BOMBAY HIGH COURT

The Government Pleader, High

Vs

Tulsidas Subhanrao Jadhav

(John Beaumont, Kt., C.J. Wassoodew, J.)

18.11.1937

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an application by the Government Pleader asking that a rule may be issued against the respondent, Tulsidas Subhanrao Jadhav, to show cause why he should not be committed for contempt of Court in respect of a speech which he made at Sholapur on June 26, 1937. The speech followed closely upon the disturbances of June 23 at Sholapur, which were the subject-matter of the last application with which we dealt. But the charge against the respondent here is under a different heading of contempt of Court to that in the last case. It was laid down by Lord Russell of Killowen C.J. in *Reg v. Gray*[1] that any act done or writing published which is calculated to bring a Court or a Judge into contempt, or to lower his authority is contempt of Court. It is a class of contempt usually referred to as " scandalising the Court," and the principle on which the Court proceeds in taking notice of that class of contempt is based on the interest of the public and not on the interest of the particular Court or Judge which is attacked. It is in the public interest that confidence should exist in Courts of justice, and if an attack is made upon a Judge, who is not in a position to answer the attack, the authority and prestige of the Judge tends to be lowered in the estimation of the public, and that is contrary to the interests of the public. At the same time one has to recognise that in the long run the degree of confidence reposed in the judiciary will depend on the character of judicial work, and confidence cannot be for long artificially engendered by the simple process of stifling criticism. It has been laid down many times and by the highest tribunals that Judges are not immune from criticism, and that fair and reasonable criticism of a case which is finished is not objectionable. The process of contempt of Court for scandalising the Court, a process in which the Court is in effect both prosecutor and Judge and in which respondent is deprived of the ordinary methods of trial, is one which should be sparingly used. Lord Morris, in the case of *Mcleod v. St. Aubyn*[2] delivering the opinion of the Privy Council, said that committals for contempt of Court by scandalising the Court itself had

become obsolete in England, though Lord Atkin pointed out in *Ambard v. Attorney General of Trinidad*[3] that that opinion was falsified by the case of *Reg v. Gray*[4]

36 decided in the next year. In my judgment the process should be used in this country where attacks are made on the personal character of a Judge, or where base or improper motives in the decision of a case are attributed to a Judge.

2. In the present case the speech which is the subject-matter of the charge does undoubtedly contain matter which shows that the speaker entertains in the popular sense of the word contempt for all Courts of Justice. Possibly on the context it might be said that the Courts of Justice to which he is referring are the Courts of his Presidency and that the speech should be so limited. But even if the speaker is expressing contempt for all Courts of Justice in this Presidency, he is not making any attack on any particular Judge or comment on any particular case, and, in my opinion, a general expression of opinion hostile to the utility of Courts of Justice is not likely to affect the public, and need not disturb the equanimity of Judges, In my opinion the speech does not amount to such a contempt of Court as should be dealt with by the process of contempt, I would add that the respondent has offered an unconditional apology for any expressions in his speech which do show contempt for the Courts, and, in my judgment, therefore, the rule should be discharged.

Wassoodew, J.

3. I Agree.

Cases Referred.

1[1900] 2 Q.B. 36
2[1899] A.C. 549
3(1936) 38 Bom. L.R. 681
4[1900] 2 Q.B