

RIZWAN-UL-HASAN AND ANOTHER

v.

THE STATE OF UTTAR PRADESH.

[MEHR CHAND MAHAJAN and DAS JJ.]

1953

Feb. 5.

Contempt of Courts Act (XII of 1926), s. 3—Proceedings before Sub-Divisional Magistrate—Application by respondents to District Magistrate containing allegations against trying Magistrate and the bona fides of the pending proceedings—Transmission of application to Sub-Divisional Magistrate for report—Whether amounts to contempt of Court—Question of prejudice.

The jurisdiction in contempt of court is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. The purport of the court's action is a practical purpose and the Court will not exercise its jurisdiction upon a mere question of propriety.

During the pendency of proceedings against A and B under s. 145, Criminal Procedure Code, in the court of a Sub-Divisional Magistrate, A and B made an application to the District Magistrate alleging that the proceedings were not *bona fide* and

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containing statements in the nature of a countercharge. The 2nd appellant who was then officiating as the District Magistrate sent this application to the Sub-Divisional Magistrate for report and on receiving a report from him that A and B should be asked to file a formal complaint before him, advised them to do so. A brother of A sent a similar petition to the District Magistrate containing also allegations against the trying Magistrate. The 1st appellant, who was the District Magistrate, forwarded them to the Sub-Divisional Magistrate for report, and on receiving his report passed an order that he saw no reason to withdraw the file from the Sub-Divisional Magistrate. The High Court of Allahabad held that as the applications contained allegations which might interfere with the course of the trial of the proceedings under s. 145, in transmitting the applications the appellants had acted without due circumspection and thought though they had no intention to influence the Sub-Divisional Magistrate and the appellants were therefore guilty of contempt of court :

Held, (i) that in transmitting the applications received by them to the Sub-Divisional Magistrate and calling for a report the appellants were not in any way interfering with the course of justice but were only doing their duty as superior officers;

(ii) it was not possible to hold that any prejudice had been caused by the two applications being sent by the appellants to the Sub-Divisional Magistrate or that any action was necessary to protect the Sub-Divisional Magistrate who was hearing the case and the appellants were not guilty of any contempt of court.

Anantlal Singha v. Alfred Henry Watson ([1931] I.L.R. 58 Cal. 884) referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 79 of 1952. Appeal by special leave from a Judgment and Order dated 16th April, 1951, of the High Court of Judicature at Allahabad (Dayal and Desai JJ.) in Criminal Miscellaneous No. 17 of 1950.

K. S. Krishnaswami Iyengar (*K. B. Asthana*, with him) for the appellants.

N. C. Sen for the respondent.

1953. February 5. The Judgment of the Court was delivered by

MAHAJAN J.—This is an appeal by special leave from the judgment and order dated the 16th April, 1951, of the Allahabad High Court in Criminal Miscellaneous Petition No. 17 of 1950. The two appellants are members of the Uttar Pradesh Civil Service.

In March, 1950, appellant No. 1 (Rizwan-ul-Hasan) was posted as District Magistrate, Jalaun, and appellant No. 2, Mohammad Munawar, was posted as a Magistrate in the same district, having officiated as District Magistrate for some time in the early part of March, 1950.

On 2nd March, 1950, one Phundi Singh commenced proceedings under section 145 of the Code of Criminal Procedure in the Court of the Sub-Divisional Magistrate of Jalaun on the allegation that Kedarnath and Matadin were about to cut his standing crop by force and that there was an imminent danger of a breach of the peace. The magistrate issued notices to the parties complained against and ordered attachment of the standing crop.

On 4th March, 1950, one Shriram, brother of Kedarnath, filed a counter application before the court making certain allegations against one Thakur Pratap Singh, said to be the real person behind the proceedings commenced by Phundi Singh. Kedarnath and Matadin, the respondents in Phundi Singh's application, also filed an application similar to that of Shriram before the District Magistrate on the same date. This application was accompanied by a recommendatory letter written to the District Magistrate by Lalla Ram Dwivedi, Secretary, District Congress Committee. It was received by the second appellant who was then officiating as District Magistrate and was sent by him to the Sub-Divisional Magistrate, Jalaun, in whose court Phundi Singh's application was pending, for report. The Sub-Divisional Magistrate returned it with the remark that a proper complaint should be made in his court in the ordinary way on the allegations made in the application. Thereupon the second appellant returned the application to Kedarnath and Matadin and advised them to move the Sub-Divisional Magistrate in a formal and proper manner.

On the application of Phundi Singh made before the High Court of Allahabad under section 3 of the

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Contempt of Courts Act, the second appellant was held guilty of contempt of the Sub-Divisional Magistrate on the following reasoning :—

• “ Shri Mohammad Munawar opposite party No. 5 forwarded application given by the opposite parties Nos. 2 and 3 together with introductory letter to the Sub-Divisional Magistrate, Jalaun. We do not think that he had any intention to influence the Sub-Divisional Magistrate with respect to his action in the case under section 145, Criminal Procedure Code. But intention is not of importance so far as the question of commission of contempt is concerned. He *certainly acted without due circumspection and thought*. It must have been clear to him that the application contained expression which affected the due considerations of the points in dispute in the proceeding under section 145, Criminal Procedure Code. He says in his affidavit and we can accept it that he sent this application to the Sub-Divisional Magistrate just for taking action for the protection of opposite parties No. 2 and No. 3 and their crop about which an allegation was made that some action was to be taken by the other party the night following. He should in the circumstances either pass an order for the police himself which he could have very well done, or he could have just conveyed a gist of the complaint necessitating protection of life and property immediately. His conduct in transmitting the allegations made by the opposite parties Nos. 2 and 3 to the Sub-Divisional Magistrate, Jalaun, in whose court the case under section 145, Criminal Procedure Code, was pending, did amount to the commission of contempt of that court.”

As regards the first appellant, the facts are that on 22nd March an application was received by post in the office of the District Magistrate signed by Shriram containing allegations against the trying Magistrate. On 25th March, 1950, this application was sent by the appellant for report to the Sub-Divisional Magistrate with the following endorsement :—

"S.D.O. Please look into these allegations and let me have a report." On 4th April, 1950, the Sub-Divisional Magistrate submitted a report and the first appellant having been satisfied that the allegations were baseless passed the following order:—

"I do not see any reason to withdraw the case from your file."

On the application of Phundi Singh mentioned above made before the High Court of Allahabad under section 3 of the Contempt of Courts Act this appellant along with others was also held guilty of contempt of the Sub-Divisional Magistrate's Court, on the following reasoning:—

"Similarly transmission of the application sent by Shriram on the 25th March to the Sub-Divisional Magistrate, Jalaun, amounted to commission of contempt of court by opposite party No. 6. The mere fact that he had to take action in view of the allegations against the magistrate in that application would not affect this question. The application contained, as already stated, expressions showing that Phundi Singh was a history sheeter and that the case under section 145, Criminal Procedure Code, was fictitious and was instituted at the instance of Pratap Singh. He should not have transmitted the entire application. He could have necessary extracts which related to the allegations against the magistrate sent to the court concerned in the circumstances when the applicants introduced matter irrelevant for transfer application. It may also be mentioned here that the application could be treated as a transfer application though no such request was made in that application. The application was neither properly presented nor was it accompanied by an affidavit nor was it stamped. The applicant wanted some action for the protection of his crop from bad characters."

Having found both the appellants guilty of contempt of court of the Sub-Divisional Magistrate, Jalaun, the High Court took no action against them because they happened to commit contempt of court rather due to their carelessness and lack of vigilance

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than with any deliberate intention to commit it. It was observed that officers who have to transmit communications to courts of justice should be vigilant and careful to see that nothing is transmitted which can have any effect, even remotely on, the merits of a case.

In our judgment, the proceedings for contempt of court against the two appellants on the facts stated are misconceived and have to be quashed. Both the appellants were superior officers of the Sub-Divisional Magistrate at the time when they sent the applications of Kedarnath and Matadin for report. They were under a duty to supervise his work. It is difficult to see how by transmitting the applications received by them to him, and asking him for his views they were in any way interfering with the course of justice and were committing contempt of his court. Their action cannot be characterized as having a tendency to interfere with the course of justice. The applications were transmitted to the Sub-Divisional Magistrate in the usual and normal course of the official practice and we cannot subscribe to the view of the High Court that only extracts of these applications should have been sent to him for his views and not the applications as such as they contained material which had a tendency to interfere with the course of justice.

The second appellant, when he was officiating as District Magistrate, received the application of Kedarnath and Matadin with a letter of recommendation from the Secretary of the Congress Committee. This application was in the nature of a counter complaint, and the appellant acted properly in sending it to the magistrate who was seised of the original application. He was under no duty to censor it and to cut it into pieces and then forward the relevant parts only to the magistrate. The recommendatory letter was an annexure to the application and it had to go with it. The conduct of the Secretary of the Congress Committee in writing a recommendatory letter about the facts of the case to the District

Magistrate was undoubtedly a communication for the purpose of influencing his decision and was rightly reprobated by the High Court. Such a course is calculated, if tolerated, to divert the course of justice and ought more frequently than it is, to be treated as what it really is, namely, a high contempt of court. The Congress Secretary has been rightly held guilty of contempt and punished. He has not come to this Court and we are no longer concerned with him. But we are unable to find how the conduct of the appellant in sending the application which, as we have already stated, was in the nature of counter charge to the Sub-Divisional Magistrate who was seised of the original complaint in any way amounted to contempt of court. There are three different sorts of contempts known to law in such matters. One kind of contempt is scandalizing the court itself. There may likewise be a contempt of the court in abusing parties who are concerned in causes in that court. There may also be a contempt of court in prejudicing mankind against persons before the cause is heard. The act of the appellant could not fall in either of these three categories.

So far as the first appellant is concerned, under the provisions of section 528 of the Code of Criminal Procedure, he had authority to withdraw the case under section 145 of the Code pending in the court of the Sub-Divisional Magistrate. On the application of 22nd March made by Kedarnath and Matadin containing allegations against the Sub-Divisional Magistrate he was entitled to use his powers under that section if the allegations contained therein were substantiated. It is usual to send such applications to the court concerned for its remarks and that is precisely what he did, and as soon as the remarks were received and he was satisfied that the allegations were baseless, he declined to withdraw the case. We have not been able to see how such an action on the part of the District Magistrate, done in the normal and usual course of the discharge of his duties as such magistrate, could be held to interfere with the

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course of administration of justice or to create prejudice of any kind against the complainant in the proceedings under section 145 of the Code of Criminal Procedure. There is nothing in section 528 of the Criminal Procedure Code which disables a magistrate from taking action unless he is set in motion by the petition of one of the parties and nothing in the Code prevents any person from bringing facts to the notice of the District Magistrate which might suggest to that magistrate that it was advisable to see whether the magistrate should remain in charge of a particular case.

In our judgment, therefore, the High Court was in error in thinking that the two appellants acted without due circumspection and thought and were guilty of contempt of the court of the Sub-Divisional Magistrate. We are further of the opinion that it was not possible to hold on those facts that any prejudice arose in the case by these two applications being sent by the appellants to the Sub-Divisional Magistrate or that any action was necessary for the protection of the tribunal which was engaged in hearing the case under section 145, Criminal Procedure Code. As observed by Rankin C.J. in *Anantlal Singha v. Alfred Henry Watson* ⁽¹⁾, the jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice and that the purpose of the court's action is a practical purpose and it is reasonably clear on the authorities that the court will not exercise its jurisdiction upon a mere question of propriety.

The result is that we allow the appeal, set aside the judgment of the High Court against the two appellants and acquit them of the charge under section 3 of the Contempt of Courts Act.

Appeal allowed.

Agent for the appellant: *S. Subramanian.*

Agent for the respondent: *C. P. Lal.*