

(1958) 03 CAL CK 0001

Calcutta High Court

Case No: Re. Suit No. 1947 of 1950

In Re: Barindra Kumar Ghosh
and Another

APPELLANT

Vs

RESPONDENT

Date of Decision: March 18, 1958

Citation: 62 CWN 862

Hon'ble Judges: P.B. Mukharji, J; Lahiri, J; Das Gupta, J

Bench: Full Bench

Judgement

Das Gupta, J.

These two Rules were issued under an order of the Chief Justice on the 11th March, 1958. By one Rule Barindra Kumar Ghose was directed to attend before this Court in person on this day the 18th of March, 1958 and to show cause either in person or by Advocate why he should not be committed or otherwise dealt with for contempt of this Court committed by addressing and causing to be delivered to the Chief Justice at his private residence a letter dated the 8th of March, 1958 and thereby attempting to interfere with the course of justice in Suit No. 1947 of 1950 - Administrator General of West Bengal v. Basudeb Mukherji pending in the court of Mitter, J. By the other Rule Sambhu Nath Mukherji of 22 Park Lane, Calcutta was directed to appear before this Court in person on this day the 18th of March, 1958 and show cause either in person or by Advocate why he should not be committed or otherwise dealt with for aiding and abetting Sri. Barindra Kumar Ghose, Editor, Daily Basumati, in committing contempt of this Court by carrying and delivering at the private residence of the Chief Justice on the 8th of March, 1958 a letter written by the said Barindra Kumar Ghose and also for committing contempt of this Court himself by verbally asking the Chief Justice to intervene as Chief Justice in Suit No. 1947 of 1950 - Administrator General of West Bengal v. Basudeb Mukherji and to induce Mitter, J. to hold up judgment in the case. Both Barindra Kumar Ghose and Sambhunath Mukherji have appeared before us in accordance with the direction in the Rules.

2. Affidavits affirmed by them have been filed in court before us. Barindra Kumar Ghose in his affidavit tenders "a humble and unqualified apology for writing and addressing the letter set out in the judgment". He adds therein that the letter was written without reflection on his part and without realisation of the nature of the act, that it was never his intention to obstruct administration of justice, that for the time being he was overwhelmed, by his sympathy for Basudeb Mukherji and the sufferings of his family and was actuated by no intention of committing any wrongful act. He repeats thereafter his unqualified apology.

3. The facts are thus not in dispute. As set out in the judgment of the Chief Justice for the order directing the Rule, the Chief Justice was working in his office room when two young men came to see him, one of them giving his name as Sambhu Nath Mukherjee, that thereafter a closed envelope containing the letter which has been marked with the letter "B" was handed over to him by one of them. This letter has been examined by us. In this the writer who signs his name as Barindra Kumar Ghose and adds after his signature the words "Editor, Daily Basumati", refers to suit No. 1947 of 1950 - Administrator General of West Bengal v. Basudeb Mukherji and draws the notice of the Chief Justice who was addressed in the letter as "My dear Phani Babu" to the helpless condition of Basudeb Mukherji describing him as his intimate friend. After stating that this Basudeb is a bed-ridden patient and his daughter is laid up with paralysis, the writer adds:

Quick decision in the case will mean throwing them all in the streets and Basudeb will at once die of heart-failure. Please see that they get time as they are doing their level best to pay up by disposing of 10 cuttahs land at Jadavpur and ornaments in the Punjab National Bank Ltd.

4. After some other statements which are not relevant for our present purpose the writer continues in this strain:

The case is pending in the Court of Hon^{ble} Justice Mitter and I hear judgment is about to be delivered on Tuesday next. Please request the judge to hold up judgment so that the family gets time to move in the matter. It is a question of life and death for Basudeb. Please do all you can to stay proceedings and judgment. I am their guardian and I appeal to you to come to their help.

5. That Barindra Kumar Ghose who is present before us this day did write this letter and send it to the residence of the Chief Justice through Sambhu Nath Mukherjee is not disputed and it has indeed been admitted by him in the statement made before us in reply to the questions put to him by me. That such conduct on his part amounts to grave contempt of court cannot be and is not disputed before us. While it is unnecessary and indeed unwise to attempt a definition of what constitutes contempt of court, it is settled law that conduct which interferes or is calculated to interfere with the administration of justice amounts to contempt of court. It is not for the protection of the court but the protection of all litigants before the court that

it is necessary for the court to see that no outside influence is permitted to divert the course of justice. The temple of justice is wide open on the front and any party can come in and either by addressing the court himself or by a duly appointed Advocate try to influence the judgment of the court in the manner recognised and permitted by law. But the temple of justice has no opening in its rear and any person who tries to pierce a back door in the temple of justice is thereby trying to destroy that temple, the proper maintenance of which is necessary for all who live in an organised State. Indeed the folly and wickedness of an attempt to divert the course of justice by writing to the Trial Judge or by writing to the Chief Justice requesting him to speak to the Trial Judge in the matter are so patent that I am astonished to see that a person advanced in years as Barindra Kumar Ghose is and holding an important and responsible position as the Editor of a daily newspaper could think of writing such a letter. The statement in his affidavit that he was overwhelmed by his sympathy for Basudab Mukherjee and the sufferings of his family does not provide the slightest justification or extenuation of his conduct. It is a matter of grave concern to us that any body, specially any body holding an important position in life and having experience of life would think even for a moment, that when he is "overwhelmed" by sympathy for somebody, he can write to the Chief Justice of this Court and thereby influence judgment in favour of his friend. It is foolish on the part of any person to attempt such interference. It is wicked because he is thereby trying to defeat justice that might be done to another.

6. I have no hesitation, therefore, in finding Barindra Kumar Ghose guilty of contempt of this Court. The fact that he has tenderd an unqualified apology has to be taken into consideration in deciding what punishment we should order for this contempt. I am unable to accept Mr. Sen's submission that the apology offered by him washes out all guilt and that no punishment need be inflicted. It seems necessary not, as I have said earlier, for the protection of this Court but for the protection of all those who seek justice here that a grave contempt of this nature should be punished. After taking into consideration the fact that ha has now offered an unqualified apology and in his statement before us has repeated that he fully appreciates the gross impropriety of his conduct, I am of the opinion that a sentence of fine of Rs. 100/- only should be inflicted on him. I would therefore, inflict on him a fine of Rs. 100/- and also order him to pay costs. The hearing fee is assessed at 3 gold mohurs. If the fine and the costs are not paid within a month from this date, this should be put up before us for further orders in the matter.

7. As I have already mentioned, Sambhu Nath Mukherjee has also appeared before us today and an affidavit solemnly affirmed by him has been filed before us. In that affidavit he has stated inter alia that he tenders his humble and unqualified apology on his part for the events set out in the judgment, that he did not at material times realise the nature or gravity of the act, that as the letter referred to was in English his understanding thereof was faint and he had no idea of the consequences and that he had no idea that he was taking any part in the obstruction to the

administration of justice. Thereafter he repeated his tender of full complete and unqualified apology. In his case the facts are not disputed. It appears clear and is not disputed that he was one of the two persons who went to the residence of the Chief Justice on the 8th of March, 1958 and that he went with the letter written by Barindra Kumar Ghose to which I have already referred and handed it over to the Chief Justice. It appears clear also that he told the Chief Justice in reply to a question put by him how they could dare to bring to him a letter like this, that they were in great difficulty and needed help and he proceeded to say that his sister was lying in a paralytic condition.

8. In my opinion it is quite clearly established that this person Sambhu Nath Mukherjee aided and abetted Barindra Kumar Ghose in committing contempt of this Court by taking the letter written by said Barindra Kumar Ghose to the Chief Justice and handing it over to him and further that he himself was guilty of contempt by making his statement to the Chief Justice as regards their difficulty, and need for help and his sister's condition by which he intended to persuade the Chief Justice to influence the course of justice in his favour. He has however tendered an unqualified apology. We have also to take into consideration the further fact that he is a young man of 17 years 4 months of age according to his affidavit and only last year passed the School Final Examination of the Board of Secondary Education, West Bengal. In consideration of all the facts I am of opinion that an order of fine of Rs. 100/- only would be proper and adequate punishment. I would therefore order that a fine of Rs. 100/- be imposed on him. If this fine is not paid within a period of one month from this date, this matter should be put up before us for further orders.

Lahiri, J.

9. I agree with the order which has been parsed by My Lord Mr. Justice Das Gupta. In both the affidavits used by Barindra Kumar Ghose and Sambhu Nath Mukherjee their statement is that they had no intention of obstructing the course of justice and in the affidavit of Barindra Kumar Ghose he has further stated that he was at the time of writing the letter to the Chief Justice overwhelmed by a sense of grief at the suffering of his friend Basudeb Mukherjee. The question of intention is hardly material in a case of contempt of court. But absence of intention can be taken into account in awarding the sentence and the fact that the respondents in both the cases have stated that they had no intention of obstructing the course of justice may be taken into account in considering what punishment should be given to them.

10. If the letter addressed to the Chief Justice had the effect of obstructing the course of justice, the question that the author of that letter had not the intention of obstructing it is, as I have already stated, immaterial in deciding the question whether he was guilty of contempt. But, as I have already pointed out, this is a circumstance to be taken into account in awarding the sentence. I therefore agree with the order passed by My Lord. Neither of the two respondents should be sentenced to imprisonment, and that a sentence of fine of Rs. 100/- and costs will

meet the ends of justice.

11. Both the respondents have tendered an unqualified apology; but tendering of an apology does not entitle the respondents to get a discharge as a matter of right. It is again a mitigating circumstance which can be taken into account in considering the question of sentence.

12. For both the reasons given above, I am of the opinion that the sentence of a fine of Rs. 100/- which has been inflicted upon each of the respondents will meet the ends of justice.

P.B. Mukharji, J.

13. I agree with the order proposed by My Lord.

14. The letter dated the 8th March, written by Barindra Kumar Ghose, Editor of the Bengali Daily Newspaper "Basumati" to the Chief Justice of this High Court asking him to influence a Judge of this High Court to withhold judgment in a matter pending before him, is plainest contempt. It interferes with the due course of justice. It is calculated to discredit the course of justice. It is contempt of Court because it attempts to influence judgment by unlawful means. The road to justice is public. There is no covert approach to justice. Attempt to procure justice by private correspondence from unauthorised persons, claiming to be inspired by sympathy and altruism defeats the integrity and impartiality of justice. The offence of contempt is complete by the attempt and does not depend on actual deflection of justice and purity of motive of the condemnor. Administration of justice in this Court is public and not private. The editors of newspapers will do well to have at least a nodding acquaintance with the law of contempt before embarking on editing newspapers. That will help to save themselves and to improve public standards of a public press. That it should be done in this case by a responsible editor of a responsible paper is the more unfortunate. It enhances and not reduces the guilt of contempt. That he should secure the help of a young student of 17 years, who has just passed out of his school days, is deplorable. In awarding punishment for contempt, the Court always takes into consideration the attitude taken by the condemnor. In this case, both of them have tendered an unqualified apology. The Court accepts such apology. The Court, however, does not consider that apology to be enough by itself. I am, therefore, in entire agreement with the punishment proposed by My Lord in fining and in awarding costs.