

Her Majesty in Council, on terms, against the Judgments given on all three motions and ordered a stay of execution of the Judgments on all three motions, on terms, pending appeal. The Appellant was granted final leave to appeal on 9th February 1981. By Order of the Judicial Committee of the Privy Council dated 28th June 1982 it was ordered that the three Appeals be consolidated and heard together on one Case on each side.

No. 4 pp.82-3
No. 5 pp. 84-5
No. 6 p.15

3. The Appellant is a member of the Legislative Assembly of Mauritius and a former Minister for Social Security in the Mauritius Government. On 21st December 1978 Mr. Justice Glover was appointed under the Commissions of Inquiry Ordinance, Cap. 286, ("the Ordinance") as sole Commissioner to enquire into allegations of fraud and corruption made against the Appellant, in his said former capacity, and against another. On 2nd May 1979 the Commission produced its report which was adverse to the Appellant.

No. 5 p.18

4. On 18th May 1980 the Appellant made a public speech at a regional congress held by the Labour Party at the Social Welfare Centre at Mare d'Albert, Mauritius. By the three motions the Appellant was called upon to show cause why he should not be committed to prison or otherwise punished for contempt of Court for words used by him in the course of the said speech.

No. 5 p.19

5. The words alleged to have been used by the first motion were, in translation:

"There is a person who committed murder, he got away with it because he has got money, he has left - a child is dead."

No. 4 p.5

and

"A Creole working at F.U.E.L. (FLACQ UNITED STATES LIMITED) met with an accident at work. He is now 50% incapacitated. The case went to the Supreme Court. The case was dismissed. Because it is F.U.E.L., because it is M. Series who is there, he did not get a penny in compensation. This is the kind of justice we have here."

No. 4 p.6

6. The words alleged to have been used by the second motion were to the following effect, in translation:

"We, the children of the coolies, who have suffered hardships, we shall have to take our revenge. Is it M. Glover who is going to run this country? M. Glover must be taught a lesson, in this country, and exposed for what he is."

No. 5 p.7

7. The words alleged to have been used by the third motion were, in translation:

"The Glover report is being used to destroy me - it is not everything he said that is true - there are a lot of things he has not taken into consideration."

No. 6 p.5

THE FIRST MOTION - APPEAL No. 4 of 1981

8. On this motion, on behalf of the Respondent, evidence was adduced from one Ombrajine, a reporter with the newspaper 'LE MAURICIEN', that the words alleged had been used by the Appellant. On behalf of the Appellant evidence was given by the Appellant himself (1), one Ramdewon (2) and one Sophie(3) to the effect that the words alleged had not been used; and the evidence of one Hyderkhan (4), former Acting Commissioner of Police, was adduced to establish (as was accepted by the Respondent) that no police officer present at the meeting heard the Appellant use the words alleged.

No. 4 pp. 18-31
(1) No. 4 pp.31-
(2) No. 4 pp. 37-8
(3) No. 4 pp.38- 5
(4) No. 4 pp.45-

9. The submissions made to the Court on behalf of the Appellant were, stated shortly, as follows:

- (i) that contempt of Court, being an offence of a criminal character, must be proved beyond reasonable doubt; No. 4 pp. 47-8
- (ii) that the witness Ombrasine was "partisan" and, as such, his evidence needed the corroboration of an independent witness; No. 4 pp. 49-50
- (iii) that the evidence of Obrasine was unreliable and uncorroborated; No. 4 pp.48-50
- (iv) that the words alleged did not constitute contempt of court and amounted to no more than legitimate criticism of the system of justice which tended to favour the rich to the disadvantage of the poor. No. 4 pp. 52-4

10. The submissions made to the Court on behalf of the Respondent

were, stated shortly, as follows:

- (i) that it was for the Court to decide on the totality of the evidence whether it was satisfied beyond reasonable doubt that the Appellant had uttered the words alleged; No. 4 pp. 56-7
 - (ii) that the words alleged constituted a contempt of court as they amounted to the assertion that justice in the Supreme Court was not fair and impartial. No. 4 p.58
11. The Court, in giving Judgment:
- (i) expressed itself to be fully satisfied that Ombrasine had acted in good faith and accepted his evidence; No. 4 p.67
 - (ii) rejected the evidence of and on behalf of the Appellant; the Court found the witnesses Ramdewon and Sophie to be "thoroughly unconvincing and unreliable" and observed that only one police officer had been detailed to cover the regional congress, the other officers being on traffic duty; No. 4 p.65
 - (iii) declared that it would ignore the first part of the words alleged as it was not clear that the Appellant must have been referring to, and been understood as referring to, a Court case; No. 4 p.67
 - (iv) found that the second part of the words alleged constituted a serious allegation of bias levelled at the Supreme Court and constituted contempt of Court. No. 4 pp.67-8

12. The Respondent respectfully submits that the Judgment of the Court on this motion is correct and should be upheld. The Court correctly rejected the submission that the evidence of Ombrasine needed to be corroborated but took into account the seriousness of the matter alleged and acknowledged that the Court had to be satisfied beyond reasonable doubt. The Court was entitled to and did accept the evidence of Ombrasine and rejected the evidence of the Appellant and his witnesses. The second part of the words alleged clearly impugned the impartiality of the Supreme Court, by the suggestion that the Supreme Court unjustly dismissed the man's claim because the other part to the action was a wealthy company; as such the words alleged were in contempt of Court.

THE SECOND AND THIRD MOTIONS - APPEALS NO. 5 AND 6 OF 1981

13. On these motions, on behalf of the Respondent, evidence was adduced from one Appou (1), a reporter with the newspaper 'L'EXPRESS', that the words alleged in the second and third motions had been used and from Ombrasine (2) that words substantially the same as those alleged in the second motion had been used. On behalf of the Appellant, evidence was given by the Appellant himself, it was agreed that the evidence of Ramdewon and Sophie on the first motion should be treated as evidence on these motions and the Respondent again accepted that no police officer present at the meeting heard the Appellant use the words alleged.

(1) No. 5 pp.28-42
 (2) No. 5 pp. 4 -4
 No. 5 pp.44-7
 No. 5 p.48
 No. 5 p.44

14. The submissions made to the Court on behalf of the Appellant were, stated shortly, as follows:

- (i) the same submission as is referred to in paragraph 9(i) herein; No. 5 p.51
- (ii) that the evidence of Appou and Ombrasine was unreliable and uncorroborated; No. 5 pp. 49-51
- (iii) that the words alleged constituted legitimate criticism and, indeed, were hardly criticism at all. No. 5 pp. 52-3
- (iv) that the words alleged referred to Mr. Justice Glover in his capacity as Commissioner of the Inquiry; No. 5 p.53
- (v) that the common law of contempt applies only to courts of law and not to Commissions of Inquiry; No. 5 pp.53,62-4
- (vi) that acts in relation to Commissions of Inquiry are punishable only in accordance with the Ordinance and the Ordinance contains no provision for the imposition of a penalty in the circumstances complained of in these motions. No. 5 pp. 61, 69

15. The submissions made to the Court on behalf of the Respondent were, stated shortly, as follows:

- (i) that the words alleged in the second motion were a scurrilous abuse of Mr. Justice Glover in his capacity of Commissioner; No. 5 pp. 72-3
- (ii) that the words alleged in the third motion were an attack on the partiality and/or integrity of Mr. Justice Glover in his capacity of Commissioner; No. 5 p.71
- (iii) that the common law of contempt applies to Tribunals of Inquiry and Commissions of Inquiry. No. 5 pp. 73-4

16. The Court, in giving Judgment on these motions:
- (i) accepted the evidence of Appou and Ombrasine No. 5 p.20
and rejected the evidence of the Appellant and
his witnesses;
 - (ii) held that comments which scandalised a Commission No. 5 p.21
of Inquiry did constitute a contempt and referred
to and assented to the decision of D.P.P. v.
Masson & Anor. 1972 M.R. 47 in which statements
which scandalised a Board of Enquiry were held to
amount to contempt;
 - (iii) held that the words alleged in the second motion No. 5 p.25
amounted to a scurrilous abuse of Mr. Justice
Glover as Commissioner and tended to bring the
administration of justice into disrepute;
 - (iv) held that the words alleged in the third motion No. 5 p.26
constituted an attack on the integrity and
impartiality of Mr. Justice Glover as Commissioner.

17. The Respondent respectfully submits that the Judgement
of the Court on these motions is correct and should be upheld for
the reasons set out in paragraphs 18 to 21 herein.

18. The Court was entitled to and did accept the evidence
of Appou and Ombrasine and rejected the evidence of the Appellant
and his witnesses.

19. The common law of contempt applies to Commissions
of Inquiry set up under the Ordinance, save and except where the
Ordinance itself makes provision for the imposition of penalties

for certain conduct therein specified. The jurisdiction assumed by the Supreme Court of Mauritius in D.P.P. v. Masson and Anor. 1972 M.R. 47 in relation to a Board of Enquiry applies equally to Commissions of Inquiry. The Respondent adopts as argument the conclusions of the Inter-departmental Committee under the chairmanship of Salmon L.J. (Cmnd. 4078) that contempt should apply to proceedings before a Tribunal of Inquiry in the same way as it applies to proceedings in a court of law, as:

- (i) "there is no such profound difference between a trial before a judge alone and proceedings before a Tribunal on Inquiry as would justify affording the protection of the law of contempt of persons involved in the one but not in the other";
- (ii) the impact of a Tribunal's findings on individuals is of considerable importance as their "political, commercial and social reputations may be (and sometimes have been) utterly ruined and their careers brought to an abrupt end" and "It is certainly of no less public importance that justice should be done to individuals by Tribunals of Inquiry than that it should be done by the Courts";
- (iii) the application of the law of contempt to Tribunals of Inquiry will enhance their ability to arrive at the truth.

20. The words alleged in the second motion were scurrilous abuse of Mr. Justice Glover as a Commissioner. The statement that Mr. Justice Glover "must be taught a lesson and exposed for what he is" suggests that Mr. Justice Glover is an impostor, that

his true character has been concealed from, and needs to be disclosed to, the public and that his conduct has been such as to justify serious reprimand.

21. The words alleged in the third motion constituted an attack on the integrity and impartiality of Mr. Justice Glover as Commissioner. The words suggested that Mr. Justice Glover had included in his report statements which were false and had not taken into account a substantial amount of relevant information.

22. The Respondent therefore respectfully submits that these appeals should be dismissed for the following, (among other)

REASONS

Appeal No. 4 of 1981

- (1) BECAUSE the Supreme Court was entitled to find and did find that the Appellant used the words alleged;
- (2) BECAUSE the words used seriously impugned the impartiality of the Supreme Court of Mauritius and thereby constituted contempt of Court.

Appeal No. 5 of 1981

- (3) BECAUSE the Supreme Court was entitled to find and did find that the Appellant used the words alleged;
- (4) BECAUSE the law of contempt applies to Commissions of Inquiry set up under the Commissions of Inquiry Ordinance, Cap. 286;
- (5) BECAUSE the words used were a scurrilous abuse of Mr. Justice Glover as a Commissioner and thereby constituted contempt;

Appeal No. 6 of 1981

- (6) BECAUSE the Supreme Court was entitled to find and did find that the Appellant used the words alleged;
- (7) REASON (4) is repeated;
- (8) BECAUSE the words used seriously impugned the integrity and impartiality of Mr. Justice Glover as a Commissioner and thereby constituted contempt.

MARK STRACHAN

IN THE PRIVY COUNCIL Nos. 4, 5 & 6 of

ON APPEAL

FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N:

LUTCHMEEPARSAD BADRY Appellant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

CASE FOR THE RESPONDENT

Charles Russell & Co.,
Hale Court,
Lincoln's Inn,
London WC2A 3UL.

R/JA