C.G. Janardhanan Vs T.K.G. Nair and Others

Court: High Court Of Kerala

Date of Decision: July 12, 1960

Acts Referred: Contempt of Courts Act, 1971 â€" Section 3, 4, 5

Citation: (1961) CriLJ 104

Hon'ble Judges: M.A. Ansari, C.J; P. Govinda Menon, J

Bench: Division Bench

Judgement

P. Govinda Menon, J.
These two applications are filed by Shri C. G. Janardhanan under Sections 3, 4 and 5 of the Contempt of Courts

Act - Central Act XXXII/52 - on which, notice was issued to the respondents to show cause-why they should not be convicted for contempt of

court. Application No. 3/59 is against three respondents, the 1st respondent being the editor, the 2nd respondent the printer and publisher and the

third respondent being the town correspondent of a Malayalam Daily newspaper called Navajeevan, printed and published at Triehur. Application

No. 4/59 is against two respondents, the 1st respondent being the editor and the 2nd respondent being the printer and publisher of a Malayalam

Daily called Deshabhimani, printed and published at Kozhikode, These two petitions were heard together and as the question involved in these

petitions are the same, we propose to pass a common order.

2. The publication in the two papers are almost to the same effect. It refers to an incident that happened on the morning of 31-1-1959 in front of

the Triehur Collectorate. It is stated in the petition that the petitioner is a member of the Working Committee of the Kerala Praja Socialist Party

shortly known as P. S, P. Being dissatisfied with the measures adopted by the Government to tackle the food problem, the Party had decided to

carry on Satyalic in different parts of the State to awaken public conscience.

In pursuance of this programme the petitioner led a Jatha on 31-1-59 to the Trichur Collectorate to offer Satyagarha. The petitioner was arrested

at 12 noon along with some others and produced before the First Class Magistrate, Triehur at 7 p.m., that day when they were remanded to

custody. The police had registered a case against the petitioner and 33 others and the F.I.R. in the case has been produced along with his petition.

3. It is alleged in the petition that the respondents in these petitions were active members of the Communist Party and supporters of the Communist

Government and they did not relish the activities of the P. S.P., and were antagonistic to the party and to the petitioner, in particular, who

happened to be a prominent member of the party. The respondents have therefore, in their issue of the above two newspapers dated 1-2-1959

published what purports to be an account of the Jatha that was taken out by the petitioner, its activities and the arrest or"" the members of the Jatha.

Copies of the paper have been produced along with the petition.

It is not necessary to extract the report here. The petitioner alleges that in the publication there was a sarcastic comment on acts said to have been

committed by the petitioner and others for which acts they had been charged and the truth of which has finally to be decided by the court. The

petitioner therefore alleges that the above publications are calculated to obstruct or interfere or likely to interfere with the due course of justice or

the legal process of the court and that the respondents have thereby committed contempt of court.

4. The main contention raised in the counter-affidavit of the respondents and argued before us by the learned Counsel for the respondents are,

firstly that the articles do not in any way tend to interfere with the due course of justice, that there was no intention to hamper the administration of

justice and what was really intended by the publication was only to comment on the peculiar mode of Satya-graha adopted by the P.S.P, The

second contention was that the respondents were not aware of the imminence or the actual institution of any criminal proceedings and that they had

no knowledge at the time of the publication that the police had either prepared any first information report or had produced the arrested persons

before any Magistrate for prosecuting them,

5. The learned Counsel did not seriously contend that it is necessary that a proceeding before a court should, actually be pending at the time of the

publication. The law is clear that it is not necessary for a cause actually to be taken, since if it is imminent, "it is possible to poison the fountain of

justice before it begins to flow". It is not necessary here to deal with all the case law on the subject. In the Division Bench Ruling of this High Court

in Government Pleader Vs. Mathai Manjooran and Another, Vaidialingam, J., has exhaustively dealt with the case law and held that:

It is not necessary that a, matter should be actually pending before the court; it is enough if the cause was imminent.

6. It has also been held in a number of decided cases both in England and in India that where the writer knew that proceedings are pending the fact

that he did not desire or intend to prejudice the case was immaterial except as to the extent of his punishment if the court be satisfied that such was

the obvious and necessary result of his words. If the publication is of such a nature calculated to obstruct or interfere with the due course of justice

the person who published, will be guilty of contempt whatever be his intention in publishing the same.

7. It must also be stated that although it is a cardinal principle of the Indian Constitution to permit free discussion and although a free press is

essential to the liberty of the citizen, the framers of the Constitution did not confer any special privileges on the press,

In Leo Roy Frey v. R. Prasad AIR 1958 Punj S77 at p 380 it is stated:

Freedom of the Press was conceived as a right for all citizens, for as pointed out in R. v. Gray (1900) 2 QB. 36 at p. 40, ""liberty of the press is no

greater than the liberty of every subject of the Queen"", and in this country no greater than the liberty of every citizen of the Republic, The courts

cannot authorise trials by newspapers and cannot endanger the rights of accused persons before the courts. The power of the courts to punish any

publication calculated to obstruct and prevent the due course of justice and law is not restricted by the constitutional guarantee of liberty of the

press, for liberty of the press is subordinate to the independence of the judiciary and the proper administration of Justice.... A publisher cannot be

allowed to usurp the functions of the court or to take shelter behind the plea of the liberty of the press to spread before courts of law his opinion of

the merits of the cases which are on trial. This aspect of the matter was brought out with admirable clarity in an early American case, Cooper v.

People (1889) 6 Lawyers Report Annotated 430 where the court said:

''Parties have a constitutional right to have their cases tried fairly In court, by an impartial tribunal, uninfluenced by newspaper dictation or popular

clamour. What would become of this right if the press may use language in reference to a pending cause calculated to intimidate or unduly influence

and control judicial action''.

8. In Read v. Huggonson (1742) 26 ER 683, Lord Hardwicks observed:

Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented nor there is anything of more

pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally

heard.... There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety

both to themselves and their characters.

9. It would therefore be contempt of, court to publish in papers during the pendency of a cause, matters derogatory to the parties which must

necessarily prevent them from obtaining a fair trial of the action. It is no defence, to a charge of contempt that the offensive article never reached

the eyes of the court or that the court was not prevented from performing its duties fairly and properly or that the respondent had no disrespectful

or contemptuous design of reflecting upon the dignity of the court, or that the respondent did not know the nature of the publication or that the

articles published during the trial were true and impartial statements of news and facts, or that they were published without intent to injure the

parties or interfere with the administration of justice.

10. We may in this connection refer to the observations of the Privy Council in Channing Arnold v. Emperor ILR Cal 1023 : AIR 1914 PC 116:

Their Lordships regret to find that there appeared on the one side, in this case the time-worn fallacy that some kind of privilege attaches to the

profession of the press as distinguished from the members of public. The freedom of the journalist is an ordinary part of the freedom of the subject

and to whatever lengths the subject in general may go, so also may the journalist, but, apart from the statute law, his privilege is no other and no

higher. The responsibilities which attach to his power in the dissemination of the printed matter may, and in the case of a conscientious journalist

do, make him more careful; but the range of his assertions, his criticisms or his comments, is as wide as, and no wider than, that of any other

subject. No privilege attaches to Ms position.

11. Now the most important question that arises for decision in this case is whether the respondents had knowledge that the cause was pending in

court or that the cause was imminent. The learned Counsel for the petitioner argued before us that the question of knowledge of the alleged

eontemner is immaterial and irrelevant and that a person would be guilty of contempt of court, irrespective of any knowledge on his part of the

pendency of the matter in court. According to the contention advanced, once a person is arrested the proceedings must be deemed to be pending

and any person making any comment in respect thereof would be guilty of contempt of court, whether he had knowledge that the proceedings

were pending or that it was imminent.

12. In Tuljaram Rao v. Governor, Reserve Bank of India AIR 1939 Mad 257 a Full Bench of the Madras High Court while discussing the

question whether proceedings should actually be pending in court has stated:

To comment on a case which is about to come before the court with knowledge of the fact is in our opinion just as much a contempt as comment

on a case actually launched.

13. In in re Subrahmanyan AIR 1943 Lah 329(FB) at p. 335 the learned Chief Justice observed as follows;

... Further it now seems clear that the offence of contempt may be committed even if there is no proceeding or cause actually pending provided

that such a proceeding or cause is imminent and that the writer of the offending publication either knew it to be imminent or should have known that

it was imminent...

The learned Chief Justice expressed his approval of the view taken by the Madras High Court in AIR 1939 Mad 257 (FB), referred to above and

observed;

... I respectfully agree with the opinion expressed in the Madras Full Bench case that proceedings need not actually be pending; it is sufficient that

proceedings are imminent to the knowledge of the person charged with contempt.

14. In Emperor Vs. J. Choudhury and Others, a Special Bench of the Calcutta High Court held:

Where an article commenting on an incident which is under police investigation is written before any arrest is made in connection with the incident,

the editor or the publisher is not guilty of any contempt of court if at the time of writing the articles, the editor had neither knowledge nor reasonable

grounds for believing that proceedings were about to be launched in respect of the incident. The fact that the matter was under police investigation

is not sufficient to prove either actual knowledge of or reasonable grounds for believing in the imminence of any criminal proceedings.

And Biswas, J., observed:

Be that as it may, it seems to be the case that whatever uncertainty there may still exist on the question whether the offence of contempt may be

committed by a publication at the time when proceedings are imminent, but not yet begun, there is not a single decision, English or Indian which has

gone the length of holding that the offence may be Committed even if the alleged offender had no knowledge or had no reasonable grounds for

believing that proceedings were about to be launched. So to hold would in our judgment be an unwar rantable extension of the law of contempt in

such case.

15. State Vs. Radhagobinda Das and Others, observed:

If a person making a publication, or responsible for the act, which is likely to interfere with the fair trial of the case, is aware that a proceeding is

imminent, then the offence is complete and it is not essential that the case must be pending.

Their Lordship then referred to the Madras and the Lahore Full Bench decisions and concluded by saying;

Respectfully agreeing with the two Full Bench decisions referred to above we are of the view that pendency of proceedings is not essential if the

proceedings are imminent to the knowledge of the contemner.

16. In the case of E. V, Ramaswamy v. Jawaharlal Nehru AIR 1958 Mad 558 the question whether the respondent had knowledge of the

proceedings was again considered and Their Lordships held that:

Knowledge of the pendency of the proceedings in court is an essential pre-requisite for holding that a person is guilty of contempt.

17. The observations of Beg, J., in Rajendra Kumar Garg Vs. Shafiq Ahmad Azad and Another, also goes to show that the question of knowledge

of the contemner of the pendency or imminence of proceedings is a very important circumstance to decide whether contempt of court has been

committed.

18. It therefore follows that knowledge of the pendency of the proceedings or the imminence of such proceeding is an essential pre-requisite for

holding that a person is guilty of contempt.

19. The question therefore arises whether on the facts of this case it could be said with certainty that the respondents had knowledge of any

proceeding that was pending or that it was imminent. The entire argument of the learned Counsel for the petitioner was that because the petitioner

and others were arrested the proceedings must be deemed to be pending. Whether by the mere arrest it could be said that the proceedings are

imminent in any'' particular case will always be a question of fact.

In serious cases like minder when the alleged offender is arrested and the police have started investigation it is not difficult to say that the cause Is

imminent. But as far as the arrest in this case is concerned it need not necessarily mean imminence of legal proceedings. The arrest could as well be

as a temporary measure for the purpose of preventing any offence being committed or for preventing any untoward consequences or as a

precautionary step to nip the attempt in the bud or to prevent it from developing into anything serious.

As stated by the learned Counsel for the respondents, it is also not uncmmon in such large scale picketing that the police disperse the Satya-grahis

by taking them into custody, removing them to some distant place in a vehicle and then releasing them or keeping them in the police station for

some time and later allowing them to go away. Reference was also made to Section 41(2) of the Travancore-Cochin Police Act - Act 11/52

which provides for removal of persons resisting or declining to conform to the directions of the police officer. It is not imperative that in all these

cases there should be an actual prosecution of the person or persons who are taken into custody.

20. It will be pertinent in this connection to quote the observations of Chaturvedi, J., in Dwarka Prasad Agarwal v. Krishna Chandra AIR 1953

AH 600.

It would thus appear that a prosecution commences in England as soon as an information has been laid before a justice, or the accused has been

brought to answer the charge, or if there is no preliminary examination before the justice, when an indictment is preferred.... It would be very

difficult to draw a line and to say that cases falling towards one side of the line are cases in which the cause was imminent and the cases falling on

the other side are the cases in which the cause was not imminent Extending the rule for the punishment of contempt of court to cases which are

imminent would unduly hamper with the freedom of speech of the citizen. In many cases, the citizen will have to take the risk of the court coming to

the conclusion that the case had become imminent, while he himself thought that it was not so imminent. It is a matter of every-day occurrence that

a civil suit is thought of, but, ultimately, for various reasons the idea has to be given up and the case is never taken to the court at all. Similarly in

criminal cases, the accused persons are arrested by the police and at one stage the police is of the opinion that it would prosecute the arrested

person; but subsequently, on the disclosure of some further facts or event, they decide not to take the case to the court at all. At one time the case

may appear to be imminent but subsequently it may transpire that it was not fit for the charge-sheet to be submitted to court. An arrest in England

might necessarily mean the institution of criminal proceedings subsequently, but it is not so in our country. The extending of the punishment for

contempt to cases which are only imminent, in our opinion, is not justified in the circumstances as they exist in this country.

21. These observations have even gone to the extent of laying down that unless the proceedings are actually pending in court, the jurisdiction to

take action under the Contempt of Courts Act would not arise. Without expressing our approval to this extreme position we agree that as far as

the instant case is concerned the mere fact of arrest cannot by any means be sufficient to enable us to fasten the respondents with the knowledge of

the proceedings or that proceedings were imminent.

It must also be remembered that after the arrest the petitioner and others were produced before the Magistrate only at seven in the night and it is

not unlikely as suggested by the learned Counsel for the defence that by that time the editing, composing and printing of this offending news item

must have been completed and the papers kept ready for publication the next morning. It was also pointed out that even though a F.I.R, was

registered, the case did not actually oorne up for hearing as the prosecution was withdrawn.

Considering all these circumstances, we are of opinion, that it would not be safe to conclude that the respondents would have had any knowledge

that any proceedings were pending or were imminent in respect of the matter in question. The finding of want of knowledge either direct or

inferential on the part of the respondents is enough to entitle them to have these applications dismissed.

22. It was however argued by the learned Counsel for the respondents that even if it be found that respondents should be deemed to have had

knowledge of the imminence of the prosecution and therefore were guilty of any technical contempt this Court should exercise its powers under the

Contempt of Courts Act only in exceptional cases in which there is real danger of prejudice.

23. In Hunt v. Clarke (1889) 58 LJ QB 490 Fry, LJ, observed at p. 494:

Although I think the paragraph is technically a contempt of court and does tend to prejudice the minds of the public against the defendant,

nevertheless I think the application is of a somewhat trifling and trumpery character. I can hardly imagine any person of much intelligence being

influenced by this paragraph, and I think it is not in point of fact in any way likely to prejudice the trial of the cause, and therefore, I think it is a case

which the defendant might properly and ought rightly to have passed over without bringing it to the attention of the court.

24. In the words of Rankin, C.J., in Ananta Lal Singh and Others Vs. Alfred Henry Watson and Others,

The court''s jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the

due course of justice. It is not every theoretical tendency that will attract the action of the court in its very special jurisdiction. The purpose of the

court''s action is a practical purpose and, it is reasonably clear, on the authorities, that this Court will not exercise its jurisdiction on a mere question

of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment is otherwise such that it can

properly be ignored

25. This observation of Rankin, C.J., has been approved by the Supreme Court in Rizwan-ul-Hasan and Another Vs. The State of Uttar Pradesh,

where it was held that the jurisdiction in contempt will not be invoked unless there is real prejudice which can be regarded as substantial

interference with the due course of justice.

26. In the Full Bench decision AIR 1943 Lah 329 (FB), referred to earlier Harries, C.J., observed:

Contempt proceedings are summary and a very arbitrary method of dealing with an offence. That being so contempt proceedings should be

sparingly instituted and a person should not be convicted unless his conviction is essential in the interest of justice.... There must be something more

than a technical contempt. There must be a substantial contempt, that is something which tends in a substantial manner to interfere with the course

of justice or to prejudice the public against one of the parties to a proceeding"".

27. In Government Pleader, Bombay v. Shankar Dattatraya AIR 1938 Bom 198, Beaumont C.J., observed:

... the court will not take action for contempt unless it thinks that the conduct of the respondent is calculated seriously to interfere with the course of

justice. Proceedings in contempt are not taken merely in respect of technical offences

28. The jurisdiction in contempt is a very special jurisdiction and is certainly a jurisdiction which it is necessary for the superior courts to have and

exercise whenever it is found that something has been done which tends to affect the administration of justice or which tends to impede its course.

While it is necessary to exercise the jurisdiction in contempt on proper occasions it is equally important that the integrity of the proceedings in court

ought to be maintained by taking the utmost care that it is not used on occasions or in cases to which it is not appropriate.

29. After a careful consideration of all the facts and circumstances of this case we are of the opinion that the respondents had no knowledge of the

proceedings or the imminence of the proceedings that the publication in question was not intended to prejudice the fair trial of the case and that the

contempt, if any, which is said to have been committed is purely technical and do not call for any action under the Contempt of Courts Act.

Accordingly both these petitions are dismissed. We will leave the parties to bear their own costs,