1961 *Present :* **Tambiah, J.**

IN RE U. P. JAYATILAKE

S. C. 495—Application in Revision in M. C. Colombo South, 8078

Contempt of Court—Jurisdiction of an inferior Court to punish for contempt of court—Newspaper publications—Principles underlying law of contempt—Courts Ordinance (Cap. 6), ss. 47, 57—Civil Procedure Code, s. 839.

In the course of an order made by him a Magistrate had stated, " Theft of articles from Government Departments is frequent but not easily detected ". The respondent-petitioner, who was a newspaper reporter, published a news item stating that the Magistrate, when passing a sentence of three months' rigorous imprisonment on a railway watcher for having stolen pieces of brass, had said, " Thefts in Government institutions are increasing by leaps and bounds ". The Magistrate, thereupon, issued a notice directing the respondent-petitioner to appear before him to show cause, if any, why he should not be punished for contempt of court for publishing a false report.

Held, that the publication of the false report, even if it was assumed to amount to a contempt of court, was not punishable by the Magistrate under section 57 of the Courts Ordinance inasmuch as : (1) it was not committed in the presence of the court, and (2) it was not an offence which was committed in the course of any act or proceeding in the court, and which was declared by any law to be punishable as a contempt of court.

Held further, that the publication for which the respondent-petitioner was responsible could not be said to amount to a contempt of court.

APPLICATION to set aside an order of the Magistrate's Court, Colombo South.

G. T. Samarawickreme, for the respondent-petitioner.

J. G. T. Weeraratne, Crown Counsel, with *H. B. White*, Crown Counsel, as *amicus curiae*

Cur. adv. vult.

March 2, 1961. TAMBIAH, J.—

This is an application to revise the order of the learned Magistrate of Colombo South asking the respondent-petitioner to show cause why he should not be dealt with for contempt of Court. The facts leading to the making of this order are briefly as follows :

The learned Magistrate in the course of an order he made in case No. 466/N had stated :" Theft of articles from Government Departments is frequent but not easily detected ".

The respondent-petitioner is a correspondent of the " Ceylon Daily News ". On the 14th October 1960 the following news item, for which he was responsible, appeared in the above newspaper in reference to the above case :—

" Watcher Stole.

(From our Mt. Lavinia Correspondent)

' Thefts in Government institutions are increasing by leaps and bounds ', said Mr. D. S. L. P. Abeyasekera, the Colombo South Magistrate, in passing a sentence of three months' hard labour on a railway watcher, S. D. Wilbert, of the Railway Workshops, Ratmalana, for having stolen pieces of brass. "

On 14.10.60, the learned Magistrate issued notice directing the respondent-petitioner to appear before him on 17.10.60 and to show cause, if any, why he should not be punished for contempt of Court for inserting a false report in the " Ceylon Daily News " of 14.10.60. The learned Magistrate fixed the matter for inquiry, and, by the order of this Court, he was requested to stop further proceedings. On 17.10.60, when the respondent-petitioner appeared in Court, it was submitted on his behalf that the Magistrate had no jurisdiction to inquire into and adjudicate upon the charge of contempt of Court as the act alleged was not done in the presence of the Court. The learned Magistrate adjourned proceedings till 8.11.60 as he desired to obtain assistance from the Attorney-General. However, on 8.11.60 the Magistrate stated that he had decided the matter, and did not require assistance from the Crown Counsel, and purporting to act under section 839 of the Civil Procedure Code, held that he had jurisdiction to adjudicate upon the charge.

It is necessary to consider the statutory provisions of our law dealing with contempt of Court. Under section 47 of the Courts Ordinance, the Supreme Court is given " full power and authority to take cognizance of and to try in a summary manner any offence of contempt committed against or in disrespect of *the authority of itself or any offences of contempt against or in disrespect of the authority of any other Court and which such court has not jurisdiction under section 57 to take cognizance of and punish*, and, on conviction, to commit the offender to jail until he shall have purged his contempt or for such period as to the Court or Judge shall seem meet. " Only a limited power to punish for contempt is conferred on the Court of Requests, Magistrate's Court and District Court, by section 57 of the Courts Ordinance, which is as follows :

" Every District Court, Court of Requests and Magistrate's Court shall, for the purpose of maintaining its proper authority and efficiency have a special jurisdiction to take cognizance of, and to punish by the procedure and with the penalties in that behalf by law provided, every

offence of contempt of court committed *in the presence of the court itself, and all offences which are committed in the course of any act or proceeding in the said courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of court.* " The publication of the false report by the respondent-petitioner, which is the subject matter of this case, does not fall within the Magistrate's jurisdiction under the above section inasmuch as :

(1) it was not committed in the presence of the court, even if it is assumed to amount to a contempt of court, and (2) it is not an offence which was committed in the course of any act or proceeding in the court, and which is declared by any law to be punishable as a contempt of court.

Section 57 of the Courts Ordinance has been interpreted authoritatively by a Divisional Bench of the Supreme Court in several cases. In *Annamalay Chetty v. Gunaratne* [1] Withers J. said, " The civil Court's jurisdiction to deal with offences of contempt is limited to the provisions of section 59 " (now section 57) " of the Courts Ordinance No. 1 of 1889, and to special provisions in the Civil Procedure Code. Section 59 enacts that a District Court may take cognizance of offences of contempt of Court committed in the presence of the Court itself, and of all offences which are committed in the course of any act or proceeding in the said Court, and which are declared by any law for the time being in force to be punishable as contempts of Court. " In this case the view was taken that disobedience by a judgment-debtor of an order made under section 219 of the Civil Procedure Code to attend court for examination is not punishable as contempt of court under Chapter 17 of the Code. In *King v. Samarawira* [2] a Divisional Bench, following the ruling in the above case, held that possession of land by a receiver appointed by a District Court is possession by the Court, and contumacious interference with the possession of the receiver is punishable as a contempt of Court. But such contemptuous interference *ex facie curiae* with the possession of the receiver is punishable only by the Supreme Court, and not by the District Court. In *Re Molamure* [3] a Divisional Bench took the view that where a District Court issued a probate to an executor and allowed him to withdraw from the bank a certain sum of money lying to the credit of the estate leaving a balance, which was intended to defray the cost of estate duty, a disobedience of the order of the District Court amounted to contempt of its authority, but in the circumstances the Supreme Court alone had jurisdiction to take cognizance of, and punish such a contempt. Macdonell C.J., in the course of his judgment, referred to sections 51 and 59 (now 47 and 57 respectively) of the Courts Ordinance and drew a clear distinction between the powers of the Supreme Court and those of the other courts of this country in dealing with contempt of court. He said (at p. 42), " The contempt alleged here was committed ' against or in disrespect of the authority of another Court ', and if that

[1] *(1895) 1 N. L. R. at p. 50.* [2] *(1917) 19 N. L. R. 433.*
[3] *(1935) 37 N. L. R. 33.*

Court has no jurisdiction under section 59 to take cognizance of and punish such a contempt, then clearly it is this court which is empowered to do so." Instances of conduct declared to be contempt of Court and punishable as such are found in sections 137, 294, 295, 358, 650, 656, 682, 713, 717 and 718 of the Civil Procedure Code.

What has been said so far is sufficient to dispose of this application, but Mr. J. G. T. Weeraratne, who appeared as *amicus curiae*, invited the court to deal with this matter more fully so that judges of the District Court, Court of Requests and Magistrate's Court may have guidance.

Many systems of jurisprudence recognise the right of a Court of law to punish persons for the commission of acts in contempt of its authority. Referring to the jurisdiction of the Court to punish for contempt, Lord Russel observed in *Rex v. Gray*[1]: "This is not a new-fangled jurisdiction; it is a jurisdiction as old as the common law itself, of which it forms part. It is a jurisdiction the history, purpose, and extent of which are admirably treated in the opinion of Wilmot, C.J., (then Wilmot J.) in his Opinions and Judgments. It is a jurisdiction, however, to be exercised with scrupulous care, to be exercised only when the case is clear, and beyond reasonable doubt; because, if it is not a case beyond reasonable doubt, the Courts will, and ought to, leave the Attorney-General to proceed by criminal information." Even in England a distinction has been made between the powers of the superior and inferior courts of record to punish for contempt. The "Encyclopaedia of the Laws of England", (Vol. 3, p. 314) states the law succinctly as follows: "The jurisdiction of inferior Courts of record (such as the Court of Quarter Sessions, the Mayor's Court and County Court) is confined to such contempts as are perpetrated *in facie curiae* (as in *R. v. Lefroy*[2] and *R. v. Jordan*[3]), and does not extend to such as are committed out of Court unless by virtue of some statutory enactment." The legislative provisions of Ceylon appear to have followed the distinction observed in the English Courts. The history of our legislation on this subject is set out fully by Shaw J. in *King v. Samarawira* (*supra*). After referring to the rules and regulations and the Charter of Justice, he states (at p. 437), "In this condition of the law the Courts Ordinance, 1889, was passed. This Ordinance is not a mere consolidation Ordinance, but as the preamble states, it is an Ordinance 'to consolidate and amend the laws relating to the constitution, jurisdictions, and powers of the Courts'." After the Courts Ordinance came into operation one has to look at the sections of the Ordinance to determine the powers of our Courts in matters of contempt. The Criminal Procedure Code also contains provisions which make certain acts punishable as contempt of Court. These are the offences under sections 173, 176, 177, 178, and 123 of the Penal Code. Section 380 of the Criminal Procedure Code provides that certain other offences in the nature of contempts of court referred to in section 147 paragraph (*b*) and (*c*) shall be sent for inquiry and trial to the nearest Magistrate's Court, and, finally, after providing

[1] *(1900) 2 Q. B. D., at pp. 40-41.* [2] *(1873) L.R. 8 Q. B. 134.*
[3] *(1888) 57 L. J. Q. B. 483.*

procedure by which summary proceedings shall be governed, lays down that except as provided, "No District Judge or Magistrate shall try any person for any offence referred to in section 147 (1), paragraph (*b*) and (*c*), when such offence is committed before himself or in contempt of his authority or is brought under his notice as such District Judge or Magistrate in the course of a judicial proceeding." (See section 384 of Criminal Procedure Code.) The contention that section 59 of the Courts Ordinance is not exhaustive of the powers of the District Courts to punish summarily for contempt and that such Courts have an inherent power to punish summarily all contempts was rejected in *King v. Samarawira* (*supra*) (at p. 438). Section 839 of the Civil Procedure Code no doubt gives inherent powers to the District Court and Courts of Requests, but those powers cannot be invoked to confer jurisdiction over those particular aspects of the law of contempt of court which are already provided for by statute. As de Kretser J. held in *Kamala v. Andris* [1], section 839 is not intended to authorise a court to override the express provisions of the Code. If contempts of court, which do not come within the purview of the District Court, Court of Requests or Magistrate's Court to punish are committed, then it is the duty of judges who preside in such courts to report the matter to the Supreme Court, which in appropriate cases will take cognizance of such matters. It is clear that the learned Magistrate was not right in invoking the inherent powers of the Court in justification of the charge of contempt against the respondent-petitioner. The scope within which an appeal to such inherent powers can succeed was pointed out in the following words by Humphreys J., in *Re a Solicitor* [2], "This application comes before the court in that most attractive form, an appeal to the inherent jurisdiction of the court. The judges of this division have always been friendly to such an application based upon that ground, but one has to remember, however desirable it may be in order to prevent injustice not to confine within too strict limits what is known as the inherent jurisdiction of the Court, it is quite another thing for this court to be invited to override the terms of statutes . . ."

Mr. Samarawickreme, counsel for the Respondent-petitioner as well as Mr. Weeraratne further contended that the report published at the instance of the respondent-petitioner cannot in any event be construed as a contempt of court. In *Reginald Perera v. King* [3], Lord Radcliffe, citing with approval the dictum in *Rex v. Gray* (*supra*), said: "It is proper that the Courts there should be vigilant to correct any misapprehension in the public that would lead to the belief that accused persons or prisoners are denied the right that ought to be theirs. But Mr. Perera too has rights that must be respected, and their Lordships are unable to find anything in his conduct that comes within the definition of contempt of court. That phrase has not lacked authoritative interpretation. *There must be involved some 'act done or writing published calculated to bring a Court or a judge of the Court into contempt or to lower his authority'*

[1] *(1939) 41 N. L. R. at p. 72.* [2] *(1944) 2 A. E. R. a p. 434.*
[3] *(1951) 52 N. L. R. at p. 296.*

or something calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts." In this case it was held that an entry made by Mr. Perera, who was a Member of Parliament, in the Visitors' Book of the Colombo Remand Prison that the "present practice of appeals of Remand prisoners being heard in their absence is not healthy", was held not to amount to contempt of court although it was not in fact a correct statement.

The principles underlying the law of contempt, *qua* press publications, are enunciated in a work entitled, "The law of Contempt of Court and of Legislature" by Teck Chand and H. L. Sarin (2nd Edition at pp. 249-251), as follows :

"1. It is a contempt of Court to scandalise the Court or offend against the dignity of a Judge by attributing to him dishonesty or impropriety or incompetence, regardless of the fact whether the case with reference to which the offending remarks were made is pending in the court, or has been decided.

"2. It is a contempt of Court to publish an article in a newspaper commenting on the proceedings of a pending criminal case or a civil suit, reflecting on the Judge, jury, the parties, their witnesses or counsel appearing in the case. It is immaterial whether the remarks are made with reference to a trial actually proceeding, or with reference to a trial which is yet to proceed, provided that the comment has a tendency to prejudice the fair trial or influence the decision.

"3. It is a contempt of Court to publish any matter affecting the proceedings of a pending case which has a tendency to prejudice the public for, or against a party, before the cause is finally heard. It is not necessary to prove that a Judge or jury will be prejudiced.

"4. General criticism of the conduct of a Judge, not calculated to obstruct or interfere with the administration of justice, or the administration of the law in any particular case, even though libellous, does not constitute a contempt of Court . . . . "

"Lord Hardwicke in *Read v. Hugganson*[1] said that there are three different sorts of contempts :

(*a*) One kind of contempt is scandalising the Court itself.

(*b*) There may be likewise a contempt of this Court in abusing parties who are concerned in causes here.

(*c*) There may be also a contempt of this Court in prejudicing mankind against persons before the cause is heard."

Applying the principles set out both in case decisions and text books, the publication for which the respondent-petitioner was responsible cannot be said to amount to a contempt of court. In this connexion

[1] *(1742) 26 E. R. 283=2 Atk. 469.*

the words of Fletcher-Moulton L.J. in *Scott v. Scott* [1] (which was upheld by the House of Lords) are apposite. He said, " The courts are the guardians of the liberties of the public and should be the bulwark against all encroachments on those liberties from whatsoever side they may come. It is their duty therefore to be vigilant. But they must be doubly vigilant against encroachment by the courts themselves. In that case it is their own actions which they must bring into judgment and it is against themselves that they must protect the public. " It is, however, unfortunate that the respondent-petitioner who was responsible for the publication in question, has not expressed his regret as a matter of courtesy to the Magistrate whose words were misreported.

For the reasons I have already stated, I set aside the order of the learned Magistrate calling upon the Respondent-petitioner to show cause for contempt.

Order set aside.

[1] *(1912) P. 241, at p. 274.*