

CALCUTTA HIGH COURT

Naresh Kumar Gupta

Vs.

Umraomal Agarwalla

Criminal Misc. No. 59 of 1951

(Das Gupta and P.N. Mookerjee, JJ.)

31.01.1951

JUDGMENT

Das Gupta J.

1. This Rule was issued on the opposite parties to show cause why they should not be proceeded against for contempt of the Ct. of the Addl. Chief Presidency Mag. of Calcutta for having printed and published certain leaflets containing remarks as regards the merits of a case pending in the Mag.'s Ct.

2. The leaflets have been produced before us and quite clearly they contain a remark that the complaint filed by the Petitioner in the Mag's. Ct. at Calcutta is false. On behalf of the opposite parties a point has been raised that as proceedings have already been instituted by one Biswanath Agarwalla under Sections 500, 501 and 109, Indian Penal Code, with regard to the publication of the very leaflets which form the subject-matter of the present contempt proceedings, these proceedings for contempt do not lie before this Ct. in view of the provisions of sub-sections (3) of Section 2, Contempt of Courts Act. The sub-section is in these words :

"No H.C. shall take cognizance of a contempt alleged to have been committed in respect of a Ct. subordinate to it where such contempt is an offence punishable under the Indian Penal Code"

It is important to mark the words "such contempt."

3. It was contended on behalf of the opposite parties that if by the act by which a party is said to have committed contempt of a subordinate Ct. an offence punishable under the Indian Penal Code is committed, then the H.C. shall not take cognizance of the alleged contempt. In our judgment this is not the proper interpretation to put on the words used in the sub-section. As we

have already stated it is necessary to note carefully that this sub-section does not say that the H.C. shall not take cognizance of a contempt alleged to have been committed where the acts alleged to have constituted the contempt amounted to an offence punishable under the Indian Penal Code. Instead of saying that, it says that the H.C. shall not take cognizance of a contempt alleged to have been committed in respect of a Ct. subordinate to it where such contempt is an offence punishable under the Indian Penal Code. To read into this sub-section the sense which Mr. Mukherjee appearing for the opposite party has contended for, is to read into it something which the Legislature has not said. In our judgment the only possible interpretation of the sub-section is that where the acts alleged to have constituted the contempt are punishable as contempt under the Indian Penal Code, then only the H.C. shall not take cognizance of that contempt under the Contempt of Courts Act.

4. It is interesting to see that when this question was raised in the case of *Dharanidhar Singha v. Satish Chandra*¹, their Lordships while not deciding the point, as it was unnecessary in the circumstances of the particular case, did say that there was considerable force in the argument that it is only contempts punishable as such under Chap. X of the Code (e.g., an offence punishable under Section 173, Indian Penal Code) that are excluded from the purview of the Contempt of Courts Act. Our attention has been drawn to certain observations of Sanderson, C.J., in the case of *V.M. Bason v. A.H. Skone*², It was argued in that case there that

"even if the action of the appellant did constitute contempt of Ct., the learned Judge ought not to have invoked the jurisdiction, which is inherent in this Ct., and should not have called upon the appellant to show cause why he should not be committed for contempt, first, because the matter was one which could have been investigated fully and dealt with adequately in a Mag's. Ct. in Calcutta, and secondly, because there was no necessity for the matter being immediately dealt with, because, in fact, the notice had been served and the proceedings in execution would go on." Sanderson, C.J., after mentioning this argument in his judgment proceeded to say this :

"I think there is considerable weight in that argument and if I had been sitting as a Judge of first instance and had been hearing the appellant I feel sure that I should have rejected it and should have held that the proper place for this matter to be investigated was the Mag's. in Calcutta. I do not think that this was a case, in which it was necessary to invoke the special jurisdiction which is inherent in this Ct., by way of an appellant for committal for contempt of Ct."

It is important to note that in this case, the question of interpretation of Section 2 (3), Contempt of Courts Act was not before the Ct. at all. The observations are all as regards the propriety of contempt proceedings in the circumstances mentioned, and are not on the interpretation of Section 2 (3), Contempt of Courts Act.

5. It is worth noting also that after the observations mentioned above, his Lordship went on to say

: "But the position is this : The learned Judge had jurisdiction." and finally he used these words :

"In my opinion it is not necessary for this Ct. to set aside the decision of my learned brother in order that the matter might be dealt with in a Mag's. Ct. in Calcutta". The appeal from the judgment of C.C. Ghose, J., was dismissed. As we read this judgment, we are unable to find in it any authority for the view for which Mr. Mukherjee contends.

¹36 CWN 645 : (AIR 1932 Cal 705 : 33 Cr LJ 945)

²53 Cal 401 : (AIR 1926 Cal 701)

6. We are fortified in this view we have taken of sub-sections (3) of Section 2, Contempt of Courts Act, mentioned above by the decisions of the Patna H.C. in the cases of *Kaulashia v. Emperor*³, and *Jnanendra Prasad v. Gopal Prasad*⁴, In both the cases the clause was interpreted to mean that where under the Penal Code there is already a provision for punishing a contempt of Ct. as a contempt of Ct., the Contempt of Courts Act itself shall have no application. We respectfully agree with this view.

7. Our decision, therefore, is that the opposite parties have committed contempt of the Presidency Mag's. Ct. In view, however, of the unqualified apology tendered by them, we do not think that any further action is necessary.

8. The Rule is disposed of accordingly.

Order accordingly.

³12 Pat 1: (AIR 1933 Pat 142: 34 Cr LJ 770)

⁴12 Pat 172: (AIR 1933 Pat 204)