

documents had been produced. The facts in *Vivekanand Nand Kishore's case* (3), show that the entire transaction was one and that the offence of cheating was closely allied to the other offences under sections 467 and 471 of the Indian Penal Code. In view of this it was found that in truth and substance the offence under section 420 of the Indian Penal Code could not be a distinct offence. In the present case, however, it has been found that the offence with regard to the payment of rupees ten thousand by the complainant to the accused at Hoshiarpur on their representation was a distinct and separate offence as compared with the other allegations relating to issuance of post-dated cheques and the production of an allegedly forged receipt.

(9) For the reasons stated above, I find that there is no merit in the second contention either and I dismiss the revision petition.

N. K. S.

ORIGINAL CRIMINAL

Before Man Mohan Singh Gujral, J.

STATE (on behalf of Court),—*Petitioner.*

versus.

DEWAN JAMAN LAL,—*Respondent.*

Criminal Original No. 220 of 1969.

April 3, 1970.

Judicial Officers Protection Act (XVIII of 1850)—Section 1—Execution of a decree—Judgment-debtor raising objection regarding the nullity of the decree—Executing Court deciding the objection—Whether protected by Judicial Officers' Protection Act—Contempt of Courts Act (XXXII of 1952)—Section 3—Jurisdiction under—Whether to be exercised sparingly—Acts amounting to contempt of Court—Stated—Communication sent to a Judicial Officer executing decree containing threat of damages and casting aspersions on his integrity—Whether amounts to contempt.

Held, that it is within the jurisdiction of the executing Court to decide all the objections raised by the judgment debtor including the objection that the decree which is sought to be executed is a nullity and cannot be executed. The Judicial Officer executing the decree is therefore protected by virtue of the provisions of Judicial Officers' Protection Act while dealing with the execution application and even if he

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were to wrongly decide the question whether the decree sought to be executed is a nullity or not or commits an irregularity or even illegality, he acts in judicial capacity and the protection under the Act is available to him. The only remedy open to the judgment debtor is to go up in appeal or revision against the decision and no damages can be claimed against the Officer personally.

Held, that the jurisdiction to punish for contempt of Court is an extraordinary jurisdiction and it is to be exercised in a summary manner. Though it cannot be denied that in proper cases it is necessary to exercise this power but it is equally well settled that recourse should be had to it after serious deliberations. The Court is both the accuser as well as the judge of the accusation, and it behoves the Court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in Courts and Tribunals. It is only when a clear case of contumacious conduct not explainable otherwise arises that the contemner must be punished.

Held, that it is difficult to enumerate the acts which may amount to contempt of Court, but the main question in all cases of contempt is whether the action or remark of the alleged contemner is or is not calculated to interfere with, interrupt or thwart the course of justice. Generally speaking, there are two kinds of contempt: one direct and the other indirect. If a person takes any action to prejudice a party to a pending litigation by, for example, telling the trial Judge something beyond the record of the case or publishing an article in a paper purporting to give what the writer deems the true facts of the case, his action tends directly to interfere with justice. If, on the other hand, he makes any remarks derogatory to the dignity of the Judge and if that remark is calculated either to put the Judge in an embarrassing position so that free administration of justice is jeopardised, or to make the litigant public lose confidence in the Judge, the maker of the remark thwarts justice indirectly.

Held, that a communication sent to a judicial officer executing a decree which not only contains a threat to recover damages from him personally if the decree is executed but also casts aspersions on his integrity and impartiality, amounts to an attempt to obstruct the course of justice and tends to lower the authority of the judicial officer by making the public lose confidence in his impartiality and sense of justice. The only object of sending such a communication is to embarrass the officer in the discharge of his duties so that he can be deterred from properly administering the justice. (Paras 9 and 10)

Proceedings taken under section 3 of the Contempt of Courts Act against the respondent on the recommendation made by Shri J. C. Nagpal, Senior Sub-Judge, Karnal.

M. L. NANDA, ADVOCATE, FOR ADVOCATE-GENERAL HARYANA, for the petitioner.

KRISHAN LAL, ATTORNEY of respondent.

JUDGMENT

MAN MOHAN SINGH GUJRAL, J.—Notice under section 3 of the Contempt of Courts Act came to be issued against Dewan Jaman Lal in the following circumstances. A decree for the recovery of Rs. 8,706.27 was passed against Dewan Jaman Lal and the judgment-debtor filed an appeal in this Court being Regular Second Appeal No. 937 of 1969. A civil miscellaneous petition was also filed in this appeal being Civil Miscellaneous No. 1754 of 1969, praying for the stay of the execution of the decree. On this application Pandit, J., passed the following order on 6th August, 1969 :—

“Notice. Early date. The decretal amount will be withdrawn by the decree-holder on furnishing adequate security for refund to the satisfaction of the executing Court. The adequacy of security will, however, be determined after notice to the judgment-debtor.”

This order was communicated to the Court of Shri Nagpal (by the order of this Court) *vide* letter No. 23111/Civil, dated 7th August, 1969. On 26th August, 1969, the decree-holder filed an application for the execution of the decree and notice of that application was issued to the judgment-debtor for 4th October, 1969. On this date Dewan Jaman Lal, judgment-debtor, appeared and filed an objection petition under section 47 of the Civil Procedure Code, a copy of which was given to the decree-holders who were also directed to furnish security of Rs. 10,000 for the restitution of the decretal amount. The decree-holders were also directed to file a reply to the objection petition on 18th October, 1969, to which date the application was adjourned. Before the objection petition could be decided the judgment-debtor Dewan Jaman Lal sent a registered notice to Shri Nagpal, Senior Subordinate Judge, Karnal, in whose Court the execution application was pending. The notice was received by him on 8th or 9th October, 1969. As this communication contained matter which appeared to scandalise Shri Nagpal and Shri Salig Ram Seth and also tended to interfere with administration of justice, Shri Nagpal forwarded this communication to this Court on the basis of which a notice was issued to the respondent to show cause why

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he should not be punished under section 3 of the Contempt of Courts Act.

(2) In reply it is stated that by issuing a notice under section 80 of the Civil Procedure Code the respondent had committed no contempt of Court and that the reference made by Shri Nagpal was the result of a conspiracy between the Senior Subordinate Judge, the Additional District Judge, Shri Chuni Lal, Advocate and Chetan Dass, decree-holder. It was also stated that as the decree against the judgment-debtor was a nullity it could not be executed and Shri Nagpal, therefore, had no jurisdiction in the matter and the judgment-debtor was within his rights to issue a notice under section 80 of the Civil Procedure Code to safeguard his interests. It was also stated that a prejudice against the respondent was prevailing in the subordinate Courts where the cases were pending. It was denied that the notice amounted to a threat to Shri Nagpal. According to the respondent, as Shri Nagpal was proceeding to execute the decree which was a nullity he had become personally liable for the legal consequences thereof. So, it was contended that the respondent was legally entitled to issue a notice under section 80 of the Civil Procedure Code. It was also stated that this reference was not a *bona fide* one but had been made to pressurise the respondent so that he may not expose some of the judicial officers and advocates of the Bar at Karnal. It was also added that the order of Shri Nagpal for the payment of the decretal amount in execution of a void decree was a gross abuse of the process of the Court and Shri Nagpal was himself liable for contempt of Court, and in order to safeguard himself against such an action, Shri Nagpal had moved for taking action against the respondent which was not otherwise maintainable under the law.

(3) In the reply which was filed on behalf of the respondent a prayer for summoning the records of certain cases pending in the lower Courts was made. A separate application was also filed by the respondent for summoning certain records from the lower Courts relating to suits pending between the respondent and Chetan Das and various applications filed in those suits. As it is not necessary in these proceedings to go into the legality of the orders that had been passed against the respondent in various cases, the files of those cases were not summoned and only the file of the execution case was sent for. Similarly, the prayer of the respondent made in the reply that he may be permitted to examine two Judges of this

Court, a retired District Judge of Karnal and some other Judicial Officers who had been posted at Karnal at some time was not accepted as in these proceedings under the Contempt of Courts Act, which are of a summary nature, no enquiry can be made about matters which are not strictly relevant to the question of contempt. In the reply it was not mentioned as to for what purpose it was necessary to examine all these witnesses. During arguments, however, it was brought out that the evidence of these witnesses was necessary so that the respondent could bring to light certain irregularities and illegalities which had been committed by the lower Courts at Karnal in the cases to which the respondent was a party and also to bring to the notice of the Court the atmosphere of prejudice which was prevailing against the opposite party at Karnal. Both these matters are of no interest so far as the question of contempt is concerned and such an inquiry is beyond the scope of the proceedings under section 3 of the Contempt of Courts Act. In *Sher Singh v. Raghu Pati Kapur and another* (1), it was observed that if the contemner wants to defend himself he should be afforded opportunity to do so having regard to the summary nature of the proceedings, but he cannot be allowed to produce witnesses to prove as to whether those documents had tendency to influence the Court. Seeking help from these observations, I am of the view that the contemner cannot be allowed to produce witnesses and documents to prove matters which are not strictly relevant to the inquiry relating to contempt.

(4) On behalf of the respondent a large number of authorities were cited to show that the decree which was a nullity could not be executed. It is not necessary to deal with these authorities as there is no dispute about the proposition of law urged before me and moreover the point dealt with in these cases does not arise in the present proceedings. The respondent having raised objection that the decree passed against him was a nullity it was the duty of the executing Court to decide the execution application in the light of the objections taken by the respondent in those proceedings. The executing Court could only come to a decision whether the decree passed against the respondent was a nullity or not after dealing with the objection petition filed by the respondent in accordance with law. The fact that the respondent filed objections in the execution proceedings would itself indicate that the respondent accepted that Shri Nagpal had the jurisdiction to decide the execution application

(1) 1967 P.L.R. 673.

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as well as the objection petition filed by him. The argument urged by the attorney of the respondent that, because in the objection petition a plea had been taken that the decree was a nullity the executing Court lost the jurisdiction to decide the execution application and the objection petition, is wholly without merit and cannot be accepted. It is within the jurisdiction of the executing Court to decide all the objections raised by the judgment-debtor including the objection that the decree which was sought to be executed was a nullity and could not be executed. I am, therefore, clearly of the view that Shri Nagpal had the jurisdiction to deal with the execution application as well as the objection petition filed by the respondent and in proceeding to decide these matters he was not acting illegally or without jurisdiction.

(5) Shri Nagpal, was, therefore, protected by virtue of the provisions of the Judicial Officers' Protection Act while dealing with the execution application and even if he were to wrongly decide the question whether the decree sought to be executed was a nullity or not, the only remedy open to the respondent was to go up in appeal or revision against the decision and no damages could be claimed against Shri Nagpal personally. The extent to which the Judicial Officers are protected has been considered in a number of cases and has been settled by the following observations made by the Supreme Court in *Anowar Hussain v. Ajoy Kumar Mukherjee and others* (2) :—

“The Act protects a Judicial Officer only when he is acting in his judicial capacity and not in any other capacity. But within the limits of its operation it grants large protection to Judges and Magistrates acting in the discharge of their judicial duties. If the act done or ordered to be done in the discharge of judicial duties is within his jurisdiction, the protection is absolute and no enquiry will be entertained whether the act done or ordered was done or ordered without believing in good faith that he had jurisdiction to do or order the act complained of. If the act done or ordered is not within the limits of jurisdiction, the Judicial Officer acting in the discharge of his judicial duties is still protected, if at the time of doing or ordering the act complained of, he in good faith believed himself to have jurisdiction to do or order the act.

(2) A.I.R. 1965 S.C. 1651.

The expression 'jurisdiction' does not mean the power to do or order the act impugned, but generally the authority of the Judicial Officer to act in the matter....."

On the basis of the above observations it was contended on behalf of the respondent that as Shri Nagpal was acting wholly without jurisdiction he was not protected as the protection available is not an absolute one. In my opinion, the observations in *Anowar Hussain's case* (2), do not support the contention raised on behalf of the respondent. While proceeding to decide the execution application filed by the decree-holder and the objection-petition filed by the judgment-debtor Shri Nagpal was acting in his judicial capacity and it was within his jurisdiction to decide these applications. Even if he had ultimately taken an erroneous view or had committed an irregularity or even illegality the protection under the Judicial Officers' Protection Act would have been available to him. There is no material on the record to show that Shri Nagpal was proceeding in the matter without believing in good faith that he had jurisdiction to proceed with the execution application. There is, therefore, no merit whatsoever in the contention raised on behalf of the respondent that Shri Nagpal was not protected by the Judicial Officers' Protection Act.

(6) Coupled with the argument that Shri Nagpal was not protected as he was acting illegally and without jurisdiction and a suit could be filed against him was another argument raised on behalf of the opposite party. It is contended that the notice under section 80 of the Civil Procedure Code was a step in judicial proceedings which were contemplated against Shri Nagpal and that the opposite party was absolutely privileged being a party to the proceedings which were to be initiated on the basis of the notice served on Shri Nagpal. The attorney appearing on behalf of the opposite party has not been able to substantiate this argument by any authority. I am, however, of the opinion that the contention is wholly without merit. It cannot be accepted that a person can be allowed to insult and terrorise a Judge by filing or threatening to file a suit and calling his communication a notice under section 80 of the Civil Procedure Code. This was also the view taken by Broomfield, J., in *re Tulsidas Amanmal Karani* (3). The following observations may be read with advantage :—

"On 26th March, 1936, Karani served a notice under S. 80, Civil P. C., on Mr. Kurwa stating his intention

(3) A.I.R. 1941 Bom. 228.

to file a suit in the High Court against him for a declaration that the remarks passed by him as Judge of the Small Cause Court against him (Karani) in the judgment in the small cause suit were false, unjustified, malicious and irrelevant, that in passing those remarks Mr. Kurwa did not act honestly, judicially or in good faith, and for the reliefs that the said remarks should be expunged and that Mr. Kurwa should be made to pay the costs. On 31st August, 1937, Karani served a further notice under S. 80 alleging that Mr. Kurwa had no jurisdiction to pass the *ex parte* decree in the small cause suit and that he had no jurisdiction to entertain the application under S. 151, also that he had no jurisdiction to make the false, unjustified, malicious and irrelevant remarks in his judgment."

In *Tulsidas Amanmal Karani's case* (3) the contemner had appeared as a witness in certain proceedings before the Court of Small Causes at Bombay. The Judge was unfavourably impressed with the demeanour of the contemner as a witness and while disbelieving his evidence he severely criticised his conduct. After this Karani issued a notice under section 80 of the Civil Procedure Code on Mr. Kurwa stating his intention to file a suit in the High Court against him for a declaration that the remarks passed by him as a Judge were false, unjustified, malicious and irrelevant. 'Mr. Karani sent a second notice alleging that Mr. Kurwa had no jurisdiction to pass the *ex parte* decree in the small cause suit, that he had no jurisdiction to entertain the application under section 151 of the Civil Procedure Code and that he also had no jurisdiction to make the false, unjustified, malicious and irrelevant remarks in his judgment. In view of these communications notices were issued to Karani to show cause why he should not be punished for contempt. In these proceedings, one of the arguments raised on behalf of Karani was that the letter sent by him was a step in judicial proceedings contemplated against Mr. Kurwa, having been sent by way of notice under section 80 of the Civil Procedure Code and that as a party he was absolutely privileged. While negating this contention Broomfield, J., made the above observations. The circumstances in the present case are somewhat analogous and the argument raised is fully answered in the observations of Broomfield, J.

(7) Even assuming that Shri Nagpal was not protected under the Judicial Officers' Protection Act and it was open to the respondent

to file a suit against him for having acted wholly without jurisdiction and thereby having caused loss to the respondent, the stage for issuing that notice had not arrived because at the time the notice was issued Shri Nagpal had not allowed the execution application and had not ordered the payment of the decretal amount to the decree-holder. Only a notice had been issued to the decree-holder regarding the objections filed by the respondent and those objections had yet to be decided. On behalf of the respondent a lot of stress was laid on the fact that before the notice had been issued Shri Nagpal had ordered the decree-holder to file a surety-bond for rupees ten thousand for the restitution of the decretal amount. This had been done in view of the orders passed by this Court on 6th August, 1969. From this order of Shri Nagpal requiring the decree-holder to furnish security it was sought to be inferred that Shri Nagpal had already made up his mind to reject the objection petition of the respondent and to make the payment of the decretal amount to the decree-holder. In my opinion, the order passed by Shri Nagpal requiring the decree-holder to furnish security is not open to the interpretation sought to be put on that order by the respondent. He was only complying with the orders issued by this Court as the prayer of the respondent for stay of execution had not been accepted by this Court. It was, therefore, not open to the respondent to infer from the order passed by Shri Nagpal requiring the decree-holder to furnish security that the decretal amount was about to be paid to the decree-holder and it was, therefore, not the appropriate stage for issuing a notice to Shri Nagpal under section 80 of the Civil Procedure Code. A notice under these circumstances cannot, therefore, be considered to have been issued with a view to protect the interests of the respondent but would be presumed to have been issued with an ulterior motive.

(8) The jurisdiction to punish for contempt of Court is an extraordinary jurisdiction and it is to be exercised in a summary manner. Though it cannot be denied that in proper cases it is necessary to exercise this power but it is equally well settled that recourse should be had to it after serious deliberation. In *Debabrata Bandopadhyay and others v. The State of West Bengal and another* (4), it was observed that the Court is both the accuser as well as the judge of the accusation, and it behoves the Court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in

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Courts and tribunals. It was pointed out that it is only when a clear case of contumacious conduct not explainable otherwise arises that the contemner must be punished.

(9) It is difficult to enumerate the acts which may amount to contempt of Court, but the main question in all cases of contempt is whether the action or remark of the alleged contemner is or is not calculated to interfere with, interrupt or thwart the course of justice. Generally speaking, there are two kinds of contempt : one direct and the other indirect. If a person takes any action to prejudice a party to a pending litigation by, for example, telling the trial Judge something beyond the record of the case, or publishing an article in a paper purporting to give what the writer deems the true facts of the case, his action tends directly to interfere with justice. If, on the other hand, he makes any remark derogatory to the dignity of the Judge and if that remark is calculated either to put the Judge in an embarrassing position so that free administration of justice is jeopardised or to make the litigant public lose confidence in the Judge the maker of the remark thwarts justice indirectly. This contempt has been called scandalising a Court or a Judge. In *Pratap Singh and another v. Gurbaksh Singh* (5), it was observed that there were many ways of obstructing the Court and any conduct by which the course of justice is perverted, either by a party or by a stranger, is a contempt. He who scandalises the Court or a Judge in relation to a particular litigation commits an offence not merely against the rights of the litigants but also against public justice. In *R. v. Gray* (6), it was laid down by Lord Russell of Killowen that any act done or writing published which is calculated to bring a Court or a Judge into contempt or to lower his authority is contempt of Court. It is a class of contempt usually referred to as 'scandalising the Court' and the principle on which the court proceeds in taking notice of that class of the contempt is based on the interest of public and not on the interest of the particular court or the Judge so attacked. It is in the public interest that confidence should exist in court of justice and if an attack is made upon a judge who is not in a position to answer the attack, the authority and the prestige of the Judge tends to be lowered in the estimation of the public and that is contrary to the interest of the public.

(5) A.I.R. 1962 S.C. 1172.

(6) 1900 2Q.B. 36.

(10) Keeping in view the principles mentioned above, I propose now to consider the merits of the case. The following portion of the notice to which reference has been made in the letter of Shri Nagpal which was forwarded to this Court and a copy of which was sent to the opposite party along with a notice issued by this Court is relevant for our purpose :—

“That the applicant J.D. pointed out that the decree under execution is a nullity under law and the Court has no jurisdiction to entertain a time-barred execution application by the D.H. made on or about 30th August, 1969 and also in view of the objections contained in the objection application. The decree has become unexecutable and stands even adjusted on the face of the record on which your honour could not conceal your wrath and anger.”

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as well as during arguments on behalf of the respondent it was maintained that he was within his rights to issue a notice under section 80 of the Civil Procedure Code. Keeping in view the attitude of the respondent and the serious nature of the contempt of Court committed by him, I sentence him to simple imprisonment for two months.

K. S. K.

APPELLATE CIVIL

Before D. K. Mahajan and B. S. Dhillon, JJ.

JASWANT ETC.—Appellants.

versus.

SHRIMATI BASANTI DEVI,—Respondent.

S.A.O. No. 86 of 1968.

April 20, 1970.

Hindu Succession Act (XXIX of 1956)—Section 22—Whether applies to completed transfers of immovable property—Agricultural lands—Whether covered by the section.

Held, that a completed transfer also falls within the ambit of sub-section (1) of section 22 of the Hindu Succession Act, 1956. The words ‘proposes to transfer’ in the section thus include a completed transfer, otherwise this section will become otiose and its very purpose will be defeated. Although the section is very unhandily worded yet there is indication

contains a threat to Shri Nagpal that if he executed the decree he would be personally liable for the repayment of the amount and damages to the judgment-debtor but also casts aspersions on the integrity and impartiality of Shri Nagpal and on the integrity and ability as a District Judge of Shri Salig Ram Seth, Additional District Judge. Contempt is, therefore, committed not only by scandalising the Senior Subordinate Judge and the Additional District Judge but also by creating atmosphere in which it would be difficult for Shri Nagpal to do his duty as Judicial Officer. When the communication was received by Shri Nagpal he was seized of the case relating to the execution of a decree against the opposite party and the only object of sending the communication to Shri Nagpal was to embarrass him in the discharge of his duties so that he could be deterred from properly administering justice. This, in my opinion, clearly amounts to an attempt to obstruct the course of justice and is punishable as contempt. Moreover, there was also an insinuation that Shri Nagpal was acting under the influence of his relation who had been brought to the courtroom by Chetan Dass decree-holder. This insinuation also reflected on the impartiality and integrity of Shri Nagpal and was calculated to interfere with and influence the decision of the case by Shri Nagpal. This insinuation has the effect of lowering the authority of Shri Nagpal and making the public lose confidence in the impartiality and sense of justice of Shri Nagpal. It was, therefore, a clear case of scandalising Shri Nagpal.

(11) The remarks made against Shri Salig Ram Seth, Additional District Judge are also scandalising in nature. By saying that he had bungled with the case it was suggested that Shri Salig Ram was not competent as Judge. This remark also had the tendency to make the public lose confidence in Shri Salig Ram Seth as a District Judge.

(12) For the foregoing reasons I have no hesitation in holding that by issuing a notice, the issuance of which has been accepted by Dewan Jaman Lal, respondent, he has rendered himself guilty of contempt of Court and is liable to punishment for it.

(13) The only question that now remains to be considered is as to what punishment is appropriate in such a case. It may be added that at no stage was an apology offered. On the other hand, in reply

as well as during arguments on behalf of the respondent it was maintained that he was within his rights to issue a notice under section 80 of the Civil Procedure Code. Keeping in view the attitude of the respondent and the serious nature of the contempt of Court committed by him, I sentence him to simple imprisonment for two months.

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Held, that a completed transfer also falls within the ambit of sub-section (1) of section 22 of the Hindu Succession Act, 1956. The words 'proposes to transfer' in the section thus include a completed transfer, otherwise this section will become otiose and its very purpose will be defeated. Although the section is very unhappily worded yet there is indication in the section itself of the intention of the Legislature. The provision has been enacted to keep out strangers coming into the heirs of Class I of the Schedule after the coming into force of the Act. Courts must give meaning to a legislative provision unless the Court is forced to a conclusion that it will in fact be legislating and not interpreting the same. (Para 5)

Held, that section 22 does not provide for devolution of agricultural lands. It merely gives a sort of right of pre-emption. Entry No. 6 in List III of Schedule VII of the Constitution of India, 1950, clearly takes out agricultural lands from the ambit of the concurrent list. Agricultural land is specifically dealt with in Entry No. 18 of List II of the Constitution, the only exception being in the case of devolution. Therefore, section 22 of the Act does not embrace agricultural lands. (Para 8)

Case referred by Hon'ble Mr. Justice D. K. Mahajan, on 21st February, 1969 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice