1945 *Present:* **Soertsz A.C.J., Keuneman S.P.J. and Wijeyewardene J.**

## In the Matter of a Rule issued under Section 47 of the Courts Ordinance on P. Ragupathy, Advocate.

*Contempt of Court—Passage in petition of appeal—Calculated to bring Judge into contempt or lower his authority—Inadequate apology by respondent.*

Rule was issued under section 47 of the Courts Ordinance on the respondent, an Advocate, in respect of a certain passage appearing in a petition of appeal addressed to the Court of Criminal Appeal, which he had drafted and presented for signature to the prisoners concerned.

The passage was in the following terms:—

"His Lordship suggested to witnesses for the prosecution answers which enabled them to shape the evidence in a manner which made the case for the prosecution more convincing than on the evidence as it otherwise stood".

In his affidavit the party noticed averred that he had no intention to convey a sinister or derogatory meaning, maintained that the words used did not amount to a contempt of Court and added that in view of the fact that the Rule issued showed that it appeared to the Supreme Court that the statement in the petition of appeal was an unwarranted and offensive statement made in disrespect of the authority of the Court, he humbly expressed his regret for having made the statement.

There was nothing in the record to support or even to suggest that the learned trial Judge acted in the manner imputed to him.

*Held*, (i) that, even if it were true that the respondent had no intention to convey a sinister meaning, the Court had to interpret the meaning of the language used, and in doing so to consider how it would be understood by the majority of those who read it; a petition of appeal would pass through many hands, viz., the persons who prepare and type it, officials at the jail, officials of the Supreme Court Registry, and others who have access to it.

(ii) that to the ordinary man the passage in question would convey a meaning so sinister, or at the least so derogatory, that it would bring the Judge into contempt or lower his authority.

*Held, further*, that the expression of regret contained in the respondent's affidavit was not a sufficient or satisfactory apology nor could it be taken into consideration in mitigation of sentence.

THIS was a Rule issued on the respondent, an Advocate, to show cause why he should not be committed for contempt in respect of a certain passage in a petition of appeal which he had drafted. The facts are set out in the head-note.

*H. V. Perera, K.C.* (with him *N. E. Weerasooria, K.C., E. B. Wikremanayake, H. W. Thambiah, A. H. C. de Silva, G. E. Chitty*, and *H. W. Jayawardene*), for party noticed.—The passage in the petition of appeal to which exception has been taken is fairly capable of an innocent interpretation. The word "suggested" has no sinister meaning. It only implies that leading questions were put to the witness—section 141 of the Evidence Ordinance. The Judge was indeed entitled to do this under section 165 of the Evidence Ordinance. The word "enabled" shows

that the Judge did not intend the consequences. The mere fact that the statement was capable of a sinister meaning would not be sufficient to make it a contempt. It did not bring the authority of the Court into ridicule. The party noticed had made the statement in the petition of appeal only because he felt it his duty by his client to do so. An Advocate expects a generous interpretation of a statement made in the course of his professional duty. See *Morogese Ayer v. Cathergamer* [1].

*C. Nagalingam, Acting Attorney-General* (with him *H. A. Wijemanne, C.C.*) as *amicus curiae*.—The only question is whether the passage as a whole imputed something to the Judge which was improper. It is submitted that the passage did impute to the Judge something of unfairness to the accused. No unqualified apology is made even now. On the face of it the contempt is a serious one, and the party noticed is clearly liable.

*Cur. adv. vult.*

July 23, 1945. KEUNEMAN S.P.J.—

The Rule in this case was issued in respect of a statement contained in a petition of appeal to the Court of Criminal Appeal in connection with Appeals 13 and 14 of 1945 and Applications 20 and 21 of 1945, S. C. No. 4—M. C., Kayts No. 5640. The passage is as follows:—

> " His Lordship suggested to witnesses for the prosecution answers which enabled them to shape the evidence in a manner which made the case for the prosecution more convincing than on the evidence as it otherwise stood ".

It is admitted that the party noticed drafted the petitions of appeal including this sentence, and presented them for signature to the prisoners concerned in the jail.

The nature of the contempt alleged has been described as " scandalising a Court or Judge ". This would consist of " any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority ". (*Reg. v. Gray*) [2]. It has been well established that in Ceylon this species of contempt is punishable. The next question that arises relates to the interpretation of the passage. In spite of the subtle arguments advanced by Mr. H. V. Perera I am satisfied that to the ordinary man the passage in question would convey a meaning so sinister, or at the least so derogatory, that it would bring the Judge into contempt or lower his authority.

In his affidavit the party noticed has averred that he had no intention to convey a sinister or derogatory meaning. That, however, even if true, does not conclude the matter. As Wood Renton C.J. said in the matter of *Armand de Souza* (18 N.L.R. 33) " it is by no means exhaustive of the situation. The Court has itself to interpret the meaning of the language used, and in doing so to consider how it will be understood by the majority of those whom it reached. . . . . It is clear that the readers of such an article as this would not stop to subject it to a minute analysis which it has received at the Bar, or to consider how far the character of the warp of one line of criticism was modified by woof of a different texture. They would read the article as such articles are read

[1] *2 Lorenz 44.*

[2] *(1900) 2 Q. B. 36.*

every day by ordinary people, who have no time, even where they have the capacity, to carry out such a policy of balancing, and who would be guided in the long run by the general impression which the article left on their mind ". (See also *Hulugalle's* Case, 39 N.L.R. 294.) This was written in respect of an article published in a newspaper. But even a petition of appeal of the kind we are dealing with passes through many hands, viz., the persons who prepare and type it, officials at the jail, officials of the Supreme Court Registry, and others who have access to it.

In my opinion the party noticed has failed to show cause why he should not be committed for contempt of Court. There is nothing in the record to support or even to suggest that the learned trial Judge acted in the manner imputed to him, and as I have already observed the words used are offensive.

The only matter that remains is what punishment should be imposed. On the face of it the contempt is a serious contempt, but the suggestion contained in it is of such a character that it is difficult to understand how it could have been made by an Advocate of this Court. It is very likely that the party noticed did not intend to convey the full meaning which the words would ordinarily bear. What is difficult to understand is how the party noticed can continue to hold the opinion that these words are not and cannot be offensive and derogatory to the Judge. That is, however, the effect of the affidavit tendered. The party noticed has maintained that the words used did not amount to a contempt, and has added that in view of the fact that the Rule issued showed that it appeared to this Court that the statement was an unwarranted and offensive statement made in disrespect of the authority of the Court, he humbly expresses his regret for having made the statement. This is not a sufficient or satisfactory apology nor can it be taken into consideration in mitigation of sentence.

In all the circumstances, the order of the Court is that you, P. Ragupathy, Advocate, be imprisoned till the rising of the Court and that you do pay a fine of Rs. 250 or suffer simple imprisonment for one month in default of payment.

*Rule made absolute.*