

Judgement of the Lords of the Judicial Committee of the Privy Council on the Petition of Sarendra Nath Banerjea v. The Chief Justice and Judges of the High Court of Bengal, from Bengal; delivered 18th July 1883.

Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE only question to be determined is whether the High Court had jurisdiction to commit the Petitioner for a contempt of Court in publishing the libel set out in the Petition.

Their Lordships took time to consider, in order that they might carefully examine the provisions of the Code of Criminal Procedure, 1882, which came into force in January 1883. Having done so, they are clearly of opinion that, notwithstanding that Code, the High Court had jurisdiction.

The Penal Code for British India was referred to by the learned Counsel for the Petitioner, and in particular chapter 11, section 228, and chapter 21, "Of Defamation." But that Code merely defines the several offences thereby created, and provides the punishments to which offenders are to be liable. It does not at all affect the procedure by which offenders are to be brought to punishment. It is only by the Code of Criminal Procedure, read in conjunction with the Penal Code, that the jurisdiction of the High Court to commit for contempt was, if at all, affected.

Section 228 of the Penal Code, which was referred to in the argument, does not apply to

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the present case; it relates merely to insult or interruption to a public servant while sitting in a stage of a judicial proceeding. It does not provide against a contempt of Court committed by the publication of a libel out of court when the Court is not sitting.

The chapter 21, "Of Defamation," does not define "contempt of Court" or make any provision for the punishment of a contempt of Court by the publication of a libel reflecting upon a Judge in his judicial capacity or in reference to his conduct in the discharge of his public duties. The offence, as a case of defamation, might doubtless have been punished under that chapter with simple imprisonment, not exceeding two years, or with fine, or with both. If the procedure of the Criminal Procedure Code had been adopted, and the Petitioner had been convicted of simple defamation under chapter 21 of the Penal Code, and, after his apology, had been sentenced by the Court to two months' imprisonment, there would have been no pretence for an application for special leave to appeal against the conviction.

But it is not because the publisher might have been punished for defamation that he could not be punished summarily as for a contempt of Court.

Lord Hardwicke, in the case of *The Champion*, 2 Atkyns, 469, says: "To be sure, Mr. Solicitor General has put it on upon the right footing that, notwithstanding this should be a libel, yet, unless it is a contempt of Court, I have no cognisance of it; for whether it is a libel against public or private persons, the only method is to proceed at law."

The libel in the present case was clearly a contempt of Court. It is contended, however, on the part of the Petitioner that, by reason of the Code of Criminal Procedure, 1882, the Court could not deal with it as a contempt of Court or

punish the offender by commitment in a summary manner.

Several sections of that Code were referred to.

Section 198 enacts, amongst other things, that no Court shall take cognisance of an offence under chapter 21 of the Indian Penal Code, *i.e.*, the chapter "Of defamation," except upon a complaint made by some person aggrieved by such offence.

"Complaint is defined in section 4a to mean "the allegation made orally or in writing to a "magistrate with a view to his taking action," &c.

Section 195 enacts that no Court shall take cognisance of an offence under section 228 of the Indian Penal Code (*i.e.*, the offering insult to a public servant whilst sitting in any stage of a judicial proceeding) when such offence is committed in or in relation to any proceeding in any Court, except with the previous sanction or on the complaint of such Court or of some other Court to which it is subordinate.

It is scarcely possible to suppose that the procedure above pointed out was intended to apply to the case of an insult to or a libel upon the High Court or a libel upon one of the Judges thereof, imputing corruption or misconduct or incapacity in the discharge of his public duties, or a libel such as that set out in the Petition.

Section 480 and the two following sections of the Code of Criminal Procedure were referred to in the argument in support of the Petition, but they do not apply to a case of libel or defamation out of court whilst the Court is not sitting, and have no direct bearing on the present case.

Section 5 was also referred to, and it was contended on the part of the Petitioner that, according to the provisions of that section, the procedure provided by the Code of 1882 was the only one which could be adopted.

That section is in the words following:—

“All offences under the Indian Penal Code shall be inquired into and tried according to the provisions herein-after contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.”

Their Lordships are of opinion that a contempt of the High Court by a libel such as the present, published out of court when the Court is not sitting, is not included in the words “offences under the Indian Penal Code,” although the contempt may include defamation. Such an offence is something more than mere defamation, and is of a different character. It is an offence which by the common law of England is punishable by the High Court in a summary manner by fine or imprisonment, or both. That part of the common law of England was introduced into the Presidency towns when the late Supreme Courts were respectively established by the Charters of Justice. The High Courts in the Presidencies are Superior Courts of Record, and the offence of contempt, and the powers of the High Court for punishing it, are the same there as in this country, not by virtue of the Penal Code for British India and the Code of Criminal Procedure, 1882, but by virtue of the common law of England. 5 Moore, P.C.C., N.S., 497.

The words “All offences under any other law” in section 5 cannot be intended to include a contempt like the present, for which no provision is made by the Code. It is unnecessary, therefore, to consider what is the true construction of the words “any special jurisdiction or power conferred by any other law now in force” in section 1.

Their Lordships having decided that the libel was a contempt of Court, and that the High Court had jurisdiction to commit the Petitioner for a period of two months, the case is not a proper one for an appeal to Her Majesty.

In the case of *Rainy v. The Justices of Sierra Leone*, 8 Moore, P.C.C., 54, upon an application for leave to appeal to enable the Petitioner to get rid of certain fines imposed upon him by the Court of Sierra Leone for contempts of Court, it was said,—“It is the opinion not only of the
“ members of the Committee who heard the
“ Petition, but also of the other members who
“ usually attend here, to whom the Petition has
“ been submitted, and we have had the benefit
“ of their judgement as well as our own, that
“ we cannot interfere with such a subject. In
“ this country every Court of Record is the sole
“ and exclusive judge of what amounts to a
“ contempt of Court.” That case was referred to as an authority by the Judicial Committee in the case of *McDermott v. The Justices of British Guiana*, 5 Moore, P.C.C., N.S., p. 466.

In the latter case an application was made ex parte for leave to appeal from an order of the Supreme Court of Civil Justice in British Guiana, by which the Petitioner was, for a contempt of Court in publishing certain libels commenting on the administration of justice, and upon one of the Judges of the Court, committed to jail for a period of six months or until further orders. See S.C., p. 490, and 4 Moore, P.C.C., N.S., 110, 120. Leave to appeal was granted without prejudice to the question of the competency of Her Majesty in Council to entertain an appeal from an order of a Court of Record inflicting punishment by fine or imprisonment for a contempt of Court, which question was to be open to argument on the hearing of the appeal. The case came on for argument, and it was

contended by the Solicitor General that the leave to appeal ought not to have been granted, as a Court of Record is the sole judge of what constitutes a contempt. He stated, however, that he was prepared to support the order upon the merits, but he was not called upon to do so.

In delivering the opinion of the Judicial Committee, Lord Chelmsford, after stating that the leave to appeal was conditionally granted, said the Respondents might have come in to discharge the order upon the very ground which had been taken, namely, that there could be no appeal against an order of a Court of Record committing a person for contempt, and that, in order to support the propriety of the leave to appeal, the Appellant must show either that the Court was not a Court of Record, or that, if it was a Court of Record, yet that there was something in the order committing the Appellant which rendered it improper, and therefore the subject of appeal. Then, after deciding that the Court at Sierra Leone was a Court of Record, his Lordship says (498): "Not a single case is to be found where there has been a committal by one of the Colonial Courts for contempt, where it appeared clearly upon the face of the order that the party had committed a contempt, that he had been duly summoned, and that the punishment awarded for the contempt was an appropriate one, in which this Committee has ever entertained an appeal against an order of this description." Again, after referring to the authorities, and amongst others to Rainy's case, his Lordship concluded by saying: "Under these circumstances their Lordships entertain no doubt whatever as to the propriety of deciding that in this case the leave to appeal ought not to have been granted; that the Supreme Court of Justice was a Court of Record; and that, as a Court of Record, it had power to commit for the

“ particular contempt. As their Lordships do
“ not enter into the merits of the case, they will
“ say nothing as to the character of the libel
“ upon which the Court thought it proper to
“ commit the publisher for contempt.”

Acting upon these authorities, and holding that the High Court had jurisdiction to commit the publisher of the libel in question for contempt, their Lordships will say nothing as to the character of the libel, or as to the extent of the punishment awarded. They will humbly advise Her Majesty to dismiss the Petition.

