K. T. CHANDY

v.

MANSA RAM ZADE

December 11, 1973

[S. N. DWIVEDI AND Y. V. CHANDRACHUD, JJ.]

Contempt of Court—Suit by employee against employer—Dismissal of employee in exercise of right to terminate as per contract of service—When does not amount to contempt.

The respondent was employed in a company. The contract of service provided for the termination of service by giving three months notice or three months pay in lieu thereof without assigning any cause. The company gave him a notice that it was found that his performance and conduct have not been good and that he had not proved useful to the company. He was therefore advised to try for alternative employment. He was informed that he would be released from the company at his request on payment by him of the amount under a bond executed by him with some concession. The respondent thereupon filed a suit claiming various reliefs. He did not ask for an interim injunction restraining the appellant and the company from terminating his service during the pendency of the suit, nor did the appellant and the company give any such undertaking. The company gave the respondent notice terminating his service with effect from the date of the service of the notice and granted him three months' pay.

The High Court held that the act of giving the second notice amounted to contempt of court because, as a result of the termination some of the reliefs prayed for would become infructuous and that would amount to obstruction or interference with due course of justice.

Allowing the appeal to this Court,

HELD : Where a party to a suit terminates the service of the adversary party *in the honest exercise of his rights under the contract of service and in the absence of any interim injunction or undertaking*, the act would not constitute contempt of court. [653 B-C]

(a) A combined reading of the two notices shows that the appellant had terminated the service in the honest exercise of the right vested in the company by the contract of service. The order did not threaten the respondent to withdraw the whole or part of the suit. [653 C]

(b) The circumstance that one or more of the reliefs claimed in the plaint had become infructuous on account of the termination would not establish contumacy, because, the respondent was free to amend his plaint and ask for an appropriate relief. [653 D]

(c) The fact that the appellant had tendered an unconditional apology in the High Court is not a ground for this Court refusing to interfere, because, (i) the High Court had in fact held that appellant has committed contempt though it did not award punishment because of the apology, and (ii) the High Court had directed the appellant to pay costs to the respondent. [654 B]

Tuka Ram Gaikar v. *R. N. Shukla*, [1968] 3 S.C.R. 422, *Jang Bahadur Singh* v. *Brij Nath Tewari*, [1969] 1 S.C.R. 134 and *Malojirao Shitole* v. *C. G. Matkar*, A.I.R. 1953 M. B. 245, refered to.

Pratap Singh v. *Gurbaksh Singh*, [1962] Supp. 2 S.C.R. 838, and *Govind Sahi* v. *State of U. P.* [1969] 1 S.C.R. 176, distinguished.

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 129 of 1970.

Appeal by Special leave from the Judgment and order dated the 24th July, 1969 of the Calcutta High Court in Criminal Misc. Case No. 179 of 1969.

B *D. Mukherjee*, and *D.N. Mukherjee*, for the appellant. *S.B. Wad*, for the respondent.

The Judgment of the Court was delivered by

DWIVEDI, J. Seemingly it is a small case. It has not hit the headlines in the news-media. Nor it has gripped the public mind. The pecuniary stake is trivial. A tiny sum of Rs. 200/- is payable as costs by the appellant. However, this case brings in to the flash-point an issue of great consequence to liberty of contract: Where to draw the dividing line between the area of contempt of court and the area of operation of contractual rights.

The appellant is the Chairman of the Hindustan Steel Limited (hereinafter referred to as the Company). The respondent was employed in the Company on a contract of service. The contract provided for termination of his service by giving three months' notice or three months' pay in lieu thereof and without assigning any cause. On February 21, 1968, the Company gave him this notice : "It is found that your performance and conduct in this plant have not been good and that you have not proved useful for the Company. You are hereby advised to note this position and also to try for alternative employment elsewhere. You may be released from this company at your request on payment of the amount required under the bond executed by you on *pro-rata* basis as a very special case taking into account the period of service that may be rendered by you at the time of release. In other words, if you choose to leave the service of the company before expiry of bond period, you will be required to pay the company a sum not exceeding Rs. 20,000/- reduced by the amount calculated on *pro-rota* basis in respect of the service you may render after completion of your training."

Soon thereafter he rushed to the Court. On May 27, 1968 he instituted a suit in the Court of the Second Munsif, Asansol. The material reliefs claimed in the plaint are:

(1) a declaration that the notice dated February 21, 1968 is illegal, bad, *mala fide*, without jurisdiction, void and inoperative and is not binding on the plaintiff;

(2) a declaration that the charge sheet dated July 1, 1966, confidential character report, dated April 27, 1967, are *ultra vires*, unenforceable, illegal, unsustainable, *mala fide* and opposed to rules and natural justice and are not binding on the plaintiff;

(3) a declaration that the plaintiff is entitled to promotion to the next higher grade, namely, foreman, from October 10, 1966;

(4) a mandatory injunction directing the defendant to promote the plaintiff to the grade of foreman; and

(5) a permanent injunction restraining the defendant from giving effect to the notice dated February 21, 1968.

He did not ask the Munsif to grant an interim injunction restraining the appellant and the Company from terminating his service during pendency of his suit. So no such interim injunction was operating at the relevant time. Nor did the appellant and the Company give an undertaking to refrain from terminating his service during pendency of the suit. Forgetting the suit for a moment, there was no impediment in their way of terminating his service according to the contract. And on February 26, 1968, the Company gave him this notice; "(T)he services of the (respondent) are hereby terminated with effect from the date of service of this order on him and payment of three months' pay in lieu of notice in terms of clause (vi) of his appointment letter..... dated January 29, 1962."

The Calcutta High Court (R.N. Dutt and B. Banerji JJ). has held that the act of giving this notice amounts to contempt of court. The learned Judges said: "It seems that he (plaintiff) was more or less non-suited...There is no doubt that since his services have been terminated, some of the reliefs which were prayed for in the suit could become infructuous. On these considerations, we think that the action of the Chairman in terminating the services of the (plaintiff)....does amount to obstruction or interference with due course of justice in the petitioner's suit before the Munsif....and so it amounts to contempt of the said court."

When asked, counsel for the respondent could not cite any decision holding a Muslim husband's act of divorcing his wife during pendency of her suit for future maintinence as contempt of court. The divorce completely aborts her suit. It is true that the law of contempt of court is essential for keeping the administration of justice pure and undefiled. It is also well to remember that our society is also interested in the fulfilment of a man's expectations under a contract. To that end we have a law of contract in our country. Assigning an unlimited and undefined area to either of them would unduly curtail the area of the other. Each should have a viable area so that justice may hold high her head and contract is not cribbed and cramped. But what is the yardstick to measure their area of operation.

It has been held that 'initiation in good faith' of a departmental enquiry under the Customs Act by the Custom authorities on the basis of facts which are the subject of a criminal prosecution under that Act against the appellant would not amount to contempt as the authorities' are acting bona fide and discharging their statutory duties.' (*Ruka Ram G. Geokar* v. *R. N. Shukla.*[1] see also *Jang Bahadur Singh* v. *Baij Nath Tewari*).[2] In another case it was held that the issue of a notification under the Abolition of Jagirs Act for resumption of Jagirs during pendency of a jagirdar's writ petition for restraining such resumption is not contempt, because the Government was acting *bona fide* in the exercise of its statutory rights. (See

(1) [1968] 3 S.C.R. 422. (2) [1969] 1 S.C.R. 134.

A *Malojirao Shitole* v. *C. G. Matkar*)(1) These cases establish that *bona fide* exercise of a statutory right by a party to a proceeding is not contempt in the absence of an interim injunction against or undertaking by that party. There appears to be so sound reason why this principle should not extend to the exercise of rights under a contract. The rights of a party under a contract are his legal rights. In our view *bona fide* or honest exercise of a right under a contract should be the yardstick for allocating their respective area to contempt and it gives to each its proper sphere. So where a party to a suit, as here, terminates the service of the adversary party in the honest exercise of his rights under the contract of service and in the absence of any interim injunction or undertaking, his act would not constitute contempt of court. We are satisfied from a combined reading of the two notices relating to termination of service that the appellant had terminated the service of the respondent in the honest exercise of the right vested in the Company by the contract of service. So he has not committed contempt of the Munsif's Court.

The order terminating his service does not threaten the respondent to withdraw the whole or part of his suit. The mere circumstance that one or more of the reliefs claimed in the plaint have become infructuous on account of the termination order would not establish contumacy. The respondent is free to amend his plaint and ask for a relief against the termination order.

Counsel for the respondent has relied on *Pratap Singh* v. *Gurbakah Singh*(4) and *Gobind Sahai* v. *State of U.P.*(5) These cases are clearly distinguishable on facts. In the first case a Government employee had instituted a suit as well as a writ petition against the Government in respect of his service conditions. Thereupon the appropriate authority started a departmental proceeding against the employee. The charge sheet stated that he had gone to a court of law before exhausting all his departmental remedies and that his action was contrary to official propriety and subversive of good discipline. This charge was framed on the strength of a circular letter issued by the Chief Secretary of the Government on June 25, 1953. It emphasised that "any attempt by a Government servant to seek a decision on such issues in a court of law without first exhausting the normal official channels of redress could only be regarded as contrary to official propriety and subversive of good discipline and could well justify the initiation of disciplinary action against him. This Court held that the authorities have committed contempt of court. In the second case while the respondent's suit challenging the election of his opponent to a committee of a political party was pending, the appellant letters expelling him from the party on the strength of an earlier resolution of the party which barred reference of such disputes to a law court and provided for summary removal of any member who initiated a suit. This Court held that the action of expulsion amounted to contempt of court. It should be observed that in both cases the complainant had a right to institute a legal proceeding in a law court for redress of his grievance. This legal right

(1) A.I.R. 1953 MB 245. (2) [1962] Supp. 2 SCR 838. (3) [1969] 1 SCR. 176.

could be taken away only by a valid law. But there was no such law in operation. So neither the officers of the Government nor the political party had a legal right to take any action for punishing the suitor for his mere act of instituting a legal proceeding in a law court. In our case the appellant had a right under the contract to terminate the service of the respondent. A

Counsel for the respondent has submitted that as the appellant had tendered an unconditional apology in the High Court, we should not interfere with the High Court's order. We are unable to appreciate the submission. Apology goes to sentence and may be accepted only upon a finding that contempt has been committed. The High Court has in fact held that the appellant has committed contempt. But it has accepted his apology and refrained from awarding any punishment. Moreover, the appellant has been directed to pay Rs. 200/- as costs to the respondent. So the appellant is entitled to have the order of the High Court set aside. B C

We allow the appeal and set aside the order of the High Court.

V.P.S. *Appeal allowed.*