

CRIMINAL ORIGINAL

Before A. N. Bhandari, C.J., and Bishan Narain, J.

S. GYAN SINGH VOHRA, ADVOCATE,—Petitioner

versus

SHRI RAM BHEJA LAL MALIK; ADVOCATE.—Respondent

Criminal Original No. 10-D of 1957.

1958
 —————
 Dec., 23rd

Contempt of Court Act (XXXII of 1952)—Person attacking the integrity of a retired judge of the High Court while in office after his retirement—Whether guilty of Contempt of Court—Contempt of Court—Essence of the offence stated.

Held, that an attack upon the integrity of a recently retired Judge of the High Court in relation to the performance of his duties as a Judge while in office does not amount to contempt of Court. Nor does any libellous and defamatory statement made against a retired Judge relating to his judicial conduct and character amount to contempt of Court. It is immaterial whether the judge retired recently or has been on the retirement list since a long time.

Held, that in substance the contempt of Court consists of disrespect to the fountain-head of justice or to the authority of Sovereign State exercised through Courts of Law. When a person has ceased to be a Judge on retirement or otherwise, then it cannot be said that a libellous statement made against him regarding his judicial conduct or character amounts to disrespect to Court or to the fountain-head of justice or to the authority of Sovereign State exercised through courts of law. As soon as a Judge lays down the reins of his office for whatever reasons, he ceases to hold any judicial position and he ceases to be a constituent of courts of law. After ceasing to be a Judge, he cannot be said to be exercising judicial functions of the Sovereign State. A person who ceases to hold a judicial post ceases to have from that moment any connection with courts of law and becomes a private citizen. He ceases to represent the majesty of law and also ceases to be a constituent of the court. The break is immediate and absolute.

The moment he ceases to be a Judge, he becomes incapable of making an order or giving a decision which can be considered to be that of a Court of law. There is no reason whatsoever for extending the protection which is given to a person representing majesty of law to a quondum Judge, merely on the ground that at one time he enjoyed such a protection. After all the essence of offence in contempt proceedings is against the Sovereign State in its judicial aspect and not against the Judge as a private individual. It is well-established that a libellous statement against a Judge which has no connection with his judicial capacity does not amount to contempt of court.

Held, that contempt of court takes place whenever a person's conduct tends to being the authority and administration of law into disrespect or is designed to or tends to prejudice litigants or the witnesses during the litigation. The essence of contempt is action or inaction amounting to an interference with or obstruction to or having tendency to interfere with or obstruct due administration of justice.

Held, that when any act is done which is calculated to bring a Judge into contempt or to lower his authority, it amounts to contempt of court. The reason for this conclusion is obvious. When a Judge is scandalised, then authority and prestige of the court of which he is a constituent is also adversely affected. The decision of a Judge so scandalised would become suspect and the public will lose confidence in his orders and judgments and to a certain extent also lose confidence in courts of law. Such state of affairs must necessarily interfere with and obstruct due administration of justice. This result cannot follow when the person so attacked is not a Judge but a quondum Judge.

Petition under Sections 3 and 4 of the Contempt of Courts Act, XXXII of 1952, praying that for the acts and reasons mentioned in the petition, the respondent be committed for contempt of the court or otherwise dealt with according to law, as the Hon'ble Court deems fit.

D. D. CHAWLA and G. S. VOHRA, for Petitioner.

CHARANJIT LAL, T. R. BHASIN and RAM BHEJA LAL MALIK,
for Respondent.

JUDGMENT

Bishan Narain,
J.

BISHAN NARAIN, J.—The only question that requires determination in this case is whether or not a person who attacks the integrity of a recently retired Judge of this Court in the course of his judicial duties after the Judge has retired, can be held guilty of contempt of Court.

This question has arisen in the application filed by Shri Gyan Singh Vohra, an Advocate of this Court under the Contempt of Courts Act, 1952, against Malik Ram Bheja Lal another Advocate of this Court. The history sheet of the events leading to this application has been given by Mehr Singh, J. in some detail. It will be convenient to give a few salient facts which are relevant for the purposes of deciding this question.

Before partition of the country the two Advocates were settled in Lahore. They migrated to Delhi in 1947. One Sardul Singh Caveeshar was the Managing Director of (i) the New Hindustan Bank, Ltd., and of (ii) the Peoples Insurance Co., Ltd. The Bank went into voluntary liquidation and some time in April, 1948, Shri M. C. Sethi and Shri Kartar Singh were appointed joint liquidators. Shri Sethi resigned and Malik Ram Bheja Lal was appointed in his place. In 1949 the High Court brought the liquidation of the Bank under its supervision. Malik Ram Bheja Lal was also appointed legal adviser of the Insurance Co. at the time of his appointment as Joint Liquidator of the Bank. After the liquidation had been taken under supervision by the High Court, Shri Gyan Singh Vohra superseded Malik Ram Bheja Lal as legal adviser of the Insurance Co. Thereafter Sardul Singh Caveeshar along with some others applied under section 213 of the Indian Companies Act to the High Court on 27th November, 1949, through

Shri Vohra for removal of Malik Ram Bheja Lal S. Gyan Singh
 from Joint Liquidationship. At that time Harnam Vohra, Advocate
 Singh, J., was dealing with liquidation cases. v.
 Evidence was recorded in the case in due course Shri Ram Bheja
 but before it could be decided on merits, Malik Lal Malik,
 tendered his resignation on 10th July, 1950, to the Advocate
 learned Judge stating that due to his private cir- Bishan Narain,
 cumstances, he found it impracticable to continue J.
 as Joint Liquidator. The learned Judge accepted
 this resignation. As was to be expected on the
 filing of this application, the relations between the
 two Advocates became strained. It appears, how-
 ever, that these relations became extremely bitter
 and both the Advocates embarked on a career of
 filing Civil and Criminal cases against each other
 directly or indirectly. Ultimately on 18th Febru-
 ary, 1957, Shri Vohra filed a suit for the recovery
 of Rs. 1,500 as damages for defamation against Malik
 and on 8th March, 1957, Malik retaliated by filing
 a similar suit but for recovery of Rs. 10 only. In
 this reference we are concerned with Vohra's case
 only. In para 5 of his plaint he alleged that after
 the evidence had been recorded, Malik tendered
 his resignation "seeing writing on the wall." In
 reply Malik prayed that the allegation of Vohra in
 this paragraph be expunged as scandalous and ir-
 relevant and then proceeded to give his own ver-
 sion of the circumstances in which he had tendered
 resignation in 1950. In this explanation, besides
 making allegations against Vohra and others, he
 alleged that on account of the attitude of Harnam
 Singh, J., he had applied to the Chief Justice for
 transfer of the case and learning of that applica-
 tion, the learned Judge consulted the then Adv-
 ocate-General who expressed his opinion that con-
 tempt of court proceedings could not be taken on
 this application. This, according to Malik, annoyed
 the learned Judge. Malik further alleged in this
 written statement that the learned Judge was on

S. Gyan Singh
Vohra, Advocate
v.
Shri Ram Bheja
Lal Malik,
Advocate
Bishan Narain,
J.

friendly and social terms with Sardul Singh Caveeshar and that he threatened to give his judgment against Malik if he did not resign. According to Malik the attitude of the Judge impelled and compelled him to tender his resignation. The written statement in which these allegations have been made was filed by him in Court on 16th April, 1957 and a month later Vohra made this present application on various grounds, including the ground that serious allegations had been made against a Judge of this Court relating to his judicial work. It may be stated here that Harnam Singh, J., retired on attaining the age of superannuation in April, 1956, i.e., about a year prior to the filing of the written statement by Malik. The application for contempt of Court came before Mehr Singh, J., who rejected all the grounds raised by Vohra but so far as the matter relating to the retired Judge of this Court was concerned, the learned Judge referred the following question for decision by a larger Bench:—

“Whether an attack upon the integrity for a recently retired Judge in relation to the performance of his duties as a Judge while in office of this Court, as in the circumstances of the present case, amounts to contempt of court or not.”

It is this question that is to be decided by this judgment. This question assumes that if these allegations had been made when the learned Judge was still a Judge of this Court, then Malik would have been guilty of the offence of contempt of court and it is on this assumption that I proceed to discuss the matter.

The learned counsel for both sides were unable to cite any English or Indian decision wherein

this question has been directly or indirectly discussed. The point must, therefore, be decided on basic principles on which the jurisdiction relating to contempt of court rests.

S. Gyan Singh
Vohra, Advocate
v.
Shri Ram Bheja
Lal Malik,
Advocate

Contempt in law primarily signifies disrespect. Oswald in his well-known book on Contempt of Court described the scope of the subject in these words:—

Bishan Narain,
J.

“It is proposed to consider only contempt in its secondary or derivative aspect as an offence against the courts or persons to whom the judicial functions of the Crown are delegated or as it is commonly called ‘contempt of court’; that is of the judicial courts and not contempt of the High Court of Parliament; discussions of which will be found in treatises dealing with Parliament.”

In the opinion of Oswald, all legal contempt in its origin will be found to consist of an offence more or less direct against the sovereign himself or the fountain head of law or justice or against his place where justice is administered.

Willmot, C. J., in *Rex v. Almon* (1), has observed that a libel upon a court is a reflection upon the King and the arraignment of the justice of the Judges is arraigning the King’s justice.

Cockburn, C. J. in *Queen v. Lefroy* (2), observed:—

“These Westminster Courts were originally carved out of the one Supreme Court and are all divisions of the Aula regis

(1) 97 English Reports 94 at p. 100
(2) (1873) L.R. 8 Q.B. 134(7)

S. Gyan Singh
Vohra, Advocate

v.

Shri Ram Bheja
Lal Malik,
Advocate

Bishan Narain,
J.

where it is said the King in person dispensed justice and their power of committing for contempt was an emanation of the Royal authority for any contempt of the Court would be a contempt of the Sovereign."

As observed by Rajagopalan, J., in *Mr. Hayles; Editor of "The Mail" and another* (1), "in its ultimate analysis contempt of court is contempt of the authority of the Sovereign State exercised through its Courts, duly constituted for the administration of justice."

From these opinions, it is clear that in substance the contempt of court consists of disrespect to the fountain head of justice or to the authority of Sovereign State exercised through Courts of Law. Willmot. C. J., in *Rex v. Almon* (2), has observed that "Court" means the Judges who constitute it and who are entrusted by the Constitution with a portion of jurisdiction defined and marked out by law."

It follows from the above discussion that when a person has ceased to be a Judge on retirement or otherwise, then it cannot be said that a libellous statement made against him regarding his judicial conduct or character amounts to disrespect to Court or to the fountain head of justice or to the authority of Sovereign State exercised through courts of law. As soon as a Judge lays down the reins of his office for whatever reasons, he ceases to hold any judicial position and he ceases to be a constituent of courts of law. After ceasing to be a Judge, he cannot be said to be exercising judicial functions of the Sovereign State. A person who ceases to hold a judicial post ceases to have

(1) A.I.R., 1955 Mad, 1 (F.B.) at p. 20

(2) 97 English Reports 94 at p. 100

from that moment any connection with courts of law and becomes a private citizen. He ceases to represent the majesty of law and also ceases to be a constituent of the court. The break is immediate and absolute. The moment he ceases to be a Judge, he becomes incapable of making an order or giving a decision which can be considered to be that of a court of law. It was suggested in the course of arguments that immediately on retirement and within a few minutes any person can attack the retired Judge's judicial character and in the view that I am taking that person would not be guilty of contempt of court. In my view, this is so but it does not leave such a person who considers himself maligned and libelled without any redress. He can always seek the remedy available to him in a court of law as a private citizen. I see nothing unnatural or inconvenient or incongruous in this situation. There is no reason whatsoever for extending the protection which is given to a person representing majesty of law to a quondam Judge, merely on the ground that at one time he enjoyed such a protection. After all the essence of offence in contempt proceedings is against the Sovereign State in its judicial aspect and not against the Judge as a private individual. It is well established that a libellous statement against a Judge which has no connection with his judicial capacity does not amount to contempt of court (*In the matter of a special reference from the Bahama Islands* (1), The Supreme Court has approved the following observations made by Willmot, C.J. (Willmot's Opinions, page 256) in *Rex v. Davies* (2), in *Bathina Ramakrishna Reddy v. State of Madras* (3):—

“attacks upon the judges excite in the minds of the people a general dissatisfaction

(1) 1893 A.C. 138

(2) Willmot's Opinions page 256

(3) A.I.R. 1952 S.C. 149

S. Gyan Singh
Vohra, Advocate
v.
Shri Ram Bheja
Lal Malik,
Advocate
Bishan Narain,
J.

S. Gyan Singh
Vohra, Advocate

v.

Shri Ram Bheja
Lal Malik,
Advocate

Bishan Narain,
J.

with all judicial determinations..... and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the judges as private individuals but because they are the channels by which the King's justice is conveyed to the people."

It is obvious that when a Judge has retired, he has ceased to be a channel by which the King's justice is conveyed to the people.

For these reasons I am of the opinion that any statement made against a retired Judge even if it relates to his judicial character does not constitute "contempt of court."

There is another way of looking at the matter. It is firmly established that contempt of court takes place whenever a person's conduct tends to bring the authority and administration of law into disrespect or is designed to or tends to prejudice litigants or the witnesses during the litigation (*vide* Oswald on "Contempt of Court"). The essence of contempt is action or inaction amounting to an interference with or obstruction to or having tendency to interfere with or obstruct due administration of justice. Therefore, in essence offence of contempt of court is committed when the action complained of interferes with or obstructs due administration of justice. The legal position in such cases has been described in the following words in *Rex v. Gray* (1):—

"Any act done or writing published calculated to bring a Court or a Judge of the

(1) (1900) 2 Q.B. 36

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 Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke L. C., characterised as 'scandalising a Court or a Judge'."

S. Gyan Singh
Vohra, Advocate
v.

Shri Ram Bheja
Lal Malik,
Advocate

Bishan Narain,
J.

In the present case we are concerned with the first category with this difference that the allegation involved has been made after the Judge had retired and had ceased to hold a judicial post although it relates to his judicial conduct and character of the time when he held a judicial post. It is nobody's case that the allegations made by the respondent in the present case scandalise the High Court as such.

Now in the present case, the statement under consideration libels a Judge of this Court in his judicial capacity but this has been done only after his retirement, i.e. when he did not hold any judicial office or post: Therefore, at the time of making the statement, it does not scandalise a Judge but a quondam Judge. At that time he had no judicial authority and he did not represent the majesty of law. The statement was, therefore, made against a private individual. In these circumstances, it is difficult to hold that disrespect shown to a quondam Judge amounted to contempt of court.

The second class of contempt relates to administration of justice. When any act is done which is calculated to bring a Judge into contempt

S. Gyan Singh or to lower his authority, it amounts to contempt
 Vohra, Advocate of court. The reason for this conclusion is obvious.
 v.
 Shri Ram Bheja When a Judge is scandalised, then authority and
 Lal Malik, prestige of the court of which he is a constituent is
 Advocate also adversely affected. The decisions of a Judge
 Bishan Narain, so scandalised would become suspect and the pub-
 J. lic will lose confidence in his orders and judgments
 and to a certain extent also lose confidence in
 courts of law. Such a state of affairs must neces-
 sarily interfere with and obstruct due administra-
 tion of justice. This result cannot follow when
 the person so attacked is not a Judge but a quon-
 dam Judge. The reputation of a quondam Judge
 regarding his judicial character cannot affect the
 respect due to the Judges or to the Court which for
 the time being represent the majesty of law. A
 quondam Judge can deliver no judgment which
 may be considered to be suspect and he is not in a
 position to adversely affect the course of justice or
 reputation of courts of law by his conduct. If
 adverse comments are made against the judicial
 conduct and character of a retired Judge, then
 there is no warrant for holding that it would
 lower the prestige of courts of law as constituted
 at the time of making of that comment. As Bowen
 L.J. has observed in *Re Johnson* (1):—

“The law has armed the High Court of
 Justice with the power and imposed on
 it the duty of preventing *brevi manu*
 and by summary proceedings any at-
 tempt to interfere with the administra-
 tion of justice. It is on that ground
 and not on any exaggerated notion of
 the dignity of individuals that insults to
 judges are not allowed..... The
 principle is that those who have duties

(1) (1887) 20 Q.B.D. 68

to discharge in a court of justice are pro- S. Gyan Singh
 tected by the law, and shielded on their Vohra, Advocate
 way to the discharge of such duties, Shri Ram Bheja
 while discharging them, and on their Lal Malik,
 return therefrom, in order that such Advocate
 persons may safely have resort to courts Bishan Narain,
 of justice." J.

This principle is in no way affected by not extending this protection to quondam Judges. For these reasons, I am of the opinion that a defamatory statement made against a quondam Judge relating to his judicial character cannot interfere with or obstruct due course of justice and, therefore; cannot be held to be contempt of court.

It may be argued that defaming a quondam Judge in relation to his judicial work may amount to disrespect of court as it may amount to telling the public that the judicial work of the country is in the hands of corrupt persons or in the hands of persons who cannot administer justice impartially and judicially. Such allegations may lead to a general dissatisfaction and would, it may be said, amount to shaking public confidence in the administration of justice and would obstruct and interfere with the course of justice. If such an imputation can be spelt out of an alleged libellous statement, then it may be said to amount to scandalising the Sovereign State which appoints Judges. This, however, does not mean that it would amount to contempt of court so far as it relates to a quondam Judge. This aspect of the matter, however, need not be decided in this case because admittedly the allegations under consideration are directed against the Judge and not against the High Court. If it be considered that an attack on a Judge in his judicial capacity even if made after his retirement

S. Gyan Singh Vohra, Advocate
 v.
 Shri Ram Bheja Lal Malik, Advocate
 Bishan Narain, J.

per se scandalises a court and, therefore, is contempt of court, then even if adverse comments are made against retired Judges or dead Judge, say in history books, then those comments would technically amount to contempt of court. On this reasoning prosecutions of a Judge (under suspension) for corruption during his judicial work may also technically amount to contempt of court or so may the judgment given in that case. There is no rational reason at all for extending the doctrine of contempt of court to such cases.

It is significant that in no decided case nor in any commentary or discussion on the subject of contempt of court has there been at any time any suggestion that contempt of court can be committed by making a defamatory statement against a quondam Judge relating to his judicial character. This circumstance to my mind indicates that such protection has never been given to retired Judges.

In *Dallas v. Ledger* (1), a publisher ridiculed the jury after the case was over and after it had been discharged. The publication would have amounted to contempt of court if it had been made before the jury was discharged. Field, J., in such circumstances observed that there was an undoubted right to make comments upon the conduct of Judges and juries. The matter, however, was not discussed in detail as the counsel concerned had conceded that the publisher's right of comment existed in such cases. This shows that in England the protection available to Judges and other persons entitled to protection in the course of judicial proceedings has never been extended to discharged juries and on the same reasoning this protection cannot be extended to quondam Judges.

(1) (1887) 4 T.L.R. 432

For these reasons, I would answer the question referred to us in the negative and would hold that any libellous and defamatory statement made against a retired Judge relating to his judicial conduct and character cannot amount to contempt of court. In this view of the matter, it is immaterial whether the Judge retired recently or has been on the retirement list since a long time.

S. Gyan Singh
Vohra, Advocate
v.

Shri Ram Bheja
Lal Malik,
Advocate

Bishan Narain,
J.

A. N. BHANDARI, C. J.—I agree :

B. R. T.

REVISIONAL CRIMINAL

Before D. Falshaw, J.

SADHU RAM,—*Petitioner.*

versus

MST. AMAR KAUR AND OTHERS,—*Respondents.*

Criminal Revision No. 1378 of 1958.

Code of Criminal Procedure (Act V of 1898)—Sections 205 and 342—Personal attendance of the accused dispensed with—Such accused whether must attend in person for answering questions under Section 342.

1958

Dec., 24th

Held, that in the cases where the personal attendance of an accused has been dispensed with under section 205, Criminal Procedure Code, the accused must attend in person after the close of the prosecution evidence for questioning by the Court under section 342, Criminal Procedure Code.

Case reported under section 438 of Criminal Procedure Code by Shri G. S. Bedi, District and Sessions Judge, Gurdaspur, with his letter No. 3528/R.K., dated 28th October, 1958, for revision of the order of Naib-Tehsildar Gurdaspur, dated 4th October, 1958, dismissing the application under section 205 Cr. P. C.

NEMO, for Petitioner.

M. R. PUNJ, for Respondent.