

since affirmed by the House of Lords and they quoted with approval the following passage from the judgment of Romer L. J., at p. 13 of the earlier report:

"The short answer is that a Court of Equity cannot say that it is equitable to compel a person to pay moneys in respect of a transaction which as against that person the Legislature has declared to be void."

That ratio was applied by their Lordships to the facts of the case before them and the contention was negatived. Merely because the State of U. P. had not retained the monies paid by the respondent but had spent them away in the ordinary course of the business of the State would not make any difference to the position and under the plain terms of s. 72 of the Indian Contract Act the respondent would be entitled to recover back the monies paid by it to the State of U. P. under mistake of law.

The result, therefore, is that none of the contentions urged before us on behalf of the appellants in regard to the non-applicability of s. 72 of the Indian Contract Act to the facts of the present case avail them and the appeal is accordingly dismissed with costs.

Appeal dismissed.

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(JAFER IMAM, S. K. DAS and J. L. KAPUR JJ.)

Contempt of Court—Ouster of High Court's jurisdiction—Test—Contempt of Courts Act, 1952 (XXXII of 1952), s. 3(2)—Indian Penal Code, 1860 (XLV of 1860), s. 228.

The respondent, who had filed a complaint in respect of an alleged offence under s. 500 of the Indian Penal Code in the Court of the Additional District Magistrate of Indore, made a number of aspersions against the Magistrate in an application

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made to him under s. 528 of the Code of Criminal Procedure, two of which were of a serious character. It was alleged that the Magistrate was a party to a conspiracy with certain others the object of which was to implicate the complainant in a false case of theft and that a lawyer appearing for the accused persons, to whom the Magistrate was favourably inclined, had declared that he had paid a sum of Rs. 500 to the Magistrate. Those allegations were later on repeated in an affidavit. The Magistrate reported the matter to the Registrar of the High Court for necessary action. The High Court called upon the respondent to show cause why he should not be proceeded against in contempt under the Contempt of Courts Act, 1952. The Judges of the Division Bench who heard the matter, without going into the merits of the case, held that, *prima facie*, the offence was one of intentional insult under s. 228 of the Indian Penal Code and, consequently, the jurisdiction of the High Court was ousted under s. 3(2) of the Contempt of Courts Act, 1952.

Held, that the High Court had taken an erroneous view of the matter and its order must be set aside.

The mere existence of an element of insult in the alleged act of contempt was not conclusive as to the applicability of s. 228 of the Indian Penal Code so as to oust the jurisdiction of the High Court under s. 3(2) of the Contempt of Courts Act.

While Judges and Courts are not beyond criticism, and there are well-recognised limits to such criticism, and contempt proceedings are not meant to shield Judges from personal insults, there can be no question that where defamatory aspersions are cast upon the character and ability of individual Judges or of Courts in general, which in substance scandalise the Court itself and have the effect of undermining the confidence of the public in it and thus hinder due administration of justice, the contempt is of a kind which exceeds the limits of s. 228 of the Indian Penal Code.

The true test, therefore, is: is the act complained of an offence under s. 228 of the Indian Penal Code, or something more than that? If it is something more, the jurisdiction of the High Court is not ousted by s. 3(2) of the Contempt of Courts Act.

So judged, there could be no doubt that the aspersions cast in the present case amounted to scandalising the court itself, and were no mere personal insults, and the High Court had jurisdiction to take cognizance of the same.

Bathina Ramkrishna Reddy v. The State of Madras, [1952] S. C. R. 425 and *Brahma Prakash Sharma v. The State of Uttar Pradesh*, [1953] S.C.R. 1169, relied on.

Ambard v. Attorney-General for Trinidad and Tobago, [1936] A.C. 322, referred to.

The question whether an insult offered to a public servant is intentional so as to attract s. 228 of the Indian Penal Code has to be decided on the facts of each particular case and it is neither necessary nor advisable to lay down any hard and fast rule.

Narotam Das v. Emperor, A.I.R. 1943 All. 97, *Queen Empress v. Abdullah Khan*, (1898) A.W.N. 145 and *Emperor v. Murli Dhar*, (1916) I.L.R. 38 All. 284, considered.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 103 of 1956.

H. J. Umrigar and *R. H. Dhebar*, for the appellant. The sole question arising for determination is whether on the facts and circumstances of the case the High Court was correct in holding that the act of the respondent complained of constituted an offence under s. 228 of the Indian Penal Code, and the jurisdiction of the High Court was, therefore, ousted by reason of the provision of s. 3(2) of the Contempt of Courts Act, 1952. The High Court in coming to this conclusion appears to have relied on two decisions of the Supreme Court—[1952] S.C.R. 425 and [1953] S.C.R. 1169. The facts in the two Supreme Court cases were quite different and they do not, in any way justify the view taken by the High Court. It will be my submission that the allegations made in the so-called transfer application as also the affidavit are of such a serious nature that they are not a mere personal insult to the Magistrate, but go far beyond; they scandalise the Court in such a manner as to create distrust in the minds of the public, and pollute the stream of justice, and in such cases the jurisdiction of the High Court is not ousted (Reads out portions of the transfer application and the affidavit in support). From a perusal of the extracts which have been read, it will be seen that the aspersions made against the Magistrate are of a very serious nature alleging criminal conspiracy, and also that he had taken a bribe of Rs. 500 from the opposite side.

So far as the offence under s. 228 of the Indian Penal Code is concerned, the first essential ingredient is that there must be an "intention" to insult. In the affidavit filed in the High Court in reply to the

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show cause notice the respondent had stated that there was no intention to insult or show disrespect to the Magistrate.

[*Imam J.*—I cannot agree with that, the language used in the application and affidavit is such that intention to insult was clearly there.]

That may be true, but there are several earlier decisions of the Allahabad High Court which have been referred to in the case relied upon by the High Court—*Narotam Das v. The Emperor*, A.I.R 1943 All. 97, wherein it was held that where scandalous allegations were incorporated in a transfer application, there was not necessarily an intention to insult, as the primary object was to seek a transfer and not to insult the Court.

So far as the decisions are concerned, they support my contention that when scandalous allegations are made against a Magistrate in a transfer application they would not necessarily constitute an offence under s. 228 of the Indian Penal Code and could be punished by the High Court. In I.L.R. 1941 Nagpur 304, the Judge, who was seized of the case, made a complaint to the High Court about a letter sent to him by one of the parties, and it was there held that the sender of the letter could be punished for Contempt of Court by the High Court. It is true that there is no discussion about s. 228 of the Indian Penal Code but in the course of the judgment the case of *Emperor v. Jagdish Prasad Swadhiry*, I.L.R. 1938 All. 548, was mentioned. In the Allahabad case a person during the pendency of a suit sent communications by post to the Judge containing scandalous allegations. It appears that it was urged that s. 228 of the Indian Penal Code would bar the jurisdiction of the High Court under s. 3(2) of the Contempt of Courts Act, 1926, but this contention was repelled and the High Court stated that its jurisdiction to punish for contempt was not ousted.

[Reference was also made to I.L.R. 12 Patna 1 and I.L.R. 12 Patna 172].

I submit that where the allegations made go beyond

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mere personal insult and tend to bring the whole administration of justice into disrepute, then the jurisdiction of the High Court would not be ousted by s. 3(2) of the Act. In a case where there is only an insult to the Judge by using vulgar abuse such as "rogue or rascal" and this abuse was made "*ex facie curiae*", then it may be said that the jurisdiction of the High Court is ousted as the offence falls within the purview of s. 228 of the Indian Penal Code.

[*Das J.*—Also if the abuse relates to the private life of the Judge, such as, calling him a drunkard or imputing some immorality to him, unconnected with his judicial duties.]

I agree. In the instant case the Magistrate must have been fully conscious of the powers possessed by him under s. 228 of the Indian Penal Code as also the relevant provisions in the Criminal Procedure Code which permit him to punish for Contempt of Court, yet he presumably must have felt that the aspersions made in the present case were so grave as to transcend mere personal insult and as such it was a fit case to be referred to the High Court for taking necessary action. In conclusion, it is submitted that the view taken by the High Court is much too narrow and cannot be supported either in principle or by the authorities cited.

J. B. Dadachanji and *S. N. Andley*, for the respondent. The view taken by the High Court is correct and is in accordance with the judgments of the Supreme Court in the cases reported in [1952] S.C.R. and [1953] S.C.R. If the act complained of intentionally offers a personal insult to the Magistrate concerned, it may tend to undermine the administration of justice thereby, but it will nevertheless amount to an offence under s. 228 of the Indian Penal Code and as such the jurisdiction of the High Court will be ousted by s. 3(2) of the Act. It is unsound to say that there are two kinds of contempt, and the lesser kind of contempt will come under s. 228 of the Indian Penal Code and the grosser kind will not come under s. 228; every insult to a Court, whatever its nature, is contempt and punishable under s. 228 of the Indian Penal Code.

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[*Kapur J.*—Every insult to a Judge will not necessarily be a contempt. A libel attacking the integrity of a Judge may not, in the circumstances of a particular case, amount to a contempt at all, although it may be the subject matter of a libel proceeding.]

[*Das J.*—It appears that there is a further difficulty in your way, that is, whether the Magistrate was sitting in any stage of a judicial proceeding when the application and the affidavit were filed; if he was not, then one of the essential ingredients of s. 228 of the Indian Penal Code was not satisfied.]

The High Court has assumed that the Magistrate was sitting as a Court at that time and this was also borne out by the facts stated in the petition for special leave to appeal filed by the appellant wherein it is stated "the application having been presented during the sitting of the Court was clearly calculated to lower the dignity of the Court in the public mind".

Section 480 of the Code of Criminal Procedure specifically mentions s. 228 of the Indian Penal Code and treats it as a form of contempt, therefore, it will be an offence of contempt punishable under the Indian Penal Code and as such the jurisdiction of the High Court would be ousted under s. 3(2) of the Act.

I submit that the view taken by the High Court is the correct view and is supported by the two decisions of the Supreme Court as also the judgment of the Bombay High Court in (1922) I.L.R. 46 Bom. 973.

Umrigar in reply. During the course of discussion, doubts have arisen whether there was any intention to insult, or whether what was said was an insult, or whether the insult was offered in any stage of a judicial proceeding. If any one of these three essentials is lacking, then, obviously, there is no offence under s. 228 of the Indian Penal Code. Where there is so much doubt as to whether an offence under s. 228 of the Indian Penal Code has been committed or not, and there is no doubt that "prima facie" a Contempt of Court apart from the provisions of s. 228 has been committed, it is wrong to say that the jurisdiction of the High Court is ousted.

I submit that the case relied upon by the High Court, *Narotam Das v. Emperor*, A. I. R. 1943 All. 97, correctly lays down the law so far as the question of "intention" is concerned.

1958. September 24. The Judgment of the Court was delivered by

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S. K. DAS, J.—This is an appeal by special leave from the judgment and order of the then Madhya Bharat High Court, dated February 9, 1955, in Criminal Miscellaneous Application no. 2 of 1954. Originally, the appeal was filed on behalf of the State of Madhya Bharat, now substituted by the State of Madhya Pradesh. The appeal raises an important question with regard to the interpretation of s. 3(2) of the Contempt of Courts Act, 1952 (XXXII of 1952), hereinafter referred to as the Act, which repealed the earlier Contempt of Courts Act, 1926 (XII of 1926), as also the Indore Contempt of Courts Act (V of 1930) which was earlier in force in the State of Madhya Bharat.

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The facts so far as they are relevant to this appeal are these. One Ganga Ram, stated to be the landlord of the respondent Revashankar, instituted a suit, which was numbered as 1383 of 1952 in the court of the Additional City Civil Judge, Indore, for ejectment and arrears of rent against Revashankar. It was stated that the suit was filed in the name of Ganga Ram and his wife Chandra Mukhi Bai. It was further alleged that one Mr. Uma Shankar Chaturvedi, a lawyer acting on behalf of Ganga Ram, advised the latter to sign the name of his wife Chandra Mukhi Bai though Chandra Mukhi Bai herself did not sign the plaint or the vakalatnama. In this suit Chandra Mukhi Bai filed an application for permission to prosecute her husband for forgery. Another application was filed by certain other persons said to be other tenants of Ganga Ram in which some allegations were made against Revashankar. On June 29, 1953, Revashankar filed a complaint against five persons for an alleged offence under s. 500, Indian Penal Code. This complaint was verified on July 13, 1953, and was registered as Criminal Case no. 637 of 1953 in the court of one

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Mr. N. K. Acharya, Additional District Magistrate, Indore. In that case one Mr. Kulkarni appeared on behalf of the complainant Revashankar. The accused persons appeared on August 8, 1953, through Messrs. Mohan Singh and Uma Shankar Chaturvedi. An objection was raised on behalf of the accused persons to the appearance of Mr. Kulkarni as the latter's name appeared in the list of witnesses. This was followed by a spate of applications and counter-applications and on October 12, 1953, the learned Additional District Magistrate passed an order to the effect that the copies of the applications as well as of the affidavits filed by both parties should be sent to the District Judge for necessary action against the lawyers concerned. In the meantime a criminal case was started against Revashankar in the court of the Additional City Magistrate, Circle No. 2, for an alleged offence under s. 497, Indian Penal Code. The case was started on the complaint of Ganga Ram. That case was numbered as 644 of 1953. We then come to the crucial date, namely, December 17, 1953. On that date Revashankar filed an application in the court of the Additional District Magistrate who was in seisin of Criminal Case no. 637 of 1953. The application purported to be one under s. 528, Code of Criminal Procedure. This application contained some serious aspersions against the Magistrate, Mr. N. K. Acharya. The aspersions were summarised by the learned Judges of the High Court under the following four categories. The first aspersion was that from the order dated October 12, 1953 it appeared that Mr. N. K. Acharya wanted to favour Mr. Uma Shankar Chaturvedi. The second aspersion was that from certain opinions expressed by the Magistrate, Revashankar asserted that he was sure that he would not get impartial and legal justice from the Magistrate. The third aspersion was of a more serious character and it was that the Magistrate had a hand in a conspiracy hatched by Messrs. Mohan Singh and Uma Shankar Chaturvedi regarding certain ornaments of Chandra Mukhi Bai with the object of involving, Revashankar and his brother Sushil Kumar in a false case of theft of ornaments. The fourth aspersion was that Mr. Uma

Shankar Chaturvedi had declared that he had paid Rs. 500 to the Magistrate through Ganga Ram. These aspersions were later repeated in an affidavit on December 21, 1953. On January 11, 1954, the learned Magistrate reported the aforesaid facts to the Registrar of the Madhya Bharat High Court and prayed for necessary action against Revashankar for contempt of court. On this report the High Court directed the issue of notice to Revashankar to show cause why action should not be taken against him under the Contempt of Courts Act, 1952 and Criminal Miscellaneous Application no. 2 of 1954 was accordingly started against Revashankar. On March 3, 1954, Revashankar showed cause. The case was then heard by a Division Bench consisting of V. R. Newaskar and S. M. Samvatsar, JJ. and by an order dated February 9, 1955, the learned Judges held that by reason of the provisions in s. 3(2) of the Act the jurisdiction of the High Court was ousted inasmuch as the act complained of constituted an offence under s. 228 of the Indian Penal Code. The question for consideration in the present appeal is if the aforesaid view of the High Court is correct.

Mr. H. J. Umrigar, who has appeared on behalf of the appellant, has very strongly submitted before us that the High Court has erred in holding that the act of the respondent complained of constituted an offence under s. 228, Indian Penal Code, and the jurisdiction of the High Court was, therefore, ousted by reason of the provisions in s. 3(2) of the Act. It is necessary to read first s. 3(2) of the Act. We may state here that the corresponding section in the earlier Contempt of Courts Act, 1926 was s. 2(3) and in the judgment under consideration there is some confusion as to the correct number of the sub-section. Section 3(2) of the Act is in these terms:—

“No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (Act XLV of 1860).”

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The sub-section was considered in two decisions of this Court, *Bathina Ramakrishna Reddy v. The State of Madras* ⁽¹⁾ and *Brahma Prakash Sharma v. The State of Uttar Pradesh* ⁽²⁾. In the earlier case of *Ramakrishna Reddy* ⁽¹⁾ the appellant was the publisher and managing editor of a Telugu Weekly known as "Praja Rajyam". In an issue of the said paper dated February 10, 1949, an article appeared which contained defamatory statements about the stationary sub-Magistrate, Kovvur, and the point for consideration was if the jurisdiction of the High Court to take cognisance of such a case was expressly barred under s. 2(3) of the earlier Contempt of Courts Act, when the allegations made in the article in question constituted an offence under s. 499, Indian Penal Code. On behalf of the appellant it was argued that what the sub-section meant was that if the act by which the party was alleged to have committed contempt of a subordinate court constituted offence of any description whatsoever punishable under the Indian Penal Code, the High Court was precluded from taking cognisance of it. This argument was repelled and this Court said (at page 429):—

"In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say "where the act alleged to constitute such contempt is an offence".

On an examination of the decisions of several High Courts in India it was laid down that the High Court had the right to protect subordinate courts against contempt but subject to this restriction, that cases of contempt which have already been provided for in the Indian Penal Code should not be taken cognisance of

(1) [1952] S.C.R. 425.

(2) [1953] S.C.R. 1169.

by the High Court. This, it was stated, was the principle underlying s. 2(3) of the Contempt of Courts Act, 1926. This Court then observed that it was not necessary to determine exhaustively what were the cases of contempt which had been already provided for in the Indian Penal Code; it was pointed out, however, that some light was thrown on the matter by the provision of s. 480 of the Code of Criminal Procedure which empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under ss. 175, 178, 179, 180 or s. 228 of the Indian Penal Code in the view or presence of the court. The later decision of *Brahma Prakash Sharma* ⁽¹⁾ explained the true object of contempt proceedings. Mukherjea J. who delivered the judgment of the Court said (at page 1176):

“It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened”.

It was also pointed out that there were innumerable ways by which attempts could be made to hinder or obstruct the due administration of justice in courts and one type of such interference was found in cases where there was an act which amounted to “scandalising the court itself”: this scandalising might manifest itself in various ways but in substance it was an attack on individual Judges or the court as a whole with or without reference to particular cases, causing unwarranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for the reason that it tends to create distrust in the popular mind and impair the confidence of the people in the courts which are of prime importance to the litigants in the protection of their rights and liberties.

(1) [1953] S.C.R. 1169.

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Bearing the aforesaid principles in mind, let us now examine the case under consideration. The High Court expressed the view that the act of the respondent complained of merely amounted to an offence under s. 228, Indian Penal Code. Nevaskar J. said :

“It appears to me that the application, though it was stated to be an application for transfer, was intended to offend and insult the Magistrate. A man's intention can be judged by the nature of the act he commits. The application directly and in face attributes partiality and corruption to the Magistrate. It was not an application made bona fide to a court having jurisdiction to transfer the case from that Court to some other Court. It was an application thrown in the face of the Magistrate himself. The action is no better than telling the Magistrate in face that he was partial and corrupt. The allegations in the application no doubt are insulting to the Magistrate and he felt them to be so and at the time the application was submitted on 17th December, 1953, when he was sitting as a Court and dealing with the case of the opponent.”

“Thus, since I hold that the opponent intended to offer insult to the Magistrate concerned there is no doubt that the act would fall within the purview of section 228, Indian Penal Code, and this Court will be precluded from taking action for the contempt committed before the Court of the Magistrate by reason of section 2(3) of the Contempt of Courts Act”.

The other learned Judge also expressed the same view in the following words :

“The subordinate Courts can sufficiently vindicate their dignity by proceeding against the offenders under the provisions of criminal law in such cases. Legislature has deemed it proper to exclude such cases from the jurisdiction of the High Court under section 2(3) of the Contempt of Courts Act. This, however, does not mean that High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code.”

“The question to be considered in this case is

whether the act complained of is punishable as contempt under any one of the specific provisions of the Indian Penal Code. In other words whether it falls under any one of the sections 175, 178, 179, 180 or 228 of the Indian Penal Code."

"If the act complained of constitutes an offence under any of these sections, it can be dealt with by the subordinate Court itself under section 480 of the Criminal Procedure Code and the High Court will have no power to take cognizance of it under the Contempt of Courts Act."

We are of the opinion that the learned Judges were wrong in their view that *prima facie* the act complained of amounted to an offence under s. 228, Indian Penal Code, and no more. We are advisedly saying *prima facie*, because the High Court did not go into the merits and we have no desire to make any final pronouncement at this stage on the merits of the case. Section 228, Indian Penal Code, is in these terms:

"Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

The essential ingredients of the offence are (1) intention, (2) insult or interruption to a public servant and (3) the public servant insulted or interrupted must be sitting in any stage of a judicial proceeding. In the present case there is an initial difficulty which has been pointed out to us. The respondent was sought to be proceeded against by reason of the aspersions he made in the application dated December 17, 1953, and the affidavit dated December 21, 1953. It is not very clear from the record if the learned Magistrate was sitting in any stage of a judicial proceeding when the application and the affidavit were filed. The High Court no doubt says that the Magistrate was sitting as a court at the time; but there is no reference to the particular work, judicial or otherwise, which the

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Magistrate was doing at the time. The practice as to the filing of applications and affidavits varies from court to court and in some courts applications and affidavits are filed within stated hours before the reader or the bench clerk; they are so filed even when the Judge or Magistrate is in chamber or pre-occupied with some administrative duties. So far as the present case is concerned, it is not at all clear, from the record as placed before us, as to what was the judicial work which the learned Magistrate was doing when the application and affidavit were filed. If he was not doing any judicial work at the relevant time, then the third essential ingredient mentioned above was not fulfilled and the act complained of would not amount to an offence under s. 228, Indian Penal Code.

We are not, however, basing our decision on the mere absence of materials to show what particular judicial work the learned Magistrate was doing when the application dated December 17, 1953, and the affidavit dated December 21, 1953, were filed. If that were the only infirmity, the proper order would be to ask for a finding on the question. Our decision is based on a more fundamental ground. Learned counsel for the parties have taken us through the application dated December 17, 1953, and the affidavit dated December 21, 1953. The aspersions made therein *prima facie* showed that they were much more than a mere insult to the learned Magistrate; in effect, they scandalised the Court in such a way as to create distrust in the popular mind and impair the confidence of people in Courts. Two of the aspersions made, taken at their face value, were (1) that the learned Magistrate had joined in a conspiracy to implicate the respondent in a false case of theft. In the affidavit it was stated that the learned Magistrate had sent for the respondent and his brother and had asked them to make a false report to the police that the ornaments of Chandra Mukhi Bai had been stolen. The learned Magistrate characterised the aspersion as totally false and said that he neither knew the respondent nor his brother and had no acquaintance with them. Another aspersion was that the Magistrate had taken a bribe

of Rs. 500. This aspersion was also stoutly denied. We must make it clear here that at this stage we are expressing no opinion on merits, nor on the correctness or otherwise of the aspersions made. All that we are saying is that the aspersions taken at their face value amounted to what is called scandalising the court itself, manifesting itself in such an attack on the Magistrate as tended to create distrust in the popular mind and impair the confidence of the people in the courts. We are aware that confidence in courts cannot be created by stifling criticism, but there are criticisms and criticisms. "The path of criticism", said Lord Atkin in *Ambard v. Attorney-General for Trinidad and Tobago* ⁽¹⁾, "is a public way: The wrong-headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune". If, therefore, the respondent had merely criticised the Magistrate, no notice need have been taken of such criticism as contempt of court whatever action it might have been open to the Magistrate to take as an aggrieved individual; but if the respondent acted in malice and attempted to impair the administration of justice, the offence committed would be something more than an offence under s. 228, Indian Penal Code.

Learned counsel for the respondent has contended before us that as soon as there is an element of insult in the act complained of, s. 228, Indian Penal Code, is attracted and the jurisdiction of the High Court to take cognizance of the contempt is ousted. We are unable to accept this contention as correct. Section 228 deals with an intentional insult to a public servant in certain circumstances. The punishment for the offence is simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. Our attention has been drawn to the circumstance that under s. 4 of

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the Act the sentence for contempt of court is more or less the same, namely, simple imprisonment for a term which may extend to six months. The fine is a little more and may extend to two thousand rupees. Section 4 of the Act contains a proviso that the accused person may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court. We do not, however, think that a similarity of the sentence in the two sections referred to above is a real test. The true test is: is the act complained of an offence under s. 228, Indian Penal Code, or is it something more than that? If in its true nature and effect, the act complained of is really "scandalising the court" rather than a mere insult, then it is clear that on the ratio of our decision in *Ramakrishna Reddy's case*⁽¹⁾ the jurisdiction of the High Court is not ousted by reason of the provision in s. 3(2) of the Act.

Mr. Umrigar has urged a further point in this connection and has contended that for an offence under s. 228, Indian Penal Code, the insult must be an intentional insult. The first essential requirement of the offence, according to him, is that the insult must be offered intentionally. He has pointed out that the application which the respondent filed purported to be an application under s. 528, Criminal Procedure Code, and though it is difficult to see how that section applied in the present case, the intention of the respondent was not to insult the Magistrate, but merely to state the circumstances in which the respondent was praying for a transfer of the case. Mr. Umrigar has pointed out that in the reply which the respondent gave to the notice issued from the High Court, he said that he had no intention to insult or show disrespect to the learned Magistrate. Mr. Umrigar has further submitted that the decision in *Narotam Das v. Emperor*⁽²⁾; (on which the learned Judges of the High Court relied) where in somewhat similar circumstances it was held that s. 228, Indian Penal Code, applied, does not correctly lay down the law. In that case Yorke J. observed that it would be a matter for

(1) [1952] S.C.R. 425.

(2) A.I.R. 1943 All. 97.

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consideration in each individual case how insulting the expressions used were and whether there was any necessity for the applicant to make use of those expressions in the application which he was actually making to the court. While we agree that the question of intention must depend on the facts and circumstances of each case, we are unable to accept as correct the other tests laid down by the learned Judge as finally determinative of the question of intention. In two earlier decisions of the same High Court, in *Queen Empress v. Abdullah Khan* ⁽¹⁾ and *Emperor v. Murli Dhar* ⁽²⁾, it was held that where an accused person made an application for transfer of the case pending against him and inserted in such application assertions of a defamatory nature concerning the Magistrate who was trying the case, there was no intention on the part of the applicant to insult the court, but the intention was merely to procure a transfer of the case. We do not think that any hard and fast rule can be laid down with regard to this matter. Whether there is an intention to offer insult to the Magistrate trying the case or not must depend on the facts and circumstances of each case and we do not consider it necessary, nor advisable, to lay down any inflexible rule thereto.

Taking the aspersions made by the respondent in the application dated December 17, 1953, and the affidavit dated December 21, 1953, at their face value, we have already expressed the view that they amounted to something more than a mere intentional, personal insult to the Magistrate; they scandalised the court itself and impaired the administration of justice. In that view of the matter s. 3(2) of the Act did not stand in the way and the learned Judges of the High Court were wrong in their view that the jurisdiction of the High Court was ousted.

We accordingly allow the appeal and set aside the order of the High Court dated February 9, 1955. In our view, the High Court had jurisdiction to take cognizance of the act complained of and the case must

(1) (1898) A.W.N. 145.

(2) (1916) 38 All. 284.

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now be decided by the High Court on merits in accordance with law. It is only necessary to add that the act complained of was committed as far back as 1953 and it is desirable that the case should be dealt with as expeditiously as possible.

Appeal allowed.

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September 24.

S. M. JAKATI & ANOTHER

v.

S. M. BORKAR & OTHERS

(B. P. SINHA, JAFER IMAM and J. L. KAPUR JJ.)

Hindu Law—Debts of father—Pious obligation of son—Partition, if affects such obligation—Avyavaharika, Meaning of—Sale of joint family property—"Right, title and interest of defaulter"—Bombay Land Revenue Code, 1879 (Bom. V of 1879), s. 155.

J was the managing director of a Co-operative Bank getting a yearly remuneration of Rs. 1,000. The Bank went into liquidation and an examination of the affairs having showed that the monies of the Bank were not properly invested and that J was negligent in the discharge of his duties, a payment order for Rs. 15,100 was made by the Deputy Registrar of Co-operative Societies against him. On July 27, 1942, for the realisation of the amount, an item of property belonging to the joint family of J was attached by the Collector and brought to sale under s. 155 of the Bombay Land Revenue Code, and purchased at auction by the first respondent. This sale was held on February 2, 1943, and confirmed on June 23, 1943. In the meantime on January 15, 1943, one of the sons of J instituted a suit for partition and separate possession of his share in the joint family properties, and contended, *inter alia*, that the sale in favour of the first respondent was not binding on the joint family. The sale was challenged on the grounds (1) that the liability which J incurred was *avyavaharika* and therefore the interest of his sons could not be sold for the realisation of the debt, (2) that even if the debt was not *avyavaharika*, the institution of the suit for partition operated as severance of status between the members of the family and, therefore, the father's power of disposition over the son's share had come to an end and, consequently, at the auction sale the share of the sons did not pass to the auction purchaser, and (3) that what could legally be sold under s. 155