Privy Council Appeal No. 23 of 1944

Parashuram Detaram Shamdasani - - - - *Appellant*

v.

The King-Emperor - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH MAY, 1945

Present at the Hearing:

LORD MACMILLAN
LORD GODDARD
SIR MADHAVAN NAIR

[*Delivered by* LORD GODDARD]

This is an appeal from an order of the High Court of Bombay made by Kania J. adjudging that the appellant was guilty of a contempt of court, committing him to prison for three months, and ordering him to pay a fine of Rs.1,000. On the day after the order was made the appellant applied to the learned judge for a modification of the sentence expressing sincere and unreserved regret for having used the expressions which were held to be a contempt, and the sentence was then reduced to one of eight days' imprisonment but no alteration was made in the fine. The sentence of imprisonment was served and the appellant then applied to the High Court in its appellate criminal jurisdiction for a certificate that the case was one fit for appeal to His Majesty in Council under clause 41 of the Amended Letters Patent of 1865. This application was opposed by the Advocate General, who submitted there was no jurisdiction to grant it, as it was said that the clause in question did not apply to a committal for contempt of Court. The High Court (Beaumont C.J. and Sen J.) held that there was jurisdiction to grant a certificate and that it was a proper case in which to do so, and this was accepted as right by Counsel for the respondent before this Board, and their Lordships accordingly do not think it necessary to express any opinion upon this matter.

The appellant had been an unsuccessful plaintiff in a suit in the High Court and had been ordered to pay costs. They were taxed and the appellant then took out a summons to review the taxation, and, though a layman, appeared in person to support his objections. In the course of the hearing Counsel opposing stated that the appellant was misleading the Court as to the nature of the issues raised in the action and insisted that he should read out a paragraph in the plaint. The appellant then said: " I do not keep anything back at all. My fault is that I disclose everything, unlike members of the Bar, who are in the habit of not doing so and misleading the Court ". This caused a protest from the opposing Counsel, Mr. Desai, whereupon the appellant immediately apologised and expressed his regret for having used an unfortunate expression in the heat of argument. Later in dealing with the Taxing Master's statement, with regard to the allowance of discretionary items, that he had taken into consideration all the matters mentioned in Rule 563, the appellant said: " It is customary

for the Taxing Masters to write what is written at the end of the paragraph, but is it considered at all? " No protest or observation on this statement was made either by Bench or Bar at the time when it was uttered, nor when judgment was given, and it appears to their Lordships that it must have been regarded as no more than the sort of tactless and intemperate statement that is not infrequently made in the heat of argument and not only by litigants in person. On 13th October, 1942, the appellant concluded his argument and the Court proceeded to give judgment but had not finished doing so at the end of the day. At the rising of the Court Mr. Desai stated that he would draw the attention of the Court to the statement made by the appellant with reference to the Bar and would apply that appropriate action be taken. On the next day both Mr. Desai and the Advocate General of Bombay appeared, and, though the appellant again apologised and expressed regret for what he had said, moved the Court to punish the appellant for a contempt in using the language he did regarding the Bar. In the course of the argument the learned Judge himself then raised the question as to the words the appellant had used relating to the Taxing Masters. On the following day the learned Judge delivered a lengthy judgment, reviewing some authorities, and, coming to the conclusion that the appellant had been guilty of a contempt both in his reflections on the Bar and on the Taxing Masters, made the order against which this appeal is brought.

Dealing first with the appellant's reference to the conduct of the Bar, their Lordships share the surprise expressed by the Chief Justice when granting the certificate for appeal as to what he described as the somewhat undue degree of sensitiveness displayed in taking so serious a view of what had been said. Their Lordships would indeed go further and say that it would have been more consonant with the dignity of the Bar to have ignored a foolish remark which has been made over and over again not only by the ignorant, but by people who ought to know better, and no doubt will continue to be made so long as there is a profession of advocacy. To treat such words as requiring the exercise by the Court of its summary powers of punishment is not only to make a mountain out of a molehill but to give a wholly undeserved advertisement to what had far better have been treated as unworthy of either answer or even notice. But apart from the question of whether the motion was wise or expedient it has to be decided whether these words could be properly regarded as a contempt of court. The principle to be applied is clear enough. For words or action used in face of the Court, or in the course of proceedings, for they may be used outside the Court, to be a contempt, they must be such as would interfere or tend to interfere with the course of justice. No further definition can be attempted. It must be rare indeed for words used in the course of argument, however irrelevant, to amount to a contempt when they relate to an opponent, whether counsel or litigant. If in the course of a case a person persists in a line of conduct or use of language in spite of the ruling of the presiding Judge he may very properly be adjudged guilty of contempt of court, but then the offence is the disregard of the ruling and setting the Court at defiance. So also if a litigant or an advocate threatened or attempted violence on his opponent, or conceivably if he used language so outrageous and provocative as to be likely to lead to a brawl in Court, the offence could be said to have been committed. An insult to Counsel or to the opposing litigant is very different from an insult to the Court itself or to members of a jury who form part of the tribunal. Their Lordships mention this matter because their attention was drawn to the case of *Ex parte Pater*, 5 B. and S. 299, where a member of the Bar was adjudged guilty of contempt by the Middlesex Quarter Sessions and fined for insulting a juryman and persisting in his conduct when reproved by the Deputy Assistant Judge. The Court of Queen's Bench refused to interfere and would not grant a *certiorari* to quash the order saying they could not act as a Court of Appeal from the Sessions. But it is quite clear that the Court's refusal was based on the fact that there was evidence of conduct which could amount to contempt, and the Court held itself free to inquire whether the inferior Court had reasonable grounds for adjudging that a contempt had been committed. Their Lordships think it unnecessary

for them to deal with the cases of *R.* v. *Davison* (4 B. and Ald. 329) and *French* v. *French* (1 Hogan 138) on which Kania J. relied, as the judgment of Beaumont C.J. has already shown that they do not support the propositions that the learned Judge thought they did, and the Board entirely agree with the Chief Justice. In their Lordships' opinion the words used by the appellant respecting the Bar, and which must be taken to have been intended by him to refer to Mr. Desai in particular, did not and could not amount to a contempt of court, and consequently there was no jurisdiction in the learned Judge to exercise his summary powers in respect of them.

With regard to the words relating to the Taxing Masters, no doubt if a litigant were to suggest in Court that its officers were corrupt or habitually failed to carry out their duties the Court might consider it a contempt, though if it were only the latter that was suggested it would be unwise to do so. But when all the circumstances here are considered, and especially that when the words were uttered there was no reproof or even comment from the Bench it is impossible to suppose that they were treated or indeed intended as more than a tactless way of suggesting that Taxing Masters were apt to deal somewhat summarily with such matters as were then in question. It was not till the Advocate General was moving for punishment on the appellant in respect of the other words that any notice seems to have been taken of the matter and then by the Judge himself, somewhat late in the day as it seems to their Lordships. In their opinion they afford no reasonable grounds for adjudging the appellant guilty of so grave an offence as contempt of court, and on this point also their Lordships are glad to find that their opinion and that of the Chief Justice and Sen J. coincide.

Their Lordships would once again emphasise what has often been said before, that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a Court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised, and to use it to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended. The Bar can surely maintain its dignity and prestige without having to invoke this jurisdiction.

Their Lordships will humbly advise His Majesty that this appeal should be allowed and the order of the learned Judge set aside. It should have been said that originally the Chief Justice and other Judges of the High Court were made respondents to this appeal. It was afterwards realised that this was incorrect and by an Order in Council dated the 27th October, 1944, the Crown was substituted as respondent. Where the Crown appears to uphold a conviction in a criminal case it is not the practice to award costs to the appellant in the event of the appeal succeeding. Although this matter is one which is known as a criminal contempt it obviously is in a different category from an ordinary criminal case. It is a matter of some surprise to their Lordships that in spite of the emphatic opinion of the Chief Justice and another Judge of the Court of which the appellant was alleged to be in contempt that no contempt had been committed the Executive should have deemed it necessary not only to appear but to have endeavoured to uphold this order. In these circumstances their Lordships are of opinion that the appellant should have the costs of this appeal.

(41989) Wt. 8077—36 170 6/45 D.L. G. 338

In the Privy Council

PARASHURAM DETARAM SHAMDASANI

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DELIVERED BY LORD GODDARD

Printed by His Majesty's Stationery Office Press,
Drury Lane, W.C.2.

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