LMM(80)44

CONTEMPT OF COURT

Memorandum by the Government of Mauritius

Except for a section of The Courts Ordinance giving power to all Courts of Law to punish contempts in the face of the Court and an article of the Penal Code making it an offence to outrage a Magistrate or Judge in public, the written laws of Mauritius are completely silent about contempts of Court.

On the other hand the Legislative Assembly (Immunities and Privileges) Ordinance lists a number of acts, and even omissions, which constitute contempt of the Legislative Assembly and are liable to be severely punished when referred to the Court after a resolution of the House.

The Supreme Court of Mauritius having, by virtue of its constitution, the same powers as the High Court in England, it has never been doubted that it consequently had within its powers the right to safeguard the proper administration of justice, and therefore to punish contempts of court.

Proceedings for contempt may be of a civil or criminal nature and may be stated by any citizen or by the Court itself.

In practice, however, all proceedings for criminal contempt are initiated by the Director of Public Prosecutions by way of a summons to show cause before the Supreme Court.

The Reports abound with decisions for all sorts of contempt. In the recent years, however, the majority of cases brought to Court were directed against the press for what is tersely described as "pre-trial publicity" or "trial by newspaper".

In one of its most recent pronouncements [*DPP* v. *Cateaux and ors* (1978) S.C.J. 114] the Court quotes with approval what Lord Hardwicke, LC said more than two centuries ago in the *St. James Evening Post* case (1742) that there was nothing "of more pernicious consequence than to prejudice the minds of the public against persons concerned as parties in causes, before the case is finally heard", and held that for a publication to constitute contempt it is not necessary that it should be likely to influence the Court of trial. It is sufficient if it tends to influence the minds of the public, or of the witnesses.

On the question of trial by newspaper, the Court said—

> The evil of trial by newspaper is that the function of the Court is resumed without any of the procedural safeguards provided by law. This inadmissible evidence may be disclosed, and parties named in the article have no opportunity to cross-examine and reply. This leads to several mischievous results among which it will be sufficient to quote the following: first, the public is thereby induced to condemn a man who has never had the chance to defend himself; secondly, a witness who feels that the public is strongly prejudiced against a party may be detained from giving evidence in favour of that party by the fear of incurring reprobation or dislike (see *R.* v. *Daily Herald* [1932] K.B. 402) thirdly, a witness may commit himself to an inaccurate or exaggerated version which it will be difficult for him to rectify afterwards.

Commenting on the facts of the case in which the newspaper in question had published a resumé of the allegations which a particular witness had made in the past, the Court reflected that "one need not reflect long before one realises how tempting it is for a witness who as the result of a sensational article has jumped from obscurity into the limelight to pose as a star and seek to prolong his adventitious fame by adding even more glamorous embellishments to his story".

It goes without saying that the danger is even greater when a potential witness is paid large sums of money for the exclusivity of his version of the facts.

In another case the appellants challenged their conviction by the Court of Assizes on a charge of manslaughter because some articles and photographs which had appeared in certain newspapers constituted contempt of court and had thus prevented a fair trial, one of the fundamental human rights guaranteed by section 10 of the Constitution. In its judgment the appellate Court said—

> We have studied the publications in question and wish to express in no uncertain terms our strong condemnation of such cheap pre-trial publicity. Had those responsible for the publications been brought before the competent Court on a charge of contempt and found guilty, nothing would have saved them from a long term in goal which they would have richly deserved. This observation should serve as a warning to newspaper editors and publishers who might feel tempted to indulge in a practice which must be abhorrent to anyone who understands the importance and solemnity of a criminal trial. As Mr. Blom Cooper rightly pointed out, that was no ordinary trial, the crime had political overtones, and roused violent passions, so that the need to protect the accused from trial by newspaper became even greater than usual. Even the worst criminal is entitled to a fair trial; if therefore we had come to the conclusion that as a result of one-sided comments in the press so much prejudice had been stirred that there was a serious risk that the appellants had not had a fair trial, we should have felt bound to quash the conviction. One of the reasons why this sort of publicity should be sternly discouraged is that an astute criminal might, literally, get away with murder by the simple artifice of getting a paid hack to libel him in the press.

It is in this context of the need to ensure a fair trial that we, in Mauritius, view with concern the wide publicity given to reports of Preliminary Enquiries held in open court. We wonder whether it is not time

to abolish preliminary enquiries and furnish the defence with copies of the statements of witnesses. We have already adopted this practice for those cases of crime which are referred to our Intermediate Criminal Court composed of three trained senior Magistrates which has now jurisdiction to determine certain classes of crime which were previously within the exclusive jurisdiction of the Court of Assizes sitting with a jury.