CRIMINAL ORIGINAL

Before Tek Chand J.

RAO HARNARAIN SINGH, *Accused-Petitioner*

versus

GUMANI RAM ARYA,—*Respondent.*

Criminal Original No. 24 of 1957

1958

Feb., 5th

Contempt of Courts Act (XXXII of 1952)—Section 3—Contempt of Court—What constitutes—Essence of the offence—Publication of news items and comments regarding causes pending or about to commence—When constitutes contempt of Court—Privileges of the press—Extent of—Accused person—Trial of—Whether to be free of all outside influences—Administration of justice and freedom of expression—Compatibility of—Comments on decided cases—Whether and when constitute contempt of Court—Publication of an article constituting contempt—Whether can be justified—Various defences for justification considered—Code of Criminal Procedure (Act V of 1898), Section 164—Statement made under-Publication of—Whether constitutes contempt of Court.

Held, that improper news items and comments regarding causes which are either pending or about to be taken up before Courts of law, very often hamper and hinder the proper functioning of the Courts. Taking of sides in criminal cases, suggesting innocence or guilt of accused persons can cause grave prejudice, by either influencing the minds

of judges, jurors, witnesses, or by creating a climate of sympathy for, or prejudice against the accused. It is but essential that those, who are engaged in the administration of justice, should be free from outside influence, and the judicial machinery should be left unaffected by popular feelings as to guilt or innocence of persons being tried or awaiting trial on a criminal charge. The legal machinery, according to law, for adjudging the culpability of accused persons, or in civil causes, for determining the rights of the parties, carefully excludes from consideration facts and circumstances, other than those which are presented in a formal manner, according to the rules of procedure and evidence. The decision rests on the material on the record, and extraneous matters, howsoever palpable, or seemingly important, are kept severely outside the judicial purview. Any outside comment upon a pending case, and any criticism of the parties or the witnesses, which is calculated to influence the decision, has to be placed under a legal ban. Journalists, whether out of good or evil intentions, who intrude themselves on the due and orderly administration of justice, are guilty of contempt of Court and can be subjected to summary punishment. The Courts do not countenance any interference which is calculated to impede, embarrass or obstruct the administration of justice. Any publication, which has a tendency to foil or thwart a fair and impartial trial or any conduct, which in any manner prejudices or prevents judicial investigation, whether by intimation of or by reflection on the Court, counsel, parties or witnesses, in respect of a pending cause, constitutes contempt of Court.

Held, that the so-called privilege of the press is a time-worn fallacy. No journalist can assume the role of an investigator, in a pending case, and then attempt to influence the mind of the Court, regarding the merits of the case, either by comments, or by publishing matter, which is *de hors* the judicial record. A person accused of crime in this country can properly be convicted in a Court of justice, only upon evidence, which is legally admissible, and which is adduced at his trial in legal form and shape. Though the accused be really guilty of the offence charged against him, the due course of law and justice is nevertheless prevented and obstructed if those, who have to try him, are induced to approach the question of his guilt or innocence with minds

into which prejudice has been instilled by published assertions of his guilt or imputations against his life and character, to which the laws of the land refuse admissibility as evidence. The Courts have steadfastly discountenanced the claim of the special privilege of the press as often as it has been asserted. No notion of liberty of press can stand in the way of the inherent power of Court to punish any publication calculated to interfere with the administration of justice. Liberty of the press is subordinate to the proper administration of justice. Freedom of the press must not be confounded either with license or abuse. Freedom of press cannot be understood to mean, the freedom to do wrong with impunity, and thereby to frustrate and defeat the discharge of these very public duties, upon the performance of which, the freedom or the well-being of the citizens depend.

Held, that the Courts owe it to every litigant, that his cause should receive a calm, detached and fearless consideration of what is submitted to them, in accordance with the rules of procedure and evidence, uninfluenced and uncoerced by any external pressure, popular prejudice or public criticism. For achieving the above purpose the power to punish for contempt of Court is exercised, so as to prevent interference with the adjudicatory process, by any outside domination. It is important that within bounds, that are well recognised, the Courts may be criticised; but it is no less important that they may be permitted to discharge their functions, and to administer even-handed justice, solely with reference to matters, which are judicially placed before them. A writer in a newspaper by suggesting that the accused persons who are awaiting their trial, are guilty of the crime for which they are being or about to be prosecuted, threatens impartial adjudication, and cannot be permitted to do so with impunity.

Held, that the Courts in the interest of administration of justice cannot be allowed to be corroded by a focussed attempt to influence the decision of a particular case. Preservation of the right of freedom of expression is very important for a free society, but the exercise of this right has to be compatible with the preservation of other freedoms no less important, like the impartial and calm administration of justice unconstrained by any outside interference, the safeguarding of other people's reputations, the protection of the society from the corrupting influence of lewd

and obscene publications, overthrow of lawfully constituted Government by violent means, the maintenance of public peace and friendly relations with foreign States. When there is a conflict between two interests, one, the administration of Justice free from pressure, and the other, freedom of expression, the former cannot be compelled to yield to the latter.

Held, that after a cause has been finally decided, the chief hurdle to comment and criticism is removed, as there is no longer the possibility of influencing the decision. Law recognizes in such cases freedom of criticism so long as it is fair and true. Law does not restrain or punish the freest expression of the disapprobation of what is done in, or, by the Courts. But even in such a case, it must not be forgotten, that scurrilous and disrespectful attacks on the Court, even after it has finally disposed of a case, imputing to it corruption or incompetency, will make the critic liable to be summarily punished for contempt of Court. The purpose of contempt proceedings is not so much to protect the personal feelings or the dignity of the Judge, but rather to ensure that litigants get a fair and unprejudiced trial uninfluenced by extraneous matters not forming legal evidence.

Held, that the publication of an article in a newspaper cannot be justified on the ground that the trial for the offence, to which it relates, is not then in progress nor immediately to be commenced, but the date of the hearing is to be fixed afterwards. Truth or falsity of the facts or comments published is immaterial. Good faith or malice of the author is an equally irrelevant consideration. It does not matter whether a fair trial had in fact been embarrassed or impeded. The outcome of the trial against the person, who was the target of the newspaper attack, cannot avail the contemner. The law of contempt is not concerned with the working of the mind of the person charged with committing contempt, or with his capacity to cause harm—these may be considerations for assessing the quantum of punishment. Absence of intention to prejudice fair trial of a person accused of a crime, lack of knowledge of the publication or of its likelihood to cause prejudice, belief in the truth of the imputation made in the offending publication, or even, the ultimate failure of the attempt to influence

the result of the case, cannot be considered proper defences on proof of which, the respondent may obtain relief from liability for contempt of court. The law looks at the conduct of the person proceeded against, in order to find out if it was calculated to produce an atmosphere of prejudice, in the midst of which, the judicial proceedings have to go on. The test of guilt, in all such cases, depends on the findings, whether the matter complained of tended to interfere with the cause of justice, and not on the question, whether such was the objective sought; much less whether it was achieved. Neither desire to obstruct or prevent administration of justice, nor its fulfilment count in proceedings for contempt. Reasonable tendency to influence or interfere with a pending proceeding has been a long established standard, and still is the only accepted criterion, recognised by Courts in India and in the countries, which have adapted their legal system on the pattern of Common Law. A journalist who rushes to comment on causes which are pending, without taking care to refrain from publishing matter, which prejudices fair trial, undertakes a perilous adventure and does so at a grave risk to himself. It is of no avail in such a case to urge the purity of his motives or that he was serving the cause of justice in exposing a serious crime which, had he not laid it bare, would have remained undiscovered. He cannot even take credit, in order to earn immunity from the consequences of his acts of contempt, by urging that had he not taken the bold step to focus through the columns of his paper, the attention of the authorities, and had he not caused stir in the public mind by arousing their interest, the crime would not have seen the light of the day and the offenders would have remained untraced and unpunished. These defences cannot exculpate his guilt. The goodness of the motive in exposing an evil is not the criterion in cases of contempt committed by newspaper publications. Law, in its wisdom, considers it of greater consequence that the stream of justice should be kept clean and pure and that the parties may proceed with safety both to themselves and their character. The *ratio decidendi* in cases of contempt of court neither rests on the excellence or worthiness of the motive, nor on the presence of *mense rea* as an essential element of the offence.

Held, that the publication of a statement recorded under section 164 of the Code of Criminal Procedure before the commencement of the trial constitutes contempt of court

as the object of doing so could be no other than to instil in the minds of the readers feelings of hatred towards the accused persons and to create an impression that they were guilty. The publication of a document in a pending case even without comments is liable to constitute contempt if the publication is calculated to interfere with the fair trial of the accused persons.

Case law reviewed.

Petition under section 3 of the Contempt of Courts Act, 1952, praying that the respondent be punished for contempt of court for his act of interference with the due course of justice by publishing news and comments in a way intended to mobilise public opinion against the petitioner.

Y. P. GANDHI, for Petitioner.

J. N. SETH, for Respondent.

ORDER

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TEK CHAND, J.—This is an application under section 3 of the Contempt of Courts Act, 1952, of Rao Har Narain Singh, who, along with others, is awaiting trial before the Sessions Judge on the allegation that he and the other accused committed offences under sections 302, 201, 376, etc., of Indian Penal Code, on Sarti Devi deceased, wife of one Kalu, who died in the house of Rao Har Narain Singh on the night between the 18th and 19th April, 1957.

The respondent in this case is the Proprietor, Editor, Publisher and Printer of a newspaper "Mewat", which is printed in Hindi and in Urdu, though not regularly. Rao Har Narain Singh was arrested on 18th May, 1957, and the challan was put in the Court of the Committing Magistrate on 10th July, 1957. The Magistrate, by his order dated 3rd September, 1957, committed him to stand his trial before the Court of Session. In the application under section 3 of the Contempt of Courts

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Act, which is now before me for disposal, the petitioner, who is an Advocate, has stated, that he is a resident of Gurgaon town and previous to his arrest for the offences mentioned above, he was working as an Additional Public Prosecutor. The respondent published in the various issues of his paper, beginning from 30th April, 1957, news items and comments regarding the commission of the offences for which the petitioner and others have been charged. The petitioner complains, that there has been on the part of the respondent. a persistent press compaign against him and other accused with a view to poison the mind of the general public against them. It is urged that the comments are in the nature of a calumny on the conduct and character of the petitioner and of some people who may be appearing as witnesses. The newspaper propaganda is said to be malicious in character and the articles appearing were deliberately designed to create an atmosphere of sympathy for the deceased and with the intention of mobilising public opinion against the petitioner and the other accused. It is, also, stated that the respondent has been at pains to eulogize the steps which have been taken by the police and other officers regarding investigation of the case and the arrest of the accused. It is alleged that the newspaper reports have a tendency to interfere with the fair trial of the case, to the prejudice of the petitioner. The petitioner has attached with his application several issues of the "Mewat", Annexures 'A' to 'O' of different dates. Out of these, Annexures 'A' to 'L' were filed along with the petition on 13th October, 1957, and the remaining three Annexures, 'M', 'N' and 'O', were put in by the petitioner's counsel on 14th November, 1957.

In his written-statement the respondent has maintained that he has not committed contempt

of Court. The respondent contends that the incident mentioned in the newspaper was of great public importance, and the items appearing in the various issues did not create prejudice against the accused, and did not affect the reputation of the petitioner. He made fair comments on an incident regarding the death of a young woman under suspicious circumstances. He also stated that a formal report was lodged by the Superintendent of Police, Gurgaon, on 11th May, 1957, as there were many rumours in circulation as to the sinister and suspicious manner in which the woman had met her death. He said that, after the investigation had been entrusted to the C.I.D. and Sham Lal, Station House Officer of Sadar Police Station, Gurgaon, had been transferred, he eulogized the honest and untiring manner in which the investigation was being carried on by the C.I.D. officials. He denied that there was anything in the publications, which amounted to abusing the petitioner or his co-accused or prejudicing mankind against them, before the cause was heard or doing of anything else, which, in any manner, could amount to contempt of Court.

Before determining whether the respondent had committed contempt of Court, it will not be out of place to give a resume of the offending publications. Annexure 'A' is a news item published in the issue of 30th April, 1957, under the heading—

> "Tragic death of a young woman in Gurgaon."

It states that *sufaid-posh* persons (the word is used in the sense of well-to-do persons) committed rape after getting heavily drunk and cremated the dead body in the darkness of the night. It was also stated that a few days back a woman was

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brought to a *sufaid-posh* for purposes of adultery. As a result of sexual intercourse committed by several persons upon her, she died. It was also widely rumoured that the dead body was cremated in the darkness of the night. Many Government servants were said to be involved in this case and that investigation in this connection was most essential. In this issue no names were given. In the next issue of 6th May, 1957 (Annexure 'B'), the headlines read as under—

> "Investigation about the death of a young woman in Gurgaon. The Government doctor did not even inform the police about the death."

In this issue it is mentioned that a big officer, Deputy Superintendent of Police of Gurgaon, is making investigation in this case and the police has recorded the statement of Rao Har Narain Singh, in whose house the death of the woman is alleged to have taken place. It then proceeds to state that the police recorded the statements of some Advocates. Dr. Ram Parshad, Assistant Surgeon, Gurgaon, also went there. The police should have been informed of such a sudden death and a post-mortem examination also should have taken place, and in a case where a Government doctor visits the place, both morally and legally the matter should have been reported to the police which was not done. Such a death must arouse suspicion. It suggested that the dead body was not cremated with customary rites. This news item ends with the words—

> "Rao Narain Singh, being a Government Pleader, can be a source of pressure on the police. The public should also co-operate with the police."

In the issue of 16th May, 1957 (Annexure 'C'), the news item appeared in the 'Mewat" under the headline—

> "The death of a helpless woman in Gurgaon has started producing results. The C.I.D. Police, Punjab, has started investigation. Arrests will be made shortly: the Sub-Inspector-in-charge, Police Station Sadar, Gurgaon, transferred."

Then, it is stated that the readers of the newspaper would be remembering that the death of a young woman had taken place in the house of Rao Har Narain Singh, temporary Government Pleader. and the death being under suspicious circumstances had created a great sensation and panic in the district and that there was a rumour that some arrests, would be made soon. Thrilling disclosures were expected and readers should wait.

The petitioner was arrested on 18th May, 1957. In the issue of "Mewat" (Hindi) dated the 20th May, 1957 (Annexure 'D'), the headlines were—

> "Shri Har Narain Singh, Officiating Government Pleader, and two others arrested in connection with the sensational Sarti Rape and Murder Case of Gurgaon. The arrest of several other Government officers and people is expected. The action of the C.I.D. Police and the Deputy Commissioner is appreciated by the public."

In the body of the article. reference is made to the transfer of Sham Lal, In-charge, Police Station, Gurgaon, as the local police neglected this incident. It is then stated that in investigating this

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case, the C.I.D. has given proof of its honesty and promptness, deserving appreciation for impartially conducting investigation.

Annexure 'E' is a copy of the news item appearing in the issue of Hindi "Mewat" on 23rd May, 1957. There is reference to the strong step taken by the C.I.D. Police and Deputy Commissioner, which has calmed the unrest prevailing in the public. It was surmised that Government officers were also involved in the case and many big secrets were expected to be unearthed. It is mentioned that the incident is alleged to have occurred at midnight between 18th and 19th April and then, it is said—

> "The accused persons tortured her by committing rape on her. Her death is alleged to have come about in a mysterious manner, and the dead body was cremated before sunrise, having been carried on a charpoy without a coffin."

Annexure 'F' is a copy of issue of Urdu "Mewat", dated the 4th June, 1957, publishing the report of a press interview with the District Magistrate and the Superintendent of Police, in which it was declared that no partiality would be shown to anybody in Sarti Rape and Murder Case, and that Har Narain Singh, Advocate, Additional Public Prosecutor, Mauji Ram, Deputy Superintendent, Ferozepore Jail, Kalu Ram and Sawant Singh (accused persons) had been arrested in Rohtak in Mst. Sarti Rape and Murder Case. Annexure 'G', issue of Hindi "Mewat" dated the 6th June, 1957, gives the news that the Magistrate refused bail to Rao Har Narain Singh, Advocate. and the number of arrests was raised to five and that sensational disclosures of the mystery were expected. The investigation by the police was

extolled. In the issue of Urdu "Mewat" dated the 16th June, 1957 (Annexure 'H'), there is appreciation of C.I.D. Police, who was said to be investigating the case diligently.

In Annexure 'J', an undated issue of Hindi "Mewat", it was reported that five accused persons had been arrested till then, and the C.I.D. Police was investigating the case with great earnestness, and that it was said that the C.I.D. Police had laid hands on a witness, who had seen the entire fateful incident. There is, then, a reference to the statement of Babu Ram, servant of the petitioner, in the Court of the Magistrate, under section 164, Criminal Procedure Code. The news item ends with the following words:

> "Statement of Babu Ram. Today Shri Babu Ram, a servant of Rao Har Narain Singh, Advocate (accused), appeared as a witness in Sarti Rape and Murder case in the Court of Shri K. R. Bahl, Judicial Magistrate, and made a statement under section 164, Criminal Procedure Code. This statement throws full light on this incident, and discloses how Rao Balbir Singh, an absconder, Rao Har Narain Singh, Advocate, and Ch. Mauji Ram committed atrocity on Mst. Sarti Devi. He is an eye-witness to this incident."

In the issue of Urdu "Mewat", dated the 24th June, 1957 (Annexure 'I'), the statement of Babu Ram under section 164, Criminal Procedure Code, is reproduced under the caption—

> "Was Sarti made of paper that she succumbed to co-habitation by three persons only?"

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Annexure 'I' dated 24th of June, 1957, reproduces in extenso the statement of Babu Ram, an alleged eye-witness of the occurrence made under section 164, Criminal Procedure Code. This statement contains the detailed account of what took place at the house of Rao Harnarain Singh, on the night of the occurrence. It mentions the shrieks of Mst. Sarti and refers to the talk which is of incriminating nature between the accused persons.

The investigation by the police having been completed, the case was put in the Court of the Magistrate on 10th July, 1957.

In the issue of 13th July, 1957, in Urdu "Mewat" (Annexure 'K'), there was the report of the news, that a complete challan had been submitted by the police, and there was a mention, that the readers might be remembering that the death of a young woman, Mst. Sarti Devi, whose age was 21 years, had taken place under suspicious circumstances. In the Urdu issue of 15th July, 1957 (Annexure 'L'), there was also a news item that the result of the examination of bloodstained clothes of Mst. Sarti had been received and that the accused persons were in Gurgaon Jail. In the Urdu issue of 17th August, 1957 (Annexure 'M'), there was a news item that the Punjab High Court had refused the bail application of the petitioner. Annexure 'N' is a news item, appearing in the issue of Urdu "Mewat", dated the 25th August, 1957, giving a detailed summary of the order of the High Court refusing bail to the accused.

On 3rd September, 1957, the Magistrate passed orders committing the accused to the Court of Session to stand their trial. The last news item on the record is Annexure 'O', from the Urdu "Mewat" of 16th September, 1957, stating that the

accused persons were left by the police at their residence without handcuffs for about four-and-a half hours and that they met many witnesses of the case. It was also stated that they were brought by Bikaner Mail, which was scheduled for 10.30 p.m. at Gurgaon railway station; but their presence was shown at 3 or 3.30 a.m. at Police Station, Gurgaon.

As has been mentioned already, Annexures 'M', 'N' and 'O', were filed a considerable time after the petition; and an objection has been raised by the counsel for the respondent, that as he could not reply to these documents in the written statement, they should not be taken into consideration. I am advisedly basing my fiindings on Annexures other than 'M', 'N' and 'O'.

After carefully examining the contents of the issues of the "Mewat" referred to in this petition, I am left with no doubt in my mind that the respondent has overstepped the bounds of propriety. The publications to which exception has been taken in this case when judged by all accepted standards amount to contempt of Court.

The news items, which are particularly objectionable, are Annexures 'B', 'E', 'I' and 'J'.

In Annexure 'J' words are not minced and the guilt of the three accused persons mentioned therein is clearly suggested in no uncertain language.

It is not stated by the respondent as to how he obtained the copy of the statement of Babu Ram which he published in extenso in the "Mewat",—*vide* Annexure I. Under section 164(2), after a statement is recorded by a Magistrate, it is to be forwarded to the Magistrate by whom the cause is

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to be inquired into or tried. In the respondent's written-statement all that is said is that the statement was published after the copy had been supplied to the petitioner by the prosecution. It is unlikely that the petitioner would have furnished a copy to the respondent and the latter has studiously refrained from disclosing the source from which he obtained his copy. The publication of this statement recorded under section 164, Criminal Procedure Code, on the part of the respondent before the commencement of the trial, was grossly improper, and the object of doing so, could be no other than to instil in the minds of his readers, feelings of hatred towards the accused persons and to create an impression that they were guilty.

All that is urged on behalf of the respondent is that the several publications referred to above were an "impartial purveying items of news, containing fair comment and there is nothing which amounts to prejudicing mankind before the cause is heard". It is also contended that a perusal of the issues of the newspaper "in no way reflects on the parties or witnesses which may tend to prejudice the fair trial or influence the decision of the case". It was also stated that the reporting was true and it did not, therefore, amount to contempt of Court.

If what was contended on behalf of the respondent, reflected a true picture of what he felt when giving publicity about this case, there must be grave and serious misgiving in his mind regarding his obligations as a journalist. It is little realised that improper news items and comments regarding causes which are either pending or about to be taken up before Courts of law, very often, hamper and hinder the proper functioning of the Courts. Taking of sides in Criminal cases, suggesting innocence of guilt of accused persons

can cause grave prejudice, by either influencing the minds of Judges, Jurors, witnesses, or by creating a climate of sympathy for, or prejudice against the accused. It is but essential that those, who are engaged in the administration of justice, should be free from outside influence, and the judicial machinery should be left unaffected by popular feelings as to guilt or innocence of persons being tried or awaiting trial on a criminal charge. The legal machinery, according to our law, for adjudging the culpability of accused persons, or in civil causes, for determining the rights of the parties, carefully excludes from consideration, facts and circumstances, other than those which are presented in a formal manner, according to the rules of procedure and evidence. The decision rests on the material on the record, and extraneous matters, howsoever palpable, or seemingly important, are kept severely outside the judicial purview. Any outside comment upon a pending case, and any criticism of the parties or the witnesses, which is calculated to influence the decision, has to be placed under a legal ban. Journalists, whether out of good or evil intentions, who intrude themselves on the due and orderly administration of justice, are guilty of contempt of Court and can be subjected to summary punishment. The Courts do not countenance any interference which is calculated to impede, embarrass or obstruct the administration of justice. Any publication, which has a tendency to foil or thwart a fair and impartial trial, or any conduct, which in any manner prejudices or prevents judicial investigation, whether by intimidation of or by reflection on the Court, counsel, parties or witnesses, in respect of a pending cause, constitutes contempt of Court.

Despite weighty pronouncements from the highest Courts, there still persists, in the minds

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of some newspapermen, an erroneous impression, that they enjoy some special immunity on account of their being a privileged class. The so-called privilege of the press is a time-worn fallacy. This misconception has persisted, despite numerous attempts on the part of the highest Courts to remove it. No journalist can assume the role of an investigator, in a pending case, and then attempt to influence the mind of the Court, regarding the merits of the case, either by comments, or by publishing matter, which is *de hors* the judicial record. A person accused of crime in this country can properly be convicted in a Court of Justice, only upon evidence, which is legally admissible, and which is adduced at his trial in legal form and shape. Though the accused be really guilty of the offence charged against him, the due course of law and justice is nevertheless perverted and obstructed if those, who have to try him, are induced to approach the question of his guilt or innocence with minds into which prejudice has been instilled by published assertions of his guilt or imputations against his life and character, to which the laws of the land refuse admissibility as evidence. The Courts have steadfastly discountenanced the claim of the special privilege of the press, as often as it has been asserted. Lord Mansfield in *R.* v. *Dean* of *St. Asaph* (1), said—

> "The liberty of the press consists in printing without any previous license, subject to the consequences of law."

Lord Shaw in *Arnold* v. *King-Emperor* (2), observed—

> "Their Lordships regret to find that there appeared on the one side in this case the

(1) 3 T.R. 431
(2) I.L.R. 41 Cal. 1023 (P.C.) at page 1063

time-worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist, but apart from statute-law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position."

No notion of liberty of press can stand in the way of the inherent power of Court to punish any publication calculated to interfere with the administration of justice. Liberty of the press is subordinate to the proper administration of justice. Freedom of the press must not be confounded either with license or abuse. Freedom of press cannot be understood to mean, the freedom to do wrong with impunity, and thereby to frustrate and defeat the discharge of those very public duties, upon the performance of which, the freedom, or the well-being of the citizens depend. In *Toledo Newspaper Company* v. *United States of America* (1), Chief Justice White, delivering the opinion of the Court, observed at page 410—

"The safeguarding and fructification of free and constitutional institutions is the

(1) 247 U.S. 402

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> vey basis and mainstay upon which the freedom of the press rests, and that freedom, therefore, does not and cannot be held to include the right virtually to destroy such institutions. It suffices to say that, however complete is the right of the press to state public things and discuss them, that right as every other right enjoyed in human society, is subject to the restraining which separate right from wrong doing."

It will also be instructive to refer to the observations of Frankfurter, J., of United States of America, in *Pennekamp* v. *Florida* (1), at page 1313—

> "The press does have the right, which is its professional function, to criticize and to advocate. The whole gamut of public affairs is the domain for fearless and critical comment, and not least the administration of justice. But the public function which belongs to the press makes it an obligation of honour to exercise this function only with the fullest sense of responsibility. Without such a lively sense of responsibility a free press may readily become a powerful instrument of injustice. It should not and may not attempt to influence judges or juries before they have made up their minds on pending controversies. Such a restriction, which merely bars the operation of extraneous influence specifically directed to a concrete case, in no wise curtails the fullest discussion of public issues generally."

(1) (1946) 90 Law Ed. 1295

The Courts in India have adopted a similar view. A Division Bench of the Oudh Chief Court in *District Magistrate, Kheri* v. *M. Hamid Ali Gardish* (1), said

> "The special privilege of the press is a time-worn fallacy, and the sooner the misconception that the press is not accountable to the law is removed the better it will be. No editor has a right to assume the role of investigator or try to prejudice the Court against any person."

> "We might say further that so far from there being any special privilege of the press we are of opinion that there is on the other hand a special responsibility affecting the editor of a newspaper, namely that he is in duty bound always to bear in mind the danger of prejudicing the course of justice by the publication of articles in his newspaper which though innocent in appearance may easily be so read by members of the public as to prejudice the course of litigation."

In Demibai Gengji Sojpal v. *Rowji Sojpal and others* (2), Wadia, J., said—

> "Another proposition which has been well established is, that all proceedings in suits pending in a Court of justice are privileged, and any comment on the subject-matter of the suit, and any abuse of the parties or holding them up to ridicule and contempt in the eyes of the public, whilst the suit is pending, are not allowed. In my opinion, it

(1) A.I.R. 1940 Oudh. 137
(2) A.I.R. 1937 Bom. 305

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would be simply disastrous for the due and proper administration of justice, if when a suit is still pending investigation in a Court of law, that investigation was to be taken out of the hands of the Court and practically left to the press. The object of proceedings in contempt is not so much to vindicate the dignity of the Court or the person of the Judge, as to ensure that every litigant in a Court of justice has a fair and unprejudiced hearing at the trial on the merits of his case."

The Courts in the interest of administration of justice cannot view with placid equanimity any criticism calculated to obstruct or interfere with the due course of justice. A discussion in a newspaper, of the merits of a pending case, or of the evidence to be adduced at the trial, or of the witnesses who may be appearing in a case, cannot be permitted.

Life and liberty of a citizen, facing a criminal charge, runs the risk of being imperilled by his preliminary trial, in the columns of a newspaper. The plain duty of a journalist is the reporting and not the adjudication of causes. The process of justice cannot be allowed to be corroded by a focussed attempt to influence the decision of a particular case. Preservation of the right of freedoms ~~no less important, like the impartial~~ and society, but the exercise of this right has to be compatible with the preservation of other freedoms no less important—like the impartial and calm administration of justice unconstrained by any outside interference, the safeguarding of other people's reputations, the protection of the society from the corrupting influence of lewd and obscene publications, overthrow of lawfully constituted

Government by violent means, the maintenance of public peace and friendly relations with foreign States. When there is a conflict between two interests-one, the administration of justice free from pressure, and the other, freedom of expression, the former cannot be compelled to yield to the latter.

The following words of Frankfurter, J., in *Pennekamp* v. *Florida* (1), bear quoting:—

> "No Judge fit to be one, is likely to be influenced consciously, except by what he sees and hears in Court and by what is judicially appropriate for his deliberations. However, Judges are also human, and we know better than did our forebears how powerful is the pull of the unconscious and how treacherous the rational process. And since Judges, however, stalwart, are human, the delicate task of administering justice ought not to be made unduly difficult by irresponsible print. (Page 1309). The power to punish for contempt of Court is a safeguard not for Judges as persons but for the functions which they exercise. It is a condition of that function—indispensable for a free society—that in a particular controversy pending before a Court and awaiting judgment, human beings, however strong, should not be torn from their moorings of impartiality by the undertow of extraneous influence. In securing freedom of speech the Constitution hardly meant to create the right to influence Judges and jury (1314)."

(1) (1946) 90 Law Ed. 1295

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Article 19(2) of our Constitution expressly provides for imposition of reasonable restrictions on the exercise of the fundamental right to freedom of speech and expression, *inter alia*, in relation to contempt of Court.

I may next examine the question, whether the publication in extenso of the statement of Babu Ram made under section 164, Criminal Procedure Code, before the Magistrate constituted contempt of Court. The ordinary reader's mind could not remain unprejudiced after reading the account said to have been given by Babu Ram. Such a one-sided publication is calculated to interfere with a fair trial. In *Chesshire* v. *Strauss* (1), the publication of a statement of claim in a newspaper, containing matter defamatory to the defendant in a pending case, was held to amount to contempt of Court, as that would cause prejudice against him. There is ample authority for this proposition both of Courts in England and in India.

> "One can easily see the evils which would arise if it were permissible to publish a plaint containing charges of fraud against some respectable man before he could even put in his answer and long before the charges could be judicially determined." In *re. M. K. Gandhi* (2). *Vide Re. Cheltenham and Swansea Ry. Carriage and Wagon Company* (3), *Gaskell and Chambers Limited* v. *Hudson, Dodsworth and Company* (4), *Bennet Coleman and Company* v. *G. S. Monga* (5), *Wasundeoraoji Sheorey* v. *A. D. Mani* (6).

(1) (1896) 12 T.L.R. 291
(2) 58 I.C. 915 at p. 919
(3) (1869) L.R. 8 Equity 580
(4) (1936) 2 K.B. 595.
(5) A.I.R. 1936 Lah. 917
(6) A.I.R. 1951 Nag. 26

In *re. Vidya Sagar Kapur, Editor, 'Daily Guru' Lahore, and others* (1), a complaint filed in Court containing charges of abduction against certain persons was published with scare headlines. It was held that as the publication was bound to tend to prejudice the hearing of the case, it amounted to contempt.

Publication of a document in a pending case even without comments is liable to constitute contempt and in this case, I am left with no doubt in my mind, that the publication was calculated to interfere with the fair trial of the accused persons.

After a cause has been finally decided the chief hurdle to comment and criticism is removed; as there is no longer the possibility of influencing the decision. Law recognizes in such cases freedom of criticism so long as it is fair and true. Law does not restrain or punish the freest expression of the disapprobation of what is done in, or, by the Courts. But even in such a case, it must not be forgotten, that scurrilous and disrespectful attacks on the Court, even after it has finally disposed of a case, imputing to it corruption or incompetency, will make the critic liable to be summarily punished for contempt of Court. The purpose of contempt proceedings is not so much to protect the personal feelings or the dignity of the Judge, but rather to ensure, that litigants get a fair and unprejudiced trial uninfluenced by extraneous matters not forming legal evidence

Courts owe it to every litigant that his cause should receive a calm, detached and fearless consideration of what is submitted to them, in accordance with the rules of procedure and evidence.

(1) A.I.R. 1936 Lah. 815

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uninfluenced and uncoerced by any external pressure, popular prejudice or public criticism. For achieving the above purpose, the power to punish for contempt of Court is exercised, so as to prevent interference with the adjudicatory process, by any outside domination. It is important that within bounds, that are well recognized, the Courts may be criticised, but it is no less important that they may be permitted to discharge their functions, and to administer even-handed justice, solely with reference to matters, which are judicially placed before them. A writer in a newspaper by suggesting, that the accused persons who are awaiting their trial, are guilty of the crimes for which they are being or about to be prosecuted, threatens impartial adjudication, and cannot be permitted to do so with impunity.

In this case the news items in Annexure 'A', 'B' and 'C', were published before the arrest of the petitioner on 18th of May, 1957. Annexures 'D' to 'J', were published while the investigations were going on but before the case was put in the Court by the Police which was done on the 10th of July, 1957. Annexures 'K', 'L', 'M' and 'N' relate to the period during which the case was before the Committing Magistrate. Annexure 'O' was published after the order of the commitment which was made on 3rd of September, 1957.

The next question that arises is, whether the news items mentioned above, having been published before the commencement of the trial by the Sessions Judge, violate the principles governing law of contempt of Court. As early as 1742 in a judgment of Lord Hardwicke, which has become *locus classicus*, contempt of Court was defined in the following words:—

> "There are three different sorts of contempt. One kind of contempt is scandalizing

> the Court itself. There may be likewise a contempt of this Court, in abusing parties who are concerned in causes here. There may be also a contempt of this Court, in prejudicing mankind against persons before the cause is heard."

[*Vide St. James' Evening Post case*; *Roach* v. *Garvan* (*or Hall*) (1)].

In *R.* v. *Gray* (2), Lord Russell defined contempt of Court as follows:—

> "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or to lower his authority is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Court is a contempt of Court."

It is the very essence of the offence, that the due course of justice is likely to be interfered with, if prejudice is created in the minds of the public against the accused. A publication calculated to poison the mind of the Court, or to create an atmosphere of prejudice against the witnesses or parties, is contempt of Court, whether the proceedings at the time of the appearance of the offending publication, are actually pending or imminent. The distinction is not between causes about to be put up for trial and those actually pending, but rather between proceedings, which are not yet concluded, and those which have been

(1) 26 E.R. 683=1742—22 ATK 469
(2) (1900) 2 Q.B.D. 36

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finally decided. In the latter case, newspaper comments have relation to proceedings which are past and ended, and are generally held not to constitute contempt of Court or of its authority. After the conclusion of the judicial act, the Courts allow criticism of the public acts done from the seat of justice.

Holmes, J., laid down in *Patterson* v. *Colorado* (1)—

> "When a case is finished, Courts are subject to the criticism as other people but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied * * *"

As observed by Lord Atkin in *Andre Paul Terence Ambard* v. *Attorney-General of Trinidad. Tobago* (2)—

> "The path of criticism is a public way; the wrong headed are permitted to err therein: Provided the members of the public abstain from imputing improper motives to those taking part in the administration of justice. and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."

The possibility of influencing the decision is equally present whether the case is actually being

(1) (1907) 205 U.S. 454 (463):51 Lawyers Ed. 879
(2) A.I.R. 1936 P.C. 141 at p. 145

proceeded with or is about to commence. It is erroneous to assume that immunity which is not allowed to newspaper criticism during the pendency of the case, is permitted before its commencement. This argument was advanced by counsel before the King's Bench and was repelled by the Court in *Rex* v. *Parke* (1). Wills, J., said—

> "Great stress has been laid by Mr. Danckwrts upon an expression which has been used in the judgments upon questions of this kind—that the remedy exists when there is a cause pending in the Court. We think undue importance has been attached to it. It is true that in very nearly all the cases which have arisen there has been a cause actually begun, so that the expression, quite natural under the circumstances, accentuates the fact, not that the case has been begun, but that it is not at an end. That is the cardinal consideration. It is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do so when the stream has ceased."

This passage was also referred to by Lord Hewart L. C. J. in *Rex* v. *Daily Mirror* (2). In *Hunt* v. *Clarke* (3), Cotton. L. J., said:—

> "If any one discusses in a paper the rights of a case or the evidence to be given before the case comes on, that, in my opinion, would be a very serious attempt to interfere with the proper administration of justice."

(1) (1903) 2 K.B.D. 432
(2) (1927) I.K.B. 845
(3) 58 L.J.Q.B.D. 490

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The publication of an article in a newspaper cannot be justified on the ground that the trial for the offence to which it relates, is not then in progress nor immediately to be commenced, but the date of the hearing is to be fixed afterwards. *Vide Globe Newspaper Company* v. *Commonwealth* (1), a decision of the Supreme Judicial Court of Massachussetts.

A Full Bench of the Lahore High Court in *re: Subrahmanyan, Editor, Tribune and others* (2) and a Full Bench of the Madras High Court in *Tulajarama Rao* v. *Sir James Taylor* (3), also held, that a comment on proceedings which were imminent but not yet launched in Court, constitutes contempt, if the writer of the offending publication, either knew the inquiry or the trial to be imminent, or should have known that it was imminent. Thus, there is ample authority for the proposition, that the publication of an article, which otherwise would constitute contempt, cannot be justified on the ground that the trial to which it relates, has not yet been commenced.

Truth or falsity of the facts or comments published, is immaterial. Good faith or malice of the author is an equally irrelevant consideration. It does not matter whether a fair trial had in fact been embarrassed or impeded. The outcome of the trial, against the person, who was the target of the newspaper attack, cannot avail the contemner. The law of contempt is not concerned with the working of the mind of the person charged with committing contempt, or with his capacity to cause harm—these may be considerations for assessing the quantum of punishment. It is equally futile for the respondent to pin

(1) 74 North—Eastern Reporter 632
(2) A.I.R. 1943 Lah. 329
(3) A.I.R. 1939 Mad. 267

his faith on certain pleas, which are frequently raised but never succeed. Absence of intention to prejudice fair trial of a person accused of a crime, lack of knowledge of the publication, or of its likelihood to cause prejudice, belief in the truth of the imputation made in the offending publication, or even, the ultimate failure of the attempt to influence the result of the case, cannot be considered proper defences, on proof of which, the respondent may obtain relief from liability for contempt of Court. The law looks at the conduct of the person proceeded against, in order to find out if it was calculated to produce an atmosphere of prejudice, in the midst of which, the judicial proceedings have to go on. The test of guilt, in all such cases, depends on the findings, whether the matter complained of tended to interfere with the cause of justice, and not on the question, whether such was the objective sought; much less whether it was achieved. Neither desire to obstruct or prevent administration of justice, nor its fulfilment count in proceedings for contempt. Reasonable tendency to influence or interfere with a pending proceeding has been a long established standard, and still is the only accepted criterion, recognized by Courts in India and in the countries, which have adapted their legal system on the pattern of Common Law.

See *Parashuram Detaram Shamdasani* v. *Emperor* (1), *Debi Prasad Sharma* v. *Emperor* (2), *Homi Rustomji Pardivala* v. *Sub-Inspector Baig* (3); *In re Subramanyan, Editor, Tribune* (4); *Demibai Genji Sojpal* v. *Rowji Sojpal* (5); *R.* v

(1) A.I.R. 1945 P.C. 134
(2) A.I.R. 1943 P.C. 202
(3) A.I.R. 1944 Lah. 196
(4) A.I.R. 1943 Lah. 329 (F.B.)
(5) A.I.R. 1937 Bom. 305

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Tibbits (1); *Charlton's Case* (2); *Skipworth's Case* (3), *R.* v. *Parke* (4); and *R.* v. *Davis* (5).

See also 22 C.J.C., Article 24 at pages 70-73, and *Toledo Newspaper Company* v. *United States* (6).

In the words of Justice Holmes in *Patterson* v *Colorado* (7):—

> "A publication likely to reach the eyes of a jury, declaring a witness in a pending cause a perjurer, would be none the less a contempt that it was true. It would tend to obstruct the administration of justice, because even a correct conclusion is not to be reached or helped in that way, if our system of trials is to be maintained. The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open Court, and not by any outside influence, whether of private talk or public print."

Chief Justice White of the Supreme Court of United States while delivering his opinion in *Toledo Newspaper Company* v. *United States of America* (8), observed:—

> "Again, it is said there is no proof that the mind of the Judge was influenced or his purpose to do his duty obstructed or restrained by the publications, and therefore, there was no proof tending to show the wrong complained of. But here

(1) (1902) 1 K.B. 77 (85—89)
(2) 40 E.R. 661 (671)
(3) L.R. 9 Q.B. 230 (235-238)
(4) 1903, 2 K.B. 432
(5) (1906) 1 K.B. 32
(6) 247 U.S. 402 (410)
(7) 205 U.S. 454=51 Lawyers Ed. 679
(8) 247 U.S. 402—62 Lawyers Ed. 1186

> again, not the influence upon the mind of the particular Judge is the criterion, but the reasonable tendency of the acts done to influence or bring about the baleful result is the test. In other words, having regard to the powers conferred, to the protection of society, to the honest and fair administration of justice, and to the evil to come from its obstruction, the wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of how far they may have been without influence in a particular case. The wrong-doer may not be heard to try the power of the Judge to resist acts of obstruction and wrongdoing by him committed as a prelude to trial and punishment for his wrongful acts."

In the language of Cotton, L.J., in *Hunt* v. *Clarke* (1)—

> "It is not necessary that the Courts should come to the conclusion that a Judge or a jury will be prejudiced, but, if it is calculated to prejudice the proper trial of a cause, that is a contempt, and would be met with the necessary punishment in order to restrain such conduct."

The journalist who rushes to comment on causes which are pending, without taking care to refrain from publishing matter, which prejudices fair trial, undertakes a perilous adventure and does so at a grave risk to himself. It is of no avail in such a case to urge the purity of his motives or, that he was serving the cause of justice in exposing a serious crime which, had he not laid it bare,

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

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would have remained undiscovered. He cannot even take credit, in order to earn immunity from the consequences of his acts of contempt, by urging that had he not taken the bold step to focus through the columns of his paper, the attention of the authorities, and had he not caused stir in the public mind by arousing their interest, the crime would not have seen the light of the day, and the offenders would have remained untraced and unpunished. These defences cannot exculpate his guilt. The goodness of the motive in exposing an evil is not the criterion in cases of contempt committed by newspaper publications. Law, in its wisdom considers it of greater consequence, that the stream of justice should be kept clean and pure, that parties may proceed with safety both to themselves and their character. In the words of Lord Chancellor Lord Hardwicks in the celebrated case of *Roach* v. *Garvan* (*or Hall*) (1)— ,

> "Nothing is more incumbent upon courts of justice than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard."

The *ratio decidendi* in cases of contempt of Court neither rests on the excellence or worthiness of the motive, nor on the presence of *mens rea* as an essential element of the offence, *vide* R. v. *Odham's Press Limited, and others, Ex parte Attorney-General* (2), and *R.* v. *Griffiths and*

(1) 26 E.R. 683
(2) (1956) 3 A.E.R. 494

others, Ex parte Attorney-General (1). *In Rex* v. *Parke* (2), Wills, J., said—

> * * * * * The reason why the publication of articles like those with which we have to deal is treated as a contempt of Court is because their tendency, and some time their object is to deprive the Court of the power of doing that which is the end for which it exists, namely to administer justice duly, impartially, and with reference solely to the facts judicially brought before it. Their tendency is to reduce the Court which has to try the case to impotence, so far as the effectual elimination of prejudice and prepossession is concerned."

The object of proceedings in contempt is to ensure to the litigant, in a Court of justice, that he gets a fair and unprejudiced hearing at the trial, on the merits of his case, and it is this object, which in this case, has been attempted to be undermined. That is why the test for determining the guilt of contemners rests on the reasonable tendency of the acts done to influence or bring about the baleful consequences. The law of contempt seeks to curb the evil, which, if unchecked, might result in preventing the litigants from getting their causes decided fairly, on their facts in accordance with procedure, and unaffected by any extraneous influence or pressure.

I am of the view, that the publications referred to above in the respondent's newspaper "Mewat", were contemptuous, as they tended to prejudice the public as to the merits of the criminal

(1) (1947) 2 A.E.R. 347
(2) (1903) 2 K.B.D. 432 (136)

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trial about to commence; and they were also calculated to obstruct the administration of justice, by attempting to prevent a fair trial, by disparaging the cause of the petitioner and of the persons accused along with him.

This is a case of a serious contempt of Court and the apology, which has been tendered, cannot take the sting out of the contempt. The respondent is Proprietor and Editor of a local newspaper which has a limited circulation and which is not even published regularly. The extent of the mischief that such a publication can, in all likelihood, cause is comparatively restricted. I think it will meet the ends of justice, if he is ordered to pay a fine and a sentence of imprisonment is not awarded.

I, therefore, order the respondent to pay a fine of Rs. 200 for the offence of contempt of Court committed by him. In case of default in payment of fine the respondent will be liable to undergo simple imprisonment for one month. I express the hope that the leniency which has been shown to the respondent, will not be treated by him as a licence to commit similar acts of contempt in future.

B.R.T.