Bhandari, C. J. BHANDARI, C. J. I agree.

Bishan Narain, J. BISHAN NARAIN, J. I agree.

CRIMINAL WRIT.

Before Bhandari, C. J. and Khosla, J.

MANI RAM BAGRI,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Writ Case No. 1 of 1955.

1956

March 5th

Punjab Security of State Act (XII of 1953)—Section 9—Constitution of India, Schedule VII, List II, Item 1—Contempt of Courts Act (XXXII of 1952)—Punjab Security of the State Act, whether intra vires *the Constitution of India—Section 9, whether repugnant to contempt of Courts Act—Interpretation of Statutes—Interpretation of the Act —Principles governing the same stated.*

Held, that the provisions of section 9 of the Punjab Security of the State Act, being within the competence of the State Legislature by virtue of Item 1 of List II of the Constitution of India, are *intra vires*.

Held further, that section 9 of the Punjab Security of State Act, deals with contempt of a special kind and it may be said to deal with a new offence, namely a type of contempt of Court which is prejudicial to the Security of the State or the maintenance of public order. The contempt of the type punishable under section 9 is not of the same kind of contempt as is punishable under the Contempt of Courts Act. The two offences are wholly different and both the enactments can stand together without being considered repugnant to one another.

Held also, that in interpreting an Act the Court has to consider what the pith and substance of the Act is.

Prafulla Kumar Mukherjee v. *Bank of Commerce, Ltd., Khulna* (1), *Lakhi Narayan Das and others* v. *The Province of Bihar* (2), relied upon; *The School Board of London Re. Murphy* (3), *Sodhi Shamsher Singh and others* v. *The State of Pepsu* (4), distinguished.

(Case referred to Division Bench by Hon'ble Mr. Justice Harnam Singh, on 6th June, 1955).

Petition under Articles 226 and 227 of Constitution of India, read with Section 561-A, Criminal Procedure Code, praying that this Hon'ble Court will be pleased to send for the record of Lower Court concerning the prosecution of petitioner under Punjab Act No. XII of 1953, and quash the whole proceedings, and further praying that pending the disposal of this petition, the proceedings in the Lower Court be stayed, and also further praying that the petitioner be released on bail in the cases against him in which he is being prosecuted for contempt of court under Section 9 of Punjab Security of State Act.

RAJINDAR SACHAR, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

(1) A.I.R. 1947 P.C. 60
(2) A.I.R. 1950 F.C. 59
(3) (1887) 2 Q.B.D. 397
(4) A.I.R. 1954 S.C. 276

ORDER

After hearing counsel for the parties at some length, I order that with the sanction of the Chief Justice Criminal Writs Nos. 1 and 2 of 1955 may be placed for disposal before a Division Bench of this Court:

JUDGMENT

Khosla, J. KHOSLA, J. The petitioner Mani Ram Bagri, a Member of the Punjab Legislative Assembly, is being prosecuted under Section 9 of the Punjab Security of the State Act (Punjab Act No. XII of 1953) in respect of two speeches which he is alleged to have made at Hissar on the 22nd of November, 1954, and the 1st of December, 1954, respectively. It is contended that these speeches contained matter which amounts to contempt of Court of the type which is punishable under section 9 of the said Act. The petitioner has moved this Court under Articles 226 and 227 of the Constitution and also under section 561-A of the Code of Criminal Procedure and his prayer is that the proceedings against him be quashed. The grounds upon which the petition is based are set out in paragraph 5 of the petition under various heads but the main argument may be briefly summarised as follows:—

The offence of contempt of Court is punishable under Central Act No. XXXII of 1952. Provision to punish this offence therefore cannot be made by the State Legislature. Section 9 of the impugned Act is therefore *ultra vires* in so far as it relates to the offence of contempt of Court.

Section 9 of the Act is in the following terms:—

"Dissemination of rumours, etc.—whoever—

(a) makes any speech, or

(b) by words, whether spoken or written, or by signs, or by visible or audible representations or otherwise publishes any statement, rumour or report,

shall, if such speech, statement, rumour or report undermines the security of the State, friendly relations with foreign States, public order, decency or morality, or amounts to contempt of Court, defamation or incitement to an offence prejudicial to the security of the State or the maintenance of public order, or tends to overthrow the State, be punishable with imprisonment which may extend to three years or with fine or with both."

Mr. Sachar who appeared on behalf of the petitioner argued that the impugned Act purports to have been enacted in order to deal with subjects which fall under Item I of List II of the Seventh Schedule to the Constitution, but inasmuch as contempt of Court falls under Item 14 of the List III (Concurrent List) and the matter has been dealt with by Parliament, the State Legislature cannot enact a law which is repugnant to the Parliamentary Law. There is no doubt that if section 9 is designed to punish the same kind of contempt as falls under Item 14 of List III, then section 9 is invalid because the terms of this section are undoubtedly repugnant to the provisions of Act XXXII of 1952. It is not necessary to state the full extent of repugnancy and it is sufficient to notice that the punishment provided under the two Acts is different and the procedure for punishing contempt is also different:

In the present case, however, the contempt which section 9 punishes is not the same type of contempt as falls under Item 14 of List III: The object of the Punjab Security of the State Act is

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to "provide for special measures to prevent activities prejudicial to the security of the State or the maintenance of public order." There is no doubt whatsoever that this is a matter upon which the State Legislature alone is competent to legislate. The question therefore arises whether to provide punishment for contempt falls within the declared objective of the Act. The learned Advocate-General has argued that the contempt which is punishable under section 9 is only that kind of contempt which is "prejudicial to the security of the State or the maintenance of public order." He has asked us to read section 9 as if it were divided into three separate parts. The first part deals with those cases where the speech, etc., undermines five things, namely—

(1) the security of the State,

(2) friendly relations with foreign States,

(3) public order,

(4) decency, and

(5) morality.

The second part deals with speeches etc., which amount to—

(1) contempt of Court,

(2) defamation, and

(3) incitement to an offence,

and where in each of these three cases the speech is prejudicial to the security of the State or the maintenance of public order. The third part deals with speeches etc., which tend to overthrow the State. Section 9 may therefore be set out in the following somewhat diagramatic form—

"Whoever—

(a) makes any speech,

or

(b) by words, whether spoken or written, or by signs or by visible or audible representation or otherwise publishes any statement, rumour or report,

shall if such speech, statement, rumour or report,

Udermines { the security of the State, friendly ... *relations* with foreign States, public order, decency, or morality, or

amounts to { contempt of Court, defamation or incitement to an offence } { Prejudicial to the security of the State or the maintenance of public order, }

or tends to overthrow the State,

be punishable with imprisonment which may extend to three years or with fine or with both."

I have not changed any word or remark of punctuation in the original section but I have set it in the above manner merely for the sake of clarity and in order to show that the argument of the learned Advocate-General is well-founded. It will be seen at once that in that portion of the section which begins with "amounts to" and ends with "public order" the phrase "prejudicial to the security of the State or the maintenance of public order" qualifies each of the three items (1) contempt of Court, (2) defamation, and (3) incitement to an offence.

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This section may be expanded as follows at the expense of inelegant repetition—

"Whoever—

(a) makes any speech, or

(b) by words, whether spoken or written or by signs, or by visible or audible representations or otherwise publishes any statement, rumour or report, shall—

(A) if such speech, statement, rumour or report undermines the security of the State, undermines friendly, relations with foreign States, undermines public order, undermines decency or undermines morality, or

(B) if such speech, statement, rumour, or report amounts to contempt of Court prejudicial to the security of the State or the maintenance of public order, amounts to defamation prejudicial to the security of State or the maintenance of public order, or amounts to incitement to an offence prejudicial to the security of the State or the maintenance of public Order, or

(C) if such speech, statement, rumour or report tends to overthrow the State,

be punishable with imprisonment which may extend to three years or with fine or with both."

Read in this manner it is quite clear that the entire provisions of section 9 fall within the ambit of Item 1 of List II and that therefore there is nothing repugnant in this section to the Central Act No. XXXII of 1952.

That this interpretation is justified is clear from an examination of the whole Act: In the first place, the preamble declares that the objective of the Act is to provide special measures to prevent activities prejudicial to the security of the State or the maintenance of public order, and the entire Act is designed to attain that object. The various sections are intimately connected with the objective and the wording of section 9 itself shows that it was not intended to deal with the question of contempt of Court *simpliciter*. What the State Legislature wanted to do was to punish a type of contempt which may be of such a virulent and malicious type as to jeopardise public order and affect the security of the State adversely. That this may well happen cannot be doubted and if a responsible Member of the State Legislature launches, a violent campaign against the integrity and competency of Courts he may well bring about a state of affairs in which the public may not only lose confidence in the Courts of law but may be prepared to break the law and to endanger the very security of the State.

In interpreting an Act we have to consider what the pith and substance of the Act is. This principle has been laid down in a large number of cases but a reference may be made to a recent decision of the Federal Court in *Lakhi Narayan Das and others* v. *The Province of Bihar* (1). In this case their Lordships of the Federal Court were considering the validity of the Bihar Maintenance

(1) A.I.R. 1950 F.C. 59

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of Public Order Ordinance, 1949. The argument raised against the Ordinance was that some of its provisions trespassed upon the law-making authority of the Central Legislature and were repugnant to it. That Ordinance was promulgated in order to deal with the question of public order and it was alleged that the Ordinance was in conflict with certain provisions of the Criminal Procedure Code and had created new offences for the first time. Mukherjee, J. observed—

> "To ascertain the class to which a particular enactment really belongs, we are to look to the primary matter dealt with by it, its subject-matter and essential legislative feature. Once the true nature and character of a legislation determine its place in a particular list, the fact that it deals incidentally with matters appertaining to other lists is immaterial. The Judicial Committee made it perfectly clear in the case mentioned above (A. I. R. 1947 P. C. 60) that the extent of invasion by a Provincial Act into subjects enumerated in other lists is an important matter not because the validity of an Act can be determined by discriminating between degrees of invasion but for determining what is the 'pith and substance' of the Act. Judged by that test, it can scarcely be argued that the impugned Ordinance is a legislation not on public order or preventive detention for reason connected with it but on Criminal Procedure. * * * The Ordinance lays down what in the opinion of the legislative authority is essential for maintenance of public order in the province.

That is the true nature and character of the legislation which unquestionably brings it within item 1 of List II. The offences that have been created and the procedure that has been laid down for arrest and trial of the offenders are only ancillary things without which no effective legislation would have been possible. We have, therefore, no hesitation in holding that the Ordinance is covered entirely by Item (1) and (2) of the Provincial List * * *."

The argument contained in the above quotation holds equally true in the case before us. Here, too, contempt of Court is punishable only inasmuch as it is prejudicial to the security of the State or the maintenance of public order. Therefore, the pith and substance of this provision deals primarily with the question of public order and not with the question of contempt.

Mr. Sachar argued that the Central Act (Act No. XXXII of 1952) has covered the entire field of contempt of Courts and that no State Act dealing with that matter can be enacted if it is in any manner repugnant to the Central Act. He says that the Central Act deals with contempt of all kinds, whether such contempt is prejudicial to the security of the State or not. This argument, however, is untenable. Section 9 deals with contempt of a special kind and it may be said to deal with a new offence namely a type of contempt of Court which is prejudicial to the security of the State or the maintenance of public order. Such an offence is not covered by the Central Act. Instances were cited before us by the learned Advocate-General from Maxwell on Interpretation of Statutes and these instances are very much in

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point. Of a number of cases mentioned on pages 171 and 172 attention may be drawn to *Ex Parte The School Board of London. Re. Murphy* (1). In this case the question of repugnancy between two enactments was considered by the Queen's Bench Division. Some by-laws framed under the Elementary Education Act, 1870, provided punishment for the parent of a child if he failed to make him attend school. There was also a provision in section 11 of the Elementary Education Act of 1876 and this provision dealt with a parent who habitually neglected to provide instruction for his child. The question was which of the two sections should be applied to the case of a parent who was guilty of habitual neglect. The argument put forward was that under the by-laws framed under the earlier Act of 1870 a parent could have been summoned, whether he was a casual offender or habitual offender, and therefore, section 11 of the later Act, was unenforceable. The Queen's Bench Division, however, held—

> "The offence under the by-laws and the offence under the statute are two essentially distinct and separate things. The offence under the by-laws is that of neglecting to send children to school, to constitute which an occasional omission might suffice, while that which is dealt with under the 11th section of the statute, is not that of occasionally omitting to send the child to school, but that of habitually doing so, without reasonable excuse, and the two offences are dealt with very differently indeed."

In the same way contempt of the type punishable under section 9 is not the same kind

(1) (1887) 2 Q.B.D. 397

of contempt as is punishable under Act No. XXXII of 1952. The two offences are wholy different and both the enactments can stand together without being considered repugnant to one another.

The following observation from another decision of the Federal Court in *Miss Kishori Shetty* v. *The King* (1), is also in point—

> "Where the Constitution Act has given to the Provinces legislative power with respect to a certain matter in clear and unambiguous terms, the Court should not deny it to them or impose limitations on its exercise, on such extraneous considerations. It is now well settled that if an enactment according to its true nature, its pith and substance, clearly falls within one of the matters assigned to the Provincial Legislature, it is valid notwithstanding its incidental encroachment on a Federal subject."

Their Lordships of the Federal Court referred to the case of *Prafulla Kumar Mukherjee* v. *Bank of Commerce Ltd: Khulna*, (2), The pith and substance of the Act before us is the question of public order and the fact that it provides for the punishment of contempt of a particular type does not make that part of the provision invalid merely because contempt *simpliciter* is punishable under a Central Act and falls under one of the items in the Concurrent List.

The last argument addressed before us by Mr. Sachar was that contempt of Court of the type which has been committed by the petitioner cannot by any stretch of meaning be said to be prejudicial to the security of the State or to the maintenance of public order and that therefore this

(1) A.I.R. 1950 F.C. 69
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Court should under the provisions of section 561-A of the Criminal Procedure Code quash these proceedings. Mr: Sachar relied upon a decision of the Supreme Court in *Sodhi Shamsher Singh and others* v. *The State of Pepsu* (1), and drew our particular attention to the observations of Mukherjee, J. appearing at page 277 of the report—

> "Whatever other remedies that might be to the aggrieved party or to the Government to prevent such scurrilous attack upon the head of the judiciary in the State, we do not think that the provisions of the Preventive Detention Act could be made use of for that purpose. The utmost that can be said is that the allegations in the pamphlets are calculated to undermine the confidence of the people in the proper administration of justice in the State. But it is too remote a thing to say, therefore, that the security of the State or the maintenance of law and order in it would be endangered thereby."

The learned Judges of the Supreme Court were in that case considering the case of a man who had made a scurrilous attack upon the Chief Justice of the State of Pepsu, and it will be stretching the observation of Mukherjee, J. too far to apply it to the case before us which is of a wholly different nature. It may well be that the petitioner will be ultimately acquitted of the charges against him on the ground that the kind of contempt which he is alleged to have committed does not prejudice the security of the State or the maintenance of public order. But that is a matter which will have to be enquired into by the trial Court and it is premature for us to intercede at

(1) A.I.R. 1954 S.C. 276

this stage. I have expressed my views with sufficient clarity on the type of contempt which comes within the mischief of the Act. Contempt of Court *simpliciter* is clearly not punishable under section 9 of the Act and indeed were it so punishable the section will be *ultra vires* inasmuch as it would be repugnant to the Central Law which was enacted under Item 14 of List III. It is only a special type of contempt which can be made punishable by the State Legislature and it is only that kind of contempt which falls within the ambit of section 9. The prosecution will, therefore, have to prove (1) that the petitioner committed contempt of Court and (2) that the contempt was of such a type as would prove prejudicial to the security of the State or the maintenance of public order. We have not all the material before us to consider the question on merits and indeed I should be most reluctant to do so even if we were supplied with the necessary data. I would therefore decline to exercise the powers of this Court under section 561-A of the Criminal Procedure Code.

Summing up I would hold that the provisions contained in section 9 of the Act, being within the competence of the State Legislature by virtue of Item 1 of List II, the section is valid and *intra vires*. The section is to be read to mean that contempt of Court committed by a person is punishable provided such contempt has the effect of prejudicing the security of the State or the maintenance of public order. This is so notwithstanding the fact that contempt of Court is mentioned in Item 14 of List III and has been dealt with by the Central Legislature in Act No. XXXII of 1952.

For the reasons given above, I would dismiss these two petitions.

Bhandari, C, J, I agree.

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