1941 *Present :* **Soertsz J.**

R. VEERASAMY *v.* STEWART *et al.*

IN THE MATTER OF A CONTEMPT OF THE AUTHORITY OF THE SUPREME COURT IN RESPECT OF NON-SUMMARY PROCEEDINGS IN M. C., GAMPOLA, No. 2,172

Contempt of Court—Publication of editorials and articles on pending case—Articles calculated to prejudice the fair trial of the petitioner—Intent not an essential ingredient of offence—Courts Ordinance, s. 47.

Where the editor and the publisher of a newspaper were charged with contempt of the authority of the Supreme Court in respect of certain editorials, letters and report of a speech, appearing in the newspaper and referring to non-summary proceedings in a Magistrate's Court in which the petitioner was charged with murder—which said publications were calculated to prejudice the fair hearing of the case before the Supreme Court,—

***Held,* that it was not essential to establish that the respondents intended to prejudice the fair trial of the petitioner or to interfere with the course of justice. It would be sufficient if the effect of the publications complained of was to create prejudice or to interfere with the due course of justice.**

THIS was a rule issued against the respondents, the Editor and the Publisher of the Times of Ceylon, to show cause why they should not be dealt with under section 47 of the Courts Ordinance for Contempt of the Authority of the Supreme Court.

N. Nadarajah, for the respondents.—A rule for contempt would lie only in a case where comments have been made pending an investigation, directly affecting the accused person and connecting him with the commission of the offence. In the present case it cannot be said that the publications in question directly or by necessary inference prejudice the petitioner by implicating him personally. The leading cases on the subject are *R. v. Parke*[1]; *R. v. Tibbits*[2]; *R. v. Davies*[3]. What is merely "technicality" contempt is not sufficient; the power which this Court possesses is one which ought to be exercised only in cases of real contempt (*Reg. v. Payne and Cooper*[4]; *Gaskell and Chambers, Ltd. v. Hudson, Dodsworth & Co.*[5]). See also Oswald on Contempt of Court (1910), pp. 94-95.

S. Nadesan (with him *P. de Silva* and *H. Jayawardene*), for the petitioner.—The comments made in the articles are of such a character as to create an atmosphere of prejudice against the accused and affect a fair trial. It is not necessary that the comments should make direct reference to the subject-matter of the case. A case exactly in point is *Superintendent of Legal Affairs, Behar v. Murali Manohar*[6]. See also *Higgins v. Richards*[7]; *R. v. Editor, Printers and Publishers of the Daily Herald* Ex Parte *Rouse*[8];

[1] *(1903) 2 K. B. 432.*
[2] *(1902) 1 K. B. 77.*
[3] *(1906) 1 K. B. 32.*
[4] *(1896) 1 Q. B. 577.*
[5] *(1936) 2 K. B. 595 at 601.*
[6] *(1941) 42 Cr. L. Jnl. 225.*
[7] *(1912) 28 T. L. R. 202.*
[8] *(1931) 75 Sol. Jnl. 119.*

R. v. Editor, Printers and Publishers of the Evening Standard: Ex parte *Director of Public Prosecutions*[1] *R. v. Hutchinson et al.*: Ex parte *Mahon*[2].

N. Nadarajah replied.

Cur. adv. vult.

August 5, 1941. SOERTSZ J.—

This case affords an illustration of what, I believe, has been the experience of nearly every one of us, that we have slipped into saying things we did not intend, or that we have said more or less than we meant.

A perusal of the publications in question in this case in the light of the averments in the affidavits of the respondents which I accept, and of the submissions of their Counsel, has satisfied me that in publishing these articles it was not the purpose of the respondents to prejudice the petitioner and his co-accused, or to interfere with the course of justice.

But, unfortunately for the respondents, that is not an end of the matter.

As Harris C.J. said in the case of *Superintendent of Legal Affairs, Behar v. Murali Manohar* (*supra*),

> "It has been frequently laid down that no *intent* to interfere with the due course of justice, or to prejudice the public need be established if the *effect* of the article or articles complained of is to create prejudice, or is to interfere with the due course of justice."

In regard to the precise meaning of the words 'if the effect is to create prejudice or to interfere', numerous judgments have established the rule that—

> "the question in every case is not whether the publication *in fact* interferes, but whether it *tends* to interfere with the due course of justice", (*e.g.*, Vide *Metropolitan Music Hall v. Lake*[3]; *In re Cornish, Staff v. Gill*[4].)

Therefore, in view of my finding that the respondents did not intend to interfere with the course of justice, it is sufficient for me to address myself to the question whether these publications tend to prejudice the petitioner and the other accused, by interfering with their right to a fair and impartial trial.

In taking up this question, I must, of course, bear in mind that the summary jurisdiction to punish for contempt of Court must not be exercised in regard to matters which can, if at all, be said to tend to prejudice or interfere with parties or the course of justice only in some remote or far-fetched manner. It has been observed that—

> "Courts should not be astute to exercise this summary power to punish contempts of a *technical* kind."

In the case of *Gaskell and Chambers, Ltd.*[5] Lord Hewart C.J. said—

> "I should wish to refer to the words used forty years ago by Lord Russell C.J., which, with respect, seem to me to be no less true to-day than they were then. He said in the case of *Reg. v. Payne & Cooper*[6].

[1] *(1924) 40 T. L. R. 833 at 836.*
[2] *(1936) A. E. R. 1514.*
[3] *(1889) 58 L. J. Ch. 513.*
[4] *(1894) 9 T. L. R. 196.*
[5] *(1936) 2 K. B. 595.*
[6] *(1896) 1 Q. B. 77.*

'I wish to express the view I entertain that applications of this nature have, in many cases, gone too far. No doubt, the power which the Court possesses in such cases is a salutary power and it ought to be exercised in cases where there is a real contempt but only when there are serious grounds for its exercise . . . . The applicant must show that something has been published which is either clearly intended or, at least, is calculated to prejudice a trial that is pending'."

If I may analyse this dictum, the conditions laid down in it for the exercise of this jurisdiction appear to be:—(*a*) a pending trial; (*b*) a publication *intended* or *calculated* to prejudice that trial.

In this case, when the first editorial of May 10, 1941, was published, two accused persons, other than the petitioner, had been arrested and produced before the Magistrate, and proceedings had commenced. The petitioner himself was arrested and produced before the Magistrate on May 11, 1941, and there can be no question but that the respondents, whatever their state of knowledge on May 10, were well aware of the pending case when the other editorials, the letters and the speech were published. So that the first condition stated above is satisfied.

In regard to the second condition, I have observed already that I am satisfied that the respondents did not intend to prejudice the accused by interfering with their right to a fair trial. The sole question that remains is whether these publications are calculated to prejudice the accused in that way. Commenting on this phrase 'calculated to prejudice', in the case of *R. v. Tibbits*[1], Lord Alverstone C.J. said:—

"The essence of the offence is conduct calculated to produce, so to speak, an *atmosphere of prejudice* in the midst of which the proceedings must go on."

For a proper consideration of the question whether this second condition is satisfied, an examination of the articles complained of is necessary. First, there is the editorial of May 10. The title is "The Murder of Mr. Pope". The opening paragraph is in these terms:—

"The dastardly murder of Mr. C. A. G. Pope in circumstances of peculiar barbarity introduces a new element into the labour agitation that has been going on some time Up-country. There is no reason to doubt that the disaffected elements are connected with this murder. What precisely they hope to gain by assassination it is difficult to see."

Further down, occurs this passage:—

"Strikes occur, but if this murder is to be regarded as a sign of the times, the retort now takes the form of assassination. The murder of Mr. Pope is a challenge in more ways than one. It is a challenge to Indian leadership in Ceylon. Whatever sympathy the Indian leaders may have for their humbler brethren on the estates, they could have no sympathy with murder, and murder moreover of this cruel and cowardly type."

Petitioner's Counsel took strong exception to the use of the words "murder", "assassination", "dastardly murder in circumstances of peculiar barbarity", "murder moreover of this cruel and cowardly type".

[1] *(1902) 1 K. B. 77.*

He contended that one of the questions for decision by the proper tribunal would be whether the offence of the culprits, whoever they might be, was the offence of murder or some lesser offence and, here we find the editor prejudging the case and giving expression to his opinion that the offence was "murder", "assassination", "dastardly murder" "murder of a cruel and cowardly type". Commenting on similar remarks made by a newspaper in regard to a case in Dinapure, Harris C.J. said:—

> "In this article the facts of the case are stated without any qualification, and anybody reading the article would be bound to come to the conclusion that the assault committed on this young Indian was a brutal assault committed without any justification of any kind. Whether it was so or not is a matter which a jury will have to decide. No one has a right to prejudge the case and to state what he regards to be the true facts whilst the case is pending."

It may well be that when the true facts are known these descriptions may fit the crime, but the use of these expressions at this stage is calculated to prejudice the accused in regard to the charge preferred against them.

In his affidavit, the first respondent states in paragraph 8:—

> "in using the word 'murder' , ... I meant to convey the meaning attached to the word in ordinary parlance, to wit:—to kill wickedly, inhumanly or barbarously (Please see Oxford Dictionary Vol. VI., p. 770), and did not precisely intend to convey the meaning attached to it under the Ceylon Penal Code. A newspaper has to use the English language as understood by the layman and not the legal phraseology of the Courts and their niceties of interpretations according to law."

I fully appreciate this, and I should not have been disposed to take serious notice of the petitioner's complaint if it related only to the use of the word "murder", and if that word occurred in this first editorial only, for I allow that to drive journalists to so meticulous a search of the *mot juste* would result in their being very much behind the times with their news, and would add another terror to lives already much "beset with pitfall and with gin". But the difficulty here is the insistence upon the fact that the offence is murder. Not only is there the reiteration of this fact in the editorial of May 10, but in the next editorial on May 14, the matter is taken a stage further and the offence is described as the "dastardly and *premeditated* murder" and when we come to the speech of Mr. Lloyd Jones on June 9, 1941, we find him stating "For here is an *indisputable fact—murder, no less*". It is true that Mr. Lloyd Jones prefaced his remarks by saying:—

> "no comment is, of course, permissible on the case against those accused of the murder of Mr. Pope arising out of his actions in the ordinary course of his duties. The case is before the Courts and we still have the greatest respect of our Supreme Court",

but that is of no more avail than was a similar statement of the Editor in *Murali Manohar's Case* (*supra*) to the effect that:—

> "we have no desire to offer any comments on the merits of the case now being heard at Dinapure except to emphasise that the incident has horrified the entire province."

It was held that to say that the "incident has horrified the whole province" "must prejudice the person who is now standing his trial as a result of this incident". At first sight this observation may appear to go too far, but it must be understood with reference to the whole article.

In the case of *R. v. Editor, Printers and Publishers of the Daily Herald: Ex parte Rouse*[1] the facts were that while Rouse stood committed for trial on a charge of murdering an unknown man in a motor car which was found burned out, the respondents published a poster containing the words "Another blazing car murder". That poster related to another case in which, it was alleged, a young woman was found dead in a blazing motor car, and Lord Hewart C.J. in the course of making the Rule absolute said:—

> "The words 'another murder' might well seem to suggest that the case on which Rouse was to be tried was a case of murder. That was the very issue which the jury would have to try."

In Rouse's case the question was whether the death of the deceased was the result of an accident, or due to violence. In the present case, so far as it is possible to see, there is no question of accident, but that is a difference only in degree, not in kind. It is possible—we cannot say—that the question may arise whether the offence is murder or a lesser offence. As Hewart L.C.J. observed in another case, that of *R. v. Editor, Printers and Publishers of the Evening Standard*: Ex parte *Director of Public Prosecutions*[2]:—

> "It is not possible even for the most ingenious mind to anticipate with certainty what are to be the real issues, to say nothing of the more difficult question what is to be the relative importance of different issues in a trial which is about to take place."

The decision in Rouse's case is a striking instance of the anxiety of the law to see that no prejudice is likely to be caused to accused persons awaiting trial.

The second ground upon which the petitioner based his complaint is that in the editorial of May 10, it was stated that:—

> "there is no reason to doubt that the disaffected elements" of labour agitation "are connected with this murder."

And in the editorial of May 14, that:—

> "There has been ample evidence for some time past of the utter lack of responsibility possessed by Labour Unions who, professedly, come into existence to better the lot of the estate labourer. It is a well known fact that the vast majority of their office-bearers on estates are selected from the more rowdy elements for the excellent reason that the average decent labourer flatly refuses to associate himself with such activities . . . . Mr. Pope's murder was the direct result of this state of affairs . . . The trouble upon his estate appears to have originated with the perfectly lawful dismissal of a prominent member of a Labour Union. Had there been no unchecked encouragement of defiance of law and order, Mr. Pope would have been alive to-day."

[1] *75 Sol. Jnl. 119.*

[2] *(1924) 40 T. L. R. 833 at 836.*

The petitioner says that he and the other accused, are members of a Labour Union, and that they will be prejudiced by statements to the effect that there is no reason to doubt that the disaffected elements of labour are connected with the murder, that the murder arose from the dismissal of a prominent member of a Labour Union, &c. Counsel contends that even if these statements do not definitely convey the meaning that the accused are the culprits, they are, at least, calculated to involve them in suspicion. It is impossible to deny that there is much force in this contention. Again it may well be, that when the true facts are ascertained by the proper tribunal, these statements may prove to be correct, but to say all this at this stage when the case is due to be tried is calculated to prejudice the accused. It must be borne in mind that this case is going to be tried by a Judge and a Jury. The Times Newspaper enjoys a great reputation and has a wide circulation in the country, and one may safely assume that most of the Jurors who will come to try this case have read these articles, and they, probably, read them as newspapers are read, except by the very leisured classes, hurriedly, without critical or logical examination, and taking almost everything for granted.

No one desires to fetter unduly the freedom of the Press, least of all Courts of Law, for the Press can be, and has often been a powerful ally in the administration of Justice, but it is essential that judicial tribunals should be able to do their work free from bias or partiality and that the right of accused persons to a fair trial should be absolutely unimpaired.

Lord Reading C.J. said in *R. v. Empire News Ltd.*[1]:

> "The Courts should not permit the investigation of murder to be taken out of the hands of the proper authorities. The liberty of the individual even when he is suspected of crime, and indeed even more so when he is charged with crime, must be protected, and it is the function of Courts to prevent the publication of articles which are likely to cause prejudice."

It would not be surprising to find many persons reading passages such as I have quoted with astonishment and even with disappointment. It does seem natural, when one is confronted with what appears to be an atrocious crime, to express immediate horror and condemnation. It is poor comfort to be told that although one may not express oneself in the way indicated in the judgments I have referred to, while a case is pending, one may give vent to one's feelings when the case has been finally decided, so long as one confines oneself to the relevant fact and keeps within certain bounds. But that appears to be well settled law.

There are countries in which this attitude of the British system of Law is viewed with frank distaste as calculated to encourage crime and to pamper criminals. But, in our Jurisprudence the presumption of innocence is deeprooted and sacrosanct. Lord Sankey in his celebrated judgment in the Woolmington case described it as 'the thread of gold' that runs through our Criminal Law. Proceedings of the kind before me now are an inevitable corollary of that presumption. They are part of the machinery devised to ensure the effective operation of the presumption, and to prevent it from degenerating into an empty formula.

[1] *Times 20. 120.*

For the reasons I have given, I must hold that although the respondents had no intention to cause prejudice, the publications for which they admit responsibility are 'calculated to produce an atmosphere of prejudice in the midst of which proceedings must go on', and in that way, they tend to interfere with a fair trial of the case.

It would appear that the respondents entertained the opinion that they were entitled to comment on the case in the way they did so long as they did not say anything directly against those charged with the offence. Now that that opinion has been held to be erroneous they have tendered an apology to this Court. Mr. Nadesan who appeared for the petitioner, and if I may say so, put forward his case with commendable moderation said that this application for a Rule was made for the sole purpose of repairing any prejudice that might have been caused to his client. In all these circumstances and particularly in view of the fact that I have found that it was not the purpose of the respondents when they published these articles to cause prejudice to the accused or to interfere with the course of justice, I think that it will be sufficient if I order that the Rule be discharged in view of the apology that has been tendered by the respondents. This apology, I think, will serve the purpose the petitioner had in view in making this application. I feel confident that there will be no recurrence of this sort of comment in future.

Rule discharged.