
(1989) 02 CAL CK 0038

Calcutta High Court

Case No: None

Samar Ghosh and
Others

APPELLANT

Vs

Somnath Chakraborty
and Another

RESPONDENT

Date of Decision: Feb. 15, 1989

Citation: (1989) CriLJ 1638

Hon'ble Judges: Mukul Gopal Mukherji, J; Monoj Kumar Mukherjee, J

Bench: Division Bench

Judgement

Mukul Gopal Mukherji, J.

The present proceeding in Contempt has been initiated on the basis of a petition filed by Samar Ghosh and 16 others, all Advocates practising in the Judges' Court, Chinsurah, for an alleged contumacious conduct committed by the contemnor opposite party No. 1 Somnath Chakraborty, Sub-Inspector of Police who wrote out a poem "Kazir Bichar" which was published in a Bengali fortnightly magazine "Bhagirathi Express" on 16th Dec., 1985. It was contended that the contemnor opposite party No. 2 Pradeep Mukherjee who is die editor and publisher of the said magazine "Bhagirathi Express" also was guilty of contumacious conduct as editor and publisher of the said fortnightly " Bhagirathi Express" by publishing the same in the issue of said magazine "Bhagirathi Express" dt. 16th Dec., 1985 thereby scandalising the court and the lawyers and lowering UK dignity of the judicial system, as such, which amounted to an interference with the judicial process as well as administration of justice.

2. The facts in a brief nutshell are as follows:

Sri S. Mohanti was posted as Judge, Special Court under the Essential Commodities Act at Hooghly. There was no other judicial officer having surname "Mohanti" in the court of Chinsurah. The contemnor opposite party No. 1 Somnath Chakraborty was a Sub-Inspector of Police attached to District Enforcement Branch, Hooghly. In or about

1984 the said Somnath Chakraborty was the Officer-in-charge of Dadpur Police Station. One Tarun Ghosh and one Arun Ghosh were accused in a case under the Essential Commodities Act out of which Special Court Case No. 34/84 was registered in the Court of the Id. Special Judge (Essential Commodities Act) Hooghly in which a charge was ultimately framed against one Arun Ghosh. Somnath Chakraborty was practically the de facto complainant in the case and he was also a witness for the prosecution. In compliance of the process issued by the Court, Somnath Chakraborty attended court on 20th March, 1985. On that date Arun Ghosh was sick and on the prayer of the defence lawyer the Id. Special Judge granted him permission to sit inside the court room instead of placing him in die accused"s dock. When Sri Chakraborty stepped in at the witness box, Sri S. Mohanty cautioned him for avoiding the process of Court However Somnath Chakraborty was examined and cross-examined and then discharged But before leaving the Court he had put an objection before the Id. Judge to the effect that the accused should have been allowed to be seated in the court room instead of being directed to stand in die accused"s dock. However when he was apprised about the court"s earlier permission in this regard, he left the court with utter dissatisfaction. The case however ended in an acquittal in favour of Arun Ghosh. In the judgment, the Id Judge made certain observations to the following effect:

from the facts and circumstances of the case and the evidence on record it is abundantly clear that the accused"s shop was not a grocery shop and on the late hours of the night, the shop was closed and that no rice was recovered and seized therefrom, that the accused has been falsely prosecuted by P.W. 8 Sub-Inspector of Police Somnath Chakraborty out of vengeance and has seized a bag of rice from his residential portion and in so doing he had to manipulate the seizure list.

3. After the judgment Arun Ghosh and Tarun Ghosh instituted a suit for defamation against Somnath Chakraborty praying for damages which was numbered as Money Suit No. 21 of 1985 in the Court of 1st Assistant District Judge, Chinsurah, Upon receipt of the summons and the copy of the plaint, Somnath Chakraborty became aware of the observations made by the Id. Special Judge, Shri S. Mohanty against him in course of the judgment Thereafter the poem named "Kazir Bichar" was published in a local fortnightly magazine named "Bhagirathi Express" edited and published by the opposite party No. 2 on 16th Dec., 1985. Copy of the said magazine is annexed as annexure "C" to the contempt application. The name of the opposite party NO. 1 was printed as author of the poem "Kazir Bichar" of the said magazine. The first four lines of the said poem

(matter in vernacular omitted....Ed.)

directly connects the Id. Special Judge Sri S. Mohanty inasmuch as said Sri Mohanty was the only judicial officer having surname of Mohanty in the court of Chinsurah. This would also be confirmed from the 7th and 8th line.

(matter in vernacular omitted... Ed.)

which refers to the origin of Sri S. Mohanty who hails from the State of Orissa, This would be further confirmed from the. 5th and 6th line of the 3rd stanza

(matter in vernacular omitted....Ed.)

which had a practical relation with the physical appearance of the Id. Judge who was physically slim having a thin face with a dark complexion with spectacles.... The first two lines of the 2nd stanza

(matter in vernacular omitted...Ed.)

tends to scandalise that the courts are prone to illegal gratification without any fear. While the first 4 lines tend to scandalise and lower the dignity of the court by referring that the learned Judge never commands the accused to the dock which has a direct reference to the case as referred to earlier, the first two lines of 3rd stanza namely

(matter in vernacular omitted...Ed.) indicates about rendezvous between the acquitted accused and the learned Judge with reference to the place of residence of the Id. Judge inasmuch as he resides in the locality of Baghbazar at Chandernagore. The 3rd and 4th line of the 2nd stanza viz.

(matter in vernacular omitted...Ed.)

is also aspersion against the lawyers and it tends to indicate an unholy alliance between the lawyers and the Presiding Officer of the Court.

4. It is alleged that the publication of the said poem attracted wide and general public attention at the very moment when it was published. The local people very well understood the contents and purport of the poem and it ridiculed the judicial system as well. The petitioners contacted the publisher of the said issue and had ascertained that the poet Somnath Chakraborty was none else but opposite party No. 1 who himself was a police officer.

5. The contemner opposite party No. 2 caused publication of the said poem in his magazine thus contributing sufficiently to the cause of denigrating the dignity of the court, lawyers and judicial system, the said poem is neither a fair and an accurate report of the judicial proceeding nor a fair criticism of any judicial act and did not also amount to any complaint against the Presiding Officer done in good faith. It really did interfere and/or did tend substantially to interfere with the administration of justice. The publication was not an innocent publication of literature. The libellous publication upon the court, the lawyers and the judicial system has been made by two respondents only for scandalising and lowering the dignity of the judicial officers in the eyes of the public in order to interfere with the course of administration of justice. It is not open to a person who is dissatisfied with a decision in a case to attack the system of administration of justice or the person involved in the system in a manner so as to scandalise the system of justice itself or the person

who are concerned with the administration of justice as such. It is patent itself and has been manifestly so done to cause the said effect. It also creates certain mistrust in the mind of the innocent people and did impair the confidence of the people in the judicial officers who preside over the courts. The offence did really amount to criminal contempt inasmuch as it had prejudiced and undermined the courts and the lawyers.

6. The Respondent 2 Pradeep Mukherjee at the outset submitted before us by filing an affidavit in opposition to the effect that he had deepest regard and respect not only for this Court but also for the entire judiciary. He did not have any intention at all to violate any order of court or to do any act which might amount to the contempt of court. If however, he was found to have committed any contempt, the most respectfully tenders his unconditional apology for the same which may kindly be accepted. He did not know previously that there was any such Judge by the name S. Mohanty. He had no occasion to deal with any case as alleged or at all. He himself was a Science Graduate from Burdwan University and during 1973-74 he was appointed as correspondent of "Dainik Basumati" and while acting as correspondent of "Dainik Basumati" he developed certain aptitude for Journalism. Since his financial position did not permit him to start a local newspaper, he could not start any paper till 16th May 1985, when he as editor of "Bhagirathi Express" started publishing the said fortnightly Journal He had no knowledge whatsoever as regards the facts stated by the petitioners in course of their averments in paragraphs 5 to 11 except that the opposite party No. 1 was an officer of Police Directorate. He disputed the allegations made against him in paras 12 to 16 of the contempt application and submitted inter alia that the local fortnightly magazine was published by him where a good number of persons including the opposite party No. 1 subscribe their articles. Since it was known that the said fortnightly was published by him, the opposite party No. 1 contacted him claiming himself that he writes poem. In the Annual Publication of the said fortnightly newspaper published in 1392 B.S. a poem of the opposite party No. 1 was published under the heading "(Vernacular matter omitted - Ed.)" Before publication of the said poem the opposite party No. 1 met him and handed over the manuscript of the said poem as the editor of the magazine. He found it more or less complete in rhymes and he accordingly published the same. Similarly when the 14th issue of the said fortnightly was about to be published, the opposite party No. 1 Somnath Chakraborty again met him and handed over his manuscript. He examined the poem in the manner done on the previous occasions and thereafter having found the same to be a piece of literature, he published the same. The poem was styled as "Kazir Bichar", Prior to its publication he never knew Sri Mohanty the Id. Judge of the said court nor did he know of any proceeding pending in his court The opposite party No, 1 also brought out a book under the name "(Vernacular matter omitted - Ed.)" and it was published prior to 11-6-79. A copy of the said book was also handed over to him which he read thoroughly. In the 7th issue of the said fortnightly, another poem of the opposite party No. 1 was published. A copy of manuscript of the poem "Kazir Bichar" written in the hand writing of the opposite party No. 1 was enclosed as annexure "A" to the affidavit in opposition. Prior to the receipt of the present contempt rule, he never knew that the said poem was

intended to malign the Id. Judge to scandalise and/or to lower and/or tend to lower dignity of the Court lawyers and the judicial system as a whole. He only found the said poem to be a piece of literature worthy of circulation in his fortnightly and accordingly he published the same. He further refuted the contention about circulation of the said poem and submitted that nobody enquired of him about the said poem at any point of time. If he had known, prior to the publication of the poem in his fortnightly issue of "Bhagirathi Express" that it was really an attempt to scandalise or to lower the dignity of the Court, lawyers and the judicial system, he would not have published the same since he adheres to the principle that any publication which tends to scandalise and/or to lower the dignity of the Court or the dignity of a Judge or the judicial system should not be published in his fortnightly issue. He categorically denied that he had any knowledge about the meaning, purport and contents of the said poem. The publication of the poem was made in the same manner as was done earlier in respect of other articles submitted for publication by the opposite party No. 1. He further asserted that he had honestly published the said poem without knowing the implication of the same or without understanding the merit, of the said article to the effect that it did tend to lower the court, the lawyers and the judiciary. There was nothing untowards publication since his fortnightly was circulated in the usual manner as was so done in respect of previous issues. He further asserted that he honestly examined the said poem and found it to be a piece of literature and thereafter published the same. Accordingly he denied and disputed the averments of the petitioners that he was in any manner guilty of any contumacious conduct in publishing the said poem in his fortnightly issue dated 16th Dec., 1985. As such by the act of causing publication upon honestly believing the same to be a piece of literature he might have committed some error of judgment for which he prayed to be excused.

7. We now come to the stand taken by the respondent No. 1 Somnath Chakraborty. His case inter alia was to the effect that the entire proceeding was engineered by the petitioner No. 9 Netai Ch Ghose out of prior malice. The said petitioner 9 was a lawyer in respect of certain proceedings and his brother was a party to certain proceedings. He disputed the contention that Sri S. Mohanty was posted as Judge of the Special Court, Hooghly at Chinsura on the day the publication was made in "Bhagarathi Express" on 16th Dec., 1985. He admitted that he was a police officer and it was further submitted that he was the complainant of a case as referred to in the petition for contempt in which he was examined as witness on 20th Mar. 1985 but he was neither the person who investigated the case nor did he submit any charge sheet in the said case and the charge sheet was in fact submitted by some other police officer after completion of due investigation. The petitioner in fact moved this Hon"ble Court for expunging the observations made against him in course of the judgment passed by Sri Mohanty. Copy of the judgment dated 14th May 1986 in Crl. Rev. No. 66/1986 was produced before us. In course of the said judgment, S. Ahmed, J. was of the opinion that "the Court might have observed that the petitioner Somnath Chakraborty has falsely initiated this case as he might have some grudge against him as the accused"s elder brother acted as an Advocate in a criminal case against him but that does not at all affect the merit of the

case". Considering the materials on record, S. Ahmed J., inter alia observed that the learned Judge ought to have stated that the petitioner Somnath Chakraborty has falsely initiated this case because he ought have a motive for taking vengeance against the action of the accused"s brother who is a learned Advocate appeared against him. Subject to this his Lordship found that there was no reason for interference against the judgment. This however does not clinch the issue at all. The respondent 1 further submitted that the allegations were non specific, vague and omnibus and were not sufficiently clear enough for effecting a worthy representation against. He wanted to rely in this context upon the certified copy to the court"s proceeding and other official papers at the time of hearing. He denied that he ever wrote any such poem and sent the same for publication to "Bhagarathi Express".

His further averment was to the effect that the whole thing was manufactured and engineered by the petitioner in connivance with the opposite party No. 2 Pradeep Mukherjee and as such he has not committed any act of contempt.

8. In support of their respective stands, the parties were allowed to adduce evidence.

9. We have gone through the evidence of Samir Ghosh, a Newspaper printer who owned a press and knew Somnath Chakraborty from before and did publish some of his books and knew him as an author too. Somnath Chakraborty also contributed to his newspaper. He also purchased a manuscript as given by Somnath Chakraborty and was also familiar with his handwriting. The manuscript was marked as Ext. A. He was candid about having published 3/4 of Somnath Chakraborty"s poems. He also sought to prove that Ext. A was not his handwriting. The writing which Somnath Chakraborty had given to him for publication and one or two more such writings given to him were subsequently written in his presence and he wrote all the writings with the right hand and he was not able to testify as to whether Somnath Chakraborty did also write with his left hand. When Ext. A was shown to him, he testified to the effect that the signature appearing there did belong to Somnath Chakraborty and he further testified that he signed in his presence. As regards the corrections made on the body, he owned up the corrections to be made by him. To the suggestion of the Counsel on behalf of the respondent 1 that it was not the handwriting of Somnath Chakraborty, he only asserted that he wrote it out in front of him and he was sure about it.

10. The other witness examined in the case was Pradeep Mukherjee himself. He gave out that he published newspaper "Bhagirathi Express" of which he was the editor from Panchanantola, Chhinnurah, Hooghly. He admitted that he published the issue dated 16th Dec., 1985 which was marked as Ext. I. He gave out that Somnath Chakraborty was the author of the poem "Kazir Bichar" and he identified Somnath Chakraborty in Court as well. He also admitted that the manuscript was handed over to him by Somnath Chakraborty and he also did identify his handwriting. The other book "Kakhan Bajbe Bashi" written by Somnath Chakraborty was also identified by him and marked as Ext. II.. He candidly gave out that he did not know Mr. Mohanty from before and even if he did

see him, he would not be able to recognise him. He tendered unconditional apology to the court which seemed to be sincere and genuine and in this context we do believe in his statement that he did not consciously publish the poem "Kazir Bichar" with a guilty mind so as to ridicule the judiciary and/or to lower down the prestige of S. Mohanty or to humiliate lawyers of Chinsura who attended the court of S. Mohanty. He admitted that Journalism was not his usual avocation and did not receive any training in the same nor was he aware of the law which regulates and governs the profession of Journalist About his own Newspaper, he submitted that it was both a news magazine and a literary magazine and that it was a part of his duty to weigh the news value in contradistinction to the language while selecting the articles. He submitted clearly and candidly that he did not know the Judicial Officers posted at Chinsurah. He submitted that his magazine is not a scandalous one and he did not usually publish scandalous matters in his journal But only on having assessed the literary value of the particular poem as "Banga Kabila" or a satirical verse the poem was considered worthy for publication. He was not very much aware of the fact that Somnath Chakraborty was a police officer. He also admitted having been presented by Somnath Chakraborty himself a copy of his book (Vernacular matter omitted - Ed.) "Kakhan Bajbe Banshi". The book was tendered and marked as Ext. III. He did not tell the Court as to what extent Somnath Chakraborty was renowned as a poet but he could testify to this effect that he had written other poem before and in so far as this poem is concerned, it was personally handed over to him by Sri Chakraborty. He could not also agree as to whether he was a satirist or a writer of lighter fashion.

11. Having considered the evidence on record in the light of the entire background of the case and the fact that Sri Somnath Chakraborty did not examine himself in support of this case, we feel no hesitation in concluding that Sri Chakraborty is the author of the offending poem and that he wrote the same with a view to denigrating Sri Mohanty and thereby bringing judiciary to disrepute. We are satisfied that the contempt committed tends substantially to interfere with the due course of justice.

12. For the foregoing discussions while we accept the unconditional apology as tendered by Pradeep Mukherjee and absolve him of the charges of Criminal Contempt, we hold Somnath Chakraborty guilty of such contempt and sentence him to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for 15 days. The Rule is thus disposed of. The fine should be deposited with the Registrar, Appellate Side within a fortnight from date. Let this matter be placed for further orders a fortnight hence.

Monoj Kumar Mukherjee, J.

13. I agree.