

TRAVENCORE COCHIN HIGH COURT

Cheriyam Joseph

Vs

Dr. James Kalacherry

C.M.P. No. 88 of 1125

(Kunhi Raman, C.J. and Subramania Iyer, J.)

28.11.1950

JUDGMENT

Kunhi Raman, C.J.

1. This is a petition presented on behalf of the plff. in O.S. No. 156 of 1124 on the file of the Additional District Munsiff's Court of Alleppey for taking action for contempt of court against the respondents who are two in number. The first respondent is described as the Bishop of the Diocese within whose jurisdiction the petitioner resides. The second respondent is the Vicar of the St. George's Church of Pachakara, Koyilkukku Pakuthy, Ambalapuzha Taluk. The petitioner describes himself as a parishioner of this Church. He had filed a suit for a declaration that an edavaka Yogam stated to have been held on 26.6.1946 was not validly held and that the resolutions passed at that yogam are null and void and not binding upon the Church aforesaid or the parish in which the petitioner resides. He prayed for a permanent injunction to restrain the defts. from acting in pursuance of such resolutions. The respondent 1 is deft. 4 to that action. The respondent 1 is not a party thereto. Pending the suit, the petitioner says that he applied for a temporary injunction to restrain the defts. from enforcing the purport of the resolutions. Notice was ordered to the respondents who filed their objections in Court on 4-5-1124. On 5-4-1124 the plff. says he received a communication from respondent 2 which purports to be a true copy of an order made by respondent 1. The document is filed with the petition. On receiving this communication, the petitioner sent a registered letter to respondent 1 asking for information as to whether he had issued an order as set forth in the communication and also pointing out that if he had done so, the object of that order would be to defeat the administration of justice. To this no reply was sent by respondent 1. The petitioner alleges that the communication which he received contains a threat to ex-communicate the petitioner and to claim damages from him in case he does not withdraw his suit forthwith. The petitioner submits that this letter and the subsequent ex-communication of the petitioner are calculated to interfere and obstruct the course of justice. The object of this step taken by the respondents, according to the petitioner, was to cow down the

petitioner into submission and compel him under threat of ex-communication to abandon the suit which he had filed and which he was entitled to prosecute. After the petitioner was excommunicated, the defts. to the action seem to have filed an objection to the petitioner continuing to prosecute the suit, because he had no locus standi to do so after he was ex-communicated from the church. According to the petitioner these acts of the respondents amount to contempt and he charges both the respondents with contempt of court.

2. The respondent 1 is reported to be dead. He seems to have died soon after the petition was filed and before the date fixed for hearing. Therefore, so far as he is concerned no question arises for determination in this petition which is not pressed as against him. Mr. T.K. Narayana Pillai, the learned Counsel for the petitioner, however, wants to press the case against respondent 2 who is the Vicar of the Parish where the petitioner resides. Reliance was placed by the learned Counsel on the case reported in '*Rajender Singh v. Uma Prasad*'¹. There, an application for contempt was made against a litigant and his counsel. When a suit was pending to which the petitioner in that case was a party, a lawyer's notice was sent by the advocate in which he was informed that unless within a week of the receipt of the notice an unqualified apology was tendered and certain averments contained in the pleadings were withdrawn by the petitioner and unless he paid a sum of Rs. 10,000/- as damages, civil and criminal proceedings would be instituted against him by the party alleged to be in contempt. The question for consideration was whether the sending of the notice amounted to a contempt of the Subordinate Judge's Court, Dehra Dun, where the suit was pending. There the learned Judges held that it being the right of every deft, to take every legitimate plea and submit his defense to the Court for its consideration, a person who tries to deter a deft. from pressing his pleas would be liable to be proceeded against for contempt. It is pointed out in that case that it is the duty of the Court to protect defts. from being cowed down into submission and under pressure of threat and menace being made to abandon pleas which they can legitimately raise in a pending action. The following sentences in the judgment are relied on :

"The present case is one where an attempt was made to put pressure on the deft. to withdraw a plea which had been taken in the written statement, duly filed in Court, which was the subject of consideration by the Subordinate Judge of Dehra Dun. We think there can be no doubt that such an action amounted to a direct interference with the administration of justice in preventing the deft. from pressing his defense and putting forward the plea which might, if established, prove fatal to the suit and in that way an indirect attempt was made to exclude the plea taken on behalf of the minor from the consideration of the Court."

3. The Court took the view that the litigant and his Counsel who sent this notice which was objected to were both in contempt. Since the litigant expressed unqualified apology for his conduct he was exonerated. On behalf of the Counsel it was alleged that he was acting professionally on behalf of his client and that, therefore he could not be held to be guilty of

contempt. But this argument was repelled and the Court held that the Counsel had in such circumstances to exercise his own judgment and discretion and not to take shelter under the plea that he acted blindly and allowed himself to be dictated to by his client. The learned Judges say :

¹ AIR 1935 All 117

"It is a novel proposition that even though the sending of the notice amounted to contempt, the counsel who sent it is protected because he was acting as counsel. A counsel's capacity is not inviolable and his privilege cannot possibly extend to interference with the administration of justice. Counsel are expected to help in the administration of justice and not to be an impediment thereto.

Ultimately in view of the explanation submitted to the counsel that he committed the act unwittingly and unintentionally and he also expressed his unqualified regret for the same, he was let off lightly by being made to pay the costs of the proceeding. Mr. Narayana Pillai contends that in the present case respondent 2 stands in the position of the counsel in the Allahabad case and that he cannot claim exemption from punishment for the reason that he had only forwarded a letter which respondent 1 had directed him to forward to the petitioner.

4. In considering this question, it is necessary to refer to the contents of the letter. The letter starts by stating that the petitioner had already incurred the displeasure of the church and that he had been deprived of certain ecclesiastical privileges by the order No. 751, dated 5.4.1945 passed by the Bishop. It then recites that instead of showing repentance, he had filed the civil suit without any adequate reason against respondent 2 and others in their official capacity thereby causing unnecessary loss and expense to the church. Respondent 1, therefore, directed respondent 2 to inform the petitioner that in case he does not withdraw the suit forthwith respondent 1 would ex-communicate him. If he did not withdraw the suit, respondent 1 gave authority to respondent 2 to incur all necessary expense for defending the action out of church funds and also stated that after the suit was over, the amount of expenditure incurred by the church in defending the action would be recovered from such person as was found to be responsible for having brought about such unnecessary expenditure. What respondent 2 did was to take a copy of this letter and forward it to the petitioner. He did not add any words of his own with regard to the contents of that letter.

5. The case of respondent 2 differs from the case of the advocate in the Allahabad case AIR 1935 Allahabad 117, relied upon by the petitioner's learned counsel. This is a case in which there is absolutely no evidence to show that respondent 2 was responsible for the contents of the letter or that he suggested the idea to respondent 1 of sending such a communication to the petitioner. The fact that respondent 2 happened to be deft. 4 in the suit filed by the petitioner, cannot by itself be sufficient to presume that he was instrumental in having this letter sent. On the other hand, the contents of the letter indicate that it was conceived by respondent 1 and that he was acting in the exercise of his legitimate right of safeguarding the interests of the church. We are not prepared to

assume as the petitioner's learned counsel wants us to assume that respondent 2 was responsible for the despatch of this letter. He was legally bound to obey the commands of his Bishop and all that he did was to comply with the direction given to him by the Bishop in as innocuous a manner as possible. Therefore, in our judgment, respondent 2 cannot be taken to task for obeying an order sent to him by respondent 1.

6. It is then urged that respondent 2 cannot take shelter under such a plea if the letter by itself amounts to a contempt, inasmuch as it is intended to interfere with the course of justice. Here again, we are not prepared to accept the contentions of the learned counsel for the petitioner. The facts seem to us to be more similar to the case reported in '*Webster v. Bakewell Rural District Council*²', There it was held that the threat to assert one's legal rights against another if he chose to continue an action started by him, would not amount to contempt. In the present case also the threat held out by respondent 1 was that the petitioner had already incurred a censure by the church and that if he persisted in asserting his rights in the suit filed by him in the Court of the District Munsiff of Alleppy respondent 1 would exercise the lawful right of ex-communicating the petitioner for the wrongful acts done by him. Therefore we are not prepared to say that this case is similar to the case dealt with in '*Rajender Singh v. Uma Prasad*³', it is as already stated more like the case reported in '*Webster v. Bakewell Rural District Council*⁴' and respondent has not incurred any liability for contempt for mechanically forwarding a copy of that letter to the petitioner. In these circumstances, the petition must be dismissed. But this is a case in which the parties should be directed to bear their own costs.

Petition dismissed.

²(1916) 1 Ch 300

⁴(1926) 1 Ch 300

³ AIR 1935 All 117