

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

UNIVERSITY OF LONDON
W.C.1.
12 NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

31399

BETWEEN

ARTHUR REGINALD PERERA - - - Appellant

AND

THE KING - - - Respondent.

CASE FOR THE APPELLANT

RECORD.

10 1. This is an appeal by special leave from an order of the Supreme Court of the Island of Ceylon, dated 25th July, 1950, whereby the said Court adjudged the Appellant guilty of contempt of Court and sentenced him to pay a fine of Rs.500 or to six weeks' rigorous imprisonment in default of payment. p. 6, l. 4.

2. Special leave to appeal to His Majesty in Council was granted by an Order-in-Council dated the 8th day of December, 1950. p. 14.

3. The words which were held to constitute a contempt of Court were written by the Appellant on the 20th June, 1950, in the Visitors' Book of Colombo Remand Prison and were as follows :—

20 "The present practice of appeals of remand prisoners being heard in their absence is not healthy. When represented by Counsel or otherwise the prisoner should be present at the proceedings." p. 20, l. 10.

The said words were written by the Appellant after he had visited the prison as a member of the House of Representatives and were intended solely for transmission to, and consideration by, the Inspector-General of Prisons and the Minister for Home Affairs. At the time when he wrote the said words the Appellant was not aware that the practice to which he referred was the result of a direction given by a Judge of the Supreme Court.

30 4. The principal grounds of appeal are that the words written by the Appellant in the Visitors' Book were written by him in pursuance of his parliamentary duties and did not in any way reflect upon the Supreme Court or any Judge thereof or obstruct or interfere with the course of justice or the due administration of the law and could not therefore amount to a contempt of Court.

CASE FOR APPELLANT

5. The powers of the Supreme Court to deal with offences of contempt are set out in Section 47 of the Courts Ordinance (No. 19 of 1937). A copy of the said Section 47 is annexed hereto (Annexure A).

6. For many years past it has been the practice for members of the House of Representatives (or, prior to 1948, members of the State Council) to make occasional visits to public institutions such as schools, hospitals and prisons. Such visits are regarded as part of their parliamentary duties. It is also the practice for members of the House of Representatives who visit prisons to write their comments and suggestions in a Visitors' Book provided for the purpose. The entries in this book are intended for 10 transmission to the Inspector-General of Prisons.

These practices received statutory recognition in Sections 35 and 36 of the Prisons Amendment Ordinance, No. 53 of 1939. A copy of the said sections is annexed hereto (Annexure B).

7. On the 26th June, 1950, the Appellant visited Colombo Remand Prison as aforesaid and was escorted round the prison by one of the gaolers. A number of prisoners complained to him that they had not been present in Court when their appeals were being considered. The Appellant inquired of the gaoler whether these complaints were well founded and received the reply: "We do not take all the prisoners but only those 20 who are undefended." The Appellant inferred from this reply that the responsibility for the practice complained of was that of the prison authorities. He therefore wrote in the prison Visitors' Book as follows:—

20, l. 6.

"Visited Remand Prison in the company of Jailor Wijewardena. Premises clean. Adequate library facilities required. The present practice of appeals of Remand prisoners being heard in their absence is not healthy. When represented by Counsel or otherwise the prisoner should be present at proceedings. In my opinion not more than one prisoner should be in a cell (7 x 9) approximately."

18.

On the following day the Appellant wrote to the Minister of Home Affairs 30 a letter reporting his visit to the prison.

8. On the 29th June, 1950, the acting Commissioner of Prison and Probation Services addressed to the Registrar of the Supreme Court the following letter:—

1.

"Registrar, S.C.

An extract from the Visitors' Log Book of Colombo Remand Prison is forwarded for favour of observations please:

'The present practice of appeals of remand prisoners being heard in their absence is not healthy. When represented by Counsel or otherwise the prisoner should be present at 40 proceedings.

Sgd.: A. REGINALD PERERA.'

Sgd.: VERNON WILLE,

Actg. C.P.P.S."

On the 30th June, 1950, the Deputy Registrar wrote on the said letter the following endorsement :—

“ Registrar, S.C.

p. 2, l. 12.

This obviously refers to accused in Jail appeals in which the appeal Petition is not stamped and which referred to Basnayake, J. for order. In all other Criminal Appeals whether the prisoner or prisoners are represented by Counsel or not, he (or they) are produced in Court on notice.

10

Sgd. : F. C. VAN CUYLENBERG,
Dy. Registrar, S.C.

30/6/50.”

The papers were then submitted to Basnayake J. who wrote the following minute :—

“ Registrar,

The statement is incorrect and is a contempt of the Court. Issue a Rule on A. Reginald Perera returnable on Tuesday the 25th. I shall sit specially on that day. p. 2, l. 30.

Sgd. HEMA BASNAYAKE,

11/7/50.”

20 A rule was accordingly issued for the 25th July, 1950, ordering the Appellant to appear before Basnayake J. and show cause why he should not be punished for contempt, and served on the Appellant. p. 3.

9. The Appellant appeared before Basnayake J. on the 25th July, 1950, and asked for an adjournment, which was not granted. The Appellant informed the Court that when he made the entry in the Visitors' Book he had no intention of bringing the Court into disrepute or into contempt, submitted that his statement in the Visitors' Book did not amount to contempt of Court and said that he meant no disrespect to the learned judge. p. 5, l. 1.
p. 5, l. 6.

30 10. The Appellant was ordered to pay a fine of Rs.500, in default 6 (six) weeks' rigorous imprisonment. p. 6, l. 4.

11. On the 27th July, 1950, the Appellant applied by letter to the Registrar of the Supreme Court for a certified copy of all the papers and proceedings in connection with the matter of the rule in order to enable him to take the matter to their Lordships of the Privy Council. The said letter was passed by the Registrar to Basnayake J. who minuted thereon that the fine must be paid on the due date but would be refunded if the Privy Council set aside the Order. p. 6.

40 12. On the 25th August, 1950, the Appellant wrote to the Registrar of the Supreme Court at Colombo a letter inquiring the practice as at 20th June, 1950, regarding the hearing of appeals of accused persons in p. 10.

p. 10.

jail. He received a reply, dated the 6th October, which appears at page 10 of the Record. An affidavit by the Appellant, sworn in support of his Petition for Special leave to appeal to His Majesty in Council, is set out at

p. 12.

13. The Appellant respectfully submits that the said Order, dated the 25th July, 1950, should be quashed and the said sentence set aside and the said sum of Rs.500 ordered to be refunded and that the Respondent should be ordered to pay the Appellant's costs here and in the Court below for the following amongst other

REASONS

10

- (1) Because the Appellant was wholly unaware that the Supreme Court or any of the judges thereof were responsible for the practice to which he referred and he therefore did not intend by the said words even to refer to the said Court or judges.
- (2) Because the said words were not, in the circumstances, calculated to obstruct or interfere with the course of justice or the due administration of the law.
- (3) Because the said words contained no criticism of any judicial act of any judge of the Supreme Court nor any imputation on any judge for anything done or omitted to be done by him in the administration of justice. 20
- (4) Because, even if the Appellant had been aware that the Supreme Court or any of the judges thereof were responsible for the practice to which he referred, the said words were a fair comment on a matter of public interest and concern and were written without any malicious or improper motive and could not amount to a contempt of Court.
- (5) Because the Appellant wrote the words in question in pursuance of his duty as a member of the House of Representatives and in the exercise of his statutory privilege conferred upon such members by the Prisons Amendment Ordinance No. 53 of 1939. 30
- (6) Because the principles of natural justice have been violated and grave and substantial injustice has been done.

DINGLE FOOT.

RALPH MILLNER.

T. L. WILSON & Co.,
6 Westminster Palace Gardens,
London, S.W.1,
Solicitors for the Appellant

40

ANNEXURE A.

COURTS ORDINANCE (NO. 19 OF 1937), SECTION 47.

47. The Supreme Court or any Judge thereof, whether at Colombo or elsewhere, shall have 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 offence of contempt committed 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; and such imprisonment shall be simple or rigorous as such court or Judge shall direct, and the offender may in addition thereto or in lieu thereof, in the discretion of such court or Judge, be sentenced to pay a fine not exceeding five thousand rupees.

ANNEXURE B.

PRISON AMENDMENT ORDINANCE, NO. 53 OF 1939, SECTIONS 35 AND 36.

“ 35. (1) It shall be the duty of the jailor of every prison—

(a) to keep within the prison—

20 (i) a Visitors' Book in which Judges of the Supreme Court, members of the State Council and members of the Board of Prison Visitors may record any observations or recommendations after a visit paid by him to the prison;

(ii) a Log Book in which members of Local Visiting Committees or Additional Prison Visitors may record statements or particulars of the business transacted during their visits which they are required or authorised to record by this Ordinance or the rules made thereunder;

30 (iii) a Complaint Book in which any Visitor may record the complaints made to him by prisoners and the proceedings taken upon such complaints; and

(b) to produce the Visitors' Book, Log Book, or Complaint Book, as the case may be, on demand made by any of the aforesaid persons in the course of any visit made by him to the prison.

(2) It shall be the duty of the Superintendent to transmit to the Inspector-General, within such period as may be specified by him, a copy of each new entry made in the Visitors' Book or the Log Book.

(3) The Inspector-General may, after consideration of any report transmitted to him under section 33 or section 37 or of any entry in a Visitors' Book or Log Book, of which a copy is transmitted to him under sub-section (2), take such action thereon as to him may seem expedient."

* * * * *

" 36. (1) Nothing in this Ordinance shall be deemed to abridge or affect the power of a Judge of the Supreme Court to visit any prison at any time and to hold therein any inspection, investigation or inquiry which he may consider necessary.

(2) Any member of the State Council may visit any prison, between the hours of 5.30 a.m. and 5.30 p.m. on any day, for the purpose of inspecting the general condition of the prison and of the prisoners therein, and may record in the Visitors' Book any observations or recommendation which he may think fit to make after such inspection. 10

(3) The provisions of section 35, as to the production of the Visitors' Book and the transmission of copies of the entries made therein to the Inspector-General, shall apply in the case of Judges of the Supreme Court and members of the State Council in like manner as in the case of members of the Board of Prison Visitors."

By a Proclamation of His Excellency the Governor-General, dated the 18th September 1947, and published in the Ceylon Government Gazette Extraordinary No. 9773 of the 24th September, 1947, the words " Senator or member of Parliament " are substituted for the words " member of the State Council " in the aforesaid sections. By section 3 of the Ceylon (Constitution) Order-in-Council 1946, " member of Parliament " means " a Member of the House of Representatives." 20

In the Privy Council.

ON APPEAL FROM THE SUPREME
COURT OF THE ISLAND OF CEYLON.

BETWEEN

ARTHUR REGINALD

PERERA - - - *Appellant*

AND

THE KING - - - *Respondent.*

CASE FOR THE APPELLANT.

T. L. WILSON & CO.,
6 Westminster Palace Gardens,
London, S.W.1,
Solicitors for the Appellant.