

NAGPUR HIGH COURT

State Government, Madhya Pradesh

Vs

Vinaya Kumar Parashar

Misc. Criminal Case No. 204 of 1950

(Bose, C.J. and Hemeon, J.)

22.12.1950

JUDGMENT

Bose, C.J.

1. This is an application by the State Government under section 3 of the Contempt of Courts Act (Act 12 of 1926).
2. On the 2nd May 1950 a prosecution under section 7 of the Prohibition Act was pending in the Court of Shri Abdul Rahman, Magistrate Second Class, Akola, against one Sheik Madar, son of Sheik Lal. The principal witness on the prosecution side was Sub-Inspector Pandharinath.
3. The case followed the usual lines, namely a bogus purchaser, raid by the police, and seizure of liquor found on the premises. The main point against the accused was that when Sub-Inspector Pandharinath reached the place on being given a signal by his decoy he found half a bottle of diluted spirit in the house.
4. It appears that this Sub-Inspector was unpopular and that a number of persons sent in complaints to the non-applicant, who was the President of the Nagar Congress Committee of that area. The non-applicant, therefore, convened a public meeting on the 2nd May 1950 to ventilate the grievances of the public against this Sub-Inspector publicly. According to the applicant, the non-applicant made a speech at this meeting and in the course of it

"criticized the work of Sub-Inspector Pandharinath, Station Officer Rifle Range Akola and stated that the said Station Officer arrested a Gaoli in a prohibition case by planting a spirit bottle in his house and that that was another example of the said Station Officer's dishonesty."

The applicant says that this had direct reference to the prosecution case then pending and that it was likely to prejudice the course of justice in that case.

5. The Magistrate trying this case was present at the meeting, though why he should have attended knowing that there was at least one case in his Court in which this Sub-Inspector was appearing as an important witness is not explained. It may be that he had good reason for going, but we would have been happier if that reason had been disclosed. Any way this occurred on the 2nd May 1950.

6. The next we hear of the case is an affidavit made by this Magistrate 2= months after the event. It is dated the 31st July 1950. In it he states :

"Shri Vinaya Kumar Parashar, President Nagar Congress Committee, Akola, addressed the said public meeting and in my presence and within my hearing while criticising the work of Shri Pandharinath, S.O. Rifle Range, Akola, stated that the said S.O. arrested a Gaoli in a prohibition case by planting a spirit bottle in his house and that this was another example of the said S.O.'s dishonesty. That I was myself present at the said public meeting and heard the statements made by Shri Vinaya Kumar Parashar as stated above. That there is a case pending in my Court in which the accused person is a Gaoli named Sk. Madar. A charge against him is that a bottle of denatured spirit was recovered from his house, and that he had altered denatured spirit by dilution with water and had sold for human consumption."

7. Despite this, no further steps were taken till 12th September 1950, that is to say, for 4 months and 10 days after the alleged contempt had been committed in the presence of the Magistrate affected, though of course not while he was in Court. The application we are now considering was filed on that day. But despite the fact that the applicant had this affidavit in his possession no attempt was made to comply with the rules of the High Court which require an affidavit to be filed along with the application in contempt cases. See rule 16 of Chapter 4, which runs as follows :

"The following petitions shall be accompanied by an affidavit made by the petitioner of his counsel :

* * * * *

(vi) for action for contempt of Court.

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8. The non-applicant filed his return on 25-11-1950. He admitted all the above facts except the one regarding the passage in which he is said to have referred to the prohibition case. He denied having made any such statement and said that he had no idea that any case of that nature was then pending in any Court. He also complained that the application was not accompanied by an affidavit. Curiously enough, the affidavit we have just referred to was filed the same day, namely,

the 25th November 1950, but whether as a consequence of this defense or not we are unable to say. In any event, the delay here is fatal to the present case.

9. We do not say that delay will always be fatal. There may be cases in which it is not. Examples of both kinds of cases will be found in 7 Halsbury's Laws of England, Hailsham Edition, page 37 Note (p). Each case must depend on its own facts, but taken by and large contempt proceedings are of a summary nature and promptness is ordinarily of the essence. Therefore, any delay should normally be regarded as fatal, though there may be exceptional cases when the delay may be overlooked, but that kind of case should be regarded as rare, and in any event the reason for the delay should always be fully explained.

10. The only explanation we were offered here was in the course of argument, and that was that the Magistrate had to obtain the permission of his District Magistrate and the District Magistrate in turn had to move the State Government and that Government Departments move slowly. That, in our opinion, is no excuse.

11. The High Court is the authority primarily and immediately concerned with matters of contempt committed against Courts subordinates to it. Every Judge and Magistrate has the right to report any matter of contempt committed against him or his Court to the High Court direct, and there are abundant cases where this has been done. It is not necessary, and in our opinion is most undesirable, that a matter relating so immediately to the administration of Justice should be referred to outside authorities or that permission of any outside authority should be sought before an approach is made to this Court. We are unable to make any exception in this case where a prominent political personage is involved. If the Magistrate was afraid to proceed against him because of his political office the Magistrate was at fault, and we are not prepared to encourage any feeling that any outside authority must first be approached for permission before a Judge or a Magistrate dares to come to this Court for redress of an offence against the due processes of the law.

12. On the other hand, the delay lays itself open to criticism on the ground that resort is being had to the contempt processes because of political pressure. We know nothing about this, but we are concerned to see that the summary contempt proceedings are not turned into engines of abuse. We recognize of course that this may be a praiseworthy attempt on the part of the State to demonstrate the determination of the State Government to uphold the purity of justice and the dignity of the Courts and to bring to book any person, whatever his political persuasion or his political office, who attempts to undermine or influence the course of justice in a Court of law. We can recognize that an incident of this kind may be long in reaching the attention of the Government, and when at last it does there the Government, very rightly, determines to do all it can to demonstrate to the whole world that it will not be any party to indirect pressure or influence on a Court by any person whoever he may be, and so leaves it to the High Court to take such action as it thinks fit after the matter has been brought to its attention. But, as we say, we are

not in a position to judge this matter. The point is that whatever the reason for the delay the fact remains that in a case of this kind it must result in great harm to the non-applicant.

13. In a summary proceeding of this nature we would ordinarily act on affidavit evidence, and here we have been asked so to act, even though in the present case there is nothing but word against word. Had this been a regular trial the non-applicant would have had the right to cross-examine the Magistrate and to call his own witnesses. Had the matter been taken up at once it would have been possible to obtain numerous affidavits regarding the contents of the speech, and that while the matter was still fresh in the minds of the witnesses. It is admitted that over a thousand persons attended the meeting. So, there would have been a wealth of material available. Now, all we have before us is the Magistrate's memory of a very short passage in a speech, which we are told lasted over an hour, and an affidavit made 2= months after the event, and on the other side the denial of the non-applicant. In any case, we are unable to condone the carelessness of the State in omitting to observe the rules of this Court regarding the necessity of affidavits in a matter of contempt. If the delay in filing the application was due to the anxious care with which the matter was being considered from every viewpoint before starting the present proceedings then it was all the more reason for a careful observance of the rules. The rule which requires an affidavit is not an empty one. The non-applicant cannot fA.I.Rly meet a case when an affidavit is not there, especially when all turns on one man's word against another. Every day of delay is important in such a case because each succeeding day makes it that much the more difficult for the non-applicant to rebut a case of this nature by citing the evidence of those who could be depended upon to know and remember what had happened.

14. We dismiss the application on those two grounds alone, namely, the omission to file the affidavit along with the application and the delay. We repeat that matters of contempt are primarily the concern of the High Court. They are not offences in which the State or an individual or a party has a right to a decision. Every stage of such a proceeding is in the absolute discretion of the High Court. Therefore, it is not necessary to wait and obtain' the permission of the State Government or of any other person to come to the High Court. The proper procedure is to send in a report at once. This is all the more necessary when political personages are involved. We make no order regarding the costs of the paper-book. Counsel's fee is Rs. 50/- will be paid by the applicant.

Application dismissed.