Commissioner of Income-tax, Delhi
v.
S. Teja Singh, Dalmia Jain Aviation Ltd. (now Asia (Udyog Ltd.)

Venkatarama Aiyar, J.

In the result, we set aside the order of the Court below and answer the reference in the affirmative. The appellant will have his costs here and in the Court below.

B. R. T.

CRIMINAL ORIGINAL

Before A. N. Bhandari, C.J. and S. S. Dulat, J.

GURBAKHSH SINGH,—*Petitioner*

versus

S. PARTAP SINGH, I.F.S., CHIEF CONSERVATOR OF FORESTS, PUNJAB, SIMLA, AND ANOTHER,—*Respondents.*

Criminal Original No. 20 of 1957.

1958

Nov., 5th

Contempt of Courts Act (XXXII of 1952)—Section 3—Right of a citizen to resort to law Courts—Nature of—Interference with such right—Whether constitutes Contempt of Court—Communication of the Chief Secretary to Government preventing Government servants from seeking redress at the hands of Courts of law—Whether amounts to contempt of Court.

Held, that ever since the declaration in the Magna Carta, people of free countries all over the world have regarded it as a fundamental principle that justice shall be administered to all without delay or denial, without sale or prejudice, and the Courts shall always be open to all alike. Not only are the Courts to be open to all who may wish to resort to them but they are to be open to all on the same terms so that every person should have a remedy when he chooses to ask for it for injury done to him in person or property. It is the duty of the Courts which have been established and erected for the administration of justice, for the enforcement of legal rights and for the redress of injuries to legal rights, to secure that the doors of litigation which are already wide open should constantly remain so.

Held further, that contempt of court is constituted not only by an act which is calculated to embarrass, hinder or obstruct the Court in the administration or justice or to lessen its authority or dignity, but also by such conduct as tends to defeat, impair or prejudice the rights of parties or witnesses to pending litigation. It is a general rule which is almost as old as the common law, that a person who forces or attempts to force a party to refrain from instituting a suit or a party or a prosecution witness to withdraw or abandon the prosecution or defence of an action or proceeding is guilty of contempt of court. It is the duty of the courts to protect defendants from being cowed down into submission and under pressure of threat and menace being made to abandon pleas which they can legitimately take in a pending cause. If a person attempts to bring pressure on a party to a proceeding to admit his claim, he commits contempt of court as his action tends to interfere with the due course of justice.

Held also, that a government servant, like any other citizen of this country, has a right to invoke the authority of the Court at any time he chooses to ask for it and a person who deters him from exercising this right, when he wishes to exercise it, commits contempt of court. The communication issued by the Chief Secretary to the Punjab Government with the object of preventing government servants from seeking redress at the hands of courts of law at their own sweet will and pleasure, must be deemed to have been issued with the object of diverting the course of justice and is a clear contempt of court.

Turk v. *State* (1) *Wilson* v. *Irwin* (2), *Ch. Rajinder Singh* v. *Uma Parshad* (3), *Nalin Chander Pal* v. *Bejay Ranjan Ganguly* (4), referred to and *Webster* v. *Bakewell Rural Council* (5), distinguished.

Petition under Section 3 of the Contempt of Courts Act (Act 32 of 1952), praying that the respondents be brought up before the Bar of this Court and punished in accordance with law and the requirements of the gravity of the offence in the case.

B. S. CHAWLA, for Petitioner.

N. L. SALOOJA, for Respondents.

(1) (1916) 123 Ark. 341; 185 S.W. 472.

(2) (1911) 144 Ky. 311, 138 S.W. 373.

(3) A.I.R. 1935 All. 117.

(4) 1953 Cal. 53.

(5) (1916) 1 Ch. 300; 85 L.J. Ch. N.S. 326.

ORDER

Bhandari, C. J.

Bhandari, C. J. This petition under section 3 of the Contempt of Courts Act raises the question whether a certain order issued by the Punjab Government is calculated to interfere with the due course of justice.

The petitioner in this case is one S. Gurbakhsh Singh, a Forester in the Punjab Forest Department, while the respondents are S. Partap Singh, I.F.S., Chief Conservator of Forests, Punjab, and S. Bachan Singh, Divisional Forest Officer, Amritsar.

By an order passed by him in his capacity as Chief Conservator of Forests, S. Partap Singh required the petitioner to pay a sum of Rs 1,136-9-7 by way of penalty for short supply of timber. Government endeavoured to deduct this amount from the salary of the petitioner, but the latter promptly brought a suit for a declaration that the order of S. Partap Singh was void and of no effect. This suit was followed by a petition under Article 226 of the Constitution which, however, was dismissed by a learned Judge of this Court on the 20th May, 1957.

Some three months later, that is, on the 30th August, 1957, while the above suit was awaiting the decision of a Court of law, S. Partap Singh served a charge-sheet on the petitioner calling upon him to show cause why disciplinary action should not be taken against him for rushing to a Court of law before first exhausting the normal official channels of redress. This charge-sheet was served on the petitioner through S. Bachan Singh who was to hold an enquiry into the charges.

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The petitioner complains that the respondents are endeavouring to punish him merely because he had the temerity to exercise the legal rights conferred upon him as a citizen of India, that the respondents are endeavouring to prevent him from continuing a proceeding which is already pending in a Court of law, and that this action on their part constitutes contempt of Court. He has accordingly presented this petition under section 3 of the Contempt of Courts Act.

Action appears to have been taken against the petitioner in obedience to the directions contained in a circular letter dated the 25th January, 1953 issued by the Chief Secretary to Government, Punjab, to all Heads of Departments in the Punjab. This letter is in the following 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

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disciplinary action against the Government servant. These instructions may, therefore, be brought to the notice of all Government servants of your department/office."

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Ever since the year 1215 when the unwilling King John declared in the Magna Carta "We will sell to no man, we will not deny to any man, either justice or right", people of free countries all over the world have regarded it as a fundamental principle that justice shall be administered to all without delay or denial, without sale or prejudice, and that Courts shall always be open to all alike. Not only are the Courts to be open to all who may wish to resort to them but they are to be open to all on the same terms so that every person should have a remedy when he chooses to ask for it for injury done to him in person or property. It is the duty of the Courts, which have been established and erected for the administration of justice, for the enforcement of legal rights and for the redress of injuries to legal rights, to secure that the doors of litigation which are already wide open should constantly remain so.

Contempt of Court is constituted not only by an act which is calculated to embarrass, hinder or obstruct the Court in the administration of justice or to lessen its authority or dignity, but also by such conduct as tends to defeat, impair or prejudice the rights of parties or witnesses to pending litigtion. It is a general rule, which is almost as old as the common law, that a person who forces or attempts to force a party to refrain from instituting a suit or a party or prosecution witness to withdarw or abandon the prosecution or defence of an action or proceeding, is guilty of contempt of Court. The reason for this rule has

been stated with admirable clarity in a number of cases but I shall content myself by citing only two. In the American case of *Turk* v. *State* (1), it appears that one Andrewes had instituted an action against one Wallen. On the day set for the trial Andrews was accosted by Turk, who attempted to dissuade him from proceeding with the suit. Turk called Wallen, and together, by means of intimidation, they succeeded in driving Andrews out of town. In affirming the conviction of Turk and Wallen of contempt, the Court said—

> "It is universally held that intimidating a witness and preventing his appearance at court, or procuring him to absent himself from the trial, is a contempt of court. Preventing the appearance of a litigant in court, for the prosecution of a suit brought to enforce a right by intimidation and threats, is such an obstruction of judicial procedure as renders absolutely worthless all process of the court, which is instituted for the enforcement and protection of the rights and the redress and prevention of wrongs of the litigants. It destroys the dignity and power of the court and brings the administration of Justice into disrepute. .....The conduct of appellants was a flagrant offense against the dignity and power of the Court, whose arm is long enough and strong enough to keep open and unobstructed the way to its door to all who must invoke its authority, which is not limited in the right to punish offenses of this kind except by

(1) (1916) 123 Ark. 341; 185 S.W. 472

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the infliction of such punishment as is commensurate with the enormity of the offense and calculated to preserve and uphold the dignity and honour of the court and its respect in the confidence of the people."

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In *Wilson* v. *Irwin* (1), it appeared that at the instance of one Irwin, a preliminary injunction issued, restraining Wilson, a neighbour, from maintaining on his premises a dog kennel. While the suit was pending Wilson threatened to put up a fence 20 feet high between his premises and those of Irwin, if made to move his dogs, and on Irwin's persisting in the suit the fence was erected. On final judgment the preliminary injunction as to the dogs and kennels was made perpetual, and Wilson was required to remove the fence. Appeal was taken from so much of the judgment as related to the fence. In upholding the decision of the Court below it was said—

> "Any obstruction of public justice is a public offense; any effort to thwart justice, or to interfere with its orderly administration, is a contempt of Court..... .....Justice cannot properly be administered if litigants are intimidated. The courts must be free, and it is the duty of the court to protect litigants no less than witnesses, that the orderly administration of justice shall not be impeded. The record amply sustains the court's findings of fact, and on these findings he properly required the fence to be removed. It is insisted that Wilson had the right to build a fence on his

(2) (1911) 144 Ky. 311, 138 S.W. 373

own land, and build it as high as he pleased, but he had no right to interfere with the administration of justice, and he may be required to remove anything that was built to interfere with justice."

Similar principles have been propounded and followed by the Courts in England. The relevant cases have been collected in Oswald's admirable treatise on Law of Contempt where the learned author observed as follows—

> "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, even if the threatening letter is marked 'private'; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts.....
>
> Endeavouring to intimidate a witness or a possible witness into not attending the Court or arresting him while attending the Court, or preventing or impeding a witness that he may not be subpoenaed, or seeking to influence a witness against a party, or endeavouring by bribery to induce a witness to suppress evidence. or dismissing or threatening to dismiss a witness from his employment because of his evidence, have all been held to be contempts."

The Courts in India have taken a similar view. They have held that it is the duty of the Courts to protect defendants from being cowed down into submission and under pressure of threat and

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menace being made to abandon pleas which they can legitimately take in a pending cause (Ch. *Rajinder Singh* v. *Uma Parsad* (1)), and that if a person attempts to bring pressure on a party to a proceeding to admit his claim he should be committed for contempt of Court as his action tends to interfere with the due course of justice in the Court (*Nalin Chander Pal* v. *Bejay Ranjan Ganguly* (2)). Indeed, they have gone to the length of holding that any attempt by an officer, however highly placed he may be, to withhold applications addressed to the High Court, however frivolous or worthless they may appear to be, constitutes a gross contempt of Court.

The learned counsel for the respondents has placed two submissions before us. It is contended in the first place that Government has no desire to interfere with the administration of justice or to prevent a Government servant from securing the remedy to which he considers himself entitled. It is anxious only to secure that he should exhaust the remedies available to him under the departmental rules before seeking the intervention of a Court of law. This contention appears to me to be wholly devoid of force. A Government servant, like any other citizen of this country, has a right to invoke the authority of the Court at any time he chooses to ask for it, and it seems to me, therefore, that a person who deters him from exercising this right, when he wishes to exercise it, commits contempt of Court.

Secondly, it is contended that every public servant holds office at the pleasure of the State and that there is nothing wrong or improper in

(1) A.I.R. 1935 All. 117.
(2) A.I.R. 1953 Cal. 53.

Government informing its employees that it would not hesitate to exercise its legal right in terminating the services of its employees if the employees assert their right of seeking the intervention of Courts of law. An English authority reported as *Webster* v. *Bakewell Rural Council* (1), has been cited in support of this contention. In this case it appeared that the plaintiff, tenant of a cottage, had served the defendants with a writ for an injunction to restrain them from damaging his boundary wall. His landlady's agent, at her instance, wrote to him to dissuade him from proceeding with his litigation, and finally threatened to turn him out of his cottage if the writ was not withdrawn. The plaintiff then sought to have the agent committed to prison for contempt of Court. The Court, however, declared that it was proper for the landlady to protect her interests by exercising her legal right to turn the tenant out of the property at the end of the tenancy. It was the same thing, said the Court, as saying, "I will assert my legal rights against you if you choose to go on with your action, which, to my mind, is detrimental to my interest in the property."

It is true that Government has a right to take disciplinary action against its own employees but it has no right to interfere with the administration of justice, and if in exercising its own rights it interferes with the course of justice it commits contempt of Court. In *Lechmere Charlton's case* (1), Lord Cottenham observed:—

> "The power of committal is given to Courts of justice for the purpose of securing the better and more secure administration of justice. Every writing, letter or

(1) (1916) 1 Ch. 300; 85 L.J. Ch. N.S. 326.

(2) 6 L.J. Rep. (N.S.) Ch. 185.

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publication, which has for its objects to divert the course of justice is a contempt."

There can be no manner of doubt that the communication which was addressed by the Chief Secretary to Government was issued with the object of preventing Government servants from seeking redress at the hands of Courts of law at their own sweet will and pleasure and must, therefore, be deemed to have been issued with the object of diverting the course of justice.

Although the respondents are clearly guilty of an offence punishable under section 3 of the Contempt of Courts Act, I am of the opinion that they were endeavouring merely to comply with the orders of Government the legality or propriety of which they had no reason to doubt. In the circumstances I am not inclind to view their conduct too censoriously. The ends of justice would be amply served if they are directed to abandon the departmental proceedings which have been brought against the petitioner for contravening the instructions contained in the circular letter and warned against complying with the provisions of the said letter in future. Ordered accordingly.

Dulat, J.

Dulat, J.—I agree.

K. S. K.

APPELLATE CIVIL.

Before Falshaw and Dua, JJ

PANDIT RAM NATH KALIA,—*Appellant*

versus

SHRI PAUL SINGH,—*Respondent.*

First Appeal from Order No. 138 of 1958.

1958

Nov., 5th

Representation of the People Act (XLIII of 1951)—Section 80—Election petition—Nature and object of—Whether a suit between two persons—Code of Civil Procedure