

1938 Present : Poyser S.P.J., Keuneman and de Kretser JJ.

IN THE MATTER OF A RULE UNDER SECTION 51 OF THE COURTS
ORDINANCE.

In re RATNAYAKE.

Contempt of Court—Letter requesting postponement of a case—Attempt to influence a Judge—Courts Ordinance, s. 51.

Where the respondent wrote a letter to a Judge requesting the postponement of a case on the ground that a party, against whom a warrant had been issued for failure to appear in Court on summons, was in a delicate state of health,—

Held, that the communication amounted to an attempt to influence the Judge upon a matter publicly before him and that the respondent was guilty of contempt of Court.

R. SOMADU moved the District Court of Kandy that she be appointed curatrix of the property of her minor children. She was noticed to appear on January 20, 1938, to supply the necessary stamps for the certificate of curatorship. On that day it appears that she sent her son with a certificate from the Arachchi to the effect that as she was in delicate health she could not be present in Court on that date. The certificate was not brought to the notice of the learned District Judge as there was no journal entry regarding it. On that day a warrant was issued for her appearance on March 31. A brother of Somadu informed these facts to the respondent, who wrote the following letter to the learned District Judge:—

“Sir,—I am given to understand that Rankotgedera Somadu is in delicate health, being pregnant, and is expecting a child at any moment. The Arachchi, I understand, has sent a certificate to that effect.

“I shall be grateful to you if you can grant a date to enable her to appear in Court in response to the summons.”

The learned District Judge reported the matter to the Supreme Court and at the same time asked for an explanation from the respondent. He replied that his action was purely on humanitarian grounds and the letter was not written either as an Advocate or as a State Councillor.

A rule was issued on the respondent to show cause why he should not be punished for contempt of Court.

R. L. Pereira, K.C. (with him *H. V. Perera, K.C., E. A. P. Wijeratne* and *B. H. Aluwihare*), for party noticed.—The practice is that, when the parties are poor, the Arachchi's report is accepted. The respondent acted on humanitarian grounds. No offence has been committed at all. The law contemplates an endeavour by a third party to induce the Court to act improperly so as to taint the source of justice—7 *Hals.* (*Hailsham ed.*) p. 7, s. 10. Five cases are cited, but they do not go so far as the broad proposition. (*In re Ludlow Charities, Lechmere, Charlton's case*¹).

[KRETSEK J.—Your client placed certain material before Court, but at the same time he asked for a favour.]

¹ (1837) 6 L. J. 185; 40 E. R. 661.

That is unfortunate. The inclusion of that phrase was not to taint the source of justice.

*Martin's case*¹ was one dealing with bribery. The question of contempt was not discussed in *R. v. Falkner*².

Counsel cited *In re Dyce Sombre*³ and *Ex parte Jones*⁴.

The effect of all these cases is that, if any person endeavours improperly to induce the Court to act in an improper manner, it would be a contempt of Court. In this case the respondent has brought certain facts to the Court as *amicus curiae*. It is merely for a postponement and it has nothing to do with the judgment.

Out of gratefulness he had used a phrase which had no meaning. The mentality of the writer must be taken into account. It must take a course which it would not naturally take.

[POYSER S.P.J.—It was a technical contempt.]

[Mr. Pereira at this stage tendered an apology on behalf of the respondent.]

E. A. L. Wijeyewardene, K.C., Acting A.G. (with him *D. Jansze*), was not called upon.

July 20, 1938. POYSER S.P.J.—

In this matter one Ratnayake Mudiyanselegedera Abeyratna Ratnayake of Kahalla, Katugastota, has been called upon to show cause why he should not be punished for the offence of contempt of Court committed by him against and in disrespect of the authority of the District Court of Kandy.

The following are the facts. Proceedings were initiated in the District Court of Kandy, on October 25, 1937, by one R. Somadu who moved that she be appointed curatrix of the property of her minor children. Her application was allowed on November 15, 1937, and various directions were given. On January 20, 1938, it appears that the stamps that were necessary for the certificate of curatorship had not been supplied, and notice was served on the applicant but she did not appear, and consequently warrant was issued for her appearance on March 31. On March 12, the respondent writes the following letter to the District Judge, Kandy:—

“ Sir,—I am given to understand that Rankotgedera Somadu is in delicate health, being pregnant, and is expecting a child at any moment. The Arāchchi, I understand, has sent a certificate to that effect.

I shall be grateful to you if you can grant a date to enable her to appear in Court in response to the summons.

I am, Sir,
Your obedient Servant,
Sgd. A. Ratnayake”.

The District Judge reports the receipt of this letter to the Supreme Court and also calls upon the respondent for an explanation. He asks him whether such letter was written in his capacity as an Advocate or in

¹ (1747) 2 *Russ. & M.* 674.

² (1835) 2 *M. & R.* 525.

³ (1849) 1 *Mac. & G.* 116; 41 *E. R.* 1209.

⁴ (1806) 13 *Vessey Jr.* 237.

his capacity as a State Councillor. In answer to that letter, the respondent states that he did not write that letter in either of such capacities, but that he wrote it as he felt it his duty as an ordinary citizen to bring to the notice of the Court that the person who had been summoned and against whom a warrant was issued was in a delicate state of health and was incapable, without danger to herself and to her unborn child to be able to attend the District Court, Kandy.

Various affidavits have been filed and there is no reason to doubt that the facts are as stated by the respondent, namely, that the woman was in a delicate state of health at the time she was called upon to appear before the District Court of Kandy, that she did make an attempt to bring her condition to the notice of the Court, but that such attempt was not successful; and subsequently, her brother approached the respondent and in consequence of what her brother told the respondent, the letter which is the subject-matter of this Rule was written. I have no doubt that the tendency of this letter does constitute a contempt of Court. No doubt, it is only a technical contempt, but the important fact is that the respondent not only brings to the notice of the District Judge that Somadu is in delicate health, but goes on to ask the Judge for an adjournment in the following words:—

“I shall be grateful to you if you can grant a date to enable her to appear in Court in response to the summons”.

Various authorities have been cited in regard to what does or does not constitute a contempt of Court, and I think for the purposes of this case, I need only quote a passage in the judgment of Lord Chancellor Cottenham in the case of *In re Dyce Sombre*¹.

“Every private communication to a Judge, for the purpose of influencing his decision upon a matter publicly before him, always is, and ought to be, reprobated; it is a course calculated, if tolerated, to divert the course of justice, and is considered, and ought more frequently than it is, to be treated as, what is really is, a high contempt of court”

As I said earlier, the contempt is not a serious one, but it amounts to an attempt to influence the Judge upon a matter publicly before him, and it is very necessary, in my opinion, that such a course as the respondent has taken should be the subject of judicial action, and it is of greater importance in this particular case where the respondent is not only an Advocate but is a Member of the State Council. Persons in the position of the respondent must be made to realize that they cannot interfere in the course of justice, and that if they do so interfere, or attempt to interfere, they will be punished.

However, Mr. R. L. Pereira, K.C., at the close of his argument appreciated that the letter written in the form it was should not have been sent by his client, and he has on behalf of his client tendered an apology. In view of that fact, I think the Rule may be discharged with a warning to the respondent.

KEUNEMAN J.—I agree.

DE KRETZER J.—I agree.

Rule discharged.

¹ (1849) 1 Mac. & G. 116; 41 E. R. 1209.