

The Queen V. Peries

372/1964

Present: T. S. Fernando, J., Sri Skanda Rajah, J., and G. P. A. Silva, J.

THE QUEEN v. D. PERIES et al.

Rule No. C. J. 255/63 (A)—In the matter of a Rule Nisi under Section 47 of the Courts Ordinance

Newspaper—Publication of news interfering with administration of justice—Contempt of Court—Admission of guilt—Sentence—Courts Ordinance, s. 47.

The respondents stated that they had no cause to show why they should not be dealt with for an offence of contempt of court committed by them by publishing in their newspaper certain news interfering with the administration of justice. In mitigation of the offence they pleaded, *inter alia*, that they had not intended to interfere with that administration of justice.

Observations of Court when passing sentence.

RULE nisi under section 47 of the Courts Ordinance.

V. Tennekoon, Solicitor-General, with *R. S. Wanasundere*, Crown Counsel, in support.

H. W. Jayawardene, Q.C., with *M. Rafeek*, *George Mason* and *I. S. de Silva*, for the respondents.

Cur. adv. vult.

August 31, 1964. T. S. FERNANDO, J.—

The 2nd respondent company is the printer and publisher and the 1st respondent is the editor of a daily newspaper called "The Ceylon Observer" circulating in this Country. In its issue of August 6,

1963, it published under the heading "PATHIRAJA CASE TAKEN UP" an account of an important criminal trial which had attracted public attention. At this trial which was then in progress at a criminal sessions of the Supreme Court at the circuit town of Negombo three persons stood charged with the murder of one Pathiraja. In the account so published was included the following statement:—

"The day was taken up in preliminary arguments about the admissibility of confessions made by the accused."

There is no dispute that this statement was even factually incorrect when it stated that two of the persons on trial had confessed. It would appear that the argument related only to a confession alleged to have been made by one of the three persons accused. The preliminary arguments were heard by the judge in the absence of the jury, and it is not doubted that it was important that, unless the court decided to admit the confession in evidence, the jurors should not learn of the making of anything in the nature of a confession by any of the persons standing trial. In the face of the publication it is not unreasonable to infer that the jurors who read this newspaper account would have concluded that two of the persons on trial were alleged to have made confessions of their guilt. When the publication was brought to the notice of the trial judge, he discharged the jury and ordered a retrial.

The respondents who appeared before us stated that they had no cause to show why they should not be dealt with for the offence of contempt of this Court. They have expressed their deep regret and have tendered apologies to this Court. The 1st respondent, while accepting, in his capacity of editor, full responsibility for the offending publication, submits he had not seen the report prior to publication. The passing of the report for publication had been done by a sub-editor who has himself submitted by affidavit that he did so in the belief that the account received by him from the newspaper's correspondent was accurate. The sub-editor submits that he was unaware that the question of admissibility of the confession was argued in the absence of the jury. In regard to this last-mentioned submission, it is proper to remark that the sub-editor has not

observed the ordinary caution that should have presented itself to the mind of anyone holding a position like his when he read the reference to preliminary arguments about admissibility.

Also in mitigation of his offence, the 1st respondent has submitted another affidavit from the newspaper's correspondent at Negombo to say that the account sent up by him for publication was one prepared not by him but for him by his younger brother that day as he was attending to personal business and could not be present in court. This correspondent says that he had been reporting proceedings in court for about two years and that, if he had been aware that argument took place in the absence of the jury, he would not have forwarded the account in the form in which it was sent. It is sufficient to say that in his case too there does not appear to have been an exercise of the ordinary caution to which I have already made reference.

It must be emphasized that newspaper companies and any other bodies seeking to publish reports of proceedings in court must install an administrative set up sufficient to ensure substantial accuracy of such reports. Inaccurate reports of court proceedings are, unfortunately, not infrequent today.

While we are ready to accept the position that the respondents did not intend to interfere with the administration of justice, it is undeniable that the publication actually made was calculated to prejudice the minds of the public and, more to the point, the minds of the jurors trying the case. Indeed that much is admitted in terms in the affidavits presented by or on behalf of the respondents. In these circumstances, taking into account the prompt expressions of regret and the apologies tendered, we deemed it sufficient to sentence each of the respondents to pay a fine of Rs. 500 with a default sentence in the case of the 1st respondent of a term of two months' simple imprisonment.

G. P. A. SILVA, J. — I agree.

SRI SKANDA RAJAH, J. —

It appears appropriate to quote a very eminent and thoroughly democratic Judge, whose opinions are held in high esteem, regarding the function of the press in relation to the administration of justice. In his book *The Road to Justice*, Lord Denning says, in the chapter intituled the Free Press, that he verily believes that a newspaper reporter is the "watchdog of justice". In this case I find it difficult to accept what the reporter in question avers in his affidavit. Having, by his negligence, put the respondents into trouble he seems to attempt to save himself and his job. An affidavit from his brother who is alleged to have acted as his substitute has not been filed.

Lord Denning says further, "All I am concerned to show is that the press play a vital part in the administration of justice. It is the watchdog to see that every trial is conducted fairly, openly and above board. The press is itself liable to make mistakes. The watchdog may sometimes break loose and have to be punished for misbehaviour. But taken by and large we could not do without him."

He concluded, "So we see that too much freedom leads to the evils of 'trial by newspaper', obscenity, horror-comics and the rest: but on the other hand too much control leads to a servile press which tells the people only that which the party in power wants them to know. It is better to have too much freedom than too much control: but it is better still to strike the happy mean."

Some years ago Lord Chief Justice Goddard repeated and emphasised what Lord Hardwicke said over 230 years ago: ".....nor is there anything of more pernicious consequence than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard."

Though no intention to prejudice the minds of the jury against the accused can be imputed to the respondents, this publication was calculated to or tended to do so. And that is enough to constitute contempt. Intention is not a necessary element in a matter of this kind.

Rule made absolute.