

JAGANNATH SINGH AND OTHERS

v.

DR. RAM NARESH SINGH

March 10, 1970.

[M. HIDAYATULLAH, C.J., A. N. RAY AND I. D. DUA, JJ.]

Practice and Procedure—Case not properly described in cause list—Non-appearance of counsel and party.—When excusable.

A motion for contempt against the appellants was made and it was shown on the daily cause list on Monday, 1st of May 1967 before a Judge of the High Court. On that day the case did not reach and it was shown on the next day. The name of the counsel of the appellants was not correctly mentioned in the cause list of 1st of May, but the next day the entry was correctly made. When the case was called, the appellants were absent as also their counsel. The order was passed *ex-parte* imposing fines on the appellants. The clerk of the counsel filed an affidavit stating that he missed the case on the first day as his counsel's name was not correctly recorded, and as contempt matters are usually shown on Monday, he overlooked it the following day also. It was also stated that his counsel was informed by another counsel that his case had been called out and when his counsel went to enquire, he found that the judgment had already been delivered. An application was thereafter made for rehearing the case after vacating the order. The Judge did not accept the explanation. In appeal, this Court,

HELD :—The High Court contributed to the failure of the party to appear before it on the first day and in these circumstances, the High Court should have seen its way to hear the counsel when he put an application for re-hearing.

The omission to mention the case correctly in the cause list was a mistake of the Court itself and some indulgence was, therefore, to be shown to the party who had been misled by this erroneous entry. It is no doubt true that on the next day, the entry was correctly made. When the counsel knew that his case was not in the Cause List the previous day he ought to have looked into the Cause List for the next day's work. There was some negligence on the part of the counsel or his clerk but it was not so grave as to disentitle the party to be heard, and in any event, the alleged contemnors could not be punished for a mistake on the part of their counsel or the counsel's clerk.

Further, this was a case in which the counsel must have an opportunity of explaining his conduct and the conduct of his clients in reference to the order of stay for whose disobedience the charge of contempt was made. [972 B-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 59 and 60 of 1968.

Appeals by special leave from the judgments and orders dated May 2, 1967 and May 18, 1967 of the Allahabad High Court in Criminal Misc. Contempt Case No. 53 of 1966.

M. V. Goswami, for the appellant (in both the appeals)

S. S. Khanduja and *Kailash Chander* for the respondents (in both the appeals).

O. P. Rana, for the interveners.

A The Judgment of the Court was delivered by

Hidayatullah, C.J. These two appeals arise out of two separate proceedings in the High Court of Allahabad. Criminal Appeal No. 60 of 1968 arises out of an order by which the appellants held guilty of contempt and fined, asked the Court to vacate the order and to rehear the case. Criminal Appeal No. 59 of 1968 concerns the main order passed in the case holding the appellants guilty of contempt and imposing fines on them. We have not considered the merits of Civil Appeal No. 59 of 1968 because in our opinion, Civil Appeal No. 60 of 1968 should be allowed with the consequential order that the conviction for contempt of Court should be set aside and the case remanded to the High Court for re-hearing.

C It is not necessary to go into the facts of the case because we are only concerned with the absence of counsel and parties when the motion for contempt was heard in the High Court. The case was shown in the daily Cause List of Monday, the 1st May, 1967 before Mr. Justice Gyanendra Kumar in Court Room No. 2. On that day, there were two cases fixed at the top for dictation of judgment and for orders. Thereafter, this case was shown at the 12th place. The entry read correctly in so far as the names of the parties were concerned and the number of the case but by some mischance, the name of the counsel was shown as Mr. C.B. Gupta in place of Mr. C.B. Misra. It appears that the case was not reached that day. It was shown the next day in the same Court its position was then No. 3. One case which had the 15th place on 1st May, 1967 was shown ahead of this case. This time, the name of the counsel was correctly mentioned.

When the case was called in the Court of Mr. Justice Gyanendra Kumar, the appellants were absent as also their counsel. The order was passed *ex-parte* imposing fines upon the contemnors who are the appellants here. According to the affidavit filed by the clerk of Mr. C. B. Misra, he missed the case on the first day because the name of his counsel was not correctly recorded. He also stated that as contempt matters were usually shown on Monday, he overlooked the case on the following day also and hence Mr. C. B. Misra could not be present in Court. It is also stated in the affidavit that another counsel informed Mr. C. B. Misra that his case had been called in Court No. 2. Mr. Misra went to enquire because he did not know that he had a case there. He found that this case was in fact shown in the Cause List but that it was already heard and decided and the judgment was also delivered. The application was thereafter made for rehearing the case after vacating the order, pointing out the facts which we have narrated above. The learned Judge did not accept the affidavit of Mr. Misra's clerk. He observed that it was not a

case of optical illusion or that two pages had been turned by mistake. The case was shown on the 1st May and also on the second May he was not, therefore, prepared to accept the explanation.

Although, we are reluctant to interfere in matters of discipline, when the High Court punishes for contempt for disobedience of its orders, we think in this case, the learned judge might well have heard Mr. Misra. There is no doubt that on the 1st of May there was an error in the Cause List and it is a maxim that an act of Court should not harm any person. The omission to mention the case correctly in the Cause List was a mistake of the Court itself and some indulgence was, therefore, to be shown to the party who had been misled by this erroneous entry. It is no doubt true that on the next day, the entry was correctly made. When the counsel knew that his case was not in the Cause List the previous day he ought to have looked into the Cause List for the next day to find whether it was included in the next day's work. There is some negligence on the part of the counsel or his clerk but it is not so grave as to dis-entitle the party to be heard, and in any event, the alleged contemnors cannot be punished for a mistake on the part of their counsel or the counsel's clerk. In a contempt matter, the Court acts as accuser as well as the Judge. Although, strictly speaking, the contemnor is not allowed to defend himself where the contempt is patent, however, here, there was some question as to whether the stay granted remained intact after the order of August 30, 1965, or had been varied by that order. There was also some doubt as to whether the constructions had been made in such a way as to amount to disobedience of the injunction which had been made by the Court on January 11, 1965. All these matters might have been properly explained if the party had appeared. In our judgment, the High Court contributed to the failure of the party to appear before it on the first day and in these circumstances, the High Court should have seen its way to hear the counsel when he put an application for re-hearing. We say nothing about the merits of the case. If contempt has been committed, no doubt, it will be dealt with properly by the High Court. But in this case, we are satisfied that the counsel must have an opportunity of explaining his conduct and the conduct of his clients in reference to the order of stay. We accordingly set aside both the orders and remit the case to the High Court for considering whether contempt has been committed or not and to deal with the matter in accordance with law. Since the appellants were guilty of some negligence, we think, we should make an order that they should bear the costs of these appeals qualified at Rs. 300.

Y.P.

Case remanded.