

# ALLAHABAD HIGH COURT

Rex

Vs

B.S. Nayyar

Criminal Misc. No. 20 of 1949

(Kidwai and Chandiramani, JJ.)

31.01.1950

## JUDGMENT

### **Kidwai, J**

1. The Maharaja of Kapurthala owned considerable tracts of forest lands in the Bahraich district. Some of this land in pargana Ikauna was cleared and large tenancies were created in favour of some Punjabees, who had migrated and settled down in Bahraich, some Muslims and others, including important members of the district Congress Organisation. The tenants mostly reserved portions of their holdings in their own cultivation and let out the rest to sub-tenants.

2. After a time trouble arose between the tenants and their sub-tenants which resulted in the forcible occupation of land, riot, murder and other crimes. The Punjabee and Muslim tenants felt that these troubles were engineered by Pandit Janardan Prasad, a so-called Communist, and Pandit Sobha Ram, the Secretary of the Ikauna Congress Committee. They began to agitate for action and expressed their readiness to offer concessions to the sub-tenants, and were prepared to accept only one-third of the produce instead of a half or even "a fixed grain rent-as is prevalent in the tenancies of the Hon'ble Minister of Revenue, and Pandit Bhagwan Din M. L. A." With a view to get some settlement effected, the tenants approached the District authorities, the Commissioner, the President of the All India Congress Committee, and, finally, the Hon'ble Premier of the Province. In order to seek an interview with the Hon'ble Premier Mr. B.S. Nayyar, one of the tenants, wrote a letter to Dr. C.D. Pandey, on 13th June 1948. Dr. Pandey replied on 17th June stating that the Premier would grant an interview on any day between 3rd and 7th July at Lucknow.

3. It appears that, thereafter, the Hon'ble Premier visited Bahraich and addressed a public meeting on 25th June, and in the course of his address, he expressed his readiness to take action against all and sundry, including officials, should it be shown to him that such action was called for. Thereafter the tenants held a meeting at Bahraich on 28th of June and passed certain resolutions. They authorised Mr. B.S. Nayyar to prepare a memorandum for the consideration of the Hon'ble Premier and to send an advance copy. Mr. B.S. Nayyar accordingly prepared four documents which he described as follows :

"(1). Memorandum (2). Brief history of sub-tenants' agitation and some useful suggestions. (3). Copy of resolutions dated 28th June 1918. (4). Instances of self-gain by Pandit Sobha Ram, instances of victimisation of Punjabees etc."

4. He sent all these four documents as well as a copy of a letter addressed by eight persons, including himself, to the President of the All India Congress Committee, in February 1948, to the Private Secretary to the Hon'ble Premier under his own covering letter.

5. It does not appear what action, if any, was taken by the Hon'ble Premier on this representation nor is it material to know this for the purposes of the present proceedings. On 24th December 1948, however, the District Magistrate wrote to the Deputy-Registrar of this Court at Lucknow, drawing attention to certain remarks contained in the fourth of the papers mentioned above and in the letter to the President of the All India Congress Committee, and asking for action against Mr. B.S. Nayyar for contempt of Court. The learned District Magistrate writes :

"Shri B.S. Nayyar wrote a letter to the Private Secretary to the Hon'ble Premier U. P. I herewith enclose a certified copy of his letter together with its enclosures. It will be seen that Shri B.S. Nayyar makes the following allegations under the heading 'Support by the District High Command' in the fourth enclosure to his letter giving instances of self-gain by Pandit Sobha Ram, Ex-Secretary Congress Mandal Committee, Ikauna."

"(1) Reward of such activities of Pandit Sobha Ram even his acquittal in a theft case of a buffalo, etc.

(2) Tampering of records as in the case of Mohendra Singh's case and other instances.

(3) Engaging of one lawyer in most of such cases of sub-tenants who is the nephew of the Hon'ble Minister of Land Revenue and transfer of all such cases nearly in the Court of Judicial Officer, who is the brother-in-law of the Private Secretary of the said Hon'ble Revenue Minister, do not inspire faith in the public.

(4) This is further clear by the instance of contempt of Court case against Pandit Bhagwan Din Vaid, which was dropped by the learned Magistrate without due jurisdiction."

Again he says :

"Enclosure fifth (flag B) is a copy of an application sent to President of All India Congress Committee. Paragraph 5 of this application contained the following allegations :

"On the appointment of Judicial Officer who is a brother-in-law of the Private Secretary of an Hon'ble Minister and the manipulations of the transfer of all cases to his Court wherein Congressmen are involved are factors which are too glaring and which certainly do not inspire faith and confidence in the public mind."

Such remarks, though somewhat clearly worded, all the same strongly insinuate that S.D.M. Bahraich who transfers cases to the Court had allowed himself to be influenced to do so and the

Judicial Officer had in his turn decided the cases in the manner he did under certain influences which does not "inspire faith in the public" which I think is only another way of saying that the public has lost faith in these Courts. These remarks betray little enough respect for the authority of these Courts and scandalise unwarrantedly.

In their other aspect the remarks are an attempt to influence the S.D.M. Bahraich not to transfer cases to the Court of the Judicial Officer and necessarily to influence him (if the cases are transferred) to decide those in a different wise."

6. Upon receipt of this letter, this Court ordered a notice to issue to Mr. B.S. Nayyar against him for contempt of Court. The notice was issued by Shri Mahesh Chandra, Deputy Registrar of this Court, and was on the lines of the letter written by the District Magistrate of Bahraich.

7. Mr. Nayyar appeared in answer to this notice and filed a lengthy written statement, which, after narrating his status, gives a detailed reply to the charge and explains the purport of the words used by him in the various representations made, and the circumstances in which these representations were made. He states that the letter to the President, All India Congress Committee, in respect of a passage of which he is charged, was written because even the Superintendent of Police and the Sub-Divisional Magistrate had publicly stated that the serious troubles which existed in the Ikauna Circle were the outcome of the acts of irresponsible Congressmen, particularly Janardban and Shobha Ram and the complaint was made with a view to secure the intervention of the President against the members of the local branch of the organisation. With regard to enclosure IV to the letter addressed to the Hon'ble Premier, it is stated that, since representations made to the Deputy Commissioner and the Commissioner to secure redress failed, the tenants approached the Hon'ble Premier to lay their grievances before him. It is stated that they were further encouraged to do so because the Hon'ble Premier promised redress in a public meeting at Bahraich if definite cases were brought to his notice. The written reply then proceeds to state that the history will show that the references in both the alleged contempts were to the Executive and the members of the Congress party but no attack of any kind was made upon the Judiciary. It was also stated that the alleged contempt was committed several months before the report was made and that the report was made for ulterior motives. Further the sanction of the Government was not obtained.

8. The opposite party filed another affidavit on 22nd August 1949, in which he reiterates his plea that he never intended any contempt of judicial authorities but only enunciated an unexceptionable principle that no Court should try a case in which there is the least doubt of its impartiality or independence.

9. Before considering whether any contempt has been committed by the opposite party, it will be useful to state briefly what is meant by contempt of Court and what are the principles which should guide a Court in deciding the question whether a contempt has been committed.

10. The first thing to be remembered is that Courts are not concerned with contempt of any authority except Courts of law in the exercise of their judicial functions. Thus, any speech, writing or act which does not have the effect of interfering with the exercise of their judicial functions by the Courts cannot be the subject of proceedings in contempt. In India very often the same officers exercise executive as well as judicial functions. Sometimes it becomes difficult to draw a distinction between their two capacities but nevertheless a distinction must be drawn and

it is only if the criticism is of judicial acts that action by way of proceedings in contempt may be taken. Criticism of any kind, even though it may amount to libel, of the actions of an Executive Officer, or a policeman or a member of the Legislature or even of a Minister cannot be dealt with in proceedings for contempt.

11. Halsbury's Laws of England (Vol. VII, para. 603) divides contempt of Court into two categories "either (1) criminal contempt; consisting in words or acts obstructing, or tending to obstruct, the administration of justice, or (2) contempt in procedure, consisting in disobedience to judgments, orders or other process of the Court, and involving a private injury." Criminal contempt is again sub-divided into several categories :

- (1) Contempt in the face of the Court which includes the act of insulting a Judge while actually sitting in Court or Chambers to administer justice;
- (2) Speeches and writings tending to defeat the ends of justice;
- (3) Obstructing persons officially connected with Court or proceedings;
- (4) Obstructing the parties to pending proceedings;
- (5) Abusing the process of the Court; and
- (6) Breach of duty by persons officially connected with Court or proceedings.

12. In the present case, the contempt complained of does not fall within any of the categories mentioned at 1 and 3 to 6 above but it is alleged to fall under category (2). It is, therefore, necessary to examine the cases falling under that category in greater detail.

"Contempt by speech or writing may be by scandalising the Court itself, or by abusing parties of actions, or by prejudicing mankind in favour of or against a party before a cause is heard. Any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court.

"Scandalous attacks upon Judges are punishable by attachment or committal upon the principle that they are, as against the public, not the Judge, an obstruction of public justice, and a libel on a Judge, in order to constitute it a contempt of Court, must be calculated to cause such an obstruction. The punishment is inflicted, not for the purpose of protecting either the Court as a whole or the individual Judge of the Court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the tribunal is undermined or impaired." -Vide paras. 610 and 611 of Halsbury's Laws of England, Vol. VII-which proceed to discuss other contempts included in this category viz., private communications to a Judge, comments on pending proceedings and reflections on the parties and witnesses in pending proceedings-but we are not concerned with any of these latter categories.

13. Thus, in the Matter of a Special Reference from the Bahama Islands, 1893 AC 138, their Lordships of the Judicial Committee ruled that a letter published in a newspaper which might have been made the subject of proceedings for libel at the instance of the Chief Justice, against whom it was directed and whom it was intended to ridicule, did not constitute contempt of Court because it did not obstruct or interfere with the course of justice or the due administration of law. Again in *Debi Prasad v. Emperor*<sup>1</sup>, it was shown that the Hindustan Times made the following editorial comment :

"If it is true that the new Chief Justice of the Allahabad High Court, Sir Iqbal Ahmad, in his administrative capacity, has issued a circular to the judicial officers under his jurisdiction, enjoining on them to raise contributions to the war funds, then it must be said that he has done a thing which would lower the prestige of the Courts in the eyes of the people. The Presiding Officer of a Court, while asking for funds, may say that the contribution is voluntary, but he cannot remove the idea from the mind of a person, particularly a litigant, that the request is being made by one whom it may not be safe to displease . . . . "

The Editor of the paper was proceeded against for contempt of Court and he was found guilty. The High Court said :

"The comment contains a clear insinuation that the Chief Justice had issued a circular to all Judicial Officers to raise contributions from litigants and others to the War fund, that pressure was thereby being exerted by an authority, which 'it would not be safe to displease' and that the prestige of the Courts would thus be impaired. The implication is that the Chief Justice has done something which was unworthy of a person holding that high office and that as the head and representative of the High Court, he had committed the gross impropriety of forcing Judicial Officers subordinate to this Court to ask for war contributions from litigants, who, notwithstanding that the giving of donations was ostensibly voluntary, were not in a position to refuse."

The Editor appealed and their Lordships of the Judicial Committee set aside the order of the High Court. In the course of their judgment they say :

"The cases of contempt which consists of 'scandalising the Court itself' are fortunately rare, and require to be treated with much discretion. In 1899 this Board pronounced proceedings for this species of contempt to be obsolete in this country, though surviving in other parts of the Empire; but they added it is a weapon to be used sparingly and always with reference to the administration of justice."

At another place they say :

"If facts were as they were alleged they admitted of criticism. No doubt it is galling for any judicial personage to be criticised publicly as having done something outside his judicial proceedings which was ill-advised or indiscreet. But judicial personages can

afford not to be too sensitive. A simple denial in public of the alleged request would at once have allayed the trouble. If a Judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation if he should feel impelled to use them."

14. In *Andre Paul Terens Ambard v. Attorney-General of Trinidad and Tobago*<sup>2</sup>, their Lordships of the Judicial Committee say, at page 145 :

"But whether the authority and position of an individual Judge or the due administration of justice is concerned no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of justice is a public way; the wrong headed are permitted to err therein : provided that members of the public abstain from imputing improper motives to those taking a part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."

15. In the *Queen v. Payne*<sup>3</sup>, the question was whether an accused person had been prejudiced by reason of certain comments appearing in newspapers and whether, for this reason, a contempt of Court had been committed. The Court of appeal held that it had not. Lord Russell, Chief Justice, says at p. 580 :

"No doubt the power which the Court possesses in such cases is a salutary power, and it ought to be exercised in a cases where there is real contempt; but only where there are serious grounds for its exercise.

"He adopted the view stated by Cotton, L.J., in an earlier case in the following words :

Now that I apply and adopt as the principle which ought to regulate these applications-that there should be no such application made unless the thing done is of such a nature as to require the arbitrary and summary interference of the Court in order to enable justice to be duly and properly administered without any interruption or interference, that is what we have to consider, and, in my opinion, although, as I say, there is here that which is technically a contempt, and may be such a contempt as to be of a serious nature I cannot think there is any such interference, or any such fear of any such interference, with the due conduct of this action, or any such prejudice to the defendant who is applying here, as to justify the Court in interfering by this summary and arbitrary process."

16. Thus, it will appear that no proceedings should be taken for contempt, even though a Judge or a judicial act is criticised, except in so far as it interferes with the administration either by shaking public confidence in the Court or in any other manner.

17. It must also be remembered that proceedings in contempt of the kind complained of are of a criminal nature and the proof offered must, therefore, establish the charge beyond any reasonable

doubt : vide *Homi Rustomji v. Sub-Inspector Baig*<sup>4</sup>, and *Legal Remembrancer v. Matilal Ghose*<sup>5</sup>, Thus, if the words used may reasonably be interpreted in two different ways and one of the interpretation, indicates contempt while the other does not, it cannot be said that contempt has been proved to have been committed, At the same time, when the words used clearly indicate that contempt has been committed, proof of the fact that it was not intended to commit contempt may mitigate the gravity of the offence but it will not have the effect of showing that no contempt was committed - vide *Emperor v. P.C. Tarapore*<sup>6</sup>, and *Radha Krishna v. Raja Ram*<sup>7</sup>,

18. Coming now to a consideration of the writings in question in the light of the above principles, the first thing to be considered is whether assuming that their meaning is such that they would bring a Court into contempt, do [sic] they have the effect of interfering with the administration of justice.

19. The words objected to were not used in any newspaper article or in any other writing meant for the perusal of the public generally, nor were they used to influence the Magistrates said to be concerned in them, but they were used in representations made to authorities which had power to redress the grievances of which the user of the words complained. Further, so far as the passages from the enclosure to the letter to the Hon'ble Premier are concerned, they were written in response to his public announcement that he would investigate any genuine grievances of the people of Bahraich that were brought to his notice. It is true that, no matter what encouragement a person may receive from those in authority, he would not be justified in doing or saying anything which would interfere with the administration of justice by shaking public confidence in Courts of justice. Consequently the fact that the Hon'ble Premier had invited the people generally to lay their grievances before him would not, in ordinary circumstances, be sufficient to justify an attack upon the judicial actions of a Magistrate nor would it permit people to attack with impunity the honesty or integrity of a judicial officer.

20. Unfortunately, however, the position of the class of persons occupying the post of 'judicial officers' is most peculiar and unsatisfactory: they have no permanency and may be removed at the discretion of the Government, at whose head is the Hon'ble Premier. Further, even if they were not removed, they, as well as the permanent Magistrates, can be transferred from one place to another by the same authority. If therefore, there is any real complaint against the conduct of any such officer which renders it desirable that he should be removed from office or, at least, that he should be removed from a particular district, it is the Premier that such complaints must be addressed. However unsatisfactory this state of affairs might be considered to be - it is a part of the established order and, so long as it exists, complaints against Judicial Officers must go to the Government. If those complaints are genuine and are made in a proper manner with the object of obtaining redress, and are not made mala fide with a view either to exert pressure upon the Court in the exercise of its judicial functions or to diminish the authority of the Court by vilifying it, it would not be in furtherance of justice to stifle them by means of summary action for contempt, but rather the reverse.

21. The learned Government Advocate was unable to point to any decision in which action might have been taken for contempt of Court in such circumstances. All the cases that were placed before us were cases in which public criticism was made of the conduct of a judicial officer in the newspapers or in speeches. It would indeed be extraordinary if the law should provide a remedy - the conduct of even a member of the highest Judicial Tribunal in the exercise of his judicial

office may be the subject of enquiry with a view to see whether he is fit to continue to hold that office - and yet no one should be able to initiate proceedings for an enquiry by a complaint to the appropriate authority by reason of a fear of being punished for contempt, and I can find no justification for this view.

22. I have already pointed out that the matters complained of in the first instance were contained in the enclosures to the letter addressed to the Private Secretary of the Hon'ble Premier, for the purpose of giving him an indication of the matters, which a deputation which was to wait upon him, would discuss. It is not explained how the letter and its enclosure reached the Deputy Commissioner.

23. There was no attempt by the opposite party either to vilify the judicial actions of a Court or to bring any pressure to bear upon a Judicial Officer by complaining against him to his official superior. Even, therefore, if the words used are capable of being construed as contempt, they do not have the tendency of interrupting or interfering with the administration of justice and consequently as laid down in *Queen v. Payne and Cooper*<sup>8</sup>, from the judgment in which case I have already quoted, they do not justify interference by "the summary and arbitrary process" of contempt.

24. The position with regard to the words used in the letter to the President of the All India Congress Committee is, however, different. That gentleman does not hold any official position and, however powerful he or his Committee might be, neither he, nor they, are the duly constituted authorities for granting redress against the misdeeds, assuming that there are misdeeds of a Judicial Officer in the exercise of his judicial functions. Thus different considerations will apply to that part of the case which alleges that contempt of Court was committed by some words used in that letter.

25. Coming now to consideration of the question whether the words used by the opposite party do amount to contempt of Court, the context in which these words are placed must be considered.

26. I have already pointed out that the opposite party alleges that some of the congress workers of his district had created such a state of affairs that the life and property of the law abiding persons of his class were not safe. The Deputy Commissioner has himself stated in his letter of reference that there were agrarian troubles in his district which led to riots in respect of which cases were started against sub-tenants. The opposite party further alleged that the District Congress High Command and the Executive authorities, instead of trying to redress the wrongs done to the tenants, were encouraging and supporting those whom the Executive Officers themselves considered to be the offenders. The first enclosure is a memorandum addressed to the Hon'ble Premier himself. This complains of the actions of Pandit Shobha Ram in creating a state of anarchy in which "the administration seems to be non-existing." It then expresses the readiness of the tenants to agree to all reasonable legislation for the purpose of bettering the lot of the sub-tenants and points out that they had already approached the District Magistrate, who agreed that they were the aggrieved parties but took no practical steps to support them. The memorandum then proceeds :

"Naturally when the opposite does happen, the aggrieved party is justified in claiming that no justice is being accorded to it and it becomes apprehensive that even law and justice is

being interfered with. This apprehension of late has become very acute and we respectfully submit that no members of the legislature or other high placed dignitaries be permitted to interfere in the pure and simple disbursement of justice and orders to that effect be communicated to the District Administration so that they may feel immune from transfers and other such actions, if they earn the displeasure of the District Congress High Command. This will be bound to restore confidence in services and their morale will not be unnecessarily lowered. Our letter addressed to the President, All India Congress Committee, a copy of which is attached herewith for your, kind perusal, has been drafted and sent in that very spirit."

The memorandum ends up with asking for an independent enquiry and emphasising the need for strong action.

27. The next paper is called "Brief History of the Agitation." This is also full of complaints against Pandit Sobha Ram and the Congress Committee. It again suggests that the system of division of crops between tenants and subtenants should be altered to the advantage of the latter but that all tenants should be treated alike and whatever system of division prevails in the tenancies of Pandit Bhagwan Din M.L.A. and the Hon'ble Minister of Revenue should be adopted in all oases. The third paper is a copy of the Resolutions passed by the tenants at a meeting held on 26th June 1948. One of the resolutions requests the Hon'ble Premier

"to initiate an immediate independent enquiry into the Ikauna affairs and the allegations against some responsible Congress Office bearers and thus take necessary action against such of them to restore confidence into the public mind which is waning day by day."

The fourth annexure is divided into various subheads. The first is headed "incidents of self-gain by Pandit Sobha Ram, Ex-Secretary Congress Mandal Committee, Ikauna." Among the instances given is

"Collection of funds for the defence of the accused in Birpur Murder case. Enaging of Thakur Shiv Kumar Singh nephew of Hon'ble Minister for Revenue to avoid shadow of doubt. Charging share in all cases and engagement of this lawyer in all cases to get support from the Hon'ble Minister."

The next heading is "Instances of ill-treatment against Punjabees." In this sub-heading the complaint is principally directed against the actions of Pandit Bhagwan Din M.L.A., Pandit Sobha Ram and Mr. B.R. Yadava, Deputy Commissioner. The third heading is "Acts of Aggression by the sub-tenants" the gravamen of which is also directed against Pandit Sobha Ram. Then comes the fourth heading "Support by District High Command." It is to the entries under this heading that objection is taken by the Deputy Commissioner of Bahraich. Unfortunately the quotation of the first entry under this head given in the letter of the Deputy Commissioner is not complete and is put in a grossly misleading form. If the letter of the Deputy Commissioner alone is looked at it would appear as if a serious attack had been made upon the impartiality of the Magistrate who tried Pandit Sobha Ram in what is called "a theft case of a buffalo, etc." As a matter of fact the passage itself does not have this meaning and it is to be regretted that the learned Deputy Commissioner has omitted important words, which changed the

meaning of the words used by the opposite party. The whole entry reads as follows :

"1. Reward of such activities of Pandit Sobha Ram by his appointment in the Prantiya Raksha Dal in spite of opposition by the S.P. and another member of the Selection Committee. A wonderful prediction of judgment by both Mr. B.R. Yadava and Pandit Bhagwan Din. Even his acquittal in a theft case of a buffalo, etc."

28. It appears that Pandit Sobha Ram was prosecuted under Section 411, Penal Code, for receiving a stolen buffalo. While that case was still going on, he was selected to be a member of the Prantiya Raksha Dal, an organisation meant to perform quasi-police functions. This was a most undesirable appointment and the writer of the words attributes it to a desire to reward Pandit Sobha Ram for his according to him, nefarious activities. Then the writer says ironically that the appointment of such a person was a most wonderful forecast that Pandit Sobha Ram would be acquitted. There is no reflection whatsoever upon any judicial authority. There is, of course, a reflection upon the Deputy Commissioner for having made such an objectionable appointment but that is not a criticism of any action of his performed in a judicial capacity, and consequently it does not amount to contempt.

29. The next entry under the fourth heading is a charge of the tampering with records. This is certainly not a contempt of Court because there is no allegation that either the Court or any officer of the Court had tampered with any records and the opposite party explains, in his affidavit, that the records tampered with were the patwari's records as was shown by the fact that two different certified copies of the same paper were filed by two rival parties in a suit.

30. The learned Government Advocate relied strongly upon the third entry which is as follows :

"3. Engaging of one lawyer in most of such cases of sub-tenants who is the nephew of the Hon'ble Minister of Revenue and the transfer of all such cases nearly in the Court of the judicial officer, who is the brother-in-law of the Private Secretary of the same Hon'ble Minister do not inspire faith in the public." It will be seen that there is no allegation that the conduct of the Judicial Officer does not inspire confidence. No attack is made upon his impartiality nor is it said that he had ever allowed himself to be influenced by considerations other than those of justice. The attack is directed against those who place the Judicial Officer in this difficult position. The passage in the letter to the Congress President in respect of which contempt is charged, has the same tenor though the words are different and it is said that :

"and the appointment of a Judicial Officer who is a brother-in-law of the Private Secretary of an Hon'ble Minister and the manipulations of the transfer of nearly all the cases to his Court wherein Congress men are involved are factors which are too glaring and which certainly do not inspire faith and confidence in the public mind."

In this passage also the attack is on the appointment of the Judicial Officer and the transfer of cases to him but there is no attack upon the officer himself. Both these attacks are upon the system and not upon any Magistrate in respect of the performance by him of his judicial functions. They wish to see laid down a salutary principle by which justice should not only be

done but should also appear to be done. There is no contempt of Court in this - rather it is an endeavour to free Courts from all extraneous shackles and proceedings in contempt are wholly uncalled for.

31. It was contended by the learned Government Advocate that, if there was no attack upon the Magistrate trying the cases at least there was an attack upon the officer transferring those cases. On the facts of the present case the latter officer was not acting in a judicial capacity. A judicial officer had been posted to Bahraich and it was necessary to provide him with work. Accordingly the Deputy Commissioner passed a general order that a certain number of cases should be transferred to him every month. In pursuance of this general order, cases were transferred. There was no judicial order of transfer but only an administrative order,

32. The fourth entry also does not indicate contempt. It only states that a Court had acted without jurisdiction in dropping a case of contempt against Pandit Bhagwan Din, M.L.A. Nothing is known of the circumstances in which the case was started and dropped. The words themselves indicate that the case had already terminated and its result could not be influenced by the opposite party.

33. Having examined the language used, I have come to the conclusion that far from committing any contempt of Court, the deputationists, including the opposite party, who waited upon the Hon'ble Premier, did so with a view to remedy the state of anarchy into which, according to them, the pargana of Ikauna in the district of Bahraich had been plunged owing to the actions of members of the Congress party and the failure of the Executive officers. It is surprising that the Deputy Commissioner of Bahraich, hiding out a passage here and there, proceeded to ask for action against one of them for contempt of Court. Such an action is an extraordinary remedy and can only be taken when necessary to protect the Courts exercising their function of administering public justice from interference or obstruction.

34. I would, therefore, hold that the opposite party is not guilty of any contempt and would dismiss the proceedings against him.

**Chandiramani, J.**

35. I agree.

Proceedings dismissed.

Cases Referred.

1AIR 1943 PC 202 : (46 Cr LJ 318)

2AIR 1936 PC 141 : (162 IC 92)

3(1896) 1 QB 577 : (65 LJQB 426)

4AIR 1944 Lahore 196 at P. 202 : (46 Cr LJ 174 SB)

541 Cal 173 : (AIR 1914 Cal 69 : 14 Cr LJ 321 SB)

6AIR 1940 Sind 239 : (42 Cr LJ 1 FB)

7AIR 1941 Oudh 14 : (41 Cr LJ 584)

8(1896) 1 QB 577 : (65 LJQB 426)

