

## PUNJAB AND HARYANA HIGH COURT

S. Kapur Singh

Vs

L. Jagat Narain

(Khosla, C.J. Falshaw, J.)

12.04.1951

### JUDGMENT

#### **Falshaw, J**

1. Lala Jagat Narain has been called on. as Editor, Printer & Publisher of an Urdu daily newspaper published at Jullundur called "The Hind Samachar" to show cause why he should not be punished Under Section 3, Contempt of Courts Act, of 1926 with regard to a leading article which -appeared over his name in the issue of the paper dated 12-3-19.

2. The petnr. in the case is Sardar Kapur Singh, I. C. S. against whom an inquiry has been in progress for several months under the Public Servants Innquiries Act XXXVII (37) of 1850. It so happens that the person who has been appointed by the Govt. as the Comr. under the Act to hold this inquiry is my Lord the Chief Justice of this Ct. The passage in the article in Question which is complained against by Sardar Kapur Singh has been translated in the petn. as follows: "I have to ask one straight question from Doctor Bhargava, Can he point out any Dept. from which work can be taken without bribery? Is he not aware that, when he was opposition Leader, what speeches he used to make & what he used to say about the corruption in the Administration? Today this corruption has increased & not decreased. In the times of the Englishmen public servants feared that they might be dismissed. To-day the public servants are emboldened that they have the Ministers & M. L. As, at their back. They work for them, & therefore their corruption can be overlooked. A very clear instance of this is before us. An Ex-Deputy Comr. was suspended by the Punjab Govt. for corruption, a judicial enquiry into this is proceeding. In the defence of this Ex-Deputy Comr. one Minister of the Punjab Govt. & the Chief Whip of the Congress Assembly Party have appeared as defence witnesses. The Chief Whip in his deposition has made allegations against the Chief Secretary. The Punjab Govt. is sitting silent like a statue. Under these circumstances if the public servants practice corruption openly, how can they be stopped?

3. Before going into the question whether the passage complained against amounts to a contempt

of Ct. it is necessary to deal with a preliminary objection which has been raised on behalf of the resp. which is that this Ct. has no jurisdiction to take proceedings against the resp. for contempt of Ct. in respect of a reference in the newspaper to proceedings before the Special Comr. appointed to hold the inquiry under the Act into the conduct of the petnr. The argument of the learned counsel for the resp. is that the contempt of Cts. Act. 1926, only gives the H C. the power to deal with contempts of Cts. subordinate to it in the same way as it deals with contempts of itself, & the Ct. of a Comr. appointed to hold an inquiry under the Act of 1850, if indeed it is a Ct. is in no sense a Ct. subordinate to the H. C. It is further contended & this point is not disputed by the learned counsel for the petnr. that the power of this Ct. to deal with the present alleged contempt is not affected in any way by the fact that the Comr. appointed to hold an inquiry under the Act of 1850 happens to be my Lord the Chief Justice. The first stage in the argument of the learned counsel for the resp. is the contention that the Ct. of the Comrs. as it is convenient to call it, is not even a Ct. but it seems to me that this contention was not meant to be taken very seriously. In fact the only decision cited by the learned counsel for the resp. tended rather to go against him. This was the case 'M.M. Khan v. Emperor' 12 Lah 391. The facts in the case were that some Special Comr. under the Act of 1850 had been appointed to hold an inquiry against Mr. M. M. Khan, an officer in the Irrigation Dept. & the question arose whether the Special Comrs. were a Ct. for the purpose of filing a complaint Under Section 195, Cr. P.C. regarding a document put in by M. M. Khan which was thought to be forged. Harrison, J. held that the officers appointed as Special Comrs. under the Act of 1850 to hold an inquiry regarding the conduct of a public servant, constituted a Ct. within the meaning of Section 195, Cr. P.C. & therefore a complaint by them was necessary. The Public Servants Inquiries Act itself seems clearly to indicate that a Comr. or Comrs. appointed under the Act constitute a Ct. as they are given, all the powers of a Ct. regarding the summoning of witnesses & other matters, & the only ground on which the learned counsel for the resp. could base his argument that the Comr. does not constitute a Ct. was that he can give no final decision, but merely has to draw up a report giving his findings on the charge or charges against the resp. which is to be forwarded to the Govt. In my opinion, however, this fact alone is not sufficient to make the Comr. or Comrs. any thing Other than a Ct. & it is to be noted that the definition of Ct. in Section 3, Evidence Act, is very wide indeed as it reads: 'Court' includes all Judges & Mags., & all persons, except arbitrators, legally authorised to take evidence.

4. The question, however, whether the Ct. of the Comr. is a Ct. Subordinate to this Ct. within the meaning of the Contempt of Cts. Act is undoubtedly much more difficult. There can be no doubt whatever that the Ct. of the Comr. is not subordinate to this Ct. in anything like the same sense in which the Cts. of Mags., Subordinate Judge & the Dist. & Ses. JJ. are subordinate to it, i.e., that apart from any direct control exercised by this Ct. over those Cts., their decisions come up to this Ct. by way of appeal or revn. Such a decision as the Comr. may come to regarding whether the charges against the public servant are established or not is merely embodied in a report & sent to Govt., which can take such action as it thinks fit upon this report, & this Ct. has no power to interfere. The learned advocate for the resp. maintains that the word "subordinate" in the

Contempt of Cts. Act is used in the narrow sense of Cts. which are subordinate to this Ct. in that their decisions can be brought to this Ct. by way of appeal or revn. On the other hand the learned counsel for the petnr. relies on the provisions of Section 8, Public Servants Inquiries Act & Article 227 of the Constitution. The relevant portion of Section 8, of the Act of 1850 reads:

The Comrs. shall have the same powers of punishing contempts & obstructions to their proceedings, as is given to Civil & Criminal Cts. by the Civil P.C. 1898 & shall have the same powers for the summons of witnesses, & for compelling the production of documents, & for the discharge of their duty under the commission, & shall be entitled to the same protection as the Zila & City Judges. The part of this section which deals with the powers of comrs. to punish contempts of Ct. only relates to the punishment of contempts which take place in the presence of the Ct., i.e. those punishable under the Penal Code, the power to deal with which in the case of subordinate Cts. is even now specifically denied to the H. C. in Sub-section 3, Section 2, Contempt of Cts. Act of 1926. The words particularly reld. on, however, are those relating to the same protection as the Zila & City Judges, which, it is contended, mean that the H. C. can protect the Ct. of the Comr. just as it can protect the Cts. subordinate to it by punishing contempts other than those punishable by the subordinate Cts. themselves. I am, however, inclined to agree with the learned counsel for the resp. that this is a somewhat doubtful interpretation of the word "protection" in this context. His contention was that this protection is the protection reld. to in an Act passed earlier in the same year, 1850, namely, the Judicial Officers Protection Act, XVIII (18) of 1950. This Act consists of a single section prohibiting : he bringing of any suit in a civil Ct. against any Judge, Mag. Jastice of the Peace, Colr. or other person acting judicially in respect of any act done or ordered to be done by him in good faith in his judicial capacity. The use of the word "protection" which is not a very common word in statutes, in the two Acts passed in the same year would certainly indicate that-the legislature in the second Act had in mind the-meaning of the word used in the first Act. to any case, as is pointed out by the learned counsel for the resp. it is clear that when the contempt of Cts. Act, 1926, was passed it was simply with the object of setting aside doubts which had arisen in the conflicting decisions of H. Cs. as to whether H. Cs. were competent to punish contempts of Ct. other than those punishable by the Cts. themselves & therefore it hardly seems likely that the word "Protection" was used more than seventy years earlier in the Act of 1850 in the wider sense of protection by the H. C. from contempts. On the whole, therefore, I am not inclined to accept this, part of the arguments of the learned counsel for the petnr., but it seems to me that he is on stronger ground in his reliance on Article 227 of the Constitution, which reads:

1. Every H. C. shall have superintendence oven all Cts. & tribunals throughout the territories in. relation to which it exercises jurisdiction.
2. Without prejudice to the generality of the foregoing provision, the H. C. may:
  - (a) call for returns from such Cts:
  - (b) make & issue general rules & prescribe forms for regulating the practice & proceedings of such. Cts; &

(c) prescribe forms in which books, entries & accounts shall be kept by the officers of any such Cts.

3. The H. C. may also settle tables of fees to be allowed to the sheriff & all clerks and officers of such Cts. & to attorneys, advocates & pleaders practising therein; Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, & shall require the previous approval of the Governor.

4. Nothing in this article shall be deemed to confer on a H. C. powers of superintendence over any Ct. or tribunal constituted by or under any law relating to the Armed Forces. It is clear that this Article gives the H. C. Superintendence over all Cts. & tribunals functioning in its territories other than Cts. martial i.e. Cts. constituted under the Army, Navy or the Air Force Acts, & it cannot possibly be urged that the Ct. of a Comr. holding an inquiry under the Act of 1850 is not a Ct. over which the H. C. is given superintendence under this Article. The only argument which the learned counsel for the resp. was also to advance against this proposition was that owing to the elaborate provisions of the Act of 1850 itself there was necessity at all for the H. C. to take any of the actions mentioned in Sub-clauses 2. & 3 of the Article, but this does not preclude the application of the Article as a whole, since Clause (2) begins with the words "Without prejudice to the generality of the foregoing provision...."

5. The question at issue resolves itself into one whether the power of superintendence given by Article 227 means that the Ct. of a Comr. is subordinate to the H. C. within the meaning of Section 2, Contempt of Cts. Act; whether in the latter section the word "subordinate" is used in its narrowest sense. It would seem that Article 227 is to be read-with Article 226 which gives the H. C. power to issue writs, including writs in the nature of 'habeas, corpus mandamus' prohibition, 'quo warranto' & 'certiorari'. The learned counsel for the petnr. is undoubtedly right in his contention that if a Comr. appointed under the Act of 1850 to Hold an inquiry did not in the course of the Inquiry follow the procedure laid down in the Act, the aggrieved party would be entitled to apply to the H. C. for the appropriate writ, & this certainly is one form in which the power of superintendence of the H. C. reld. to in Article 227 would be exercised. The word "superintendence", however, appears to mean more than this & on the whole I am inclined to take the view the Superintendence would include the power to deal with a contempt of Ct. of a kind not punishable by the Ct. of the Comr. Itself, & that for the purpose of the Contempt of Cts. Act the word "subordinate," would include all Cts. & tribunals over which the H. C. is given the power or superintendence under Article 227 of the Constitution.

6. The question therefore remains for determination whether the passage complained against amounts to a contempt of Ct. The grounds on which this allegation is made are that the offending passage states or implies: (a) That the petnr. was corrupt, (b) That the Hon'ble Sardar Ishar Singh Majhail, Minister of the Punjab Govt., & Chaudhuri Kartar Singh, the Chief Whip of the Congress Assembly Party, had appeared as defence witnesses in the inquiry not in order to speak

the truth but in order to help Sardar Kapur Singh, in consideration for improper favours shown to them by him as a public servant, (c) That it was intrinsically improper & inculpable to make a statement in the Ct. of a Comr. which amounted to a criticism of the Chief Secretary (a) That it was the duty of the Punjab Govt. to take action against the witnesses for having appeared in defence of Sardar Kapur Singh irrespective of whether their depositions have been true or false & also a fact that when they were summoned as defense witnesses they had no alternative but to appear, (e) That anyone who appears in defence of a public servant against whom the Govt. has started inquiry encourages & supports corruption in the administration.

7. On behalf of the resp it is strenuously denied that the passage in question amounted to a contempt of Ct. & attached to the written statement of the resp. there is a translation of the whole of the article from which the offending passage has been taken. The article in question is quite a long one covering almost four & a half typed foolscap pages, & it is headed "Budget Session of the Punjab Assembly". This Session had just started when that article appeared, & there does not appear to be any doubt from the trend of the article as a whole that the primary object of it was to make an attack on the ministry, & that the reference to the inquiry against Sardar Kapur Singh was purely incidental, the main criticism in this particular passage being against the conduct of the Hon'ble Minister & the Chief Whip of the Congress Assembly Party. The article begins with some criticism of the Ministry for passing a resolution of thanks to the Governor for his opening address to the Assembly, & it then proceeds to deal, in particular with the question of corruption, the speech of the Hon'ble the Chief Minister on this point being severely criticised on account of the alleged change in his attitude from the time when he was in opposition. The offending passage appears towards the end of the article. However, even though, as I have said, the criticism of the ministry appears to be the chief object of the article as a whole, & criticism of the Hon'ble Minister & the Chief Whip who appeared as defence witnesses in the inquiry the chief object of the passage to which objection has been taken, this fact alone is not sufficient to absolve the offending passage from amounting to a contempt of Ct. The argument of the offending passage in a nutshell is that when ministers & important officials of the party in power appear as witnesses in the defence of a public servant against whom an inquiry is being held on charges of corruption, it amounts to an encouragement to public servants to be corrupt. The assumption underlying the argument, without which indeed the argument would have no force, is that the particular public servant on whose behalf the Hon'ble Minister & the Chief Whip appeared as defence witnesses was in fact corrupt, since it is clear that no objection could be taken to their conduct if they appeared as defence witnesses & told the truth on behalf of an innocent officer against whom false charges of corruption had been brought. The publication of anything which implies or assumes the guilt of any person against whom a case or an inquiry is still pending obviously amounts to a contempt of Ct., but whether in the circumstances we need take a serious view of the matter as to impose any punishment on the resp. is a different matter. In the first place, as I have already observed, the main object of the article was an attack on the ministry & the reference to the inquiry against Sardar Kapur Singh who, it may be mentioned, was not even named in the article, was purely incidental, & in the second place, the contempt of Ct. could not

in the circumstances of the present case possibly have been expected to have any effect whatever on the course of justice, since it is most unlikely that my Lord the Chief Justice, would ever have heard of the article, or even of the existence of the newspaper, unless his attention had been drawn to it by the petnr. It hardly seems necessary to speculate on what effect the article might have had on the mind of my Lord the Chief Justice even if he had become aware of it independently of the present petn.

8. One case has been cited by the learned counsel for the resp. which is in some respects similar to the present case. This is the case of 'Anant Lal v. A. H. Waston' decided by Rankin, C.J. & Costello J. & reported as AIR (18) 1931 Cal 257. The parties in those proceedings were connected with rival newspapers, the petnrs. being, connected with a newspaper called "The Advance" & the resp. being the editor of the Statesman. Some controversy had been going on between these two newspapers regarding the connection of the Congress Party with the terrorist activities which were prominent in the news in those days, & in order to score a point in the controversy the editor of the Statesman unfortunately chose to criticise the conduct of Mr. Sarat Chandra Bose, an advocate of the Calcutta H. C. who some time before had announced that he was giving up his practice in order to devote himself entirely to work for the Congress party, but had at that-time been reported as having undertaken the defence of some accused persons in what is known as the Chittagong raiders case, in an article in the "Statesman" doubts were cast on whether defending the "Chittagong raiders" was a legitimate Congress activity. The use of the phrase "Chittagong raiders" clearly implied, though the implications not have been intentional, that the accused, who were still on trial, were guilty & so the case is similar to the present case in that the newspaper had used language which presupposed the guilt of the persons on trial & therefore amounted to a contempt of Ct. although the main object of the article was criticism of an attack on some other person than the accused in the case & the reference to the case was incidental to the argument. In these circumstances Rankin C.J. held that technically a contempt of Ct. had been committed, but was of the opinion that the jurisdiction of the Ct. in contempt was not to be invoked unless there was real prejudice which could be regarded as a substantial interference with the due course of justice, & it was not very theoretical tendency that would attract the action of the Ct. in its very special jurisdiction. He then went to say: The purpose of the Ct's. action is a practical purpose &, it is reasonably clear on the authorities that this Ct. will not exercise its jurisdiction upon a mere question of propriety where the tendency of the article to do harm is slight & the character & circumstances of the comment or otherwise such that it can properly be ignored. The result was that with the agreement of Costello, J. the rule was discharged. In the circumstances of the present case I would adopt a similar course & discharge the rule but order the resp. to pay Rs. 100/ as costs.

**Khosla, J**

9. I agree