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he entrusted to the Railway Administration for carriage from Aligarh to Khulna which was in the Dominion of Pakistan. The researches into the Law Reports do not show that the principle which would be applicable to commercial corporations has ever been applied to the Government. At least I am not aware of any case and none has been cited at the Bar which would show that the principle laid down in *Doya Narain Tewary's case* has ever been dissented from in this country. I, therefore, dismiss this petition and discharge the rule, but in view of the importance and newness of this case in regard to the Dominion of India I do not think the opposite party are entitled to any costs.

CRIMINAL ORIGINAL

Before Khosla and Falshaw, JJ.

1951

April 12th.

S. KAPUR SINGH, I.C.S.,—*Petitioner.*

versus

L. JAGAT NARAIN, EDITOR, PRINTER and PUBLISHER of the daily "HIND SAMACHAR" JULLLUNDUR,—*Respondent.*

Criminal Original No. 3 of 1951.

Contempt of Court—Commissioner appointed under the Public Servants Inquiries Act (XXXVII of 1950)—Whether a Court—If so, whether it is subordinate to the High Court —Technical Contempt—Punishment for—Rule stated—Contempt of Courts Act (XII of 1926) Sections 2 and 3.

Held, that the Commissioner appointed under the Pubilc Servants Inquiries Act though not competent to give final decision is nonetheless a court as he has the powers of a court regarding the summoning of witnesses and other matters.

Held further, that the Commissioner is a Court subordinate to the High Court under section 2 of the Contempt of Courts Act read with section 8 of the Public Servants Inquiries Act and Articles 226 and 227 of the Constitution of India. High Court has the power to punish the offender

for his contempt. In the matter of punishment for contempt, the purpose of the Court's action is a practical purpose and the court will not exercise its jurisdiction upon a mere question of propriety where the tendency to do harm is slight and where it can properly be ignored.

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Khosla J.

Petition, against L. Jagat Narain Editor, Printer and Publisher of the daily "Hind Samachar", Jullundur, to show cause why he should not be punished under section 3, Contempt of Court Act (Act XII of 1926).

BHAGAT SINGH CHAWALA, for Petitioner.

A. R. KAPUR, A. M. SURI and YASPAL GANDHI, for Respondent.

JUDGMENT.

FALSHAW, J. Lala Jagat Narain has been called on as Editor, Printer and Publisher of an Urdu daily newspaper published at Jullundur called "The Hind Samachar" to show cause why he should not be punished under section 3 of the Contempt of Courts Act of 1926 with regard to a leading article which appeared over his name in the issue of the paper, dated the 12th March 1951.

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The petitioner in the case is Sardar Kapur Singh, I.C.S., against whom an inquiry has been in progress for several months under the Public Servants Inquiries Act XXXVII of 1950. It so happens that the person who has been appointed by the Government as the Commissioner under the Act to hold this inquiry is my Lord the Chief Justice of this Court. The passage in the article in question which is complained against by Sardar Kapur Singh has been translated in the petition as follows :—

> "I have to ask one straight question from Doctor Bhargava. Can he point out any Department from which work can be taken without bribery? Is he not aware that, when he was opposition Leader, what

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speeches he used to make and what he used to say about the corruption in the Administration? To-day this corruption has increased and not decreased. In the times of the Englishmen public servants feared that they might be dimissed. To-day the public servants are emboldened that they have the Ministers and M.L.A.s at their back. They work for them, and therefore, their corruption can be overlooked. A very clear instance of this is before us. An Ex-Deputy Commissioner was suspended by the Punjab Government for corruption, a judicial enquiry into this is proceeding. In the defence of this Ex-Deputy Commissioner, one Minister of the Punjab Government and the Chief Whip of the Congress Assembly Party have appeared as defence witnesses. The Chief Whip in his deposition has made allegations against the Chief Secretary. The Punjab Government is sitting silent like a statue. Under these circumstances if the public servants practice corruption openly, how can they be stopped."

Before going into the question whether the passage complained against amounts to a contempt of Court, it is necessary to deal with a preliminary objection which has been raised on behalf of the respondent, which is that this Court has no jurisdiction to take proceedings against the respondent for contempt of Court in respect of a reference in the newspaper to proceedings before the Special Commissioner appointed to hold the inquiry under the Act into the conduct of the petitioner. The argument of the learned counsel for the respondent is that the contempt of Courts Act, 1926, only gives the High Court, the power to deal contempts of Courts subordinate to it in the same way as it deals with contempts of itself, and the Court of a Commissioner appointed to hold an inquiry under the Act of 1850, if indeed it is a Court, is in no sense a Court sub-

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ordinate to the High Court. It is further contended —and this point is not disputed by the learned counsel for the petitioner—that the power of this Court to deal with the present alleged contempt is not affected in any way by the fact that the Commissioner appointed to hold an inquiry under the Act of 1850 happens to be my Lord the Chief Justice. The first stage in the argument of the learned counsel for the respondent is the contention that the Court of the Commissioner, as it is convenient to call it, is not even a Court, but it seems to me that this contention was not meant to be taken very seriously. In fact the only decision cited by the learned counsel for the respondent tended rather to go against him. This was the case *M. M. Khan* v. *The Crown,* reported as I.L.R. 12 Lah 391. The facts in the case were that some Special Commissioner under the Act of 1850 had been appointed to hold an inquiry against Mr. M. M. Khan an officer in the Irrigation Department, and the question arose whether the Special Commissioners were a Court for the purpose of filing a complaint under section 195, Criminal Procedure Code, regarding a document put in by M. M. Khan which was thought to be forged. Harrison, J., held that the officers appointed as Special Commissioners under the Act of 1850 to hold an inquiry regarding the conduct of a public servant, constituted a Court within the meaning of section 195 of the Code of Criminal Procedure and therefore a complaint by them was necessary. The Public Servants Inquiries Act itself seems clearly to indicate that a Commissioner or Commissioners appointed under the Act constitute a Court as they are given all the powers of a Court regarding the summoning of witnesses and other matters, and the only real ground on which the learned counsel for the respondent could base his argument that the Commissioner does not constitute a Court was that he can give no final decision, but merely has to draw up a report giving his findings on the charge or charges against the respondent, which is to be forwarded to the Government. In my opinion, however, this fact alone is not sufficient to make the Commissioner or Commissioners anything other than a Court and it is to be

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noted that the definition of Court in section 3 of the Evidence Act is very wide indeed as it reads—

> "Court includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence."

The question however, whether, the Court of the Commissioner is a Court subordinate to this Court within the meaning of the Contempt of Court Act is undoubtedly much more difficult. There can be no doubt whatever that the Court of the Commissioner is not subordinate to this Court in anything like the same sense in which the Courts of Magistrates, Subordinat Judges and the District and Sessions Judges are subordinate to it, i.e., that apart from any direct control exercised by this Court over those Courts, their decisions come up to this Court by way of appeal or revision. Such a decision as the Commissioner may come to regarding whether the charges against the public servant are established or not is merely embodied in a report and sent to Government, which can take such action as it thinks fit upon this report, and this Court has no power to interfere. The learned counsel for the respondent maintains that the word "subordinate" in the Contempt of Courts Act is used in the narrow sense of Courts which are subordinate to this Court in that their decisions can be brought to this Court by way of appeal or revision. On the other hand the learned counsel for the petitioner relies on the provisions of section 8 of the Public Servants Inquiries Act and Article 227 of the Constitution. The relevant portion of section 8 of the Act of 1850 reads—

> "The Commissioners shall have the same powers of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by the Code of Civil Procedure 1898 and shall have the same powers for the summons of witnesses, and for compelling the production of

documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection as the Zila and City Judges....."

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The part of this section which deals with the powers of Commissioners to punish contempts of Court only relates to the punishment of contempts which take place in the presence of the Court, i.e. those punishable under the Indian Penal Code, the power to deal with which in the case of subordinate courts is even now specifically denied to the High Court in subsection 3 of section 2 of the Contempt of Courts Act of 1926. The words particularly relied on, however, are those relating to the same protection as the Zila and City Judges, which, it is contended, mean that the High Court can protect the Court of the Commissioner just as it can protect the Courts subordinate to it by punishing contempts other than those punishable by the subordinate Courts themselves. I am, however, inclined to agree with the learned counsel for the respondent that this is a somewhat doubtful interpretation of the word "protection" in this contact. His contention was that this protection is the protection referred to in an Act passed earlier in the same year, 1850, namely, the Judicial Officers Protection Act, XVIII of 1850. This Act consists of a single section prohibiting the bringing of any suit in a Civil Court against any Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially in respect of any act done or ordered to be done by him in good faith in his judicial capacity. The use of the word "protection," which is not a very common, word in statutes, in the two Acts passed in the same year would certainly indicate that the legislature in the second Act had in mind the meaning of the word used in the first Act. In any case, as is pointed out by the learned counsel for the respondent, it is clear that when the Contempt of Courts Act, 1926, was passed it was simply with the object of setting aside doubts which had arisen in the conflicting decisions of High Courts as to whether High Courts were competent to punish contempts of

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Court other than those punishable by the Courts themselves and therefore it hardly seems likely that the word "Protection" was used more than seventy years earlier in the Act of 1850 in the wider sense of protection by the High Court from contempts. On the whole, therefore, I am not inclined to accept this part of the argument of the learned counsel for the petitioner, but it seems to me that he is on stronger ground in his reliance on Article 227 of the Constitution, which reads—

"(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercise jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such Courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

It is clear that this Article gives the High Court Superintendence over all courts and tribunals functioning in its territories other than Courts martial, i.e. Courts constituted under the Army, Navy or the Air Force Acts, and it cannot possibly be urged that the Court of a Commissioner holding an inquiry under the Act of 1850 is not a Court over which the High Court is given superintendence under this Article. The only argument which the learned counsel for the respondent was able also to advance against this proposition was that owing to the elaborate provisions of the Act of 1850 itself there was no necessity at all for the High Court to take any of the actions mentioned in subclauses 2 and 3 of the Article, but this does not preclude the application of the Article as a whole, since clause (2) begins with the words "Without prejudice to the generality of the foregoing provision...."

The question at issue resolves itself into one whether the power of superintendence given by Article 227 means that the Court of a Commissioner is subordinate to the High Court within the meaning of section 2 of the Contempt of Courts Act, whether in the latter section the word "subordinante" is used in its narrowest sense. It would seem that Article 227 is to be read with Article 226 which gives the High Court power to issue writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto and certiorari.* The learned counsel for the petitioner is undoubtedly right in his contention that if a Commissioner appointed under the Act of 1850 to hold an inquiry did not in the course of the inquiry follow the procedure laid down in the Act, the aggrieved party would be entitled to apply to the High Court for the appropriate writ, and this certainly is one form in which the power of superintendence of the High Court referred to in Article 227 would be exercised. The word "superintendence," however, appears to mean more than this and on the whole I am inclined to take the view that Superintendence would include the power to deal with a contempt of Court of a kind not punishable by the Court of the Commissioner itself, and that for the purpose of the

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Contempt of Courts Act the word " subordinate " would include all courts and tribunals over which the High Court is given the power of superintendence under Article 227 of the Constitution.

The question therefore remains for determination whether the passage complained against amounts to a contempt of Court. The grounds on which this allegation is made are that the offending passage states or implies—

(a) That the petitioner was corrupt.

(b) That the Hon'ble Sardar Ishar Singh Majhail, Minister of the Punjab Government, and Chaudhri Kartar Singh, the Chief Whip of the Congress Assembly Party, had appeared as defence witnesses in the inquiry not in order to speak the truth but in order to help Sardar Kapur Singh in consideration for improper favours shown to them by him as a public servant.

(c) That it was intrinsically improper and inculpable to make a statement in the Court of a Commissioner which amounted to a criticism of the Chief Secretary.

(d) That it was the duty of the Punjab Government to take action against the witnesses for having appeared in defence of Sardar Kapur Singh irrespective of whether their depositions have been true or false and also a fact that when they were summoned as defence witnesses they had no alternative but to appear.

(e) That anyone who appears in defence of a public servant against whom the Government has started inquiry encourages and supports corruption in the administration.

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On behalf of the respondent it is strenuously denied that the passage in question amounted to a contempt of Court and attached to the written statement of the respondent there is a translation of the whole of the article from which the offending passage has been taken. The article in question is quite a long one covering almost four and a half typed foolscap pages, and it is headed "Budget Session of the Punjab Assembly". This Session had just started when the article appeared, and there does not appear to be any doubt from the trend of the article as a whole that the primary object of it was to make an attack on the ministry, and that the reference to the inquiry against Sardar Kapur Singh was purely incidental, the main criticism in this particular passage being against the conduct of the Hon'ble Minister and the Chief Whip of the Congress Assembly Party. The article begins with some criticism of the Ministry for passing a resolution of thanks to the Governor for his opening address to the Assembly, and then proceeds to deal, in particular with the question of corruption, the speech of the Hon'ble the Chief Minister on this point being severely criticised on account of the alleged change in his attitude from the time when he was in opposition. The offending passage appears towards the end of the article. However, even though, as I have said, the criticism of the ministry appears to be the Chief object of the article as a whole, and criticism of the Hon'ble Minister and the Chief Whip who appeared as defence witnesses in the inquiry the chief object of the passage to which objection has been taken, this fact alone is not sufficient to absolve the offending passage from amounting to a contempt of Court. The argument of the offending passage in a nut shell is that when ministers and important officials of the party in power appear as witnesses in the defence of a public servant against whom an inquiry is being held on charges of corruption, it amounts to an encouragement to public servants to be corrupt. The assumption underlying the argument, without which indeed the argument would have no force, is that the particular public servant on whose behalf the Hon'ble

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Minister and the Chief Whip appeared as defence witnesses was in fact corrupt, since it is clear that no objection could be taken to their conduct if they appeared as defence witnesses and told the truth on behalf of an innocent officer against whom false charges of corruption had been brought. The publication of anything which implies or assumes the guilt of any person against whom a case or an inquiry is still pending obviously amounts to a contempt of Court, but whether in the circumstances we need take a serious view of the matter as to impose any punishment on the respondent is a different matter. In the first place, as I have already observed, the main object of the article was an attack on the ministry and the reference to the inquiry against Sardar Kapur Singh, who, it may be mentioned, was not even named in the article, was purely incidental, and in the second place, the contempt of Court could not in the circumstances of the present case possibly have been expected to have any effect whatever on the course of justice, since it is most unlikely that my Lord the Chief Justice would ever have heard of the article, or even of the existence of the newspaper, unless his attention had been drawn to it by the petitioner. It hardly seems necessary to speculate on what effect the article might have had on the mind of my Lord Chief Justice even if he had become aware of it independently of the present position.

One case has been cited by the learned counsel for the respondent which is in some respects similar to the present case. This is the case of *Anant Lal Singh and others* v. *Alfred Henry Waston*, decided by Rankin, C. J., and Constello J. and reported as A.I.R. 1931 Cal. 257. The parties in those proceedings were connected with rival newspapers, the petitioners being connected with a newspaper called "The Advance" and the respondent being the editor of the "Statesman". Some controversy had been going on between these two newspapers regarding the connection of the Congress Party with the terrorist activities which were prominent in the news in those days, and in order to score a point in the controversy the editor of the

"Statesman" unfortunately chose to criticise the conduct of Mr Sarat Chandra Bose, an advocate of the Calcutta High Court, who some time before had announced that he was giving up his practice in order to devote himself entirely to work for the Congress party, but had at that time been reported as having undertaken the defence of some accused persons in what is known as the Chittagong raiders case. In an article in the "Statesman" doubts were cast on whether defending the "Chittagong raiders" was a legitimate Congress activity. The use of the phrase "Chittagong raiders" clearly implied, though the implication may not have been intentional, that the accused, who were still on trial, were guilty and so the case is similar to the present case in that the newspaper had used language which presupposed the guilt of the persons on trial and therefore amounted to a contempt of Court, although the main object of the article was criticism of an attack on some other person than the accused in the case and the reference to the case was incidental to the argument. In these circumstances Rankin, C.J., held that, technically a contempt of Court had been committed, but he was of the opinion that the jurisdiction of the Court in contempt was not to be invoked unless there was real prejudice which could be regarded as a substantial interference with the due course of justice, and it was not every theoretical tendency that would attract the action of the Court in its very special jurisdiction. He then went to say —

> "The purpose of the Court's action is a practical purpose and, it is reasonably clear on the authorities that this "Court will not exercise its jurisdiction upon a mere question of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment or otherwise such that it can properly be ignored."

The result was that with the agreement of Costello, J., the rule was discharged. In the circumstances of the

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present case I would adopt the similar course and discharge the rule but order the respondent to pay Rs 100 as costs.

KHOSLA, J —I agree.

REVISIONAL CIVIL

1951

April 20th

Before Soni, J.

THE GOVERNMENT OF RAJISTHAN JAIPUR, through GENERAL MANAGER BIKANER STATE RAILWAY, BIKANER,—*Petitioner.*

versus

MESSRS GIASI RAM-MOOL CHAND, through GIASI RAM, and (2) DOMINION OF INDIA,—*Respondents.*

Civil Revision No. 12 of 1951

Civil Procedure Code (V of 1908), Section 86—Suit against Bikaner State Railway—Merger of State—New State of Rajasthan formed—Whether suit against a ruling chief—Consent of the Central Government under Section 86 whether necessary.

Held, that the suit against the Government of Rajasthan stands on the same footing as a suit against His Highness the Maharaja of Bikaner and the consent of the Central Government under section 86 of the Civil Procedure Code was necessary and the suit having been filed without such consent was not maintainable.

Petition under section 44 of Act 9 of 1919, Punjab Courts Act, for revision of the order of Shri G. S. Bedi, Sub-Judge, 1st Class, Gurgaon, dated the 18th August 1950, holding that the suit is competent in the absence of consent of the Central Government as laid down in section 86 of the Civil Procedure Code.

BISHAN NARAIN, for Petitioner.

NEMO, for Respondents.