
(1957) 01 AHC CK 0021

Allahabad High Court

Case No: Criminal Miscellaneous (Contempt) Case No. 19 of 1956

Rahmat Ali

APPELLANT

Vs

Beni Madho Baijpal and Another

RESPONDENT

Date of Decision: Jan. 11, 1957

Acts Referred:

- Contempt of Courts Act, 1971 - Section 3, 4
- Criminal Procedure Code, 1898 (CrPC) - Section 110

Citation: AIR 1957 All 457 : (1958) 28 AWR 19 : (1957) CriLJ 801

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

Bench: Division Bench

Advocate: Government Advocate, for the Appellant; P.C. Chaturvedi and B.N. Misra, for the Respondent

Final Decision: Dismissed

Judgement

Roy, J.

This is an application under Sections 3 and 4 of the Contempt of Courts Act. The petitioner Rehmat Ali obtained a rule upon the opposite parties Pandit Beni Madho Bajpai, the editor, printer and publisher of a newspaper known as Vir Bharat in Kanpur and Lakshmi Narain, the proprietor of the Mahesh Press where the paper is printed, to show cause why they should not be convicted or otherwise dealt with for contempt of Court inasmuch as during the pendency of proceedings u/s 110, Cr. P. C. against Rahmat Ali in the Court of the City Magistrate, Kanpur, a news item was printed in the Vir Bharat on 19th October 1958 which was calculated to produce, so to speak, an atmosphere of prejudice. The news item reads as follows: (Transliteration of Hindi omitted). Translated into English the matter would read thus:

"KANPUR NEWS

Members of the Congress Ad Hoc Committee appear in defence of Rahmat Ali a history sheeter and a criminal.

The Local Kotwali Police had arrested. Mian Rahmat Ali of Patkapur, a confirmed criminal and a notorious history sheeter u/s 110, Cr. P. C. and his case is peading in the Court of the City Magistrate.

It is alleged that as against the police, and in support of Mian Rahmat Ali, two prominent members of the Congress Ad Hoc Committee viz., Hafiz Baitullah and Shri Bhushan Lal Agarwala and also several other persons of the neighbourhood have given evidence."

Rahmat Ali in his petition contended that Lakshmi Narain, opposite party No. 2, was the printer and proprietor of the Mahesh Press and in his capacity, as such he is liable for the printing of this news item. It has, however, been made clear by affidavits and by the copy of a declaration made by Pandit Beni Madho Bajpai that Lakshmi Narain is only the proprietor of the press and he is not the printer of the paper. The editor, printer and publisher of the newspaper known as Vir Bharat is Pandit Beni Madho Bajpai. Mr. P.C. Chaturvedi, appearing on behalf of Rahmat Ali, conceded before us that since the application against Lakshmi Narain was founded upon the wrong impression that he is the printer of the paper, Lakshmi Narain is not liable for the publication of the news item and the contempt matter cannot, therefore, proceed against him.

2. What we have, therefore, to see is whether, so far as opposite party No. 1 is concerned, the publication of the news item amounts to contempt of Court.

3. Pandit Beni Madho Bajpai in his counter-affidavit pleaded justification for printing and publishing this news item. But at the hearing of the petition Mr. Shukla, appearing on his behalf, has contended that he cannot justify the assertions made in that publication and that in view of the manner in which it was printed and published it would amount to contempt and he has expressed regret on the part of his client for having unwittingly committed the contempt. There was, of course, no expression of regret on the part of opposite party No. 1 when the counter-affidavit was filed by him.

4. Before we proceed to consider the question as to whether the expression of regret which was advanced by Mr. Shukla on behalf of his client, and which is made the basis of a subsequent petition filed by him, should be accepted or not we would desire to express ourselves on the question as to whether publications of this nature do really amount to contempt.

5. Taking the head lines as a whole and more particularly the words that ""the Local Kotwali Police had arrested Rahmat Ali, a confirmed criminal and a notorious history sheeter u/s 110, Cr. P. C."" we have no doubt that their publication might have an effect on the minds of witnesses who were subsequently to be examined and

cross-examined before the Magistrate. The two witnesses Hafiz Baitullah and Shri Bhushan Lal Agarwala, members of the Congress Ad Hoc Committee who were examined on behalf of the defence were examined on 17th October and the news item appears in the Vir Bharat two days later i.e. on 19th October.

The head lines in the news item namely that "members of the Congress Ad Hoc Committee appear in defence of Rahmat Ali, a history sheeter and a confirmed criminal" is also calculated to give in the minds of the probable witnesses who were to follow later that responsible persons of that locality were coming in support of the defence of one who was a confirmed criminal and also a history sheeter. It was in a sense an assertion to ridicule the two witnesses Hafiz Baitullah and Shri Bhushan Lal Agarwala who had already appeared as witnesses. Although we are only concerned with the case before us, we think it right to say that all comments of the present nature in the press whether by way of approval or disapproval of witnesses appearing on behalf of a person against whom proceedings were -going u/s 110, Cr. P. C. reprehensible and may entail most disagreeable consequences on those responsible for it.

If it is urged that there was no real danger of the article prejudicing the mind of the Magistrate the danger or absence of danger of actual prejudice would be an important consideration and it is the only consideration. As observed by Bruce J. in *Re Labouchere, Ex parte Columbus Co. Ltd.* (1901) 17 TLR 578 (A), the jurisdiction of the Court exist not only to prevent mischief in the particular case but to prevent similar mischief arising in other cases".

6. In [Sathappa Chettiar Vs. C. Ramachandra Naidu, Editor and Publisher, "Tamil Nadu," Broadway](#), Beasley C.J. quoted the language of Lord Alverstone O.J. in *R. v. Tibbits*, (1902) 1 KB 77 (C)., "It would, indeed, be farfetched to infer that the articles would in fact have any effect upon the mind of either Magistrate or Judge."" Beasley C.J. then went on to say

"But the essence of the offence is conduct calculated to produce, so to speak, an atmosphere of prejudice in the midst of which the proceedings must go on. Publications of that character have been punished over and over again as contempts of Court, where the legal proceedings pending did not involve trial by jury and where no one would imagine that the mind of the Magistrate or Judges charged with the case would or could be induced thereby to swerve in from the straight course."

7. Considering the nature and import of the news item we are clearly of opinion that it was calculated to produce an atmosphere of prejudice in the midst of which the proceedings u/s 110, Cr. P. C. were going on, and it was likely to embarrass and impede the petitioner's case and that being so it clearly amounts to contempt of Court.

8. The question which remains to be considered is whether the apology tendered by Pt. Beni Madho Bajpai, opposite party No. 1 diluted the gravity of the offence. Apology must, in order to dilute the gravity of the offence, be voluntary, unconditional and indicative of remorse and contrition and it must be tendered at the earliest opportunity. It has not been so in the present case. The apology has come rather very late in the day; and under the circumstances we are not prepared to accept it and absolve opposite party No. 1 of all responsibility.

That is not the sort of apology which would save opposite party No. 1 from the consequences of his act and in our opinion the requirements of justice will be satisfied if we severely reprimand him of the article that he has written and warn him against the repetition of such articles in reference to parties to pending suits in the future. We do so and we direct opposite party No. 1 to (sic) the costs of the applicant and the costs of the Government Advocate which we assess at Rs. 160/- in each case. (9) The rule is discharged so far as it relates to opposite party No. 2 who would be entitled to his costs from the applicant which we assess at Rs. 80/-. The costs aforesaid should be paid within, a month of this date by the applicant as also by the opposite party No. 1.