

# KERALA HIGH COURT

Kayiath Damodaran

Vs.

Induchoodan

Contempt Appln. No. 15 of 1959

(M.A. Ansari, C.J. and M. Madhavan Nair, J.)

29.07.1960

## JUDGMENT

### **M.A. Ansari, C.J.**

1. The application is to punish for contempt the Editor as well as the Printer and Publisher of newspaper called "Desanhimani", that is published from Kozhikode. The aforesaid newspaper had published on December 1 and 2, 1959, what purports to be information from its special correspondent, and its translation in English reads thus :

"It is learnt that Sri Chacko, the District Magistrate of Tellicherry, has been transferred to Kozhikode as the Principal Sub-Judge. It is further learnt that the black bands of certain leaders of the Deliverance movement were behind the transfer. Shri Chacko had issued a warrant to search the house of a prominent Congress leader of Cannanore and it is stated that the said leader had bestowed a blessing on Sri Chacko that he would not be able to issue similar orders any longer. It is this blessing that has come out in the shape of a transfer."

2. The petitioner complains that the publication amounts to contempt of Court, because it defames him in connection with proceedings pending before a Magistrate; and the facts to support the complaint are given in his affidavit, which can be shortly stated. The petitioner is the defendant in Original Suit No. 80/1955, which is pending adjudication before the Subordinate Judge of Tellicherry, and an interlocutory order had in the case been passed for production of the accounts of the partnership, of which the petitioner and the plaintiff in the case were partners. The petitioner claims to have, in compliance, produced account books in his possession of the aforesaid partnership, that had been dissolved in 1953; and further avers that he was on October 21, 1959, summoned in the case to produce discharged hundies and some other account books relating to a different concern, whereupon he produced some books, and filed an affidavit undertaking to make a thorough search of the discarded books in his office and to produce the documents, if discovered, at the next hearing. That was fixed for November 25, 1959; and the petitioner swears in the affidavit before us that he directed his employees to make thorough

search, to collect discarded books, papers, and to bundle them, with the object of producing them before Court; but the plaintiff of the civil suit filed or complaint before the District Magistrate, Sri V.T. Chacko, complaining of offences under Sections 406, 204 and 417 of the Indian Penal Code, against the petitioner. The complainant prayed for search of the petitioner's office and premises for the recovery of any books and papers, that may be found there, and this step was taken on November 21, 1959; and the District Magistrate thereafter issued a search warrant, which was followed by a search of the petitioner's house on November 21 and 22, 1959. The news concerning the search was published in the Desabhimani on November 26, 1959, and the District Magistrate was transferred from Tellicherry as the Principal Sub-Judge, Kozhikode. Thereafter, the news, extracted earlier in the judgment, was published in the newspaper.

3. The complaint is that the news item contains insinuations, which are calculated to interfere with, the course of justice in the case, and to give the petitioner, who is a party to the case a bad character. The next complaint is that the news item, constitutes contempt of the High Court and the Judges, including the Chief Justice. It follows that the petitioner claims the Publication to be contempt of a party to a litigation, and to contain disparaging remarks about the Judges as well as the Chief Justice of this Court.

4. The counter-affidavit pleads that there is no reference to the High Court, nor to the Judges of the High Court, nor the publication makes any suggestion affecting the High Court nor against the Judges of the High Court. Paragraph 3 of the counter-affidavit says :

"Both the parties to the litigation referred to are Congressmen, although the petitioner has greater control over the Congress machinery than the other, it is learnt. The reference in the publication is to the influence that the petitioner brought to bear through the Congress organization on the Government of the day. The High Court is not the authority, which transfers District Magistrates, but it is the Government. In the Kerala State, the postings or transfers of District Magistrates are done by the Government and the reference is to the authority which has transferred the District Magistrate. Far from bringing the administration of justice into contempt, the intention of the publication is to see that the judiciary is not interfered with through the instrumentality of transfers and thus to see that the independence of the Magistracy is preserved unaffected by the subtle interference by political parties through the executive Government."

Therefore, it is clear that the counter-affidavit contains no denial about the publication being defamatory of the petitioner, and the position taken is about there being no intention to commit or to publish any reflection on the High Court. Also the apology offered is concerning reflection or aspersion against the High Court; for, the fourth paragraph of the counter-affidavit states as follows :

".....I unhesitatingly express regret if the Court thinks there is any reflection on the High Court in the publication of Exts. P-2 and P-3, because it is farthest from the intention and object of the Editor and the Publisher of the Desabhimani to make any such reflection or aspersion."

5. It follows that the counter-affidavit has very little defence to offer against the complaint of the publication being defamatory of the petitioner; nor does it tender any apology, should the publication be found to be defaming a party to a proceeding in connection with the case before the Court. In these circumstances, we have to determine first, whether the publication amounts to contempt, and, if so, what should be the order against those responsible. Now, it is well-settled that abusing and vilifying parties to a pending proceeding, in relation to the proceeding, amounts to contempt. In this connection, it would be useful to refer to the dictum of Lord Hardwicke in *In re Read and Huggomon*<sup>1</sup>, where it was observed as follows :

"Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in the causes, before the cause is finally heard. . . . . There may be ..... a contempt of this Court in abusing parties who are concerned in causes here ..... there cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters. Replying on the aforesaid observation, it was held in *In re the William Thomas Shipping Company, Ltd.*<sup>2</sup>, that the publication of injurious misrepresentations concerning parties to proceedings in relation to those proceedings, may amount to contempt of Court, because it may cause those parties to discontinue Or to compromise, and because it may deter persons with good causes of action from coming to the Court, and it is thus likely to affect the course of justice. In this connection, we may also refer to *Demibai Gengji v. Rowji Sojpal*<sup>3</sup>, where Wadia, J., had said :

"It has been held that a libel on the parties to a suit which does not amount to an interference with the course of administration of justice is a matter in respect of which the aggrieved party can have his remedies elsewhere. He may either prosecute the writer in a criminal Court of law, or he may bring an action for defamation in a civil court. But he cannot proceed in contempt against the author of the libel.

Another proposition which has been well established is that all proceedings in suits pending in a court of justice are privileged, and any contempt on the subject-matter of the suit, and any abuse of the parties or holding them up to ridicule and contempt in the eyes of the public, whilst the suit is pending, are not allowed. In my opinion, it would be simply disastrous for the due and proper administration of justice, if when a suit is still pending investigation in a court of law, that investigation was to be taken out of the hands of the Court and practically left to the press. The object of proceedings in contempt is not so much to vindicate the dignity of the Court or the person of the Judge, as to ensure that every litigant in a Court of justice has a fair and unprejudiced hearing at the trial on the merits of his case." We therefore, think the law of contempt guards a party to the litigation against being misrepresented, provided the misrepresentation be of the party in relation to the proceedings. In this connection, we should be mindful of the observation of the Supreme Court in

<sup>1</sup>(1742) 2 Atk. 469

<sup>3</sup> AIR 1937 Bom 305, at page 306

<sup>2</sup>(1930) 2 Ch. 368

*Rizwan-Ul-Hasan v. State of U.P.*<sup>4</sup>, that the jurisdiction in contempt is not to be invoked, unless

there be real prejudice, which can be regarded as a substantial interference with the due course of justice, and the Court should not exercise the jurisdiction upon a mere question of propriety. We should further remember that contempt proceeding being criminal, the benefit of the doubt should be given to the person, against whom the proceeding is taken. Yet it cannot be denied that the position of the litigant is not happy, who finds incorrect publication in newspaper about his influence being exercised to bring about the transfer of a Judicial Officer, that had ordered search against him. Nobody would deny that with such imputation, he would not be respected by the public, nor it would enhance his neighbour's esteem for him, nor his reputation among his acquaintances. Indeed, the counter-affidavit makes no effort to deny the, statement being libellous, and the question narrows down to determining whether the misrepresentation be in relation to the proceedings.

On a fair reading of the publication, we feel that it does, for, the search warrant had been issued against the petitioner in a pending criminal proceeding, and the imputation is that he has brought his influence to bear to get the Magistrate, trying the case, transferred, because of the search warrant. Therefore, it cannot be properly argued that it is a mere libel of person, unconnected with the proceedings. Nor can the publication be brought within the exempting circumstances mentioned in Rizwan-UI-Hasan's case, AIR 1953 SC 185, for misrepresenting a party to a litigation prejudices the public mind against him, and it does not enable him to prosecute his case with safety of his character. Such a person may well clear the misrepresentation to the satisfaction of a tribunal, but would find it impossible to defend himself against a fluctuating body. Then, with character smeared, the innocence from law Court eventually received, could hardly be of any value, nor the Court is allowed to determine the issue, in such circumstances, fairly. We are, therefore, convinced that the complaint against the printer and publisher of abusing a litigant to a pending litigation in connection with the proceeding, which is sub-judice, is something which should be guarded against, and cannot be disregarded as of no consequence. It is necessary to emphasize that the press, with its freedom of expression, also carries with it the responsibility of observing rules of law, and should not injure the cause of a party by misrepresentation. We, therefore, hold that the petitioner is justified in complaining that the publication is contempt. That aspect of the responsibility is not fully realized, and we would, therefore, conclude the contempt proceedings in the present case with the warning.

6. But, before making the final order in the case, we would deal with the other complaint. It has been argued on behalf of the respondents that any comment on the administrative side of the judiciary, does not amount to contempt, and reliance has been placed on *Debi Prasad v. Emperor*<sup>5</sup>, This principle has also been upheld by the Supreme Court in *Brahma Prakash v. State of U.P.*<sup>6</sup>, It is clear that had the insinuations and suggestions in the publication been against the High Court alone, they would not have persuaded us to take any step against the respondents, for the question of transfer of Magistrates, is administrative in character, and we would have given the benefit of the doubt in this case to the printer and the publisher. We are not impressed by the argument that the publication does not constitute contempt of the

<sup>4</sup> AIR 1953 SC 185

<sup>6</sup> AIR 1954 SC 10

<sup>5</sup> AIR 1943 PC 202

High Court, as the Government transfers Magistrates. It is well known that such transfers are on the recommendation of the High Court; and any transfer without prior consultation, would be impossible. Nor are we impressed with the form in which the apology has been made, and as it is not in the form, which is generally treated as sufficient for purging the party found guilty of contempt. We think that though the publication cannot be held as amounting to contempt on the

ground of its bringing the High Court into contempt and ridicule that plea is not available so far as the complaint of its being libelous of the party to the litigation is concerned.

7. The publication misrepresents a party, and the misrepresentation is in relation to a pending proceeding. We hope parties to a litigation would not be abused in the form it has been done in this case; otherwise, we would take serious action. With that warning, we would conclude the contempt proceedings.

8. We therefore, allow the petition, but pass no sentence, as we think the warning would suffice. The parties will bear their costs.

Petition allowed.