

NAGPUR HIGH COURT

Sri Wasudeoraoji Sheorey

Vs

Sri A.D. Mani

Misc. Criminal Case No. 99 of 1950

(Hemeon Ag., C.J. and Mudholkar, J.)

18.09.1950

JUDGMENT

Hemeon Ag., C.J.

1. I agree. The principle on which the Ct. acted in cases of this kind had been clearly stated in *Reg v. Payne*¹, by Lord Russel who said :

"The applicant must show that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending." This dictum was quoted with approval by Hewart, L.C.J., in *Rex v. Editor of the Daily Mail*², and so also were his additional observations :

".....there should be no such application made unless the thing done is of such nature as to require the arbitrary and summary interference of the Ct. in order to enable justice to be duly and properly administered without any interruption or interference."

2. In *In re 'Finance Union' Yorkshire Provident Assurance Co. v. "Review" Publishers*³, Wright, J., was of the view that the summary jurisdiction ought only to be exercised when it is probable that the publication will substantially interfere with a fair trial; and at p. 11 of Halsbury's "Laws of England", Edn. 2, Col. VII, reference is made to a bead-roll of decisions to the effect that the Ct. discourages appellants for attachment or committal where the contempt is slight.

3. In the present case the publication does not amount even to a slight contempt and even if it had done, the appellant could not succeed. I feel it proper, however, in general to remind those responsible in this State for the production of newspapers of the special responsibility which devolves on them of seeing that everything which might have the effect of prejudicing or prepossessing the mind of any judicial officer, juror or potential witness, who might be concerned with a pending case, is excluded from their columns.

Mudholkar, J.

4. This is an appellant under Section 3, Contempt of Courts Act, for taking action against Shri A.D. Mani, the Managing Editor of the "Hitavada", Nagpur in respect of three publications appeared in the issues of the "Hitavada" dated 23.2.1950, 9.3.1950 and 31.3.1950. During the pendency of the proceedings before this Ct. an appellant was made for joining Shri R.V.S. Mani, Advocate, Nagpur, as a non-appct. to this appellant on the allegation that he is the legal correspondent of the "Hitavada" and that the three impugned publications are based on the reports sent by him. Hidayatullah, J., and myself allowed this appln, subject to the objection at the hearing.

5. The circumstances under which the present appellant has come to be filed are these : On 21.2.1950 Shri G.D. Karkare, the editor of a weekly newspaper called "New Leader" presented a complaint before a Mag. of the First Class, Nagpur, against the applicant Shri W.G. Sheorey who is the Managing Editor of a daily newspaper called "Nagpur Times". In that complaint Shri Karkare has accused Shri Sheorey of the commission of offences under Sections 500 and 504, Penal Code by publishing in the "Nagpur Times" an article which, according to him, besides being defamatory was insulting and likely to cause breach of the public peace.

6. Shri Karkare, it would seem, appeared before the Mag. on 22.2.1950 and the Mag. recorded his verification on that date. In the issue of the "Hitavada" of 23.2.1950, a column appeared concerning the complaint instituted by Shri Karkare. After mentioning the names of the accused and the two sections of the Penal Code under which the complaint was made, the provisions of Section 504, Penal Code, were set out in extenso and a reference was made to the article which was alleged by Shri Karkare to be defamatory. Besides this, a substance of the certain statements made by Shri Karkare in the complaint as well as of some of those in the Ct. was given and reference was made to some statements contained in the impugned article.

7. According to the applicant, this publication amounts to a contempt of Ct. because it has a tendency to prejudice his trial and also because publication of an account of pending proceedings and of documents filed in such proceedings is not permissible.

8. The next hearing of the case before the Mag. was on 9.3.1950. The applicant and his co-accused in the case did not appear in Ct. in person but appeared only through counsel. Shri R.V.S. Mani, who appears for Shri Karkare in the cr. cases, drew the attention of the Ct. to the absence of the accused and pointed out that that was irregular. Thereafter, there was a general discussion on the point in which counsel for the accused as well as the Mag. took part. Ultimately, the accused appeared in person and then the question arose whether they should be released on their furnishing personal recognisances. Shri R.V.S. Mani objected to their being so released and when the counsel for the applicant suggested that the accused were respectable persons, Shri R.V.S. Mani stated as follows : "I deny they are respectable. They are not respectable persons who write nasty articles." During the discussion that took place Shri R.V.S. Mani referred to the 'Nagpur Times' as a ministerial organ and appears to have suggested that it is because of this that the applicant and his co-accused were asking for special treatment. The observations of Shri R.V.S. Mani were not lost on the Mag. for he stated on two occasions that he stood above party politics. An account of the day's happenings in the Ct. appeared in the issue of the 'Hitavada' of 9.3.1950. This account, except the first and the last two paras. has the appearance of being a verbatim report.

9. According to the applicant the statement of Shri R.V.S. Mani that he (the applicant) is not a respectable person is defamatory and the publication of the account of the day's proceedings, and particularly of the defamatory statements, amounts to a contempt of Ct. Further, according to him, the report is not a full account of the day's proceedings but it is a partisan report calculated to prejudice a fair trial.

10. The hearing of the cr. case was taken up again on 30.3.1950. On that date, the only point discussed was whether exemption from personal appearance should be granted to the applicant and his co-accused. In the course of the discussion Shri R.V.S. Mani made the following observation :

"As for accused Sheorey, he has no other work except writing such disgraceful articles under the name of "Free Lance". and if he is asked to be present in the Ct., it will act as a corrective to such a disgraceful journalist."

Shri Tambay protested against this and asked for the shelter of the Ct. but does not appear to have secured it. The account of the day's proceedings in the Ct. appeared in the issue of the 'Hitavada' dated 31.3.1950 including the particular statements of Shri R.V.S. Mani which I have quoted above.

11. According to the applicant this publication is also contempt of Ct. for the following reasons :

"(1) It is not a complete report and it omits to reproduce all that happened and particularly some material submissions made by Shri Tambay, counsel for the accused.

(2) It tends to create an impression that the accused had no case for grant of exemption as claimed and that the submissions made on behalf of the complainant were an effective answer to submissions made on behalf of the accused.

(3) It tends to glorify the complainant's side at the expense of the accused and to belittle and ridicule the side of the accused.

(4) It gives emphatic publicity to libellous statements about the accused and thereby tends to create prejudice in the mind of the public as well.

(5) It tends to hamper and prevent fair trial of the issues in the case."

12. Shri A.D. Mani, in his affidavit, denies that the reports are partisan or that they are likely to prejudice a fair trial. According to him, the Courts of law being public institutions, the people at large are entitled to know what goes on there and it is the responsibility as well as the duty of the press to keep the public truly, accurately and fairly informed of the proceedings before the Cts. Shri A.D. Mani asserts that the reports published in the 'Hitavada' of the proceedings in a Court of law are a special feature of the paper and that in publishing them a high standard of veracity, accuracy and fairness is maintained. He states that the reports published on each of the three occasions conformed to that standard.

13. On the question of not reproducing everything that transpired in the Ct. Shri A.D. Mani has stated particularly with reference to the proceedings on 30.3.1950, that if everything said on that day were published, at least 14 columns of the newspaper would have been occupied by the

account. He has denied that there were any omissions of the statements or remarks of Shri Tambay who appears for the applicant in the Cr. case. Further, according to him, even if it be found that there were such omissions as alleged by the applicant, they are not material and therefore no substantial misrepresentation can be said to have resulted from them. As regards the two statements, which, according to the applicant are defamatory, the defence of Shri A.D. Mani is that those statements having been made in the proceedings before a Court of Law were privileged and therefore their publication does not amount to contempt of Ct. I may add that Shri A.D. Mani has in fact denied all the allegations made by the applicant concerning the publication which appeared in the Hitawada of 31.3.1950.

14. The first question is what are the rights and privileges of a newspaper with regard to the publication of reports of proceedings before a Court of Law and with regard to the publication of documents filed in those proceedings. It would be useful to set out the view taken on the matter in four leading cases on the subject. First, I would refer to *Stockdale v. Hansard*⁴, The observations of Littledale, J., who was one of the Judges who decided the case, at page 923 are pertinent. He said :

"It is upon the ground that Courts of justice are open to the public, that what passes there is public at the time, and that it is important that all persons should be able to scrutinise what is there done, that the publication of everything which there passes has been thought to be lawful. I for one do not go that length, but think, with some Judges of great name who have gone before me, that the doctrine is to be taken with much limitation."

15. Next, I would refer to *Davison v. Duncan*⁵, where Lord Campbell, C.J., observed at p. 106 :

"A fair statement of what takes place in a Court of justice is privileged and it is a most beneficial law that it should be so, as the public have a great interest in knowing what occurs there and the inconveniences which can arise from such a publication (evidently the learned Judge was meaning inconveniences to the parties concerned in the cause before the Ct.) are infinitesimally small in comparison with the benefits which result from it."

In the case before Lord Campbell the question was mooted whether the privilege attaching to the publication of proceedings before the Ct. could not be extended to public meetings. While justifying the privilege in respect of proceedings before a Court of law on the ground that those proceedings were subject to the control of the presiding Judge, Lord Campbell refused to extend that privilege to the proceedings of public meetings because such proceedings were not subject to a control which could be equally efficacious.

16. The third case is *The King v. Wright*⁶, In that case, Lawrence, J., took a view which coincides with that of Lord Campbell.

17. The last case on the point is the decision of the *House of Lords in Macdougall v. Thomas Knight*⁷, There, Lord Fitz-Gerald expressed his opinion thus :

"The privilege which attaches to the publication of the proceedings of Courts of justice rests on the foundation that the law of this land is administered publicly and openly, and its administration is at once subjected to, and protected by, the full and searching light of public opinion and public criticism. The openness and publicity of our Cts. forms one of the excellences of our practice of the law, and admits of exception only in rare cases of such a character that public morality requires that the proceedings should be in camera wholly or in part."

18. It is implicit in all these decisions that the publication in newspapers of reports of proceedings before a Court of law must be true and accurate and that it must be without malice. This is made amply clear by the decision in the Court of Appeal in *Kimber v. The Press Association Ltd*⁸, which expressly deals with publication of proceedings in a pending case. The privilege quite obviously does not extend to the publication of false opinion on the facts of the case which may operate prejudicially to a party to the proceedings before the Ct. Indeed, the law attaches the utmost importance to ensure a fair trial of a cause before a Court of law. The aim of the law relating to contempt is to secure this.

19. Indeed, Courts of law exist for the purpose of adjudicating upon the rights of litigants and it is important that nothing should be allowed to be said or done which would obstruct a litigant in prosecuting his claim or defence. It would, therefore, seem that the right of a newspaper even to publish a faithful account of the proceedings before a Court of law is subject to the condition that the publication does not tend to prejudice materially the fair trial of a case before a Court of law. This would also appear from decisions to which I would advert presently.

20. In *Roach v. Hall*⁹, Lord Hardwicke laid down the rule, which has always since been accepted by the Cts. in England and in India, that :

"Nothing is more incumbent upon 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 against persons concerned as parties in causes before the cause is finally heard."

It is on the basis of this rule that Sir R. Malins V.C. held in *In re Cheltenham and Swansea Rly. Carriage and Wagon Co*¹⁰, that the publication in a newspaper of a ptn. for winding up a co., containing charges of fraud against the director, amounted to a contempt of Court.

21. In *Bowden v. Russel*¹¹, the same learned Judge took the view that a pltf. who publishes a statement of claim containing charges injuriously affecting the deft.'s character is guilty of contempt of Ct.

22. In *Cheshire v. Strauss*¹², the publication in a newspaper of a statement of claim containing matter defamatory to the deft. in a pending case was held to amount to a contempt of Ct.

23. There are certain Indian decisions which also take the same view. I would refer to some of them. In *Bennett Coleman and Co. v. G.S. Monga*¹³, a D. B. of the Lahore H. Ct. held that the publication in a newspaper of a plaint reflecting severely on the deft.'s conduct amounts to contempt of Ct. In this case, the learned Judges relied on the English decisions referred to above. Again, in *In re Vidya Sagar Kapur*¹⁴, it was held that the publication in a newspaper of a complaint charging certain persons of abduction amounts to contempt of Ct. Similarly, in *In re Kalidas, J. Jhaveri*¹⁵, and *In re M.K. Gandhi*¹⁶, it was held that the publication in a newspaper of a document filed in a pending case amounts to a contempt of Ct.

24. It has no doubt been held in *Atindra Narayan v. Hemant Human*¹⁷, that the publication in a newspaper of copies or resumes of pleadings and similar documents in pending suits does not amount to contempt of Ct. The learned Judge, who decided the case, distinguished the decisions in *In re Cheltenham and Swansea Rly. Carriage and Wagon Co*¹⁸, and in other cases where the publication of pleadings in pending proceedings was held to amount to contempt of Ct. on the ground that in those cases the pleadings contained highly defamatory matter. The learned Judge, however, expressed the opinion that if the editors and proprietors of newspapers take upon themselves to publish copies or resumes of pleadings and similar documents in pending suits, they do so at considerable risk. From this, it would appear that even this case does not really lay down a proposition contrary to that laid down in the cases referred to by me above.

25. It would, I think, be useful to refer in this connection to a comparatively recent decision in *Gaskell and Chambers Ltd. v. Hudson*¹⁹, The deft. to an action published a statement of claim made by the pltf. during the pendency of the trial and, along with it, published certain comments on that statement. The pltf. thereupon moved for attachment for contempt of Ct. The argument advanced on behalf (sic) was that in every case, when action is pending, it must be a contempt of Ct. to circulate a pleading, even the pleading of one's own opponent, with comment, because such an action may possibly deter witnesses from doing what otherwise they would have done. Lord Hewart, C.J., who was one of the three Judges before whom the matter went up observed that no case goes near to establishing the proposition contended for

on behalf of the pltf. and that each case must be considered upon its own merits. He was of opinion that it was useless to contend that the circulation of the documents which were distributed in the case amounts to contempt of Ct. apparently because there is nothing in the documents which is clearly intended or even calculated to prejudice the trial which was pending.

26. Another Judge who heard the case, Du Parcq, J., observed :

"Publication of pleadings in an action in certain circumstances amounts to a contempt of Ct.; while in other circumstances it may not. Making unfavourable comments upon another party to the action may amount to a contempt of Ct. though it will not in every case be a contempt of Ct. It has also to be borne in mind that even if it be established in a particular case that something has been done which does amount to a contempt of Ct., an appellant for attachment or committal still ought not to be made unless, as my Lord has said, that contempt is calculated really to interfere with a fair trial."

In his opinion, it was absurd to say that the publication by the deft. of the statement of claim

made by the pltf. was likely to prejudice a fair trial of the case.

27. The third Judge, Goddard, J., was also of the same view. He said :

"I believe that the cases, somewhat analogous to the present case, upon which Mr. Groom-Johnson sought to rely can be divided into two classes. There are, for instance, Perry's case and *Bowden v. Russel*²⁰, the case before Malins V.C., which establish that the Ct. will not allow its process to be made the vehicle of a libel upon other persons, and that if the litigant uses the process as a means of disseminating a libel, the Ct. will not put the injured person to the expense and delay of bringing an action to remedy the injury, but will, if asked to do so, interfere in a summary way by treating it as a contempt of Ct. to use its process as a means of disseminating libels. That is almost a self-evident proposition. The other class of case illustrated by the judgment of Maugham, J., in the case of *In re William Thomas Shipping Co*²¹., to which reference has been made, is a class of case where an attempt has been made to intimidate witnesses in or the parties to an action."

According to him, the facts of the case before him were far removed from either of these two cases.

28. It would thus appear that the publication of a document filed in a pending case would amount to contempt if it was published with the clear intention of causing prejudice or if it was calculated to cause prejudice to a trial which is pending. That is the principle deducible from all the cases to which I have referred.

29. In the present case, no document as such filed in the cr. case has been published.

What the Hitavada has done is to reproduce some portions of the complaint or, may be, to give a gist of what the complaint contains, in the publication of 23.2.1950. No doubt, along with it Section 504, Penal Code, has been reproduced and so also some statements made by Shri Karkare in his verification. Even then, there is nothing that I can find in the publication which can reasonably be said to prejudice a fair trial of the applicant In these circumstances, even if it were assumed for a moment that the publication amounts to contempt-and in my opinion it does not - there is no ground whatsoever for taking any action.

30. Now as regards the publication of accounts of what happened at the two hearings of the criminal case in the Ct. Here, there is a difference between the versions of the applicant and non-appct. 1. The version of the applicant is on affidavit. The non-appct. has not filed any counter affidavit but has remained content with merely denying the correctness of the version of the applicant I must, therefore, accept the version of the applicant as correct. Even accepting it, it is not easy to see how the two accounts differ materially. No doubt, had the report been published more fully and in the manner appearing in the affidavit of the applicant perhaps Shri Tambay's advocacy of the case of the applicant before the Mag. would have appeared more prominently than it does in the account published in the 'Hitavada'. It may be possible to say that the omissions complained of by the applicant have the effect of showing Shri R.V.S. Mani in a better

light than Shri Tambay. If that was done deliberately by the reporter, it is indeed unfortunate but I cannot see how it can affect the fair trial of the applicant or the fair decision of any question relating to him. Even if the version of the applicant is accepted, there is nothing from which it could be inferred that his opponent was glorified while he was tried to be ridiculed. No impartial reader of the two versions can possibly come to the conclusion contended for on behalf of the applicant

31. There are, however, two remarks of Shri R.V.S. Mani, one reported in the 'Hitavada' of 9.3.1950 and the other in that of 31.3.1950, which, to put it mildly, are very unfortunate. Even so, no proceedings for contempt could be taken because of their publication unless it could be said that their publication was calculated to interfere with the due course of justice by prejudicing a fair trial of the case. Moreover, there is nothing to show, and no suggestion even, that Shri A.D. Mani has any malice against the applicant. There is no dispute about the accuracy of the reporting of the two remarks. In my opinion, such remarks ought not to have been made and indeed it was the duty of the Mag. to see that counsel did not overstep the limits of propriety by levelling cheap abuse and that too without provocation, on the applicant. Even so, the reproduction of these remarks in the report would not, apart from proof of intention or of a tendency to prejudice a fair trial, call for action. If they are defamatory, the applicant has got a remedy at law, and it is not, in my view, open to him to invoke the extra-ordinary jurisdiction of this Ct. It is clear, on authorities, that the jurisdiction in contempt, though very necessary and very salutary, is to be used only when there are strong grounds for doing so because if a person is dealt with in this jurisdiction he has no statutory right of appeal.

32. These reasons would, I think, suffice to show that no action is called for against Shri. A.D. Mani. I would, however, reiterate what was said in *T.B. Hawkins v. D.P. Miskra*²², that when a newspaper publishes an account of a pending proceeding, it does so at great peril. I would add that it would, therefore, behave the persons concerned to obviate publication of any matter, even though it may have actually transpired in a court of law, which is calculated or has a tendency to prejudice the fair trial of a case before the Court. If, in any case, prejudice to a party is apprehended or results from publication or where a Court is scandalised, however innocent be the persons in charge of the publication of the newspaper, they would run the risk of incurring the penalty of the law.

33. Now as regards Shri R.V.S. Mani. I may point out that his objection is evasive in that he does not admit or deny whether he was the legal correspondent who reported the proceedings in the case pending before the Mag. He objects to making any categorical reply in the absence of a proper affidavit from the applicant. Here, I may mention that what the applicant has averred in his petition is that he has reliable information that Shri R.V.S. Mani was the legal correspondent. He has, however, not disclosed source of the information. Shri R.V.S. Mani contends, and I think rightly, that unless the source is indicated, the affidavit is worthless and must be disregarded. The decision in *Amulya Chandra v. Satis Chandra*²³, on which he relies supports his contention. I agree with the view taken in that case.

34. It was suggested to Shri R.V.S. Mani during the course of the arguments that he might file an affidavit denying that he was the correspondent if in fact he was not. He, however, declined to do so and pleaded Article 20 (3) of the Constitution in defence. According to him, by virtue of this article he could not be forced to make an affidavit. It was not the intention of anyone to force

Shri R.V.S. Mani to make an affidavit. He was only given an opportunity to make one if he so chose. Moreover, though proceedings for contempt of Ct. are in the nature of criminal proceedings, there is nothing to preclude an alleged contemner from making an affidavit because he is not placed under the same disability as an accused person. So, when an alleged contemner does not deny on affidavit an allegation made by the applicant he runs the risk of the applicant's statement being accepted and acted upon.

35. For these reasons given above, I am of opinion that the appellant must be dismissed with costs against both the non-applicants Counsel's fees Rs. 100. Costs of the paper book will of course be borne by the applicant

Application dismissed.

Cases Referred.

¹(1896) 12 TLR 321

²(1928) 44 TLR 303

³(1895) 11 TLR 167

⁴3 State Trials (N.S.) 723

⁵(1857) 26 LJQB 104 : (5 WR 253)

⁶(1799) 8 TR 293 : (101 ER 1396)

⁷(1889) 14 AC 194 : (58 LJQB 537)

⁸(1893) 1 QB 65 : (62 LJQB 152)

⁹(1742) 2 ATK 469 : (26 ER 683)

¹⁰(1869) 8 Eq. 580,

¹¹(1877) 46 LJ Ch 414 : (36 LT 177)

¹²(1896) 12 TLR 291

¹³AIR 1936 Lah 917 : (38 Cr LJ 73)

¹⁴AIR 1938 Lah 815 : (40 Cr LJ 156)

¹⁵22 Bom LR 31 : (AIR 1920 Bom 174 : 21 Cr LJ 782)

¹⁶22 Bom LR 368 : (AIR 1920 Bom 175 : 21 Cr LJ 835 FB)

¹⁷AIR 1934 Cal 606 : (152 IC 900)

¹⁸(1869) 8 Eq. 580

¹⁹(1936) 2 KB 595 : (105 LKJB 734)

²⁰(1877) 46 LJ Ch 414 : (36 LT 177)

²¹(1930) 2 Ch 368 : (99 LJ Ch 560)

²²ILR 1949 Nag 640

²³AIR 1932 Cal 255 : (33 Cr LJ 369)