

1962
January 29

PRATAP SINGH AND ANOTHER

v.

GURBAKSH SINGH

(S. K. DAS, K. SUBBA RAO and RAGHUBAR
DAYAL, JJ.)

Contempt of Court—Circular letter prohibiting Government servant from seeking decision of Court before exhausting official remedies—Proceeding on such circular letter pending suit—If constitutes contempt of Court—Contempt of Courts Act, 1952 (32 of 1952), s. 3.

The appellants, both public servants, initiated departmental proceedings against the respondent, another public servant, for having sued the Government in the Subordinate Judge's Court at Amritsar for a declaration that a certain sum of money was being illegally deducted from his salary; the respondent brought the suit before exhausting all his departmental remedies as required by an official circular which directed "that in the matter of grievances arising out of a Government Servant's employment conditions of service the proper course is to seek redress from the appropriate departmental and Government authorities. Any attempt by a Government servant to seek a decision on such issues in a Court of law (even in cases where such a remedy is legally admissible) without first exhausting the normal official channels of redress can only be regarded as contrary to official propriety and subversive of good discipline and may well justify the initiation of disciplinary action against the Government servant". The respondent complained to the High Court that the two appellants had committed contempt of court punishable under s. 3 of the Contempt of Courts Act, 1952, as their action was tantamount to interfering with his legal rights to seek redress in a court of law and amounted to exerting pressure upon him to withdraw the suit, thereby obstructing the judicial process and interfering with the course of a suit pending in a Court subordinate to the High Court. The High Court held that that the appellants were clearly guilty of contempt but since they were merely carrying out the instructions of the Government, the ends of justice would be sufficiently met if they were directed to abandon the departmental proceedings and warned against complying with the said instructions. It was contended on behalf of the appellants that the circular letter, fairly construed, did not impose any absolute ban but merely imposed an obligation on a Government servant to exhaust his departmental remedies

before taking recourse to a court of law and as such did not constitute an interference with the course of justice.

Held, (per S. K. Das and Subba Rao, J.J.), that any conduct which interferes with or prejudices parties litigant during the litigation amounts to contempt of Court. The question is not whether the action in fact interfered with but whether it had a tendency to interfere with the due course of justice. There was no doubt that the proceedings initiated in the present case by the appellants on the basis of the circular letter had only one tendency, namely, to coerce the respondent to withdraw the pending suit or not to press it. The appellants must be held guilty of contempt of court, and it would be no defence to say that they were merely carrying out executive directions contained in the circular letter.

The question at issue was not whether the circular letter was valid in the abstract, but whether the action taken against the respondent on the basis of the circular letter at a time when the suit was pending amounted to interference with the due course of justice.

Shankar Lal Sharma v. M. S. Bisht, A.I.R. 1956 All. 160, referred to.

S. S. Roy v. State of Orissa, A.I.R. 1960 S. C. 190 and *Webster v. Bakewell Rural District Council*, L.R. 1916 1 Ch. 300, held inapplicable.

Per Dayal, J.—There could be no doubt that pressure put on a party to a pending litigation to act in a particular way would amount to contempt of court, but the initiation of the proceedings by the appellants revealed no such conduct. The charge-sheet did not indicate that the departmental proceedings were intended to put pressure on the respondent to withdraw the suit. The appellants who were doing their duty under the circular letter, the validity of which was not in question, could not be held to be guilty of contempt of Court.

Cheriyan Joseph v. Dr. James Kalacherry, A.I.R. 1952 Trav. Co. 75, approved.

Shankar Lal Sharma v. M. S. Bisht, A.I.R. 1956 All. 160, considered.

Perera v. The King, 1951 W.N. 208, *Rizwan-ul-Hasan v. The State of Uttar Pradesh*, [1953] S.C.R. 581 and *Brahma Prakash Sharma v. The State of Uttar Pradesh*, [1953] S.C.R. 1169, referred to.

1962

Pratap Singh
v.
Gurbaksh Singh

1962

Pratap Singh
v.
Gurbekh Singh

Departmental proceedings against Government servants for acts of indiscipline are as much in public interest as contempt proceedings and, consequently, unless departmental action directly affects the course of judicial proceedings it cannot amount to contempt of Court. Whether the departmental action would tempt the respondent to withdraw the suit or deter other Government servants from filing similar suits would be considerations outside the scope of a contempt proceeding and, therefore, irrelevant.

In re the South Shields (Thames Street) Clearance Order, 1931, (1932) 172 L.T.J. 76, referred to.

In re William Thomas Shipping Co. H.W. Dillon & Sons Ltd. v. The Company, In re Sir Robert Thomas, (1930) 2 Ch. D. 368, distinguished.

In the instant case the departmental enquiry against the respondent did not constitute a parallel enquiry and tend to interfere with the course of the litigation pending in Court and therefore, no contempt of court had been committed.

Sailal Kumar Gupta v. B. K. Sen, [1961] 3 S.C.R. 460, applied.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 128 and 129 of 1959.

Appeals from the judgment and order dated November 5, 1958, of the Punjab High Court in Cr. O. Nos. 20 and 27 of 1957.

B. K. Khanna, K. L. Hathi and P. D. Menon, for the appellants.

Bhagat Singh Chawla and K. R. Chowdhuri, for the respondents.

1962. January 29. The Judgment of Das and Subba Rao JJ. was delivered by Das, J. Dayal, J. delivered a separate Judgment.

Das J.

S. K. DAS, J.—These are two appeals on certificates granted by the Punjab High Court under Art. 134(1)(c) of the Constitution. They have been heard together and this judgment will govern them both.

The appeals are from the judgment and order of the said High Court dated November 5, 1958, by which it found the two appellants guilty of an

offence punishable under s. 3 of the Contempt of the Courts Act, 1952 (XXXII of 1952) and directed them, by way of punishment, to abandon the departmental proceedings which had been taken against the respondent Gurbaksh Singh for an alleged contravention of the instruction contained in a circular letter dated January 25, 1953, issued by the Chief Secretary to the Punjab Government and warned them against complying with the said instructions.

The relevant facts are these. Gurbaksh Singh respondent in the two appeals, was a Forester in the Punjab Forest Department. Pratap Singh, appellant in Criminal Appeal no. 128 of 1959, was, at the relevant time, Chief Conservator of Forests, Punjab. Bachan Singh, appellant in the other appeal, was Divisional Forest Officer, Amritsar. It appears that in the year 1950 the respondent supplied three lacs cubic feet of timber to the various Ordnance Depots under orders of the then Chief Conservator of Forests. In 1954, the then Chief Conservator of Forests sent a letter to the respondent alleging that there had been a short supply in the timber which was sent to the Ordnance Depot at Chhoke and that there had been a loss of Rs. 11,366 to the Government. By an order conveyed in a letter dated July 16, 1956, the State Government directed the Chief Conservator of Forests to recover ten per cent. of the loss i.e. Rs. 1,136 and odd annas from the respondent Gurbaksh Singh. The letter further stated that the recovery sought to be made from the salary of the respondent was in accordance with the rules contained in the Punjab Civil Services (Punishment and Appeal) Rules, 1952, and that an opportunity had already been given to the Forester to submit an explanation and the order for recovery was made after considering his explanation. Gurbaksh Singh then instituted a suit in the Court of the

1962
Pratap Singh
v.
Gurbaksh Singh
Das J.

1962
 Pratap Singh
 v.
 Gurtekh Singh
 Das J.

Senior Subordinate Judge, Amritsar for a declaration that the order of recovery made against him was void and without effect. The suit was followed by a petition under Art. 226 of the Constitution which was, however, dismissed by the Punjab High Court on May 20, 1957. When the summons in the suit instituted in the Court of the Senior Subordinate Judge, Amritsar, was served on the State Government, the Under Secretary to the said Government in the Forest and Animal Husbandry Departments, sent a memorandum to the Chief Conservator of Forests in which the attention of the latter was drawn to a circular letter issued by the Chief Secretary on January 25, 1953. The letter has been quoted in extenso in the judgment of the High Court and was in these terms :

"I am directed to say that the question of Government servants having recourse to Courts of law in matters arising out of their employment or conditions of service has been engaging the attention of Government for some time past and it is considered necessary to lay down that in the matter of grievances arising out of a Government servant's employment or conditions of service the proper course is to seek redress from the appropriate departmental and Governmental authorities. Any attempt by a Government servant to seek a decision on such issues in a Court of law (even in cases where such a remedy is legally admissible) without first exhausting the normal official channels of redress, can only be regarded as contrary to official propriety and subversive of good discipline and may well justify the initiation of disciplinary action against the Government servant. These instructions may, therefore, be brought to the notice of all Government servants of your department/office."

The Under Secretary said in his memorandum that as the respondent had not exhausted the departmental remedies open to him before going to a court of law, he had rendered himself liable to disciplinary action as per the instructions contained in the circular letter. The Under Secretary then said :

"It may please be intimated immediately as to what action you propose to take against him."

On receipt of this memorandum, the appellant Pratap Singh sent a copy thereof to the Conservator of Forests, South Circle, and directed that the respondent should be proceeded with in accordance with the instructions aforesaid and a copy of the proceedings recorded and orders passed in the case should be forwarded to him. On receipt of the said orders, the Conservator of Forests, South Circle, passed an office order appointing Bachan Singh, appellant in Criminal Appeal No. 129 of 1959, to hold an enquiry against the respondent for having contravened the instructions contained in the circular letter quoted above. Bachan Singh then drew up a charge-sheet against the respondent and asked him to submit an explanation in writing within 15 days. In the charge-sheet it was stated that the respondent had gone to a court of law before exhausting all his departmental remedies and this was contrary to official propriety and subversive of good discipline. The charge-sheet appears to have been drawn up on or about August 30, 1957. Then, on September 14, 1957, the respondent made an application to the High Court to the effect that the two appellants had committed contempt of court punishable under s. 3 of the Contempt of Courts Act, 1952. In that petition the allegation made was that appellant Pratap Singh had framed and got served a charge-sheet on the respondent and appellant Bachan Singh was holding an enquiry into the

1962
Pratap Singh
v.
Gurbaksh Singh
Das J.

1962
 Pratap Singh
 v.
 Gurbaksh Singh
 ———
 Das J.

charge, which was tantamount to interfering with the legal rights of the respondent to seek redress in a court of law and also amounted to exerting pressure upon him with the intent of restraining him from pressing his suit. This, it was stated, amounted to an obstruction of the judicial process and interfered with the course of justice in respect of the suit which was pending in the court of the Senior Subordinate Judge, Amritsar, a court subordinate to the High Court. The High Court issued notice to the appellants and after hearing the parties came to the conclusion that though the appellants were clearly guilty of an offence punishable under s. 3 of the Contempt of Courts Act, 1952, they were merely endeavouring to comply with the instructions of the Government, the legality or propriety of which they had no reason to doubt. In that view of the matter, the High Court expressed the view that the ends of justice would be amply met if the two appellants were directed to abandon the departmental proceedings which had been taken against the respondent and furthermore, if they were warned against complying with the instructions contained in the circular letter issued by the State Government.

On behalf of the appellants three points have been urged in support of the contention that they were not guilty of the offence of contempt of court. Firstly, it has been argued that the petition dated September 14, 1957, by which the respondent prayed for action against the appellants for contempt of court, stated that the contempt was in respect of the High Court in which a writ petition under Art. 226 of the Constitution had been filed. That writ petition, it is pointed out, was dismissed on May 20 1957 and the charge-sheet against the respondent was drawn up on August 30, 1957, i.e., about three months after the writ petition in the High Court had been dismissed. The argument before us is that where the contempt is criminal in its nature, the

specific offence charged should be distinctly stated and each step in the proceedings to punish it should be fairly, properly and strictly taken. It is argued that the application on behalf of the respondent made a grievance of interference with the due course of justice in the matter of the writ petition filed in the High Court, but the High Court held the appellants guilty of a different offence, namely, of interference with the course of justice in respect of the suit pending in the Court of the Senior Subordinate Judge, Amritsar.

The second point which has been taken on behalf of the appellants is that on a fair construction of the terms of the circular letter on which the two appellants took action against the respondent, it should be held that it did not constitute an interference with the course of justice, inasmuch as it did not impose any absolute ban on a Government servant to have recourse to a court of law for the redress of his grievances arising out of his employment or conditions of his service, but merely imposed an obligation on a Government servant to exhaust his departmental remedies before taking recourse to a court of law. It has been argued that on this view of the circular letter, the action taken by the appellants against the respondent did not constitute an interference with the course of justice in respect of the suit which was pending in the court of the Senior Subordinate Judge, Amritsar.

Thirdly, it has been contended that in any view of the matter appellant Pratap Singh, who took no action beyond endorsing the memorandum of the Under Secretary was not guilty of contempt of court.

We propose now to deal with these three points in the order in which we have stated them. The first point can be very shortly disposed of. It appears that the respondent filed two petitions on September 14, 1957, in the Punjab High Court which gave rise to two cases nos. 20 and 27 of 1957. These two cases were heard together. In the petition

1962

Pratap Singh
v.
Gurbaksh Singh

Das J.

1962

Pratap Singh
v.
Gurbaksh Singh

D. S. J.

which gave rise to case no. 20 of 1957, a grievance was made of interference with the course of justice in the High Court in respect of the writ petition which was dismissed by the High Court on May 20, 1957. But in the second petition filed on the same day, which gave rise to case no. 27 of 1957, the respondent clearly stated as follows in para. 9 of his petition :

"Previously the petitioner filed a petition under Section 3 of the Contempt of Courts Act in this Hon'ble Court in respect of this very charge-sheet on the ground that this charge-sheet related to the writ petition that had been filed by the petitioner (Civil Writ no. 528 of 1956). Now, however, the respondents are taking up the plea that the charge-sheet (annexure 'A') is not in respect of the writ petition filed in the High Court but concerns the suit which has been filed by the petitioner and which is awaiting decision in the Court of the Subordinate Judge at Amritsar."

It is clear, therefore, that the High Court had before it two petitions against the appellants, in one of which a grievance was made of interference with the course of justice in respect of the writ petition and in the other a grievance was made of interference with the course of justice in respect of the suit which was awaiting decision in the court of the Senior Subordinate Judge, Amritsar. The respondent further stated that "by forcing and coercing him to withdraw his suit or otherwise not to press it" the appellants were obstructing the course of justice and had, therefore, committed contempt of court punishable under s. 3 of the Contempt of Courts Act, 1952. In view of these allegations in the second petition filed on September 14, 1957, the first point urged on behalf of the appellants must be overruled.

We now come to the second point which is of a more substantial nature. We have already quoted

the terms of the circular letter dated January 25, 1953. There was some argument before us as to whether the said circular letter contained executive instructions only or laid down a rule as to a condition of service. Our attention was drawn to some institutions or departments of Government, where a rule in similar terms laid down as one of the conditions of service that it is improper for a Government servant to take recourse to a court of law before he has exhausted the normal official channels of redress. Learned Advocates for the parties were, however, agreed that no rule laying down the conditions of service of Government servants serving in the department to which the respondent belonged imposed an obligation similar to that imposed by the circular letter. We have, therefore, proceeded in this case on the footing that the circular letter contained executive instructions only and did not embody a rule governing the conditions of service. Therefore we have not thought it necessary to consider what the position would be if such a rule were made a condition of employment for certain Government servants. Other considerations would then arise such as, the authority of the rule-making power to make such a rule, and we must make it clear that we are expressing no opinion on those other considerations.

Assuming that the circular letter contained certain executive instructions what then is the position? It should perhaps be made clear at the very outset that the question before us is not so much the validity of the circular letter in the abstract, but the propriety of the action taken against the respondent on the basis of the circular letter at a time when his suit was awaiting decision in the court of the Senior Subordinate Judge at Amritsar. It must not, however, be assumed that we are holding the circular letter to be valid in the sense that compliance with it will, in no circumstances, amount to contempt of court. We do not come to any such

1962

Pratap Singh
v.
Gurbaksh Singh

Das J.

1962

Pratap Singh
v.
Gurbaksh Singh

Das J.

conclusion. The argument before us is that the circular letter did not impose an absolute ban on a Government servant seeking redress of his grievances arising out of his employment or service conditions in a court of law ; it is submitted that all that it did was to ask Government servants to exhaust first the normal Official channels of redress before proceeding to a court of law. The emphasis, it is stated, is on propriety and discipline in the conduct of a Government servant ; and it has been submitted that judged from that point of view the circular letter cannot be said to constitute an interference with the course of justice in any court of law. Theoretically and in the abstract, this may be true; and if the circular letter merely lays down that *Ordinarily* a Government servant should exhaust his departmental remedies before going to a court of law, no objection can be taken to it. Speaking generally, a Government servant does not ordinarily go to court unless and until he fails to get what he considers to be justice from the departmental authorities. But we have to consider in this case a somewhat different problem, namely, the action taken against the respondent during a pending litigation, as though going to a court of law before exhausting departmental remedies *must in all cases* be visited with punishment.

What, after all, is contempt of court? "To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation." (Oswald's Contempt of Court, 3rd Edition, page 6.) We are concerned in the present case with the second part, namely, "to interfere with or prejudice parties litigant during the litigation". In the case under our consideration the respondent had instituted a suit in the court of the Senior Subordinate Judge, Amritsar,

in respect of his grievance that a certain sum of money was being illegally deducted from his salary. On behalf of the respondent it was alleged that he had no further departmental remedies to exhaust, inasmuch as the order by which a part of his salary was being deducted was a final order made by the Punjab Government after considering the respondent's explanation. On behalf of the appellants it has been contended that the respondent had still a further remedy by way of an appeal to the Governor. That is a matter with which we are not really concerned, as it relates to the question whether the respondent had or had not violated the terms of the circular letter. We are concerned with the action that was taken against the respondent on the footing, right or wrong, that he had violated the instructions of the circular letter. His suit was pending in the court of the Senior Subordinate Judge, Amritsar. When the summons in the suit was served on the Government, the Under Secretary to Government, drew the attention of one of the appellants to the circular letter and asked the latter to intimate to Government what action he proposed to take against the respondent. Appellant Pratap Singh then forwarded the memorandum of the Under Secretary to the Conservator of Forests, South Circle, and in his forwarding endorsement Pratap Singh directed that the respondent should be proceeded with in accordance with the instructions in the circular letter and that a copy of the proceedings recorded and orders passed should be forwarded to him. It appears, therefore, that appellant Partap Singh was not merely content with forwarding the memorandum of the Under Secretary. He directed his subordinate officer to take action against the respondent. In accordance with that direction a proceeding was drawn up against the respondent and the appellant Bachan Singh was asked to enquire into it. The appellant Bachan Singh then drew up a

1962
Pratap Singh
v.
Gurbaksh Singh
Das J.

1962Pratap Singh
v
Gurbaksh SinghDas J.

charge-sheet and in that charge-sheet it was stated that the respondent had gone to a court of law before exhausting all his departmental remedies. What would be the effect of these proceedings on the suit which was pending in the court of the Senior Subordinate Judge, Amritsar ? From the practical point of view, the institution of the proceedings at a time when the suit in the court of the Senior Subordinate Judge, Amritsar, was pending could only be to put pressure on the respondent to withdraw his suit, or face the consequences of disciplinary action. This, in our opinion, undoubtedly amounted to contempt of court. There are many ways of obstructing the Court and "any conduct by which the course of justice is perverted, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while his suit is pending; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts". (Oswald's Contempt of Court, 3rd Edition, page 87). The question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent, then there can be no doubt that in law the appellants have been guilty of contempt of court, even though they were merely carrying out the instructions contained in the circular letter.

We have been referred to a large number of decisions dealing with various aspects of contempt of court. We consider it unnecessary to refer to them all, because it is clear to us that any conduct which interferes with or prejudices parties litigant

during the litigation is undoubtedly contempt of court. There is, however, one decision which is very much in point and to which we must refer. In *Shankar Lal Sharma v. M. S. Bish* (1) in very similar circumstances it was held by the Allahabad High Court that if any kind of threat or any action which may amount to a threat is held out to a person who approached the Civil Courts for a redress of his grievances, with a view to induce him to forego the assistance of the Civil Courts, the action amounts to a contempt of court. In that case also an employee of the Public Works Department of Uttar Pradesh moved the High Court for the grant of a writ. While the writ petition was pending in the High Court the Chief Engineer, P.W.D., U. P., purporting to act in accordance with certain directions contained in a circular letter asked for an explanation from the employee as to why he has submitted a writ application to the High Court. The learned Judges expressed the view that there was no doubt that the action taken by the Chief Engineer in accordance with the instructions contained in the circular letter amounted to a threat with a view to induce the employee to forego the assistance of the Civil Courts. An unqualified apology having been tendered in the case, no further action was taken. On behalf of the appellants reliance was placed on the decision of this Court in *S. S. Roy v. State of Orissa* (2). That was a case in which a First Class Magistrate misconceiving his powers and exercising a jurisdiction not vested in him by law and without any justifying circumstances made an order under s. 144, Code of Criminal Procedure, by which a Civil Court peon was restrained from executing a warrant of arrest issued by an Additional Munsif in connection with the execution of a money decree; the Magistrate was not influenced by any extraneous consideration or dishonest motive in making the

(1) A.I.R. 1956 All. 160.

(2) A.I.R. 1960 S.C. 190.

1962

Pratap Singh
v.
Gurbaksh Singh

Das J.

1962

Pratap Singh
v.
Gurbaksh Singh

Das J.

order and it was held that the Magistrate was not guilty of contempt of the Court of the Additional Munsif, because there was nothing to suggest any wilful culpability on his part. We are unable to agree with the learned Advocate for the Appellants that the principle of that decision should apply to the present case. The appellants in the instant case were not judicial officers who misconceived their powers. They were no doubt carrying out executive instructions given by their employer, but they carried out those instructions at a time when a civil suit was pending and they carried out the instructions in such a manner as to exert pressure on the respondent to withdraw the suit. That is the finding at which the High Court arrived and on that finding the appellants were clearly guilty of contempt of court. The decision in *Webster v. Bakewell Rural District Council* (¹) on which also learned Advocate for the appellants relied is not in point. That was a case in which the yearly tenant of a cottage and land, adjoining a highway and farming part of a settled estate issued a writ against the local authority for an injunction to restrain an alleged trespass on his land ; the solicitor of the tenant for life wrote to the local authority with a view to arrange the matter and at the same time wrote to the tenant that the tenant for life required him to withdraw the writ, and that, if he did not comply, his tenancy would be determined. It was held that the solicitor had not committed a contempt of court. The decision proceeded on the footing that the tenant for life had the right to turn out the yearly tenant and there was nothing to prevent the tenant for life, who was the landlord, from exercising his legal rights if he did so honestly to protect the rights he had in the property.

"We have, therefore, come to the conclusion that the appellants were guilty of contempt of the

Court of the Senior Subordinate Judge, Amritsar and in awarding the sentence the High Court correctly took into consideration the circumstance that the appellants were merely carrying out the instructions contained in the circular letter. Though that circumstance does not afford a defence to the charge, it is undoubtedly a consideration relevant to the sentence.

As to the third point that appellant Pratap Singh took no action beyond endorsing the memorandum of the Under Secretary, we have already dealt with it and pointed out that he not merely endorsed the memorandum of the Under Secretary but directed the Conservator of Forests, South Circle, to institute a proceeding against the respondent for having contravened the instructions contained in the circular letter.

This disposes of all the points urged on behalf of the appellants. In our opinion, there are no grounds for interference with the judgment and order of the High Court dated November 5, 1958. The appeals are accordingly dismissed.

RAGHUBAR DAYAL, J.—I have held the advantage of perusing the judgment of my learned brother, S. K. Das, J., but regret my inability to agree that the appellants are guilty of contempt of Court.

Raghubar Dayal, J.

The facts leading to the conviction of the appellants in the two appeals, have been fully mentioned in the majority judgment and I need not repeat them here. For the purpose of these cases, I assume the validity of the Circular issued by the Government in 1953. That has not been challenged by the opposite party. If an employee acts against the directions contained in the Circular, it is just and proper that action be taken. If action is taken and that be considered *per se* to amount to the commission of contempt of Court, the directions in the Circular can be disobeyed with impunity and

1962
Pratap Singh
v.
Gurbaksh Singh
Das J.

1962

Pratap Singh
v.
Gurbaksh Singh

Raghubar Dayal J.

the Circular, though valid, would remain a dead letter. It would then be incongruous to hold that any action taken in pursuance of it would *per se* amount to contempt of the Court to which the Government servant had gone for adjudication.

There is nothing in the charge-sheet framed against the appellants by Bachan Singh, Divisional Forest Officer, which can amount to contempt of Court. The Charge relates to misconduct and indiscipline. The evidence in support of the charge is mentioned in the charge-sheet to be that Gurbaksh Singh had gone to the Court of law before exhausting all the sources as ordered in the Circular and which was contrary to official propriety and that thereby he had rendered himself liable to disciplinary action. There was nothing in the description of the charge or in the description of the evidence in support of it, which, in any way, referred to the merits of the case or directed Gurbaksh Singh to do, in connection with that case. For the purposes of the charge laid against him, the merits of the civil case were irrelevant. The charge was with respect to misconduct and indiscipline which consisted simply in his going to Court without exhausting all the normal official channels of redress. Gurbaksh Singh had simply to point out that he had exhausted all the official channels open to him and that therefore, he had not acted in contravention of the directions given in the Circular.

The charge-sheet did not, in any way, threaten Gurbaksh Singh with any consequences in view of his continuing his suit. His continuing the suit will not be in contravention of the Circular and therefore, will not be misconduct or indiscipline on account of his contravening the directions of the Circular. I am unable, therefore, to conclude from the Departmental charge-sheet against Gurbaksh Singh during the pendency of his suit in Court that the Departmental proceedings were in

order to put pressure on him to withdraw his suit or face the consequences of disciplinary action. Even if Gurbaksh Singh does not withdraw the suit, the basis of the charge against him would stand and he will have to meet it. There is no indication in the charge-sheet, or in any other circumstance, that in case he withdraws the suit the charge would be dropped. He committed the act of indiscipline and he has to answer for it if the Department considers it expedient to take Departmental action.

I do not dispute the legal proposition that if any pressure is put on a party in order to make him act in a particular manner with respect to pending litigation, that would amount to contempt of the Court in which the matter be pending. I however fail to see any such conduct on the part of the appellants in the action taken by them against Gurbaksh Singh.

Reference may now be made to certain cases having a bearing on the question before us for determination.

The cases reported as *Hrishikesh Sanyal v. A. P. Bagchi* ⁽¹⁾ and *Radhey Lal v. Niranjan Nath* ⁽²⁾ hold that a person does not commit contempt of Court if during the pendency of a certain proceeding he takes recourse to other judicial proceedings open to him, even though the latter proceedings put the other party to loss, because everybody is entitled to take recourse to law.

It was held in *Baldeo Sahai v. Shiva Datt* ⁽³⁾ that the plaintiff's son's serving a notice on the defendant telling him that either he should pay damages for a defamatory statement about him in the written statement within a certain time or he would bring action against him for defamation, did not constitute contempt of Court.

In *Kamtu Prasad v. Ram Agyan* ⁽⁴⁾ it was held that a party cannot be said to be interfering with

(1) I.L.R. 1940 All. 710.
(3) A.I.R. 1940 All. 114.

(2) A.I.R. 1941 All. 95.
(4) I.L.R. 1950 All. 530.

1962

Pratap Singh
v.
Gurbaksh Singh

Raghubar Dayal J.

1962

Pratap Singh
v.
Gurbaksh Singh

Boghater Deyal J.

the course of justice and to be guilty of contempt of Court when he makes an offer for the settlement of the dispute between the parties out of Court and, as part of the settlement, suggests that the pending litigation should be withdrawn and, failing it, threatens to take legal proceedings open to him under the law. Reliance was placed for this view on the decision in *Webster v. Bakewell Rural District Council* (1).

The principle behind all these cases is that such action of the person which he takes in pursuance of his right to take legal action in a Court of law or in just making a demand on the other to make amends for his acts will not amount to interfering with the course of justice, even though that may require some action on the part of the other party in connection with his own judicial proceeding, as a party is free to take action to enforce his legal rights.

The case reported as *Shankar Lal Sharma v. M. S. Bisht* (2) does go against the appellants. I however do not agree with the conclusion in that case that the calling for an explanation from the employee as to why he had submitted a writ application in the High Court, in contravention of certain directions contained in the Government Circular of 1952, was an attempt to hold out a threat of Departmental action against him in order to induce him to withdraw the application he had presented for the protection of his rights under the Constitution.

On the other hand, in the case reported as *Cherian Joseph v. Dr. James* (3), a different view was expressed. The plaintiff instituted a suit for a declaration that a certain resolution was not binding upon the church or the parish in which he resided and for a permanent injunction to restrain

(1) L.R. (1916) 1 Ch. 300. (2) A.I.R. 1956 All. 160.
(3) A.I.R. 1952 Trav. Co. 75, 76.

the defendants from acting in pursuance of that resolution. The Vicar of that church was one of the defendants. The Bishop's letter to the plaintiff contained a threat to excommunicate him and to claim damages from him in case he did not withdraw his suit forthwith. The plaintiff was subsequently excommunicated. Thereafter, he applied for contempt of Court proceedings against the Bishop and the Vicar, alleging that the letter and the excommunication were calculated to interfere and obstruct the course of justice, as their object was to cow him down into submission and to compel him under the threat of excommunication to abandon the suit which he had filed and which he was entitled to prosecute. In considering the question, it was observed:

"On the other hand the contents of the letter indicate that it was conceived by respondent 1 (the Bishop) and that he was acting in the exercise of his legitimate right of safeguarding the interests of the church. We are not prepared to assume as the petitioner's learned counsel wants us to assume that respondent 2 (the Vicar) was responsible for the despatch of this letter. He was legally bound to obey the commands of his Bishop and all that he did was to comply with the direction given to him by the Bishop in as innocuous a manner as possible. Therefore, in our judgment, respondent 2 cannot be taken to task for obeying an order sent to him by respondent 1."

On the question of the letter amounting to contempt of Court, it was said at the end of the same page :

"The facts seem to us to be more similar to the case reported as *Webster v. Bakewell Rural District Council* (L.R. 1916 1 Ch. 300). There

1962

P. Nanp Singh

v.

Gurbaksh SinghRaghubar Dayal J.

1962

Prelop Singh
v.
Gurbaksh Singh

Raghubar Deyal J.

it was held that the threat to assert one's legal rights against another if he chose to continue an action started by him, would not amount to contempt. In the present case also the threat held out by respondent I was that the petitioner had already incurred a censure by the church and that if he persisted in asserting his rights in the suit filed by him in the Court of the District Munsif of Alleppy, respondent I would exercise the lawful right of excommunicating the petitioner for the wrongful act done by him."

The Vicar was not held guilty of contempt of Court. I think in this case the Judges took a correct view of the matter.

The case before us is a still stronger case for holding that no contempt of Court took place since the action taken against Gurbaksh Singh did not ask him to withdraw the suit he had instituted.

The observations of the Privy Council in *Perera v. The King*⁽¹⁾ lead to the same conclusion. Mr. Perera, a member of the House of Representatives of Ceylon and as such a Visitor of the Jail, made certain remarks in the Visitor's Book, which were considered to amount to contempt of court by the Supreme Court of Ceylon. On appeal, the Privy Council said.

"Their Lordships are satisfied that the order against the appellant ought not to have been made.....But Mr. Perera, too, has rights that must be respected, and their Lordships are unable to find any thing in his conduct that comes within the definition of contempt of court. That phrase has not lacked authoritative interpretation. There must be involved some 'act done or writing published calculated to bring a court or a Judge of the

(1) 1951 W.N. 208, 209.

court into contempt or to lower his authority'; or some thing 'calculated to obstruct or interfere with the due course of justice or the lawful process of the court': See, *Reg. v. Gray* (1900) 2 Q.B. 36.

What has been done here is not at all that kind of thing. Mr. Perera was acting in good faith and in discharge of what he believed to be his duty as a member of the legislature. His information was inaccurate, but he made no public use of it, contenting himself with entering his comment in the appropriate instrument, the visitors' book, and writing to the responsible Minister. The words that he used made no direct reference to the Court, or to any judge of the court, or, indeed, to the course of justice, or to the process of the courts. Finally his criticism was honest criticism on a matter of public importance. When these and no other are the circumstances that attend the action complained of there cannot be contempt of court."

It can be said in the present case that the appellants acted in good faith and in discharge of what they believed to be their duty as officers of Government to comply with the directions given in the Circular to which attention had been drawn by the Under Secretary to the Government, by his letter enquiring what action was proposed to be taken against Gurbaksh Singh. The action taken was on the departmental basis. No publicity was given to it. The words used in the charge made no reference to the merits of the case, to the judge or the Court or to the course of justice or to the process of the Courts. The action was taken in the interest of discipline of the services and therefore in public interest.

1962

Pratap Singh
v.
Gurbaksh Singh
Baghbar Dayal J

1962

Pratap Singh
v.
Gurbekh Singh
Raghubir Dayal J.

In *Rizwan-ul-Hasan v. The State of Uttar Pradesh*⁽¹⁾ this Court said.

"As observed by Rankin C.J., in *Anantalal Singh v. Alfred Henry Watson* (I.L.R. 58 Cal. 884, 895), 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."

It follows that even if the action of the appellants be considered to be improper, that will not justify holding them guilty of contempt of Court when their action in no way prejudiced the trial of the suit.

In *Brahma Prakash Sharma v. The State of Uttar Pradesh*⁽²⁾, it was stated :

"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."

Contempt of Court proceedings are in public interest and so are Departmental proceedings against Government employees for any act of indiscipline committed by them. It is therefore only when the Departmental action directly affects the course of the judicial proceeding that it can

(1) [1953] S.C.R. 581, 588.

(2) [1953] S.C.R. 1169, 1176.

amount to interfering with the course of justice and consequently, to contempt of Court. If it does not do so, there can be no case of contempt of Court.

In *Re the South Shields (Thames Street) Clearance Order, 1931*⁽¹⁾ certain articles were published suggesting that the appellants by their appeal were keeping the tenants out of the new houses, that they were hindering the progress of housing in the borough and causing the corporation to lose the rent of the new houses. It was argued that the articles constituted contempt not as affecting the mind of the Court that would hear the appeal, but as tending to deter the appellants and other from coming to the Court and presenting their appeal and that the articles were thus calculated to affect the course of justice. It was held that the rule ought not to be granted as the issue of the writ of attachment in the case would be an extension of the jurisdiction of the court on contempt beyond anything that could justify it. It is to be noticed that in that case nothing was said on the merits of the matter for consideration in the appeal, though reference was made to the adverse results of the pendency of the appeal on the tenants, the corporation and the progress of housing and it was said that in view of the publicity of such contemplated adverse effects, the appellants and other persons might be deterred from taking similar matters to Court and therefore those articles cause obstruction to the course of justice. Such a contention was not accepted, as it would be extending the jurisdiction of the Court in matters of contempt. Such a possibility of a certain act with respect to the conduct of a party or a few persons interested in similar cause in future was held not to amount to contempt of Court.

I have already stated that no threat is held out to Gurbaksh Singh in the contents of the charge-sheet with respect to withdrawing or not

(1) (1932) 173 L.T.J. 76.

1962

Pratap Singh
v.
Gurbaksh Singh

Raghubar Dayal J.

1962

Pratap Singh
v.
Gurbaksh Singh
Raghbir Dayal J.

withdrawing the suit. Any consideration that to avoid Departmental action he be tempted to withdraw the suit or that other Government servants would be deterred from instituting similar suits, will be beyond the scope of considerations for the determination of the question whether the appellants committed contempt of Court or not.

In *In re The William Thomas Shipping Co. H. W. Dillon & Sons. Ltd. v. The Company, In re Sir Robert Thomas* (¹) it was said :

"I think that to publish injurious misrepresentations directed against a party to the action, especially when they are holding up that party to hatred or contempt, is liable to affect the course of justice, because it may in the case of a plaintiff, cause him to discontinue the action from fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to, for a like reason."

This would make publication of injurious misrepresentations against a party to an action, contempt of Court, if they had a tendency to cause that party to come to a compromise which he otherwise would not come to. The facts of the present case do not in any way correspond to this case even if on his own, Gurbaksh Singh, to avoid Departmental action, discontinues the suit, as the action taken does not in any way make such injurious misrepresentation of the party, if any, as would hold him up to hatred or contempt.

Lastly, I may refer to the judgment of this Court in *Saibal Kamar Gupta v. B. K. Sen* (²). Proceedings in revision against the Sessions Judge's order for further enquiry on a complaint filed by one Bimala Kanta Roy Choudhury against B. K. Sen, under s. 497, I. P. C., were pending in the

(1) (1930) 2 Ch. D. 368, 376.

(2) [1961] 3 S.C.R. 460.

High Court. B. K. Sen held the office of Commissioner of the Calcutta Corporation. The Corporation appointed a Special Committee of three Councillors to enquire into the allegations levelled against certain officials, including B. K. Sen, of the Corporation, who were alleged to have been taking advantage of their office in carrying on business in their own names. The Special Committee issued a questionnaire to B. K. Sen. Some of the questions related to his giving appointments to certain persons who were related to certain witnesses in the case, his giving appointments to certain persons and condoning the punishment previously inflicted on one person, as they were helping him in continuing the defence in that case and to his being instrumental in securing the appointment of another probable prosecution witness. The High Court considered this action of the Special Committee to amount to gross contempt of Court and convicted the members of the Special Committee for it. On appeal to this Court, the order was set aside. This Court said in the majority judgment.

"The record does not establish that at any time the appellant had made comments on the case under s. 497, Indian Penal Code, pending against B. K. Sen or in respect of any matter pending in connection with that case in the Calcutta High Court. ...The questionnaire nowhere suggested that B. K. Sen had made these appointments in order to suborn prosecution witnesses in that case or that he had made the appointments with a view to preventing Bimala Kanta Roy Choudhury from producing witnesses to prove his case against B. K. Sen. ...The Special Committee had embarked upon an enquiry on the directions of the Corporation in order to discover malpractice on the part of the Corporation's servants. Malpractices of the

1962
—
Pratap Singh
v.
Gurbaksh Singh
—
Raghubar Dayal J.

1962
Pratap Singh
v.
Gurbaksh Singh
Bachan Doyal J.

part of a servant of the Corporation would presumably include making unworthy appointments. The ascertainment of the motive for the appointment would be merely incidental to the main purpose of the enquiry. It would be difficult to conclude therefrom that the Special Committee were holding a parallel enquiry on matters pending decision by a court of law and that thereby their action tended to interfere with the course of justice."

The same, with greater emphasis, can be said in the present case. The Departmental enquiry against Gurbaksh Singh did not tend to interfere with the course of justice. Bachan Singh, appellant, was conducting the enquiry under the orders of Pratap Singh. Pratap Singh directed the enquiry under orders from Government. Neither of them would commit contempt of Court in discharging his duty.

I am therefore of opinion that the facts of the case do not make out that the appellants, by their alleged conduct, committed contempt of Court. I would therefore allow their appeals.

By COURT : In accordance with the opinion of the majority, these appeals are dismissed.

Appeals dismissed.