ANDHRA PRADESH HIGH COURT

D. Jones Shield

Vs.

N. Ramesam State (Andhra)

Cri. Misc. Petn. No. 1360 of 1954

(Subba Rao, C.J. and Satyanarayana Raju, J.)

28.01.1955

JUDGMENT

Surba Rao, C.J.

1. This is a petition under Section 3 and 4 of Act 32 of 1952 for committing the respondents for contempt of Court. Respondent 1 is the District Collector and District Magistrate, Guntur. Respondent 2 is the Personal Assistant to respondent 1 and Additional District Magistrate and respondent 3 is the acting Public Prosecutor, Guntur.

2. The circumstances under which this petition was filed may be briefly stated. The petitioner is a native of Sattanepalli village and worked as a Jamedar during the war. Thereafter he worked as Taluk Surveyor for some time and had been working temporarily as clerk at Guntur or Sattane Palli in the Revenue offices. He filed a complaint for breach of trust of court properties against Sri Wahab Sahib, the then Stationary Sub Magistrate, Sattanepalli and others before the Sub Divisional Magistrate, Guntur. It was transferred to the file of the Additional First Class Magistrate, Narasaraopet, who dismissed the same under Section 203, Criminal Procedure Code. The petitioner preferred a Criminal Revision against the order of the Additional First Class Magistrate to the Sessions Judge, Guntur. The petitioner's case is that, pending the revision, the three respondents did some acts interfering with the course of justice and that, therefore, they are liable to be punished for contempt.

3. In the affidavit filed in support of the petition he made the following allegations in support of his case. The Criminal Revision was posted to 13-9-1954 for hearing and the Sessions Judge gave notice to respondent 3 to assist him on the legal aspect viz., whether S.197, Criminal Procedure Code, was or was not a bar for the prosecution.
On the hearing date when the matter was about to be taken up, respondent 3 rose up and, with the permission of the Court, stated that the contents of the revision petition against the Sub Magistrate were false, that respondents 1 and 2 in their departmental capacity enquired into the matter and came to the conclusion that they were false, that they had intimated the said fact to the Government and that they had also intimated to him and asked him to represent the said facts to the Sessions Judge. The Sessions Judge adjourned the case to 21-9-1954 and again to 15-10-

1954. The first two respondents, with the knowledge that the matter was 'sub judice', communicated the aforesaid facts to the Government and to respondent 3 and thereby prejudiced the mind of the Judge and obstructed the due course of justice.

4. Respondent 1, in his counter, denied that he committed any act of contempt and placed before the Court the circumstances under which he communicated certain facts to the Public Prosecutor. According to him the petitioner filed a complaint before him. On that petition, he called for the records, but, as he came to know that an identical complaint was filed before the Additional First Class Magistrate, Narasaraopet and that it was dropped, he rejected it on the ground that no action was necessary as the Additional First Class Magistrate's Court had held on 13-7-1954 that it was false after a due enquiry and on merits. One Sakkumuri Sithayya and some residents of Gudipudi village filed petitions against the Sub Magistrate to the High Court and the Government and the Board of Revenue sent them for enquiry to him. He made an enquiry into those petitions as directed by the Revenue Board and the Government directed the matter to be dropped. Even this report was sent by him on 11-6-1954 i.e., after the Additional First Class Magistrate dismissed the complaint on 17-5-1954 and before the Criminal Revision was filed on 7-8-1954. When on 23-8-1954 the Public Prosecutor wrote to respondent 1 stating that the complainant had filed similar petitions to the Collector and to the Government and that the connected files might be made available to him for reference in opposing the Revision Petition, respondent 2 wrote back to the Public Prosecutor that the petition filed by the complainant to the Collector and the Government were not necessary and that the Public Prosecutor might oppose the Revision Petition without those records. But as he felt that it was for the Public Prosecutor to decide that records should be used at the time of the arguments, he directed the relevant papers to be sent to the Public Prosecutor. Respondent 1 thereafter sent the records along with a letter from his Personal Assistant informing him that the disposal was a confidential one, that it was sent to him simply for his information for opposing the revision petition and that no part of it need be filed into Court. But the Public Prosecutor sent another letter asking the Personal Assistant to state if it could be stated before the Sessions Court that the matter was enquired into by the District Collector and the Magistrate and that it was found that no action was called for. To that the Personal Assistant replied that the whole matter was confidential and that he was unable to say anything more about that and that as Public Prosecutor it was for him to decide whether or not it was necessary to mention all this in court and if the Revision Petition could not otherwise be opposed on merits with the information already available before him. The Public Prosecutor filed a separate counter stating what actually happened in court. According to him a notice dated 9-8-54 was issued to him by the court intimating that the matter would be heard on 24-8-1934 and was received by him on 11-8-1954. After narrating the gist of the correspondence between him and respondents 1 and 2 he alleged that on 13-9-1954, the revision petition came up for hearing and the learned Sessions Judge for his own information inquired of him whether the matter was investigated into. In reply to that question, he was obliged to state that the matter was investigated into both in the Criminal Court and also departmentally and that the Government dropped the matter. Then, the learned Sessions Judge observed that he was not bothered about the departmental enquiry and that he would hear the matter on some other day. Later on, the Criminal Revision Petition was transferred to the Additional Sessions Judge and he finally dismissed it on 5-11-1954.

5. When the matter came before us on 25-11-1954 the learned counsel for the petitioner suggested that, in view of the conflict of versions given by the petitioner in his affidavit and that

given by respondents 1 and 3 in their counters, a report might be called for from the learned Sessions Judge on what actually happened before him. He also stated from the Bar that the allegations contained in the affidavit filed by the petitioner were true to his knowledge. In the circumstances, we directed the learned Sessions Judge to submit a report on what actually happened before him. On 6-1-55 i.e., more than one month and ten days, he sent a considered report on what actually took place before him. Though some comment was made on this long delay in sending a report, nothing turns upon it. In that report the learned Sessions Judge states the following four facts:

(i Notice to the Public Prosecutor was ordered as is the practice in all important criminal revision petitions and not for the particular purpose of answering the point under Section 197 Criminal Procedure Code

(ii He asked the Public Prosecutor whether a similar petition had been filed under Section 435 Criminal Procedure Code before the District Magistrate to which a negative reply was given. A further querry was incidentally raised by him whether in view of the alleged misappropriation of case properties by a public servant who in this ease is a Sub Magistrate any departmental action also had been taken for the recovery of the alleged missing articles. To that the Public Prosecutor replied that a petition had been filed before the District Magistrate and found against. The Public Prosecutor gave that information in answer to his querry and that he did not do so of his own accord;

(iii He observed substantially to the effect that he was not bothered about the departmental enquiry and would hear the matter on some other day:

(iv When he expressed his intention to send the matter for disposal to the Additional Sessions Judge the learned Counsel for the petitioner pressed for its retention before him indicating thereby that he had no apprehension that the Judge was influenced by the disclosure of the result of the departmental enquiry.

6. We have no hesitation to accept the facts given by respondents 1 and 3 in their counters as regards the circumstances and the purpose for which the relevant files were sent to the Public Prosecutor. We also accept the version given by the Sessions Judge in regard to what actually happened before him, when the case came up for disposal. We shall, therefore, proceed on the basis of the said facts whether any contempt of court was committed by the respondents or any one of them.

7. Mr. Sarma, learned counsel for the petitioner raised before us three points in support of his contention, that the respondents committed contempt of court. (i) Respondent 1 started a parallel enquiry in regard to the subject matter of the Criminal Revision Petition pending before the Sessions Judge. (ii) The respondents 1 and 2 asked the Public Prosecutor, respondent 3, to communicate to the Judge the fact that such an enquiry was held, that respondent 1 found it to be false and that the Government accepted the report sent by him to that effect and (iii) respondent 3 in open court unasked prominently brought those facts to the notice of the Court to prejudice his mind and to deflect the course of justice.

8. Before we consider the arguments advanced, it will be convenient for us at this stage to notice the law on the subject briefly. Courts have always found it difficult to give a comprehensive and complete definition of 'contempt of Court'. But the definition of these words given in the leading case - *'Brich v. Walsh'*[1], has been accepted by Courts in India. There, the court gave three categories of contempt (i) contempt in respect of orders of Court, (ii) contempt by letters or pamphlets addressed to the Judge who is to decide the case with the intention either by threats or flattery or bribery to influence his decisions and (iii) constructive contempt depending upon inference of an intention to obstruct the course of justice.

9. Before 1926, it was held that, in matters of contempt a High Court possesses the same jurisdiction as the old King's Bench in England had. Act 12 of 1926 expressly empowered High Courts to exercise the same jurisdiction, power and authority in respect of courts subordinate to them as they have in respect of contempts of themselves. The Constitution of India expressly saved the powers of the High Court to punish for contempt of court. The Parliament by Act 32 of 1952 repealed the earlier Acts and restated in express terms that

> "subject to the provisions of sub-section (2) every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it, as it has and exercises in respect of contempts of itself".

10. it is, therefore, obvious that if really the respondents are guilty of contempt of the Sessions Court this court can commit them for contempt. It may also be mentioned that this court will take a serious view, if public officers of responsibility act in such a manner as to obstruct the course of justice or disobey to implement the orders of court, for such acts will undermine the prestige of courts and set a bad example to the

[1]10 Irish Eq. B. 93

public. At the same time, the filing frivolous applications for contempt against public Officers with a view to harass them is equally reprehensible and the court will give exemplary costs against such abuse of process of this court.

11. On the first point viz., that a parallel enquiry conducted by an Officer, when the same subject is 'sub judice' amounts to a contempt of court, reliance is placed upon a Full Bench decision of the Patna High Court in *'King v. Parmanand*[2]*',* There Narayan J., stated the principle at p.229 as follows:-

> "..... It must be pointed out that any enquiry with regard to a matter which is 'sub judice' is bound to interfere with the even and ordinary course of justice. It is a cardinal principle that when a matter is pending for decision before a court of justice, nothing should be done which might disturb the free course of justice and this court will discountenance any attempt on the part of any executive official, however high he may be, to prejudge the merits of a case and to usurp the functions of the court which has got seisin of the case.
>
> Such a practice is fraught with immense danger and I was surprised to hear the learned Advocate contending that a parallel enquiry could be started by the Government. If we accede to the argument of the learned Advocate General that a parallel enquiry can be started we will be opening the door for contempt and impediment in the course of justice. Once the principle is accepted that the Government are free to hold a separate enquiry, it would be impossible to impose any limit as in the nature and the scope of such an enquiry."

12. We respectfully accept the aforesaid weighty observations as laying down the correct law on the subject. But the question is whether in the present case, respondent 1 started a parallel enquiry when the Criminal Revision was pending before the Sessions Judge. From the facts already stated and accepted by us, it is manifest that respondent 1 did not conduct any parallel inquiry during the crucial period. Indeed respondent 1 did not make any enquiry on the application filed by the petitioner on 3-4-1954 and rejected it on the ground that no action was necessary as the Additional First Class Magistrate's Court had held that the complaint was false alter due enquiry and on merits and that the said decision was binding on him. Respondent 1, therefore, not only did not make any enquiry pending the criminal proceedings before the Additional First Class Magistrate, but rejected it on the ground that no action was necessary as that decision was binding upon him. This petition was rejected even before the Criminal Revision Petition was filed in the Sessions Court. This act on the part of respondent 1 cannot, therefore, be held to be one in contempt of court.

13. As regards the report sent by respondent 1, to the Revenue Board on the application filed by Sithayya and the mahazar presented by the residents of Gudipudi village, respondent 1 says in his counter:-

> "It is also incidentally mentioned that even this report of mine which has nothing to do with the Criminal complaint against the Sub Magistrate was sent on 11-6-1954. The criminal complaint was thrown out by the Additional First Class Magistrate on 17-5-1954 and the Revision Petition in the Sessions Court

[2] AIR 1949 Pat 222

was filed on 7-8-1954. This report of mine was sent on 11-6-1954 i.e., after the Judgment of the Additional First Class Magistrate and before the matter was taken up in revision before the Sessions Court. Hence at the time the report was sent, the matter was not at all 'sub judice'".

This respondent has, therefore, nothing to do with the criminal complaint filed against the sub Magistrate, and as respondent 1 says, even that report was sent when no proceedings were pending in any court of law. We cannot, therefore, hold that, respondent 1 made a parallel enquiry at a time when the revision petition was pending in court and therefore, he would be guilty of contempt.

14. The second ground of attack is that respondents 1 and 2 asked the Public Prosecutor to represent to the Court that respondent 1 had made an enquiry found the allegations to be false and submitted the same to the Government, who accepted it. The allegations in the counters filed by respondents 1 and 3, if accepted, we see no reason to reject them - clearly establish that neither respondent 1 nor respondent 2 asked the Public Prosecutor to represent the aforesaid facts to the Court. The facts, which we have already narrated, show that notwithstanding the request of the Public Prosecutor to respondents 1 and 2 to state whether he could mention before the Sessions Judge that the matter was enquired into by the District Collector and the Magistrate and that it was found that no action was called for, respondent 2 had distinctly written to him the following letter:

> "The whole matter was confidential. I am unable to say anything more about this and as the Public Prosecutor, it should be for you to decide whether or not it is necessary to mention all this in court and if the Revision Petition cannot otherwise be opposed on merits with the information already available before you."

15. This is the last in the series of letters that passed between the Public Prosecutor and respondent 2 or respondent 1. The said letter indicates that respondents 1 and 2 emphasized upon the confidential nature of the record and left it to the Public Prosecutor as their legal adviser to decide whether the contents could be disclosed or not to the Judge. From the correspondence, it is manifest that respondents 1 and 2 expressed their personal view that the matter was confidential, which could only mean that the contents could not be disclosed, but they left it to the final decision of their legal adviser. We must, therefore, hold that respondents 1 and 2 did not ask the Public Prosecutor to state before the Sessions Judge that respondent 1 made an enquiry and found the allegations against the Sub Magistrate to be false.

16. The next question is whether the Public Prosecutor stated those facts to the court, and if so, under what circumstances he did so. The Public Prosecutor admits in his counter that he stated before the Sessions Judge that the matter was investigated into both in the criminal court and also departmentally and that the Government dropped the matter. But he says that he made that statement under the following circumstances:

> "On 13-9-1954, the revision petition came up for hearing and the learned Sessions Judge for his own information enquired of me whether the matter was investigated into. In reply,

to that question, I was obliged to state that the matter was investigated into both in the criminal court and also departmentally and that the Government dropped the matter. The learned Sessions Judge observed "I am not bothered about the departmental enquiry. I will hear the matter on some other day."

The learned Sessions Judge in his report says on this aspect of the matter thus:

"A further querry also was incidentally raised by me whether in view of the alleged misappropriation of case properties by a public servant, who in tills case is a Sub Magistrate, any departmental action also has been taken for recovery of the alleged missing articles. To that the Public Prosecutor Sri M.O. Hanmantha Rao replied that a petition had been filed before the District Magistrate and found against. I must state that it was in answer to what I felt was a relevant querry in that context and that the Public Prosecutor gave the information and he did not do so of his own accord.

It is not true that the Public Prosecutor (R-3) sought "any permission to submit something" and he did not volunteer any information. The question of my granting him 'permission' to make a submission did not, therefore, arise. I am definite that in giving that information, it was not the intent of the Public Prosecutor to influence my decision on the judicial side, for the enquiry by the District Magistrate regarding loss of properties was of an administrative nature.

The Statement of Sri. M.O. Hanumantha Rao in his counter affidavit in this matter viz., that I then observed I am not bothered about the departmental enquiry. I will hear the matter on some other day' is substantially - though not verbally correct."

17. The report of the learned Sessions Judge, therefore, completely supports the version given by the Public Prosecutor in his counter. We do not, therefore, see any reason not to accept it. If so, the position is that the Public Prosecutor made this statement in court in answer to a querry put by the Judge.

18. The learned counsel for the petitioner argues that even if the Judge asked the Public Prosecutor he should have submitted that the matter could not be disclosed as it might prejudice the course of justice. Though that might have been done, by the Public Prosecutor, ordinarily it cannot be expected of any Public Prosecutor or for the matter of that any advocate to refuse to answer questions, pertinent to the enquiry put by the court. If he refused, the advocate might be found fault with for not showing the regard due to a court of law. It would also be putting undue strain on an advocate to decide on the spur of the moment whether to answer the question put to him by the Judge or not at the risk of his being committed for contempt of court. In this connection, the observations of the Master of the Rolls in - *'Munster v. Lamb*[3]*',* which the Full Bench in - *'Sullivan v. Norton'*[4]*,* approved, may usefully be extracted. At

[3](1883) 11 QBD 588

[4]10 Mad 28

p.34, it is stated

"In *'Munster v. Lamb*',, the Master of the Rolls says referring to - *'Dawkins v. Lord*

Rokeby[5]*',* and other cases "if it is right and wise that such a privilege shall be extended to a Judge ..... and if the privilege is equally given to a witness... ..... how can it be considered that it is not equally, I would say more beneficial to the public that a counsel and an advocate should come to the performance of his duty with an equally free and unfettered mind?

If any one needs to be free from all fear in the performance of his arduous duty, an advocate is that person. His is a position of difficulty the does not speak of that which he knows, that he has to argue and to support a thesis which it is for him to contend for, he has to do this in such a way as not to degrade himself, but he has to do it under difficulties which are often pressing. If in this position of difficulty he had to consider whether everything which he uttered were false or true, relevant or irrelevant, he could not possibly perform his duty with advantage to his client and the protection which he needs and the privilege which must be acceded to him is needed and accorded above all for the benefit and advantage of the public."

19. Though those observations were made in a different context, they forcibly indicate the difficulties of an advocate when discharging his duties before a court. We cannot, therefore, hold that when an advocate bona fide answered a question put to him by the court, he would be guilty of contempt of Court. The Public Prosecutor in the present case, therefore, did nothing more than his duty when he answered truthfully to the query of the Judge.

20. In support of his contention, the learned advocate for the petitioner relied upon a Full Bench decision of the Pepsu High Court in - *'Nirmal Singh v. Gainda Mal*[6]*',* There a criminal case was pending in a court of the First Class Magistrate, Mansa. Presumably there was no separation of judiciary from the executive in that State. The Public Prosecutor applied for the withdrawal of the case on the ground that there was no evidence in support of it. But he also mentioned that the District Magistrate came to the opinion that the case had been falsely made and that the same had to be withdrawn. It was argued that by stating that fact, the Public Prosecutor influenced the mind of the Magistrate in giving sanction to the withdrawal or not. In that connection, the learned Chief Justice observed at P.93:

"It must be remembered that when once a case is before a court of law, it is for that court and that court alone to decide whether the case is true or false and if any other person ventures to form an opinion on this point and communicates that opinion to the court during the pendency of the case, his conduct amounts to interference in the administration of justice and consequently to contempt of court. The same remarks apply to a person who communicates to the court some one else's opinion about a pending case in the court."

21. A Special Bench of the Madras High Court in - '*Tuljaram Rao v. Governor, Reserve Bank of India*[7]*',* held that, if the act constitutes

[5](1873) 8 QB 255 [6] AIR 1954 Pepsu 91 [7] AIR 1939 Mad 257

contempt the honesty of the motive of the contemner cannot remove it from that category.

22. It is not necessary to multiply cases. The said decisions lay down nothing more than that, when a person communicates to a Judge his opinion or decision on the facts of a case, which is 'sub-judice', it constitutes contempt and his motive in so communicating is irrelevant. But in this case, the facts are different. Respondent 1 did not communicate to the Sessions Judge the result of his enquiry. The Public Prosecutor only replied to the question of the Sessions Judge, which he should do under the circumstances. The said act of the Public Prosecutor cannot, therefore, constitute contempt of court.

23. In this case, we are satisfied that there were no bona fides in filing this application. The Judge before whom the Criminal Revision Petition was pending is the District and Sessions Judge, the head of the judiciary in this district. The Collector is the head of the executive in this district. Both are officers of the same rank. Indeed on the judicial side under Section 408, Criminal Procedure Code, the Sessions Judge exercises appellate jurisdiction in regard to orders made by the Collector in his capacity as District Magistrate. In this particular case, the Sessions Judge also happens to be senior of the two. There cannot, therefore, be any apprehension in regard to the nature of relationship between the two officers. The Public Prosecutor says that when he told the Sessions Judge that the matter was enquired into departmentally, the learned Sessions Judge observed that he was not bothered about the departmental enquiry. The Sessions Judge in his report accepted that he made an observation substantially to that effect. He further adds that when he expressed his intention to transfer the case to the Additional Sessions Judge, the advocate for the petitioner politely pressed for its retention before him, indicating thereby that notwithstanding the communication made by the Public Prosecutor, he had no apprehension that the Sessions Judge was influenced by the said communication. It might have been different if the communication of a fact as in the present case was made by the Public Prosecutor to a Sub Magistrate in a non-separation district for the Collector is the controlling Officer on the executive side. We are also satisfied that the petition was filed by the accused more in a sense of frustration than in any attempt to protect the dignity and prestige of the court in public interests.

24. In the result, this application fails and is dismissed with costs Rs. 300/-.
Application dismissed.