1938 *Present :* **Koch J.**

JAYASINGHE *v.* WIJESINGHE *et al.*

IN THE MATTER OF A RULE UNDER SECTION 51 OF THE COURTS ORDINANCE, NO. 1 OF 1889, FOR CONTEMPT OF COURT.

Contempt of court—Death of person caused by driver of car—Verdict of Coroner against driver—Driver on remand—Notice of meeting convened to consider the matter of the "murder"—Prejudice to fair trial—Courts Ordinance s. 51.

The petitioner, who was driving a car, ran over and killed C, who was one of a hostile crowd which attempted to obstruct the passage of the car at a junction.

At the inquest the Coroner was of opinion that the petitioner wilfully ran over and caused the death of C.

The petitioner was thereupon produced before the Court by the Police Inspector and remanded pending further investigation.

Meanwhile, the respondent published leaflets, summoning a meeting to consider the conduct of the Inspector of Police "in the matter of the murder of C".

Held, that the publication of the leaflets was calculated to prejudice the fair trial of the petitioner and amounted to contempt of court.

THIS was an application for a rule on the respondents to show cause why they should not be dealt with under section 51 of the Courts Ordinance for contempt of court.

H. V. Perera, K.C. (with him *Sri Nissanka*), for petitioner.

F. A. Hayley, K.C. (with him *Colvin R. de Silva*), for respondents.

Cur. adv. vult.

July 8, 1938. KOCH J.—

On the application of the petitioner, one P. de S. Jayasinghe, a rule was issued by this Court on the four respondents to show cause why they should not be dealt with under section 51 of the Courts' Ordinance, No. 1 of 1889, for having committed the offence of contempt of court, in disrespect of the authority of this Court, by the publication of a notice which, it was alleged, was done while criminal proceedings were pending against the petitioner, and which would seriously prejudice the petitioner in his defence and trial. The respondents have appeared and shown cause.

The notice referred to was a printed announcement in a leaflet marked "A" that a public meeting would be held at the Young Men's Biddhist Association hall, Nugegoda, under the presidentship of Mr. A. E. Goonesinha, Member of the State Council, to consider the conduct of Police Inspector W. W. Fonseka *in the matter of the murder* of the late Mr. M. Abraham Costa and to take such action as the meeting might decide. The four respondents are signatories to this notice. The notice was in both Sinhalese and English, and it would appear that what was stated in English was for all practical purposes the same as the Sinhalese version.

The circumstances connected with the publication of the notice as gathered from the petition and affidavit are briefly that the petitioner's brother was grievously assaulted by one Abraham Costa and a prosecution against Costa was pending when, on January 14, 1938, the petitioner, who was driving home with his father and one Stephen Perera after having dropped Albert Perera at Nugegoda, met a hostile, armed crowd at Kohuwela junction. Abraham Costa was one of the crowd. When the crowd attempted to obstruct the passage of the car, the petitioner drove through and knocked down Abraham Costa and another. The petitioner came straight home and, having dropped his father and Stephen Perera to guard his house as he feared an attack, he proceeded immediately to the Police Station and lodged a complaint. On the following day Abraham Costa died as a result of the injuries he had received. On January 16, the Coroner held an inquest and was of opinion that the petitioner had wilfully run over Abraham Costa and caused his death.

Police Inspector Fonseka, thereupon, produced the petitioner before Court and moved that he be remanded till the 18th pending investigations, and on the 18th moved for a further remand till the 25th. In the meantime, on January 22, leaflets similar to that marked "A" were broadcast throughout Colombo.

The words in the notice to which exception is taken are : " In the matter of the murder of Mr. M. Abraham Costa ".

The petitioner maintains that these words indicate that a murder had actually been committed, and were published at a time when the case against him was *sub judice* and when the issue as to whether a murder had been committed or not was still undecided, and that the respondents, who are responsible for the publication of these leaflets, have by this act seriously prejudiced his defence and trial.

The question for decision is whether the petitioner is likely to be prejudicially affected in his trial by the publication of these leaflets, and if so, whether such a contempt of this Court has been committed as to justify the Court in taking cognisance of it and punishing the respondents.

It is contended on behalf of the respondents that the notice was in respect of a meeting to be convened to consider the conduct of a Police Inspector in connection with an incident, and in referring to that incident the word " murder " was used not with the object of stressing the fact that a wilful murder had been committed but merely as a description of that incident; that it was an unfortunate word to use; and that the respondents meant nothing more than that at the meeting the conduct of the Police Inspector was to be considered in connection with an incident which resulted in the death of Abraham Costa.

Four affidavits, one from each of the respondents, and all to the same effect, have been tendered. In these affidavits, it is stated that Inspector Fonseka came to the scene, left a constable to make inquiries and that Abraham Costa was not taken to hospital till two hours later although he was seriously injured; and that the meeting was called to protest against this conduct on the part of the Inspector and not in any way to prejudice the issue in the case against the petitioner. In support, the two resolutions passed at the meeting are quoted, and it is stressed that these resolutions show that the conduct of the Inspector was seriously censured in connection with the circumstances attending the death of Abraham Costa; that there is not the slightest reference to a murder having been committed; that in fact at the meeting the Chairman explained that the word " murder " had been inadvertently used in the leaflets; and that no such suggestion was intended. It was strongly pressed that the name of the petitioner does not appear in the notice and that this fact too went to show that there was no intention to prejudice him in any way.

Mr. Hayley cited the case of *Hunt v. Clarke*[1]. In that case there was a publication of certain observations by a newspaper in connection with a civil action which was pending. Mr. Hayley referred to a passage in Cotton L. J.'s judgment where he says, that if in his opinion the publication was wilfully done and that if such publication would really prejudice the parties, he would not hesitate to commit the offender to prison, and that the jurisdiction of the Court was only to be exercied in extreme cases. But the learned Judge also says that if such publication would tend in any way to prejudice the parties in the case, it may be that whoever is guilty of the act would be liable to be committed. The learned Judge goes on further to say that the observation may be of such a character as

[1] *58 Law Journal Q. B. D. 490.*

to amount to a technical contempt, but even in that case they may be such that a Court ought to interfere. He also said that although it is not necessary that the Court should come to the conclusion that a Judge or a Jury would be prejudiced, yet, if it is calculated to prejudice the proper trial of a cause, that is a contempt and should be punished. He finally expresses the view that if the offence is of a slight and trifling nature and not likely to cause any substantial prejudice to a party or to the due administration of justice, the party ought not to apply.

This view was adopted by Lord Russell in *The Queen v. Payan and Cooper* [1]. Here the case pending was a criminal one, the charge being one of arson. Wright J. added his opinion that to justify an application, the publication complained of must be calculated really to interfere with a fair trial, and secondly, if this is so, the next point is whether under the circumstances the jurisdiction of the Court to punish for contempt should be exercised.

Mr. Perera for the petitioner cited the case of *The King v. Parke* [2], and contended that although the principle may be the same whether the case pending was civil or criminal, the Court will more readly exercise its jurisdiction when the proceedings pending are of a criminal nature. He also cited the two local cases of *Abdul Wahab v. A. J. Perera and others* [3], and *The Attorney-General v. De Mel Laxapathy* [4]. These were both flagrant cases of contempt and no attempt was made by the respondents to justify their act. In the notice which was complained of (it was the same in both cases), it was stated that a serious and frightful crime had been committed by the person against whom criminal proceedings were pending—referring to him by name. Although the Divisional Bench before whom both these cases came up were of opinion that the respondents did not act with deliberate malice against the accused and that they did not really intend to prejudice a fair trial, nevertheless the publication was calculated to influence a Jury who may be deterred from doing their duty by a knowledge that in the minds of the people of the district the crime had actually been committed by the accused person, and would perhaps also influence the witnesses for the prosecution and the defence in different ways.

In the result, I think that if the publication, taken in connection with the circumstances of the case, is such that it tends or is calculated to prejudice the petitioner in obtaining a fair and impartial trial, the Court ought to interfere and punish the offender whether there was any intention to so prejudice the petitioner or not ; but if, in the circumstances, the offence is of such slight and trivial a character as to amount to a commission of a technical contempt only, and if the petitioner is not likely to be prejudiced in his trial, the Court will not interfere.

Now, it is true that the name of the petitioner does not appear in the notice convening the meeting, and it may be that the word "murder" was not used intentionally, but the use of that word in the notice for which the respondents were responsible was bound to create the impression that the person charged or who would be charged was guilty of wilfully killing Abraham Costa, and thus prejudice that person in obtaining a fair trial.

[1] *(1896) 1 Q. B. D. 577.*
[2] *(1903) 2 K. B. D. 432.*
[3] *6 C. L. W. 130.*
[4] *6 C. L. W. 148.*

The fact that at the meeting the word "murder" was studiously avoided in reference to the incident is irrelevant. The offence of contempt was committed when the leaflets were distributed. Besides many of the readers of these leaflets may not have been present at the meeting.

I am of opinion that the respondents are guilty of having committed a contempt of this Court by interfereing with the due administration of justice.

In passing sentence, I have taken into consideration all the points that have been urged in their favour, and also the fact that they have apologized to this Court for any prejudice that their act may have caused.

I sentence each of the respondents to pay a fine of Rs. 100, in default to undergo one month's simple imprisonment.

Rule made absolute.