

CHANDRADASA NANAYAKKARA
v.
LIYANAGE CYRIL

COURT OF APPEAL.

ATUKORALE, J. (PRESIDENT), TAMBIAH, J. AND L. H. DE ALWIS, J.

C.A. APPLICATION No. CA/APN/GEN/10/84.

JUNE 26, 1984.

Contempt of Court – Article 105 (3) of the Constitution.

The Magistrate of Kandy had found the respondent's wife guilty of the unlawful possession of 1123 grains of ganja, an offence punishable under the Poisons, Opium and Dangerous Drugs Ordinance and sentenced her to pay a fine of Rs. 2,000 and in default of payment to undergo six months' rigorous imprisonment. She failed to pay the fine and was kept in the custody of the Fiscal Officers pending removal to prison to serve the default term. The Magistrate after adjourning the sittings of court for the day was in his Chambers attending to his duties. Before his wife could be removed the respondent forcibly entered the Magistrate's Chambers carrying a child in his arms. He addressed the Magistrate in rude language, abused him and threatened to dash the child on the floor and kill or cause bodily harm to the Magistrate if his wife was not released forthwith. By these acts the respondent intimidated the Magistrate into making an order for the immediate release of his wife from lawful custody before she paid the fine or served the default sentence, an order which the Magistrate would otherwise have not made at that stage. A Rule was thereupon issued on the respondent by the Court of Appeal to show cause why he should not be punished for the offence of contempt of the Magistrate's Court of Kandy. The respondent appeared before the Court of Appeal and pleaded guilty to the charge.

Held –

The jurisdiction of the Court of Appeal to punish for contempt of court includes, inter alia, the power to punish for contempt of a court of first instance (Article 105 (3) of the Constitution). The punishment that can be imposed is imprisonment or fine or both as the Court may deem fit.

Per Atukorale, J.

"Of all contempts committed against the lawful authority of courts of law the most heinous are those which involve actual or threatened injury to the person of a judge with a view to intimidating him into revoking or altering an order or decision made by him in the discharge of his judicial duties. The outrageous nature of the acts committed by the respondent constitutes not only an affront to the dignity and authority of the court but also a direct challenge to the fundamental supremacy of the law itself. It is

absolutely imperative that such conduct, whenever or in whatever court it occurs, should be dealt with speedily, firmly and unmercifully. People like the respondent who have but scant respect and regard for law and order and the courts of the land must be made to realise that the arm of the law is sufficiently long and sufficiently strong to repel any attempts at undermining the authority of courts. It is our duty in situations such as have arisen in the instant case to uphold and vindicate, not the personal reputation of the holder of the particular office, but the sanctity and supremacy of the authority of courts so as to secure the preservation of law and order and to ensure the protection of the future administration of justice. Viewed in this light the circumstances of this case call for very deterrent punishment on the respondent.*

RULE for contempt.

S. W. B. Wadugodapitiya, Additional Solicitor-General for the Attorney-General.

Respondent present in person.

Cur. adv. vult.

June 26, 1984.

ATUKORALE, J.

The facts pertaining to this contempt matter as placed before us were as follows. The respondent's wife was charged in case No. 43128/84 of the Magistrate's Court of Kandy with having been in unlawful possession of 1123 grains of ganja, an offence punishable under the Poisons, Opium and Dangerous Drugs Ordinance (Cap.218). On 25.1.1984 the Magistrate of Kandy found her guilty and imposed on her a fine of Rs. 2,000 in default six months' imprisonment. She failed to pay the fine and was therefore kept in the custody of Fiscal officers to be removed to prison for serving the default term of imprisonment. The Magistrate after adjourning the sittings of court for the day was in his chambers attending to his duties. Before his wife could be removed, the respondent forcibly entered the Magistrate's Chambers carrying a child in his arms. He addressed the Magistrate in rude language, abused him and threatened to dash the child on the floor and to kill or cause bodily harm to the Magistrate if his wife was not released forthwith. By these acts the respondent intimidated the Magistrate into making an order for the immediate release of his wife from lawful custody before she paid the fine or served the default sentence, an order which the Magistrate would otherwise have not made at that stage. Having so procured his wife's release the respondent left the Chambers.

Upon these facts being brought to the notice of this Court by the Attorney-General, a Rule was issued by this Court on the respondent to show cause why he should not be punished for the offence of contempt of the Magistrate's Court of Kandy. He appeared before us in response to the Rule issued on him and on the charge being read out and explained to him and on being asked whether he had any cause to show he pleaded guilty to the charge. On being questioned

by us he stated that he was 29 years of age. He admitted having five previous convictions for offences under the Excise Ordinance. He also admitted three other convictions – one for cheating and two for robbery – for all of which he has been sentenced to an aggregate term of 2 years 9 months and 2 weeks rigorous imprisonment. Asked to plead in mitigation he replied that he had three children. He tendered no apology nor an undertaking not to repeat this type of behaviour. Upon a careful consideration of the above facts and circumstances and of the law relating to the nature of the punishment that could be imposed by us, we sentenced the respondent to a term of seven years' rigorous imprisonment and indicated that we would give our reasons for doing so today (13.7.1984). Accordingly we set out our reasons herein.

The offence of contempt to which the respondent has pleaded guilty is criminal in nature. Some of the acts committed by him are punishable under the Penal Code. A Magistrate's Court is one of the institutions created and established for the administration of justice in this country. For this purpose a Magistrate is entrusted with the performance of important judicial functions and duties. In the course of the performance of such functions and duties he is called upon to make various decisions and orders. There is no decision or order he can make which cannot be challenged. But the challenge must be by an appropriate application or proceeding made to this court in accordance with law. It cannot be challenged by a violent display of verbal threats or open defiance directed at the Magistrate himself. Of all contempts committed against the lawful authority of courts of law the most heinous are those which involve actual or threatened injury to the person of a judge with a view to intimidating him into revoking or altering an order or decision made by him in the discharge of his judicial duties. The outrageous nature of the acts committed by the respondent constitutes not only an affront to the dignity and authority of the court but also a direct challenge to the fundamental supremacy of the law itself. It is a type of contemptuous conduct which appeared to us to be unprecedented in the annals of the courts of this country. It is absolutely imperative that such conduct, whenever or in whatever court it occurs, should be dealt with speedily, firmly and unmercifully. People like the respondent who have but scant respect and regard for law and order and the courts of the land must be made to realise that the arm of the law is sufficiently long and sufficiently strong to repel any attempts at undermining the authority of courts. It is our duty in situations such as have arisen in the instant case to uphold and

vindicate, not the personal reputation of the holder of the particular office, but the sanctity and supremacy of the authority of courts so as to secure the preservation of law and order and to ensure the protection of the future administration of justice. Viewed in this light the circumstances of this case call for very deterrent punishment on the respondent.

The jurisdiction of the Court of Appeal to punish for contempt of court includes, inter alia, the power to punish for contempt of a court of first instance – Article 105 (3) of the present Constitution. The punishment that can be imposed by us is imprisonment or fine or both “as the court may deem fit.” The extent of the punishment that should be meted out is left to our discretion. Our attention was drawn by learned Additional Solicitor General to S. 800 of the Civil Procedure Code. Prior to the repeal of this section by S. 20 of the Civil Procedure Code (Amendment) Act, No. 53 of 1980, the Supreme Court (later the Court of Appeal) was empowered to impose a sentence of imprisonment (simple or rigorous) for a term not exceeding 7 years and a fine not exceeding Rs. 7,000 in addition thereto or in lieu thereof. This section, though repealed now, would serve as a guide to the extent of the punishment that may be imposed by us depending, of course, on the facts and circumstances of each case. The fact that the respondent has 3 children is not a ground of mitigation. It did not even evoke any sympathy from us for it is one of them that the respondent threatened to dash on the floor in the immediate presence of the Magistrate. We were conscious of the fact that the respondent may have acted in the way he did out of a sense of sheer desperation rather than in a spirit of bravado. But if he paused to think for a moment he would have realised that there were legal remedies open to his wife. He would also not have failed to realise that the desperate situation in which he thought he found himself was brought about by none other than his own wife by having had in her possession grains of ganja and certainly not by the Magistrate. Although he is a young man of 29 years he has had already several confrontations with the law for some of which he has been sentenced to terms of imprisonment. On a most anxious consideration of all these matters and particularly the nature and the gravity of the contempt committed by the respondent we took the view that nothing less than 7 years rigorous imprisonment would have constituted adequate punishment for him.

TAMBIAH, J. – I agree.

L. H. DE ALWIS, J. – I agree.

Respondent committed to prison.