

Compass Rose Enterprises Ltd v. Attorney-General

Court of Appeal

Gibbs V.P., Frost, Donne, Dillon, and Mitchell J.J.A.

19 April 1988

Criminal law—contempt of court—scandalizing the court—whether motion and affidavit seeking trial before a new judge on the grounds of perceived bias of first judge amounts to contempt of court.

Criminal law—contempt of court—procedure—need for specific allegations of contempt to be given to alleged contemnor—need for opportunity for contemnor to adduce evidence and obtain legal advice.

Criminal law—contempt of court—punishment—finite rather than indeterminate sentence to be imposed for criminal contempts.

Compass Rose Enterprises Ltd. and Orme, a director of the company, were summonsed by the Chief Justice to appear before him and answer a charge of contempt of court. The contempt alleged was a filing of a motion and affidavit seeking that a civil action involving Compass Rose be tried before a judge other than the Chief Justice on the grounds that there was a reasonable suspicion or a real likelihood of bias if it was heard by the Chief Justice. Other contempts arising out of the same matter were also alleged. At the hearing the Chief Justice would not agree to Orme calling witnesses or being represented by a lawyer. The Chief Justice fined Compass Rose \$500 for contempt and committed Orme to prison until he purged himself of his contempt. Compass Rose and Orme appealed.

HELD:

- (1) An alleged contemnor should have notice of specific allegations against him and a reasonable opportunity of being heard in his defence: page 186. *Coward v. Stapleton* (1953) 90 CLR 573 followed.
- (2) The power to commit for contempt should be used sparingly. A request for a judge to disqualify himself on the grounds of bias could only rarely be regarded as contempt, for if a party contends that a judge is biased he is entitled to say so. Orme and Compass Rose were entitled to point to the facts which gave rise to their suspicion of bias, even if it was offensive to the judge: page 186.
- (3) Imprisonment in cases of criminal contempt should be for a fixed term: page 186. *Attorney-General v. James* [1962] 2 Q.B. 637; [1962] 2 W.L.R. 740; 1 All E.R. 255 followed.

Other cases mentioned in judgment:

Chang Hang Kiu v. Piggott [1909] A.C. 312 (P.C.)

Ex parte Bellanto (1962) 63 S.R. (N.S.W.) 190

Ex parte Fernandez (1861) 30 L.J.C.P. 321; 10 C.B.N.S.; 4 L.T. 324; 142 E.R. 349

In re Pollard (1868) L.R. 2 P.C. 106; 5 Moo. P.C. (N.S.) 111

- Izuora v. The Queen* [1953] A.C. 327 (P.C.)
Lewis v. Judge Ogden (1984) 153 C.L.R. 682
R. v. Castro; Skipworth's Case (1873) L.R. 9 Q.B. 219
R. v. Foster ex parte Isaacs [1941] V.L.R. 77
R. v. Watson; ex parte Armstrong (1976) 136 C.L.R. 248
Shamdasani v. King Emperor [1945] A.C. 270; 61 T.L.R. 448 (P.C.)

Legal sources referred to in judgment:

Halsbury, *Laws of England* (4th. edn.), vol. 9, paragraph 87

Appeals:

⁵⁰ These were appeals by Compass Rose and Orme from orders of the Chief Justice fining the former and committing the latter for contempt of court.

Counsel:

Mr. Orme in person
Mr. Koaru as *amicus curiae*
Mr. Tabane for the Attorney-General

GIBBS V.P., FROST, DONNE, DILLON, and MITCHELL J.J.A.

Judgment:

⁶⁰ These three appeals arise out of the same set of circumstances. On 28 May 1986 Compass Rose (a company of which Mr. Orme is a director) issued a writ against the Attorney-General claiming damages for negligence and breach of contract in the repair of a ship. Kiribati Insurance Co. became a third party in the action. Mr. Bell, a New Zealand barrister and solicitor, who had been admitted to practice as a lawyer in Kiribati was retained for the plaintiff in the action.

⁷⁰ On 19 August 1986 Mr. Bell wrote a letter to the Registrar proposing that the case be heard by Topping J. and saying that "for reasons which we understand are well known to all, it is not appropriate for the matter to go before Mr. Maxwell" (i.e., Maxwell C.J.). On 29 August the Registrar wrote to the Attorney-General saying that the Chief Justice regarded Mr. Bell's letter as a contempt of court and suggesting that action be taken through the New Zealand High Commission or the Attorney-General of New Zealand. On 1 September the Registrar wrote to Mr. Bell saying that the matter would be heard by the Chief Justice from 24 to 26 November 1986.

On 1 September 1986 the Lawyers' Admission Rules were amended with the effect that the names of all legal practitioners admitted elsewhere were removed from the Roll of Legal practitioners in Kiribati and such practitioners ceased to be entitled to practise there until readmitted. On 23 September 1986 Mr. Bell applied for readmission in Kiribati.

⁸⁰ On 3 October 1986 a notice of motion signed by Mr. Orme and made on behalf of Compass Rose sought an order directing that the Chief Justice do not hear the proceedings on the grounds that there was a reasonable suspicion of bias or alternatively a real likelihood of bias and that such order was necessary to ensure a fair hearing. The notice of motion was supported by an affidavit sworn by Mr. Orme which alleged that on 23 November 1985 the Chief Justice had committed a serious crime and that on 20 May 1986 Mr. Orme had issued a summons out of the

Magistrates' Court charging the Chief Justice with a number of offences. The affidavit further stated that the Attorney-General took steps to have the private prosecution discontinued.

By a letter dated 7 October 1986 the Attorney-General refused Mr. Bell's application for readmission, saying that he was not satisfied that Mr. Bell is a fit and proper person to be admitted, but giving no particulars of Mr. Bell's alleged lack of fitness.

On 23 October 1986 a second motion was taken out by Mr. Orme on behalf of Compass Rose seeking an order in effect that Mr. Bell be allowed to represent Compass Rose at the trial of the action.

On 20 November 1986 Mr. Orme wrote to the Chief Registrar asking that the two motions be heard before the trial proceeded and saying that he felt that it would be improper for the Chief Justice to hear the motions.

On 21 November Mr. Orme and Compass Rose were served with a summons issued by the Chief Justice requiring them to appear in court on 24 November 1986 "to answer a charge of contempt of court which you are alleged to have committed against us in your affidavits sworn on 3rd October, 1986 and filed in Court, as also such other matters as shall be then and there laid to your charge". The matter came before the Chief Justice on 24 November 1986. He stated that the contempt for which the parties had been brought before the Court was as follows:

- (1) Swearing to an affidavit in a case before this court, scandalising me and the court.
- (2) Making serious allegations of partiality and bias on my part.
- (3) Abusing the process of the court by
 - (i) forging court documents i.e. exhibited summons and complaint;
 - (ii) swearing to an affidavit which is wanting in bona fide and is frivolous and vexatious.
 - (iii) misusing of the process of the court to extend its influence beyond the parties to the action;
 - (iv) addressing a letter to the Chief Registrar reflecting on the Chief Justice.

After some further remarks he asked the parties if they had anything to say before he imposed the sentence required by law. The following exchange then occurred:

Brian Stewart Orme: It is not my intention to commit the criminal contempt.

Ask the Court to prepare a defence to call witnesses in my defence, to be represented by a lawyer.

Court: As a contemnor you cannot be heard to make any application. If that is all you have to say I shall have to commit you.

After dealing with a matter not presently relevant, the Chief Justice again asked Mr. Orme if he had anything more to say. The record continues as follows:

Brian Stewart Orme: [Refers to section 10 of the Constitution. Reads the section.]

Court: That section is not relevant to this case.

Answer: The affidavit was prepared by the New Zealand lawyer.

Court: If he was here I would have committed him too.

The Chief Justice committed Mr. Orme to prison until he purged himself of the contempt, fined Compass Rose \$500, struck out the motion dated 3 October 1986

and the supporting affidavits, and stayed the action until further order.

On 24 December 1986 Mr. Orme made an apology and the Chief Justice ordered his release. Compass Rose has paid the fine imposed upon it. Appeals are brought in all three matters by leave previously given by the Court of Appeal.

In *Coward v. Stapleton* (1953) 90 C.L.R. 573 at pages 579-580, the High Court of Australia stated the following principles in relation to the hearing of a charge for contempt of court:

140 Even apart from any such express provision, however, it is a well-recognized principle of law that no person ought to be punished for contempt of court unless the specific charge against him be distinctly stated and an opportunity of answering it given to him: *In re Pollard* ((1868) L.R. 2 P.C. 106, at p. 120); *R. v. Foster*; *ex parte Isaacs* ([1941] V.L.R. 77, at p. 81). The gist of the accusation must be made clear to the person charged, though it is not always necessary to formulate the charge in a series of specific allegations: *Chang Hang Kiu v. Piggott* ([1909] A.C. 312, at p. 315). The charge having been made sufficiently explicit, the person accused must then be allowed a reasonable opportunity of being heard in his own defence, that is to say a reasonable opportunity of placing before the
150 court any explanation or amplification of his evidence, and any submissions of fact or law, which he may wish the court to consider as bearing either upon the charge itself or upon the question of punishment.

In a more recent case, *Lewis v. Judge Ogden* (1984) 153 C.L.R. 682, at page 693, the same court said: reasonably suspect that the judge may (however unconsciously) have been biased: see the discussion in *Reg. v. Watson*; *ex parte Armstrong* (1976) 136 C.L.R. 248. Mr. Orme had previously, by making and laying charges against the Chief Justice, acted in a way that was calculated to cause great annoyance to the Chief Justice. In those circumstances members of the public might not unreasonably have suspected that the Chief Justice might have formed towards Mr. Orme an
160 unconscious antipathy which might have rendered it difficult for him to approach with an unprejudiced mind any litigation to which Mr. Orme was a party. Although such a suspicion might in fact be groundless, in those circumstances it was better that the Chief Justice should not sit. Mr. Orme and Compass Rose were entitled to bring out the facts which led to that conclusion. The motion and affidavit, although personally offensive and distressing, did not in these circumstances amount to a contempt. The same of course is true of the letter to the Registrar.

It should be added that in cases of criminal contempt any period of imprisonment should be for a fixed term: see *Attorney-General v. James* [1962] 1 All E.R. 255, at 256. The position may be different when committal for contempt is made for the
170 purpose of ensuring that the contemnor complies with an order of the court.

It follows that the order made by the Chief Justice cannot be allowed to stand. Clearly it is not possible to accept the argument that the part of the order which struck out the motion and stayed the action can be sustained. It appears from what has been said above that the action ought to be tried by a judge other than the Chief Justice, and this should be arranged without it being necessary to hear the motion and make a formal order to that effect.

The appeals are allowed and the order made on 24 November 1986 is set aside. Order that fine be remitted.