1953

Nov. 25.

SUKHDEV SINGH SODHI

v.

THE CHIEF JUSTICE AND JUDGES OF THE PEPSU HIGH COURT.

[MUKHERJEA, VIVIAN BOSE and BHAGWATI JJ.]

Contempt of court—Contempt of Judges of High Court—Power of Supreme Court to transfer proceedings to another High Court—Criminal Procedure Code, 1898, ss. 1(2), 527—Constitution of India, art. 215—Contempt of Courts Act, 1952, s. 3.

The Supreme Court has no power under section 527 of the Criminal Procedure Code or under any other provision of law to transfer from a High Court, proceedings which that High Court has initiated for contempt of itself, to another High Court.

Section 527 of the Criminal Procedure Code does not apply to such a case as the power of a High Court to institute proceedings for contempt of itself and to punish the contemner where necessary, is a special jurisdiction which is inherent in all courts of record and section 1 (2) of the Criminal Procedure Code excludes such special jurisdictions from its scope.

It is desirable, on general principles of justice, that a Judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally.

In re Abdool and Mahtab (8 W.R. Cr. 32), *Surendranath Banerjea* v. *Chief Justice and Judges of the High Court of Bengal* (10 I.A. 171), *In re Abdul Hasan Jauhar* (I.L.R. 48 All. 711), *In the matter of Sashi Bhushan Sarbadhicary* (I.L.R. 29 All. 95), *Crown* v. *Sayyad Habib* (I.L.R. 6 Lah. 528 F.B.), *In re Adbul Hasan Jauhar* (I.L.R. 48 All. 711), *In the matter of Muslim Outlook, Lahore* (A.I.R. 1927 Lah. 610), *In re Murli Manohar Prasad* (I.L.R. 8 Pat. 323), *Harkishen Lal* v. *The Crown* (I.L.R. 18 Lah. 69), *Ambard* v. *Attorney-General for Trinidad & Tobago* ([1936] A.C. 322), *William Rainy* v. *The Justices of Sierre Leone* (8 Moo. P.C. 47), *In the matter of K. L. Gauba* (I.L.R. 23 Lah. 411), *Parashuram Detaram* v. *Emperor* (A.I.R. 1945 P. C. 134), *Emperor* v.

B. G. Horniman (A.I.R. 1945 All. 1), *In re Pollard* (L. R. 2 P. C. 106), *In re Vallabhdas* (I.L.R. 27 Bom. 394) and *Ebrahim Mamoojee Parekh* v. *King Emperor* (I.L.R. 4 Rang. 257) referred to.

ORIGINAL JURISDICTION: Petition (No. 304 of 1953) under section 527 of the Criminal Procedure Code.

H. J. Umrigar for the appellant.

M. C. Setalvad, Attorney-General for India (*G. N. Joshi, with him*) for the respondent.

1953. November 25. The Judgment of the Court was delivered by

BOSE J.—This is an unusual application asking for a transfer of certain contempt proceedings from the Pepsu High Court to any other High Court and, in the alternative, asking that at least the matter should not be heard by two of the Judges of that High Court who are named. This at once raises a question about our jurisdiction to order such a transfer.

The learned counsel for the applicant relied on section 527 of the Criminal Procedure Code. Briefly his reasoning was this. Section 527 authorises the transfer of any "case" from one High Court to another whenever it is made to appear to the Supreme Court that such transfer is expedient for the ends of justice. The word "case" is not defined but "offence" is defined in section 4 (o) to mean "any act or omission made punishable by any law for the time being in force." Contempt is punishable under the Contempt of Courts Act, 1952, therefore it is an offence punishable by a law which is in force; consequently, it is an offence. Being an offence it is triable under the Criminal Procedure Code because section 5 makes the Code applicable not only to the trial of offences under the Indian Penal Code but also to the trial of offences against "other laws." As it is a matter triable under the Criminal Procedure Code it must be a "case" within the meaning of section 527 and accordingly the section can be invoked here.

We are unable to agree. In our opinion, the power of a High Court to institute proceedings for contempt

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and punish where necessary is a special jurisdiction which is inherent in all courts of record and section 1(2) of the Code expressly excludes special jurisdictions from its scope. The section runs—

"In the absence of any specific provision to the contrary, nothing herein contained shall affect any special.....law now in force or any special jurisdiction or power conferred by any other law for the time being in force."

The term "special jurisdiction" is not defined in the Criminal Procedure Code but the words "special law" are defined in section 41 of the Indian Penal Code to mean "a law applicable to a particular subject." In the absence of any specific definition in the Criminal Procedure Code we think that that brings out the ordinary and natural meaning of the words "special jurisdiction" and covers the present case. Contempt is a special subject and the jurisdiction is conferred by a special set of laws peculiar to courts of record.

This has long been the view in India. In 1867 Peacok C. J. laid down the rule quite broadly in these words in *In re Abdool and Mahtab* (1):

"there can be no doubt that every court of record has the power of summarily punishing for contempt."

It is true the same learned Judge sitting in the Privy Council in 1883 traced the origin of the power in the case of the Calcutta, Bombay and Madras High Courts to the common law of England [see *Surendranath Banerjea* v. *Chief Justice and Judges of the High Court of Bengal*(2)], but it is evident from other decisions of the Judicial Committee that the jurisdiction is broader based than that. But however that may be, Sir Barnes Peacock made it clear that the words "any other law" in section 5 of the Criminal Procedure Code do not cover contempt of a kind punishable summarily by the three Chartered High Courts.

Now it is relevant to note in this connection that whatever the origin of the jurisdiction may be in the

(1) (1867) 8 W.R. Cr. 32 at 33. (2) (1883) 10 I.A. 171 at 179.

case of those three courts, the Charter of 1774 which established the Supreme Court of Bengal, while providing in clause 4 that its Judges should have the same jurisdiction as the Court of King's Bench in England, also expressly stated in clause 21 that the court is empowered to punish for contempt. When the Supreme Court of Bengal was abolished the High Courts Act of 1861 continued those powers to the Chartered High Courts by sections 9 and 11 and clause 2 of the Letters Patent of the year 1865 continued them as courts of record. Despite this, in 1883 the Privy Council did not trace this particular jurisdiction of the Calcutta High Court to clause 15 of its Charter but to the common law of England. But what is the common law? It is simply this: that the jurisdiction to punish for contempt is something inherent in every court of record. Sulaiman J. collected a number of English authorities at pages 728 to 730 of his judgment in *In re Abdul Hasan Jauhar* (1) and concluded thus:

"These leading cases unmistakably show that the power of the High Court in England to deal with the contempt of inferior courts is based not so much on its historical foundation as on the High Court's inherent jurisdiction."

Apparently, because of this the Privy Council held in 1853 that the Recorder's Court at Sierre Leone also had jurisdiction to punish for contempt, not because that court had inherited the jurisdiction of the English courts but because it was a court of record. Their Lordships' language was this:

"In this country every court of record is the sole and exclusive judge of what amounts to a contempt of court.....and unless there exists a difference in the constitution of the Recorder's Court at Sierre Leone the same power must be conceded to be inherent in that court.....we are of opinion that it is a court of record and that the law must be considered the same there as in this country."

(1) (1926) I.L.R. 48 All. 711.

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The 1884 edition of Belchamber's Practice of the Civil Courts also says at page 241 that—

"Every superior court of record, whether in the United Kingdom, or in the colonial possessions or dependencies of the Crown has *inherent* power to punish contempts, without its precincts, as well as *in facie curiae*....."

So also 7 Halsbury's Laws of England (Hailsham edition) page 2—

"The superior courts have an *inherent jurisdiction* to punish criminal contempt etc....."

But reverting to the developments in India. The High Court of Allahabad was established in 1866 under the High Courts Act of 1861 and was constituted a court of record. In 1906 the Privy Council remarked at page 108 of its judgment in *In the matter of Sashi Bhushan Sarbadhicary*(1) that—

"There is also no doubt that the publication of this libel constituted a contempt of court which might have been dealt with by the High Court in a summary manner by fine or imprisonment or both."

After this came the Government of India Act, 1915. Section 106 continued to all High Courts then in existence the same jurisdiction, powers and authority as they had at the commencement of that Act, and section 113 empowered the establishment of new High Courts by Letters Patent with authority to vest in them the same jurisdiction, powers and authority "as are vested in or may be conferred on any High Court existing at the commencement of this Act."

The Lahore High Court was established by Letters Patent in 1919 and was duly constituted a court of record. In the year 1925 a Special Bench of that court punished a contempt of itself in *Crown* v. *Sayyad Habib*(2).

After this the question was again agitated in the Allahabad High Court in 1926 but this time in respect of a contempt of a subordinate court. A Full Bench was convened and the learned Judges reaffirmed their

(1) (1907) I.L.R. 29 All. 95. (2) (1925) I.L.R. 6 Lah. 528 (F.B.)

powers : *In re Abdul Hasan Jauhar*(1). Two of the Judges based broadly on the inherent jurisdiction of a court of record. Sulaiman J. said at page 727 that "it is not the territorial limits of the jurisdiction of a Supreme Court" [of Bengal] "but the very nature of its constitution that is of importance." Boys J. however preferred to ground on the fact that that court "had conferred on it, by the statute and the Letters Patent creating it, similar powers to those conferred on the High Court of Calcutta," and at page 733 went on to say that that applied "to every other High Court in this country."

In the presence of all this history the Contempt of Courts Act, 1926, was passed. The heading states that the Act is "to define and limit the powers of certain courts in punishing contempts of courts." The preamble states—

"Whereas doubts have arisen as to the powers of a High Court of Judicature to punish contempts of courts and whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of court : It is hereby enacted as follows :".

Section 2 says :—

"Subject to the provisions of sub-section (3), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them *as they have and exercise in respect of contempts of themselves.*"

This recognises an existing jurisdiction in all Letters Patent High Courts to punish for contempts of themselves, and the only limitation placed on those powers is the amount of punishment which they could thereafter inflict. It is to be noted that the Act draws no distinction between one Letters Patent High Court and another though it does distinguish between Letters Patent High Courts and Chief Courts; also, as the

(1) (1926) I.L.R. 48 All. 711.

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Act is intended to remove doubts about the High Court's powers it is evident that it would have conferred those powers had there been any doubt about the High Court's power to commit for contempts of themselves. The only doubt with which the Act deals is the doubt whether a High Court could punish for a contempt of a court subordinate to it. That doubt the Act removed. It also limited the amount of punishment which a High Court could inflict.

Now this recognises an existing power in all Letters Patent High Courts to punish and as the Letters Patent High Courts other than the Chartered High Courts could not have derived this power from the common law, it is evident that the power must have been inherent in themselves because they were courts of record.

In 1927 another Full Bench of the Lahore High Court consisting of five Judges re-examined the position: *In the matter of Muslim Outlook, Lahore*(1). They reaffirmed their earlier decision in *The Crown* v. *Sayyad Habib* (2) and held that this jurisdiction is inherent in every High Court and not merely in the three Chartered High Courts.

In 1928 a Full Bench of the Patna High Court examined the matter [*In re Murli Manohar Prasad*(3)] and then committed for contempt. In 1936 another Special Bench of the Lahore High Court [*Harkishen Lal* v. *The Crown*(4)] followed the earlier Lahore decisions.

The Privy Council decided a case of contempt from Trinidad in 1936 [*Ambard* v. *Attorney-General for Trinidad & Tobago*(5)] and held that it was a quasi-criminal offence and in the course of their judgment they referred to an earlier decision of the Board from Sierre Leone to which we have already referred [*William Rainy* v. *The Justices of Sierre Leone*(6)]. In the Trinidad case their Lordships did not accept the extreme proposition that every court of record is the

(1) A.I.R. 1927 Lah. 610.
(2) (1925) I.L.R. 6 Lah. 528.
(3) (1929) I.L.R. 8 Pat. 323.
(4) (1937) I.L.R. 18 Lah. 69.
(5) [1936] A.C. 322.
(6) 8 Moo. P.C. 47.

sole and exclusive judge of what amounts to a contempt because of their decision in *Surendranath Banerjea* v. *The Chief Justice and Judges of the High Court of Bengal*(1), but they did not doubt the soundness of the decision otherwise.

In 1942 the Lahore High Court examined the position in a Full Bench for the third time and reached the same conclusion : *In the matter of K.L. Gauba*(2). This time they pointed out that the Sind, Rangoon and Nagpur High Courts had also punished summarily for contempts. They also referred to two American decisions where, though the power was said to have been derived from the common law, it was said that—

"The power to fine and imprison for contempt from the earliest history of jurisprudence has been regarded as a necessary incident and attribute of a court without which it could no more exist than without a Judge. ....."

Finally, in *Parashuram Detaram* v. *Emperor*(3) the Privy Council said that "this summary power of punishing for contempt..... is a power which a court must of *necessity* possess."

We have omitted references to the Bombay and Madras decisions after 1883 because the Judicial Committee settled the powers of the three Chartered High Courts. What we are at pains to show is that, apart from the Chartered High Courts, practically every other High Court in India has exercised the jurisdiction and where its authority has been challenged each has held that it is a jurisdiction inherent in a court of record from the very nature of the court itself. This is important when we come to construe the later legislation because by this time it was judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the court. The only discordant note that we know of was struck in *Emperor* v. *B. G. Horniman*(4) where a Division Bench of the Allahabad

(1) (1883) 10 I.A. 171.
(2) (1942) I.L.R. 23 Lah. 411.
(3) A.I.R. 1945 P.C. 134 at 136.
(4) A.I.R. 1945 All. 1 at 4.

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High Court held that after the Act of 1926 the offence of contempt was punishable under an Indian penal statute and so the Code of Criminal Procedure applied because of the words "any other law" in section 5. In our opinion, this is wrong because the Act of 1926 does not confer any jurisdiction and does not create the offence. It merely limits the amount of the punishment which can be given and removes a certain doubt. Accordingly, the jurisdiction to initiate the proceedings and take seisin of the matter is as before.

The Pepsu High Court was established in 1948 and section 33 of the Ordinance which established it recites that it shall be a court of record and that it shall have power to punish for contempt. It will be remembered that the Charter of 1774 which established a Supreme Court for Bengal said the same thing of that court and yet the Privy Council did not trace its powers about contempt from the Charter but from the common law. In the same way, the law by this time was so well settled in matters of contempt that the words "court of record" and "power to punish for contempt" had acquired a special meaning. Consequently, it is immaterial whether in 1948 the power of the Pepsu High Court was derived from section 33 or was inherent in the nature of the court because whichever it is the jurisdiction is a special one, and had the legislature desired to take it away and confer another kind of jurisdiction it would have been necessary to use express words in view of the case law which by then had become well established.

In 1950 came the Constitution of India and article 215 states that—

"Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

Here again, whether this is a fresh conferral of power or a continuation of existing powers hardly matters because whichever way it is viewed the jurisdiction is a special one and so is outside the purview of the Criminal Procedure Code.

The Contempt of Courts Act, 1926, was repealed by Act XXXII of 1952. Section 3 of the new Act is similar to section 2 of the old and, far from conferring a new jurisdiction, assumes, as did the old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction, powers and authority "in accordance with the same procedure and practice." These words are new and would be inappropriate if the Criminal Procedure Code applied. In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate court, the Constitution vests these rights in every High Court, so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. It is true section 5 expands the ambit of the authority beyond what was till then considered to be possible but it does not confer a new jurisdiction. It merely widens the scope of an existing jurisdiction of a very special kind.

On reflection it will be apparent that the Code could not be called in aid in such cases, for if the Code applies it must apply in its entirety and in that event how could such proceedings be instituted? The maximum punishment is now limited to six month's simple imprisonment or a fine of Rs. 2,000 or both because of the 1952 Act. Therefore, under the second schedule to the Code contempt would be triable by a Magistrate and not by a High Court and the procedure would have to be a summons procedure. That would take away the right of a High Court to deal with the matter summarily and punish, a right which was well established by the case law up to 1945 and which no subsequent legislation has attempted to remove. So also section 556 could not apply, nor would the rule which prohibits a judge from importing his own knowledge of the facts into the case. We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own

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procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council in *In re Pollard*(1) and was followed in India and in Burma in *In re Vallabhdas*(2) and *Ebrahim Mamoojee Parekh* v. *King Emperor*(3). In our view that is still the law.

If the Code of Criminal Procedure does not apply, then there is no other power which we can exercise. The Constitution gives every High Court the right and the power to punish a contempt of itself. If we were to order a transfer to another court in this case we would be depriving the Pepsu High Court of the right which is so vested in it. We have no more power to do that than has a legislature. As for transfer from one Judge to another, there again there is no original jurisdiction which we can exercise. It is not a fundamental right and so article 32 has no application and there is no other law to which recourse can be had. This petition is therefore incompetent and must be dismissed.

We wish however to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally. It is otherwise when the attack is not directed against him personally. We do not lay down any general rule because there may be cases where that is impossible, as for example in a court where there is only one judge or two and both are attacked. Other cases may also arise where it is more convenient and proper for the judge to deal with the matter himself, as for example in a contempt *in facie curioe*. All we can say is that this must be left to the good sense of the judges themselves who, we are confident, will

(1) L.R. 2 P.C. 106 at 120.
(2) I.L.R. 27 Bom. 394 at 399.
(3) I.L.R. 4 Rang. 257 at 259-261.

comport themselves with that dispassionate dignity and decorum which befits their high office and will bear in mind the oft quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by judges who have no personal interest or concern in his case.

Petition dismissed.

Agent for the petitioner: *Ratnaparkhi Anant Govind.*

Agent for the respondent: *G. H. Rajadhyaksha.*