PATNA HIGH COURT

Legal Remembrancer

Vs

Bibhuti Bhusan Das Gupta

Criminal Misc. Case No. 8 of 1953

(Das and Rai, JJ.)

01.09.1953

JUDGMENT

Rai, J.

1. This case was started on an application of the Legal Remembrancer, Bihar, representing the State of Bihar for issue of notice on the opposite party to show cause why they should not be proceeded against for contempt of court.

2. The events leading to the filing of the present application may shortly be stated as follows. On the 18th of January, 1953, the Sub-Inspector of Police in charge of Banawan Police Station, in the District of Manbhum, made a report to the sub-divisional Magistrate of Purulia to the effect that there was likelihood of a breach of the peace between two groups of people in Bandwan over the staging of a drama called "Desher Dabi" on the 23rd of January, 1953, by one of the groups. The police officer prayed for the issue of a notice under section 144, Criminal Procedure Code, against both the parties. Acting on the aforesaid report of the police officer, the sub-divisional Magistrate of Purulia passed an order under section 144, Criminal Procedure Code, and issued notices against both the parties named in the report not to stage the drama or to do any act likely, to cause a breach of the peace and to show cause, if any, on the 28th of January, 1953. In spite of the service of the notice under section 144, Criminal Procedure Code, the drama was staged at the premises of the Rishi Nibaran Chandra Vidyapith on the 23rd of January, 1953. On the 26th of January, 1953, an article was published in a weekly Bengali newspaper called "The Mukti" in its issue dated the 26th of January, 1953, under the head line: "The incident of section 144 promulgation in Bandwan : the newest sample of Governmental highhandedness". The petitioner has attached a copy of the article as annexure A and an English translation thereof as annexure B to the petition. The opposite party No. 1, Sri Bibhuti Bhusan Das Gupta, is the editor of the newspaper and opposite party No. 2, Sri Ramchandra Adhikary is its printer and publisher. The article in question was published over the name of Sri Arun Chandra Ghosh, opposite party no. 3. According to the petitioner, the opposite party are guilty of contempt of court on the ground of their having published the article in question during the continuance of the proceeding under section 144, Criminal Procedure Code, and on the ground of their having scandalised the Sub-divisional Magistrate of Purulia in particular and the magistracy of that district in general by

calling them conspirators with the police and the ministry, and further on the ground of their having interfered with the due course of justice and proper administration of law. According to the petitioner, the opposite party are guilty of contempt of court of a grave nature.

3. The opposite party have appeared and filed three sets of written statements. Opposite party 1 and 2 have accepted the responsibility for publishing and printing the article in question. They have also averred that in case it be found that they had committed contempt of court by publishing or printing the article they will deem it a privilege to suffer any punishment that may be inflicted on them for the same. Opposite party no. 3, Sri Arun Chandra Ghosh, has admitted to have written the article in question. In paragraph 6 of his written statement he has pleaded :

> "That the article in question did not tend to and could not have tended to pollute "the fountain of Justice" "proper administration of law" nor even calculated to do either of them. On the contrary the object of the article was to protect the fountain of justice from being polluted by the local police and magistracy acting in league and with the active support and connivance of the State Government and its high officials and to keep the administration of justice free from unclean politics which was invading the sacred citadel of justice and jeopardising the civil rights of the people of Manbhum."

In paragraphs 12 and 13 of his written statement he further averred that the magistracy in Purulia was in league with the local police. Paragraph 13 of the written statement runs thus :

> "That the Bandwan matter referred to in the aforesaid article is but a link in the long chain of events in pursuit of the neo-imperia-list policy of the Ministry of Bihar by the local police and magistracy in league and directed and inspired by the Imperialist Ministers of the State of Bihar."

In paragraph 17 of his written statement opposite party no. 3 pleaded :

> "That in writing the article in question the intention of this respondents had been to vindicate justice and hold the standard of justice high and if by doing that he has committed contempt of court he is prepared for any punishment for the same."

4. Learned counsel for the petitioner contended before us that the article in question had been written and published with the object of scandalizing the Sub-divisional Magistrate in particular and the magistracy of the district in general so as to undermine the confidence of the public in them, and to hinder the administration of justice. According to him, all the three members of the opposite party were aware of the pendency of the proceeding under section 144, Criminal Procedure Code; but in spite of that they published the article wherein an evil motive had been attributed to the learned Sub-divisional Magistrate of Purulia in passing the order under section 144, Criminal Procedure Code. The Sub-divisional Magistrate, nay the entire magistracy, have been denounced as acting in conspiracy with the police of the district. He contended that some passages in the article do amount to contempt of court for which the opposite party are liable to be punished under the Contempt of Courts Act (Act XXXII of 1952).

5. Mr. Sinha further submitted that what constitutes a "contempt of court" has been the subject-matter of discussion in several decisions of English and Indian Courts. In this connection he referred to the decisions in the cases of - '*Queen v. Gray*[1]*'*, (A); - '*Emperor v. Murli Manohar Prasad*[2]*'*, (B); - '*Andre Paul Terenee Ambard v. Attorney-General of Trinidad, Tobago*[3]*'*, and - '*in the matter of Tulsidas Amanmal*[4]*'*,

6. In the case of - '1900-2 Q B 36 (A), Lord Russell of Killowen had observed :

> "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke L. C. characterised as 'scandalising a Court or a Judge'. That description of that class of contempt is to be taken subject to one and an important qualification, Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen."

This view of Lord Russell has been followed by their Lordships of the Judicial Committee and also by the various High Courts in India. In the case of - 'AIR 1936 PC 141 ', Lord Atkin also quoted with approval that portion of the judgment of Lord Russell which I have quoted above. Lord Atkin further observed in this connection :

> "But whether the authority and position of an individual Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way : the wrongheaded are permitted to err therein : provided that members of the public abstain from 'imputing improper motives' to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."

The tests laid down by the above two English decisions have been adopted in the cases of - "AIR 1929 Patna 72 ' and - 'AIR 1941 Bombay 228 '.

7. According to Mr. Sinha, the article in question does, in clear terms, impute evil motives to the

learned Sub-divisional Magistrate of Purulia who had passed the order under section 144, Criminal Procedure Code. He submitted that the article does not stop there; it goes further and denounces the entire magistracy as being in league with the police of the district. In this connection Mr. Sinha drew our attention to several passages in the article in question including the following passage :

> "After the promulgation of notice under section 144 on the 9th Magh (23rd January), I declared in Bandwan on my own responsibility in a procession that it was not a law if any conspiracy be made in the name of law and it should not be obeyed and consequently the play would be acted on our responsibility and in it the conduct of police of Bandwan and the Inspector of Balrampur and the S. D. O................ real breakers of law, would be discussed and it was made known to the police."

At another place in the article it was said :

> "He who applies the law in such a manner on the police report is really actively participating in conspiracy and high handedness." Could there be a more glaring instance wherein an attempt was made to undermine the confidence of the people in the justice administered by the Courts of Magistrates, urged Mr. Sinha?

8. Learned counsel for the petitioner further submitted that the Courts of Magistrates are subordinate to the High Court within the meaning of section 3 of the Contempt of Courts Act, and this Court is competent to take action under the Act if his argument is accepted that several passages in the article do amount to contempt of court.

9. Mr. B. C. Ghosh, learned counsel for the opposite party, contended that as the Contempt of Courts Act provides no definition of the expression "contempt of court", the Act will be deemed to impose an unreasonable restriction on the fundamental right granted to the citizens of the Indian Union under article 19(1) (a) of the Constitution. He submitted that as the Act in question does impose an unreasonable restriction on the fundamental rights of the people of this Union, it is void. In this connection he directed our attention to Article 19(1)(a) and to Article 19(2), as amended, of the Constitution which nun thus :

> "19(1)(a) All citizens shall have the right to freedom of speech and expression."
> "19(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

In my opinion, this submission of Mr. Ghosh is without any merit. The expression "contempt of court" has not been defined in the Constitution itself, yet it has been used at another place under article 215 which runs thus :

> "Every High Court shall be a court of record and shall have all the powers of such a Court including the power to punish for 'contempt' of itself."

Thus, it is quite clear that the framers of the Constitution had in their mind the well recognised judicial interpretation of the term "contempt of court" while incorporating it in Articles 19(2) and 215 of the Constitution. Similarly, the Constitution has provided for issue of writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari without defining those writs in the Constitution itself. Thus, it is quite clear that the framers of the Constitution considered it unnecessary to define those terms as they all carry a set meaning given to them by well known judicial pronouncements of the English and Indian Courts. In my opinion, the Contempt of Courts Act cannot be held nugatory on the ground of absence of a definition of the term "contempt of court" in that Act. It may also be mentioned that Mr. Ghose failed to point out any unreasonableness in any of the provisions of the Contempt of Courts Act. In my view, there is no merit in this contention of Mr. Ghose which must be rejected.

10. Mr. Ghose thereafter characterised the order under section 144, Criminal Procedure Code, as merely a police action. According to him, the Sub-divisional Magistrate was not functioning as a court while passing that order because he does not in that proceeding examine witnesses, nor has he been invested with any power to enforce the orders passed by him. While making this submission Mr. Ghosh, probably, had in his mind the following passage from the decision in the case of - *'Mt. Dirji v. Smt. Goalin'*[5], (E) :

> "It is evident that a Court cannot function properly unless it is armed with certain powers, such as the power to receive evidence bearing on the matter which it is called upon to decide, the power to enforce the attendance of witnesses and the production of documents and material objects before it and 'the power to pronounce judgment and carry it into effect between the person and parties who bring a case before it for decision' (See Bouvier's Law Dictionary). Thus a Court must not only be charged with judicial function but must also be invested with judicial powers."

In that case the question for decision was whether a commissioner appointed under the Workmen's Compensation Act, 1923, was a court, and it was held there that such a commissioner performs the functions of a court. A similar question was agitated in the case of - '*Abdul Razak v. Kuldip Narain*[6]', where it was held that the Election Commissioner referred to in the Bihar District Board Election Petition Rules, 1939, was Subordinate to High Court within the meaning of section 115, Civil Procedure Code. In the case of - '*Hasan v. Mohammad Shamsuddin*[7]', a Division Bench of this Court held that the prescribed authority under section 15 of the Payment of Wages
Act, 1936, functions as a Court.

11. But apart from decided cases, the Code of Criminal Procedure itself has, under Chapter II, made provisions for constitution of Criminal Courts and Offices. Section 6 of the Code provides :

> "Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British. India,

namely,

I - Courts of Session :

II - Presidency Magistrates :

III - Magistrates of the first class :

IV - Magistrates of the second class :

V. - Magistrates of the third class."

The Magistrates of 1st, 2nd and 3rd class do hold courts in the district of Purulia. The Sub-divisional Magistrate is a Magistrate of the 1st class. The order under section 144, Criminal Procedure Code, was passed in the present case by the court presided over by him. Sometimes Courts have to pass prohibitory orders, but they do not thereby cease to be Courts. It is also true that Magistrates have sometimes to perform executive functions as well; but that in itself will not debar them from acting as Courts as provided by Section 6, Criminal Procedure Code. In my view the Court of a Magistrate is a Court Subordinate to High Court within the meaning of Section 3 of the Contempt of Courts Act.

12. Mr. Ghose next submitted that the powers conferred on this Court under section 3 of the Contempt of Courts Act should be exercised sparingly after the enforcement of the Constitution. In this connection Mr. Ghosh relied on the decision of - '*McLeod v. St. Aubyn*'[8], (H). The relevant passage out of this judgment on which Mr. Ghosh laid great emphasis runs thus :

> "It is a summary process, and should be used only from a sense of duty and under the pressure of public necessity, for there can be no landmarks pointing out the boundaries in all cases. Committals for contempt of Court by scandalising the Court itself have become obsolete in this country. Courts are satisfied to leave to public opinion, attacks or commets derogatory or scandalous to them. But it must be considered that in small colonies, consisting principally of coloured populations, the enforcement in proper cases of committal for contempt of Court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of and respect for the Court."

Mr. Ghosh also referred to the decisions in the cases of -'*Debi Prasad v. Emperor*'[9], and - '*Parashuram Detaram v. Emperor*[10]', In my view these decisions have no application to the facts and circumstances of the present case. In the case of - 'AIR 1943 PC 202 ', the appellants before the Judicial Committee had been convicted under
the Contempt of Courts Act for publishing the following news item in a newspaper called the "Hindustan Times":

> "Judicial Officers for war work. Raising Subscriptions. New Chief Justice's Circular" (From Our Correspondent.) Meerut, Aug. 1. With the judicial officers also now co-operating actively in the war efforts, the 'efforts' are bound to receive a heavy push forward. The judicial officers all over the province have been, I reliably learn, asked by the new Chief Justice of the Alianabad High Court, who, it is understood, has been requested by His Excellency the Governor for co-operation in war efforts, to raise subscriptions for the war funds. The judicial officers raising money make it quite clear to

> the persons whom they ask to contribute that the donations were voluntary and they were not exercising any compulsion in asking for funds. They could donate as much or as little as they pleased."

It was held in that case that the editorial committee wrongly mentioning in the news item about the issue of a circular by the Chief Justice of the Allahabad High Court to the Judicial Officers under his jurisdiction enjoining on them to raise contributions to war fund does not amount to criticism of any judicial act of the Chief Justice or any imputation on him for anything done or omitted to have been done by him in the administration of justice, and in the circumstances the words used in the comment were not capable of being a contempt of court. In that case the Chief Justice was not alleged to have passed any order functioning as a court. In the present case, however, the order passed under section 144, Criminal Procedure Code, was an order passed by the Subdivisional Magistrate of Purulia as the presiding officer of a Court.

13. Briefly stated, the facts in the case of - 'AIR 1945 PC 134 ' were as follows. The appellant before their Lordships was an unsuccessful plaintiff in a suit before the High Court of Bombay. He was taxed in the suit for costs etc. He filed an application for review of the order of taxation. During the course of hearing, counsel for the opposite party stated that the appellant was misleading the court as to the nature of the issues raised in the action. To this the appellant replied :

> "I do not keep anything back at all. My fault is that I disclose everything, unlike members of the Bar, who are in the habit of not doing so and misleading the court."

This caused a protest from the counsel for the opposite party; whereupon the appellant immediately apologized and expressed his regret for having used an unfortunate expression in the heat of the argument. Later, in dealing with the taxing master's statement, with regard to the allowance of discretionary items, the appellant said :

> "It is customary for the taxing masters to write what is written at the end of the paragraph, but is it considered at all?"

No protest or observation on this statement was made either by Bench or Bar at the time when it was uttered, nor when judgment was given. On the next day learned counsel for the opposite party accompanied by the Advocate-General of Bombay appeared and moved the Court for punishing the appellant for contempt in using the language he did regarding the bar. During the course of the argument the learned Judge himself raised the question regarding the words used by the appellant the previous day concerning taxing matters. The appellant was convicted for contempt of court by the learned Judge for both the observations made by him. Their Lordships of the Judicial Committee, however, held that the words used by the appellant respecting the Bar did not and could not amount to a contempt of court, and consequently there was no jurisdiction in the learned Judge to exercise his summary power in respect of them With respect to the words used by the appellant against the taxing masters their Lordships of the Judicial Committee observed :

"With regard to the words relating to the taxing masters, no doubt if a litigant were to suggest in court that its officers were corrupt or habitually failed to carry out their duties the court might consider it a contempt, though if it were only the latter that was suggested it would be unwise to do so. But when all the circumstances here are considered, and especially that when the words were uttered there was no reproof or even comment from the Bench, it is impossible to suppose that they were treated, or, indeed, intended, as more than a tactless way of suggesting that taxing masters were apt to deal somewhat summarily with such matters as were then in question. It was not till the Advocate-General was moving for punishment on the appellant in respect of the other words that any notice seems to have been taken of the matter, and then by the Judge himself, somewhat late in the day as it seems to their Lordships. In their opinion they afford no reasonable grounds for adjudging the appellant guilty of so grave an offence as contempt of court, and on this point also their Lordships are glad to find that their opinion and that of the Chief Justice and Sen, J., coincide.

Their Lordships would once again emphasize what has often been said before, that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised, and to use it to suppress method of advocacy which are merely offensive is to use it for a purpose for which it was never intended. The Bar can surely maintain its dignity and prestige without having to invoke this jurisdiction."

14. In my opinion, the imputation in this case, however, is of a graver nature. Here the article attributes an evil motive to the entire magistracy of the district including the Sub-divisional Magistrate of Purulia who, according to the article, has passed the order under section 144, Criminal Procedure Code, in furtherance of the conspiracy between the magistracy and the police. It is true that the powers conferred by the Contempt of Courts Act should be exercised sparingly, yet as it is intended to safeguard the dignity of courts against wanton attacks by reckless persons imputing evil motives to them, one should not hesitate in exercising those powers if and when the circumstances of the case demand it.

15. Mr. Ghose thereafter referred to two recent decisions of the Supreme Court in the cases of - '*Rizwan-Ul-Hasan v. State of Uttar Pradesh'*[11], and - '*Brahma Prakash Sharma v. State of Uttar Pradesh*[12]', In the former case, during, the pendency of a proceeding under section 145, Criminal Procedure Code, before the Sub-Divisional Magistrate of Jalaun, the District Magistrate had forwarded to him an application sent on behalf of one of the parties to the proceeding. The application was accompanied with a recommendation from the secretary. District Congress Committee. The Sub-divisional Magistrate had returned that application with a direction to file a formal petition of complaint. The District Magistrate had thereafter returned the application to the applicant drawing his attention to the remark of the Magistrate that a regular complaint petition should be filed. The Collector of the District and the Secretary of the District Congress Committee were both proceeded against under the contempt of the Courts Act and were convicted by the High Court of Allahabad. The Secretary of the District Congress Committee accepted the judgment of the High Court; but the gentleman who had acted as the District Magistrate at the relevant time moved their Lordships of the Supreme Court where it was held

that the District Magistrate had forwarded the application to the Sub-divisional Magistrate by way of routine work and by so doing he never intended to interfere with the course of justice in relation to the proceeding under section 145, Criminal Procedure Code, pending before the Sub-divisional Magistrate. Their Lordships of the Supreme Court further held in agreement with the view expressed in the case of - '*Anantalal Singh v. Alfred Henry Watson*[13]', (M), that the jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice and that the purpose of the Court's action is a practical purpose and it is reasonably clear on the authorities that the Court will not exercise its jurisdiction upon a mere question of propriety.

16. The case of - ' AIR 1954 Supreme Court 10 ', was by way of special appeal from a Full Bench decision of the Allahabad High Court reported in - '*State v. Brahma Prakash*[14]', (N), where almost all the points raised by Mr. Ghose had been dealt with and repelled. The facts of the case may briefly be stated as follows. The appellants before their Lordships of the Supreme Court were members of the executive committee of the District Bar Association at Muzaffarnagar within the State of Uttar Pradesh on the 20th April, 1949, the President of the Association sent a copy of the resolutions in question in that case with a covering letter marked confidential to the District Magistrate, Muzaffarnagar. Copies of the resolutions were similarly despatched to the Commissioner of the Division, the Chief Secretary and the Premier of Uttar Pradesh. An application was ultimately filed before the High Court of Judicature at Allahabad for drawing up proceedings against the members of the executive committee of the Bar Association for contempt of Court. The concluding portion of the judgment of the High Court on the question of sentence ran thus :

> "We think the opposite parties acted under a misapprehension as to the position; but they have expressed their regret and tendered an unqualified apology. In the circumstances we accept their apology, but we direct that they
> pay the costs of the Government Advocate which we assess at Rs. 300."

Before their Lordships of the Supreme Court the Attorney General of India who had appeared for the appellants, had laid great stress on the fact that the resolutions passed and the representations made by the appellants in that case were not intended for exposing before the public the alleged shortcomings of the officers concerned. The whole object according to him, was to have the grievances of the lawyers and the litigating public which were genuinely felt, removed by an appeal to the authorities who alone were competent to remove them. According to the learned Attorney General such a conduct of the appellants could not have interfered with the due administration of justice. The relevant portion of the judgment of their Lordships runs thus :

> "It admits of no dispute that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the Courts. It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any

party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened.

There are indeed innumerable ways by which attempts can be made to hinder or obstruct the due administration of justice in courts. One type of such interference is found in cases where there is an act or publication which amounts to "scandalising the court itself" an expression which is familiar to English lawyers since the days of Lord Hard-wick, vide - '*In Re Read and Huggonson'*[15], (O). This scandalising might manifest itself in various ways but, in substance, it is an attack on individual Judges or the Court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character or ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair confidence of people in the Courts which are of prime importance to the litigants in the protection of their rights and liberties.

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It seems, therefore, that there are two primary considerations which should weigh with the court when it is called upon to exercise the summary powers in case of contempt committed by "scandalising" the Court itself. In the first place, the reflection on the conduct or character of a Judge in reference to the discharge of his judicial duties, would not be a contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not by stifling criticisms that confidence in Courts can be created. 'The path of criticism' said Lord Atkin - 'AIR 1936 PC 141 at pp. 145, 146 (C)' - 'is a public way. The wrong headed are permitted to err therein,
provided that members of the public abstain from imputing motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice, or attempt to impair the administration of justice, they are immune'. In the second place, when attacks or comments are made on a Judge or Judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the Judge and what amounts really to contempt of court.

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The position, therefore, is that a defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libellor in a proper action if he chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such Court, it can be punished summarily as contempt. One is a wrong done to the Judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well-established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement, it is enough if it is likely or tends in any way, to interfere with the proper administration of law. Per Mookerjee, J. - 'In re, Motilal Ghose', AIR 1918 Calcutta 988 at p. 994 (P)." Their Lordships of the Supreme Court, on the facts and circumstances of that case, came to

the conclusion that the contempt if any, was only of a technical character, and that after the affidavits were filed on behalf of the appellants tendering an unqualified apology, the proceedings against them should have been dropped.

17. In the present case, however, I find that there is a deliberate attack on the Sub-divisional Magistrate of Purulia attributing an evil motive to him for having passed the order under Section 144, Criminal Procedure Code. The article in question also depicted him as a person wholly unfamiliar with law and devoid of all common sense. There is, in the article, mentioned in a triumphant manner how the order was disregarded and disobeyed at the instance of opposite party no. 3. In my opinion, the article in question not only scandalised the Sub-divisional Magistrate in particular and the magistracy of the district in general, but also intended to interfere with the course of justice administered by the Courts presided over by Magistrates in the district of Purulia. In my opinion, the opposite parties are not entitled to claim on the basis of the above decisions of their Lordships of the Supreme Court that the proceedings against them should have been quashed.

18. Mr. Ghose attempted to justify the aspersions cast on the Sub-divisional Magistrate in the article in question on the ground that no breach of the peace had, in fact, taken place when the drama was actually staged on the 23rd of January, 1953, at the premises of Rishi Mbaran Chandra Vidyapith, Bandwan. He further submitted that after enquiry, opposite party no. 3, Arun Chandra Ghosh, had come to know that none of the persons named as the first party in the proceedings under Section 144, Criminal Procedure Code, whom he could meet had any objection to the staging of the drama. In my opinion, there is no merit in this argument of Mr. Ghosh as well. For aught one knows the breach of the peace might have been averted because the members of the first party respected the order issued under section 144, Criminal Procedure Code, restraining them from doing anything which may tend to create the breach of the peace. Mr. Ghose further submitted that the order passed under section 144, Criminal Procedure Code, had rightly been characterised as a ridiculous one in the article, because it had restrained both the parties from staging the drama. This, according to him, was beyond any imagination as the drama was to be staged by only one section of the people and not by both the sections. I think, while putting forward this argument, Mr. Ghose has, like his client, misappreciated the order. The Magistrate appears to have restrained both the parties not to do any act likely to cause a breach of the peace, and to show cause, if any, on the 28th of January, 1953. Paragraph 3 of the petition filed before this Court does refer to the order in question. It is clear from the article itself that opposite party no. 3 and his associates considered it necessary to make enquiry whether the members of the first party to the notice under section 144, Criminal Procedure Code, were really objecting to the staging of the drama. They alleged to have gone to the locality, contacted all the persons named as the first party in the notice except one Santosh Kumar Das, but none, whom they had met, had objected to the staging of the drama. Well, if the opposite party no. 3 had thought it expedient to make an enquiry about the alleged opposition to the staging of the drama, why did he blame the Sub-divisional Magistrate when he issued notice under section 144, Criminal Procedure Code, for satisfying himself regarding the truth or otherwise of the report made by the police about the apprehension of a breach of the peace? Section 144, Criminal Procedure Code, provides for satisfaction of the Magistrate on the report. There is no provision for making enquiry before issuing the preliminary notice. It is only when parties appear and show cause that the final order is passed. The Sub-divisional Magistrate had fixed the 28th of January, 1953, as the date for showing cause on the notice which had been issued by him on the 19th of

January, 1953. This was not a long interval between the date of issue of notice and the final hearing of the case. In my opinion, the article was intended to cast uncalled for aspersions on the Sub-divisional Magistrate of Purulia which may incite people of the locality to treat his order with scant regard. In my view, the opposite party have committed contempt of court within the meaning of the Contempt of Courts Act. I hold them guilty for contempt of court and sentence them as follows. Sri Bibhuti Bhushan Das Gupta, opposite party no. 1, and Sri Ramchandra Adhikary, opposite party no. 2, are each sentenced to pay a fine of Rs. 150/-, while Sri Arun Chandra Ghosh, opposite party no. 3, is sentenced to pay a fine of Rs. 250/-. It is further ordered that in default of the payment of fine, the defaulters are to be confined in the Patna jail for three months; but they will be released earlier if and as soon as the fines are paid.

19. The opposite party are also jointly and severally liable to pay the costs of the petitioner. I assess the hearing fee at Rs. 150/- only.

Das, J.

20. I agree with my learned brother, and wish to add a few words only as respects the argument based on Article 19 of the Constitution.

21. The argument of Mr. Ghose was that clause (2) of Article 19 as it originally stood saved all existing law relating to contempt of court; but clause (2) as amended by the Constitution (First Amendment) Act, 1951, has narrowed the scope of the clause. He has argued that after the amendment, the operation of any existing law in relation to contempt of court is saved only in so far as it imposes reasonable restrictions on the exercise of the right referred to in sub-clause (a) of clause (1). His contention has been that if contempt of court is given such a wide connotation as to cover every criticism of a Court or the order of a Court, then the law which gives such wide connotation imposes an unreasonable restriction on freedom of speech and expression and must be held to be void. He has said that in the context of the Indian Constitution and the changed circumstances consequent on the attainment of freedom, a criticism of Courts and judicial orders of Courts must be allowed; or else, the freedom guaranteed under sub-clause (a) of clause (1) will be illusory.

22. I think that the answer to the arguments of Mr. Ghose is to be found in the words of Lord Atkin "Justice is not a cloistered virtue". Any and every criticism is not contempt. One of the tests is, to use the words of Mukherjea, J., in - ' AIR 1954 Supreme Court 10 ' whether the criticism is calculated to interfere with the due course of justice or proper administration of law; whether it tends to create distrust in the popular mind and impair confidence of people in the Courts of law. These tests have been part of the meaning of the expression contempt of Court from before the Constitution and are still a part of its meaning - a meaning which the framers of the Constitution must have known when they used the expression. We are giving no wider connotation to it, and it is idle to contend that such connotation imports any unreasonable restriction on freedom of speech and expression.

23. Rightly or wrongly, the opposite party felt that the order under section 144, Criminal Procedure Code, was unjustified and wrong. If they had confined their criticism to such a statement only, no objection could have been taken whether one agreed with the statement or not. But the opposite party went much beyond legitimate criticism : they said that the Sub-divisional

Magistrate was in conspiracy with the police and passed the order out of an evil mind; they imputed evil motives to the entire magistracy and said that defiance of the orders of conspirators should be shown. In saying all this, they were creating distrust in the popular mind and impairing the confidence of people in the Courts of the locality.

24. I do not think that the affidavits filed by the opposite party make out any case of conspiracy on the part of the Sub-divisional Magistrate or the magistracy in general though there are many allegations to that effect. Imputations of this kind pollute the fountain of justice in the sense that they shake the confidence of the people in the Courts a confidence which is the foundation for the protection of their rights and liberties and for the proper administration of justice.

25. The arguments that the Sub-divisional Magistrate passing the order under section 144, Criminal Procedure Code, was a mere executive officer, that the order under section 144, Criminal Procedure Code, had spent its force before the relevant date, that the comments made were on Raj-Karmacharis, that is, executive officers - these do not convince me at all. I agree with my learned brother that the Sub-divisional Magistrate was a Court within the meaning of the Code of Criminal Procedure and subordinate to the High Court, when he passed the order under section 144. The order had not spent its force on the relevant date, and in making the comments they made, the opposite party were also prejudicing the decision in a pending case.
Order accordingly.

Cases Referred.

[1] 1900-2 Q B 36
[2] AIR 1929 Pat 72 (FB)
[3] AIR 1936 PC 141
[4] AIR 1941 Bom 228
[5] AIR 1941 Pat 65 (FB)
[6] AIR 1944 Pat 147
[7] AIR 1951 Pat 140
[8] 1899-AC 549
[9] AIR 1943 PC 202
[10] AIR 1945 PC 134
[11] AIR 1953 SC 185
[12] AIR 1954 SC 10
[13] AIR 1931 Cal 257 at p. 261
[14] AIR 1950 All 556 (FB)
[15] (1742) 2 Atk. 469 at p. 471