

THE PEOPLE v HINDMARCH (1967) ZR 190 (HC)

HIGH COURT

BLAGDEN CJ

27th DECEMBER 1967

Flynote and Headnote

[1] Contempt of court - Subordinate court - Procedure on contempt.

Magistrate must send copy of facts constituting offence of contempt to the High Court.

[2] Contempt of court - Lateness in appearance.

Lateness in appearance under the circumstances was not serious contempt if contempt at all.

[3] Contempt of court - Subordinate court - Procedure - Role of prosecutor.

Public prosecutor should not intervene as matter is entirely within magistrate's discretion and judgment.

[4] Contempt of court - Counsel's conduct - Imputed to client.

It is doubtful that under the circumstances counsel's alleged misconduct could justify contempt proceedings against his client.

Statute construed:

Subordinate Courts Ordinance (1934, Cap. 4), s. 41.

Judgment

Blagden CJ: This case comes before me in respect of an order made by the magistrate at the termination of proceedings when he found the accused to be in contempt of court and fined him £5.

[1] I have been disturbed by this decision for a number of reasons. In the first place, in accordance with the provisions of section 41 of the Subordinate Courts Ordinance, Cap. 4, the magistrate should have sent *forthwith* a copy of his minute regarding the facts of the offence of contempt and the extent of the punishment imposed in respect thereto to the High Court. This is a mandatory requirement which was not complied with.

[2] Secondly, it is apparent from the record of the proceedings that the contempt alleged was the accused's lateness in appearing before the magistrate for judgment on the 6th October, 1967. The court record shows that on the 14th September the case was adjourned to the 6th October for judgment at 10 am. The accused and his counsel, Mr Houstoun - Barnes, did not appear till 11 am. Mr Houstoun - Barnes immediately offered an explanation, from which it is quite apparent that there was some confusion in his mind, and that of the accused, as to whether the time to which the case had been adjourned was 10 am or 11 am. The contempt, therefore - if, indeed, it could be regarded as contempt at all - was obviously not a serious one, yet the fine imposed was £5.

[3] Thirdly, I observe from the record that at the conclusion of Mr Houstoun - Barnes' address, by way of explanation, the public prosecutor was allowed to speak and his opening observations were:

"I feel very strongly about this matter and this is one of the examples of this contempt."

It is not clear from the record whether the public prosecutor volunteered his opinion or was called upon by the magistrate to state it, but in either case it was not proper for him to intervene. It was entirely a matter for the magistrate's own judgment and discretion.

[4] Fourthly, the magistrate himself said, when sentencing the accused:

". . . the explanation given by Mr. Houstoun - Barnes on behalf of his client gives me the impression that he is the person who misled his client."

If that was the magistrate's view, then it is a little difficult to understand why he should then have proceeded to find the client in contempt and fine him.

In all the circumstances of the case the magistrate's order cannot possibly stand and under the powers conferred on me by section 41 of the Subordinate Courts Ordinance I set it aside. The £5, if paid, must be refunded to the accused or to his counsel on his behalf.

Order set aside.