now be stated.

2. On 19.6.1948 opposite party 2 sent a notice on behalf of Regal Talkies, Ghazipur, to Messrs Sri Ram Mahadeo Prasad, Proprietors, Oil and Flour Mills, Kanpur, of which firm applicant 1 is one of the partners. It is this notice which is the gravamen of the charge for contempt of Court against the parties. We set it out in full:

"Regal Talkies Premier Cine House.

Registered A/D Ghazipur, 19.6.1948, M/s. Shri Ram Mahadeo Prasad, Proprietors, Oil and Flour Mills, Harrisanganj, Kanpur.

"Dear Sirs,

We understand that you have filed a criminal complaint against our Mr. K.A. Singh in the Court of Shri J.K. Pande, Magistrate first class, Kanpur, in the matter of the fans purchased from you. You are fully aware that we had purchased the fans from you on the clear understanding that they were in perfect working order. Hence all the fans were tested by your electrician, Sukhram Mystry. After these were tested they were packed by your men on the evening of 23.4.1918. The five packages, containing 15 fans their blades and regulators were carried by your employee, Mr. Devendra Nath from your Mills to Ghazipur at our cost as mutually settled. Against the delivery of the said packages a cross cheque for Rs. 1,430-4-0 drawn in your favour was handed over to the said Mr. Devendra Nath on 24.4.1948 in full payment of your bill No. 348 dated 23.4.1948 whereunder an advance of Rs. 500 in cash was made to you under your stamped receipt dated 23.4.1948. As mutually settled your electrician, Sukh Ram Mystrl had accompanied your aforesaid Mr. Devendra Nath from Kanpur to this place for installing the fans in our Cinema Hall at our entire expenses as to his T. A. and daily wages at Rs. 2 per day which amounted to Rs. 46-13-0 and was duly paid to him on 17.5.1948. The aforesaid packages were opened in his presence and with his assistance. Immediately after the unpacking of the fans he expressed doubts that five of the ceiling fans were not those that were tested by him in your workshop and when installed did not run with the load of the blades. There upon your electrician wrote you a post-card from here about the aforesaid facts and we also wrote you a letter dated 29.4.1948 informing you about the same as also about our stopping payment of the aforesaid cheque for Rs. 1,430-4-0. In that letter we had informed you after consulting your electrician, who was present here, that repair charges to the said five defective fans would be about Rs. 400, consequently we had sought your advice whether to return to you the said five fans at your cost or to send you another cheque after deducting the cost of repairs whereupon you sent Mr. Prem Shankar of M/s. Thawani and Co., Kanpur who had arranged the sale of your fans to us for making personal enquiry into the matter. He came here on or about 10.5.1948 and saw the defective fans. He promised us to request you to communicate us very early with your

decision in the matter and assured us to see that the repairs expenses were deducted from the amount of the balance payable to you viz., Rs. 1,430. As our business was suffering badly for want of fans, we thereupon, gat the said five fans repaired at Rs. 70 each, amounting to Rs. 350.

It is really highly deplorable that instead of replying our above-mentioned letter and getting the matter amicably settled, you should have deemed fit to file a criminal complaint against our Mr. R.A. Singh about which we learnt only a few days back when a warrant was served on him, when he was seriously ill. This has seriously told upon our prestige and specially so with our Mr. Singh.

We are still open to an amicable settlement and accordingly we are willing to send you a Bank Draft for the amount due from us after deducting Rs. 350 incurred towards the repairs of your five defective firm. We have not included in the said charges of Rs. 350 the amount of about Rs. 30 that was spent on T. A. etc., of our man who got the fans repaired from Allahabad. We shall immediately forward you the draft for the said sum on learning that you will forthwith withdraw your criminal complaint filed against our Mr. Singh. In the event of your disapproval of our said most fair proposal we shall be constrained to proceed against you civilly or criminally as legally advised at your entire risk as to costs and consequences, which needless to say shall burden both of us with avoidable loss of money and energy.

Yours faithfully, for Regal Talkies

Sd. R. Singh.'

3. It appears that the applicant did not respond to this notice. Thereafter Ram Agyan, opposite party 1, filed a complaint under Section 420, Penal Code, against the two applicants and after the arrest of opposite party 1 under the warrant issued in the applicant's complaint, opposite party 1 filed another complaint under Section 500, Penal Code, for defamation. The complaint of opposite party 1 under Section 420, covered the same ground as was disclosed in the notice already quoted. The second complaint of opposite party 1 under Section 500, was based on the defamatory allegations made in and the defamation involved in, the arrest of opposite party 1 made in proceedings arising under the applicant's complaint under Section 406, Penal Code. The case for the applicant is that by issuing the notice and filing the two complaints the opposite parties have attempted to prevent the applicants from prosecuting their complaints under Section 406, and that this amounts to interference with the administration of justice and so a contempt of Court.

4. Opposite party 1 is concerned with the two complaints filed by him and opposite party 2 is concerned with the issuing of the notice of 19.6.1948. So far as the filing of the complaints is concerned, it is clearly in the exercise of one's legal rights. If Ram Agyan really felt that the applicant's firm had been really guilty of breach of trust, he was perfectly entitled to file a complaint under Section 420, Penal Code. If his allegations made in the complaint were false he would, of course, bear the consequences. The same is the case with the second complaint under

Section 500. If it be true that by making allegations in the complaint under Section 406, and by having opposite party 1 arrested in pursuance of a warrant, the applicants had committed an offence under Section 500 Penal Code, then opposite party 1 was within his rights to file the complaint. If it should appear that his complaint is not true he will bear the consequences; but the mere fact of the filing of the two complaints by opposite party 1 cannot be said to amount to a contempt of Court. The reason is that everybody is entitled to seek remedy in a Court of law for the wrongs which, he thinks, have been committed against him. The policy of the law is not to prevent such recourse to law being taken. In such cases, it is immaterial that the complaints arise out of and are based on allegations made in a previously instituted proceeding. This principle has been well established in this Court. See the cases of *Hrishikesh v. A.P. Bagchi*¹, Thus Ram Agyan, opposite party 1, cannot be said to have committed any contempt.

5. The notice of 19.6.1948 was issued by opposite party 2 as we have stated already the circumstances in which this notice was issued are apparent from the narration of events which we have already made. The applicants alleged that opposite party 1 had not paid the balance that was due from him, although he had taken delivery of the goods sold to him and had thus been guilty of cheating. On the other hand, the opposite parties alleged that the applicants had been guilty of breach of trust and that they had substituted some of the fans by other fans which were defective. There was thus a dispute between the parties. In the notice aforesaid opposite party 2 suggested that the dispute may be amicably settled and offered to pay the balance after deducting Rs. 350 alleged to have been incurred towards the repairs of the five defective fans. This offer of the payment of the balance due was however, hedged in with a condition, namely, that the applicants were to withdraw the criminal complaint against opposite party 1. Stopping here for a while, it is clear that there was nothing objectionable in a conditional offer like this. It may be that the offer, if accepted, was void being opposed to public policy under Section 23, Contract Act, inasmuch the complaint under Section 406 could not be compounded. But that is not the point to be considered in a contempt of Court proceedings. The point is that there was no contempt in this conditional offer. The notice, however, proceeded to say :

"In the event of your disapproval of our said most fair proposal, we shall be constrained to proceed against you civilly or criminally as legally advised."

6. It has been strongly urged that this was a threat which had the tendency of dissuading a party from prosecuting his case in a Court of law and that, therefore, it was a contempt of Court.

We do not think that this was a threat dissuading a party from proceeding with a case. We think what opposite party 2 meant to say was :

"Here is our dispute. It is better to compromise it out of Court. If it is not compromised, we shall be constrained to take whatever legal proceedings may be open to us."

It will be observed that the threat, if any, consisted in the taking of certain legal proceedings which the opposite parties would be entitled to take if their version of the dispute was correct. If a party says - "These are the true facts and I have a right to proceed against you in a Court of law. I will, however, not proceed in a Court of law if the matter is amicably settled" - where does the contempt come in here? Even if it were a threat, it was a threat to exercise one's own vested right. Such a threat cannot amount to a contempt of Court. The case is parallel to one reported in *Webster v. Bikewell Rural District Council*², In that case the yearly tenant of a cottage and land, adjoining a highway and forming part of a settled estate, issued a writ against the local authority for an injunction to restrain an alleged trespass on his land. The solicitor of the tenant for life of the estate wrote to the local authority with a view to arrange the matter and at the same time wrote

¹1940 All LJ 579 and *Radhey Lal v. Niranjan Nath*, 1940 All LJ 798

²(1916) 1 Ch 300

to the tenant that the tenant for life required him to withdraw the writ and threatened him that, if he did not comply, tenancy would be determined. It was held that the solicitor had not committed a contempt of Court. Neville, J., observed :

"The question is, is that a contempt of Court? I think it is only this : I do not intend to interfere with the way you carry on the action at all, but it is injurious to me and if you do carry it on, and assert what you allege to be your legal rights in that way, I on my part shall give effect to the legal rights I possess and resume possession of my cottage. I must say I cannot think that can be considered a contempt of Court.....Suppose two neighboring owners have for some time committed trespass on one another's lands either by allowing water to run or in some similar way, and this in a neighborly spirit has been allowed to go on, then one brings his action against his neighbor in respect of the trespass he has committed. The neighbor says. "We have allowed this to go on in a friendly way, and if you sue me in respect of my trespass I will sue you on your trespass"obviously done to prevent, the prosecution of the action by the litigious neighbor. Could that be said to be contempt of Court? I think not. I cannot see any distinction in principle between that and saying 'I will assert my legal rights against you if you choose to go on with your action, which to my mind is detrimental to my interest in the property!'"

7. We think that what the opposite party No. 2 did in giving the notice was merely to say in the language of Neville, J., "I will assert my legal rights against you if you choose to go on with your criminal complaint".

8. Reliance has been placed upon the case reported in *Rajendra Singh v. Uma Prasad*³, That was a case in which one party had taken a plea in a pleading which the other party considered to be defamatory of him. A notice was thereupon sent by the other party to the former party demanding the withdrawal of the plea from his pleading and threatening him that if that was not

done he would be proceeded with civilly and criminally for the defamation involved in the plea itself. A Bench of this Court held that the threat held out in the notice had the effect of putting pressure on the defendant to withdraw the plea which had been taken in the written statement and was thus a direct interference with the administration of justice.

9. In support of its decision the Bench relied upon the case of *Smith v. Lakeman*⁴, where the plaintiff had sent a letter to the defendant with a view to intimidating him in the conduct of his defence warning him that if the suit should go up for judgment, he would be indicted for swindling, perjury and forgery and thus his family would be brought in disgrace. *Smith, V.C.*, held that it was a threat for the purpose of intimidating the defendant as a suitor and was, therefore, contempt of Court. Now it will be observed that the threat in that case was not for doing something in protection of one's rights but for maliciously putting the other party to disgrace, by bringing an action, probably false, for swindling, perjury and forgery. A case of this kind stands entirely on a different footing.

³1935 All LJ 29

⁴(1856) 26 LJ Ch 305

Nobody is entitled to intimidate suitor by holding out a threat of disgrace being brought upon him or his family or some harm being caused to him simply in order to intimidate him and to dissuade him from proceeding with a case which is pending in a Court of law. A threat like this amounts to an interference with the administration of justice. But the same cannot be said of a threat to do something for the protection of one's own rights or the vindication of one's honor.

10. Because the threat held out in *Uma Prasad's* case, 1935 All LJ 29 was to take civil and criminal proceedings on the basis of the very plea which was demanded to be withdrawn, the Bench considered that it was an attempt to coerce the defendant into withdrawing the plea which he was entitled to take. In the case before us, however, the notice is materially different from the notice in *Uma Prasad's* case.

11. In the notice in the present case there is merely an offer for a compromise of a pending dispute coupled with a warning that proceedings which are open in law to the opposite parties would be taken in case the offer was rejected. The threat, if any, is not specifically to take proceedings at law upon a wrong that was supposed to be done by the institution of the applicant's complaint but to take recourse to law in protection of the opposite party's rights which had accrued to them upon their version of the dispute between the parties.

12. The law favors compromise and amicable settlements of disputes out of Court. It is for this reason that the law does not allow offers made without prejudice, during the course of a talk for compromise, for the settlement of disputes to be proved in evidence against the party making them. Therefore, where a party offers the settlement of dispute out of Court and, as part of the settlement, suggests the withdrawal of a pending legal proceedings, he cannot, by that

suggestion, be said to be interfering with the course of justice.

13. Again since the taking of a proceeding for one's own protection is a very legitimate object which the law permits, the threat to take such a proceeding cannot be branded as being of an intimidating nature. A distinction must be drawn between a case, where a party threatens to take proceedings on account of and based upon the allegations made in a plea or a suit which is pending and a case where the party threatens merely to take action in enforcement of one's pre existing rights. While the former may, perhaps, be said to involve some sort of intimidation because the action proposed is connected intimately with the pending proceedings itself, the latter cannot be said to have that tendency.

14. The law with regard to this matter, so far settled, may be stated as follows : (1) If there is a threat held out against a party to a legal proceeding not to proceed with the proceeding or to drop a plea which he had legitimately taken and the threat is that if this is not done, then some harm will be caused to that party, either by way of a bodily injury or injury to reputation, or in some other way, the threat constitutes an interference with the administration of justice and is contempt of Court, *Smith v. Lakeman*⁵, 2. If the threat is not express, but is implied in the fact of a party instituting a criminal complaint or taking

⁵(1856) 26 LJ Ch 305

some civil proceeding which puts the former party to loss, there is no interference with the administration of justice because everybody is entitled to take recourse to law - *Hrishikesh Singh v. A.P. Bagchi*⁶, If there is a simple demand for payment of damages because of the use of some defamatory expression in a pending proceeding, and the demand is not coupled with a request for the withdrawal of the pending proceeding, or a plea taken therein, the demand for damages does not amount to interference with the administration of justice - *Baldeo Sahai v. Shiv Datt Sharma*⁷, If there is a demand for the withdrawal of certain words or expressions used in a pending proceeding coupled with a threat that action will be taken if the words or expressions used are not withdrawn, then if the words or expressions were scandalous, unnecessary or irrelevant, such a threat does not amount to interference with the administration of justice, *Jagannath Prasad v. Ram Chandra*⁸, by Harish Chandra and Desai, JJ., (5) If the threat is that, unless a certain pending proceeding or plea taken therein is withdrawn, a counter-action will be taken to protect one's own interest in the exercise of one's own right in the property or to take recourse to law upon a cause of action which has already accrued, or in the vindication of one's own honour, there is no interference with the administration of justice, *Webster v. Bakewell Rural District Council*⁹,

15. In our opinion, the present case falls under the last category (5) mentioned above.

16. We, therefore, hold that the opposite parties are not guilty of contempt of Court. We see no force in this application and dismiss it. The applicants shall pay Rs. 200, as costs of the opposite

parties and Rs. 160 as costs of the Government Advocate. (A month is allowed for the payment of costs.)

Application dismissed.

⁶1940 All LJ 579 and Radhey Lal v. Niranjana Nath, 1940 All LJ 798

⁷1939 All LJ 1157. (4)

⁹(1916) 1 Ch 300

⁸ Cri. Misc. No. 15 of 1948, decided on 9.2.1949