CRIMINAL ORIGINAL

Before Tek Chand, J.

THE FIRST NATIONAL BANK, LTD. (IN LIQUIDATION),—*Petitioner*

versus

DR. KALI CHARAN,—*Respondent*

Criminal Original No. 11 of 1959

1959

May, 20th

Contempt of Courts Act (XXXII of 1952)—Section 3—Obstruction caused to the bailiff in executing process—Whether amounts to contempt of court—Apology—Essentials of.

A warrant of attachment of movable property of the respondent was issued by the High Court. When the bailiff went to effect attachment, the respondent caught hold of his arm and pushed him out of the shop. Again the bailiff along with the Naib-Nazir went to effect attachment and a number of people, alleged to be the supporters of the respondent who was a political leader, collected at the spot and did not allow wrongly stated that he had entered into a pondent also wrongly stated that he had entered into a compromise with the decree-holder. On a petition for action to be taken against the respondent for contempt of court.

Held, that under circumstances mentioned above the conduct of the respondent cannot be viewed with lenity. If people like the respondent can successfully flout the orders of the Courts, it would negate all respect for law. It would be dangerous to society if orders issued by Courts of law can be permitted to be treated with disrespect or their prompt obedience not enforced. If the conduct such as has been exhibited by the respondent were to be countenanced, the safety and security of the law-abiding citizens and orderly administration of law and order will be put in jeopardy. No individual, howsoever influential or considered important by a group or section, can entrench himself surrounded by his supporters, and offer resistance to or prevent service or process, and then escape the consequences

of law. The High Court has ample power not only to uphold its dignity and the dignity of the Courts subordinate to it, but also to protect its officers from being harassed or harmed when executed processes emanating from the Courts constituted by law. The Courts cannot countenance any obstruction or interference in the execution of its processes. No person can be allowed with impunity to offer resistance to the enforcement of their orders. If the respondent be took himself to be a leader of a particular section, it was all the more incumbent upon him to show respect to the orders of the Court and readily submit to the enforcement of the process of he Court. If he considered himself to be a leader of a group or organisation, it was essential for him to remember that rank, status or high position · impose onerous obligations—*noblessee oblige*. Had the transgression on the part of the respondent been venial, springing from thoughtlessness, he would have been administered, for bringing the gravity of his error home to him, a suitable warning. But it is a serious contempt to assault, ill-treat or threaten a process-server engaged in his duty. In this case not only was the bailiff maltreated by the respondent but he was prevented on two occasions from executing his duty which was enjoined upon him by the Court. The Courts are naturally chary of punishing people for contempt and act with forbearance and caution when exercising their powers under Contempt of Courts Act. Where a process-server or a bailiff in the execution of his duty has been obstructed, abused or assaulted, the Courts punish the guilty person not in order to vindicate their dignity but to prevent improper interference with the administration of justice. The principle that Courts bear in mind in such cases is that those Court officials who are required to discharge their official duties pursuant to the orders of Courts, must be protected by the law when engaged in carrying out the orders of the Courts. In this case the respondent while denying obstruction to the bailiff on the two occasions, has offered apology. An apology under these circumstances becomes an empty formality. The apology which has been offered in this case is with a view to avoid or avert the consequences of the contemptuous act, and is devoid of grace. Not being an expression of genuine contrition of the contemner, it cannot be taken into consideration in mitigation of the contempt. An apology not expressive of remorse or penitence can neither counteract nor palliate the mischief that has already been done.

Application by the Official Liquidator, the First National Bank, Ltd., in liquidation praying that action be taken under section 3 of the Contempt of Court Act and under section 186, Indian Penal Code, against the judgment-debtor.

K. L. KAPUR, for Petitioner.

K. S. THAPAR, for Respondent.

JUDGMENT

Tek Chand, J.

TEK CHAND, J.—This is an application made under section 3 of the Contempt of Courts Act by the Official Liquidator of the First National Bank Limited (in liquidation) against the respondent judgment-debtor Dr. Kali Charan.

A decree for Rs. 387-8-9 was passed against the judgment-debtor respondent and warrant for attachment was issued by this Court dated 17th of January, 1959. Ram Lal bailiff of Ludhiana, C.W. 1, went to effect attachment on 29th of January, 1959. On going to the shop of the respondent he demanded the decretal amount from him but he declined to pay. When the bailiff wanted to make an inventory of the goods for purposes of attachment, the judgment-debtor caught hold of his arm and pushed him out of the shop. The bailiff submitted a report to the Sub-Judge to the above effect which is Exhibit C.W. 1/1. In this report the bailiff also mentioned that the judgment-debtor being a political leader, no person was willing to attest the report. On this the Sub-Judge deputed Naib-Nazir Panna Lal and two process-servers to accompany the bailiff. The bailiff along with the above-named persons then proceeded on 5th of February 1959, to the shop of the judgment-debtor. The respondent again refused to pay the decretal amount and told the bailiff that he had entered into a compromise with the decree-holder

and was paying the amount by instalments, and that he had sent the amount of the last instalment by money order. A statement to the above effect was written down by the respondent and given to the bailiff. Towards the end of the statement he had requested that in view of the compromise, attachment be not effected. This statement is Exhibit R. I. On the same sheet, Panna Lal, Naib-Nazir made a report, Exhibit C.W. 1/2, stating that the amount was demanded from the respondent but he had refused to pay and had stated that a compromise had been effected with the decree-holder. It was then said that the judgment-debtor had not allowed the attachment to be effected. It was also mentioned that he was a political leader of the Maha-Punjab Front and a number of his men had collected outside his shop and they ordered the Naib-Nazir and the bailiff and others accompanying them to leave the shop and did not allow them to effect the attachment. It was also stated that nobody was prepared to bear witness to the report from among the persons assembled. But in order to help the respondent they were ready to obstruct them so as to prevent them from attaching the goods.

On a notice being issued to the respondent to show cause why he should not be proceeded with for the alleged contempt of Court, the respondent filed a written-statement, wherein he stated, that he did not want to contest the application against him, and that he was only pleading with the bailiff that he was paying the amount in accordance with what he considered to be a completed agreement, and that it appeared to be a case of misunderstanding. In the last part of the written-statement it was stated that he threw himself at the mercy of the Court and he never had the intention of committing any contempt and offered an unqualified apology for his behaviour.

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In his statement recorded in this Court on 8th of May 1959, the respondent stated, that he did not offer any obstruction to the bailiff, when he had gone to attach the proprety and had not caught hold of him and turned him out of the shop. He admitted having written, Exhibit R. 1, and asserted that he had entered into an oral agreement some time in January, 1959, with Shri Parkash Chand Mahajan, the Official Liquidator. He had paid Rs 80 so far and that according to the terms of the compromise Rs 150 in all was payable. According to him, he owed Rs. 70 only at present. Relating to the incident of 5th of February, 1959, he said that a number of spectators had gathered in front of his shop and he felt that he was being disgraced and he requested the bailiff not to attach his goods. He maintained that the goods were not attached by the bailiff because he felt satisfied with the respondent's statement, Exhibit R. 1. According to him the terms of the compromise were that either he should pay Rs. 100 in a lump sum or Rs. 150 within a year.

The above statement of the respondent was a clear denial of the allegations made against him in the application and as contained in the reports of the bailiff. I, therefore, considered it proper that the Official Liquidator and the bailiff be summoned to appear in this Court. Ram Lal bailiff appeared as C.W. 1 and he supported the allegations contained in his reports, Exhibits C.W. 1/1 and C.W. 1/2. Ram Lal stated that on the first occasion when he went to effect attachment (on 29th of January, 1959) the respondent had caught hold of his arm and he was pushed out of the shop. He also gave details of what happened outside the respondent's shop on his second visit when he was accompanied by Naib Nazir Panna Lal and the process-servers and how they were

prevented from effecting attachment by the crowd of adherents who had collected outside his shop. As their party feared breach of the peace, the Naib Nazir advised them to leave.

Shri Parkash Chand Mahajan, the Official Liquidator appeared as C.W. 2 and stated that there was no compromise effected between him and the judgment-debtor-respondent. Mr. Mahajan said that some time in the month of January, 1959, the respondent had come to see him in Chandigarh when the respondent had made a request to him to withdraw the execution proceedings against him. Mr. Mahajan replied that he could not accede to such a request. Mr. Mahajan said that the judgment-debtor had told him that he owed Rs. 150 only which he could pay by instalments but according to the decree the respondent owed Rs. 387-8-9 besides costs.

The respondent was given an opportunity to make a supplementary statement after the evidence of the bailiff and the Official Liquidator had been recorded. In the course of his supplementary statement the respondent said that the impression he carried, when he left the Official Liquidator, was that he had to pay Rs. 150 in all. He did not refer in the supplementary statement to the incident which happened outside his shop when the bailiff had gone to effect attachment.

The evidence recorded in this case leaves no doubt in my mind that no compromise of any kind had been effected and there is no room whatsoever for there being any impressions in the mind of the respondent that as a result of any compromise the decretal debt had been reduced or that it could be paid by easy instalments. It appears that the respondent had been resorting to false statements

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when the bailiff went to his shop to attach the goods in accordance with the warrant of attachment. If there had been any compromise, the Official Liquidator would not have denied it and there would have been some record or memorandum embodying the terms of the compromise. The contention of the respondent that a oral compromise had been effected between him and the Official Liquidator is entirely false. Mr. Thapar, learned counsel for the respondent, has made no attempt to advance any argument in support of this plea of his client. All that he stated was that his client might have been under such an impression.

So far as the gravamen of the offence of contempt of Court is concerned, it relates to the obstruction caused to the bailiff when he was engaged in the discharge of his duties and was prevented by the direct act of the respondent from effecting attachment as a result of threats and force applied to Ram Lal. I feel fully satisfied with the correctness of the report, Exhibit C.W. 1/1, made by Ram Lal bailiff. In view of the obstruction offered by the respondent on 29th of January, 1959, it had become necessary that the bailiff should be accompanied by the Naib Nazir and two process-servers. The report, Exhibit C.W. 1/2, of 5th of February, 1959, written by the Naib Nazir, further shows that on the second occasion also the respondent was causing obstruction and had prevented his goods from being attached. It is mentioned in both the reports Exhibits C.W. 1/1 and C. W. 1/2, that on account of the respondent being a political leader, no one was prepared to attest the reports. On 5th of February, 1959, a number of his men had collected and they demanded from the Naib-Nazir and the bailiff that they should clear out of the shop of the respondent.The

report does not, however, mention that the crowd had gathered there at the instance of the respondent. It is possible that out of what the crowd considered loyalty to their leader, they took into their head *suo motu*, to save him from the attendant disgrace. They used threats and show of force to strike alarm in the mind of the officials of the Court and thereby succeeded in preventing them from effecting attachment. The evidence that has been produced, however, does not justify the conclusion that the respondent had sought and obtained the services of his friends and adherents in order to prevent attachment by threats and show of force. The conclusion that the respondent had offered obstruction to the bailiff first on 29th of January, 1959, by manhandling him and by pushing him out of his shop, and then on the second occasion on 5th of February, 1959, when the Naib Nazir and the two process-servers had accompanied him to effect attachment is inescapable.

Under circumstances mentioned above the conduct of the respondent cannot be viewed with lenity. If people like the respondent can successfully flout the orders of the Courts, it would negate all respect for law. It would be dangerous to society if orders issued by Courts of law can be permitted to be treated with disrespect or their prompt obedience not enforced. If the conduct such as has been exhibited by the respondent were to be countenanced, the safety and security of the law-abiding citizens and orderly administration of law and order will be put in jeopardy. No individual, howsoever influential or considered important by a group or section, can entrench himself surrounded by his supporters and offer resistance to or prevent service of process, and then escape the consequences of law. This Court has ample

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power not only to uphold its dignity and the dignity of the Courts subordinate to it, but also to protect its officers from being harassed or harmed when executing processes emanating from the Courts constituted by law. The Courts cannot countenance any obstruction or interference in the execution of its processes. No person can be allowed with impunity to offer resistance to the enforcement of their orders. If the respondent be took himself to be a leader of a particular section, it was all the more incumbent upon him to show respect to the orders of the Court and readily submit to the enforcement of the process of the Court. If he considered himself to be a leader of a group or organisation, it was essential for him to remember that rank, status or high position impose onerous obligations—*noblesse oblige.* had the transgression in the part of the respondent been venial, springing from thoughtlessness, I would have contended myself by bringing the gravity of his error home to him by administering a suitable warning. But it is a serious contempt to assault, ill-treat or threaten a process-server engaged in his duty. In this case not only was the bailiff maltreated by the respondent but he was prevented on two occasions from executing his duty which was enjoined upon him by the Court. The courts are naturally chary of punishing people for contempt and act with forbearance and caution when exercising their powers under Contempt of Courts Act. Where a process-server or a bailiff in the execution of his duty has been obstructed, abused or assaulted, the Courts punish the guilty person not in order to vindicate their dignity but to prevent improper interference with the administration of justice. The principle that Courts bear in mind in such cases is that those Court officials who are required to discharge their official duties pursuant to the orders of Courts, must be protected

by the law when engaged in carrying out the orders of the Courts.

In this case the respondent while denying obstruction to the bailiff on the two occasions, has offered apology. An apology under these circumstances becomes an empty formality. The apology which has been offered in this case is with a view to avoid or avert the consequences of the contemptuous act, and is devoid of grace. Not being an expression of genuine contrition of the contemner, it cannot be taken into consideration in mitigation of the contempt. An apology not expressive of remorse or penitence can neither counteract nor palliate the mischief that has already been done. In the words of Vivian Bose J. in *Sub-judge First Class, Hoshangabad* v. *Jawahar Lal Ramchand Parwar,* (1):—

> "There appears to be an impression abroad that an apology consists of a magic formula of words which has but to be uttered as an incantation at the last possible moment when all else has failed and it is evident that retribution is inevitable, to stave off punishment. It appears to be felt that a man should be free to continue unfounded attacks upon another's honour and character and integrity with the utmost license till the last possible moment and then when he is unable to stave off the consequences of his infamous conduct any longer, all he need do is to wave this magic formula referred to as an apology in a Judge's face in order to emerge triumphantly
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> "An apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be

(1) A.I.R. 1940 Nag. 407

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hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer's power."

The apology which has been tendered in this case by the respondent is not of any avail.

The next question which calls for consideration relates as to the appropriate nature of the punishment which should be awarded in such a case. I have already expressed the view that the contempt of which I find the respondent guilty is of a grave nature and the obstruction offered on the two occasions to the bailiff was deliberate. This is a case which calls for a punishment which should be sufficiently severe in order to be effectively deterrent. A sentence of fine will be of no purpose in bringing home to the respodent the full significance of the gravity of his conduct. This is a case which calls for a sentence of imprisonment. I, therefore, sentence him to undergo simple imprisonment for one month. I also order him to pay costs of these proceedings which are assessed at Rs. 50.

B.R.T.

SUPREME COURT

Before Syed Jafer Imam and J. L. Kapur, JJ.

SHRI KRISHAN KUMAR,—*Appellant*

versus

THE UNION OF INDIA,—*Respondent*

Criminal Appeal No. 114 of 1957

1959

May, 21st

Prevention of Corruption Act (II of 1947)—Section (1)(c)—Offence under—Nature of—Offence of misappropriation—Essential facts to be proved.