

# ORISSA HIGH COURT

Swarnamayi Panigrahi

Vs

B. Nayak

O.J.C. No. 190 of 1955

(S.P. Mohapatra and S. Barman, JJ.)

10.10.1958

## JUDGMENT

### **S. Barman, J.**

1. The genesis of these contempt proceedings before us was an ordinary rent dispute between a landlord and a tenant in respect of certain lands in a certain village in an Inam estate at Berhampur in the district of Ganjam, primarily governed by the Madras Estates Land Act (Act 1 of 1908). The original Cri. Misc. Case No. 6 of 1955 relates to contempt proceedings. The connected writ petition being O. J. C. No. 190 of 1955, posted for hearing analogously with the said contempt matter, has since become infructuous and was not pressed and is therefore dismissed.

2. The alleged contemnners are one Shri Brundaban Nayak described in the records herein as betel-leaves merchant, near Railway Station, Berhampur (Ganjam) (hereinafter referred to as Shri Nayak) and Shri Balakrishna Rath, Advocate Berhampur (hereinafter referred to as Shri Rath) and Shri N.M. Patnaik, Pleader, Berhampur (hereinafter referred to as Shri Patnaik).

3. The charges against Shri Nayak were these : On May 19, 1955 Shri Nayak had filed before the Additional District Collector, Ganjam-Chatrapur, two transfer petitions, namely, M.Cs. Nos. 2 and 3 of 1955 and made some prejudicial statements to wit :

"1. The lower court openly identified himself with the plaintiff Srimati Swarnamayi Panigrahi and is so partial to her that no justice or impartial decision can be expected from him.

2. He has gone out of the course prescribed by law and has taken over the function of witness and court in himself in such a way that there is no parallel to it in the history of litigation in India; and

3. That the opposite party wields extraordinary influences in. the State as she is the wife of Shri Lingaraj Panigrahi, Chief Justice of Orissa High Court. It is being openly talked about that the conclusions are foregone."

On these statements, the charge against Shri Nayak was that they were calculated to undermine the prestige and dignity of the trial Court. The charge against the said Advocate Shri Rath and the pleader Shri Patnaik were that they

".....-abetted Shri Brundaban Nayak aforesaid in making such unfounded and derogatory statements by accepting Vakalat on his behalf and filing the said petitions before the Addl., Collector, Chatrapur, on his behalf."

The charge against all the three alleged contemnors was that such action amounted to contempt of the Court of the Suits Collector, Berhampur. Although the charge did not specifically allege contempt of the High Court, the learned counsel for the alleged contemnors, in course of hearing before us, submitted that, if the offending passage in the transfer petitions could be construed as amounting to contempt of the High Court also - his arguments covered both in respect of alleged contempt of the lower court as also of the High Court.

4. The main points for consideration in this matter are : A Re : Shri Nayak.

- (i) Whether Shri Nayak exceeded the limits of his right permissible under law in the matter of filing the transfer petitions in question.
- (ii) If so, whether or not such excess amounted to contempt of Court.
- (iii) Effect of apology, in the manner and background it was purported to be offered.

B. Re : Shri Rath, Advocate and Shri. Patnaik, Pleader.

- (ii) Whether the said Advocate and Pleader abetted Shri Nayak in making the said statements in the transfer petitions alleged to have been unfounded and derogatory in the manner fully stated in the show cause notice dated March 5, 1956.
- (ii) Effect of apology as offered.

C. Re : Punishment.

If contempt, what should be appropriate punishment.

5. For determination of these questions, both sides relied on the background of the picture giving colour to it in their respective way. What happened was this :

6. At all material times one Shrimati Swarnamayi Panigrahi (herein after referred to as the landlord) was the owner and proprietor of the village known as Baidyanathpur alias Kampalli situated within the Municipality of Berhampur (Ganjam) and Shri Nayak was a tenant cultivating certain lands belonging to the landlord. Incidentally, the landlord happened to be the wife of Shri Lingaraj Panigrahi, for many years a most eminent lending Advocate of Berhampur; Advocate General of Orissa; since 1948 a Judge of this Court and thereafter since 1953 until March, 1956 the period with which we are concerned, the Hon'ble Chief Justice of Orissa High Court.

7. In 1949-50 Shri Nayak acquired occupancy right in some lands in that village. Soon thereafter

dispute arose between the landlord and the tenant Shri Nayak about the quantum of produce payable by the tenant as the landlord demanded one-third as against one-sixth of the produce alleged to be payable by the raiyat of the said village which was a village in an inani estate. Ultimately, the landlord had to file three suits in the Court of the Rent Suit Deputy Collector, Berhampur, the first of the said suits having been filed on September 16, 1952 being O.S. No. 460 of 1952 for recovery of Rajbhagam for Faslis 1360 and 1361 and the subsequent suits were also filed in 1953 and 1954; namely O. S. No. 1342/53 for Rajbhagam 1360, 1361 and 1362; and O. P. No. 19/54 for Rajbhagam 1362, 1363 and 1364. All the three said cases were filed under the provisions of the said Madras Estates Land Act (Act 1 of 1908) read with the provisions of the Orissa Tenants Protection Act (III of 1948).

8. While these suits were pending, the tenant Shri Nayak filed an application in November, 1954 for appraisalment of the paddy crop on the suit lands for the year 1954 December crop under Sections 74 and 75 of the Madras Estates Land Act (Act 1 of 1908) and this was numbered as M.P. No. 1 of 1954. In the said appraisalment proceedings the Special Officer appointed by the Court estimated the total yield of the land on appraisalment at 11 nauties per Bharanam. The landlord, however, objected to the same. The landlord applied for division of crop by appointing a Receiver. On this, a Receiver was appointed. The tenant Shri Nayak filed objections to the same.

To set the matter at rest the Rent Suit Collector proposed appraisalment by Court in the presence of both parties and both parties agreed in Court to abide by his decision whether it be less or more. According to the said oral agreement the Rent Suit Collector on 10-12-1954 inspected the crop on the suit land in the presence of the landlord's lawyers and Shri Nayak's agent. We find these facts stated in the order of the Rent Suit Collector dated 27-1-1955 (Ex. 5) recording the results of his local inspection which was the primary cause of the transfer petitions Exs. 1(a) and 1(b) containing the offending passage.

9. When the Special Officer's estimate of the yield at 11 nauties aforesaid, was by the said order enhanced to 18 nauties by the Rent Suit Collector after local inspection as aforesaid, Shri Nayak apprehended, - as it was alleged by him - that he might not have a fair trial in the said three rent suits which were then pending before the said Court and that the court might decree those suits on his own impression of the yield, as derived by him from the said local inspection which is alleged to have been held ex parte without any opportunity to the tenant to test the Rent Suit Deputy Collector's impression by cross-examination. The tenant's case was that it was in this set-up that he had filed an application described as a transfer petition (Ex. 1) under Sections 24 and 151 of the Civil Procedure Code and Section 204 of the Madras Estates Land Act (Act 1 of 1908) being M. C. No. 1/55 in O. S. No. 460/52 for withdrawal of the said suit from the file of the O. T. P. Collector and sending it to any other Collector for further proceedings. We should only mention here that this first application for withdrawal was made on 13-4-1955, that is to say, more than four months after the Rent Suit Collector had held local inspection.

10. On 18-5-1955 a counter (Ex. 2) to the said first application for withdrawal was filed on behalf of the landlord. Immediately thereafter, the following day, on 19-5-1955, Shri Nayak filed two petitions before the additional District Collector for transfer of the remaining two rent cases, - O. S. No. 1342/53 and O. P. No. 19/54, the said transfer petitions being Ex. 1(a) and Ex. 1(b) in these proceedings. The transfer petition in O. S. No. 1342/53 was registered as M. S. No. 3/55 and the transfer petition in O. P. 19/54 was registered as M.C. No. 2/55. Both the said transfer

petitions Exs. 1(a) and 1(b) were signed by Shri Nayak himself and his lawyer. In both the said petitions Shri Nayak made the said offending statements - hereinbefore already quoted from the charges. The said statements are alleged to be baseless, reckless and damaging allegations amounting to contempt of Court, and they form directly the subject matter of the present contempt proceedings.

11. On July 6, 1955 the landlord filed a writ petition to the High Court being the said O. J. C. No. 190 of 1955 mainly on the ground that the Additional District Collector had no jurisdiction to entertain the said transfer application.

12. On 21-9-1955 in the said writ application O. J. C. 190 of 1955, then pending before the High Court Shri Nayak filed an affidavit recording the terms of compromise effected between himself and the landlord as stated therein.

13. On 30-9-1955 Shri Nayak filed an affidavit in the Court of the Rent Suits Collector, Berbampur, in O.S. No. 460 of 1952 and O.S. No. 1.342 etc. (Transfer Petitions) recording the fact of the said compromise and expressing regret and apology for the allegations and for the language used in the transfer petitions in question.

14. Ultimately, upon the High Court having taken cognizance of the alleged contempt in the transfer petitions, on 5-3-1956, show cause notice was issued by the Registrar by the order of the High Court, which initiated the present proceedings before us as Original Criminal Misc. Case No. 6 of 1955. In their respective replies, all dated 30-7-1956 all the alleged contemnors took the plea of justification.

15. In this background we now proceed to deal with the points for consideration. A. Re. Shri Brundaban Nayak.

16. Shri Nayak being the principal contemner in these proceedings, we have to consider whether or not the offending passage in the transfer petitions in question could be justified. Let us consider what could be the grievance of Shri Nayak against the lower Court. As we could understand, his real grievance arose out of the local inspection held by the lower court on 10-12-1954. It is clear from the order dated 27-1-1955 (Ex. 5) that the lower court held the local inspection with the consent of the parties and in the presence of the representatives of both parties. In course of hearing before us, an affidavit dated 24-7-1958 of one Kholli Nayak, referred to in the said order (Ex. 5) as having been present at the said local inspection, was filed stating that he did not accompany Shri D.S. Patnaik (Rent Suit Collector) to the land of Shri Nayak on 10-12-1954 nor did he (Rent Suit Collector) inspect the crop on that suit land in his presence on that day. We cannot believe these allegations of Kholli Nayak contained in his said affidavit. We accept the version given by the lower Court in his order dated 27-1-1955 (Ex. 5) where he has clearly mentioned that both parties in court agreed to abide by his decision and that according to this oral agreement he inspected the crop on the suit land in the presence of landlord's lawyers and the tenant's agent the said Kholli Nayak. In view of this order of the lower court duly made in course of the proceeding before him, we cannot accept the story set up by Shri Nayak. We, therefore, find that there was no justification for the alleged grievance of Shri Nayak against, the lower court nor for the allegations made in the transfer petitions in question. Some latitude is of course given in case of transfer petitions but the question is whether or not

Shri Nayak has exceeded the limit permissible under law. As a rule, applications for transfer are not made merely because the trying Judge is alleged to be incompetent but because there may be circumstances beyond the Judge's control, such as acquaintance with one of the parties or a personal interest in the subject matter of the proceedings which, in law, are considered as preventing him from giving an unbiased decision. The Bombay High Court in *Emperor v. Venkatarao*<sup>1</sup>, dealt with this aspect of the matter. Macleod, C. J., in his judgment, while observing that cases in which applications for transfer are made stand on an entirely different footing, also made it clear in case of direct contempt, it is no excuse for the contemner to take the plea that he did not mean any insult to the Court. A passage from his judgment is worth quoting here-which is as follows :

"It is a different matter when in the course of a trial a party defending himself commits direct contempt of the Court and if I were to decide that it was sufficient excuse for him to say that there was no intention to insult, I should be dealing a blow to the authority of the Courts the consequence of which would be disastrous beyond contemplation."

17. The language used by Shri Nayak in the offending passage in the two transfer petitions is clear contempt of Court. The first sentence in the offending passage is that the lower court openly identified himself with the plaintiff landlord and openly attacked the lower court alleging that it was so partial to her that no justice or impartial decision can be expected from him.

18. Oswald on Contempt of Court (3rd edition), p. 49 observed as follows :

"To charge a Judge with injustice is a grievous contempt. To accuse him of corruption might be a worse insult, but a charge of injustice is as gross an insult as can be imagined short of that. The arraignment of the justice of the Judges is arraigning the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and excites in the minds of his people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them."

The principle upon which commitments are made for contempt is –

"to keep ablaze of glory around them, and to deter people from attempting to render them contemptible in the eyes of the public .....A libel upon a Court is a reflection upon the King, and telling the people that the administration of justice is in weak or corrupt hands, that the fountain of justice itself is tainted, and consequently that judgments which stream out of that fountain must be impure and contaminated." (Oswald on Contempt, 3rd Edition, Page 50).

19. The next sentence in the offending passages is that the lower Court has gone out of the course prescribed by law and has taken over the function of witness and Court in himself in such a way that there is no parallel to it in the history of litigation in India. If Shri Nayak had a real grievance against the lower Court for the procedure adopted by it, then Shri Nayak had other remedies open to him, permissible under law. In fact, his first application for withdrawal (Ex. 1) of the rent suit

from the file of Shri D.S. Patnaik the Rent Suit Collector and sending it to some other Rent Suit Collector by itself, apart from merits, could have been legitimate. Besides, he had also a right of appeal under Section 189(2) of the said Madras Estates Land Act. Furthermore, Section 204 of the same Act under which Shri Nayak filed the first application (Ex. 1) provides that the District Collector may, by written order, distribute in such manner as appears fit, any business cognizable under this Act by any Collector in the district and by like order he may withdraw any case pending before such Collector and either dispose of it himself or by written order refer it for disposal to any other Collector in the district. It was within the ambit of the Madras Estates Land Act that Shri Nayak had remedies available to him for any grievance that he might have against the Rent Suit Collector. Shri Nayak instead chose to make wild allegations regardless of consequences.

20. We come now for the third and fourth sentences contained in paragraph 3 of the offending passage which are the most damaging sentences in the transfer petitions in question. In the third sentence he said that the landlord wields extraordinary influence in the State as she is the wife of Shri Lingaraj Panigrahi, Chief Justice of Orissa High Court and in the last sentence he said that it is being openly talked about that the conclusions are foregone. In our opinion one cannot imagine a more gross contempt of Court than this. By this expression Shri Nayak has not only brought into contempt the lower court but he has also lowered the prestige of the High Court in the estimation of the public. Shri Nayak did not even hesitate to involve even the Chief Justice of the State of Orissa to seek his own ends and to divert the course of justice. In a matter like this the law must step in and intervene and see that such contempt is adequately punished. The offence is further aggravated by the fact that Shri Nayak happens to be a member of the Orissa Legislative Assembly, a body who is responsible for the making of the law of the land. It is not a case where the contemner can possibly take the plea of ignorance of law or the legal implication of the expressions that he used in the petitions for transfer of cases from one court to another. Apparently, Shri Nayak was so much obsessed that he was blind to the fact that his expressions might have serious repercussions in undermining the judiciary and shaking the confidence of the people in the administration of justice. In a recent decision of a Division Bench of this Court consisting of Narasimham, C. J., and myself, in *Surendra Mohanty v. Nabakrishna Choudhury*<sup>2</sup>, we expressed that the real test in cases of contempt is not the intention of the alleged contemner but the effect of undermining or lowering the Court in the estimation of the public and its tendency or likelihood to so undermine or lower the Court : *Rex v. Dolan*<sup>3</sup>,

The punishment for contempt is inflicted not for the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of the attack but for protecting the Public and specially those, who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the Tribunal is undermined or impaired. Nothing is more incumbent on the 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 : *McLeod v. St. Aubyn*<sup>4</sup>, In the matter of Tushar Kanti Ghosh, ILR 63 Cal 217 (FB). The essence of the offence is that it is against the public not the Judge, an obstruction to public Justice : In the matter of Bahama Islands, 1893 A. C. 138.

21. Mr. Harihar Mohapatra, learned counsel for Shri Nayak with his usual clarity ably argued this case before us. The gist of Shri Nayak's contention throughout the proceedings before us was essentially one of justification for his statements and laid special stress on the entire background which we very seriously took into consideration. It was contended that if the lower court

deserved remarks, it would not amount to contempt. Nobody disputes that proposition. If Shri Nayak confined his remarks against the lower Court within the limits permissible by law, that is to say, by way of a grievance against the procedure adopted by the Rent Suit Collector, that would have been a different matter altogether. Shri Nayak, however, exceeded the limits and went out of his way not only to malign the personal integrity and judicial honesty of the lower court but also directly attacked the whole administration of justice headed by the Hon'ble Chief Justice of the State. The possible effect of his statement was to create in the mind of the public that the head of the Judiciary in the State was exploiting his position through his wife and exercising undue influence on the subordinate courts to serve his own personal ends. In other words para 3 of the offending passage meant that nobody was safe in the State of Orissa, if anybody had any litigation with any near relation of the Chief Justice of Orissa such as his wife, as in the present case, he would not get justice in any Court in the State of Orissa. This passage is bound to give rise to serious misgivings in the mind of the general public regarding the Judicial administration of the State. Such contempt of grave nature, must, we are afraid, be stopped at any cost "without fear or favour" in the language of Chief Justice Derbyshire in ILR 63 Cal 217 (FB).

22. It was argued on behalf of Shri Nayak that virtue is not a monopoly of the Court. True enough, as Lord Atkin observed in *Ambard v. Attorney-General*<sup>5</sup>

"Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful, even though outspoken comments of ordinary men."

The Courts, however, are not too sensitive or touchy in this respect. The dignity of the Court is not so, frail as to be easily affected by casual remarks or comments. But that is not the case before us. Here, it is a direct attack on the integrity and honesty of the Court and it brought to scandal and maligned even the Chief Justice of the State!. In any event, the lost two sentences of the offending passage have a tendency or

likelihood to undermine or impair the integrity and honesty of not only the lower Court but also of the High Court. Such tendency or likelihood is sufficient for holding contempt.

23. In *M.G. Kadir v. Kesri Narain Jaitly*<sup>6</sup>, the facts were that it was brought to the notice of the High Court that one Kesri Narain Jaitly had filed in the court of the Munsif, West Allahabad, an application which contained defamatory statements about the Chief Justice of the Allahabad High Court - statements which amounted to contempt of Court. Paragraph 4 of the application containing the offending passage, according to the translation which had been prepared for the High Court were as follows :

"Sir Iqbal Ahmad aforesaid was not a qualified Judge for the hearing; of the revision for the reasons given below and as the decision and the order of the said Hon'ble Judge is null and void and unenforceable and this Court is not bound thereby. In order to do justice to the defendant, this Court should take proceedings in accordance with the powers vested in it."

"The said Hon'ble Judge, through personal grudge and malice, without any reasonable ground, put the defendant to disgrace and insulted him in open Court....."

It cannot be doubted that the allegations made in the said passage against the Chief Justice acting in judicial capacity amounted to grossest contempt. The High Court while sentencing the contemner to simple imprisonment for a period of two months observed as follows :

"Contempts of Court are becoming very much too common and we must put a stop to them, if we possibly can, not in the interest of the individual Judges but in the interest of the administration of justice. All efforts to destroy public confidence in the judiciary are exceedingly mischievous. Attempts to slander judges in the hope that they will be influenced to decide future cases of a particular class in one way or another must be rigorously suppressed. Judges must not be dragged into the arena of controversy. No person must be allowed to interfere with Courts of justice either by attempting to influence their decisions by anything done outside the Court or by attempting to set their orders at naught."

In the light of these observations we have to decide this matter in the interest of the public and not for vindication of either the Court or of the judges in their personal private capacity.

24. Coming now to consider the effect of apology Shri Nayak purported to offer, in possible mitigation of the punishment for the contempt he is found to have committed, we now proceed to consider whether the purported apology was a sincere expression showing his contriteness or it was a mere pretence of an apology.

25. In an affidavit dated 21-9-1955 filed in the said writ petition O. J. C. No. 190 of 1955 before the High Court Shri Nayak, while recording the compromise between himself and the landlord, begged to withdraw the allegations but there is no mention of apology in the said affidavit. In a statement subsequently filed in the lower Court by Shri Nayak on 30-9-1955 referring to the said compromise that was effected between himself and the landlord, in paragraph 4 he purported to sincerely regret for having made some allegations and for the language : used in the transfer petition and apologized for the same, and also that he did not mean any reflection directly against anybody. This paragraph 4 on which Shri Nayak relied as purported apology does not specifically refer to apology to Court. In our view, the said statement while recording the terms of the compromise between the parties inter se, read as a whole, could not have meant in that particular context any apology to Court. We rather take the view that Shri was, in fact, apologizing to landlord for the allegations and the language used in the transfer petitions. If it was only an apology to the landlord, which in our view it was, this was not sufficient. In contempt proceeding's it is the honour of the Court which is involved - a matter which could not be compromised between the parties, nor could it be compounded by way of compromise between the parties. In paragraph 3 of the said statement Shri Nayak, after recording the terms of the compromise in the previous two paragraphs, stated that "in any view no further questions arise or continue." This was Shri Nayak's own judgment in his case, meaning thereby that after Shri Nayak had paid to the landlord a consolidated sum of Rs. 3,354/- (out of total claim of about Rs. 4,000/-) in full satisfaction of all landlord's dues against him and further that he did not press the transfer petition and had withdrawn the same. Shri Nayak took the view that the matter must end there and no further question arose. Shri Nayak evidently forgot that there was a third party concerned, namely, the court itself. Having regard to the contest, background and manner in

which it has been expressed, we do not accept the purported apology contained in the statement of Shri Nayak dated September 30, 1955 apology to Court.

26. Then Shri Nayak in his affidavit dated 30-7-1956, in reply to the charges contained in the show cause notice, purported to withdraw the allegations he had stated in the transfer petitions before the District Collector and offered unconditional apology for the same, which he expressed in paragraph 16 of the said affidavit. In the same breath and in the same affidavit, in subsequent paragraphs 17, 18 and 19 he justified his statements in the transfer petitions stating that they did not amount to contempt of Court and were by way of a grievance against the procedure adopted by the Rent Suit Collector. This, in our view, is an inconsistent position and untenable in law. The contemner in the same breath cannot blow hot and cold, or approbate and reprobate at the same time. We cannot see how he on the one hand offers unconditional apology and in the same breath pleads justification. In *M.Y. Shareef v. Judges of Nagpur High Court*<sup>7</sup>, the Supreme Court held that there cannot be both justification and apology. The two things are incompatible. Again, an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. In the light of the Supreme Court decision it is now settled law that mere apology is not enough. Besides, we have to consider the background in the light of the facts both antecedent to the offer of apology as also Shri Nayak's subsequent conduct right up to the proceedings before us. His attitude in our view has been throughout one of obstinacy-bravado.

27. Therefore, our findings in respect of Shri Nayak are that he exceeded the limits of his right permissible under law in the matter of filing the transfer petitions in question and that such excess amounted to contempt of Court and lastly that the apology purported to be offered by him lost its effect and was a mere pretence for reasons fully stated above. B. Re : Shri B.K. Rath Advocate and Shri N.M. Patnaik, Pleader.

28. In view of our findings against the principal contemner Shri Nayak, the consideration of the part played by his lawyers in this episode became necessarily much simpler. We would in this connexion only refer again to the Supreme Court decision in AIR 1955 SC 19, as an authority directly on the point regarding the conduct of two counsel who had signed along with their client an application for transfer. The Nagpur appeal to the Supreme Court arose out of certain observations made by Rao and Deo, JJ. of the Nagpur High Court when in course of hearing of a matter before them in which they expressed certain views which obviously were misunderstood to mean that their Lordships were prejudiced against the aggrieved party. As a sequel, an application was made to their Lordships for transfer of the case from the Bench hearing the matter to another Bench of the High Court on the ground that the observations made by their Lordships created a *bona fide* belief in the applicant's mind that they were prejudiced against him and had made up their minds and indicated that he shall have to go in appeal to the Supreme Court and that the observations and references to the Supreme Court were absolutely unnecessary and left no doubt in the applicant's mind that he would not receive justice at the hands of the Hon'ble Judges of the High Court. On those allegations, the Nagpur High Court ordered notices to be issued to the principal contemner along with the two counsel who also signed the transfer petition to show "cause why they should not all be committed for contempt. The High Court held that the transfer petition impeaching the impartiality of the Judges constituted contempt because the judges were scandalized with a view to diverting the due course of justice and the contemnners were found guilty of contempt. On appeal, the Supreme Court

upholding the finding of the High Court, referred to Advocates' responsibility in matters of signing transfer applications containing allegations of such offensive character. The observations of the Supreme Court were mainly directed against the misconception amongst a section of the Nagpur Bar about the Advocates' responsibility in such matters, and the Supreme Court observed that such misconception required to be rooted out by a clear and emphatic pronouncement. It was accordingly held that counsel who sign applications or pleadings containing matters scandalizing the Court without reasonably satisfying themselves about the prima facie existence of adequate grounds therefore with a view to preventing or delaying the course of justice, are themselves guilty of contempt of Court and it is no duty of a counsel to his client to take any interest in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications. The Supreme Court in that case proceeded further and observed that once the fact is recognized, as was done by the Nagpur High Court, that the members of the Bar have not fully realized the implications of their signing such applications and are firmly under the belief that their conduct in doing so is in accordance with professional ethics, it has to be held that the act of the two counsel in the Nagpur case was done under a mistaken view of their rights and duties. The Nagpur Advocates thought that it was necessary to have the question of their conflicting duties to client and Court settled and any effort on the part of the counsel to have that point settled could not be regarded as contumacy or a circumstance which aggravated the contempt. For this reason the Supreme Court decided that the unqualified apology by the advocates to the Supreme Court and to the High Court should be accepted. The Supreme Court, however, administered a strong admonition and warning for their conduct.

29. It is pertinent to remember that this decision of the Supreme Court was made as early as 15-10-1954, that is to say, more than seven months before the transfer petitions in question in the present case before us were signed and filed on 19-5-1955 by when Shri Rath and Shri Patnaik as lawyers should have or were expected to have known about the actual legal position already clarified by the Supreme Court as aforesaid. In any event, so far as the legal profession in Orissa was concerned, there was no uncertainty as to the legal position in 1955 because as early as 1929 a Full Bench of the Patna High Court in the matter of S. Mukhtar, Madhepure, AIR 1929 Patna 151 had clearly expressed that the duty of the legal profession is a very serious one both with regard to applications for transfer and also in respect of pleadings.

30. Now coming to deal with the conduct of the said lawyers in the present case, it appears, from records that from the very beginning and during the trial of the rent suits before the Rent Suit Collector, Shri Rath was the Advocate for Shri Nayak. The pleader Shri N.M. Patnaik came into the picture from January or February, 1955 and has since been jointly appearing with Shri Rath for Shri Nayak. Therefore, at the time the transfer petitions were filed in May, 1955 both Shri Rath and Shri Patnaik were the lawyers acting on behalf of Shri, Nayak. It further appears that on 13-4-1955, Shri Nayak gave Vakalat (Ex. 3) to both Shri Rath and : Shri Patnaik when the first transfer petition and the Vakalat were filed. Thereafter, with regard to the two subsequent transfer petitions, it is alleged that they were drafted by the lawyers and along with their Vakalats (Ex. 3(a) and Ex. 3(b)) the said transfer petitions were filed before the Additional District Collector. Shri Rath, however, subsequently stated that he had not signed the transfer petitions in question nor drafted the same.

31. One significant fact is that in the first transfer petition dated 13-4-1955 (Ex. 1), no offensive allegations or statements appear to have been made. Since 13-4-1955 no other case either O. S.

No. 1342/53 or O. P. No. 19/54 was taken up by the Court for hearing. There was no intervening or change, of circumstances to compel the contemnors to make these offensive statements in the sub-Sequent transfer petitions. Therefore there was absolutely no justification for making groundless, reckless and scandalous statements in the two sub-sequent applications for transfer. It was contended on behalf of the landlord that from these facts it was clear that the two lawyers deliberately helped or abetted Shri Nayak in making the said allegations in the subsequent transfer petitions. The two lawyers in their respective affidavits dated 30-7-1956 in reply to the show cause notice took their stand that the verified petitions for transfer of the rent suits from the file of the Rent Suit Collector were filed by Shri Nayak and that the facts stated therein were verified to be true and that as such they accepted the Vakalats. They both contended that they did not abet Shri Nayak in any way in making such statements. They both took the plea of justification in that the statements made in the transfer petitions or any action of theirs in accepting the Vakalat in those cases did not amount to contempt as the statements, according to him, were made before a higher Court to justify the apprehension of Shri Nayak and that the said statements purported to be related to certain facts in the appraisal proceedings. I have already discussed that there was no justification for any alleged grievance against the Rent Suit Collector in holding the local inspection in connexion with the appraisal proceedings which was done by consent of both parties as will appear from the order-sheet of the appraisal proceedings in the Rent Court (Ex. 5); nor was there any justification for the allegations made in the transfer petitions in question (Ex. 1(a) and Ex. 1(b)). In view of the legal position as clearly laid down by a Full Bench of the Patna High Court as early as 1929 as aforesaid and then most emphatically expressed by the Supreme Court in October, 1954, in the appeal from the Nagpur High Court cited above, the lawyers, - who by then knew or were expected to have known the actual legal position as aforesaid, had no justification in becoming parties to the said transfer petitions in question in the manner aforesaid. Both the lawyers failed in their duty as counsel. They should have advised Shri Nayak to refrain from making these wild allegations in the transfer petitions.

32. It is unfortunate that neither of the two lawyers offered apology to Court until in course of hearing before us in July, 1958, that is to say, more than three years after they had signed the said transfer petitions in question on 19-5-1955, Shri Rath, who is an Advocate of Berhampur Bar in the District of Ganjam, aged 68 years, had long experience, having put in 38 years of practice at the Bar. We are surprised that these two veteran lawyers would have shown such utter disregard for dignity and prestige of the Court in which they themselves have been practising for such long years. In course of the hearing before us both Shri Rath and Shri Patnaik filed their respective affidavits in identical language expressing unconditional apology to the High Court and the lower Court. Such belated apology offered after more than three years has no value. Their apology can be regarded as an afterthought put forward in the hope of avoiding the wrath to come - *Qari Nasir Ahmed v. Anis Ahmed Abbasi*<sup>8</sup>, We were not satisfied as to sincere contriteness on the part of either of these two lawyers. In any event, they having tendered unconditional apology there is no doubt that they are guilty of contempt. The Supreme Court has expressed that an apology is not a weapon of defense to purge the guilty of their offence; nor is it intended to operate as a universal panacea, Apology amounts to admission of guilt of contempt of Court and therefore we find that both the lawyers are guilty of contempt of court.

C. Re : Punishment.

33. This now leads us to the ultimate question as to what punishment should be meted out to the contemnors. In measuring punishment, we have to keep in view both the qualitative and

quantitative aspect of punishment, having regard to the nature of the offence and the nature of the offender.

34. The guiding principle is that the measure of punishment should depend on the facts and circumstances of each case. The real object of punishment is the prevention of the offence and the measure of punishment varies according to the prevalence of a particular form of offence. If the contempt is of serious nature, then even a fine of the maximum amount permitted by law is not sufficient. In that event anybody, with means in a position to pay such amount, will throw the money at the face of the Court and get away without the least compunction for the offence that he might commit and repeat contempt whenever he chooses. That is not the intention of the penal measure of punishment.

35. In case of gravity of the offence, the contemner deserves deterrent punishment not only by way of punishing him individually but to set an example to society at large that such loose expressions with regard to Court must not be used. In the higher interest of society Courts are sometimes constrained to take such serious view as was taken by this High Court in *State v. Radhagobinda*<sup>9</sup>, where my learned brother Mohapatra, J., in his judgment clearly expressed the view that if we do not take any serious notice of such in act, we would be failing in our duties if we do not maintain an atmosphere of complete assurance to the public of the State of fully unbiased and fair trial. There can be no ideal system of administration of justice and the Courts cannot function properly unless an exemplary punishment is awarded in such cases, leaving a deterrent effect. In such cases, it is not the quantity but the quality of the measure that matters.

36. For judicial precedents on the subject, several decisions were considered by us, namely, *Advocate-General v. Shri Ramanatha Goenka*<sup>10</sup>, ILR 63 Cal 217 ; AIR 1945 Allahabad 67; AIR 1941 Oudh 67; AIR 1954 Orissa 1. These decisions furnish us a representative view of the different High Courts in India with regard to the nature and measure of punishment for contempt keeping in view both its qualitative and quantitative aspect, having regard to the nature of both the offence and the offender, according to the facts of each case.

37. While considering punishment in this case, we took note of the most' redeeming fact that on the last day of the hearing before us, the learned counsel for the contemnors, in his address to the Court thoughtfully and wisely submitted that the contemnors were ready to tender publicly in open Court from the dock, unconditional apology, if so required. This move was indeed an extenuating circumstance.. Even so, the matter, however, cannot be allowed to end there. The contempt is too grave and this Court has a duty to perform in the matter. This Court cannot allow attacks of this nature on Courts without taking serious action. The contemnors will have to be punished and the sole question is what shall be the punishment. If unconditional apology had not been offered to be tendered publicly in the manner it was done on the last day of the hearing of this matter before us, the only proper course would have been to award the maximum, punishment allowed by law. But in view of the extenuating circumstances as aforesaid, instead of taking the extreme course, we have decided to punish the contemnors with fine. Shri Brundaban Naik is directed to Day a fine of Rs. 300/- and Shri Balakrishna Rath, Advocate and Shri N.M. Patnaik, pleader, are directed to pay a fine of Rs. 150 each.

**S. P. Mohapatra, J.**

38. I agree.

Contemners punished.

Cases Referred.

<sup>1</sup> AIR 1922 Bom 261

<sup>2</sup> ILR 1958 Cut 195 at p. 229 : (AIR 1958 Orissa 168 at p. 181)

<sup>3</sup>(1907) 2 Ir R. 260

<sup>4</sup>(1899) AC 549; Queen v. Gray, (1900) 2 QBD 36 at p. 41

<sup>5</sup>(1936) AC 322 at p. 335: (AIR 1936 PC 141 at p. 146)

<sup>6</sup> AIR 1945 All 67

<sup>7</sup> AIR 1955 SC 19

<sup>8</sup> AIR 1941 Oudh 67

<sup>9</sup> AIR 1954 Ori 1

<sup>10</sup> AIR 1942 Mad 711 (1) (F3), In re a Firm of Solicitors, AIR 1942 Bom 331