SUPREME COURT OF INDIA

H. P. Singh

v.

Thakur Prasad Tewari and Another

(Saiyid Fazl Ali, Mukherjea and Chandrasekhara Aiyar JJ.)

December 21, 1950

Judgment

Fazl Ali J.

1. This appeal has been preferred by the appellant after obtaining special leave to appeal from the Privy Council against the judgment of the High Court of Judicature at Patna in a contempt proceeding.

2. It appears that one Ramrajib Singh was detained under the Bihar Maintenance of Public Order Act, 1947, in pursuance of an order issued by the Provincial Government on February 19, 1948. He applied to the High Court at Patna under Section 491, Criminal P. C., and, on July 30, 1948, the High Court directed him to be "released forthwith." The very same day, a copy of the High Court's order was forwarded to the District Magistrate, Bhagalpur, for information and necessary action, and it reached the District Magistrate's office on July 31, 1948. Ramrajib Singh was not however released until August 08, 1948. On September 21, he filed in the High Court an application for taking action for contempt of Court against the Province of Bihar, the District Magistrate, Bhagalpur, and the Superintendent, Central Jail, Bhagalpur, and the High Court directed a rule to be issued.

3. On the October 28, 1948, the appellant, who was during the relevant period the District Magistrate of Bhagalpur, filed a petition in the High Court showing cause against the rule and stated *inter alia* that he was away from Bhagalpur on tour from the July 31, 1948, when the order of the High Court releasing the detenu was received in his office, that he was not personally guilty of any laches and had not disobeyed the order of the High Court in any way, and that the delay in communicating the order of the High Court to the jail authorities was due to the inexperience of clerks in the office. The appellant's petition was accompanied by an affidavit sworn to by his judicial peshkar, who set out his own version explaining the delay in communicating the order of release to the jail authorities.

4. When the case came up before the High Court, the Advocate-General of Bihar tendered an apology on behalf of the District Magistrate, to which the learned Judges have referred in their judgment under appeal in these terms :

> *"Very frankly and candidly, the learned Advocate-General on behalf of the District Magistrate of Bhagalpur has expressed the latter's sincere regret for the delay which had occurred in his office and tendered an unqualified apology to this Court. We accept that apology in this case."*

5. They ultimately discharged the rule against the appellant with these observations :

> *"Our finding is that, though the District Magistrate of Bhagalpur has been in contempt with regard to Ramrajib Singh, we should discharge the rule against him after accepting his unqualified apology."*

6. As to the merits of the case, the High Court made the following observations :

> *"Unfortunately, however, the District Magistrate of Bhagalpur has been in contempt in the sense that he had failed to carry out the order of this Court for the release, at least of Ramrajib*

Singh ..... It is in our opinion no plea to say that the District Magistrate was out on tour or that some other officers or clerks who were in charge had been negligent. We look to the District Magistrate to see that our orders are carried out. What internal arrangement the District Magistrate makes for attending to urgent work during his absence on tour is his business but I do not think he can be absolved from all responsibility by merely showing that some officers under him were grossly negligent.

That they were grossly negligent does not admit of any doubt. I am surprised to learn that the typing of a memorandum containing the order of release of a particular person was delayed because of the Id holidays, as though the liberty of the subject was to be trifled with on such a flimsy ground. It should have been the duty of every one connected with the office of the District Magistrate of Bhagalpur to see that the order of this Court, particularly an order relating to a person who was held to have been illegally detained by this Court, was immediately given effect to. In our opinion, the District Magistrate had failed to see that our order addressed to him was given immediate effect and in that sense he has been guilty of contempt.

The disobedience being the result of gross negligence was not merely accidental, even though there was no intention to flout or disobey the order of this Court; but intention in that sense is not the sole test in a case of contempt though it may be taken into consideration on the question of punishment. I have already observed that it was the duty of the District Magistrate to see that the order of this Court was given immediate effect, and the District Magistrate had failed to do so. To this extent, I think, the District Magistrate had been in contempt of this Court."

7. The learned Judges also observed that "there was gross negligence in the office of the District Magistrate of Bhagalpur, and we only hope that in future there would be no occasion for any complaint regarding delay in carrying out the orders passed by this Court."

8. There is much in the judgment of the High Court with which we find ourselves in full agreement. The excuses that were put forward in the affidavit of the judicial peshkar for the delay are most flimsy and unconvincing, and to say that there was only gross negligence on the part of those whose duty it was to carry out the orders of the High Court is to take a most favourable view of their action or want of action. The fact that the detenu was not released until August 08, 1948, the date on which the order of detention was due to expire and he would have been released independently of the order of the High Court is one of the curious features of the case, and the strange coincidence, if coincidence it was, was the main basis of the detenu's argument that the execution of the order of the High Court had been wilfully delayed.

9. However that may be, it is undoubtedly a most serious thing that a person who was found by the High Court not to have been properly detained, should continue to be detained for nearly 8 days, in spite of the order directing his release. The High Court was therefore justified in taking a serious view of the matter, and we hope that the Provincial Government will take proper steps against those persons on account of whose default the delay in this case has occurred and ensure that cases like this which tend to affect the confidence of the public in the efficiency of administration, do not recur.

10. We find it difficult however to hold upon the findings of the learned Judges of the High Court that the District Magistrate was personally guilty of contempt. If it is a fact that he was away on tour and was not aware of the order of the High Court, that fact must be regarded as a good defence in a contempt proceeding. Again, "if there was no intention to flout or disobey the order of the High Court", as seems to have been conceded in the judgment under appeal, that must also be regarded as an important circumstance in favour of the appellant.

11. The appellant did tender an apology, but that apology must not be taken to be a confession of guilt, especially as it was made in connection with the delay which had occurred in his office. As

the rule against the appellant has been discharged by the High Court, we think that his purpose in bringing up the matter to this Court would be served by our pronouncement that in law he is not guilty of contempt. Subject to this observation, the appeal is dismissed.

Case Number(s)
Not stated in the source

Statute(s) referred

Statute	Section/Article	Para
Code of Criminal Procedure, 1898	Section 491	2
Bihar Maintenance of Public Order Act, 1947		2

Advocate(s)
Not stated in the source text.
(P) – Provisional