CRIMINAL ORIGINAL

Before Bhandari, C. J.

MR. LEO ROY FREY, AMERICAN CITIZEN OF LOS ANGLES. CALIFORNIA,—*Petitioner*

versus

SHRI R. PRASAD, COLLECTOR OF CUSTOMS AND CENTRAL EXCISE, NEW DELHI, AND OTHERS,—*Respondents*

Criminal Original No. 13 of 1957.

1958

March, 10th

Contempt of Courts Act (XXXII of 1952)—Section 3—Contempt of Court—Publication of matters during the pendency of a cause in a Court—When constitutes contempt—Defences to such a charge of contempt—What are not—Gravamen of the charge of contempt—Court, when will exercise its power of committal for contempt—Publisher of a newspaper—When can be committed for contempt—Freedom of the press—Extent of vis-a-vis *the matters pending before a Court—Duty of the Courts in such matters—Cause, whether must be actually pending in a court to constitute contempt—Publisher omitting to use the expression "alleged" with reference to a crime or criminal—Whether commits contempt—Publication of an incorrect or inaccurate report of a decision of an administrative Officer—Whether constitutes contempt—Taking and publishing of photographs of a prisoner on trial—Whether constitutes contempt—Expression of regret when to be accepted in mitigation of the offence.*

Held, that it is a contempt of Court to publish 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 eye 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. The gravamen of the charge in all such cases is that the offending party published articles which were calculated to interfere with the due course of justice. The truth of statements appearing in the article or the absence of intent to commit contempt are material only for the purpose of considering the measure of punishment.

Held, that a court will not exercise its extraordinary power of committal unless the publication is calculated or intended to cause substantial prejudice to the petitioner or unless a real attempt has been made to interfere with the due course of justice.

Held, that before the publisher of a newspaper can be Committed for contempt, the Court must be satisfied. (1) that the matter was pending in a Court of law or was imminent; (2) that the respondent was aware of this fact; (3) that the publication was intended or reasonably calculated to prejudice the fair trial of the case; (4) that under the circumstances of the case, the jurisdiction which the Court in that case possesses should be exercised; (5) that the object of the proceeding being to vindicate justice and not merely to ventilate a fancied grievance, justice requires that an order of conviction should be recorded.

Held, that although a person charged with crime is entitled to protest against his being tried in the columns of a newspaper, and although the Constitution has placed no limitation on the power of a superior Court to punish as a contempt an act which was intended or calculated to interfere with the due course of justice, this power should not be exercised upon light occasion but only when the ends of justice require its use. The very delicacy of the power should be a safeguard against its abuse. Proceedings for contempt are initiated in Court for the purpose of protecting either the Court itself or the party concerned and to use it for any other purpose would constitute an abuse of the process of the Court. It is of the utmost importance, therefore, that before a party can seek protection from the Court it should show that it really needs such protection. A 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 attention of the Court in its very special jurisdiction: the Court will not exercise its jurisdiction upon a mere question of propriety.

Held, 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 privilege on the press. Freedom of the press was conceived as a right for all citizens and it is 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 pervert 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. It is the duty of the Courts to maintain the liberty of the press and the usefulness and efficiency of the Courts, but the liberty of the press ceases where a further exercise thereof would impede, embarrass or obstruct the Court in the discharge of its duties. 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 Court of law his opinion of the merits of the cases which are on trial.

Held, that it is not necessary that the cause be actually pending in Court, for it is possible very effectively to poison the fountain of justice before it begins to flow. The publisher of an offending article cannot take shelter behind the plea that the trial to which the article relates is not then in progress nor immediately to be begun but is to occur at a later time. He may be punished if the case is pending or imminent.

Held, that a publisher who omits to use the expression "alleged" with reference to a crime or a criminal would not ordinarily render himself liable to commitment for contempt unless the Court is satisfied that he really intended to convey the impression that the petitioners are guilty.

Held, that the Courts do undoubtedly require that the publication of an incorrect or inaccurate report of a decision

of the Court or a proceeding therein which tends to bring the Court into ridicule or disrespect constitutes contempts but there is no provision of law which extends this requirement to decisions of, or proceedings before, administrative officers.

Held, that a trial Court may forbid the taking or publication of photographs of a prisoner on trial and may punish a person for contempt when he takes or publishes photographs of a prisoner in the Court room or when he is on his way to the Court room. People cannot be allowed to take his photographs against his will when he is in custody and it is the duty of the Court to protect him against unauthorised invasions of his personal rights. But there is no decision or law which prevents a person from taking or publishing pictures of a vehicle long before the commencement of the trial and at a considerable distance from the scene of the trial.

Held, that an expression of regret, if genuine, should ordinarily be accepted in mitigation of the offence of contempt of Court.

Petition under section 3 of the Contempt of Courts Act (Act 32 of 1952), praying that the respondents be held guilty of the Contempt of Court and punished according to law.

BHAGIRATH DASS, for Petitioner.

GURBACHAN SINGH, F. C. MITTAL and MANMOHAN SINGH GUJRAL, for Respondents.

ORDER

Bhandari, C. J.

BHANDARI, C.J.—This petition under section 3 of the Contempt of Courts Act raises the question whether the respondents have published matter which is intended or reasonably calculated to prejudice the fair trial of a criminal case.

The petitioner in this case is one Mr. Leo Roy Frey, an American stock broker, while the respondents are the Editor, Printer and Publisher of the Statesman and the Editor, Printer and Publisher of the Tribune.

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On the 23rd June, 1957, Mr. Dana, a citizen of Cuba and Mr. Frey, a citizen of California, who were travelling to Pakistan in a luxury American car, presented themselves at the Attari Road Land Customs Station for completing the customs formalities. They filled in the baggage declaration forms which were handed over to them. Mr. Frey's declaration form was found to be correct in all particulars except only that he had omitted to declare a .28 revolver which was recovered from his possession. Mr. Dana's form was not found to be correct, for a search of the car in which these two passengers were travelling revealed the presence of a secret chamber above the petrol tank which contained Indian currency of the value of Rs. 8,50,000 and United States currency of the value of 10,000 dollars. As neither of the two passengers could produce the necessary permission from the Reserve Bank of India for the export of so large a sum of money from the country, the Customs officials took the currency as well as the pistol and the cartridges into possession. The documents seized in connection with this case appeared to indicate that one Moshe Baruk was a party to this conspiracy to smuggle the aforesaid currency out of India.

On the 6th July, 1957, the police produced the petitioner in the Court of the Additional District Magistrate at Amritsar under the provisions of the Indian Arms Act and on the same day the Collector of Customs presented an application under the Sea Customs Act and the Foreign Exchange Regulation Act in which he alleged that he suspected the petitioner of having conspired with Dana for endeavouring to smuggle Indian currency out of the border of the country. The Additional District Magistrate ordered the release of the petitioner on bail in a sum of Rs. 10,000 in

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the case under the Indian Arms Act and a sum of Rs. 5,00,000 in the case under the Sea Customs Act.

On the 9th July, 1957, the Collector of Customs called upon the petitioner to show cause why penal action should not be taken against him under section 167(8) of the Sea Customs Act and under section 7(2) of the Land Customs Act for attempting to export prohibited articles from this country. The petitioner replied that as he was being prosecuted under the provisions of the Sea Customs Act, the Foreign Exchange Regulation Act and the Indian Arms Act and as the matter was *sub judice* he would be prejudiced in his defence in those cases by any statements or documents which he may like to give or produce in compliance with the show-cause notice. He added, however, that he had nothing to do with the money recovered from the car, that his declaration was found to be correct, that no breach of any law had, therefore, been committed on his account, and that he was not guilty of having contravened the provisions of the Sea Customs Act or the Foreign Exchange Regulation Act.

On the 24th July, 1957, the Collector imposed a penalty of Rs. 25,00,000 on each of these two passengers by means of an order, the concluding portion of which is in the following terms :—

> "Having regard to all the circumstances of the case, I find that both Sarvshri Thomas Dana and Leo Roy Frey are equally guilty of the offence. They attempted to smuggle Indian and foreign currency out of India. I hold both of them as the persons concerned in the offence committed under section 167(8) of the Sea Customs Act, 1878. The foregoing facts prove beyond doubt that

the offence was the result of a most deliberate and calculated conspiracy to smuggle the huge sum of currency out of the country. The offenders, therefore, deserved a deterrent punishment. I, therefore, impose a personal penalty of Rs. 25,00,000 (rupees twenty-five lakhs only) each on Shri Thomas Dana and Shri Leo Roy Frey which should be paid within two months from the date of this order or such extended period as the adjudicating officer may allow."

On the same day the Collector released copies of the order to the press and allowed the press to take extracts of the order and to publish the same in newspapers.

On the 5th August, 1957, the petitioner presented a petition under section 3 of the Contempt of Courts Act against the respondents in which he complained that the latter had published certain articles in regard to this incident which were calculated to prejudice his fair trial on the criminal charges which had been brought against him. The respondents have by their answers denied the charge of contempt.

The allegation against the Statesman is that in its issue of the 26th July the paper published three photographs of the car below which appeared the following paragraph :—

"The car (top) in which two foreigners were recently held up at the Attari border while attempting to smuggle Indian and foreign currency to Pakistan. The second photograph shows the secret chamber at the back of the rear seat where the currency notes were stored.

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The containers in which the currency was packed are shown in the bottom picture."

Then followed an article the material portions of which may be condensed to this, that the two foreigners were arrested by the police at Attari-Wagah land frontier in Amritsar on June 23 while trying to cross into Pakistan, that the Collector in his order said that the offence was the result of a "most deliberate conspiracy" to smuggle a huge amount of money out of India and deserved a deterrent punishment, that Moshe Baruk Pinnhas who was arrested at Bombay on charges of buying smuggled gold from Dana and Frey is also under jail custody in Amritsar.

The allegation against the Tribune is that four issues of this paper contained matter which is likely to prejudice the petitioner in the defence of the criminal charges which have been brought against him under the Sea Customs Act and the Foreign Exchange Regulation Act. The issue of the Tribune dated the 28th July, 1957, contains two paragraphs to which objection has been taken. The first paragraph consists of an explanatory note appearing under the photographs of Dana and Frey—"While they look at the bundles of the currency notes which were recovered from their luxury Lincoln car". It is contended that the expression "their luxury Lincoln car" is intended to create the impression that the petitioner is connected with the car and the money which was recovered therefrom although he had stated quite clearly that Dana alone was the owner of the car and the petitioner happened to be travelling in the car as a fellow passenger. I do not think any prejudice can possibly be said to have been caused to Frey by the use of the expression "their" appearing before the expression "luxury Lincoln car".

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If two persons happen to travel by a particular car and if certain articles are found inside the car, it may well be said that these articles have been recovered "from their car".

The second paragraph appears under two photographs, namely (1) a photograph of the luxury car in which Dana and Frey were travelling, and (2) a photograph of the interior of the car showing the two secret chambers in which currency notes were found. Below the photographs appears the paragraph which states that "the smugglers and the car were challenged by Customs at the Attari-Wagah border" and that "the foreign smugglers" had improvised secret chambers behind the rear seat of the car to conceal currency notes. Two objections have been taken to this paragraph, namely, (1) that the object of the respondents in employing the expression "the smugglers" instead of the expression "the alleged smugglers" was likely to affect the decision of the criminal case which was about to be instituted in the Court of the Additional District Magistrate, and (2) that when publishing the photograph of the car along with the description and comments thereon the respondents have created an atmosphere which is prejudicial to the fair trial of the petitioner.

The third objectionable article appears in the issue of the Tribune, dated the 31st July, 1957. It consists of a paragraph under the fancy dress photographs of Dana and Frey who are described as smugglers and who are wearing the emblem of the crescent on their fez caps. It is contended that the trial of the petitioner is likely to be prejudiced as the Court would naturally be left with the impression, however, erroneous may be, that the petitioner has sympathy with Pakistan, an enemy of India.

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It is contended on behalf of the petitioner that the extract from the order of the Collector published by the Statesman in its issue of the 26th July, 1957, (1) contains statements which do not find any mention in the order of the Collector, (2) omits to mention the contention of the petitioner that he had no connection with the currency which was recovered from the car belonging to Dana, and (3) mentions in heavy type that the offence was the result of a most deliberate conspiracy to smuggle a huge amount of currency out of India and deserved a deterrent punishment. According to the petitioner this publication created the impression that the petitioner was a conspirator along with Dana to smuggle currency out of India and was calculated to obstruct and prevent the due course of law and justice, for he had no connection with the currency which was recovered and had no knowledge that it was being carried in the car belonging to Dana.

The allegations against the Tribune are that by publishing photographs in its issues of the 28th, 29th and 30th July, 1957, the newspaper kept the case of the petitioner before the public and by associating him with Dana created the impression that he is in fact an accomplice of Dana.

Before I proceed to deal with the specific allegations which have been made in this case it would perhaps be desirable to examine the nature of the jurisdiction which this Court exercises with regard to reports in newspapers. 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. Freedom of the press was conceived as a right for all citizens, for as pointed

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out in *Regina* v. *Gray* (1) "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 pervert 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. It is the duty of the Courts to maintain the liberty of the press and the usefulness and efficiency of the Courts. A person has full liberty, for example, to twirl his walking stick in any way he pleases, but his liberty ends where his neighbour's nose begins. In the like manner, the liberty of the press ceases where a further exercise thereof would impede, embarrass or obstruct the Court in the discharge of its duties. 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* (2), *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

(1) (1900) 2 Q.B. 36, 40.
(2) (1889) 6 Lawyers Report Annotated 430.

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control judicial action. Days and sometimes weeks, are spent in the endeavour to secure an impartial jury for the trial of a cause ; and, when selected, it is incumbent upon the court to exercise the utmost care in excluding evidence of matters foreign to the issues involved, so that the minds of the jurors may not per chance be unduly biased or prejudiced in reference either to the litigants, or to the matters upon trial. But if an editor, a litigant, or those in sympathy with him, should be permitted, through the medium of the press, by promises or threats, invective, sarcasm or denunciation to influence the result of trial, all the care taken in the selection of the jury, as well as the protection used to confine their attention at the trial solely to the issues involved, will have been expended in vain. We would not for a moment sanction any contraction of the freedom of the press. Universal experience has shown that such freedom is necessary to the perpetuation of our system of government in its integrity but this freedom does not license unrestrained scandal."

It is a contempt of Court to publish 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 eye 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

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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. The gravamen of the charge in all such cases is that the offending party published articles which were calculated to interfere with the due course of justice. The truth of statements appearing in the article or the absence of intent to commit contempt are material only for the purpose of considering the measure of punishment.

But a Court will not exercise its extraordinary power of committal unless the publication is calculated or intended to cause substantial prejudice to the petitioner or unless a real attempt has been made to interfere with the due course of justice. In *Hunt* v. *Clarke* (1), Cotton, L.J., deprecated applications for committal where the offence by the comments is only technical or trifling. After referring to several cases their Lordships observed :—

> "Now that I apply and adopt as the principle which ought to regulate these applications that there should be no such application made unless the thing done is of such a nature as to require the arbitrary and summary interference of the Court in order to enable justice to be duly and properly administered without any interruption or interference, that is what we have to consider, and in my opinion, although, as I say, there is here that which is technically a contempt, and may be such a contempt as

(1) 58 L.J. Q.B. N.S. 490.

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to be of a serious nature, I cannot think there is any such interference, or any such fear of any such interference, with the due conduct of this action, or any such prejudice to the defendant who is applying here, as to justify the Court in interfering by the summary and arbitrary process. When it is clear and evident on the facts of the case and on the documents.....that such is the case, in my opinion no such application ought to be made."

I find myself in respectful agreement with this view which was adopted by Lord Russell, C.J., and Wright, J., in *The Queen* v. *Payne* (1), and where Wright, J., added :—

"In my opinion, in order to justify an application to the Court the publication complained of must be calculated really to interfere with a fair trial, and, if this is not the case, the question does not arise whether the publication is so objectionable in its terms as to call for the interference of the Court. If the publication is found to be likely to interfere with a fair trial, a second question arises, whether, under the circumstances of the case, the jurisdiction which the Court in that case possesses ought to be exercised, not so much for punishment as for preventing similar conduct in the future. That is the rule which I wish to adopt with regard to applications of this nature."

In *Regina* v. *Evening Standard Co., Ltd.* (2), the Court observed that the publication of comments

(1) (1896) 1 Q.B. 581.
(2) (1954) 1 Q.B. 578.

on cases before they are tried or alleged histories of a prisoner on trial, or of a false or mistaken report of proceedings in Court is an interference with the due course of justice which the Court in the exercise of its summary jurisdiction will prevent and punish, whether such interference is intentional or not; and in such.....cases the principle of vicarious liability applies.

Before the publisher of a newspaper can be committed for contempt, the Court must be satisfied—(1) that the matter was pending in a Court of law or was imminent; (2) that the respondent was aware of this fact; (3) that the publication was intended or reasonably calculated to prejudice the fair trial of the case; (4) that under the circumstances of the case, the jurisdiction which the Court in that case possesses should be exercised; (5) that the object of the proceeding is to vindicate justice and not merely to ventilate a fancied grievance; and (6) that justice requires that an order of conviction should be recorded.

The first question for decision in the present case is whether a matter was pending in Court with reference to which the contempt was committed, for a publication constitutes contempt of Court only if it is intended or reasonably calculated to prevent a fair trial or to obstruct the course of justice.

It is contended on behalf of the respondents that although a reasonable suspicion existed against Frey that he was guilty of offences under section 167 of the Sea Customs Act and section 23 of the Foreign Exchange Regulation Act and although he was required by the Additional District Magistrate to furnish security in a sum of Rs 5,00,000 on the 6th July, 1957, no criminal case could be started against him unless sanction of

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the Central Government was accorded under section 173 of the Sea Customs Act and no case under section 120B could be started against him unless sanction of the State Government was received under section 196 of the Code of Criminal Procedure. A formal complaint under the Sea Customs Act and the Foreign Exchange Regulation Act was presented in the Court of the Additional District Magistrate on the 12th August, 1957, but sanction of the Governor of the Punjab for the trial of the charge of conspiracy under section 120-B was not accorded till the 20th August, 1957. It is contended that as the Central Government or the Punjab Government may well have declined to accord the necessary sanction, the case cannot be deemed to have been pending in Court till the 20th August, or at earliest till the 12th August, 1957. It is contended further that no criminal proceeding can be said to have been pending against the petitioner on the 26th July, 1957, when the offending articles were published.

This contention appears to me to be wholly devoid of force. It is common ground that on the 6th July, 1957, the Collector of Customs presented an application in the Court of the Additional District Magistrate in which he requested the latter to take appropriate action against the petitioner under section 175 of the Sea Customs Act and section 23 of the Foreign Exchange Regulation Act and that on the same day the Additional District Magistrate ordered the petitioner to be released on bail. It is also admitted that this fact was in the knowledge of the Statesman and the Tribune, for in their respective issues of the 26th July, 1957, the papers announced that the orders of the Collector confiscating the currency recovered from the car had been communicated to Frey and Dana who were lodged in the District

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Jail at Amritsar pending their trial in the local Court under the Sea Customs Act and the Foreign Exchange Regulation Act. In the circumstances it seems to me that criminal proceedings were pending or imminent towards the end of July, 1957, when the offending articles were published. It has been held that it is not necessary that the cause be actually pending in Court, for it is possible very effectively to poison the fountain of justice before it begins to flow. The publisher of an offending article cannot take shelter behind the plea that the trial to which the article relates is not then in progress nor immediately to be begun but is to occur at a later time. He may be punished if the case is pending or imminent. In *Rex* v. *Clarke* (1), it was held that an action was pending for the purpose of contempt, where an information on oath had been laid against the person and he had been arrested and was in custody under such warrant, and it was held not necessary that he should first be put in the dock and the criminal charge preferred against him. I am of the opinion that the respondents in the present case cannot escape liability on the ground only that no criminal proceedings was pending against the petitioner in Court.

This brings me to the consideration of the question whether the respondents were justified in describing Dana and Frey as "smugglers" when a criminal charge was pending against them and when the question of their guilt or innocence was to be adjudicated upon by a Court of law. It is contended that they should have been described as "alleged to be smugglers" or "said to be smugglers." My attention has been invited to *Sath appa Chettiar* v. *C. Ramchandra Naidu* (2), in which a Division Bench of the Madras High Court

(1) (1910) 27 Times Law Reports 32.
(2) A.I.R. 1932 Mad. 26.

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held the respondent to be guilty on the ground only that he had omitted to use the word "alleged" with reference to a crime. In that case the editor of a newspaper issued a poster the head lines of which may be translated as follows:—

> "Sathappa Chettiar in trouble; police search at Tiruppur, thousands of rupees missing, cotton mills in danger"

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The Division Bench of the Madras High Court expressed a view that the readers of the poster and the headlines were likely to be left with the impression that Sathappa Chettiar was in trouble, that the police were connected with the trouble, that the trouble he was in occasioned a search of the mills under his management at Tiruppur and that as a result of that search thousands of rupees were found to be missing which was a disastrous matter for the cotton mills. They observed that had the poster read "thousands of rupees alleged to be missing" the matter probably would never have come up before the Court. The learned Judges accordingly held that it was impossible to say that the conduct complained of was not calculated to produce an atmosphere of prejudice in the midst of which the proceedings must go on and consequently that the respondent was guilty of contempt of Court.

This decision is good as far as it goes, but I must state with all respect that the better view appears to be that a publisher who omits to use the expression "alleged" with reference to a crime or a criminal would not ordinarily render himself liable to commitment for contempt unless the Court is satisfied that he really intended to convey the impression that the petitioners are guilty. In *The King* v. *The Evening News* (1),

(1) (1925) 2 K.B. 158.

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Lord Hewart observed that a newspaper does not lose the immunity attached to a report of judicial proceedings, because of the omission of the words "it is said", showing that it is the evidence as to alleged facts and not facts themselves, that is being described, or because a published report changes the order of phrases and passages. A similar view was taken in *Ananta Lal Singh and others* v. *Alfred Henry Watson and others* (1) where certain articles in a newspaper referred to the petitioners in that case as "the Chitagong raiders." Rankin, C.J., observed that the absence of the word "alleged" before the word "raiders" was of little importance as the context and other passages in the order made it quite clear that it was not the writer's intention to say that the accused petitioners were guilty and he was not really intending to import that as a part of what he was saying to his readers.

It is impossible, however, to lay down a dogmatic rule of universal application, for the question whether the publication involved is calculated to prevent the parties from obtaining a fair and impartial decision of their cause is one of fact and must be answered with reference to the facts and circumstances of each case. I am unable to hold that the omission of the word "alleged" in the present case renders the publishers of the newspapers guilty of contempt. In this particular case two persons were found to be travelling in a car which carried a large quantity of Indian and foreign currency. The Collector of Customs who held an enquiry into the matter in the presence of the offenders came to the conclusion that Frey had conspired with Dana to visit India in a car with a specially designed secret chamber for the purpose of smuggling of the said currency out of India,

(1) A.I.R. 1931 Cal. 257.

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that during the period during which the currency was secreted in the car Frey and Dana remained together, that both Frey and Dana were equally guilty of attempting to smuggle a huge sum of money out of India, and that this offence was the result of a most deliberate and calculated conspiracy. In view of the findings of the Collector which were communicated to the press, it is not surprising that the publishers described Dana and Frey as "smugglers" or "foreign smugglers" or two "smugglers" and that they described the car by which they were travelling as "their" car. It has not been suggested that the publishers of these two papers were not justified in publishing the paragraphs of the Collector's report which contained the conclusions at which the Collector had arrived. If they were at liberty to publish the conclusions; they cannot, in my opinion, be said to be guilty of contempt if they characterised these two persons as smugglers. They do not appear to have intended to convey the impression that they regarded Frey to be guilty.

A number of subsidiary objections have also been raised. It is contended that the offending article in the Statesman contained certain matters which do not appear in the Collector's report, namely, that Moshe Baruke Pinnhas who was arrested in Bombay on charges of buying smuggled gold from Dana and Frey is also under jail custody in Amritsar. It is said that the allegation that this accused person had bought smuggled gold from Dana and Frey was likely to lead the unwary public to entertain the view that Frey was in possession of smuggled gold and that he sold it to Baruke. There is a certain amount of force in this contention, but the contempt, if any, is only trifling.

Again, it is argued that the relevant article of the Statesman omits to mention the contention of

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the petitioner that he had no connection with the currency which was recovered from the car belonging to Dana. The Courts do undoubtedly require that the publication of an incorrect or inaccurate report of a decision of the Court or a proceeding therein which tends to bring the Court into ridicule or disrespect constitutes contempt, but I am not aware of any provision of law which extends this requirement to dicisions of, or proceedings before, administrative officers. The omission of this line of reference cannot in my opinion render the respondents guilty of contempt (*The King* v. *The Evening News* (1).

The petitioner complains that the newspapers were not justified in taking or publishing the photographs of the car in which he and his companion happened to be travelling on that fateful day and that the publication of these photographs is likely to prejudice his trial in Court. A trial Court may forbid the taking or publication of photographs of a prisoner on trial and may punish a person for contempt when he takes or publishes photographs of a prisoner in the Court room or when he is on his way to the Court room. People cannot be allowed to take his photographs against his will when he is in custody and it is the duty of the Court to protect him against unauthorised invasions of his personal rights. But I am aware of no decision which prevents a person from taking or publishing pictures of a vehicle long before the commencement of the trial and at a considerable distance from the scene of the trial. I am unable to see how the publication of these pictures could possibly prejudice a fair trial of the petitioner.

Although a person charged with crime is entitled to protest against his being tried in the

(1) (1925) 2 K.B. 158.

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columns of a newspaper, and although the Constitution has placed no limitation on the power of a superior Court to punish as a contempt an act which was intended or calculated to interfere with the due course of justice, this power should not be exercised upon light occasion but only when the ends of justice require its use. The very delicacy of the power should be a safeguard against its abuse. Proceedings for contempt are initiated in Court for the purpose of protecting either the Court itself or the party concerned and to use it for any oher purpose would constitute an abuse of the process of the Court. It is of the utmost importance, therefore, that before a party can seek protection from the Court it should show that it really needs such protection, *Rajindra Kumar Garg* v. *Shafiq Ahmad Azad and another* (1).

I am of the opinion that although a technical contempt may be said to have been committed by the newspapers the articles themselves read as a whole justify me in holding that the respondents did not intend to prejudice the fair trial of the case. They merely published certain extracts from the order of the Collector and gave certain facts which could enable the public to understand the conclusion at which the Collector had arrived. Mr. Bhagirath Das does not say that the Collector had no power to make the order while criminal proceedings were pending against the petitioner or that the publication of the order itself constitutes contempt. If the respondents were at liberty to publish what the Collector had said, namely, that the offence was the result of a most deliberate and calculated conspiracy to smuggle a huge sum of money out of the country. anything else that was stated by them of their own accord pales into insignificance. They had no intention to prejudice

(1) A.I.R. 1957 All. 37.

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the fair decision of the criminal charges which were pending against him, though the absence of intention in itself would be no excuse for contempt actually committed. It has been held ever since the decision in *Hunt* v. *Clarke* (1), that a 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 attention of the Court in its very special jurisdiction; the Court will not exercise its jurisdiction upon a mere question of propriety; *Ananta Lal Singh and others* v. *Alfred Henry Watson and others* (2), *Mahadeo* v. *State of Bombay* (3); *In re. Subrahmanyan; Editor; Tribune and others* (4), *Emperor* v. *Mahashe Khushal Chand and another* (5).

Assuming for the sake of argument that the respondents have rendered themselves guilty of contempt, it seems to me that no further action should be taken in the present case as the respondents have tendered an apology for what has been done. The apology tendered by the Statesman is in the following terms:—

> "The answering respondent honestly believes that he has not been guilty of any contempt. He has, however, taken the pleas herein set out upon legal advice and without any desire to show any disrespect to this Hon'ble Court or to persist in any conduct which this Hon'ble Court may hold to be wrongful or improper. Should this Hon'ble Court upon determination of questions

(1) 58 L.J. Q.B. N.S. 490.
(2) A.I.R. 1931 Cal. 257-58.
(3) A.I.R. 1953 S.C. 181.
(4) A.I.R. 1943 Lah. 329.
(5) A.I.R. 1945 Lah. 206.

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above referred to come to the conclusion that the said publication did in fact constitute a contempt of Court, then both he and Mr. George Arthur Johnson tender their humble and unqualified apologies to the Hon'ble Court and state in extenuation of their action that it was done *bona fide* without malice or any intention to influence or affect in any manner whatsoever the course of justice."

The apology tendered by the Tribune was as follows:—

> "The answering respondents beg to further assure this Hon'ble Court that they had no intention at all to prejudice the fair trial of the petitioner in any manner or to interfere in any way with the course of justice. But in the event this Hon'ble Court comes to the conclusion that the publications have caused any prejudice to the fair trial of the petitioner the answering respondents beg to tender unconditional apology for this unintentional mistake."

Mr. Bhagirath Das contends that neither of these two expressions of regret should be accepted, as an apology tendered to the Court by an offender should be full, complete and unreserved before it can be considered as a mitigation of the offence *Demibai Ganji Sojpal* v. *Rowje Sojpal and others* (1). Mr. Gurbachan Singh on the other hand refers me to certain observations in Tek Chand's Law of Contempt where the learned author doubts the wisdom of the Courts in insisting that an unqualified apology should precede their finding on the

(1) A.I.R. 1937 Bom. 305, 307.

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question whether any contempt has been committed, particularly when there are a number of border-line cases in which it is difficult for the accused and perhaps for the Courts to say on a perusal of the alleged language whether it amounts to contempt. In such cases the apology should be accepted. I am of the opinion that an expression of regret if genuine should ordinarily be accepted in mitigation of the offence *M. Y. Sharaf and another* v. *Hon'ble Judges of the High Court and others* (1). I am satisfied with the apology of the respondents in the present case.

After a careful consideration of all the facts and circumstances of the case, I am of the opinion that the publications in question were not intended to prejudice the fair trial of the case, that the contempt, if any, which has been committed is purely technical and that the circumstances of the case do not justify me in taking action under the Contempt of Courts Act, particularly as a sincere apology has been tendered by the respondents. I would eccordingly discharge the notice but would leave the parties to bear their own costs.

B. R. T.