
(1957) 05 AHC CK 0007

Allahabad High Court

Case No: Criminal Miscellaneous Contempt Case No. 23 of 1956

State

APPELLANT

Vs

Faqir Chand and
Another

RESPONDENT

Date of Decision: May 8, 1957

Acts Referred:

- Contempt of Courts Act, 1971 - Section 1

Citation: AIR 1957 All 657 : (1957) 27 AWR 554 : (1957) CriLJ 1051

Hon'ble Judges: Sahai, J; Roy, J

Bench: Division Bench

Advocate: Shri Rama, for the Appellant; D.P. Agarwala, for the Respondent

Final Decision: Disposed Of

Judgement

Roy, J.

Upon an application made on behalf of the State against Faqir Chand and Chandra Kumar Saxena respondents, notice had been issued to them to show cause why they should not be convicted for the contempt of the court of the Sub-Divisional Magistrate of Shahabad. The respondents made their appearance personally in Court and they were further represented by Mr. D. P. Agarwala and in the counter-affidavit filed by them they tendered an unqualified apology and threw themselves at the mercy of the Court. On the 25-3-1957, we refrained from accepting the apology at that stage and from disposing of the matter finally and we granted the respondents a month's time to equip themselves with costs in the sum of Rs. 80/- which they may ultimately have to pay to the Deputy Government Advocate who represented the State. We directed on that date that the matter be listed for hearing on the 29-4-1957, and that if the costs aforesaid were paid up to the Deputy Government Advocate by the 28-4-1957, the personal attendance of the opposite parties on the 29-4-1957. will be dispensed with. The costs were not paid and on the 29-4-1957, at the request of counsel the matter was directed to be put up for hearing on the 1-5-1957. Again, on the 1-5-1957, at the request of counsel the case was listed for

hearing on the 3-5-1957, and direction had been given that the respondents should be present in person on that date. There was a further direction, that it would be open to the opposite-parties to pay up the amount in question before the case is taken up for hearing on the 3-5-1957, and that in that event if they do so their personal attendance will be dispensed with on the 3rd. On the 3rd the case could not be reached on the list and the matter has finally come up before us today. It may be stated that on the 29-4-1957, a telegram had been sent by the respondents to the Court to the following effect:

"Kindly give two weeks" time for deposit penalty. We released from Jail after three weeks bail."

We are told by Mr. D. P. Agarwala that the respondents were put into jail in connection with some other matter u/s 500 of the I. P. C.

2. The respondents are not present in spite of the directions of the Court and Mr. D. P. Agarwala has stated that although he had informed the respondents by telegram on the 1-5-1957, they have not thought it fit or wise to come up before the Court in compliance with the Court's orders. This is a very strong circumstance, apart from the merits of the apology tendered by them, to bring us to the conclusion that the apology was only a sham apology and had had no real expression of regret behind it.

3. The facts may be stated. On the 14-6-1956 the case of State v. Khurshid Ali and Zahid Ali under Sections 323 and 307, I. P. C. challaned by the Shahabad police was registered in the Court of the S. D. M. Shahabad, upon the allegation that on the 1-6-1956, Constable Ramji Mal accompanied by one Riyasat Ali went for the service of summons on one Jainu Mian who was a witness in a case u/s 60 of the Excise Act against Khurshid Ali. At the time of the service Khurshid Ali and his son Zahid came to know of it and they both gave a threat to Raiyasat Ali that they will not spare any effort to resist service. It is said that they began to beat Riyasat and Ramji Mal Constable causing grievous injuries to them, with the result that the summons could not be served on Jainu Mian. It may be pointed out that Riyasat Ali is the brother of Jainu Mian. Khurshid Ali filed a counter complaint against Sub-Inspector Sukhnandan Prasad Misra, Riyasat Ali and Abdul Wahab under Sections 325 and 342, I. P. C. with the allegation that these persons entered into his house on the 1-6-1956, and when they were turned out by him and his son Zahid Ali, he, namely, Khurshid Ali was arrested and he was given a beating with lathis while he was being carried to the police station, causing grievous injuries, and that he was unlawfully detained at the police station. This counter complaint was registered in the Court of the Sub-Divisional Magistrate, Shahabad. on the 26-6-1956. When both these cases were pending in that court there appeared a news-item in a local weekly paper of Shahabad styled as the "Sathi", of which respondent No. 1 happens to be the editor and respondent No. 2 the publisher. This news was published under the banner headline:

"The idealistic police of tehsil Shahabad beat a person and made the Thana a bloody scene. When the walls of the Thana depicted a picture of the bloody scene the police got his clothes changed.

On the one hand there is the tour of the Congress M. L. A. on foot and, on the other hand, the brutal attack by the police."

The news-item covers a long story of woe against the alleged highhandedness of the police. It is stated that the police has started perpetrating atrocities on the Kisans, is sheltering history-sheeters who used to commit highway robberies and who are now acting as tools in their hands; that at their insinuation the police is harassing respectable persons in order to gain money; that the police has all along been endeavouring to create disturbance: that recently it so happened that Raiyasat Ali son of Nausha Ali who is a history-sheeter, and who is the chief tout of the police along with the police entered into the house of Riyasat Ali son of Ghaffar Ali without giving a warning to the female members of the house to retire behind parda; that Riyasat Ali son of Ghaffar Ali turned the history-sheeter out of the house; that when the, police was asked to tell what the matter was the police got displeased and began to commit marpit indiscriminately and took Khurshid Ali to the Thana, beating him all the while; that the people of Shahabad were witnesses of this nefarious act of the police, but nobody had the courage to raise a voice of protest; that Khurshid Ali was shut up at the Thana and in the night the Second Officer beat him and when his clothes became smeared, with blood and the walls of the Thana depicted a ghastly scene the tyrannical police got his blood-stained clothes thrown away and made him put on another set of clothes that it has been learnt that Khurshid Ali has filed a case u/s 325/342 against the Second Officer and Riyasat Ali son of Naushe Ali who is on friendly terms with the police and that the police has entered a report of their friend who is a history-sheeter against Khurshid and his acquaintances. This publication further stated that the police will spend money on behalf of the history-sheeter in connection with the cases; that the Kisans say that the peaceful atmosphere of Shahabad is disturbed and that if the District Magistrate does not pay any attention to this matter the unity of the different communities at Shahabad will be greatly affected. There was the further insinuation in that news that although on the one hand the M L. A. is making a tour of the circle, on the other hand there is such open high-handedness of the police. There is ultimately the appeal to the voters that such, is the result of voting for the Congress where the public has been made to bleed.

4. The two respondents in their counter-affidavit accepted the position that as "editor" and "publisher" respectively they published this article with the headlines in the "Sathi" of the 5-7-1956. Their contention that they did not know that the article referred to any pending case in a court of law was obviously false. The article itself bears mention of the fact that Khurshid has filed a case u/s 325/342, I. P. C. against the Second Officer and Riyasat Ali in court. The respondent's contention that they had no desire to interfere with the administration of Justice is also ill-founded. They cannot take shelter under the plea that the article related to police excesses and excesses of the executive authorities. Before a

person can be convicted for contempt the Court should be satisfied:

(a) that something has been published which either is clearly intended or at least is calculated to prejudice a trial which is pending;

(b) that the offending matter was published with the knowledge of the pending cause or with the knowledge that the cause was imminent; and

(c) that the matter published tended substantially to interfere with the due course of justice or was calculated substantially to create prejudice in the public mind.

All these three elements are fully satisfied in the present case. There can be no doubt whatsoever that the matter published by the respondents tended substantially to interfere with the due course of justice or was calculated substantially to create prejudice in the public mind. It amounted to the grossest contempt of the court of the Sub-Divisional Magistrate of Shahabad. Under circumstances such as these we are not prepared to accept the apology tendered by the respondents. We therefore convict the opposite-parties Faqir Chand and Chandra Kumar Saxena under the Contempt of Courts Act and sentence them to simple imprisonment for a term of one month each and we further direct that they should pay a sum of Rs. 80/- as costs to the State. The respondents should be taken forthwith into custody to suffer this punishment.