

# ORISSA HIGH COURT

State

Vs

Biswanath Mohapatra

Original Criminal Misc. No 3 of 1954

(Narasimham and P.V.B. Rao, JJ.)

08.11.1954

## JUDGMENT

### **Narasimham, J.**

1. This rule was issued on the editor and publisher (the opposite party) of an Oriya weekly named The Utkal Bharat of Berhampur for contempt of Court on ground that during the pendency of T.R. Case No.16 of 1953 in the Court of the Munsif Magistrate (1st class) of Aska the said editor published an article in his Weekly dated 19-2-1954 which had a tendency to interfere with the free course of justice. The rule was based on a report submitted to this Court by the Munsif-Magistrate of Aska.

2. The unchallenged facts are as follows: On 12-3-1953 one Uchhab Patra of village Chatula, p.s. Gangpur, district Ganjam, filed a complaint in the Court of the Sub-divisional Magistrate of Russelkonda alleging that Gopinath Dora, Krishnamurti Dora and fourteen other persons of his village had committed criminal trespass inside his house on 12-1-53, looted all his moveable properties and burnt a substantial portion of the same after secreting the rest. This highhanded action was said to have been committed on account of previous bitter enmity between the parties. He further alleged that when he gave information about this incident to the Sub-inspector of Police of Gangpur thana, the latter abused him and refused to take any action and that both the Sub-Inspector and the Assistant Sub-Inspector of Police of Gangpur thana were against him. The S.D.O. directed local enquiry by a revenue Inspector and on the basis of his report summoned the accused persons for offences under Sections 379, 435 and 448, I.P.C. On 10-6-53 he transferred the case to the file of the Munsif-Magistrate of Aska for disposal. The case dragged on in the usual way in the Court of the Munsif-Magistrate for nearly six months and by 18-2-54, eleven prosecution witnesses had been examined, charge framed under Section 380 I.P.C. against Gopinath Dora, Krushnamurti Dora and others and cross-examination of most of the prosecution witnesses after charge was also completed. The case was then adjourned to 20-3-54 for cross-examination of the remaining two prosecution witnesses namely, P.Ws.4 and 6. Thus when the case for the prosecution was practically over the impugned article appeared in 'the Utkal Bharat' on 19-2-54. That article is as follows (English translation):

" 'On whose side is the Police' Acute friction is going on between two factions in village

Chatula near Kendupadar. It is reported that the Sub-Inspector of Police of Gangpur Sri Mori Panda has taken the side of rich man and is harassing the weaker party. He went to the extent of helping two rich men of the village named Gopinath Dora and Krushnamurti Dora to bum the house of a very poor man of the village named Uchhab Patra and to cut away his paddy crops.

And it is also reported that in that area oppression by the Police has increased considerably. Will the A.S.P. police of Bhanja-nagar kindly look into the matter?"

3. On 8-5-54, the accused persons of that case filed a petition before the Munsif-Magistrate alleging contempt had been committed by the publication of the said article in 'The Utkal Bharat'. The Munsif-Magistrate then submitted his report to this Court for necessary action against the editor and publisher of the said Weekly and on 14-5-54 he delivered judgment in that case convicting the accused persons under S 380, I.P.C. and sentencing them to six months rigorous imprisonment and a fine of Rs.100/- each.

4. Though the impugned article has been very cleverly worded so as not to refer to any pending case there can be no doubt that it has a tendency to interfere with the fair trial of T.R. Case No.16 of 1953 then pending in the Court of the Munsif-Magistrate of Aska. The complainant of that case and the two principal accused persons and the name of their village have all been given in the offending articles. The complainant has been described as a 'very poor' (nihat gariba) man and the two principal accused persons have been referred to as rich man of the village, who after gaining over the local police to their side were harassing the complainant by burning his house and cutting away his crops. Thus an attempt has been made to create sympathy for the complainant and hatred for the two principal accused, by depicting the former as a poor victim of oppression by rich and wicked persons. Doubtless, there is a slight difference between the nature of the allegations made against the accused persons in the pending case and in the offending article. In the complaint petition of Uchhab Patra the accused persons were alleged to have committed the offence of theft from his house and burning of a portion of the looted goods; whereas in the offending article it is alleged that they burnt Uchhab Patra's house and also cut away his paddy crops. But in the deposition of Uchhab Patra in that case (Ex.3) dated 8-8-53 he had alleged that prior to the house theft the accused persons have committed several highhanded actions against him including the cutting away of his paddy crops on 21-12-53. The essence of his grievance against Krushnamurti Dora and Gopinath Dora was that due to the unsympathetic attitude taken by the police against him on account of his poverty, the said accused persons were committing these offences with impunity. In the offending article this aspect has been specially emphasised and an average reader of that article would get the impression that Gopinath Dora and Krushnamurti Dora were victimising poor Uchhab Patra in all sorts of ways after getting the local police to their side. Hence, though the facts alleged against Gopinath Dora and Krishna Murti Dora in the petition of complaint of Uchhab Patra are not identical with the acts attributed to them in the impugned article it seems clear that the article has a tendency to prejudice the public against Gopinath Dora and Krushnamurti Dora. The date on which the article appeared is also very significant. By that date the prosecution evidence in that case was practically over. During the cross-examination of Uchhab Patra on 6-2-54 the defence had tried to discredit his story on the ground that a report about the incident was not lodged before the police at the earliest possible moment. His explanation was that the Sub-Inspector and the Assistant Sub-

Inspector of Police of that area had taken the side of the accused persons. Hence, when on the very next day after the close of the prosecution case the impugned article appeared in the Weekly, its tendency to interfere with the fair trial of the accused persons is obvious.

5. Mr. Mohanty on behalf of the opposite party rightly did not challenge the fact that the impugned article had a tendency to interfere with the free Course of justice. But he urged that the opposite party had no knowledge of the pendency of the said criminal case and that consequently his action would not amount to contempt of Court. In support of this argument he relied on the fact that the Weekly is published from Berhampur which is at a distance of twentyfive miles from Aska and that there is no evidence on the other side to show that the opposite party was then aware of the pendency of that case.

6. Hence, the main question for consideration is whether on the facts and circumstance of this case the editor and publisher of the Weekly would escape liability for contempt where there is no direct evidence to show that he had knowledge of the pendency of that case.

7. Before discussing this question it should be pointed out that even if knowledge of the pendency of the case is not proved contempt may be committed if the offender has knowledge of the imminence of the proceeding. This principle is based on the well-known observation of Wills, J. in - '*Rex v. Parke*', which has been followed in several Indian decisions, the latest of which is a Division Bench decision of this Court reported in - '*State v. Radhagobinda Das*<sup>2</sup>', The editor was fully aware that in the offending article serious allegations of arson and looting of paddy crops had been made against Gopinath Dora and Krishnamurti Dora. It had also been suggested that the local police were unsympathetic to the aggrieved party (Uchhab Patra). The editor was thus aware that the offences had been reported to the local police. He should have known that the aggrieved complainant would, in due course, seek the help of the Magistrate. Hence, it is reasonable to attribute to the editor knowledge of the imminence of a criminal proceeding against the accused persons and if with that knowledge he published that article he will be guilty of contempt.

8. Apart from the aforesaid consideration, the argument that knowledge of the pendency should, in all cases of contempt, be invariably proved seems to be based on a misconception of the law of contempt. The summary jurisdiction for punishing for contempt is exercised solely in the interests of justice with a view to prevent trial by newspapers or by the public of a cause that is pending in a Court of justice. The essence of the offence consists in the tendency or likelihood of the offending article to interfere with the course of justice. It may be that the publisher of the article had no

intention to interfere with the course of justice. He might also have acted in good faith. But these considerations are immaterial and the only test is whether the publication is calculated or likely to interfere with the course of justice. The law on the subject has been so strictly applied as to fasten vicarious liability even on the proprietor of the newspaper who might have had no knowledge of the article itself. Thus in the well-known - *St. James's Evening Post* case (1742) 26 ER 683, the plea that the printer had no knowledge of the contents of the offending article was not accepted. This was followed in a very recent English decision '*Rex v. Evening Standard Co. Ltd*<sup>3</sup>.', where a limited company (to which obviously no intention or knowledge could possibly be attributed) was held to be vicariously liable for the contempt committed by the editor of the newspaper in publishing an offending passage. Thus where absence of knowledge of the offending article has

never been held to be a valid excuse, it is difficult to understand how want of knowledge of the pendency of the case can be held to exonerate a person from contempt.

9. If the English decisions on the subject be carefully examined it will be clear that though want of knowledge of the pendency of a case has, in special circumstances been held to be a good reason for not proceeding for contempt, there is no invariable rule that unless knowledge of the pendency is affirmatively established, the offence of contempt is not committed. In the well-known - Herbert's case (1731) 24 ER 992, it was held that where a person entrapped a ward of the Court into a marriage the parties who brought about the marriage were guilty of contempt and actual knowledge of wardship on their part was not required. In repelling the argument that knowledge of the wardship as required Sir Joseph Jekeyell observed :

"If actual notice of the infant's being a ward of the Court were necessary, then these offences would be continually practised with impunity: for it would be an easy matter to put other people not really privy to the acts of the Court (in committing the guardianship of the infant) to transact and bring about the marriage."

These observations would apply with full force in the present case also. A party in a criminal case may set up some other person who is not a party to that case to write the most damaging article against the accused persons concerning the merits of the case and thereby not only prejudice the public opinion against the accused person but also prejudice the minds of the Judge or the Jury, as the case may be. If the summary procedure for contempt is not strictly enforced against the editor and publisher of the article unless actual knowledge is brought home against him (which in most of the cases is an impossibility) the stream of justice cannot be kept pure and unsullied and the law of contempt would become quite ineffective. The reasons for which good faith and absence of criminal intention have never been held to be a good excuse would apply with full force even in those cases where there was absence of knowledge of the pendency.

10. Doubtless, in the well-known case of - '*Metropolitan Music Hall Company v. Lake*<sup>4</sup>', absence of knowledge of the pendency of a civil suit was held to be sufficient reason for not proceeding for contempt against the editor of a newspaper. The facts of that case are, however, clearly distinguishable. The offending article was in the nature of an adverse comment on the conduct of the promoter of a company under liquidation. It was published on 2-2-1889. But three days later when the editor became aware of the actual existence of a civil action he published a notice to the effect that he refrained from saying anything more as the matter was subjudice and that on the date of publication of the offending article he was not aware of the pendency of the action. This explanation was accepted by the Court which held that proceedings for contempt should not be continued against the editor. But the learned Judges were fully aware of the strict rule laid down in - Herbert's case and pointed out

"that the Court will always be strong enough to get over any flimsy defense founded on the suggestion, or even the oath of the party, that there was no knowledge."

The main reasons which weighed with them in declining to proceed against the editor of the newspaper were :

- (i) their acceptance of the explanation of the editor that he was ignorant of the pending proceeding;
- (ii) the offending article itself did not disclose any knowledge that can be fairly imputed to the reader that the action was on foot, and
- (iii) as soon as the editor became aware of the pending action he published another article explaining the circumstances under which the offending article was published and undertaking not to say anything more on the subject as it was subjudice.

Similarly, in a later case - *In re The Marquis Townshend*<sup>5</sup> where a newspaper published doctors' report and its comments on lunacy proceeding. Their Lordships refused to commit the editor of contempt mainly because they accepted his explanation that he was not aware of the pendency of the action and moreover, the article itself showed intrinsic evidence to the effect that the writer was not aware that the report mentioned therein has become the subject of litigation.

11. I may also refer to an Australian case - '*Gray v. Davis Bros. Ltd.*<sup>6</sup>', Australian Digest, Vol.4, p.278) where want of knowledge was held not to exonerate the editor of a newspaper from contempt though it was held to be an extenuating circumstance for dealing with him somewhat leniently.

12. These three decisions merely lay down that where absence of knowledge of the pendency of a case is fairly inferable, the Court may, in the special circumstances of each case, be justified in (a) not proceeding for contempt against the offending newspaper or (b) dealing with the newspaper somewhat leniently. Such absence of knowledge may be inferred either from the unchallenged statement of the alleged contemner or from the internal evidence furnished by the offending article itself.

The decisions are not, therefore, an authority for the proposition that in proceedings for contempt of this nature, the prosecution should affirmatively establish that the offender had actual knowledge of the pendency.

13. But the present case is clearly distinguishable. In the offending article serious crimes such as arson and looting of paddy crops were attributed to certain persons. Every one knows that such crimes cannot be easily suppressed and even if the police take the side of the perpetrators of the crime the aggrieved party has always independent access to the Magistrate and he generally avails of this remedy. Hence from the contents of the offending article itself knowledge of the pendency of the criminal case could be fairly attributed to the editor. His plea that he had no such knowledge cannot be accepted at its face value. It is true that the offending article purports to be based on some reports received from some source. But the nature of the source has not been disclosed; nor has the editor cared to lay before this Court the contents of those reports of his informer on the basis of which he published the article. Taking all these circumstances into consideration I am not prepared to accept the explanation of the editor to the effect that he had no knowledge of the pendency of the criminal case.

14. We are, therefore, satisfied that the opposite party is guilty of contempt. He has given a conditional apology but that is not sufficient. We have anxiously considered whether a substantive sentence of imprisonment should be imposed or else whether a sentence of fine would suffice. Ever since the formation of this High Court in 1948, newspapers held to be guilty

of contempt have been dealt with somewhat leniently with due admonition in the hope that they would be more careful in future in avoiding transgression of the law of contempt. Thus in - '*State v. Editors and publishers of Eastern Times and Prajatantra*'<sup>7</sup>, two of the newspapers of Cuttack were let off with a direction to pay costs and a severe warning to the following effect :

"I cannot, however, leave this case without sounding a clear note of warning to the newspaper concerned. It is the duty of this Court to point out to them that by conducting their journals in the manner that has been disclosed in these proceedings, they have brought themselves definitely within the punitive jurisdiction of this Court. If the Court, in the particular case, has let them off it is only out of consideration for its own dignity and prestige.

The news-item and the editorial comments which have come in for consideration are certainly of a kind which does not enhance the prestige of the journals concerned. It must also be pointed out that thereby they have failed not only in their duty to this Court, but in their duty to the general public and to themselves".

Again, in - ('*Bijoyananda v. Balakrushna*'<sup>8</sup>, a severe warning was conveyed to the Press that 'if upon a future occasion, a proceeding of this kind is repeated, the full power of this Court to restrain and prevent such proceedings by adequate and commensurate punishment will be exercised with a stern hand'. It is regrettable that inspite of the caution conveyed by this Court and the lenient way in which the offending newspapers have been dealt with, the opposite party should have committed

an offence of this type. But on his behalf Mr. Mohanty submitted that 'The Utkal Bharat' is an unimportant weekly with very limited circulation and that the tendency of the offending article to interfere with the course of justice was not great. There is no affidavit on the side of the petitioner to show the extent of circulation of 'The Utkal Bharat', especially in Aska town so as to give this Court an idea of the extent of the mischief that was likely to have been committed by the offending article. Hence, I see no reason to disbelieve the statement made by Mr. Mohanty at the Bar. This circumstance coupled with the apology - though given conditionally - would justify passing of a sentence of fine only. We hope the repeated warnings given by this Court would have a salutary effect on the news papers and that no occasion would arise in future where this Court may be constrained to send to prison editors, printers and publishers of newspapers for publishing comments of the present kind on pending criminal cases. The sentence of this Court is that Biswanath Mohapatra, editor and publisher of 'The Utkal Bharat' should pay a fine of Rs.200/- in default he should undergo simple imprisonment for one month.

**Rao, J.**

15. I agree.

Order accordingly.

Cases Referred.

<sup>2</sup> AIR 1954 Ori 1 at p.3 (B)

<sup>3</sup>1954-1 All ER 1026

<sup>4</sup>(1889) 58 LJ Ch.513

<sup>5</sup>(1906) 22 TLR 341

<sup>6</sup>(1915) 11 Tas LR 48

<sup>7</sup> AIR 1952 Ori 318

<sup>8</sup> AIR 1953 Ori 249 at p.254