

Present: Mr. Justice Wood Renton and Mr. Justice Grenier.

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KANDOLUWE SUMANGALA v. MAPITIGAMA
DHARMARAKITTA et al.

D. C., Colombo, 23,308.

In the Matter of an Application of Mapitigama Buddha Rakkhita
for a Rule Nisi on Tibbotuwawe Siddhartha Sumangala,
Maha Nayaka, and two others, for Contempt of Court.

*Contempt of Court—Inherent jurisdiction—Characterizing evidence given
by a witness as false pending an appeal—Attempt to interfere with
the course of justice—Exercise of ecclesiastical jurisdiction—
Apology.*

To publish in a newspaper that the evidence given by certain
witnesses in a case pending in appeal was "suppressive of truth
and upholding falsehood" amounts to a contempt of Court.

THIS was an application calling on the respondents to show
cause why they should not be punished for contempt of
Court. The facts on which the application was based are stated
in the following affidavit of the applicant:—

" I, Mapitigama Buddha Rakkhita, of the Kelani Vihare, in
Kelaniya, not being a Christian, do solemnly, sincerely, and truly
affirm, declare, and say as follows:—

" 1. I am a Buddhist priest and the second defendant in the
above-styled action, No. 23,308, of the District Court of Colombo.

" 2. The first respondent is also a Buddhist priest and the Maha
Nayaka or Chief High Priest of Malwatte Vihare in Kandy; the
second respondent is the editor, and the third respondent is the
printer and publisher of the Sinhalese newspaper 'Sarasavi
Sandaresa,' which has its office at No. 61, Maliban street, Colombo.

" 3. That plaintiff in the said action sued me and the first defend-
ant, claiming to be a joint incumbent of the Kelani Vihare, and for
the recovery of the sum of Rs. 2,843.75, being income and emolu-
ments thereof.

" 4. The plaintiff claimed the aforesaid right as one of the pupils
of Dompe Buddha Rakkhita, who was till his death in January,
1903, joint incumbent with the first defendant of the Kelani Vihare.

" 5. I am a senior pupil of the said Dompe Buddha Rakkhita, and
upon the death of the latter, I, as such senior pupil, succeeded
to the rights, powers, and position of Dompe Buddha Rakkhita, to
the exclusion of the plaintiff, who also claimed to be his senior
pupil. The right of the first defendant to continue as a joint
incumbent was not disputed.

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“ 6. The plaintiff and the third defendant above named, who also claimed to be a pupil of Dompe Buddha Rakkhita in the year 1903, made a joint complaint to the Maha Sangha Sabha, or the Board of Priests, at Malwatte Vihare in Kandy, and certain proceedings, No. 128, were had regarding our rival claims.

“ 7. The Chief High Priest Tibbotuwawe Siddhartha Sumangala, first respondent above named, to the exclusion of the ‘ Annu-wijjaka ’ or judge appointed by the said Maha Sangha Sabha, as President of the said Board, gave a decision declaring the plaintiff and the third defendant to be pupils of Dompe Buddha Rakkhita, and as such entitled to be joint incumbents with the first defendant, and rejected my claims.

“ 8. The proceedings were tainted with illegalities and irregularities, and I refused to be bound by the decision of the first respondent as President of the Maha Sangha Sabha.

“ 9. The plaintiff thereupon brought the above-styled action in the District Court of Colombo as aforesaid, and, besides producing certain documents in proof of his rights, called amongst others the said Chief High Priest Tibbotuwawe Siddhartha Sumangala, the first respondent, and Hikkaduwe Sumangala, High Priest of Adam’s Peak and Principal of the Vidyodaya College, to give evidence in his behalf.

“ 10. I contested the plaintiff’s claim on the ground, amongst others, that I was the senior pupil of Dompe Buddha Rakkhita, and in proof of my right, besides causing the production of the Register of Ordinations or ‘ Lekanmitiya,’ wherein my ordination is duly registered as the joint pupil of Dompe Buddha Rakkhita and Mapitigama Dhamma Rakkhita, I called as witnesses, amongst others, Watareka Anu Nayaka, the Second High Priest of the Siamese Sect of the Buddhists in Ceylon, and Alutgama Medhan-kara, members of the Maha Sangha Sabha, who gave evidence in my behalf.

“ 11. The learned Additional District Judge of Colombo, F. R. Dias, Esq., tried the said action, believed the evidence produced by me on my behalf, and delivered his judgment dated January 20, 1908, dismissing plaintiff’s action with costs, and upholding my claim to be the senior pupil of Dompe Buddha Rakkhita. Aggrieved by the said judgment, the plaintiff has appealed to the Hon. the Supreme Court, and the same is now pending before this Court.

“ 12 Commenting on the plaintiff’s case and the evidence adduced by him, the learned District Judge, in the course of his judgment, observed: ‘ The case centres on the genuineness or otherwise of a certain entry in the Lekanmitiya, or ola register of Ordinations, kept at the Malwatte Vihare in Kandy The plaintiff has failed to satisfy me that the entry is a forgery.’ And with reference to the evidence of the Chief High Priest Siddhartha Sumangala, the first respondent, and the plaintiff’s chief witness,

the learned Judge observes: ' His evidence with regard to what transpired at the Malwatte inquiry touching the production of the register is so hopelessly contradicted by the plaintiff's own witness, the High Priest of Adam's Peak, not to mention the defendant and his witness, the Anu Nayaka of Malwatte, that I am compelled to throw it aside ' ; and further, with regard to the decision of the Maha Sangha Sabha, the learned Judge holds: ' It was manifestly an improper decision, forced upon the second defendant (the affirmant), without allowing him to put forward the best piece of evidence, namely, the register, and which decision was repudiated by him as soon as it was pronounced.'

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" 13. And with reference to the defence, the learned Judge observes: ' Leaving aside the improbabilities of the case put forward by the plaintiff, I cannot overlook the very strong evidence called by the second defendant (*i.e.*, myself) to show the truth of his statement that he was the joint pupil of Dompe and Mapitigama, and that he was duly ordained as such in 1887. His chief witness on this point is no other than the present Anu Nayaka or Second High Priest of the Malwatte Vihare. This priest, who is eighty-two years old, and has been a fully ordained priest for sixty years, and the Anu Nayaka of the Malwatte Vihare for the last twenty-eight years, swears that he was present and took part in the ordination of the second defendant (*i.e.*, myself) I think the testimony of this High Priest, who, so far as we know, is a perfectly disinterested person, is entitled to quite as much respect as that of any of the High Priests called by the plaintiff; it fully corroborates the genuineness of the register, which, in my opinion, it is impossible to throw aside.'

" 14. As the Kelani Vihare is one of the most sacred and important temples in Ceylon, this case between the plaintiff and myself has created a great deal of interest among the general public and amongst the Buddhists in particular, and the final decision is anxiously awaited, as it involves most momentous issues to the whole Buddhist world.

" 15. The respondents, to the best of my knowledge and belief, are well aware of the appeal taken by the plaintiff, and that the same is still pending before Your Lordships' Honourable Court.

" 16. The aforesaid Chief High Priest Siddhartha Sumangala, the first respondent, notwithstanding the pendency of the said appeal, has falsely and maliciously written in the Sinhalese newspaper ' The Sarasavi Sandaresa,' the leading Buddhist paper in the Island, edited by the second respondent, and published by the third respondent in Colombo, in its issue dated March 3, 1908, an article dealing with the facts involved in this case, headed ' A Proclamation,' which with its translation, marked A and B, is herewith produced, and containing *inter alia* the following reference to Watereka Anu Nayaka Priest and Alutgama Medhankara Priest, two of my chief

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witnesses, whose evidence the learned District Judge has accepted and acted on as stated above: 'The anu Nayaka Priest, Watareka Ratnajoti Sobhita, Alutgama Medhankara, who are members of this Board, and a priest of Asgiri Vihare, were witnesses for the defence. Their evidence was against their own conscience and against the Board's decision, which they knew: They denied facts, upheld untruth, and gave evidence in such a manner as to show owners as non-owners and non-owners as owners The Priest Alutgama in his evidence confirmed the statement of the Anu Nayaka Priest, and said that he wrote the register as stated above, and falsely made statements, so that the judgment of the Board of Priests may not be confirmed The evidence of these two priests falsified our evidence, and set at naught the decision of the Board of Priests. Besides, the decision of the Board of Priests is made a thing of no value in the future. The harm done to the complainants by the evidence of these priests is very great. They are made homeless.' Then, owing to their having given this evidence in my favour, the first respondent, as Chief High Priest, in the same 'Proclamation' proceeds to excommunicate the two witnesses Watareka Anu Nayaka and Alutgama Medhankara from the priesthood, and to interdict them 'from performing priestly functions' 'until they get purified in accordance with the laws of Vinaya.' Further, the first respondent caused copies of the said 'Proclamation' to be printed and published and circulated broadcast throughout Colombo, Kandy, Anuradhapura, and other Buddhist centres, and I produce a copy thereof with its translation, marked C and D respectively

" 17. The action of the respondents in writing, printing, and publishing the aforesaid 'Proclamation,' accusing my two witnesses of having given false evidence in my favour, and that of the first respondent in excommunicating them from performing priestly functions because of their alleged false evidence, is calculated to expose me and my said two witnesses to contempt, and to prejudice the minds of the Judges against my cause and claim, and to prevent the said two priests and other priests from giving evidence contradictory to the evidence given by the Chief High Priest, the first respondent or in my favour, if any necessity were to arise for so doing in the future, and thus to interfere with the course of justice and the due administration of the law; and I verily believe that the action of the respondents as aforesaid was intended to expose me and my witnesses to contempt, and to prejudice the minds of the Judges against my cause and claim, and to prevent the said two priests or other priests from giving evidence contradictory of the evidence of the first respondent or in my favour if any necessity were to arise for so doing in the future, and thereby to interfere with the course of justice and the due administration of the law.

“ 18. I am advised, and verily believe, that the action of the respondents as aforesaid amounts to a contempt of this Honourable Court. ”

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The first respondent in showing cause submitted the following affidavit:—

“ I, Tibbotuwawe Sri Siddhartha Sumangalabhi Dhana, Maha Nayaka of Malwatte Vihare in Kandy, do solemnly, sincerely, and truly declare and affirm as follows:—

“ 1. I am the High Priest of the Malwatte Vihare and the head of the Siamese Sect of the Buddhist Priests, and the Buddhist Temple at Kelaniya is within my ecclesiastical jurisdiction.

“ 2. On the death of the incumbent of the said Kelaniya Temple disputes arose as to the incumbency, the claimants being Kandaoluwawe Sumangala Terunnanse and Mapitigama Buddha Rakkhita Terunnanse.

“ 3. The said dispute was referred to the adjudication of the General Council of Buddhist Monks, of which I am the President, and the Council, after careful investigation, decided in favour of Kandaoluwawe Sumangala Terunnanse, and further held that Mapitigama Buddha Rakkhita Terunnanse had preferred a false and an unjustifiable claim.

“ 4. The said Mapitigama Buddha Rakkhita Terunnanse having refused to abide by the decision of the Buddhist Council, the said Council excommunicated the said Mapitigama Buddha Rakkhita Terunnanse, and suspended him from officiating as a member of the priesthood.

“ 5. The said Kandaoluwawe Sumangala Terunnanse then sued in the District Court of Colombo in ejectment of the claimant Buddha Rakkhita Terunnanse, and in the said action Watareka Ratanajoti Sobhita Terunnanse and Alutgama Medhankara Terunnanse gave evidence, which the Council knew and honestly believed to be false, and by doing so created a great scandal in the Buddhist priesthood and laity, and made themselves unworthy of remaining in the Order.

“ 6. I, then, as the head of the Order, felt it to be my reluctant duty to proclaim the said two priests, Watareka Ratanajoti Sobhita Terunnanse and Alutgama Medhankara Terunnanse, as being unworthy of officiating as priests, and I was obliged, by reason of the opinion of the Council and of many representations made to me by the clergy under my charge, to excommunicate the said two priests.

“ 7. In so doing the only motive of my action was that of the performance of my duty in maintaining the purity of the Buddhist Church and of safeguarding its interests. I had not the remotest intention to prejudice the minds of the Judges of Your Honourable Court in the cause now pending before Your Lordships, and if my

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action which my ecclesiastical duties impelled me to adopt can be construed into a contempt of Your Lordship's Honourable Court in any the slightest degree, I beg to tender to Your Lordships my humble apologies."

A. *St. V. Jayewardene*, for the applicant.

C. *M. Fernando* (with him *Batuwantudawe* and *Garvin*), for the respondents, showed cause.

July 6, 1908. WOOD RENTON J.—

In this case application is made to the Supreme Court, in the exercise of its inherent jurisdiction, to consider the question whether the issue of a certain proclamation, to which I will refer more particularly in a few moments, by the first respondent, Tibbotuwawe Siddhartha Sumangala of Malwatte Vihare in Kandy, and its reproduction in the "Sarasavi Sandaresa" by the second respondent, who is alleged to be the editor, and the third respondent who is admittedly the printer and publisher, of that paper, should be taken to constitute, under the circumstances, a contempt of Court. In regard to the facts there is practically no contest, and it will suffice to state their effect in a few sentences. It would appear that there has been a dispute between the parties, to which the applicant is one, as to the incumbency of the Kelani Temple. It came, in the first instance, before an ecclesiastical tribunal, constituted in accordance with the Buddhist law, whose decision was adverse to the present applicant. He declined, however, to accept the verdict of that tribunal, and the questions in issue have been brought before the District Court, have been adjudicated upon by that Court, and are now awaiting the consideration of the Supreme Court in appeal. It is admitted that, in that state of matters, the Maha Nayaka issued a proclamation, in which he not only interdicted two priests, who had given evidence in the proceedings in the Court below, from performing priestly functions till they had made their defence in the presence of an ecclesiastical assembly and had purified themselves in accordance with the Buddhist law, but at the same time characterized the evidence which they had given in the Court below as "suppressive of truth and upholding falsehood." The question, that we have to consider is, whether conduct of that description on the part of the author of the proclamation and of those who published it, does or does not constitute a contempt of Court. It appears to me that, to this question, there can be but one answer; and it is fair to the respondents to say that, through the mouth of their counsel, Mr. C. M. Fernando, while they properly raised the question as to whether or not a contempt of Court had been committed, they mainly rested their defence on the grounds stated in the affidavits

of the first and third defendants that they had intended to commit no contempt of Court, and that there were, in any event, circumstances which constituted a great mitigation of any offence that could be laid to their charge. I am quite prepared, speaking for myself, to accept the good faith of the allegations contained in these affidavits, and I should propose to give effect to this view of the case in the judgment we are to pronounce. At the same time I have no hesitation in holding that a contempt of Court, which, under some circumstances, might have required serious treatment, has been committed in the present case. I can well conceive, if I may put the illustration that I suggested to Mr. Fernando in the argument, that it might be a proper course for a Maha Nayaka, or for that matter for any ecclesiastical superior, to adopt in such a case as this, if he were to say to the incumbent against whom the judgment of the ecclesiastical tribunal had passed, and who had appealed against that judgment, or to any of his witnesses who were priests: "It is inexpedient that, under the present circumstances, you should exercise sacerdotal functions pending the appeal, and if you do not yourself see the decency of this suggestion on my part, I am prepared to take the responsibility of inhibiting you, while I express no opinion on the merits of your case, and while I am free to admit that my own adverse judgment against you or view of your evidence may ultimately be set aside." But it seems to me to be a quite different thing if the ecclesiastical superior takes upon himself, pending an appeal to a higher tribunal, not only to say to a priest, "You shall not be reinstated in your functions till you have undergone some process of purification," but to go further, and to characterize the evidence which he has given as being false. I have no hesitation in holding that this is a clear case of contempt of Court. It is extremely difficult to bring home to the minds of some people, and yet it is of vital moment that every one should know, that the law of contempt of Court does not exist for the glorification of the Bench. It exists—and exists solely—for the protection of the public. It is of the highest importance that, while cases are still undecided, nothing should be said which could influence the testimony of witnesses, or which could create any adverse and unjust impression upon the mind of the Court. I need scarcely point out that this latter consideration applies whether the cases are to be tried by juries or by Judges. For every one who has exercised judicial office knows that it is extremely difficult to keep the mind clear from misconception and from prejudice, if by some mischance the Judge has heard private or public gossip in regard to, or irresponsible comment upon, the case he has to decide. I feel sure that these considerations will appeal to all right thinking men in the whole community; and it is in the hope that they may reach all sections of the community that I have dealt with the question here at some length.

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In regard to the present case, it appears to me that in view of the affidavits of the first and third respondents, and of the apologies in these affidavits, the ends of justice will be met if the present rule is discharged, with costs to be paid by those respondents to the applicant. As regards the second respondent, I think that his affidavit shows that he is in no way responsible for the publication complained of. His name does not appear on the pages of the "Sarasavi Sandaresa," and I do not think that the mere fact that his name does appear in the almanac which Mr. St. V. Jayewardene has shown us should be allowed to over-ride the terms of his affidavit, to the extent of his being called upon to pay any share of the applicant's costs of the present motion. I should propose, therefore, as regards the second respondent, simply to discharge the rule, making no order as to costs.

GRENIER A.J.—

I entirely agree with what has fallen from my brother. I have nothing to add.

Rule discharged, but respondents to pay the costs of the application.

