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the proceedings *ab initio* and is not an irregularity curable under section 537 of the Code of Criminal Procedure. This distinction, we venture to think, was also present in the mind of Sir Meredyth Plowden in the passage to which reference has been made and if that were correct there is in fact no divergence in judicial authority.

In the result, this appeal must fail and is dismissed.

Bedi, J.

J. S. BEDI, J.—I agree.

K.S.K.

CRIMINAL ORIGINAL

Before Gurdev Singh, J.

EXPRESS NEWSPAPERS LTD.,—*Petitioners.*

Versus

M/S RAISINA PUBLICATION PRIVATE LTD., AND ANOTHER,—*Respondents.*

Criminal Original No. 13-D of 1963.

1964

March, 24th.

Contempt of Courts Act (XXXII of 1952)—S. 3—Corporation—Whether can be committed for contempt—Mere publication of plaint before defendant appears and files his written statement —Whetehr amounts to contempt.

Held, that a corporation is vicariously liable for the mistakes of its officers, agents and others who act for it and so can be committed and punished for contempt if an act of its officers and agents, etc., amounts to contempt of Court.

Held, that mere publication of a document or pleadings of a party does not amount to contempt. Each case has to be examined on its own facts, and if the Court comes to the conclusion that the publication tends to prejudice public mind against a party or deter witnesses or obstruct the course of justice, it will commit the offender for contempt. But before a Court takes notice of such a publication, it

must be satisfied that the matter published tended substantially to interfere with due course of justice or was calculated substantially to create prejudice in the public mind, and the Court will not take action where the offending matter amounts to what is sometimes referred to as a technical contempt. Merely, because the parties are engaged in competing businesses an inference of *mala fides* cannot be drawn. Proceedings for contempt are not intended to satisfy the grudge of a private party but to ensure fair trial and preserve the dignity of the Court.

Application under Section 3 of the Contempt of Court Act, 1952, praying that a rule may please be issued against the respondents and they be dealt with according to law for the contempt of Court committed by them.

I. M. LALL, ADVOCATE, for the Petitioner.

M. K. RAMAMURTHI, ADVOCATE, *for the Respondents.*

ORDER.

GURDEV SINGH, J.—The petitioner, Express Newspapers Limited and respondent No. 1, *Messrs Raisina Publications* (Private) Limited in these proceedings for contempt are two rival concerns engaged in the busiess of printing and publishing newspapers at New Delhi. The English daily "Patriot" is published by respondent No. 1 and edited by Messrs Edatata Narayanan (respondent No. 2). In the issue of that paper, dated 21st January, 1963; appeared a report by its staff reporter under the heading "Cartoonist Sues City Daily', which besides reporting that Shri P. L. Sondhi, Manager of the petitioner-concern; had been served with notice issued by a Subordinate Judge of Delhi to appear in answer to a suit brought by Mr. Envar Ahmad, a well-known cartoonist, for the recovery of Rs. 2,50,000 as damages for breach of contract gave a summary of the plaint wherein it was alleged *inter alia* that the contract for the employment of Mr. Envar

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Ahmad had been terminated before the expiry of his term of two years on the ground that his work was found unsatisfactory. Complaining that publication of the plaint, before the defendants had an opportunity to appear in Court or to be heard in reply, was bound to prejudice the case of the petitioner in the mind of the public and the Court and thus interfered with the fair trial of the suit pending before the Subordinate Judge, the petitioner-company has approached this Court for the respondent's committal under section 3 of the Contempt of Courts Act. The action of the respondents in publishing the report in question has been characterized by the petitioner as a deliberate attempt to vilify the petitioner-company out of spite by suppressing material facts. In his affidavit filed in reply, Mr. Edatata Narayanan (respondent No. 2) while admitting the publication of the report, to which objection is taken, denied that it contained an incorrect version of the plaint of the suit brought by the Cartoonist Envar Ahmad or was actuated by malice or born out of spite. He maintained that the publication was neither calculated to vilify the petitioners nor had it the effect or tendency to prejudice the petitioners in the public mind or to obstruct th proper administration of justice and to interfere with fair trial of the suit. He claimed to have acted solely in discharge of his journalistic duty towards the public in promptly publishing the report relating to an action brought by a political cartoonist of international fame like Envar Ahmad.

As has been stated earlier, one of the respondents in these proceedings is the private company known as Messrs Raisina Publications (Private) Limited. At the commencement of the proceedings a doubt arose if a corporation like respondent No. 1 can be committed for contempt.

but in view of the various English and Indian decisions on the point, the respondents' learned counsel, Shri M. K. Ramamurthi, conceded that the respondent-company being the printer and publisher of the news-paper "Patriot", in which the report complained of was published, could not escape vicarious liability for the publication if it amounted to contempt. The matter is covered by the decision of this Court in *Narain Singh* v. *S. Hardayal Singh Harika* (1), where Tek Chand J., held that corporations are subject to punishment for contempt and officers, agents and others who act for a corporation and who knowingly violate or disobey an injunction against the corporation are punishable for contempt even though the injunction is issued only against the corporation. This was a case relating to a Municipal Committee. The English decision in *Rex* v. *Evening Standard Company Limited and others* (2), is, however, directly in point, as it was ruled therein that the proprietors of the newspaper were vicariously liable for the reporter's mistake. In this connection Lord Goddard C.J., observed (Page 1029):—

> "The Court interferes to prevent and punish the dissemination of false reports, or improper comments or observations on cases before they are heard. Counsel for the Evening Standard Company submitted that, while his clients desired to abide by the well-understood rule of journalism that the editor and the proprietors of a newspaper must in a case such as this take responsibility, the company ought not to be made vicariously liable for the mistake or misconduct of the reporter. I do not think that we could possibly agree with

(1) I.L.R. 1958 Punjab 580=A.L.R. 1958 Punj. 180.
(2) (1954)1 A.E.L.R. 1026.

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that submission, which seems contrary to what Lord Russell of Killowen, C.J. and Wright J, said in *R.* v. *Payne* (3), where they pointed out that the Court would interfere where the publication was intended or calculated or likely to interfere with the course of justice."

The noble Lord then quoted with approval the following observations of Lord Hardwicks L.C. from *St. James's Evening Post case* (4), which is regarded as *Locus classicus* on the subject:—

> "With regard to Mrs. Read, the publisher, by way of alleviation, it is said, that she did not know the nature of the paper; and that printing papers and pamphlets, is a trade and what she gets her livelihood by. But, though it is true, this is a trade yet they must take care to do it with prudence and caution; for if they print anything that is libellous, it is no excuse, to say, that the printer had no knowledge of the contents, and was entirely ignorant of its being libellous; and so is the rule at law, and I will always adhere to the strict rules of law in these cases".

Earlier in *King* v. *J. G. Hammand and Company Limited and others* (5), it was held that although upon a rule calling upon a limited company to show cause why a writ or writs of attachment should not issue against it for contempt of Court, the Court cannot make an order for attachment, it can, where it is satisfied that a contempt has been committed, inflict the appropriate punishment, namely, order the company

(3) (18.96)1 Q.B. 577 at P. 580.
(4) 8 Atk. 472.
(5) (1914)2 K.B. 866.

to pay a fine. It is not necessary to pursue this matter further but before passing on to the next question it may be noticed that *in the matter of Tarit Kanti Biswas and others* (6), a Special Bench consisting of three Judges of that Court, while observing that printer and publisher of a newspaper was liable for contempt even though he was not aware of the subject constituting such contempt, held that the question whether persons in the position of Directors of a company carrying on a newspaper are responsible for contemptuous articles published in the paper must depend upon the facts of each case. This authority is, however, not strictly relevant for our purposes as the Directors and other officers of the company have not been cited as respondents and it is only the Company and the Editor of the newspaper against whom the *rule nisi* was obtained.

As it is not disputed that if the report published by the respondents, to which exception is taken, contains an incorrect or distorted summary of the plaint of the suit brought by the cartoonist Mr. Envar Ahmad against the respondents, it could not but prejudice the fair trial of the suit thus amounting to contempt, before proceeding further it is necessary here to examine the petitioner's contention that material facts had been suppressed out of spite and it contained misstatements. The petitioner's learned counsel, Shri I. M. Lall, pointed out that though Mr. Envar Ahmad had been employed by the petitioner-company for two years in the first instance, one of the important terms of the contract was that if Mr. Envar Ahmad's work was found unsatisfactory his services could be terminated on one

(6) A.I.R. 1918 Cal. 988.

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month's notice, but in the report published in the respondents' paper reference to this latter clause of the contract was scrupulously omitted. This omission, in my opinion, is in no way material as on going through the report, which forms the subject-matter of these proceedings, I find that it is expressly stated therein that by the letter, dated 3rd April, 1963, the Manager of the petitioner-company had informed Mr. Envar Armad that his services had been terminated because his work was not found satisfactory. The complaint, that the assertion in the report that the letter terminating Mr. Envar Ahmad's services had been issued under the instructions of Mr. R. M. Goenka, is not correct, as on reference to para 7 of the plaint (a copy of which has been filed along with the petition), we find that Envar Ahmad had averred that subsequent to the letter terminating his services he was informed that the letter was issued under the instructions of Shri R. N. Goenka, Chairman of the Board of Directors of Express Newspapers Limited.

This brings me to the consideration of the question whether the mere publication of the plaint of a suit pending in Court, before the defendant could appear and put in a reply, amounts to contempt of Court. In support of his contention that such a publication amounts to contempt, Mr. I. M. Lall, appearing on behalf of the petitioner-company, has contended that the publication of the plaint of the suit, which contained allegations of breach of contract against persons of some standing before they had an opportunity to state their case in Court, could not but prejudice the public mind against the petitioner-company as well as the Judge who must have read the report in the newspaper, and thus interfered with the fair trial of the case. In this connection he

referred to page 95 of Oswald's celebrated work on Contempt (3rd Edition), where it is stated:—

> "Printing, even without comments, and circulating the brief, pleadings, petition, or evidence of one side only is a contempt; and accounts of a case by notices, advertisements, or circulars, which misrepresent, or present mere *ex parte* statements of the case, are a contempt."

There can be no doubt that the publication of one-sided version of a party to a civil or criminal dispute pending in Court or where proceedings between them are imminent may do incalculable harm to a party's case by prejudicing public mind against him or by deterring witnesses from coming forward to depose at the trial. It was laid down by Lord Hardwicke in *Roache* v. *Hall* (7):—

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

A contention similar to the one which has been raised by Mr. I. M. Lall was examined in *Gaskell and Chambers Limited* v. *Hudson, Dodsworth and Company* (8). In dealing with it Lord Hewart C.J., observed as follows:—

> "The argument which was presented to us is that in every case, when an action is pending, it must be a contempt of Court

(7) (1742)2 Atk. 409=26 E.R. 683.
(8) (1936)2 K.B. 595.

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to circulate a pleading, even the pleading of one's own opponent, with comment, for the reason suggested here, that possible witnesses may be deterred from doing what otherwise they would have done. Our attention has been directed to various reported cases. In my opinion, there is no case which goes near to establishing the proposition contended for on behalf of the applicants. It seems to me to be idle to speak of general rules in a context in which each case must be considered upon its own merits. When I look at the course of controversy between the parties to this action; it seems to me to be useless to contend that the circulation of the documents which have been distributed here, whatever else its effect may be, amounts to contempt of Court. I should like to refer to the words used forty years ago by Lord Russell, C.J., which, with respect, seem to me to be no less true today than they were then. He said in the case of *Reg* v. *Payne and Cooper* (3):—

> I wish to express the view which I entertain, that applications of this nature have in many cases gone too far. No doubt the power which the Court possesses in such cases is a salutary power, and it ought to be exercised in cases where there is a real contempt but only when there are serious grounds for its exercise.

> Every libel on a person about to be tried is not necessarily a contempt of Court; but the applicant must show

that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending."

"Wright J., in the same case said : I agree with all that the Lord Chief Justice has said, and I only wish to add that, 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 objectionable or not.....That is the rule which I wish to adopt with regard to applications of this nature.....".

In the same case Du Parcq, J. expressed the opinion that the publication of pleading in an action may in certain circumstances amount to contempt of Court, another Member of the Bench, dealing with the same matter expressed himself in these words:—

"The jurisdiction sought to be invoked in this case is a jurisdiction which it is very necessary that the Court should possess both for the vindication of its own authority and for the protection of the litigants who may come before it. On the other hand, it is a jurisdiction the exercise of which may deprive the subject of his liberty without the intervention of a jury and in the circumstances in which there is no appeal. It is, therefore, a jurisdiction to be used with circumspection, and only to be

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invoked for grave and serious reasons and on real and substantial grounds. It certainly ought not to be invoked merely for the purpose of satisfying a feeling of vengeance against a person who may have done something which the opposite side in the litigation does not like. In this class of cases, where complaint is made of the circulation of a pleading or a comment on a pleading in a civil matter, I agree with my Lord and Du Parcq, J. that it is undesirable to lay down any general rules, because by doing so the Court might unduly fetter itself in exercising the jurisdiction in cases of this sort. I believe that the cases, somewhat analogous to the present case, upon which Mr. Croom-Johnson sought to reply, can be divided into two classes. There are, for instance, *Perry's Case and Bowden* v. *Russell*, the case before Malins V. C. which establish that the Court will not allow its process to be made the vehicle of a libel upon other persons, and that if the litigant uses the process as a means of disseminating a libel, the Court will not put the injured person to the expense and delay of bringing an action to remedy the injury, but; will; if asked to do so; interfere in a summary way by treating it as a contempt of Court to use its process as a means of disseminating libels. That is almost a self-evident proposition."

In *re Mohandas Karamchand Gandhi and another* (9), it was held that it was contempt to

(9) A.I.R. 1920 Bom. 175.

publish any part of the record of a case while proceedings are pending. Reliance in this connection was placed upon the passage from Oswald on Contempt to which a reference has already been made. In *Shri Wassdeoraoji Sheorey* v. *Shri A. D. Mani* (10), it was held that the publication of a document filed in a pending case would amount to contempt if it was published with the clear intention of causing prejudice or if it was calculated to cause prejudice to a trial which is pending. Mudholkar J., after referring to various English decisions, in this connection observed:—

> "It would, therefore, seem that the right of a newspaper even to publish a faithful account of the proceedings before a Court of law is subject to the condition that the publication does not tend to prejudice materially the fair trial of a case before a Court of Law."

The publication of pleadings and various types of documents relating to the trial of a case or when the proceedings in the Court are imminent has come up before the Courts in several cases. In *Ram Parikchan Pandy* v. *M. S. M. Sharma and another* (11), a Division Bench of the Patna High Court ruled that it cannot be laid down as a general proposition that the publication *in extenso* of the pleadings, of the statements made in a petition, or other petitions or portions thereof filed before a Court would be *per se* contempt of Court. The learned Judges observed that as the circumstances may vary in each case, it is for the Court to decide in each case as to whether such publications amount to contempt. In that case publication *in extenso* of a petition under section 110 of the Criminal Procedure Code containing

(10) A.I.R. 1951 Nag. 26.
(11) A.I.R. 1961 Pat. 217.

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serious and damaging allegations against a person were held to be contempt as it had a tendency to prejudice the public mind against the person concerned. *Rao Harnarain Singh Sheoji Singh* v. *Gumani Ram Arya* (12), is a decision of this Court in which Tek Chand, J. held that the publication, before the commencement of the trial, of the statement of a witness recorded by a Magistrate under section 164 of the Criminal Procedure Code amounted to contempt as it created in the public mind an impression prejudicial to the accused. In this connection, the learned Judge relied upon several Indian and English cases and observed:—

> "The test of guilt in all such cases depends on the findings whether the matter complained of tended to interfere with the course of justice and not on the question whether such was the objective sought much-less whether it was achieved."

Bennett Coleman and Company Limited v. *G. S. Monga and another* (13), relates to publication of a plaint with a photograph of the plaintiff. It was pleaded on behalf of the Editor of the "Khalsa" the paper in which the plaint was published, that it was a mere item of news and thus not actionable (as is the defence in the case before us). The learned Judges of the Division Bench (Monoroe and Din Mohammad, JJ.) overruling this plea held the Editor of the paper guilty of contempt being of the opinion that the matter published/created an unfavourable view of the conduct of the defendant. They relied upon *Cheshire* v. *Strauss* (14), where Day, J. had said:—

> "It was shocking that newspaper should publish such matters as this which had

(12) A.I.R. 1958 Punj. 273.
(13) A.I.R. 1936 Lah. 917.
(14) (1896) 12 T.L.R. 291.

not been before any Court of Justice. There was no excuse for that. It was interfering with the course of justice to make public the statement of claim in this way, which was the *ex parte* statement of one side."

In this connection, they found considerable force in the arguments of Mr. Carson (afterwards Lord Carson) in *Cheshire* v. *Strauss* (14), that if such a thing could be done, no one was safe as all that a man had to do was to commence an action against a public man, draw up a statement of claim containing any matters of prejudice he might choose to invent, and then threaten to make public the statement of claim.

The dictum of Malins V. C. in *re Cheltenham and Swansea Railway Carriage and Waggon Company* (15), that the publication of a petition for the winding up of a company containing charges of fraud against the Directors, before the hearing of the petition constituted contempt was relied upon.

In *re Subrahmanyan* (16), a Full Bench of the Lahore High Court held that any publication which is calculated to poison the minds of jurors, intimidate witnesses or parties or to create an atmosphere in which the administration of justice would be difficult or impossible amounts to contempt. In this connection, agreeing with the remarks of Rankin C.J., in *Anantalal Singha* v. *Alfred Henry Watson* (17), their Lordships, however, ruled that before a Court will take notice of such a publication, it must be satisfied that the matter published tended substantially to interfere

((15) (1869) 38 L.J. Ch. 330.
(16) A.I.R. 1943 Lah. 329 (F.B.)
(17) I.L.R. 58 Cal. 884.

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with the course of justice or was calculated substantially to create prejudice in the public mind.

The Single Bench decision in *Atindra Narayan Roy* v. *Hemanta Kumari Devi and others* (18), on which reliance is placed on behalf of the respondents in no way helps them. It is true that their committal for contempt for publication of a plaint containing resume of allegations against the defendants was not recorded but that was because of the express finding of the Court that it did not contain matter likely to prejudice the defendant in the eyes of the Court or the public. Even in that case the learned Judge had observed that if the editors and proprietors of newspapers take upon themselves to publish copies or resume of pleadings and similar documents in pending suits, they do so at considerable risk.

On consideration of the various authorities, the correct rule in such matters, in my opinion, is that is laid down in the case of *Gaskell and Chambers Limited* v. *Hudson, Dodsworth and Company* (8). Mere publication of a document or pleadings of a party does not amount to contempt. Each case has to be examined on its own facts, and if the Court comes to the conclusion that the publication tends to prejudice public mind against a party or deter witnesses or obstruct the course of justice, it will commit the offender for contempt.

Examining the report published in the respondent's paper on 21st January, 1963, in this light, there can be no doubt that it tended to prejudice the public mind against the petitioner by accusing the defendants of breach of contract before they appear in answer to the claim and put in their defence. But it is a well-settled rule in

(18) A.I.R. 1934 Cal. 606.

dealing with cases of this type that before a Court will take notice of such a publication, it must be satisfied that the matter published tended substantially to interfere with due course of justice or was calculated substantially to create prejudice in the public mind, and the Court will not take action where the offending matter amounts to what is sometimes referred to as a technical contempt (in *re Subrahmanyan* (16), Supra). In this connection, a reference may also be made to Halsubury's Laws of England (Third Edition, Volume 8), where it is stated at page 12:—

> "It may be contempt to publish copies of the pleadings or evidence in a cause while proceedings are pending, but the Court will not interfere unless the publication is calculated really to interfere with a fair trial."

On going through the report published by the respondents to which exception is taken on behalf of the petitioners, I am not convinced that this publication of a summary of the plaint, which in my opinion is not incorrect, tended to create such prejudice in public mind against the petitioners as to cause substantial interference with course of justice. It is complained on behalf of the petitioners that the report in question was published out of spite to discredit them because of the business rivalry between the two concern. Merely because the parties are engaged in competing businesses an inference of *mala fides* cannot be drawn. Proceedings for contempt are not intended to satisfy the grudge of a private party but to ensure fair trial and preserve the dignity of the Court. The contempt in this case being only of technical nature no action is called for against the respondents.

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In view of what has been said above, I discharge the rule issued against the respondents but leave the parties to bear their own costs. I cannot, however, help observing that even in discharge of their duty as journalists engaged in dissemination of news of public interest the respondents should have acted with circumspection and should have waited at least till the defendants in the suit had appeared and replied to the averments in the plaint.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and Prem Chand Pandit, JJ.

MOHAR SINGH,—*Appellant.*

Versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 313 of 1963.

1964

March, 26th.

Punjab Panchayat Samitis (Primary Members) Election Rules, 1961—Rule 4—Interpretation of—Election programme changed by Deputy Commissioner—Nominations filed in accordance with earlier programme—Whether valid for the changed programme.

Held, that a plain reading of sub-rule (3) of Rule 4 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, would show that both the Government and the Deputy Commissioner can at any time by an order in writing amend, vary or modify the election programme. But the proviso to this sub-rule makes it clear that the proceedings already taken before the passing of such order will not be invalidated, unless the Government—not the Deputy Commissioner—otherwise directs. In the present case, the Deputy Commissioner had issued a fresh election