

ALLAHABAD HIGH COURT

State of U.P

Vs.

Shyam Sundar Lal Jain

Criminal Misc. No. 10 of 1950

(Sapru and V. Bhargava, JJ.)

22.09.1953

JUDGMENT

Sapru, J.

1. This contempt matter was referred by us to a Full Bench of five Judges as, in our opinion, there was a conflict between two cases, namely, the Full Bench case of - '*State v. Brahma Prakash*¹', and the Bench case of - '*Rex v. B.S. Nayyar*²', Before the proposed Full Bench could dispose of the case, the Supreme Court gave its decision in - '*Brahma Prakash Sharma v. State of Uttar Pradesh*³', In view of the fact that the point referred to the Full Bench has been considered and decided by the Supreme Court, the learned Chief Justice has returned the reference to this bench with the query whether it is any longer necessary to constitute a Full Bench. We have heard learned counsel for the parties and are clearly of the opinion that it is not necessary to constitute a Full Bench in view of the decision of the Supreme Court.

2. We shall now proceed to give the salient facts of this case. Shri Shyam Sunder Lal Jain Sarraf, the opposite-party, was the complainant in a case under section 500 Indian Penal Code. It was numbered as 20 of 1949 and came to be tried by Sri H.L. Mehra, a magistrate of the first class, Dehra Dun. The learned Magistrate came to the conclusion that the complainant had not been able to establish the case against the accused and by his order dated the 3rd August 1949 acquitted the accused on the ground that they were protected by Exception 9 to section 499 of the Indian Penal Code. The opposite-party took no further action by way of revision so far as this matter was concerned. He, however, wrote a letter to the Prime Minister of India. It is in the form of a petition or representation and is dated the 10th January 1950. In the course of this letter the opposite-party made serious allegations of corruption and partiality against the magistrate.

3. The representation sent to the Prime Minister was forwarded by the Prime Minister's Private Secretary to the Chief Secretary to the Government of Uttar Pradesh, Lucknow, for disposal. The

Chief Secretary passed on that letter to the Petitions Officer of Government U. P. for necessary enquiry and final disposal. On an enquiry by a letter dated the 12th March 1950 by the Petitions Officer, the opposite-party reiterated the

¹AIR 1950 All 556

³ AIR 1954 SC 10

² AIR 1950 All 549

allegations of dishonesty and partiality that he had made against the magistrate. He pointed out that the letter was not intended to interfere with the course of justice but was sent in order that an enquiry might be made into the conduct of the learned magistrate who, he alleged, had been corrupt. The Petitions Officer forwarded the petition as also the letter dated the 26th March 1950 to the District Magistrate of Dehra Dun for necessary action. The District Magistrate of Dehra Dun did not call upon the opposite-party to substantiate his allegations. He, in fact, did not hold any enquiry but took the view that the letter constituted a contempt of court and referred it to the Legal Remembrancer to Government. Thereafter this Court was moved to initiate contempt proceedings and notice was issued by the Vacation Judge on the 6th June 1950 to the opposite-party to show cause why he should not be committed for contempt. The opposite-party has now appeared and filed a counter-affidavit. The question before us is whether he is, in all the circumstances of this case, guilty of contempt.

4. The first thing to note is that the representation which is the basis of the charge of contempt was made by the opposite-party in the form of a petition to the Prime Minister of India. There was, in this case, no general publication. The representation was sent in a registered cover to the Prime Minister. The letter or representation was sent by the Prime Minister's office to the Chief Secretary and thereafter it went to the District Magistrate. The basis of the present proceedings is, therefore, the letter to the Prime Minister. Now, we are not in a position on the material before us to say whether the letter or representation was necessarily of a 'mala fide' nature. The position in this case appears to us to be that no enquiry of any sort was made by the District Magistrate before he decided to refer the matter to the Legal Remembrance for contempt proceedings against the opposite-party. It may be further pointed out that the letter or representation cannot and could not amount in law to scandalizing the court as it did not comply with the requirements for such contempt laid down by the Supreme Court in the case of - '*Brahma Prakash v. State of Uttar Pradesh (C)*', referred to above. After distinguishing between a wrong done to a judge personally and a wrong done to the public and after pointing out that it is the latter which can properly be made the subject-matter of a contempt proceeding, his Lordship Mr. Justice Mukerjee who delivered the judgment of the Supreme Court goes on to observe that :

"It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties."

5. Now, there can be no question of causing embarrassment in the mind of the Judge himself as the representation was sent after the disposal of the case. There was no case pending before the learned magistrate or before any other court at the time the representation was sent to the Prime Minister. The letter was sent to a person who, the opposite-party thought, was the appropriate authority. Actually the Prime Minister was not the proper authority to be addressed. Any way there was here no publication to the public or any section of the public. The letter was in the form of a confidential letter. It was sent per registered post. Now, there may have been publication so far as the representation is concerned from the point of view of the law of libel. The letter is 'prima facie' of a libellous character and the magistrate whom it seeks to defame has a remedy by way of a libel suit or a criminal action for defamation against the opposite-party. The question, however, is whether the opposite-party can be held to be guilty of contempt on the ground that by so doing he has scandalized the court or brought the administration of justice into discredit or contempt. A letter sent to the prime minister and not intended to be broadcast to the public or any section of the public cannot create an apprehension in the minds of the people, to use the language of Mr. Justice Mukerjee, "regarding the integrity, ability or fairness of the judge". Further, it could not deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice for the obvious reason that they would know nothing about it, it not having been published to them. It may be remarked that, again, to use the language of Mr. Justice Mukerjee,

"the object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals."

It is rather intended as a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the Court is lowered and the sense of confidence which people have in the administration of justice by it is weakened.

6. It is well-known that the contempt jurisdiction is a summary jurisdiction. "This jurisdiction should be exercised", as is observed by Lord Russell, L.C.J., "with scrupulous care and only when the case is clear and beyond reasonable doubt", (vide '*R. v. Gray*', (D)). This Court is reluctant to use this weapon except in order to maintain the dignity of the Courts and to uphold the majesty of the law. It may be emphasised that the Supreme Court view, as we read it, is that Courts should be reluctant to take notice of technical contempts of court. There must be something to show that the contempt was likely to interfere with the due administration of justice or undermine the confidence which the public rightly reposes in courts of law as courts of justice. In this particular case, while the attack on the magistrate is of a vile character, those particular tests are not satisfied. For these reasons we do not think that the remedy of contempt is the appropriate remedy for the Magistrate. We have come to the conclusion that, in all the circumstances of the case, it is not desirable to award costs to the applicant.

7. The application is dismissed but without any order as to costs and the notice is discharged.
Application dismissed.

⁴(1900) 2 QB 36