

IN THE MATTER OF:

AMICUS CURIAE

VERSUS

PRASHANT BHUSHAN AND ANR.

...PETITIONER

...RESPONDENTS

COMPILATION OF JUDGEMENTS

(VOL. I)

INDEX

Sl. No.	JUDGEMENT	PAGE NOS.
1.	RAJA KHAN V. U. P. SUNNI CENTRAL WAQF BOARD & ANR., SLP (CIVIL) NO. 31797/2010, DATED 26.11.2010	1-11
2.	INDIRECT TAX PRACTITIONERS ASSOCIATION V. R. K. JAIN, (2010) 5 SCC 281	12-43
3.	RAJESH KUMAR SINGH V. HIGH COURT OF JUDICATURE OF MADHYA PRADESH, AIR 2007 14 SCC 126	44-53
4.	IN RE: HARIJAI SINGH AND ANOTHER, (1995) 3 SCC 40	57-60
5.	C. RAVINCHANDRAN IYER V. JUSTICE A. BHATTACHARJEE AND ORS. (1995) 5 SCC 457	67-92
6.	DELHI JUDICIAL SERVICE ASSOCIATION, THE HAZARI COURT DELHI V. STATE OF GUJARAT, (1991) 4 SCC 406	93-153
7.	M. S. SANGHI, ADVOCATE V. STATE OF PUNJAB AND HARYANA AND OTHERS, (1983) 3 SCC 600	154-172
8.	IN RE S MULGAOKAR, (1978) 3 SCC 339	173-188
9.	IN RE SHRI SHAM LAL, (1978) 3 SCC 479	200-212
10.	SHRI BRADAKANTA MISHRA V. THE REGISTRAR OF ORISSA HIGH COURT AND ANR., (1974) 1 SCC 374	213-252
11.	E. M. SANKARAN NAMBOODRIAN V. T. NARAYAN NAMBIAR, (1970) 2 SCC 325	253-286
12.	BATHINA RAMAKRISHNA REDDY V. THE STATE OF MADRAS, AIR 1952 SC 149, 1952 SCR 425	269-272
13.	DR. S. DUTT V. STATE OF UTTAR PRADESH, [1966] 1 SCR 493	273-276

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-1-

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 31797 of 2010

Raja Khan

.. Petitioner

versus

U.P. Sunni Central Waqf Board & Anr. ..

Respondents

ORDER

Heard learned counsel for the petitioner.

"Something is rotten in the State of Denmark", said Shakespeare in Hamlet, and it can similarly be said that something is rotten in the Allahabad High Court, as this case illustrates.

This petition has been filed against the impugned judgment passed by a division Bench of the High Court of Allahabad dated 5.8.2010 in Special Appeal No. 973 of 2010. By that judgment the ex-parte interim orders of the Single Judge of the High Court dated 11.6.2010 and 18.6.2010 passed in Writ Petition No. 34595/2010 have been set aside.

The brief facts of the case are that there is a Dargah known as 'Dargah Hazrat Syed Salar Masood Ghazi R.A.' in district Bahraich, U.P. which is managed by the Committee of Management of Waqf no.19.

The petitioner claims to be the proprietor of circuses e.g. Great Gemini Circus, Apollo Circus, Raj Mahal Circus and Asiad Circus, and also runs a Jhoola (cradle) for entertaining the public at large. The petitioner does touring and runs the aforesaid circuses and jhoola in 'Melas' and other places of public gathering.

In the aforesaid dargah a Mela is held in the month of Jeth, known as 'Jeth Mela', Bahraich for a period of 40 days. It is alleged by the petitioner that in the past several years the Waqf has been allotting plot nos.1760 to 1770 and 1826 to 1834 belonging to it on lease to the petitioner for holding the Jeth Mela. However, in 2010 the Waqf refused to allot the said land for Jeth Mela to the petitioner. Hence the petitioner twice filed writ petitions in the Lucknow Bench of the Allahabad High Court which were dismissed. It may be mentioned that Bahraich is a district in erstwhile Avadh, which is under the jurisdiction of the Lucknow Bench of the High Court.

The petitioner then filed a suit in district Hamirpur being Suit no.54/70/10 of 2010 and when an objection was raised about territorial jurisdiction he filed the writ petition being Writ Petition no.34595 of 2010 in the Allahabad Bench of the High Court on which the ex-parte interim orders dated 11.6.2010 and 18.6.2010 were passed by the Single Judge of the Allahabad Bench of the High Court.

The order of the single Judge dated 11.6.2010 reads as follows :

"Issue notice to respondent Nos. 2, 3 and 4.

The said respondents are directed to file counter affidavit within 6 weeks. Rejoinder affidavit, if any, may be filed within two weeks thereafter. List thereafter.

The grievance of the petitioner is that for the last several years the petitioner is allotted land for installing Circus, Jhoola, Merry go round, swing for amusement area for the children and visitors of Mela in the premises of Dargah Sharif during the annual Urs in the month of Jeth (May and June).

Accordingly the respondent Nos. 2, 3 and 4 are directed to allot land in the Mela at waqf No. 19, Dargah Sharif, Bahraich over Plot Nos. 1760 to 1770 and 1826 to 1884, details of which have been given in the writ petition, to the petitioner for the purpose of running Circus, Jhoola, Merry go round swing etc. If the petitioner pays required rent lease, the possession of the allocated land shall be handed over the petitioner within 3 days.

Order Date:- 11.06.2010".

The order dated 18.6.2010 reads as follows :

"Heard learned counsel for the petitioner and the learned standing counsel.

Learned counsel for the petitioner has raised the grievance that despite earlier order of this Court dated 11.6.2010, the petitioner has not been allotted land in the Mela area. The very purpose of filing the writ petition would be frustrated if the petitioner is not allotted the land for running circus/Jhula in the Mela area.

The District Magistrate and the Superintendent of Police, Bahraich are directed to pass appropriate order in compliance of the order of this court dated 11.6.2010, since the petitioner has not been allotted land in the Mela area. The very purpose of filing the writ petition would be frustrated if the petitioner is not allotted the land for running circus/Jhula in the Mela area.

The District Magistrate and the Superintendent of Police, Bahraich are directed to pass appropriate order in compliance of the order of this court dated 11.6.2010 and allot appropriate plot to the petitioner and file affidavit of compliance.

Put up this case on 16.7.2010 before appropriate bench for hearing. The concerned officers or any other senior officer authorized by them shall file affidavit of compliance by 28.6.2010.

Order Date:- 18.6.2010".

The above orders are shocking to say the least.

We are of the opinion that the above two ex-parte interim orders of the Single Judge of the Allahabad High Court were clearly passed on extraneous considerations. This is for the following reasons :

:4:

(1) The property in question is in the district of Bahraich

which is within the territorial jurisdiction of the Lucknow Bench of the Allahabad High Court. Hence, the writ petition could not have been validly filed or entertained in the Allahabad Bench of the High Court in view of the decision of this court in Nasiruddin vs. State Transport Appellate Tribunal AIR 1976 SC 331.

(2) The writ petition was not maintainable because ordinarily no writ petition lies against a private body.

(3) By the ex-parte order dated 11.6.2010 the writ petition has been practically allowed since by that ex-parte order the respondents 2, 3, & 4 (U.P. Sunni Central Waqf Board, District Magistrate, Bahraich and Committee of Management, Waqf No. 19, Dargah Sharif, Bahraich) have been directed to allot the land in the Mela of the aforesaid Waqf at plot Nos. 1760 to 1770 and 1826 to 1884 to the petitioner for the purpose of running circus, Jhoola, Merry-go-round etc., and possession of the allocated land was directed to be handed over within three days. Subsequently, on 18.6.2010, the same single Judge has passed an order directing the district Magistrate and SP, Bahraich to take appropriate action for compliance of the earlier order.

:5:

It is well settled that by an interim order the final

-6-

relief should not be granted, vide U.P. Junior Doctors Action Committee vs. Dr. B. Sheetal Nandwani, AIR 1992 SC 671 (para 8), State of U.P. vs. Ram Sukhi Devi, JT 2004(8) SC 264 (para6), etc.

(4) The petitioner had earlier filed a writ petition being writ petition No. 4720(M/B) of 2010 before the Lucknow Bench of the High Court which was dismissed on 19.5.2010 with liberty to approach the district Magistrate by making a representation. The petitioner made a representation which was decided by the District Magistrate on 21.5.2010 with the direction to the Committee of Management of the Waqf to reconsider the petitioner's claim for allotment of land. The petitioner then applied to the Committee of the Management for grant of a lease and simultaneously filed another writ petition being writ petition No. 5245(M/B) of 2010 before the Lucknow Bench challenging the order of the District Magistrate. This writ petition was dismissed on 28.5.2010 by the following order of the Division Bench of the Lucknow Bench of the Allahabad High Court :

-7-

"Court No. -1

Case:- MISC. BENCH No. - 5245 of 2010

Petitioner :- Raza Khan S/O Fateh Khan

Respondent :- District Magistrate / Additional
Waqf Commissioner, Bahraich

Petitioner Counsel:- M. A. Khan

Respondent Counsel:- C. S. C., M. Sayeed, U.K.
Srivastava

Hon'ble Pradeep Kant, J.

Hon'ble Ritu Raj Awasthi, J.

After hearing the argument at length, we are satisfied that this second writ petition for the same relief is not maintainable, as earlier, the writ petition filed by the petitioners for the same relief, has been dismissed as withdrawn vide order dated 19.5.2010.

Sri Umesh Kumar Srivastava appearing for the Committee says that in pursuance of the directives issued by the District Magistrate in his order dated 21.05.2010, a fresh decision has already been taken and it has been sent to the petitioner through registered post.

Mohd. Arif Khan, learned Senior Advocate, appearing for the petitioner says that no such decision has yet been communicated.

Copy of the said decision has been handed over to Sri Mohd. Arif Khan.

When this Court has refused to entertain the writ petition filed earlier for the same relief and though liberty to the petitioner to approach the District Magistrate or any other forum, as may be provided under law being even, it does not mean that the second writ petition seeking same relief will be maintainable after the orders passed by the authority concerned, but it would be open to the parties to seek their remedy, elsewhere, as may be provided under law.

-8-

The dispute like this nature, since cannot be adjudicated in writ jurisdiction, we did not entertain the earlier petition and for the same reason, the present petition is also not maintainable.

Mohd. Arif Khan, lastly submitted that a direction be issued to the Chairman for deciding the application moved under Section 70 of the Act. In response, Sri Umesh Kumar Srivastava, argued that Section 70 is not attracted in the matter, nor such an application is entertainable.

We do not intend to enter into this controversy, and leave it open to the petitioner, to pursue his application with the above observation, the writ petition is dismissed.

Order Date: 28.5.2010"

The petitioner then filed a Civil Suit being Suit No. 54/70/10 of 2010 titled 'Raza Khan vs. Managing Committee, Waqf No. 19, Waqf Dargah etc.' before the Civil Judge (Senior Division), Hamirpur. It may be mentioned that Hamirpur lies within the territorial jurisdiction of the Allahabad Bench of the High Court and not the Lucknow bench, whereas the property in question is situate at Bahraich which is under the jurisdiction of the Lucknow Bench.

On the suit being presented, the Munsarim made a report that the suit was not cognizable at Hamirpur for

-9-

lack of territorial jurisdiction. The petitioner took time to file a reply/objection against the said report. Instead of filing a reply, he filed a writ petition in the Allahabad bench of the High Court being writ petition No. 34595 of 2010 on which the orders dated 11.6.2010 and 18.6.2010 have been passed.

In our opinion, the Division Bench of the High Court has rightly set aside the interim orders of the Single Judge dated 11.6.2010 and 18.6.2010 as these interim orders were clearly passed on extraneous considerations.

The faith of the common man in the country is shaken to the core by such shocking and outrageous orders such as the kind which have been passed by the Single Judge.

We are sorry to say but a lot of complaints are coming against certain Judges of the Allahabad High Court relating to their integrity. Some Judges have their kith and kin practising in the same Court, and within a few years of starting practice the sons or relations of the Judge become multi-millionaires, have huge bank balances, luxurious cars, huge houses and are enjoying a luxurious life. This is a far cry from the days when the sons and other

-10-

relatives of Judges could derive no benefit from their relationship and had to struggle at the bar like any other lawyer.

We do not mean to say that all lawyers who have close relations as Judges of the High Court are misusing that relationship. Some are scrupulously taking care that no one should lift a finger on this account. However, others are shamelessly taking advantage of this relationship.

There are other serious complaints also against some Judges of the High Court.

The Allahabad High Court really needs some house cleaning (both Allahabad and Lucknow Bench), and we request Hon'ble the Chief Justice of the High Court to do the needful, even if he has to take some strong measures, including recommending transfers of the incorrigibles.

We entirely agree with the view taken by the Learned Division Bench in the impugned judgment. In view of the foregoing, we find no merit in this petition which is accordingly dismissed.

.....J.
(Markandey Katju)

New Delhi:
26 November, 2010.



JUDGMENT

(2010) 8 Supreme Court Cases 281

(BEFORE G.S. SINGHVI AND A.K. GANGULY, JJ.)

a INDIRECT TAX PRACTITIONERS' ASSOCIATION .. Petitioner;
 Versus
 R.K. JAIN .. Respondent.

Contempt Petitions (Crl.) No. 9 of 2009 in No. 15 of 1997,
 decided on August 13, 2010

- b** A. Public Accountability and Vigilance — Whistleblower — Who is —
 Types of whistleblowers — Internal and external whistleblowers — Need for
 maintaining confidentiality in respect of internal whistleblowers —
 Whistleblower in respect of judicial institutions — Protection against
 contempt proceedings — Held, whistleblower is a person who raises a
 concern about wrongdoing in an organisation or by body of people —
c Revealed misconduct may be violation of law, threat to public interest such
 as fraud, health/safety violations, corruption, etc. — Internal whistleblowing
 refers to raising of an alarm within an organisation while external
 whistleblowing awakens outside agencies like media, regulators, etc. —
 There must be proper mechanism in an organisation for internal
 whistleblowing, including maintenance of confidentiality in respect of
 whistleblowers — Whistleblower in respect of judicial institutions —
d Raising an alarm truthfully about malfunctioning of a judicial institution
 dealing with State revenue matters (CESTAT) — Held, is not contemptuous
 — Constitution of India — Arts. 129 and 215 — Contempt of Courts Act,
 1971 — S. 2(c) — Words and Phrases — "Whistleblower" — Meaning of —
 Contempt of Court — Nature and scope — Freedom of speech/expression
 and contempt of court — Rule of Law

- e** The respondent was the editor of the law journal, *Excise Law Times*. A
 contempt petition was filed by the petitioner Association against the respondent
 on the ground that he wrote an editorial in the issue dated 1-6-2009 of the
 journal, which amounted to criminal contempt under Section 2(c) of the
 Contempt of Courts Act, 1971. In the editorial, the respondent appreciated steps
 taken by the new President of CESTAT to cleanse the administration but at the
 same time he also highlighted irregularities in transfer and posting of some
f Members of the Tribunal and also appointment of one particular member, *T*. The
 respondent also pointed out that *T* was accommodated at Bangalore by
 transferring another Member from Bangalore to Delhi in less than one year of his
 posting, and further that the posting of *T* for a period of seven years was against
 all the norms, more so because he had earlier worked as the Commissioner of
 Central Excise (Appeals), Bangalore. The respondent then made a detailed
g reference to the orders passed by a particular Bench of CESTAT which were set
 aside by the High Courts of Karnataka and Kerala with scathing criticism
 (extracts from the editorial reproduced in para 36 herein).

A contempt petition was filed after obtaining the consent of the Attorney
 General but it was not brought to the Attorney General's notice that the President
 of CESTAT had constituted an enquiry committee.

- h** Earlier also, the respondent was charged with contempt but the proceedings
 were dropped against him on the basis of an undertaking dated 25-8-1998 given
 by him that in future he would not write such editorials without first bringing the

alleged irregularities in the functioning of CESTAT to the notice of the Chief Justice of India and/or the Ministry of Finance. Prior to writing the present editorial dated 1-6-2009, the respondent had written several letters to various authorities bringing to their notice the alleged irregularities (details of letters given in para 5 of the judgment).

The issue before the Supreme Court was whether the respondent had breached the undertaking given by him in the earlier contempt proceedings, and whether the respondent had committed criminal contempt by writing the editorial in the issue dated 1-6-2009 of the journal. The Supreme Court also considered whether the respondent had acted as a whistleblower who should be protected from contempt proceedings.

Answering all the issues in favour of the respondent and dismissing the petition with exemplary costs of ₹2 lakhs, the Supreme Court

Held :

There is a growing acceptance of the phenomenon of whistleblower. A whistleblower is a person who raises a concern about the wrongdoing occurring in an organisation or body of people. Usually this person would be from that same organisation. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption. Whistleblowers may make their allegations internally (for example, to other people within the accused organisation) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues). Most whistleblowers are *internal whistleblowers*, who report misconduct on a fellow employee or a superior within their company. (Para 40)

One of the most interesting questions with respect to internal whistleblowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behaviour or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behaviour, within an organisation, if there are complaint systems that offer not just options dictated by the planning and controlling organisation, but a *choice* of options for individuals, including an option that offers near absolute confidentiality. However, *external whistleblowers* report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, State, or federal agencies. (Para 41)

A person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such a person by invoking Articles 129 or 215 of the Constitution or the provisions of the Contempt of Courts Act, 1971. (Para 42)

B. Constitution of India — Arts. 19(1)(a), 51-A(h), 129 and 215 — Criminal contempt vis-à-vis right to freedom of speech and expression and promotion of spirit of inquiry and reform — Fair criticism of judicial functioning held, is not contempt — Limits beyond which such criticism becomes criminal contempt — Held, criticism becomes contempt when it is done with ill-motive or there is deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons — Ordinarily, court would not use its power of contempt to silence criticism

a unless criticism of judicial institutions transgresses all limits of decency and fairness, or there is total lack of objectivity, or there is deliberate attempt to denigrate the institution — Highlighting of certain irregularities in functioning of CESTAT and wrong orders passed by a Bench comprising a particular Member — Held on facts, was not criminal contempt — On the other hand, respondent fulfilled his duty as a citizen under Art. 51-A(h) — Contempt of Courts Act, 1971 — Ss. 2(c) and 5 — Contempt of Court — Nature and scope — Freedom of speech/expression and contempt of court — Fair criticism of judicial functioning, held, not contempt

b C. Contempt of Court — “Court” — CESTAT — Whether a “court” for the purpose of 1971 Act — Impliedly held, is a court — Contempt of Courts Act, 1971, Ss. 15(1), (2), (3) and 2(c)

Held :

c Freedom of speech and expression has always been considered as the most cherished right of every human being. In the land of Gautam Buddha, Mahavir and Mahatma Gandhi, the freedom of speech and expression and freedom to speak one's mind have always been respected. After Independence, the courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalise or lower the authority of the court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill-motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons.

(Paras 18 and 22)

e *New York Times Co. v. L.B. Sullivan*, 11 L Ed 2d 686 : 376 US 254 (1964); *Ambard v. Attorney General for Trinidad and Tobago*, 1936 AC 322 : (1936) 1 All ER 704 : AIR 1936 PC 141; *Debi Prasad Sharma v. King Emperor*, (1942-43) 70 IA 216 : AIR 1943 PC 202; *R. v. Commr. of Police of the Metropolis, ex p Blackburn (No. 2)*, (1968) 2 QB 150 : (1968) 2 WLR 1204 : (1968) 2 All ER 319 (CA), relied on

McLeod v. St. Aubyn, 1899 AC 549 (PC); *Special Reference from the Bahama Islands, In re*, 1893 AC 138 (PC); *R. v. Gray*, (1900) 2 QB 36 : (1900-03) All ER Rep 59; *R. v. Almon*, 1765 Wilm 243 : 97 ER 94, referred to

f Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the Court would use this power.

(Para 23)

g *S. Mulgaokar, In re*, (1978) 3 SCC 339 : 1978 SCC (Cri) 402; *P.N. Duda v. P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589; *Baradakanta Mishra v. Orissa High Court*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128, relied on

Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788; *Ambard v. Attorney General for Trinidad and Tobago*, 1936 AC 322 : (1936) 1 All ER 704 : AIR 1936 PC 141; *Rama Dayal Markarha v. State of M.P.*, (1978) 2 SCC 630 : 1978 SCC (Cri) 327, referred to

h Although the petitioner has tried to project the editorial as a piece of writing intended to demean CESTAT as an institution and scandalise its functioning but there is nothing in it which can be described as an attempt to lower the authority of CESTAT or ridicule it in the eyes of the public. Rather, the object of the

editorial was to highlight the irregularities in the appointment, posting and transfer of the members of CESTAT and instances of the abuse of the quasi-judicial powers. What was incorporated in the editorial was nothing except the facts relating to the manipulative transfer and posting of some members of CESTAT and substance of the orders passed by a particular Bench of CESTAT, which were set aside by the High Courts of Karnataka and Kerala. Even the Supreme Court was constrained to take cognizance of the unusual order passed by CESTAT of which T was a member whereby the appeal of the assessee was decided on merits even though the Tribunal was required to examine the question of limitation only. By writing the editorial which must have caused embarrassment to functionaries of the Central Government and CESTAT and even some members of the petitioner Association, but that cannot be dubbed as an attempt to scandalise CESTAT as a body or interfere with the administration of justice. What the respondent projected was nothing but the true state of the functioning of CESTAT on the administrative side and to some extent on the judicial side. By doing so, he had merely discharged the constitutional duty of a citizen enshrined in Article 51-A(h). (Para 37)

Millington v. Loring, (1880) 6 QBD 190 : 50 LJQB 214 (CA); *Baradakanta Mishra v. Orissa High Court*, (1974) 1 SCC 374 : 1974 SCC (Cri) 128; *Narmada Bachao Andolan v. Union of India*, (1999) 8 SCC 308, relied on

CCE v. McDowell & Co. Ltd., (2005) 186 ELT 145 (Kant); *McDowell & Co. Ltd. v. CCE*, (2005) 182 ELT 114 (Tri); *Rishi Polymach Ltd. v. CCE*, (2005) 192 ELT 884 (Tri); *CCE v. Rishi Polymach (P) Ltd.*, (2008) 232 ELT 201 (Kant); *Harsinghar Gutka (P) Ltd. v. CCE*, (2008) 221 ELT 77 (Tri); *CCE v. United Telecom Ltd.*, (2006) 198 ELT 12 (Kant); *United Telecom Ltd. v. Commr. of Customs*, (2005) 191 ELT 1056 (Tri); *Bharti Airtel Ltd. v. Commr. of Customs*, (2009) 237 ELT 469 (Tri); *Alvares & Thomas v. CCE*, (2009) 13 STR 516; *CCE v. Electronic Control Corpn.*, (2009) 235 ELT 417 (Ker); *Electronic Control Corpn. v. CCE*, (2006) 197 ELT 291 (Tri); *Midas Precured Treads (P) Ltd. v. CCE*, (2006) 200 ELT 423 (Tri); *CCE v. Midas Precured Tread (P) Ltd.*, (2009) 236 ELT 26 (Ker), referred to

"Battle for ₹320 crores—Mysterious recusal by CESTAT member—New Bench orders predeposit of ₹1 crore", (2008) 229 ELT A153, referred to

Black's Law Dictionary, 8th Edn., p. 1372; *Aiyer's Law Lexicon*, 2nd Edn., p. 1727, quoted

It is not the petitioner's case that the facts narrated in the editorial regarding transfer and posting of the members of CESTAT are incorrect or that the respondent had highlighted the same with an oblique motive or that the orders passed by the Karnataka and Kerala High Courts to which reference has been made in the editorial were reversed by the Supreme Court. Therefore, it is not possible to record a finding that by writing the editorial in question, the respondent has tried to scandalise the functioning of CESTAT or made an attempt to interfere with the administration of justice. (Para 38)

D. Contempt of Court — Defences — Justification and Truth — Truth as a defence in contempt proceedings — Scope and extent — Necessity to permit raising of such defence where public interest is involved and defence is bona fide — Held, truth should ordinarily be allowed to be raised as a defence unless this defence is being used as a camouflage to escape consequences of deliberate or malicious attempt to scandalise court, or is an interference with administration of justice — Truthful editorial written in a law journal pointing out certain irregularities in functioning of a Tribunal (CESTAT) — Held, is not contempt — Contempt of Courts Act, 1971 — S. 13(b) [as substituted vide 2006 amendment] and S. 2(c) — Constitution of India — Arts. 129 and 215 — Truth as a defence — When may be raised

Held :

- a** The substituted Section 13 represents an important legislative recognition of one of the fundamentals of our value system i.e. truth. The amended Section 13 enables the court to permit justification by truth as a valid defence in any contempt proceeding if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. If a speech or article, editorial, etc. contains something which appears to be contemptuous and the Supreme Court or the High Court is called upon to initiate proceedings under the Act and
- b** Articles 129 and 215 of the Constitution, the truth should ordinarily be allowed as a defence unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice. Since the petitioner has not even suggested that what has been mentioned in the editorial is incorrect or that the respondent has presented a distorted version of the facts, there is no warrant for discarding the respondent's assertion that whatever he has written is based on
- c** true facts and the sole object of writing the editorial was to enable the authorities concerned to take corrective/remedial measures. (Para 39)

- E. Contempt of Court — Civil contempt — Breach of undertaking given to court — Breach, held, not proved in this case — Respondent who was editor of a law journal, had given an undertaking in Supreme Court that in future he would not publish alleged irregularities in functioning of CESTAT**
- d** **without first bringing those irregularities to notice of authorities concerned — In conformity with this undertaking, appellant writing letters to various authorities but when no action was taken, appellant writing an editorial in law journal highlighting those irregularities — Held, undertaking not breached by respondent — Constitution of India — Art. 129 — Contempt of Courts Act, 1971 — S. 2(b)**

- e** **F. Public Accountability and Vigilance — Vigilance Authorities — Citizens — Methods that may be adopted — Apathy of authorities concerned — Recourse against**

Held :

- f** The respondent cannot be charged with the allegation of having violated the undertaking filed in the Supreme Court on 25-8-1998. The respondent is not a novice in the field. For decades, he has been fearlessly using his pen to highlight malfunctioning of CEGAT and its successor CESTAT. Letter dated 26-12-1991 written by him to the then Chief Justice of India, complaining that CEGAT was without a President for last over six months and the functioning of the Tribunal was adversely affected because the Benches would sit hardly for two hours or so and further that there was tendency to adjourn the cases, was ordered to be
- g** registered as a petition in public interest. After an in-depth analysis of the relevant constitutional and statutory provisions, the Supreme Court gave certain suggestions for improving the functioning of CEGAT and other Tribunals constituted under Articles 323-A and 323-B. (Para 15)

R.K. Jain v. Union of India, (1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464, relied on

Chaudharana Steels (P) Ltd. v. CCE, (2009) 15 SCC 183, referred to

- h** The respondent was very much conscious of the undertaking filed in the earlier contempt proceedings and this is the reason why before writing the

editorial, he sent several communications to the functionaries concerned to bring to their notice serious irregularities in the transfer and posting of members, appointment of members, changes made in the pronounced orders and many unusual orders passed by the particular Bench of CESTAT, which were set aside by the Karnataka and the Kerala High Courts after being subjected to severe criticism. The sole purpose of writing those letters was to enable the authorities concerned to take corrective measures but nothing appears to have been done by them to stem the rot. It is neither the pleaded case of the petitioner nor any material has been placed before the Court to show that the Finance Minister or the Revenue Secretary, Government of India had taken any remedial action in the context of the issues raised by the respondent. Therefore, it is not possible to hold the respondent guilty of violating the undertaking given to the Supreme Court. (Para 17)

G. Practice and Procedure — Costs — Exemplary costs — Imposition of — When warranted — Abuse of process of court — Contempt petition lacking bona fides — A body of tax-professionals filing petition in Supreme Court alleging criminal contempt by editor of a law report (*Excise Law Times*), who highlighted certain irregularities in functioning of CESTAT — No justification found for initiating contempt proceedings against editor — Attorney General from whom written consent obtained, also misled — Costs of ₹2 lakhs imposed on petitioner Association — Constitution of India — Arts. 129 and 215 — Frivolous contempt petition — Imposition of costs
Held :

This petition lacks bona fides and is an abuse of process of court. The petitioner is a body of professionals who represent the cause of their clients before CESTAT and may be other tribunals and authorities. They are expected to be vigilant and interested in transparent functioning of CESTAT. However, instead of doing that, they have come forward to denounce the editorial and in the process misled the Attorney General for India in giving consent by suppressing the factum of appointment of the Inquiry Committee by the President, CESTAT. A professional body like the petitioner has chosen wrong side of the law. For filing a frivolous petition, the petitioner is saddled with cost of ₹2,00,000, of which ₹1,00,000 shall be deposited with the Supreme Court Legal Services Committee and ₹1,00,000 shall be paid to the respondent.

(Paras 43 and 44)

K-D/46612/CVRL

Advocates who appeared in this case :

P.S. Narasimha, Senior Advocate (Abhay Kumar and Venkat S.T.R., Advocates) for the Petitioner;

Prashant Bhushan, Advocate, for the Respondent.

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INDIRECT TAX PRACTITIONERS' ASSN. v. R.K. JAIN (Singhvi, J.)

287

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- d 23. 11 L Ed 2d 686 : 376 US 254 (1964), *New York Times Co. v. L.B. Sullivan* 296b
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28. 1893 AC 138 (PC), *Special Reference from the Bahama Islands, In re* 296g
29. (1880) 6 QBD 190 : 50 LJQB 214 (CA), *Millington v. Loring* 304c-d
30. 1765 Wilm 243 : 97 ER 94, *R. v. Almon* 297a-b

The Judgment of the Court was delivered by

- G.S. SINGHVI, J.**—Whether by writing editorial, which was published in *f Excise Law Times* dated 1-6-2009 with the title “CESTAT President sets house in order—Annual transfers for members introduced—Registry in line”, the respondent violated the undertaking filed in this Court in Contempt Petition (Criminal) No. 15 of 1997 and whether contents of the editorial constitute criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 (for short “the Act”) are the questions which need consideration in this petition filed by the Indirect Tax Practitioners’ Association, Bangalore under Articles 129 and 142 of the Constitution of India.

2. This Court had, after taking cognizance of the letter dated 18-9-1997 written by Justice U.L. Bhat, the then President of the Customs, Excise and Gold (Control) Appellate Tribunal to the Chief Justice of India pointing out that the respondent had published objectionable editorials in (1996) 86 *Excise Law Times*, pp. A169 to A179; (1996) 87 *Excise Law Times*, pp. A59

to A70 and (1997) 94 *Excise Law Times*, pp. A65 to A82 containing half truths, falsehoods and exaggerated versions of the alleged deficiencies and irregularities in the functioning of the Tribunal, initiated contempt proceedings against the respondent which came to be registered as Contempt Petition (Criminal) No. 15 of 1997.

3. On 25-8-1998 the respondent filed an undertaking, the relevant portions of which are reproduced below:

"I realise that my approach and wordings in the impugned editorials of ELT have given the impression of scandalising or lowering the authority of CEGAT. I state that I had no such intention as I had undertaken the exercise in good faith and in public interest. I sincerely regret the writing of the said editorials which have caused such an impression.

That I have been advised by my Senior Counsel, Mr Shanti Bhushan that in future whenever there are any serious complaints regarding the functioning of CEGAT, the proper course would be to first bring those matters to the notice of the Chief Justice of India, and/or the Ministry of Finance and await a response or corrective action for a reasonable time before taking any other action. I undertake to the Court to abide by this advise of my counsel in future."

4. After taking cognizance of the same, the Court passed the following order:

"Mr Shanti Bhushan, learned counsel for the respondent (alleged contemnor) tenders a statement in writing signed by the respondent. We accept the regret tendered by the respondent in the said statement. We also accept the undertaking to the Court given by the respondent in the said statement. Having regard to the aforesaid, the contempt notice is discharged. There will be no order as to costs.

We express our gratitude to Mr T.R. Andhyarujina who has assisted the Court at our request."

5. During the pendency of the aforementioned contempt case, the respondent had written detailed letters dated 2-6-2008, 7-7-2008, 23-7-2008, 26-7-2008, 9-8-2008 and 12-8-2008 to the Finance Minister, Government of India highlighting specific cases of irregularities, malfunctioning and corruption in the Customs, Excise and Service Tax Appellate Tribunal (CESTAT). After the notice of contempt was discharged, the respondent wrote two more letters dated 21-10-2008 and 28-2-2009 to the Finance Minister on the same subject and also pointed out how the appointment and posting of Shri T.K. Jayaraman, Member, CESTAT were irregular. He drew the attention of the addressee to the fact that some of the orders pronounced by CESTAT had been changed. He wrote similar letters to the Revenue Secretary; President, CESTAT; Registrar, CESTAT and the Central Board of Excise and

Customs. The particulars of these letters as contained in the reply-affidavit filed by the respondent are as under:

Letters to the Finance Minister

Letter date	Subject
2-6-2008	CESTAT—Member-Advocate nexus
7-7-2008	Gold smuggling—Carrying of gold in soles of the shoes is a trade practice as per CESTAT order—Need for CBI enquiry
23-7-2008	Gold smuggling—Carrying of gold in soles of the shoes is a trade practice as per CESTAT order—Need for CBI enquiry
26-7-2008	Change of "pronounced orders" by CESTAT members—Open court handwritten order directing deposit of ₹15 lakhs changed to ₹5 lakhs—Department's ROM application pointing out this discrepancy, repeatedly dismissed by CESTAT
9-8-2008	CESTAT: Changing of orders—Direction for deposit of ₹50 lakhs changed to ₹50,000 in a customs case booked by DRI for "misdeclaration" of imports from China involving ₹2.07 crores—Need for CBI enquiry
12-8-2008	CESTAT, Settlement Commission, Revisionary Authority and government litigation in revenue evasion cases involving high revenue—Request for personal meeting
21-10-2008	Appointment of Judicial Members to CESTAT—Serious irregularities and tampering with the records—Misdeclaration as to eligibility by Mr M.V. Ravindran, Member (Judicial), CESTAT
28-2-2009	CESTAT: Changing of orders—Direction for deposit of ₹50 lakhs changed to ₹50,000 in a customs case booked by DRI involving ₹2.07 crores—Further revelations and evidences—Need for CBI enquiry strengthens

Letters to the Revenue Secretary

Letter date	Subject
5-9-2008	CESTAT: Proposal for confirmation of Shri M.V. Ravindran, Member (J) and Shri K.K. Agarwal, Member (T) may be kept in abeyance, pending verification of allegations and irregularities committed by them—Initiation of disciplinary proceedings for their removal
22-10-2008	Appointment of judicial members to CESTAT—Serious irregularities and tampering with the records—Misdeclaration as to eligibility by Mr M.V. Ravindran, Member (Judicial), CESTAT
10-11-2008	CESTAT—Non-functioning of the Chennai Bench of CESTAT since 3-11-2008
19-11-2008	CESTAT—Unauthorised and manipulated tour notes/tours by Ms Jyoti Balasundaram, Vice President—Need for vigilance enquiry

14-2-2009	Appeals by the Revenue Department in SC—95% of appeals lost—Department's representation at the High Court still worse—Need for remedial measures
2-3-2009	CESTAT: Changing of orders—Direction for deposit of ₹50 lakhs changed to ₹50,000 in a customs case booked by DRI involving ₹2.07 crores—Further revelations and evidences—Need for CBI enquiry strengthens

Letters to the Hon'ble President, CESTAT

Letter date	Subject
30-8-2008	Change of "pronounced orders" by CESTAT members—Open court handwritten order directing deposit of ₹15 lakhs changed to ₹5 lakhs—Department's ROM application pointing out this discrepancy, repeatedly dismissed by CESTAT
1-9-2008	CESTAT—Changing of orders—Direction for deposit of ₹50 lakhs changed to ₹50,000 in a customs case booked by DRI for "misdeclaration" of imports from China involving ₹2.07 crores—Need for CBI enquiry
7-10-2008	Manner of listing of matters in the cause-list
11-10-2008	Need for uniform practice for dealing with mentioned matters by different Zonal Benches of CESTAT
5-5-2009	Annual physical checking of pending appeals and applications—Misplacement of appeal files after grant of stay in heavy matters
22-5-2009	Pronouncement of reverse orders within reasonable period—Need for rehearing when order not pronounced within 4 months—Bombay High Court decision
8-6-2009	Pronouncement of "reserved order"—Listing in cause-list
13-7-2009	Complaint against Shri S. Chandran, Registrar, CESTAT for non-compliance with Miscellaneous Order No. 412 of 2007-SM(BR), dated 4-10-2007 passed by R.K. Abhichandani, J. and misusing of authority as first appellate authority under the RTI Act, by suppressing/fabricating information
31-8-2009	Disciplinary action against Shri S.K. Verma, Assistant Registrar, CESTAT as per the directions of the Presiding Officer of the Debts Recovery Tribunal II, Delhi and for other complaint and lapses
2-9-2009	Non-maintenance of records for supplementary cause-lists issued by the Chennai Bench of CESTAT
10-9-2009	Improper and illegal transfer of Customs Appeals Nos. C/112 and 139 of 2009 from the Division Bench to Single Member Bench in violation of provisions of the Customs Act and CESTAT (Procedure) Rules, 1982—Need for inquiry by an independent agency

16-9-2009	Service tax appeals relating to valuation and rate of tax by Single Member Bench in violation of Section 86(7) of the Finance Act, 1994
19-9-2009	Need for incorporating the amount of duty, penalty and fine in the orders passed by CESTAT
22-9-2009	Act of insubordination by the Assistant Registrar by commenting on exercise of power by the President as violating rules and exceeding powers—Need for disciplinary action
23-9-2009	Information about antedating of orders and delayed release of orders, particularly of CESTAT, Bangalore and of Single Member Bench of CESTAT, New Delhi
5-10-2009	Report of dispatch of CESTAT orders—Non-compliance by CESTAT, Mumbai
16-10-2009	Information about antedating of orders and delayed release of orders, particularly by the Bangalore Bench of CESTAT
16-10-2009	Lodging of police complaint for missing records from CESTAT, New Delhi
23-10-2009	Delay in dispatch of the orders—Non-submission of weekly report for dispatch of orders by the Regional Benches—Inaction by the Registrar and Deputy Registrar at CESTAT Headquarters, New Delhi
26-10-2009	Complaint against Shri P.K. Das, Hon'ble Member (Judicial), CESTAT, New Delhi
8-1-2010	Strengthening CESTAT by providing facilities to the members in the Tribunal

Letters to the Registrar, CESTAT

<i>Letter date</i>	<i>Subject</i>
23-8-2008	Listing of matter in two different courts
9-12-2008	Files for tour orders and roaster orders for 2001—Missing
9-12-2008	Issuing of letters without file number or letter number or the dispatch diary number
27-1-2009	Withholding of the Supreme Court remand orders by the CESTAT Registry, Mumbai—Request for disciplinary action
4-11-2009	Fault of CESTAT Registry, Mumbai in not placing before the Bench the proof of deposit of predeposit amount
14-11-2009	Tracing out of case records of Kozy Silks (P) Ltd.

Letter to the CDR, CESTAT, New Delhi

<i>Letter date</i>	<i>Subject</i>
1-8-2009	Cross-appeals to be heard together
6-8-2009	CESTAT orders—Discrepancies between pronounced orders and issued orders—Strengthening of departmental representation to safeguard revenue—Regarding

Letters to the Central Board of Excise and Customs

Letter date	Subject
2-3-2009	CESTAT: Changing of orders—Direction for deposit of ₹50 lakhs changed to ₹50,000 in a customs case booked by DRI involving ₹2.07 crores—Further revelations and evidences—Need for CBI enquiry strengthens
6-6-2009	Change in pronounced orders
13-6-2009	Appeals under Section 35-G of the Central Excise Act to be filed within 180 days—High Courts have no power to condone the delay—Latest Supreme Court decision in <i>Chaudharana Steels (P) Ltd. v. CCE</i> ¹ —Need for suitably modifying the CBE&C Circular No. 888/8/2009-CX, dated 21-5-2009
8-8-2009	Change of pronounced orders by CESTAT members—Whereabouts of complaint dated 4-8-2008 made to the Finance Minister

6. Since no one seems to have taken cognizance of the letters written by the respondent, he wrote the editorial in which he commended the administrative and judicial reforms initiated by the new President of CESTAT and, at the same time, highlighted how some members of CESTAT managed their stay at a particular place. He also made a mention of what he perceived as irregularities in the appointment and posting of Shri T.K. Jayaraman, erstwhile Commissioner of Central Excise, Bangalore as Member, CESTAT. The respondent then referred to some of the orders passed by the Bench comprising Shri T.K. Jayaraman, which were adversely commented upon by the High Courts of Karnataka and Kerala. He also made a mention of the irregularities in the functioning of the Registry of CESTAT.

7. The petitioner, whose members are said to be appearing before the Bangalore, Chennai, Bombay, Delhi, Ahmedabad and Calcutta Benches of CESTAT, took up the cause of Shri T.K. Jayaraman and submitted the complaint dated 11-6-2009 to the President of CESTAT accusing the respondent of trying to scandalise the functioning of CESTAT and lower its esteem in the eyes of the public. By an order dated 16-7-2009, the President, CESTAT appointed a two-member committee to look into the grievance made by the petitioner as also the allegations contained in the editorial. The terms of reference made to the Inquiry Committee are as follows:

“At this stage, the terms of reference for inquiry by the Committee shall relate to verification of grievances in the letter of the Association as well as the allegations made in the said editorial regarding the irregularities in relation to the appointment of members of the Tribunal and regarding the decisions by some of the Benches of the Tribunal.”

a 8. By letter dated 24-7-2009, the President, CESTAT informed Shri B.V. Kumar, President of the petitioner Association about appointment of the Inquiry Committee. Soon thereafter, the Inquiry Committee informed the parties that it would meet at Bangalore on 11-8-2009 but the President of the petitioner Association expressed his inability to attend the meeting and sought reschedulement for 28-8-2009/29-8-2009.

b 9. It appears that members of the petitioner Association were apprehensive that an inquiry into the truthfulness or otherwise of the contents of the editorial may cause embarrassment to some of them as also some members of CESTAT and, therefore, they decided to adopt a short-cut to silence him. In furtherance of this object, the petitioner sent letters dated 8-8-2009 and 25-8-2009 to the Solicitor General of India and the Attorney General of India respectively seeking their consent for filing the contempt petition against the respondent. In neither of those letters, the petitioner made c a mention of the Inquiry Committee constituted by the President, CESTAT to look into the complaint made by it. The Attorney General gave his consent vide letter dated 9-9-2009. Thereafter, this petition was filed.

d 10. The petitioner has sought initiation of contempt proceedings against the respondent by asserting that the editorial written by him is in clear violation of the undertaking given to this Court that serious complaint regarding the functioning of the Tribunal will be brought to the notice of the Chief Justice of India, and/or the Ministry of Finance and response or corrective action will be awaited for a reasonable time before taking further action. According to the petitioner, the editorial in question will not only create a sense of fear and inhibition in the minds of the members who are entrusted with the onerous task of dispensing justice, but also prevent the advocates and practitioners who appear before CESTAT from advancing the cause of their clients without any apprehension of bias/favouritism. The petitioner also pleaded that by targeting the particular member of CESTAT, the respondent has scandalised the entire institution.

e 11. In the written statement filed by him, the respondent has taken the stand that he cannot be accused of violating the undertaking filed in this Court on 25-8-1998 because before writing the editorial he had brought all the facts to the notice of the Finance Minister and the Revenue Secretary, Government of India as also the President, CESTAT and other functionaries, but no one had taken corrective measures. The respondent has claimed that the sole object of writing the editorial was to enable the authorities concerned to streamline the functioning of CESTAT on the administrative and judicial side and take other corrective measures. He has referred to the observations made by this Court in *R.K. Jain v. Union of India*², 162nd Report of the Law Commission on the Review of Functioning of CAT, CEGAT and ITAT and pleaded that he had written the editorial with a spirit of reform and not to scandalise the functioning of CESTAT.

25

12. Shri P.S. Narasimha, learned Senior Counsel appearing for the petitioner emphasised that the editorial written by the respondent is clearly intended to scandalise the functioning of CESTAT and, therefore, this Court should take cognizance and initiate proceedings against him under Sections 2(c), 12 and 15 of the Act read with Article 129 of the Constitution. Learned Senior Counsel submitted that contents of the editorial amount to criminal contempt because adverse and uncharitable comments made by the respondent qua some of the orders passed by the particular Bench of CESTAT amounts to direct interference in the administration of justice and the same are bound to affect the credibility of the Tribunal in the eyes of the public in general and the litigants in particular who will have no confidence in the particular member of CESTAT and those appearing before the particular Bench will not be able to represent the cause of their clients with the freedom which is *sine qua non* for dispensation of justice. a a b b

13. Shri Prashant Bhushan, learned counsel for the respondent questioned the bona fides of the petitioner and argued that this petition is liable to be dismissed because the same has been filed with an oblique motive of preventing the respondent from highlighting the irregularities in the functioning of CESTAT. The learned counsel emphasised that the petitioner is guilty of misleading the Attorney General in granting consent for filing of the contempt petition because the factum of appointment of two-member Committee by the President, CESTAT was deliberately not mentioned in the letter dated 25-8-2009. The learned counsel then submitted that the sole object of writing the editorial was to awaken the functionaries concerned of the Government and CESTAT about the serious irregularities in the appointment, posting and transfer of the members of CESTAT and orders passed by the particular Bench, which were highly detrimental to public interest. c c d d e e

14. We have given serious thought to the entire matter. One of the two minor issues which needs our consideration is whether by writing the editorial in question, the respondent has committed breach of the undertaking filed in Contempt Petition (Crl.) No. 15 of 1997. The other issue is whether the editorial is intended to scandalise the functioning of CESTAT or the same amounts to interference in the administration of justice and whether the voice of a citizen who genuinely believes that a public body or institution entrusted with the task of deciding lis between the parties or their rights is not functioning well or is passing orders contrary to public interest can be muffled by using the weapon of contempt. f f

15. In our view, the respondent cannot be charged with the allegation of having violated the undertaking filed in this Court on 25-8-1998. The respondent is not a novice in the field. For decades, he has been fearlessly using his pen to highlight malfunctioning of CEGAT and its successor CESTAT. Letter dated 26-12-1991 written by him to the then Chief Justice of India, M.H. Kania, J. complaining that CEGAT is without a President for last over six months and the functioning of the Tribunal was adversely affected because the Benches would sit hardly for two hours or so and further that g g h h

there was tendency to adjourn the cases, was ordered to be registered as a petition in public interest. After an in-depth analysis of the relevant constitutional and statutory provisions, this Court gave certain suggestions for improving the functioning of CEGAT and other Tribunals constituted under Articles 323-A and 323-B (*R.K. Jain v. Union of India*²). K. Ramaswamy, J. who authored the main judgment, declined to interfere with the appointment of Shri Harish Chander as President, CEGAT, but observed as under: (SCC p. 174, para 75)

"75. ... There are persistent allegations against malfunctioning of CEGAT and against Harish Chander himself. Though we exercised self-restraint to assume the role of an investigator to charter out the ills surfaced, suffice to say that the Union Government cannot turn a blind eye to the persistent public demands and we direct to swing into action, an in-depth enquiry made expeditiously by an officer or team of officers to control the malfunctioning of the institution. It is expedient that the Government should immediately take action in the matter and have a fresh look. It is also expedient to have a sitting or retired senior Judge or retired Chief Justice of a High Court to be the President."

16. Ahmadi, J. (as he then was) speaking for himself and Punchhi, J. (as he then was) observed: (*R.K. Jain case*², SCC pp. 133-34, para 7)

"7. The allegations made by Shri R.K. Jain in regard to the working of CEGAT are grave and the authorities can ill afford to turn a Nelson's eye to those allegations made by a person who is fairly well conversant with the internal working of the Tribunal. Refusal to inquire into such grave allegations, some of which are capable of verification, can only betray indifference and lack of a sense of urgency to tone up the working of the Tribunal. Fresh articles have appeared in the *Excise Law Times* which point to the sharp decline in the functioning of CEGAT pointing to a serious management crisis. It is high time that the administrative machinery which is charged with the duty to supervise the working of CEGAT wakes up from its slumber and initiates prompt action to examine the allegations by appointing a high-level team which would immediately inspect CEGAT, identify the causes for the crisis and suggest remedial measures. This cannot brook delay."

17. The respondent was very much conscious of the undertaking filed in the earlier contempt proceedings and this is the reason why before writing the editorial, he sent several communications to the functionaries concerned to bring to their notice serious irregularities in the transfer and posting of members, appointment of members, changes made in the pronounced orders and many unusual orders passed by the particular Bench of CESTAT, which were set aside by the Karnataka and the Kerala High Courts after being subjected to severe criticism. The sole purpose of writing those letters was to enable the authorities concerned to take corrective measures but nothing appears to have been done by them to stem the rot. It is neither the pleaded

case of the petitioner nor any material has been placed before this Court to show that the Finance Minister or the Revenue Secretary, Government of India had taken any remedial action in the context of the issues raised by the respondent. Therefore, it is not possible to hold the respondent guilty of violating the undertaking given to this Court. a

18. Before adverting to the second and more important issue, we deem it necessary to remind ourselves that freedom of speech and expression has always been considered as the most cherished right of every human being. Brennan, J. of the US Supreme Court, while dealing with a case of libel— *New York Times Co. v. L.B. Sullivan*³ observed that "it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions, and this opportunity should be afforded for 'vigorous advocacy' no less than 'abstract discussion'." (US p. 269) b

19. In all civilised societies, the courts have exhibited high degree of tolerance and accepted adverse comments and criticism of their orders/ judgments even though, at times, such criticism is totally off the mark and the language used is inappropriate. The right of a member of the public to criticise the functioning of a judicial institution has been beautifully described by the Privy Council in *Ambard v. Attorney General for Trinidad and Tobago*⁴ in the following words: (AIR pp. 145-46) c

"... no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrongheaded are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men." d

20. In *Debi Prasad Sharma v. King Emperor*⁵ Lord Atkin speaking on behalf of the Judicial Committee observed: (IA pp. 223-24) e

"... In 1899 this Board pronounced proceedings for this species of contempt [scandalisation] to be obsolete in this country, though surviving in other parts of the empire, but they added that it is a weapon to be used sparingly and always with reference to the administration of justice: *McLeod v. St. Aubyn*⁶. In a *Special Reference from the Bahama Islands, In re*⁷ the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due f

3 11 L Ed 2d 686 : 376 US 254 (1964)

4 1936 AC 322 : (1936) 1 All ER 704 : AIR 1936 PC 141

5 (1942-43) 70 IA 216 : AIR 1943 PC 202

6 1899 AC 549 (PC)

7 1893 AC 138 (PC)

a administration of the law. In *R. v. Gray*⁸ it was shown that the offence of scandalising the court itself was not obsolete in this country. A very scandalous attack had been made on a Judge for his judicial utterances while sitting in a criminal case on circuit, and it was with the foregoing opinions on record that Lord Russell of Killowen, C.J., adopting the expression of Wilmot, C.J., in his opinion in *R. v. Almon*⁹, which is the source of much of the present law on the subject, spoke of the article complained of as calculated to lower the authority of the Judge."

b 21. In *R. v. Commr. of Police of the Metropolis, ex p Blackburn* (No. 2)¹⁰ Lord Denning observed: (QB p. 155 A-D)

c "Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

d It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

e Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done."

✓ 22. In the land of Gautam Buddha, Mahavir and Mahatma Gandhi, the freedom of speech and expression and freedom to speak one's mind have always been respected. After Independence, the courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalise or lower the authority of the court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill-motivated or is construed as a deliberate

h 8 (1900) 2 QB 36 : (1900-03) All ER Rep 59

9 1765 Wilm 243 : 97 ER 94

10 (1968) 2 QB 150 : (1968) 2 WLR 1204 : (1968) 2 All ER 319 (CA)

attempt to run down the institution or an individual Judge is targeted for extraneous reasons.

23. Ordinarily, the court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the court would use this power. The judgments of this Court in *S. Mulgaokar, In re*¹¹ and *P.N. Duda v. P. Shiv Shanker*¹² are outstanding examples of this attitude and approach.

24. In the first case, a three-Judge Bench considered the question of contempt by a newspaper article published in *The Indian Express* dated 13-12-1977 criticising the Judges of this Court. The article noted that the High Courts had strongly reacted to the proposal of introducing a code of judicial ethics and propriety. In its issue dated 21-12-1977 an article entitled "Behaving like a Judge" was published which inter alia stated that the Supreme Court of India was "packed" by Mrs Indira Gandhi "with pliant and submissive judges except for a few". It was further stated that the suggestion that a code of ethics should be formulated by judges themselves was "so utterly inimical to the independence of the judiciary, violative of the constitutional safeguards in that respect and offensive to the self-respect of the judges as to make one wonder how it was conceived in the first place".

25. A notice had been issued to the Editor-in-Chief of the newspaper to show cause why proceedings for contempt under Article 129 of the Constitution should not be initiated against him in respect of the above two news items. After examining the submissions made at the Bar, the Court dropped the contempt proceedings. Beg, C.J. expressed his views in the following words: (*S. Mulgaokar, In re case*¹¹, SCC pp. 342-43, para 1)

"1. ... Some people perhaps believe that attempts to hold trials of everything and everybody by publications in newspapers must include those directed against the highest court of justice in this country and its pronouncements. If this is done in a reasonable manner, which presupposes accuracy of information about a matter on which any criticism is offered, and arguments are directed fairly against any reasoning adopted, I would, speaking for myself, be the last person to consider it objectionable even if some criticism offered is erroneous. In *Bennett Coleman & Co. v. Union of India*¹³, I had said: (SCC pp. 827-28, paras 96-98)

'96. John Stuart Mill, in his essay on "Liberty", pointed out the need for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what

11 (1978) 3 SCC 339 : 1978 SCC (Cri) 402

12 (1988) 3 SCC 167 : 1988 SCC (Cri) 589

13 (1972) 2 SCC 783

may be called the "dialectical" process of a struggle with wrong ones which exposes errors. Milton, in his *Areopagitica* (1644) said:

a "Though all the winds of doctrine were let loose to play
upon the earth, so Truth be in the field, we do injuriously by
licensing and prohibiting to misdoubt her strength. Let her and
Falsehood grapple; whoever knew Truth put to the worse, in a
free and open encounter? ... Who knows not that Truth is strong,
b next to the Almighty; she needs no policies, no stratagems, no
licensings to make her victorious; those are the shifts and
defences that error makes against her power...."

c 97. Political philosophers and historians have taught us that
intellectual advances made by our civilisation would have been
impossible without freedom of speech and expression. At any rate,
political democracy is based on the assumption that such freedom
must be jealously guarded. *Voltaire* expressed a democrat's faith
when he told an adversary in argument: 'I do not agree with a word
you say, but I will defend to the death your right to say it.'
Champions of human freedom of thought and expression, throughout
the ages, have realised that intellectual paralysis creeps over a society
d which denies, in however subtle a form, due freedom of thought and
expression to its members.

e 98. Although, our Constitution does not contain a separate
guarantee of freedom of the press, apart from the freedom of
expression and opinion contained in Article 19(1)(a) of the
Constitution, yet, it is well recognised that the press provides the
principal vehicle of expression of their views to citizens. It has been
said:

f "Freedom of the press is the Ark of the Covenant of
Democracy because public criticism is essential to the working
of its institutions. Never has criticism been more necessary than
today, when the weapons of propaganda are so strong and so
subtle. But, like other liberties, this also must be limited." "

g 26. Krishna Iyer, J. agreed with Beg, C.J. and observed: (*S. Mulgaokar*,
*In re case*¹¹, SCC p. 350, para 24)

h "24. Poise and peace and inner harmony are so quintessential to the
judicial temper that huff, 'haywire' or even humiliation shall not besiege;
nor, unveracious provocation, frivolous persiflage nor terminological
inexactitude throw into palpitating tantrums the balanced cerebration of
the judicial mind. The integral yoga of *shanti* and *neeti* is so much the
cornerstone of the judicial process that criticism, wild or valid, authentic
or anathematic, shall have little purchase over the mentation of the court.
I quite realise how hard it is to resist, with sage silence, the shafts of acid
speech; and, how alluring it is to succumb to the temptation of
argumentation where the thorn, not the rose, triumphs. Truth's taciturn

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strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens. In contempt jurisdiction, silence is a sign of strength since our power is wide and we are prosecutor and judge."

27. In the second case, this Court was called upon to initiate contempt proceedings against Shri P. Shiv Shanker who, in his capacity as Minister for Law, Justice and Company Affairs, delivered a speech in the meeting of the Bar Council of Hyderabad on 28-11-1987 criticising the Supreme Court. Sabyasachi Mukharji, J. (as he then was) referred to large number of precedents and made the following observation: (*P.N. Duda case*¹², SCC pp. 177-78 & 182-83, paras 9 & 18)

"9. 'Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men' — said Lord Atkin in *Ambard v. Attorney General for Trinidad and Tobago*⁴. Administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to defend and uphold the Constitution and the laws without fear and favour. This the judges must do in the light given to them to determine what is right. And again as has been said in the famous speech of Abraham Lincoln in 1965: 'With malice towards none, with charity for all, we must strive to do the right, in the light given to us to determine that right.' Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of judges and brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised; the motives of the judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. In the free market place of ideas criticisms about the judicial system or judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how courts should approach the powers vested in them as judges to punish a person for an alleged contempt, be it by taking notice of the matter suo motu or at the behest of the litigant or a lawyer.

* * *

18. It has been well said that if judges decay, the contempt power will not save them and so the other side of the coin is that judges, like Caesar's wife, must be above suspicion, per Krishna Iyer, J. in *Baradakanta Mishra v. Orissa High Court*¹⁴. It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the

¹² *P.N. Duda v. P. Shiv Shanker*, (1988) 3 SCC 167 : 1988 SCC (Cri) 589

⁴ 1936 AC 322 : (1936) 1 All ER 704 : AIR 1936 PC 141

¹⁴ (1974) 1 SCC 374 : 1974 SCC (Cri) 128

a court and in the majesty of law and that has been caused not so much by the scandalising remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy. Many today suffer from remediless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the judges and lawyers must make about themselves. We must turn the searchlight inward. At the same time we cannot be oblivious of the attempts made to decry or denigrate the judicial process, if it is seriously done. This question was examined in *Rama Dayal Markarha v. State of M.P.*¹⁵ where it was held that fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. In fact such fair and reasonable criticism must be encouraged because after all no one, much less judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts. But when it is said that the judge had a predisposition to convict or deliberately took a turn in discussion of evidence because he had already made up his mind to convict the accused, or has a wayward bend of mind, is attributing motives, lack of dispassionate and objective approach and analysis and prejudging of the issues which would bring administration of justice into ridicule. Criticism of the judges would attract greater attention than others and such criticism sometimes interferes with the administration of justice and that must be judged by the yardstick whether it brings the administration of justice into ridicule or hampers administration of justice. After all it cannot be denied that predisposition or subtle prejudice or unconscious prejudice or what in Indian language is called 'sanskar' are inarticulate major premises in decision-making process. That element in the decision-making process cannot be denied, it should be taken note of."

f 28. In *Baradakanta Mishra v. Orissa High Court*¹⁴ Krishna Iyer, J. speaking for himself and P.N. Bhagwati, J., as he then was, emphasised the necessity of maintaining constitutional balance between two great but occasionally conflicting principles i.e. freedom of expression which is guaranteed under Article 19(1)(a) and fair and fearless justice, referred to "republican justification" suggested in the American system and observed: (SCC pp. 401-03, paras 62-64)

g "62. Maybe, we are nearer the republican justification suggested in the American system:

'In this country, all courts derive their authority from the people, and hold it in trust for their security and benefit. In this state, all judges are elected by the people, and hold their authority, in a double

h 15 (1978) 2 SCC 630 : 1978 SCC (Cri) 327
14 (1974) 1 SCC 374 : 1974 SCC (Cri) 128

33

sense, directly from them; the power they exercise is but the authority of the people themselves, exercised through courts as their agents. It is the authority and laws emanating from the people, which the judges sit to exercise and enforce. Contempt against these courts, the administration of their laws, are insults offered to the authority of the people themselves, and not to the humble agents of the law, whom they employ in the conduct of their government.' a

63. This shift in legal philosophy will broaden the base of the citizen's right to criticise and render the judicial power more socially valid. We are not subjects of a king but citizens of a republic and a blanket ban through the contempt power, stifling criticism of a strategic institution, namely, administration of justice, thus forbidding the right to argue for reform of the judicial process and to comment on the performance of the judicial personnel through outspoken or marginally excessive criticism of the instrumentalities of law and justice, may be a tall order. For, change through free speech is basic to our democracy, and to prevent change through criticism is to petrify the organs of democratic Government. The judicial instrument is no exception. To cite vintage rulings of English courts and to bow to decisions of British Indian days as absolutes is to ignore the law of all laws that the rule of law must keep pace with the rule of life. To make our point, we cannot resist quoting McWhinney, who wrote: b c d

'The dominant theme in American philosophy of law today must be the concept of change—or revolution—in law. In Mr Justice Oliver Wendell Holmes' own aphorism, it is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. The prestige argument, from age alone, that because a claimed legal rule has lasted a certain length of time it must automatically be valid and binding at the present day, regardless of changes in basic societal conditions and expectations, is no longer very persuasive. According to the basic teachings of the Legal Realist and policy schools of law, society itself is in continuing state of flux at the present day; and the positive law, therefore, if it is to continue to be useful in the resolution of contemporary major social conflicts and social problems, must change in measure with the society. What we have, therefore, concomitantly with our conception of society in revolution is a conception of law itself, as being in a condition of flux, of movement. On this view, law is not a frozen, static body of rules but rules in a continuous process of change and adaptation; and the judge, at the final appellate level anyway, is a part—a determinant part—of this dynamic process of legal evolution.' e f g

This approach must inform Indian law, including contempt law.

64. It is very necessary to remember the legal transformation in our value system on the inauguration of the Constitution, and the dogmas of the quiet past must change with the challenges of the stormy present. The h

great words of Justice Holmes uttered in a different context bear repetition in this context:

'But when men have realised that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.' "

(emphasis supplied)

29. We shall now examine whether the editorial written by the respondent is an attempt to scandalise CESTAT as an institution or amounts to an interference with the administration of justice. The definition of the term "criminal contempt" as contained in Section 2(c) of the Act reads as under:

"2. Definitions.— * * *

(c) 'criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

30. Section 13, which was substituted by Act 6 of 2006 and which empowers the court to permit justification by truth as a valid defence in a contempt proceeding also reads as under:

"13. Contempt not punishable in certain cases.—Notwithstanding anything contained in any law for the time being in force,—

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide."

31. The word "scandalise" has not been defined in the Act. In *Black's Law Dictionary*, 8th Edn., p. 1372, reference has been made to Eugene A. Jones, *Manual of Equity Pleading and Practice* 50-51, wherein the word scandal has been described as under: a

"Scandal consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to decency or good manners, or which charges some person with a crime not necessary to be shown in the cause, to which may be added that any unnecessary allegation, bearing cruelly upon the moral character of an individual, is also scandalous. The matter alleged, however, must be not only offensive, but also *irrelevant* to the cause, for however offensive it be, if it is pertinent and material to the cause the party has a right to plead it. It may often be necessary to charge false representations, fraud and immorality, and the pleading will not be open to the objection of scandal, if the facts justify the charge." (emphasis in original) b c

32. In *Aiyer's Law Lexicon*, 2nd Edn., p. 1727, reference has been made to *Millington v. Loring*¹⁶ wherein it was held:

"A pleading is said to be 'scandalous' if it alleges anything unbecoming the dignity of the court to hear or is contrary to good manners or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading." d c

33. In *Baradakanta Mishra v. Orissa High Court*¹⁴ Palekar, J. referred to the definition of the term "criminal contempt" and observed: (SCC p. 391, para 34)

"34. It will be seen that the terminology used in the definition is borrowed from the English law of contempt and embodies concepts which are familiar to that law which, by and large, was applied in India. The expressions 'scandalise', 'lowering the authority of the court', 'interference', 'obstruction' and 'administration of justice' have all gone into the legal currency of our sub-continent and have to be understood in the sense in which they have been so far understood by our courts with the aid of the English law, where necessary." e f

34. In *Narmada Bachao Andolan v. Union of India*¹⁷ Dr. A.S. Anand, C.J., speaking for himself and B.N. Kirpal, J. (as he then was) observed as under: (SCC p. 313, para 7)

"7. We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the court and bring it into disrepute or ridicule. ... Courts are not unduly g 9

16 (1880) 6 QBD 190 : 50 LJQB 214 (CA)

14 (1974) 1 SCC 374 : 1974 SCC (Cri) 128

17 (1999) 8 SCC 308

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sensitive to fair comment or even outspoken comments being made regarding their judgments and orders made objectively, fairly and without any malice, but no one can be permitted to distort orders of the court and deliberately give a slant to its proceedings, which have the tendency to scandalise the court or bring it to ridicule, in the larger interest of protecting administration of justice." (emphasis supplied)

35. In the light of the above, it is to be seen whether the editorial written by the respondent can be described as an attempt to scandalise the functioning of CESTAT. A reading of the editorial in its entirety unmistakably shows that while expressing his appreciation for the steps taken by the new President of CESTAT to cleanse the administration, the respondent had highlighted what he perceived as irregularities in the transfer and postings of some members and appointment of one member. He pointed out that Shri T.K. Jayaraman was accommodated at Bangalore by transferring Shri K.C. Mamgain from Bangalore to Delhi in less than one year of his posting and further that the posting of Shri T.K. Jayaraman for a period of 7 years was against all the norms, more so because he had earlier worked as the Commissioner of Central Excise (Appeals), Bangalore.

36. The respondent then made a detailed reference to the orders passed by the particular Bench of CESTAT which were set aside by the High Courts of Karnataka and Kerala with scathing criticism. This is evident from the following extracts of the editorial:

"Several orders of the Division Bench of Shri T.K. Jayaraman came under the watchful eyes of the Hon'ble High Courts particularly of the Karnataka High Court. Comments bordering on strictures were passed in many cases. Severest of the strictures on any Bench of CESTAT by any High Court were passed on the Division Bench order authored by Shri T.K. Jayaraman, in *CCE v. McDowell & Co. Ltd.*¹⁸ In this case an amount of ₹99 crores was involved and CESTAT, Bangalore had earlier ordered deposit of ₹25 crores as a condition for waiver of predeposit of balance amount. However, subsequently CESTAT, Bangalore modified its own order and waived even this condition for deposit of ₹25 crores *McDowell & Co. Ltd. v. CCE*¹⁹.

The Karnataka High Court was shocked and appalled at the manner in which the CESTAT Bench modified its own order and was compelled to even state in relation to the Division Bench order authored by Shri T.K. Jayaraman that the assessee had managed to obtain the order and it is a clear case of abuse and misuse of powers by the Tribunal. The Hon'ble Karnataka High Court in specific words held as under: (*McDowell case*¹⁸, ELT p. 156, para 35)

'35. ... The order is totally lacking in conforming to the requirement of Section 35-F of the Act. ... The argument of non-interference with an order passed by the Tribunal with jurisdiction is

18 (2005) 186 ELT 145 (Kant)

19 (2005) 182 ELT 114 (Tri)

called in aid only to safeguard and protect the order which the assessee has managed to obtain before the Tribunal. ... An order which cannot speak for itself, an order which has not taken into consideration all relevant aspects, particularly, the statutory requirements of the proviso to Section 35-F of the Act, in my view is an order that is not at all sustainable. *It is a clear case of abuse and misuse of the powers under the proviso to Section 35-F of the Act.*

(emphasis supplied)

The High Court was compelled to comment that CESTAT, Bangalore granted relief to the assessee on a ground which was not even pleaded by him. In strong words the High Court observed that the Tribunal was acting more loyal than the King in the following words: (*McDowell case*¹⁸, ELT p. 156, para 34)

'34. ... The effect of this order is that the Tribunal has dispensed with the requirement of predeposit of total duty amount of ₹64 crores as also the penalty amount of ₹35 crores without showing any awareness as to the existence of any undue hardship to the assessee if the assessee is required to comply with the provisions of Section 35-F and the proviso and in total disregard of the interest of the revenue by not providing sufficient safeguard. In fact, while in the earlier order, it is held that the appellant has not even pleaded any financial hardship, in the present order, nothing is mentioned at all. Here is a typical case of the Tribunal acting more loyal than the King!'

(emphasis supplied)

Under the garb of modification, the CESTAT Bench waived the entire predeposit of around ₹99 crores even when the interim order passed before had held that the appellant did not have prima facie case and had suppressed information from the Department and the same Bench of the Tribunal ordered part predeposit of ₹25 crores as a condition of stay of ₹99 crores and it was done when the Tribunal has not powers to review its own order. The High Court took note of such infirmities and held that: (*McDowell case*¹⁸, ELT p. 155, para 33)

'33. ... the order is woefully lacking in the Tribunal having not exhibited its awareness to the requirements of proviso of Section 35-F of the Act. It is also clear that the Tribunal after having exercised jurisdiction for the purposes of passing an order for waiver of predeposit under the proviso to Section 35-F of the Act cannot modify that order subsequently like an appellate authority, nor can keep tinkering with the order as and when applications for modification of the order are filed.'

(emphasis supplied)

CESTAT, Bangalore Bench in *Rishi Polymach Ltd. v. CCE*²⁰ allowed appeals by the assessee and extended CENVAT credit to the tune of

18 *CCE v. McDowell & Co. Ltd.*, (2005) 186 ELT 145 (Kant)

20 (2005) 192 ELT 884 (Tri)

₹31 lakhs based on supplementary balance sheet produced. The Hon'ble Karnataka High Court in *CCE v. Rishi Polymach (P) Ltd.*²¹ did not approve the Division Bench order authored by Shri T.K. Jayaraman and held that acceptance of supplementary balance sheet by the Tribunal was a grave error. It held: (*Rishi Polymach case*²¹, ELT p. 203, paras 10-11)

'10. Without assigning any reason, the Tribunal has accepted the supplementary balance sheet, which according to us, the Tribunal has committed a grave error in allowing the appeal by accepting the supplementary balance sheet.

11. When the supplementary balance sheet is relied upon by the respondents, it is for them to show that the goods received were actually received and utilised in manufacturing the finished products. *The Tribunal has wrongly placed the burden of proof on the appellant instead of placing it on the respondents.*

(emphasis supplied)

Predeposit of ₹320 crores waived for deposit of ₹1 crore—Case heard without being listed

In *Harsinghar Gutka (P) Ltd. v. CCE*²² the CESTAT Division Bench comprising of S/Shri S.S. Kang and T.K. Jayaraman granted a waiver of predeposit of ₹320 crores against deposit of just ₹1 crore only. This order of waiver of predeposit was also authored by Shri T.K. Jayaraman, Member (Technical) and related to the clandestine removal of gutka. The various dimensions of the case and ramifications of the order were highlighted in our editorial '*Battle for ₹320 crores—Mysterious recusal by CESTAT member—New Bench orders predeposit of ₹1 crore*'²³.

The order of waiver of predeposit of ₹320 crores passed in this case has been challenged by the Commissioner of Central Excise, Lucknow before the Allahabad High Court. The most important aspect of this case is that it was heard and the stay order of ₹320 crores was passed on a day when the case was not even listed in the cause-list. The CEGAT Enquiry Committee had recommended that in such cases, the members concerned should be made personally responsible and this recommendation has already been accepted by the Government. In view of this, the President, CESTAT is expected to initiate action against the erring members.

Tribunal persistently ignoring statutory provisions and High Court rulings

Coming back to the Hon'ble Karnataka High Court, within whose jurisdiction the Bangalore Bench of CESTAT is functioning, the High Court in *CCE v. United Telecom Ltd.*²⁴, while considering the validity of the full waiver of predeposit granted by the Bangalore Bench of CESTAT

21 (2008) 232 ELT 201 (Kant)

22 (2008) 221 ELT 77 (Tri)

23 (2008) 229 ELT A153

24 (2006) 198 ELT 12 (Kant)

*United Telecom Ltd. v. Commr. of Customs*²⁵, which included Shri T.K. Jayaraman, Member (Technical) commented upon the routine manner in which waiver of predeposits are being granted.

The High Court also commented upon the statutory responsibility of CESTAT to safeguard the interest of the Revenue, while granting waiver of predeposit and observed as under: (*United Telecom Ltd. case*²⁴, ELT p. 19, para 27)

'27. ... It is not the lip sympathy of the Tribunal which can fulfil the statutory requirement of ensuring the safeguard of the interest of the revenue, but a concrete order indicating the manner in which the interest of the revenue is in fact safeguarded by imposing commensurate conditions.'

The High Court finally held that the Tribunal's order in this case was clearly in violation of the statute and fit to be characterised as arbitrary even while drawing reference to its own observations in *McDowell case*¹⁸ as under: (*United Telecom Ltd.*²⁴, ELT pp. 19-20, para 28)

'In the present case it is not even the case of the appellant before the Tribunal that it faces any financial hardship or has any difficulty in this regard. Even in the absence of any plea from the appellant before the Tribunal to this effect, the Tribunal ventures upon to grant total waiver of predeposit. It is undoubtedly yet another instance of as observed by this Court in *McDowell & Co.*¹⁸ the Tribunal being more loyal than the king. It is rather surprising that the Tribunal persists in ignoring the statutory provisions as contained in the proviso to Section 129-E in passing such order for the purpose of predeposit when the order is passed only under this proviso and not under any other provision. *The impugned order is clearly a violation of the statute, fit to be characterised as arbitrary* inasmuch as the Tribunal has not shown its awareness to the aspect of undue hardship if in fact existed or will be caused to the assessee if the assessee has to fulfil the statutory requirement of predeposit....'

(emphasis supplied)

Predeposit of ₹440 crores waived without any financial hardship—The High Court rulings again violated

The Bangalore Bench of CESTAT comprising of Dr. S.L. Peeran, Member (J) and Shri T.K. Jayaraman, Member (T) in *Bharti Airtel Ltd. v. Commr. of Customs*²⁶ has waived the predeposit of the entire amount of ₹440 crores on the ground that the appellant has strong prima facie case. In this case, the order of waiver has been authored by Shri T.K. Jayaraman, but it does not contain any reference to any financial hardship

25 (2005) 191 ELT 1056 (Tri)

24 *CCE v. United Telecom Ltd.*, (2006) 198 ELT 12 (Kant)

18 *CCE v. McDowell & Co. Ltd.*, (2005) 186 ELT 145 (Kant)

26 (2009) 237 ELT 469 (Tri)

either pleaded or considered by the Bench. Surprisingly, this order is very sketchy and observations, discussion and decision of the Bench are in just 11 printed lines while the case involved more than ₹440 crores.

The Karnataka High Court has repeatedly held in *McDowell & Co. Ltd.*¹⁸ and *United Telecom Ltd.*²⁴ that it is the statutory obligation of CESTAT to safeguard the interest of the Revenue and therefore, unless the assessee pleads financial hardship with regard to the compliance with predeposit and the assessee is unable to make predeposit, it cannot be said that the assessee is facing financial hardship warranting dispensation of predeposit. The order passed in *Bharti Airtel Ltd.*²⁶ by the Bangalore Bench is not only in violation of the dictum of the Karnataka High Court, but also contemptuous as the Bangalore Bench of CESTAT is refusing to follow the law laid down by the Karnataka High Court, which is the jurisdictional High Court for CESTAT, Bangalore.

Asked for 'three' got 'thirteen'

Recently, the Central Excise Department, Mangalore has filed an appeal against the order passed by the Bangalore Bench of CESTAT, again comprising of Dr. S.L. Peeran, Member (J) and Shri T.K. Jayaraman, Member (T) in *Alvares & Thomas v. CCE*²⁷ on the plea that the assessee has preferred the appeal to the Tribunal only on the question of limitation, whereas the Tribunal has decided the appeal in favour of the assessee on merits. The Hon'ble Bench of the Supreme Court comprising of Hon'ble Mr Justice S.H. Kapadia and Hon'ble Mr Justice Aftab Alam in Civil Appeal D. No. 5566 of 2009, passed the following order on 27-4-2009:

'Delay condoned. Issue notice to the extent mentioned below.

Since the assessee had preferred an appeal before the Tribunal only on the question of limitation, we do not see any reason why the Tribunal has decided the assessee's appeal on the merits of the case.'

(emphasis supplied)

The Kerala High Court also dissatisfied with the Bangalore Bench orders

In *CCE v. Electronic Control Corpn.*²⁸ the Kerala High Court too has recorded its annoyance with the order of CESTAT, Bangalore as reported in *Electronic Control Corpn. v. CCE*²⁹. In this case also, the order for the Bench was authored by Shri T.K. Jayaraman, Member (T) and as per the Kerala High Court, CESTAT did not consider the evidences relied on by the Department and burden of proof was held as not discharged by the

18 *CCE v. McDowell & Co. Ltd.*, (2005) 186 ELT 145 (Kant)

24 *CCE v. United Telecom Ltd.*, (2006) 198 ELT 12 (Kant)

26 *Bharti Airtel Ltd. v. Commr. of Customs*, (2009) 237 ELT 469 (Tri)

27 (2009) 13 STR 516

28 (2009) 235 ELT 417 (Ker)

29 (2006) 197 ELT 291 (Tri)

Department. The High Court expressed its 'thorough displeasure' in its order in the following words: (*Electronic Control Corpn. case*²⁸, ELT p. 418, para 2)

'2. ... Since we are thoroughly dissatisfied with the order of the Tribunal which was issued without reference to the materials gathered by the department and based on which adjudication was made, we set aside the order of the Tribunal with direction to the Tribunal to rehear the matter....' (emphasis supplied)

The High Court expressed surprise over the Tribunal order by holding that: (*Electronic Control Corpn. Case*²⁸, ELT p. 418, para 2)

'2. ... Strangely, the Tribunal has not considered any evidence relied on by the department like the statements recorded from the employees, admission made by the proprietrix at the time of search and the evidence collected from the Bank pertaining to business transactions. When prima facie evidence is established by the department, particularly with reference to banking transactions, it is for the respondent assessee to explain why the transactions should not be treated as pertaining to business. The Tribunal failed to note that reasonable inferences can be drawn from evidence collected by the department, more so when the respondent fails to explain the transactions brought on record. Strangely, the employees statements which have evidentiary value have been ignored by the Tribunal.'

(emphasis supplied)

Overruling the order of CESTAT, Bangalore Bench in *Midas Precured Treads (P) Ltd. v. CCE*³⁰, the Kerala High Court in *CCE v. Midas Precured Tread (P) Ltd.*³¹ held that the Tribunal, instead of considering scope of notifications with reference to statutory provisions, under which such notifications are issued, considered the scope of statutory provisions with reference to notifications issued. The Court held that: (*Midas Precured Tread case*³¹, ELT p. 29, para 3)

'3. ... We do not know on what basis, the Tribunal has held that prospectivity has no relevance in this case ... the Tribunal or even the High Courts have no power to grant retrospectivity for a notification in the interpretation process.' "

37. Although the petitioner has tried to project the editorial as a piece of writing intended to demean CESTAT as an institution and scandalise its functioning but we do not find anything in it which can be described as an attempt to lower the authority of CESTAT or ridicule it in the eyes of the public. Rather the object of the editorial was to highlight the irregularities in the appointment, posting and transfer of the members of CESTAT and instances of the abuse of the quasi-judicial powers. What was incorporated in

28 *CCE v. Electronic Control Corpn.*, (2009) 235 ELT 417 (Ker)

30 (2006) 200 ELT 423 (Tri)

31 (2009) 236 ELT 26 (Ker)

a the editorial was nothing except the facts relating to manipulative transfer
a and posting of some members of CESTAT and substance of the orders passed
by the particular Bench of CESTAT, which were set aside by the High Courts
of Karnataka and Kerala. Even this Court was constrained to take cognizance
of the unusual order passed by CESTAT of which Shri T.K. Jayaraman was a
member whereby the appeal of the assessee was decided on merits even
though the Tribunal was required to examine the question of limitation only.
By writing the editorial which must have caused embarrassment to
b functionaries of the Central Government and CESTAT and even some
members of the petitioner Association but that cannot be dubbed as an
attempt to scandalise CESTAT as a body or interfere with the administration of
justice. What the respondent projected was nothing but true state of the
functioning of CESTAT on the administrative side and to some extent on the
judicial side. By doing so, he had merely discharged the constitutional duty
c of a citizen enshrined in Article 51-A(h).

d 38. It is not the petitioner's case that the facts narrated in the editorial
regarding transfer and posting of the members of CESTAT are incorrect or that
the respondent had highlighted the same with an oblique motive or that the
orders passed by the Karnataka and Kerala High Courts to which reference
has been made in the editorial were reversed by this Court. Therefore, it is
not possible to record a finding that by writing the editorial in question, the
respondent has tried to scandalise the functioning of CESTAT or made an
attempt to interfere with the administration of justice.

e 39. The matter deserves to be examined from another angle. The
substituted Section 13 represents an important legislative recognition of one
of the fundamentals of our value system i.e. truth. The amended section
enables the court to permit justification by truth as a valid defence in any
contempt proceeding if it is satisfied that such defence is in public interest
and the request for invoking the defence is bona fide. In our view, if a speech
or article, editorial, etc. contains something which appears to be
contemptuous and this Court or the High Court is called upon to initiate
f proceedings under the Act and Articles 129 and 215 of the Constitution, the
truth should ordinarily be allowed as a defence unless the Court finds that it
is only a camouflage to escape the consequences of deliberate or malicious
attempt to scandalise the court or is an interference with the administration of
justice. Since, the petitioner has not even suggested that what has been
mentioned in the editorial is incorrect or that the respondent has presented a
g distorted version of the facts, there is no warrant for discarding the
respondent's assertion that whatever he has written is based on true facts and
the sole object of writing the editorial was to enable the authorities concerned
to take corrective/remedial measures.

h 40. At this juncture, it will be apposite to notice the growing acceptance
of the phenomenon of whistleblower. A whistleblower is a person who raises
a concern about the wrongdoing occurring in an organisation or body of

people. Usually this person would be from that same organisation. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption. Whistleblowers may make their allegations internally (for example, to other people within the accused organisation) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues). Most whistleblowers are *internal whistleblowers*, who report misconduct on a fellow employee or a superior within their company.

41. One of the most interesting questions with respect to internal whistleblowers is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behaviour or report it. There is some reason to believe that people are more likely to take action with respect to unacceptable behaviour, within an organisation, if there are complaint systems that offer not just options dictated by the planning and controlling organisation, but a *choice* of options for individuals, including an option that offers near absolute confidentiality. However, *external whistleblowers* report misconduct on outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, State, or federal agencies.

42. In our view, a person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such a person by invoking Articles 129 or 215 of the Constitution or the provisions of the Act.

43. We agree with the learned counsel for the respondent that this petition lacks bona fides and is an abuse of the process of the court. The petitioner is a body of professionals who represent the cause of their clients before CESTAT and may be other tribunals and authorities. They are expected to be vigilant and interested in transparent functioning of CESTAT. However, instead of doing that, they have come forward to denounce the editorial and in the process misled the Attorney General of India in giving consent by suppressing the factum of appointment of the Inquiry Committee by the President, CESTAT. We are sorry to observe that a professional body like the petitioner has chosen the wrong side of the law.

44. In the result, the petition is dismissed. For filing a frivolous petition, the petitioner is saddled with costs of ₹2,00,000, of which ₹1,00,000 shall be deposited with the Supreme Court Legal Services Committee and ₹1,00,000 shall be paid to the respondent.

126

SUPREME COURT CASES

(2007) 14 SCC

(2007) 14 Supreme Court Cases 126

(BEFORE R.V. RAVEENDRAN AND L.S. PANTA, JJ.)

RAJESH KUMAR SINGH

Appellant; a

Versus

HIGH COURT OF JUDICATURE OF MADHYA

PRADESH BENCH GWALIOR

Respondent.

Criminal Appeal No. 321 of 2001†, decided on May 31, 2007

A. Criminal contempt — Interfere or obstruct administration of justice b
— Contempt of court — Acts not amounting to — Holding departmental enquiry into the contemptuous conduct of the contemnor police officer under directions of superiors issued pursuant to complaint made by the Judge — Judge making a complaint to IGP that Station Officer C had entered in his court hall and threatened him, Judge requesting IGP to take action against C — IGP directing SP to conduct an inquiry and take action c
against C — SP, in turn, directing SDO (Police) to look into the matter and report — SDO (Police) accordingly holding a preliminary inquiry in respect of the conduct of C — He recording statements of C and his defence witnesses who denying the occurrence of any such incident as reported by Judge — No contempt proceedings or other proceedings pending before any court in regard to the said incident at that time — SDO (Police), in his inquiry report, holding C guilty and recommending punishment — In such d
circumstances, SDO (Police), held, not guilty of contempt — As it was necessary to give an opportunity to C, the recording of statements of C or his witnesses would not amount to holding of an inquiry into the conduct of the Judge necessitating High Court's permission — Even falsity of the statements of C and his witnesses would not render the enquiry officer [SDO (Police) in this case], liable or responsible therefor — Moreover, in the absence of pendency of any judicial proceedings in regard to the incident in e
question at that time, holding of the departmental enquiry against C did not amount to interference with administration of justice — Hence, High Court's order awarding to the SDO (Police) punishment for contempt of court, held, improper — More so, when High Court had exonerated the IGP who had directed the inquiry — Contempt of Courts Act, 1971 — Ss. 2(a) & (c), 10, 12 and 19 — Constitution of India — Arts. 129 and 215 — Contempt f
of court — Acts not amounting to — Police — M.P. Police Regulations, Para 36 — Circular dated 14-9-1999 — Penal Code, 1860 — S. 228 — Criminal Procedure Code, 1973, S. 345

B. Punishment — General principles — Power to punish for contempt of court — Mode of exercise of — Principle that such power should be invoked or exercised not routinely or mechanically but with circumspection and restraint, reiterated — Hence, an intention to scandalise the court or to g
lower its authority, unless clearly established, should not be readily inferred — Moreover, the power to punish for contempt should not be exercised in cases involving mere question of propriety — Constitution of India — Arts. 129 and 215 — Power to punish for contempt of court — Mode of exercise of — Contempt of Courts Act, 1971 — Ss. 10, 12 and 19

† From the Judgment and Order dated 2-3-2001 of the High Court of Judicature of Madhya Pradesh, Jabalpur, Bench at Gwalior in Contempt Petition (Crl.) No. 5 of 2000 h

a A Magistrate sent a report to the IG of Police stating that one C, Station Officer had come to his court hall and threatened him. Reproducing the words uttered by C, the Magistrate complained that such an act was unbecoming of a police officer and the misbehaviour warranted stern action. The Magistrate enclosed a copy of the order-sheet of the relevant date and statements of two witnesses to the incident. The IGP sent the complaint to the SP under cover of a letter with a direction to take necessary action. The subject of the letter stated: "Regarding conducting an inquiry and taking disciplinary action against C". The SP, in turn, forwarded the IG's letter along with the Magistrate's complaint and its enclosures to the appellant herein, the then SDO (Police), with a direction to personally look into the matter and send a detailed report. Accordingly, the appellant conducted an inquiry. He recorded the statements of C and witnesses cited by C. The witnesses denied the occurrence of the incident. The appellant sent a report to the SP recording a finding of guilty against C and recommending punishment.

c In an earlier matter, the same Magistrate had made a reference to the High Court consequent to which the High Court had initiated a contempt proceedings against C. The second reference made by the Magistrate against C was also placed before the High Court in the said contempt proceedings. The High Court took note of the second proceedings and issued a show-cause notice to C who in his reply denied to have misbehaved with the Judge. The High Court held C guilty in respect of both the incidents and imposed sentence. Moreover, the High Court directed notices to be issued to the IGP and the appellant to show cause why they should not be punished for contempt of court, for having enquired into the conduct of a Judge, without the permission of the High Court. Accordingly, notices were issued to them. The IGP stated that he had merely written to the SP to enquire into the matter and take disciplinary action against C, that there was no intention to hold any inquiry into the conduct of the Judge and that consequent to the enquiry report submitted by the appellant a penalty of Rs 50 was imposed on C for misbehaviour. The High Court accepted the said explanation and dropped the proceedings against the IGP. The appellant also filed a similar reply with an unconditional apology but the High Court rejected the same. After issuing a charge-sheet to the appellant and receiving his reply, the High Court held that holding an inquiry in respect of the conduct of C in the Magistrate's court amounted to holding an inquiry into the conduct of the Magistrate which was not permissible without the permission of the High Court. It further held that recording the evidence of several witnesses by the appellant to the effect that C had not misbehaved with the Judge (which contradicted the Magistrate who had reported that C had misbehaved with him), was with the ulterior intention of helping C to create a defence of malice on the part of Magistrate. The High Court concluded that the said acts amounted to scandalising the court and interfering with the administration of justice and imposed the punishment of seven days' simple imprisonment and a fine of Rs 2000. The appellant then filed the present appeal under Section 19 of the Contempt of Courts Act, 1971.

g Allowing the appeal, the Supreme Court

Held :

h When C misbehaved in the court, the Magistrate did not take any action under Section 228 IPC nor under Section 345 CrPC read with Section 228 IPC. Even before making a reference to the High Court for initiating action for

contempt, the Magistrate sent a complaint to the IGP requiring action against C. The action that was required was, obviously departmental disciplinary action. It was only in pursuance of the directive from his superiors that the appellant held a preliminary inquiry in respect of the conduct of C. The inquiry was not in regard to the conduct of the Judge. As the inquiry was against C, the appellant had to give an opportunity to him, to make his statement. He also had to record the statements of persons, whom C stated were present at the time of the incident. After recording the statements of witnesses, the appellant submitted a report holding C guilty of having used unwarranted language in court and recommending punishment. It cannot, therefore, be said, that recording the statements of C, and several other persons on the request of C, in the course of the preliminary inquiry, amounted to holding an inquiry in regard to the conduct of a Judge. (Para 13)

When the appellant held the preliminary inquiry, no contempt proceedings had been initiated by the High Court in regard to the incident in the Magistrate's court. There was no other proceedings pending before the Magistrate or any other court in regard to the said incident. Unless the inquiry by the appellant was a parallel proceeding with reference to a matter pending in court and unless such parallel proceeding interfered with or, intended to interfere with the pending court proceeding, there was no interference with administration of justice. (Para 14)

Security and Finance (P) Ltd. v. Dattatraya Raghav Agge, (1969) 1 SCC 181, followed

Even if C or the witnesses named by him stated something false, the appellant who recorded their statements in the course of preliminary inquiry cannot be held liable or responsible for such statements, unless there was material to show that the appellant was part of a conspiracy to create false evidence. There is nothing to show such conspiracy. The appellant submitted a report holding that C had used unwarranted language in court and that he should be punished. It cannot, therefore, be said that the appellant recorded the statements of witnesses with an ulterior motive of helping C to create a false defence. (Para 16)

The Police Department had issued a Circular dated 14-9-1999 (read with Para 36 of the M.P. Police Regulations) which required that whenever any complaint was received against police, a report should be sent at the earliest after holding necessary inquiry into such complaints. The letters of the IGP and the SP also make it clear that the appellant was required to hold an inquiry in connection with initiating a disciplinary action against C. The report submitted by the appellant has to be treated as one made bona fide in pursuance of the instructions of the official superiors directing him to hold a preliminary inquiry. It was not intended to scandalise the court. Nor was there any attempt by the appellant to sit in judgment over the order-sheet of the Magistrate in his inquiry report. (Para 18)

The Supreme Court has repeatedly cautioned that the power to punish for contempt is not intended to be invoked or exercised routinely or mechanically, but with circumspection and restraint. Courts should not readily infer an intention to scandalise courts or lowering the authority of court unless such intention is clearly established. Nor should they exercise power to punish for contempt where mere question of propriety is involved. (Para 20)

Rizwan-ul-Hasan v. State of U.P., AIR 1953 SC 185 : 1953 SCR 581, relied on

RAJESH KUMAR SINGH v. HIGH COURT OF M.P.
(Raveendran, J.)

129

a There is no material to show that the appellant acted with any ulterior motive. Any bona fide act in the course of discharge of duties and complying with the directions of the superior officers should not land the inquiry officer in a contempt proceedings. Though common contempt proceedings were initiated against the IGP and the appellant, the High Court dropped the proceedings against the IGP who directed the inquiry, but chose to proceed against the appellant who merely complied with the directions of the IG of Police. Therefore, it is held that the appellant is not guilty of contempt of court.

(Paras 22 and 23)

b C. Criminal contempt — Scandalise or lower authority of court — Scandalising the court — Attributing improper motive to a Judge or scurrilous abuse of a Judge will amount to scandalising the court — Contempt of Courts Act, 1971 — S. 2(c) (Para 15)

H-M/A/36463/SR

c Advocates who appeared in this case :
M.C. Dhingra, Gaurav Dhingra and Sanjay Singh, Advocates, for the Appellant.

Chronological list of cases cited

on page(s)

1. (1969) 1 SCC 181, *Security and Finance (P) Ltd. v. Dattatraya Raghav Agge* 134d-e
2. AIR 1953 SC 185 : 1953 SCR 581, *Rizwan-ul-Hasan v. State of U.P.* 137b-c

d The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J.— The appellant was the Sub-Divisional Officer (Police), Dabra, Gwalior District, during 1998-1999. He has filed this appeal under Section 19 of the Contempt of Courts Act, 1971 (for short "the Act"), being aggrieved by the order dated 2-3-2001 of the Madhya Pradesh High Court in Contempt Petition (Criminal) No. 5 of 2000, punishing him with simple imprisonment for seven days and fine of Rs 2000.

Factual background

2. Shri Pradeep Mittal, Judicial Magistrate, First Class, Dabra, sent a report dated 1-11-1999 to the Inspector General of Police, Gwalior Circle, alleging that one Chander Bhan Singh Raghuvanshi, Station Officer, Picchhor came inside his court hall and threatened him by stating "you have not done good by initiating contempt proceedings against me before the High Court. I am back in Picchhor Police Station and I will see you"; and "I have set many Magistrates right and I will see you also". The learned Magistrate complained that it was unbecoming of a police officer to threaten a judicial officer in court and interrupt the court proceedings and the misbehaviour warranted stern action. The learned Magistrate enclosed a copy of the order-sheet dated 1-11-1999 (recording the incident) and statements of two witnesses to the incident (Deposition Writer and Reader of the court).

3. Shri N.K. Tripathi, IG of Police, sent the complaint to the Superintendent of Police, Gwalior under cover of letter dated 10-11-1999 with a direction to take necessary action. The subject of the letter stated "Regarding conducting an inquiry and taking disciplinary action against

130

SUPREME COURT CASES

(2007) 14 SCC

Raghuvanshi". The Superintendent of Police (Shri Pradeep Runwaal) in turn forwarded the IG's letter along with the Magistrate's complaint and its enclosures, to the appellant herein who was at that time the Sub-Divisional Officer (Police), Dabra, under cover of letter dated 17-11-1999, with a direction to personally look into the matter and send a detailed report (Vistrit Teep).

4. As per the said directions, the appellant conducted an inquiry. He recorded the statements of Raghuvanshi and several witnesses cited by the said Raghuvanshi, namely, M.P. Sharma (President, Bar Association, Dabra), Mahendra Kumar (a litigant), Bal Kishan and Jagdish (Police Constables), Suresh Kumar (Asstt. Prosecution Officer), B.S. Thakur, Jaswant Singh Parihaar and Mahesh Dubey (Advocates) who stated that they were present at the time of the incident in court on 1-11-1999 as also Rajendra Prasad Sharma (Constable who had accompanied Raghuvanshi). All these witnesses stated that there was no unbecoming conduct or misbehaviour on the part of Raghuvanshi and that he had shown respect to the learned Magistrate. The appellant submitted a report dated 27-11-1999, in regard to his inquiry, to the Superintendent of Police, recording a finding that the documents and statements disclosed that Raghuvanshi had used unwarranted language in court which was improper and recommended punishment.

5. Long prior to the incident on 1-11-1999, the High Court had initiated contempt proceedings (Contempt Petition No. 2 of 1999) against Raghuvanshi on an earlier reference by Shri Pradeep Mittal, Judicial Magistrate, First Class, Dabra, in regard to a false report submitted by Raghuvanshi to his court in April 1998. The second reference made by the learned Magistrate in regard to the incident of 1-11-1999, was also placed before the High Court, in the pending contempt proceedings. The High Court took note of the second reference on 12-1-2000 and issued a show-cause notice to Raghuvanshi. In response to it, Raghuvanshi submitted his reply stating that he had not misbehaved with the Judge. In support of his defence, he produced the inquiry report dated 27-11-1999 submitted by the appellant to the Superintendent of Police along with the statements of the witnesses examined in the inquiry. The High Court disposed of the contempt proceedings against Raghuvanshi by orders dated 22-5-2000/29-5-2000 holding him guilty in respect of both incidents and imposed a punishment of three months' simple imprisonment. In regard to the second reference, the High Court held that Raghuvanshi had not only misbehaved with the Judge on 1-11-1999, but had also raised a false defence by alleging that the learned Magistrate had acted with malice against him. In the course of the said order the High Court dealt with the report dated 27-11-1999 of the appellant (which was produced by Raghuvanshi) thus:

"According to the respondent (Raghuvanshi), the Presiding Officer on account of malice had initiated the contempt proceedings. According to him, he had gone to the court of Mr Mittal in connection with some court work, Shri Mittal asked him as to why he did enter in the court without being called whereupon he stated that he came there on account

RAJESH KUMAR SINGH v. HIGH COURT OF M.P.
(Raveendran, J.)

131

a of some official work. In support of this submission he has relied upon Annexure R-6. A perusal of Annexure R-6 would show that he was not required to appear as a witness in the court of Shri Mittal. According to him, at the time of the alleged meeting number of lawyers were present in the court. According to him, Shri M.P. Sharma, Virendra Thakur, S.P. Sharma, J.S. Parihar, Mahesh Dubey and number of litigants were present in the court. According to him, the Presiding Officer Shri Mittal had sent a copy of the complaint to the Inspector General of Police, who in his turn directed for departmental enquiry. In the said enquiry, statements of number of witnesses were recorded. He has produced those statements at Annexure R-8 collectively. He has relied upon the statements of as many as 12 persons which were recorded on 24-11-1999, 26-11-1999 and 27-11-1999. These 12 statements do not contain the statements of the complainant Shri Mittal. Not even a single document has been produced in the Court to show that the Inspector General of Police ever authorised the SDO(P) to record the statements of the witnesses. Nobody knows as to how said SDO(P) came to know about the names of the witnesses. If these statements were recorded in the departmental enquiry then copy of the charge-sheet or such relevant documents could be filed. If these statements were recorded in a preliminary enquiry such an order could be produced in the Court to show that these statements were recorded in the preliminary enquiry."

6. While disposing of the contempt proceedings against Raghuvanshi, the High Court in its order dated 22-5-2000/29-5-2000, directed notices to be issued to the Inspector General of Police, Gwalior and the appellant, to show cause why they should not be punished for contempt of court, for having enquired into the conduct of a Judge, without the permission of the High Court.

7. In compliance with the said direction, contempt proceedings were initiated against the appellant and Shri N.K. Tripathi (IG, Police), in Contempt Petition No. 5 of 2000 and show-cause notices dated 3-7-2000 were issued to them. Shri N.K. Tripathi, IG of Police, filed a statement submitting that on receiving the complaint dated 1-11-1999 from the learned Magistrate against Raghuvanshi, he merely wrote to the SP, Gwalior to enquire into the matter and take disciplinary action against Raghuvanshi; that there was no intention to hold any inquiry into the conduct of the Judge; and that after the inquiry against Raghuvanshi, and the report submitted by the appellant, a penalty of Rs 500 was imposed on Raghuvanshi for misbehaviour. He asserted that he did not create any false or forged document as alleged in the show-cause notice dated 3-7-2000. He also submitted an unconditional apology. The High Court accepted the said explanation of Shri N.K. Tripathi, IG of Police and dropped the proceedings against him, by the following order dated 3-11-2000:

h "As regards notice to N.K. Tripathi, we have perused the record. From his reply, he has not directed any enquiry against the conduct of the Judge. N.K. Tripathi has only directed to take action within a period of

15 days and intimate the action to the court. He has not directed an enquiry. Therefore, no prima facie case is made out against N.K. Tripathi and notice to N.K. Tripathi is discharged."

8. The appellant also filed a reply similar to the reply filed by IG of Police, with an unconditional apology. The High Court did not, however, accept the appellant's explanation and apology. It framed the following charges against the appellant on 10-11-2000, which according to the High Court amounted to contempt of court:

(i) That he inquired into the conduct of a Judge and submitted the report scandalising the court in order to protect the erring official (Raghuvanshi) who misbehaved in the court. a

(ii) That with an intention to lower the dignity of the court, he sat (in appeal) over the order-sheet dated 1-11-1999 of the Judicial Magistrate and recorded a separate finding.

(iii) That with an intention to scandalise the court and to lower the dignity of the court, he recorded statements against the judicial officer without any authority of law with an oblique motive. c

9. The appellant filed replies/explanations dated 28-7-2000, 10-11-2000 and 30-11-2000 to the show-cause notice and the charges, which are summarised below:

(a) The learned Magistrate had lodged a complaint dated 1-11-1999 against Raghuvanshi with the IG of Police, who forwarded it to the Superintendent of Police for inquiry and necessary disciplinary action who, in turn, sent it to him with a direction to hold an inquiry and submit a detailed report. Accordingly, he enquired into the conduct of Raghuvanshi and found him guilty of misbehaving in court and recommended his punishment. Holding an inquiry and submitting a report as directed by his superior officers does not amount to contempt. He did not hold any inquiry in regard to the conduct of the judicial officer. d

(b) As the inquiry was against Raghuvanshi, he was bound to give due opportunity to Raghuvanshi before deciding upon departmental action. The statements of several witnesses were recorded as per the request of Raghuvanshi. When he recorded the statements of various persons and submitted his report dated 27-11-1999, no other proceedings were pending against Raghuvanshi in regard to the incident dated 1-11-1999. Therefore, there was no question of taking any permission from court, for holding the inquiry. e

(c) He did not create any false or forged document. He acted bona fide. Neither the act of holding an inquiry nor the act of recording the statements of witnesses was with the intention of scandalising or lowering the authority of any court or interfering with the due course of any judicial proceeding or interfering or obstructing the administration of justice. g

h

RAJESH KUMAR SINGH v. HIGH COURT OF M.P.
(Raveendran, J.)

133

10. The High Court by the impugned order dated 2-3-2001 rejected the explanation and held that all three charges were proved and imposed the punishment of seven days' simple imprisonment and fine of Rs 2000. The said order is under challenge in this appeal.

Whether the appellant is guilty of contempt?

11. The question whether Raghuvanshi committed contempt of court on 1-11-1999 was decided by the High Court by its order dated 22-5-2000/29-5-2000 in Contempt Petition No. 2 of 1999. We are not concerned with the acts of Raghuvanshi or the decision against him. The question before us is whether the appellant committed contempt by his following acts: (a) holding an inquiry in regard to the incident dated 1-11-1999 and recording the statements of several witnesses (who stated that they were present at the time of the incident) in the course of such inquiry, without the permission of the High Court; and (b) recording the statements made by the witnesses that Raghuvanshi had not misbehaved with the learned Magistrate, thereby contradicting the record made by the learned Magistrate as to what transpired (in the order-sheet dated 1-11-1999 of a suit which he was hearing).

12. The High Court has held that holding an inquiry in respect of the conduct of Raghuvanshi on 1-11-1999 amounted to holding an inquiry into the conduct of the learned Magistrate and that was not permissible without the permission of the High Court. The High Court has also held that recording the evidence of several witnesses by the appellant, to the effect that Raghuvanshi did not misbehave with the Judge (which contradicted the learned Magistrate who had reported that Raghuvanshi had misbehaved with him), was with the ulterior intention of helping Raghuvanshi to create a defence of malice on the part of the Magistrate. The High Court concluded that these acts amounted to scandalising the court and interfering with the administration of justice.

13. When Raghuvanshi misbehaved in court, it was open to the learned Magistrate to initiate action for prosecuting Raghuvanshi under Section 228 IPC, or punish him under Section 345 CrPC read with Section 228 IPC. If the learned Magistrate was of the view that the contempt committed did not fall under Section 228 IPC, then he could have made a reference to the High Court for taking action under Section 10 of the Act. The learned Magistrate did not take any action under Section 228 IPC nor under Section 345 CrPC read with Section 228 IPC. Even before making a reference to the High Court for initiating action for contempt, the learned Magistrate sent a complaint to the Inspector General of Police on 1-11-1999 itself, requiring action against Raghuvanshi. The action that was required was obviously departmental disciplinary action. The Inspector General of Police, acting on the said request, directed the Superintendent of Police to hold an inquiry and take disciplinary action against Raghuvanshi. The Superintendent of Police, in turn, forwarded the complaint dated 1-11-1999 of the Magistrate and the directive of the IG of Police dated 10-11-1999 to the appellant, with an

instruction to look into the matter and send a detailed report. It is only in pursuance of such directive from his superiors, the appellant held a preliminary inquiry in respect of the conduct of Raghuvanshi. The inquiry was not in regard to the conduct of the Judge. As the inquiry was against Raghuvanshi, the appellant had to give an opportunity to him, to make his statement. He also had to record the statements of persons, whom Raghuvanshi stated were present at the time of the incident. The inquiry by the appellant was a prelude to the disciplinary action against Raghuvanshi. In fact, after the recording of the statements of several witnesses, the appellant submitted a report holding Raghuvanshi guilty of having used unwarranted language in court and recommending punishment. It cannot, therefore, be said, that recording the statements of Raghuvanshi, and several other persons on the request of Raghuvanshi, in the course of the preliminary inquiry, amounts to holding an inquiry in regard to the conduct of a Judge.

14. When the appellant held the preliminary inquiry, no contempt proceedings had been initiated by the High Court, in regard to the incident of 1-11-1999. There was also no other proceedings pending before the learned Magistrate or any other court in regard to the incident dated 1-11-1999. Therefore, the question of seeking or obtaining the permission of the High Court or other court, for holding such inquiry, did not arise. Unless the inquiry by the appellant was a parallel proceeding with reference to a matter pending in court and unless such parallel proceeding interfered with or, intended to interfere with the pending court proceeding, there is no interference with administration of justice. We may in this context refer to the decision of this Court in *Security and Finance (P) Ltd. v. Dattatraya Raghav Agge*¹. This Court held that an authority holding an inquiry in good faith in exercise of the powers vested in it by a statute is not guilty of contempt of court, merely because a parallel enquiry is imminent or pending before a court. This Court pointed out that to constitute the offence of contempt of court, there must be involved some act calculated to bring a court or a Judge of the court into contempt or to lower his authority or something calculated to obstruct or interfere with the due course of justice on the lawful process of the court. Applying the said principle, the act of the appellant holding the preliminary inquiry, cannot be considered to be contempt of court.

15. Let us next examine whether recording the statements of some persons amounted to scandalising the court, if those statements were contrary to the report of the incident contained in the order-sheet dated 1-11-1999. Attributing improper motive to a Judge or scurrilous abuse of a Judge will amount to scandalising the court. Raghuvanshi was found to be guilty of such conduct and he was punished. The appellant neither attributed any improper motive to the Judge, nor abused the Judge. The High Court concluded that the inquiry and report by the appellant was intended to help Raghuvanshi, because the appellant recorded the statements of only persons who contradicted the report of the learned Magistrate, but did not examine the

¹ (1969) 1 SCC 181 : AIR 1970 SC 720

RAJESH KUMAR SINGH v. HIGH COURT OF M.P.
(Raveendran, J.)

135

learned Magistrate or his Deposition Writer or Reader of the court. The
a appellant has given a feasible and reasonable explanation for not recording
the statements of the learned Magistrate, or his Court Reader and Deposition
Writer. He has stated that he was only holding a preliminary inquiry as
directed by his official superiors; that the statements of the Deposition Writer
and Reader of the court as also the order-sheet wherein the learned
Magistrate had recorded what transpired on 1-11-1999, were already
b available on record and therefore, he did not record their statements again, in
the inquiry. In fact, the very first para of the inquiry report dated 27-11-1999
states that he had perused the letter dated 1-11-1999 of Shri Pradeep Mittal,
JMFC, Dabra, the order-sheet and the statements of Deposition Writer and
Reader recorded by the Magistrate.

16. The High Court has next found fault with the appellant for recording
c the statements of witnesses, which contradicted what was recorded by the
learned Magistrate in the order-sheet, and has concluded that this must have
been done to help Raghuvanshi to create a defence in the contempt
proceedings. Even if Raghuvanshi or the witnesses named by him stated
something false, the appellant who recorded their statements in the course of
preliminary inquiry cannot be held liable or responsible for such statements,
d unless there is material to show that the appellant was part of a conspiracy to
create false evidence. There is nothing to show such conspiracy. It is
nobody's case that he wrongly recorded the statements of the witnesses to
benefit Raghuvanshi. The inquiry by the appellant was in pursuance of the
complaint by the learned Magistrate demanding action against Raghuvanshi
and the direction of the Inspector General of Police to hold an inquiry in
e connection with disciplinary action against Raghuvanshi. The appellant
submitted a report holding that Raghuvanshi had used unwarranted language
in court and that he should be punished. It cannot, therefore, be said that the
appellant recorded the statements of witnesses with an ulterior motive of
helping Raghuvanshi to create a false defence.

17. The High Court's conclusion that the appellant prepared the report to
f support the defence of Raghuvanshi by recording the statements of some
witnesses against the learned Magistrate is in fact based on an assumption
that the orders dated 22-5-2000/29-5-2000 in Contempt Petition No. 2 of
1999, while directing initiation of contempt action, had recorded such a
finding. This is evident from the following observation of the High Court in
the impugned judgment:

g "In Contempt Petition No. 2 of 1999, allegations levied against
Chander Bhan Singh Raghuvanshi were found proved and it was also
recorded that the then Sub-Divisional Officer (Police), Dabra, without
any authority of law has recorded the statements of persons in a manner
to give handle to said Chander Bhan Singh Raghuvanshi, to make
allegation of malice against the Presiding Officer."

h But we find that the orders dated 22-5-2000/29-5-2000 do not contain a
finding that the appellant had "without any authority of law recorded the

statements of persons in a manner to give handle to Raghuvanshi to make allegations of malice against the Presiding Officer". All that the orders dated 22-5-2000/29-5-2000 stated was that no document had been produced to show that IG of Police had authorised the SDO(P) to record the statements, and if the statements had been recorded in pursuance of any order, such order could be produced in court (in the proposed contempt proceedings) to show that the statements were recorded in the preliminary enquiry. In fact no finding could have been recorded in the order dated 22-5-2000/29-5-2000 against the appellant, as he was not a party to that proceeding. The observations in the orders dated 22-5-2000/29-5-2000 were made in the context of initiating suo motu contempt proceedings against the appellant and the IG of Police. The appellant was entitled to show cause against the initiation of contempt proceedings. The appellant in fact produced documents to show that the statements of witnesses were recorded, in a preliminary inquiry directed by the IG of Police, on the complaint of the Magistrate. The explanation that he held the inquiry and recorded the statements on the directions of the IG of Police conveyed by the Superintendent of Police and that the statements of witnesses were recorded at the instance of and on the request of Raghuvanshi has been completely ignored or overlooked by the High Court.

18. The Police Department had issued a Circular dated 14-9-1999 (read with Para 36 of the M.P. Police Regulations) which required that whenever any complaint was received against police, a report should be sent at the earliest after holding necessary inquiry into such complaints. The letters of the IG of Police and the Superintendent of Police also make it clear that the appellant was required to hold an inquiry in connection with initiating a disciplinary action against Raghuvanshi. It is no doubt true that the complaint dated 1-11-1999 of the Magistrate and the directive of IG dated 10-11-1999 required "action", and did not specifically direct an "inquiry". But the "subject" portion of IG's letter dated 10-11-1999 specifically states "regarding conducting inquiry and taking disciplinary action against Sub-Inspector C.B.S. Raghuvanshi". Therefore, the report submitted by the appellant has to be treated as one made bona fide in pursuance of the instructions of the official superiors directing him to hold a preliminary inquiry. It was not intended to scandalise the court. Nor was there any attempt by the appellant to sit (in judgment) over the order-sheet dated 1-11-1999 of the learned Magistrate in his inquiry report dated 27-11-1999.

19. It is also necessary to notice that the High Court proceeded on an erroneous impression that the contempt proceedings against Raghuvanshi in regard to the incident of 1-11-1999 were pending when the appellant held the inquiry in November 1999 and submitted his report dated 27-11-1999, and therefore such inquiry by the appellant must have been with the intention of helping Raghuvanshi to prepare a defence in the contempt proceedings. Contempt Petition No. 2 of 1999 which was pending in November 1999 did not relate to the incident of 1-11-1999 at all, but related to a false report given by Raghuvanshi in April 1998, which had nothing to do with the incident on 1-11-1999. In the said contempt proceedings relating to the false report given

RAJESH KUMAR SINGH v. HIGH COURT OF M.P.
(Raveendran, J.)

137

a in 1998, the High Court took cognizance of the second reference made by the Magistrate in regard to the incident of 1-11-1999, only on 12-1-2000. Therefore, the High Court's assumption that the entire inquiry by the appellant was with a view to help Raghuvanshi in regard to the contempt proceeding pending in regard to the said incident on 1-11-1999 is obviously erroneous.

b 20. This Court has repeatedly cautioned that the power to punish for contempt is not intended to be invoked or exercised routinely or mechanically, but with circumspection and restraint. Courts should not readily infer an intention to scandalise courts or lowering the authority of court unless such intention is clearly established. Nor should they exercise power to punish for contempt where mere question of propriety is involved. In *Rizwan-ul-Hasan v. State of U.P.*² this Court reiterated the well-settled principle that jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. Of late, a perception that is slowly gaining ground among public is that sometimes, some Judges are showing over sensitiveness with a tendency to treat even technical violations or unintended acts as contempt. It is possible that it is done to uphold the majesty of courts, and to command respect. But Judges, like everyone else, will have to earn respect. They cannot demand respect by demonstration of "power".

c 21. Nearly two centuries ago, Justice John Marshall, the Chief Justice of American Supreme Court warned that the power of judiciary lies, not in deciding cases, nor in imposing sentences, nor in punishing for contempt, but in the trust, confidence and faith of the common man. The purpose of the power to punish for criminal contempt is to ensure that the faith and confidence of the public in administration of justice is not eroded. Such power, vested in the High Courts, carries with it great responsibility. Care should be taken to ensure that there is no room for complaints of ostentatious exercise of power. Three acts, which are often cited as examples of exercise of such power are: (i) punishing persons for unintended acts or technical violations, by treating them as contempt of court; (ii) frequent summoning of government officers to court (to sermonise or to take them to task for perceived violations); and (iii) making avoidable adverse comments and observations against persons who are not parties. It should be remembered that exercise of such power results in eroding the confidence of the public, rather than creating trust and faith in the judiciary. Be that as it may.

d 22*. There is no material to show that the appellant acted with any ulterior motive. But for the complaint and request by the learned Magistrate that action should be taken against Raghuvanshi and the directions issued by the IG and Superintendent of Police to hold an inquiry, the appellant would not have held the inquiry. Any such preliminary inquiry warrants recording of statements. Any bona fide act in the course of discharge of duties and

h 2 AIR 1953 SC 185 : 1953 SCR 581

* Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./66/2007 dated 25-7-2007.

138

SUPREME COURT CASES

(2007) 14 SCC

complying with the directions of the superior officers, should not land the inquiry officer in a contempt proceedings. Though, common contempt proceedings were initiated against the IG of Police and the appellant, the High Court dropped the proceedings against the IG of Police who directed the inquiry, but chose to proceed against the appellant who merely complied with the directions of the IG of Police. It even ignored the declaration of bona fides and unconditional apology. The finding of guilt is totally unwarranted.

23. We, therefore, hold that the appellant is not guilty of contempt of court. Consequently, we allow this appeal and set aside the order of the High Court dated 2-3-2001 in Contempt Petition No. 5 of 2000 and acquit and exonerate the appellant of all charges.

(2007) 14 Supreme Court Cases 138

(BEFORE S.B. SINHA AND H.S. BEDI, JJ.)

ABDUL RAHEEM

Appellant;

Versus

KARNATAKA ELECTRICITY BOARD
AND OTHERS

Respondents.

Civil Appeal No. 5320 of 2007[†], decided on November 20, 2007

A. Civil Procedure Code, 1908 — S. 100 — Second appeal — High Court's interference in second appeal with findings of fact recorded by first appellate court — Propriety — Remand when warranted — Question arising in suit for specific performance of contract whether plaintiff was ready and willing to perform his part of the contract — Trial court finding in the affirmative but first appellate court holding otherwise — In second appeal High Court framing one of the substantial questions of law regarding the question as to whether the plaintiff was ready and willing to perform its part of contract — Jurisdiction of the court in respect of — Held, High Court's jurisdiction in terms of S. 100 of the Code is undoubtedly limited — As Respondent 1-plaintiff had already parted with a substantial portion of the consideration amount as also upon having paid a large sum towards conversion charges, another opportunity should be given to High Court to formulate substantial question of law — Matter therefore remitted — Specific Relief Act, 1963 — S. 16

B. Civil Procedure Code, 1908 — S. 100 — "Substantial question of law" — Situations in which it could be said to arise — Question as to whether the plaintiff was ready and willing to perform its part of contract by itself may not give rise to a substantial question of law — Substantial question of law should admittedly be formulated relying on or on the basis of findings of fact arrived at by the trial court and the first appellate court — Though, a substantial question of law ordinarily would not arise from the finding of facts arrived at by the trial court and the first appellate court, consideration of irrelevant facts and non-consideration of relevant facts would give rise to a substantial question of law — Reversal of a finding of

[†] Arising out of SLP (C) No. 24595 of 2005. From the Judgment/Final Order dated 15-9-2005 of the High Court of Karnataka at Bangalore in RSA No. 238 of 2000

466

SUPREME COURT CASES

(1996) 6 SCC

in that behalf has been enumerated in sub-section (2) of Section 5. Since the appellant-School is not an educational institution established under the Act as it was established in 1929, it does not require recognition under the Act. But it is an educational agency defined under Section 3(b) of the Act and, therefore, it is a deemed school established under the Act by operation of Section 3(b). Accordingly the appellant-School has been receiving grants-in-aid under the Act. Under Article 29(2) of the Constitution

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

Thereby the educational institution receiving aid is an instrumentality or education agency of the State imparting education on behalf of the State which is a fundamental right of the citizens. It is not in dispute that the entire expenditure for the acquisition is being met from the public funds, as accepted by the High Court. Under those circumstances, it is clearly a case of public purpose. It could be seen that when the order of eviction was sought to be enforced, this Court while upholding the decree of eviction had imposed a condition that the undertaking shall not be enforced when the land is sought to be acquired. This Court had recognised the need for the continuance of the educational institution in the said place and that the State had taken action to acquire the land at the expense of the State to provide the education to the middle school-going children. Under those circumstances, the High Court was wholly wrong in its conclusion that public purpose is not served in acquiring the land but benefits the private individuals.

3. The appeal is accordingly allowed but in the circumstances without costs. The writ petition stands dismissed.

(1996) 6 Supreme Court Cases 466

(BEFORE KULDIP SINGH AND FAIZAN UDDIN, JJ.)

IN RE : HARIJAI SINGH AND ANOTHER

IN RE : VIJAY KUMAR

Contempt Petitions Nos. 206-207 of 1996 in Writ Petition (C) No. 26 of 1995†, decided on September 17, 1996

A. Constitution of India — Art. 129 — Contempt of Supreme Court by the Press — Publishing false news having serious repercussions without taking care to ascertain its correctness cannot be said to have been done in good faith — Absence of intention or knowledge about correctness of the news published cannot be a valid defence for the publisher, editor and reporter — They must be extra careful — News item published in a newspaper (Tribune and Punjab Kesari) scandalising a Judge of Supreme Court (grant of petrol pump outlets by the Minister concerned out of his discretionary quota in favour of sons of a Supreme Court Judge) — Editor and publisher of the newspaper stating that the news was published on the basis of information and material supplied by a

† Under Article 32 of the Constitution of India

a senior journalist/reporter — Journalist/reporter stating that the information was obtained from a highly reliable source who used to give many such informations earlier also, and as such the information was believed to be true — However, on verification after the publication the news found to be incorrect — Accordingly, an apology already published in the newspaper — Unconditional apology also tendered and sincere remorse shown by the editor, publisher and reporter before Supreme Court — Held, they are guilty of contempt of the court — But in the circumstances their apology acceptable and no punishment need be imposed — Contempt of Courts Act, 1971, Ss. 2(c) & 12

b B. Constitution of India — Art. 129 — Contempt of Supreme Court — Unconditional apology tendered by contemner — When can be accepted — Contempt of Courts Act, 1971, S. 12

c C. Constitution of India — Art. 19(1)(a) & (2) — Freedom of the Press — Not absolute and unfettered — Subject to reasonable restrictions — Journalists must be conscientious in disseminating information which must be dispassionate, objective and impartial — Journalists and publishers have greater responsibility towards the society to safeguard public order, decency and morality — Mischievously false, baseless or distorted publication of news not protected — Journalists — Role of

Held:

d In the present case neither the printer nor the publisher nor the editor or reporter took the necessary care in evaluating the correctness and credibility of the information published by them as the news items in the newspapers in respect of an allegation of a very serious nature having great repercussions causing an embarrassment to the Supreme Court. An editor is a person who controls the selection of the matter which is to be published in a particular issue of the newspaper. The editor and publisher are liable for illegal and false matter which is published in their newspaper. Such an irresponsible conduct and attitude on the part of the editor, publisher and the reporter cannot be said to be done in good faith, but e distinctly opposed to the high professional standards as even a slightest enquiry or a simple verification of the alleged statement about grant of petrol outlets to the two sons of a Senior Judge of the Supreme Court, out of discretionary quota, which is found to be patently false would have revealed the truth. But it appears that even the ordinary care was not resorted to by the contemnors in publishing such a false news item. This cannot be regarded as a public service, but a disservice to the public by misguiding them with a false news. Obviously, this cannot be regarded as something f done in good faith. At common law, absence of intention or knowledge about the correctness of the contents of the matter published (for example as in the present case, on the basis of information received from the journalist/reporter) will be of no avail for the editors and publishers for contempt of court but for determining the quantum of punishment which may be awarded. Thus they cannot escape the responsibility for being careless in publishing the news without caring to verify its correctness. However, since they have not only expressed repentance on the incident g but have expressed their sincere written unconditional apology, the same is accepted with the warning that they should be careful in future. (Paras 11 and 12)

h The reporter also acted in gross carelessness. Being a very experienced journalist of long standing it was his duty while publishing the news item relating to the members of the Apex Court, to have taken extra care to verify the correctness and if he had done so the publication would have been avoided which not only caused great embarrassment to the Supreme Court but conveyed a wrong message to the public at large jeopardizing the faith of the illiterate masses in our judiciary. The

reporter has no doubt committed a serious mistake but he has realised his mistake and expressed sincere repentance and has tendered unconditional apology for the same. He was present in the Court and virtually looked to be gloomy and felt repentant of what he had done. This sufferance itself is sufficient punishment for him. He being a senior journalist and an aged person and, therefore, taking a lenient view of the matter, we accept his apology also. (Para 12)

The Supreme Court is not hypersensitive in matters relating to contempt of courts and has always shown magnanimity in accepting the apology on being satisfied that the error made in the publication was without any malice or without any intention of disrespect towards the courts or towards any member of the judiciary. The Supreme Court has always entertained fair criticism of the judgments and orders or about the person of a Judge. Fair criticism within the parameters of law is always welcome in a democratic system. (Para 12)

A free and healthy press is indispensable to the functioning of a true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. The press should have the right to present anything which it thinks fit for publication. (Para 9)

Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, *Express Newspapers P. Ltd. v. Union of India*, (1986) 1 SCC 133 : AIR 1986 SC 872, referred to

However, freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by court of law. The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression. (Para 10)

R-M/16734/C

IN RE. HARIJAI SINGH : IN RE : VIJAY KUMAR (*Faizan Uddin, J.*) 469

Advocates who appeared in this case :

Petitioner in person;

- a K.T.S. Tulsī, Additional Solicitor General, Ram Jethmalani and Ashwini Kumar, Senior Advocates (Prashant Bhushan, P.H. Parekh, Arvind Sharma, Sameer Parekh, Ms Bina Madhavan and K.S. Chauhan, Advocates, with them) for the appearing parties.

Chronological list of cases cited

on page(s)

1. (1986) 1 SCC 133 : AIR 1986 SC 872, *Express Newspapers P. Ltd. v. Union of India* 472g
b 2. (1985) 1 SCC 641, *Indian Express Newspapers v. Union of India* 472g

The Judgment of the Court was delivered by

- c FAIZAN UDDIN, J.— When this Court was seized of writ petition filed by the “Common Cause, A Registered Society” with regard to the alleged misuse and arbitrary exercise of discretionary power by the Petroleum and Natural Gas Ministry in relation to the allotment of retail outlets for petroleum products and LPG dealership, from discretionary quota, a news item in box with a caption “Pumps for all” was published in the daily newspaper *The Sunday Tribune* dated 10-3-1996 which is reproduced hereunder:

“PUMPS FOR ALL

- d Believe it or not, Petroleum Minister Satish Sharma has made 17 allotments of petrol pumps and gas agencies to relatives of Prime Minister Narasimha Rao out of his discretionary quota. Allotments in this category can only be made to members of the weaker sections of society and war widows. Yet five of the Prime Minister’s grandchildren have been favoured as have been five of his nephews from the family of V. Rajeshwar Rao, MP. Besides, three wards of his brother Manohar Rao, two relatives of P. Venkata Rao and the son of A.V.R. Krishnamurthy whose family lives with the Prime Minister have been allocated petrol pumps and gas agencies. Similarly, Rao’s daughter, Vani Devi, who is the official hostess has a petrol pump allotted in the name of her daughter, Jyotirmai. She was also favoured by the Airport Authority of India which released a prime piece of land located in Begumpet area to her for just Rs 3 lakhs. The market value is stated to be over Rs 1 crore. It has been registered in the name of Shri Sai Balaji Agency. However, the Prime Minister’s kin are not the only ones who have benefited from these allotments. Two children of Lok Sabha Speaker Shivraj Patil have also been favoured as have the two sons of a Senior Judge of the Supreme Court. Interestingly, the Supreme Court had recently asked the Government to supply a list of all discretionary allotments made by the Ministry. However, the Minister has so far managed to withhold this crucial document. But it has hardly helped as the list has been leaked by Sharma’s own men.”

- g 2. A similar news item was also published in the Hindi newspaper h *Punjab Kesari* dated 10-3-1996, the English translation of which is as follows:

"17 POOR MEMBERS OF THE FAMILY OF THE PRIME MINISTER

Out of the short cut ways of becoming rich, one way is to obtain petrol pump or gas agency. But the power to allot the same lies with the Petroleum Minister. He has the discretionary powers to allot petrol pumps or gas agencies in charity. This power of doing such charities has been entrusted in some special cases which include the people belonging to the poor, backward classes and the wives of those who were killed in the war. But all those persons to whom these agencies have been allotted by the Petroleum Minister Capt. Satish Sharma turned out to be a scam in itself. The matter was referred to the Supreme Court in which the Government was directed to submit a list. The Petroleum Minister suppressed the list. The list was demanded in Parliament. But the list was not presented. Now the list has been leaked out from the Petroleum Ministry. Believe it, there are 17 relatives of the Prime Minister Narasimha Rao in that list. Five persons are his grandsons and granddaughters. Five others are the members of the family of V. Rajeshwar Rao. He is a Member of Parliament and the relative of the Prime Minister. Manohar Rao is the brother of Narasimha Rao. These agencies were also allotted to his three children. There is one more relative — P. Venkata Rao. Two allottees have been found in his family. One is A.V.R. Krishnamurthy who resides in the residence of the Prime Minister. He has also been allotted the agency at the Bolarum Road at Sikandrabad. But the most interesting story is of Jyotirmai. Narasimha Rao is her real maternal grandfather.

The authorised hostess of the Prime Minister's residence is Vani Devi who is the daughter of the Prime Minister and mother of Jyotirmai. Their agency is situated at Begumpet under the name and style 'Sri Sai Balaji Agency'. The land of 2000 sq. m. of the Indian Aviation Authority was given to Sri Sai Balaji Agency merely for rupees three lakhs. Presently, the cost of this land is more than one crore. The Petroleum Minister also allotted the agencies to the two children of Shivraj Patil, Speaker of the Lok Sabha. You should not be astonished if you find the names of two sons of Mr Ahmadi, Chief Justice of India in the list of the discretionary quota. Otherwise the names of such poor and backward persons are also available in this list."

3. Since the aforesaid news items contained an allegation that two sons of a Senior Judge of the Supreme Court and two sons of the Chief Justice of India were also favoured with the allotments of petrol outlets from the discretionary quota of the Ministry and, therefore, by our order dated 13-3-1996, we issued a notice to the Secretary, Ministry of Petroleum and Natural Gas to file an affidavit offering his comments and response to the facts stated in the aforesaid two news items. Pursuant to the said notice, Shri Vijay L. Kelkar, Secretary in the Ministry of Petroleum and Natural Gas, Government of India, filed his affidavit dated 20-3-1996 stating that since the allegation regarding allotment under the discretionary quota in favour of two sons of a Senior Judge of the Supreme Court are vague and in the absence of specific names, it is difficult to deal with the same. Thereafter

IN RE HARIJAI SINGH . IN RE VIJAY KUMAR (*Faizan Uddin, J.*) 471

a when the matter again came up before this Court on 21-3-1996 Shri Altaf Ahmed, learned Additional Solicitor General stated that he would look into the records and file further affidavit of a responsible officer giving response to the other allegations regarding relations of VIPs. We, therefore, granted time for the purpose and at the same time directed the relevant files to be produced in Court. It was thereafter that Shri Devi Dayal, Joint Secretary in the Ministry of Petroleum and Natural Gas, Government of India, filed his affidavit dated 26-3-1996. In para 5 of his affidavit, he made a categorical statement that there is no allotment in favour of son/sons of any Supreme Court Judge. After verification of records and affidavits referred to above, we found that the news items referred to above were patently false and, therefore, by our order dated 27-3-1996, we initiated contempt proceedings against the editors and publishers of the dailies *The Sunday Tribune*, Chandigarh and the *Punjab Kesari*, Jalandhar and issued notices to them to show cause why they may not be punished for the contempt of this Court.

c 4. In response to the contempt notice, Shri Hari Jaisingh, the Editor of *The Sunday Tribune* filed an affidavit dated 24-6-1996 admitting that the news item published in *The Sunday Tribune* dated 10-3-1996 with regard to the allotment of petrol outlets to the sons of a Senior Judge of the Supreme Court was not correct and, therefore, tendered unqualified apology and has d prayed for mercy and pardon. He has stated that it was an inadvertent publication made bona fide on the faith that the item supplied by an experienced journalist, Shri Dina Nath Misra, who is generally reliable would not be factually incorrect. It has been stated that Dina Nath Misra is a journalist of standing for over 30 years and there have been no complaints about the correctness of the material contributed by him and believing the e said item of news to be correct it was published without any further scrutiny in good faith. He has submitted that he has the highest respect for the judiciary in general and for this Court in particular and has tendered his unqualified apology with a feeling of remorse. He has submitted that since it was noticed that the news item was not correct, an apology was already published by him in *The Tribune* dated 12-5-1996 and necessary instructions f to all members of the editorial staff were issued to be careful in assuring the factual accuracy of all legal reports.

5. Lt. Col. S.L. Dheer (Retd.), the publisher of *The Tribune*, in response to the contempt notice has also filed his affidavit dated 27-6-1996 more or less in the same terms as the one filed by Shri Hari Jaisingh and has tendered his apology and prayed for mercy and pardon due to the bona fide mistake.

g 6. In response to the contempt notice, Shri Vijay Kumar Chopra, editor and publisher of the daily *Punjab Kesari*, Jalandhar has also filed his affidavit dated 29-6-1996 stating that the news item in the daily *Punjab Kesari* referred to above was published on the basis of the news report sent by a senior journalist which due to inadvertence escaped the attention of the editor. He has stated that immediately after the incorrectness of the news h item was noticed a contradiction and apology was carried out prominently in the issue of the paper dated 7-4-1996. He has stated that the said news item

was not actuated by any malice towards the judiciary and that the mistake was bona fide. He has also tendered his unconditional and unqualified apology.

7. On being apprised that the news items referred to above were found to be false which were published on the basis of the information and material supplied by the journalist/reporter Dina Nath Misra to *The Sunday Tribune* and *Punjab Kesari*, we issued a similar contempt notice to Dina Nath Misra by our order dated 9-7-1996. The journalist Dina Nath Misra in his affidavit dated 1-8-1996 admitted to have written a capsule item about the allotment of petrol pumps to the sons of a Senior Judge of the Supreme Court which was not factually correct and he has, therefore, tendered his unqualified apology for the lapse that he had committed. He has stated that he has been a journalist for about 4 decades and is known for his integrity and commitment towards professionalism. He has further stated that a highly reliable source who had earlier given many reliable informations to the deponent gave this information also which was believed by him to be true, but it turned out to be incorrect. He has stated various other facts to show that the mistake was bona fide, but we find the said excuses and explanations to be not acceptable at all. He has, however, expressed his deep repentance and tendered unqualified apology and seeks forgiveness for this honest and inadvertent blunder. In yet another additional affidavit dated 29-8-1996, he has reiterated the said facts and admitted that he has committed a grievous error in writing news items which have absolutely no basis, and has again offered unconditional apology to Hon'ble the Chief Justice as well as to this Court.

8. It may be relevant here to recall that the freedom of press has always been regarded as an essential prerequisite of a democratic form of Government. It has been regarded as a necessity for the mental health and the well-being of the society. It is also considered necessary for the full development of the personality of the individual. It is said that without the freedom of press truth cannot be attained. The freedom of press is a part of the freedom of speech and expression as envisaged in Article 19(1)(a) of the Constitution of India. Thus, the freedom of press is included in the fundamental right of freedom of expression. The freedom of press is regarded as "the mother of all other liberties" in a democratic society. Further, the importance and the necessity of having a free press in a democratic Constitution like ours was immensely stressed in several landmark judgments of this Court. The case of *Indian Express Newspapers v. Union of India*¹, is one of such judgments rendered by Venkataramiah, J. (as he then was). Again in another case of *Express Newspapers P. Ltd. v. Union of India*², A.P. Sen, J. (as he then was) described the right to freedom of press as a pillar of individual liberty which has been unfailingly guarded by the courts.

¹ (1985) 1 SCC 641

² (1986) 1 SCC 133 : AIR 1986 SC 872

IN RE: HARIJAI SINGH IN RE: VIJAY KUMAR (Faizan Uddin, J.) 473

9. It is thus needless to emphasise that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatma Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among the people certain desirable sentiments; and the third is to fearlessly express popular defects. It, therefore, turns out that the press should have the right to present anything which it thinks fit for publication.

10. But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by court of law. The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations "If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline". It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by

them and to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression.

11. In the present case, as we have noticed above, neither the printer, publisher nor the editor and reporter took the necessary care in evaluating the correctness and credibility of the information published by them as the news items in the newspapers referred to above in respect of an allegation of a very serious nature having great repercussions causing an embarrassment to this Court. An editor is a person who controls the selection of the matter which is to be published in a particular issue of the newspaper. The editor and publisher are liable for illegal and false matter which is published in their newspaper. Such an irresponsible conduct and attitude on the part of the editor, publisher and the reporter cannot be said to be done in good faith, but distinctly opposed to the high professional standards as even a slightest enquiry or a simple verification of the alleged statement about grant of petrol outlets to the two sons of a Senior Judge of the Supreme Court, out of discretionary quota, which is found to be patently false would have revealed the truth. But it appears that even the ordinary care was not resorted to by the contemnors in publishing such a false news items. This cannot be regarded as a public service, but a disservice to the public by misguiding them with a false news. Obviously, this cannot be regarded as something done in good faith.

12. But it may be pointed out that various judgments and pronouncements of this Court bear testimony to the fact that this Court is not hypersensitive in matters relating to contempt of courts and has always shown magnanimity in accepting the apology on being satisfied that the error made in the publication was without any malice or without any intention of disrespect towards the courts or towards any member of the judiciary. This Court has always entertained fair criticism of the judgments and orders or about the person of a Judge. Fair criticism within the parameters of law is always welcome in a democratic system. But the news items with which we are concerned can neither be said to be fair or made in good faith but wholly false and the explanation given is far from satisfactory. Shri Hari Jaisingh, editor of *The Sunday Tribune* and Lt. Col. H.L. Dheer, publisher as well as Vijay Kumar Chopra, editor and publisher of daily *Punjab Kesari* have taken the stand that they had taken the news items to be correct on the basis of the information supplied by a very senior journalist of long standing, Dina Nath Misra. But this cannot be accepted as a valid excuse. It may be stated that at common law, absence of intention or knowledge about the correctness of the contents of the matter published (for example as in the present case, on the basis of information received from the journalist/reporter) will be of no avail for the editors and publishers for contempt of court but for determining the quantum of punishment which may be awarded. Thus they cannot escape the responsibility for being careless in publishing it without caring to verify the correctness. However, since they have not only expressed repentance on the incident but have expressed their sincere written unconditional apology, we accept the same

- a with the warning that they should be very careful in future. As regards the case of Dina Nath Misra, we find he acted in gross carelessness. Being a very experienced journalist of long standing it was his duty while publishing the news item relating to the members of the Apex Court, to have taken extra care to verify the correctness and if he had done so, we are sure there would not have been any difficulty in coming to know that the information supplied to him had absolutely no legs to stand and was patently false and the publication would have been avoided which not only caused great embarrassment to this Court but conveyed a wrong message to the public at large jeopardizing the faith of the illiterate masses in our judiciary. Shri Dina Nath Misra has no doubt committed a serious mistake but he has realised his mistake and expressed sincere repentance and has tendered unconditional apology for the same. He was present in the Court and virtually looked to be gloomy and felt repentant of what he had done. We think this sufferance itself is sufficient punishment for him. He being a senior journalist and an aged person and, therefore, taking a lenient view of the matter, we accept his apology also. We, however, direct that the contemnners will publish in the front page of their respective newspapers within a box their respective apologies specifically mentioning that the said news items were absolutely incorrect and false. This may be done within two weeks. The Contempt Petitions Nos. 206-207 of 1996 are disposed of accordingly.
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- c
- d

(1996) 6 Supreme Court Cases 475

(BEFORE KULDIP SINGH, M.M. PUNCHHI, N.P. SINGH,
M.K. MUKHERJEE AND S. SAGHIR AHMAD, JJ.)

- e VIJAY SINGH AND OTHERS .. Appellants;
Versus
VIJAYALAKSHMI AMMAL .. Respondent.

Civil Appeals Nos. 5948 to 5950 of 1990†, decided on October 10, 1996

- f Rent Control and Eviction — Demolition and reconstruction of building — Eviction under S. 14(1)(b) of T.N. Rent Control Act on ground of bona fide requirement of landlord for immediate purpose of demolishing and re-erecting — Eviction cannot be ordered on mere asking of landlord that the building was required for immediate demolition and reconstruction — Relevant factors to be considered — Whether demolition sought with the sole object of getting rid of the tenant relevant for ascertaining bona fide requirement of landlord — Expression “immediate purpose of demolishing” does not indicate that the building must be in a dilapidated or decrepit condition requiring its immediate demolition — But age and condition of the building relevant factor — Financial position of the landlord for demolition and reconstruction also to be considered — Held, on facts, eviction order passed by Rent Controller was having regard to relevant factors and hence justified — T.N. Buildings (Lease and Rent Control) Act, 1960, Ss. 14(1)(b) & 16
- g

- h † From the Judgment and Order dated 27-6-1990 of the Madras High Court in C.R.Ps Nos. 1268 and 1332 of 1990

C. RAVICHANDRAN IYER v. JUSTICE A.M. BHATTACHARJEE

457

- a knife. The consistent and reliable evidence of the eyewitnesses coupled with the nature of injuries sustained by some of them and Chand Khan and the fact that in the FIR it has clearly been stated that one of the miscreants had been assaulted by a vegetable cutting knife do not persuade us to answer the question in the affirmative. Mr Thakur lastly submitted that the entire prosecution story was improbable for if really the incident had happened in the manner alleged by it, the persons present in PW 1's house would have sustained more serious injuries. We do not find any substance in this contention for it is evident that Shah Alam was the main target and the assault on others was carried out to thwart any resistance from those present in the courtyard.

- b 24. As all the points raised by Mr Thakur fail and as on a conspectus of the entire evidence we are fully satisfied that the conclusions drawn by the High Court, particularly regarding the roles played by the two appellants in the riot and the murder of Shah Alam are unexceptionable, we dismiss the appeal. The appellants, who are on bail, shall now surrender to their bail bonds to serve out the sentences.

(1995) 5 Supreme Court Cases 457

- d (BEFORE K. RAMASWAMY AND B.L. HANSARIA, JJ.)
C. RAVICHANDRAN IYER .. Petitioner;
Versus
JUSTICE A.M. BHATTACHARJEE AND OTHERS .. Respondents.

Writ Petition (C) No. 162 of 1995[†], decided on September 5, 1995

- e A. Constitution of India — Arts. 217(1) proviso (a) & (b) and 124(4) & (5) and 121 — Forced resignation from office of Judge/Chief Justice of High Court on pressure from the Bar — What procedure to be adopted where Bar Council/Association reasonably and honestly believes the conduct of a Judge/Chief Justice of High Court bad — While in case of proved misconduct or incapacity procedure for removal is provided under Art. 217(1) proviso r/w
f Art. 124(4) and (5), no procedure laid down under the Constitution in case of bad conduct though it also produces deleterious effect on integrity or impartiality of the Judge/Chief Justice — Self-regulation through in-house procedure laid down — Resolution passed by Bar Council against Judge/Chief Justice of High Court alleging bad conduct — Held, Bar Council cannot make scurrilous criticism of conduct of the Judge/Chief Justice and pressurise or coerce him to demit his office — Such action would constitute contempt of
g court and affect independence of judiciary which is an essential attribute of rule of law and also affect judicial individualism — However, where the Bar honestly doubts the conduct of the Judge/Chief Justice and such doubt is based on authentic and acceptable material, the proper course would be for office-bearers of the Bar Association to meet the Judge in camera and apprise him or approach the Chief Justice of that High Court to deal with the matter appropriately — After due verification and confidential enquiry the Chief
h

[†] Under Article 32 of the Constitution of India

Justice of the High Court must consult the Chief Justice of India (CJI) by placing all information with him — Where imputations are against the Chief Justice of the High Court himself the Bar Association should directly approach the CJI — Thereupon the CJI, after taking the Judge/Chief Justice into confidence, if circumstances so permit, will take a decision in the matter which will be final — Until such decision is taken, the Bar should suspend all further action and await response for a reasonable period — Judges (Inquiry) Act, 1968 — Contempt of Courts Act, 1971, S. 2(c) — Penal Code, 1860, S. 499 — Group libel

B. Constitution of India — Art. 124(4) — Removal of Judge of Supreme Court or High Court on proved misbehaviour or incapacity — 'Misbehaviour' — Meaning of — Mere bad or abrasive conduct is not 'misbehaviour' within cl. (4) for which a Judge can be removed — Cumbersome procedure of impeachment of a Judge of High Court or Supreme Court provided under the Constitution shows that he cannot be removed for minor abrasive behaviour — However such bad conduct produces deleterious effect on the impartiality and integrity of the Judge and needs correction to maintain public confidence — Words and phrases

C. Constitution of India — Arts. 50, 124, 214 & 121 and 368 — "Independence of judiciary" — Nature, role and meaning of — Is an essential attribute of rule of law which is a basic feature of the Constitution — Judiciary must be free from not only executive pressure but also from other pressures — Words and phrases

D. Constitution of India — Arts. 50, 124 & 121 and 368 — Independence of judiciary — Judicial individualism — Individual Judge has to feel secure in view of social demand for active judicial role which he is required to fulfil — Judicial activism necessary to make the ideals enshrined in the Constitution meaningful and a reality — Judicial activism

E. Constitution of India — Arts. 217(1) proviso (a) & 124 — Primacy of opinion of Chief Justice of India — Where Bar Council or Bar Association reasonably and honestly believes the conduct of a Judge of High Court to be bad, though not 'proved misbehaviour', the CJI has to be approached whose decision would be final

F. Constitution of India — Art. 19(1)(a) & (2) — Criticism of judiciary — When cannot be protected under Art. 19(1)(a)

G. Contempt of Courts Act, 1971 — S. 2(c) — Scandalising the court — Criticism of a Judge by Bar Council or Bar Association — When constitutes criminal contempt — Fair criticism based on authentic and acceptable material permissible — But when criticism tends to create apprehension in the minds of the people regarding integrity, ability or fairness of the Judge, it amounts to contempt — Such criticism not protected under Art. 19(1)(a) — Constitution of India, Art. 19(1)(a) & (2)

H. Advocates Act, 1961 — Ss. 6(1)(c), 9, 35, 36, 36-B & 37 — Disciplinary power of Bar Council — Scope — Bar Council cannot consider conduct of a Judge of High Court or Supreme Court — It cannot criticise the conduct of the Judge and pressurise him to resign from his office — That would amount to contempt of court — Contempt of Courts Act, 1971, S. 2(c) — Constitution of India, Art. 217 proviso (a)

I. Judiciary — Judges — Should maintain high standard of conduct both in public and private life based on high traditions

a The petitioner, a practising advocate, initiated the present public interest litigation under Article 32 of the Constitution seeking an appropriate writ, order or direction restraining permanently the Bar Council of Maharashtra and Goa (BCMG), Bombay Bar Association (BBA) and the Advocates' Association of Western India (AAWI), Respondents 2 to 4 respectively, from coercing Justice A.M. Bhattacharjee (the 1st respondent), Chief Justice of Bombay High Court, to resign from the office as Judge. The basis of the action by the Bar Council and Bar Associations was financial irregularities alleged to have been reflected in the disproportionate amount of royalty received by Respondent 1 from a foreign publisher that was kept confidential and not properly explained, the apprehension b being that that would influence the decisions of Respondent 1. The petitioner also sought an investigation by the Central Bureau of Investigation etc. (Respondents 8 to 10) into the allegations made against the 1st respondent and if the same are found true, to direct the 5th respondent, Speaker, Lok Sabha to initiate action for his removal under Article 124(4) and (5) read with Article 218 of the Constitution of India and Judges (Inquiry) Act, 1968. The Supreme Court on 24-3-1995 issued c notice to Respondents 2 to 4 only and rejected the prayer for interim direction to the President of India and the Union of India (Respondents 6 and 7 respectively) not to give effect to the resignation by the 1st respondent. Notice was also issued to the Attorney General for India and the President of the Supreme Court Bar Association (SCBA).

d The petitioner in a well-documented petition stated and argued that the news published in various national newspapers does prove that Respondents 2 to 4 had pressurised the 1st respondent to resign from the office as Judge for his alleged misbehaviour. The Constitution provides for independence of the Judges of the higher courts, i.e., the Supreme Court and the High Courts. It also lays down in proviso (a) to clause (2) of Article 124; so too in Article 217(1) proviso (a) and Article 124(4), procedure for voluntary resignation by a Judge, as well as for compulsory removal, respectively from office in the manner prescribed therein and in accordance with the Act and the Rules made thereunder. The acts and actions of e Respondents 2 to 4 are unknown to law, i.e., removal by forced resignation, which is not only unconstitutional but also deleterious to the independence of the judiciary. The accusations against the 1st respondent without proper investigation by an independent agency seriously damage the image of judiciary and efficacy of judicial adjudication and thereby undermine credibility of the judicial institution itself. Judges are not to be judged by the Bar. Allowing adoption of such demands f by collective pressure rudely shakes the confidence and competence of judges of integrity, ability, moral vigour and ethical firmness, which in turn, sadly destroys the very foundation of democratic polity. Therefore, the pressure tactics by the Bar requires to be nipped in the bud. He, therefore, vehemently argued and requested the Court to adopt such procedure which would safeguard the independence of the judiciary and protect the Judges from pressure through unconstitutional methods to demit their office.

g Since Respondent 1 had already resigned, the question before the Supreme Court was whether a Bar Council or Bar Association is entitled to pass resolution demanding a Judge to resign, what is its effect on the independence of the judiciary and whether it is constitutionally permissible.

Held :

h In a democracy governed by the rule of law under a written constitution, judiciary is the sentinel on the *qui vive* to protect the fundamental rights and to poise even scales of justice between the citizens and the State or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its

integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judges belong. (Para 10)

S.P. Gupta v Union of India, 1981 Supp SCC 87, relied on

Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived), undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. (Para 11)

Stephen S. Chandler v. Judicial Council of the Tenth Circuit of the United States, 398 US 74 : 26 L Ed 2d 100 (1970), relied on

The arch of the Constitution of India pregnant from its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles) is to establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice — social, economic and political — to every citizen through rule of law. Existing social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law. The Judge cannot retain his earlier passive judicial role when he administers the law under the Constitution to give effect to the constitutional ideals. In this ongoing complex of adjudicatory process, the role of the Judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. Therefore, the Judge is required to take judicial notice of the social and economic ramifications, consistent with the theory of law. Thereby, the society demands active judicial roles which formerly were considered exceptional but now a routine. The Judge must act independently, if he is to perform the functions as expected of him and he must feel secure that such action of his will not lead to his own downfall. The independence is not assured for the Judge but to the judged. Independence to the Judge, therefore, would be both essential and proper. Considered judgment of the court would guarantee the constitutional liberties which would thrive only in an atmosphere of judicial independence. Every endeavour should be made to preserve independent judiciary as a citadel of public justice and public security to fulfil the constitutional role assigned to the Judges. (Para 14)

The Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by Parliament. Articles 124(4) and 121 would put the nail squarely on the projections, prosecutions or attempts by any other forum or group of individuals or associations, statutory or otherwise, either to investigate or inquire into or discuss the conduct of a Judge or the performance of his duties and on/off court behaviour except as per the procedure provided under Articles 124(4) and (5) of the Constitution, the Judges (Inquiry) Act and the Rules. (Paras 19 and 20)

Sub-Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699 : 1991 Supp (2) SCR 1; *K. Veeraswami v. Union of India*, (1991) 3 SCC 655 : 1991 SCC (Cri) 734, relied on

a Article 124(4) of the Constitution sanctions action for removal of a Judge on proved misbehaviour or incapacity. The word 'misbehaviour' was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct as opposed to good conduct. The word 'misconduct' means wrong conduct or improper conduct. It has to be construed with reference to the subject-matter and the context wherein the term occurs having regard to the scope of the Act or the statute under consideration. (Para 24)

First Grade Pleader, Re, AIR 1931 Mad 422 : ILR 54 Mad 520 : 32 Cri LJ 657, referred to

b The behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standards of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standards in the society. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions is the guideline for judicial conduct. (Paras 23, 21 and 22)

Krishna Swami v Union of India, (1992) 4 SCC 605, relied on

e Guarantee of tenure and its protection by the Constitution would not, however, accord sanctuary for corruption or grave misbehaviour. Yet every action or omission by a judicial officer in the performance of his duties which is not a good conduct necessarily, may not be misbehaviour indictable by impeachment, but its insidious effect may be pervasive and may produce deleterious effect on the integrity and impartiality of the Judge. Every misbehaviour in juxtaposition to good behaviour, as a constitutional tautology, will not support impeachment but a misbehaviour which is not a good behaviour may be improper conduct not befitting to the standard expected of a Judge. Threat of impeachment process itself may f swerve a Judge to fall prey to misconduct but it serves disgrace to use impeachment process for minor offences or abrasive conduct on the part of a Judge. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution. Bad conduct or bad behaviour of a Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate Judge. (Paras 25 and 26)

g When the Judge cannot be removed by impeachment process for such conduct but generates widespread feeling of dissatisfaction among the general public, the question would be who would stamp out the rot and judge the Judge or who would impress upon the Judge either to desist from repetition or to demit the office in grace? (Para 26)

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72

462

SUPREME COURT CASES

(1995) 5 SCC

The Bar Council is enjoined by the Advocates Act to maintain high moral, ethical and professional standards among members of the Bar which of late is far from satisfactory. Their power under the Act ends thereat and extends no further. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf. (Para 27)

Criticism of a Judge's conduct or of the conduct of a court even if strongly worded, is, however, not contempt, provided that the criticism is fair, temperate and made in good faith and is not directed to the personal character of a Judge or to the impartiality of a Judge or court. A libel upon a Judge in his judicial capacity is a contempt, whether it concerns what he did in court, or what he did judicially out of it. Scurrilous abuse of a Judge or court, or attacks on the personal character of a Judge, are punishable contempts. Punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual Judges of the court from repetition of the attack, but for protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of a Judge or a court. (Paras 29 and 30)

Halsbury's Laws of England (4th Edn.) Vol. 9, para 27, p. 21; *Oswald's Contempt of Court* (3rd Edn.), 1993, p. 50, *Contempt of Court* (2nd Edn.) by C.J. Miller, p. 366; *Borrie and Lowe's Law of Contempt* (2nd Edn.), p. 226, *relied on*

Choklingo v Attorney General of Trinidad and Tobago, (1981) 1 All ER 244; (1981) 1 WLR 106, *relied on*

It is true that freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So the nation's interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary. (Para 31)

The threat of action on vague grounds of dissatisfaction would create a dragnet that would inevitably sweep into its grasp the maverick, the dissenter, the innovator, the reformer — in one word the unpopular. Insidious attempts pave way for removing the inconvenient. Therefore, proper care should be taken by the Bar Association concerned. First, it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of a reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehaviour. In all fairness to the Judge, the responsible office-bearers should meet him in camera after securing interview and apprise the Judge of the information they have with them. If there is truth in it, there is every possibility that the Judge would mend himself. Or to avoid embarrassment to the Judge, the office-bearers can approach the Chief Justice of that High Court and

apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately. (Para 34)

- a *Brahma Prakash Sharma v. State of U.P.*, AIR 1954 SC 10 : 1953 SCR 1169 : 1954 Cri LJ 238, relied on

It is true that the Supreme Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehaviour of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. The Chief Justice of India was given centre stage position. The primacy and importance of the office of the Chief Justice was recognised judicially by the Supreme Court in *Veeraswami case*. (Para 35)

Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441; *Sub-Committee on Judicial Accountability v. Union of India*, (1991) 4 SCC 699 : 1991 Supp (2) SCR 1, relied on

- c "*Chilling Judicial Independence*", Irving R. Kaufman, Chief Judge, US Court of Appeals for the Second Circuit [See: *Yale Law Journal* (Vol. 88) 1978-79 pp. 681, 712; Harry T Edwards, Chief Judge, US Courts of Appeal for the District of Columbia Circuit [See: *Michigan Law Review* (Vol. 87) 765] in his article "*Regulating Judicial Misconduct and Divining 'Good Behaviour' for Federal Judges*"; Resolution of Nineteenth Biennial Conference of International Bar Association at New Delhi (Oct. 1982), Para 31, referred to

- d Therefore, where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of
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74

464

SUPREME COURT CASES

(1995) 5 SCC

such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India. (Paras 40 and 41)

Thus yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect. (Para 42)

Since in this case Respondent 1 has already demitted the office of Chief Justice of Bombay High Court it would form a precedent for the future. (Para 43)

R-M/14880/CR

Advocates who appeared in this case

C. Ravichandran Iyer in person, Milon Kumar Banerjee, Attorney General for India (S.N. Teral, Advocate, with them) for the Petitioner;

V.N. Ganpule, Senior Advocate (V.B. Joshi, Advocate, with him) for Respondent 2.

F.S. Nariman, Senior Advocate (Daryar Khambatta, R.N. Karanjawala, P.K. Mullick and Ms Manik Karanjawala, Advocates, with him) for Respondent 3.

Harish N. Salve, Senior Advocate (A.M. Khanwilkar, Advocate, with him) for Respondent 4.

M.N. Krishnamani, Senior Advocate, for the Supreme Court Bar Association.

M.P. Vashi, Advocate, for the Bar Council of Maharashtra.

[Ed.: What if a similar situation arises at the level of the Subordinate Judiciary and the local Bar Association agitated over the matter passes a resolution demanding resignation or an enquiry or boycotts the court of such judicial officer. The independence of the judiciary would equally be at stake.]

The Judgment of the Court was delivered by

K. RAMASWAMY, J.— The petitioner, a practising advocate, has initiated the public interest litigation under Article 32 of the Constitution seeking to issue an appropriate writ, order or direction restraining permanently the Bar Council of Maharashtra and Goa (BCMG), Bombay Bar Association (BBA) and the Advocates' Association of Western India (AAWI), Respondents 2 to 4 respectively, coercing Justice A.M. Bhattacharjee (the 1st respondent), Chief Justice of Bombay High Court, to resign from the office as Judge. He also sought an investigation by the Central Bureau of Investigation etc. (Respondents 8 to 10) into the allegations made against the 1st respondent and if the same are found true, to direct the 5th respondent, Speaker, Lok Sabha to initiate action for his removal under Article 124(4) and (5) read with Article 218 of the Constitution of India and Judges (Inquiry) Act, 1968 (for short, 'the Act') This Court on 24-3-1995 issued notice to Respondents 2 to 4 only and rejected the prayer for interim direction to the President of India and the Union of India (Respondents 6 and 7 respectively) not to give effect to the resignation by the 1st respondent. We have also issued notice to the Attorney General for India and the President of the Supreme Court Bar Association (SCBA). The BBA filed a counter-affidavit through its President, Shri Iqbal Mahomedali Chagla. Though Respondents 2 and 4 are represented through counsel, they did not file any counter-affidavit. The SCBA informed the Court that its newly elected office-bearers required time to take a decision on the stand to be taken and we directed them to file their

C RAVICHANDRAN IYER v. JUSTICE A.M BHATTACHARJEE (*K. Ramaswamy, J.*) 465

written submission. Shri F.S. Nariman, learned Senior Counsel appeared for the BBA and Shri Harish N. Salve, learned Senior Counsel, appeared for AAWI, the 4th respondent. The learned Attorney General also assisted the Court. We place on record our deep appreciation for their valuable assistance.

2. The SCBA, instead of filing written submissions sent a note with proposals to reopen the case; to issue notice to all the Bar Associations in the country and refer the matter to a Bench of not less than five, preferably seven, Judges for decision after hearing them all. We do not think that it is necessary to accede to this suggestion.

3. The petitioner in a well-documented petition stated and argued with commitment that the news published in various national newspapers does prove that Respondents 2 to 4 had pressurised the 1st respondent to resign from the office as Judge for his alleged misbehaviour. The Constitution provides for independence of the Judges of the higher courts, i.e., the Supreme Court and the High Courts. It also lays down in proviso (a) to clause (2) of Article 124; so too in Article 217(1) proviso (a) and Article 124(4), procedure for voluntary resignation by a Judge, as well as for compulsory removal, respectively from office in the manner prescribed therein and in accordance with the Act and the Rules made thereunder. The acts and actions of Respondents 2 to 4 are unknown to law, i.e., removal by forced resignation, which is not only unconstitutional but also deleterious to the independence of the judiciary. The accusations against the 1st respondent without proper investigation by an independent agency seriously damage the image of judiciary and efficacy of judicial adjudication and thereby undermine credibility of the judicial institution itself. Judges are not to be judged by the Bar. Allowing adoption of such demands by collective pressure rudely shakes the confidence and competence of judges of integrity, ability, moral vigour and ethical firmness, which in turn, sadly destroys the very foundation of democratic polity. Therefore, the pressure tactics by the Bar requires to be nipped in the bud. He, therefore, vehemently argued and requested the Court to adopt such procedure which would safeguard the independence of the judiciary and protect the judges from pressure through unconstitutional methods to demit the office.

4. Shri Chagla in his affidavit and Shri Nariman appearing for the BBA explained the circumstances that led the BBA to pass the resolution requesting the 1st respondent to demit his office as a Judge in the interest of the institution. It is stated in the affidavit that though initially he had in his custody the documents to show that the 1st respondent had negotiated with Mr S.S. Musafir, Chief Executive of Roebuck Publishing, London and the acceptance by the 1st respondent for publication and sale abroad of a book authored by him, viz., *Muslim Law and the Constitution* for two years at a royalty of US \$ 80,000 (Eighty thousand US Dollars) and an inconclusive negotiation for US \$ 75,000 (Seventy-five thousand US Dollars) for overseas publishing rights of his book *Hindu Law and the Constitution* (2nd Edn.), he did not divulge the information but kept confidential. From about late 1994,

there was considerable agitation amongst the members of Respondents 3 and 4 that certain persons whose names were known to all and who were seen in the court and were being openly talked about, were bringing influence over the 1st respondent and could "influence the course of judgments of the former Chief Justice of Bombay". "The names of such persons though known are not being mentioned here since the former Chief Justice of Bombay has resigned as Chief Justice and Judge of the Bombay High Court." It was also rumoured that "the former Chief Justice of Bombay has been paid a large sum of money in foreign exchange purportedly as royalty for a book written by him, viz., *Muslim Law and the Constitution*. The amount of royalty appeared to be totally disproportionate to what a publisher abroad would be willing to pay for foreign publication of a book which might be of academic interest within India (since the book was a dissertation of Muslim Law in relation to the Constitution of India). There was a growing suspicion at the Bar that the amount might have been paid for reasons "other than the ostensible reason". He further stated that the 1st respondent himself had discussed with the Advocate General on 14-2-1995 impressing upon the latter that the Chief Justice "had decided to proceed on leave from the end of February and would resign in April 1995". The Advocate General had conveyed it to Shri Chagla and other members of the Bar. By then, the financial dealings referred to above were neither known to the public nor found mention in the press reports. Suddenly on 19-2-1995 the advocates found to their surprise a press interview published in *The Times of India* said to have been given by the 1st respondent stating that "he had not seriously checked the antecedents of the publishers and it was possible that he had made a mistake in accepting the offer". He was not contemplating to resign from judgeship at that stage and was merely going on medical leave for which he had already applied for and was granted. The BCMG passed a resolution on 19-2-1995 seeking "resignation forthwith" of the 1st respondent. On 21-2-1995 the BBA received a requisition for holding its general body meeting to discuss the financial dealings said to have been had by the 1st respondent "for a purpose other than the ostensible purpose thereby raising a serious doubt as to the integrity of the Chief Justice". The meeting was scheduled to be held at 2.15 p.m. on 22-2-1995 as per its bye-laws. The 1st respondent appears to have rung up Shri Chagla in the evening on 21-2-1995 but he was not available. Pursuant to a contact by Shri W.Y. Yande, the President of AAWI, at the desire of Chief Justice to meet him, Shri Chagla and Shri Yande met the 1st respondent at his residence at 10.00 a.m. in the presence of two Secretaries of the 1st respondent, who stated thus to Shri Chagla as put in his affidavit:

"... The Bar Council of Maharashtra and Goa had already shot an arrow and that the wound was still fresh and requested me to ensure that he would not be hurt any further by a resolution of the Bombay Bar Association. The 1st respondent informed me that he had already agreed to resign and in fact called for and showed me a letter dated 17-2-1995 addressed by him to the Honourable the Chief Justice of India in which

C. RAVICHANDRAN IYER v. JUSTICE A.M. BHATTACHARJEE (*K. Ramaswamy, J.*) 467

he proposed to go on medical leave for a month and that at the end of the leave or even earlier he proposed to tender his resignation."

- a 5. They had reminded the 1st respondent of the assurance given to the Advocate General expressing his desire to resign and he conveyed his personal inconveniences to be encountered etc. The 1st respondent assured them that he would "resign within a week which resignation would be effective some 10 or 15 days thereafter and that in the meanwhile he would not do any judicial work including delivery of any judgment". Shri Chagla
- b appears to have told the 1st respondent that though he would not give an assurance, he would request the members of the Association to postpone the meeting and he had seen that the meeting was adjourned to 5.00 p.m. on 1-3-1995. On enquiry being made on 1-3-1995 from the Principal Secretary to the 1st respondent whether the 1st respondent had tendered his resignation, it
- c was replied in the negative which showed that the 1st respondent had not kept his promise. Consequently, after full discussion, for and against, an overwhelming majority of 185 out of 207 permanent members resolved in the meeting held on 1-3-1995 at 5.00 p.m. demanding the resignation of the 1st respondent.

- d 6. Since the 1st respondent has already resigned, the question is whether a Bar Council or Bar Association is entitled to pass resolution demanding a Judge to resign, what is its effect on the independence of the judiciary and whether it is constitutionally permissible. Shri Nariman contended that the Supreme Court and the High Court are two independent constitutional institutions. A High Court is not subordinate to the Supreme Court though constitutionally the Supreme Court has the power to hear appeals from the decisions or orders or judgments of the High Courts or any Tribunal or
- e quasi-judicial authority in the country. The Judges and the Chief Justice of a High Court are not subordinate to the Chief Justice of India. The constitutional process of removal of a Judge as provided in Article 124(4) of the Constitution is only for proved misbehaviour or incapacity. The recent impeachment proceedings against Justice V. Ramaswami and its fall out do indicate that the process of impeachment is cumbersome and the result
- f uncertain. Unless corrective steps are taken against Judges whose conduct is perceived by the Bar to be detrimental to the independence of the judiciary, people would lose faith in the efficacy of judicial process. Bar being a collective voice of the court concerned has responsibility and owes a duty to maintain the independence of the judiciary. It is its obligation to bring it to the notice of the Judge concerned the perceived misbehaviour or incapacity
- g and if it is not voluntarily corrected they have to take appropriate measures to have it corrected. Bar is not aware of any other procedure than the one under Article 124(4) of the Constitution and the Act. Therefore, the BBA, instead of proceeding to the press, adopted democratic process to pass the resolution, in accordance with its bye-laws, when all attempts made by it proved abortive. The conduct of the Judge betrayed their confidence in his
- h voluntary resignation. Consequently, the BBA was constrained to pass the said resolution. Thereby it had not transgressed its limits. Its action is in

consonance with its bye-laws and in the best tradition to maintain independence of the judiciary. Shri Nariman also cited the instance of non-assignment of work to four Judges of the Bombay High Court by its former Chief Justice when some allegations of misbehaviour were imputed to them by the Bar. He, however, submitted that in the present case the allegations were against the Chief Justice himself, and so, he could not have been approached. He urged that if some guidelines could be laid down by this Court in such cases, the same would be welcomed.

7. The counsel appearing for the BCMG, who stated that he is its member, submitted that when the Bar believes that the Chief Justice has committed misconduct, as an elected body it is its duty to pass a resolution after full discussion demanding the Judge to act in defence of independence of the judiciary by demitting his office.

8. Shri Salve argued that independence of the judiciary is paramount. Judges should not be kept under pressure. Such procedure which would be conducive to maintain independence of the judiciary and at the same time would nip the evil in the bud, needs to be adopted. The tendencies of unbecoming conduct on the part of erring Judges would betray the confidence of the litigant public in the efficacy of the judicial process. In the light of the previous experience, it is for the Court to evolve a simple and effective procedure to meet the exigencies.

9. The learned Attorney General contended that any resolution passed by any Bar Association tantamounts to scandalising the court entailing contempt of the court. It cannot coerce the Judge to resign. The pressure brought by the Chief Justice of India upon the Judge would be constitutional but it should be left to the Chief Justice of India to impress upon the erring Judge to correct his conduct. This procedure would yield salutary effect. The Chief Justice of India would adopt such procedure as is appropriate to the situation. He cited the advice tendered by Lord Chancellor of England to Lord Denning, when the latter was involved in the controversy over his writing on the jury trial and the composition of the black members of the jury, to demit the office, which he did in grace.

Rule of Law and Judicial Independence — Why need to be preserved?

10. The diverse contentions give rise to the question whether any Bar Council or Bar Association has the right to pass resolution against the conduct of a Judge perceived to have committed misbehaviour and, if so, what is its effect on independence of the judiciary. With a view to appreciate the contentions in their proper perspective, it is necessary to have at the back of our mind the importance of the independence of the judiciary. In a democracy governed by rule of law under a written constitution, judiciary is sentinel on the *qui vive* to protect the fundamental rights and to poise even scales of justice between the citizens and the State or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential

C RAVICHANDRAN IYER v JUSTICE A.M. BHATTACHARJEE (*K. Ramaswamy, J.*) 469

attribute of rule of law. In *S.P. Gupta v. Union of India*¹ (SCC p. 221, para 27) this Court held that if there is one principle which runs through the entire

- a fabric of the Constitution it is the principle of the rule of law, and under the Constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. Judicial review is one of the most potent weapons in the armoury of law. The judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.

Judicial individualism — Whether needs protection?

- d 11. Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived) undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. Judicial individualism, in the language of Justice Powell of the Supreme Court of United States in his address to the American Bar Association, Labour Law Section on 11-8-1976, is "perhaps one of the last citadels of jealously preserved individualism ...". Justice Douglas in his dissenting opinion in *Stephen S. Chandler v. Judicial Council of the Tenth Circuit of the United States*² stated:

- f "No matter how strong an individual judge's spine, the threat of punishment — the greatest peril to judicial independence — would project as dark a shadow whether cast by political strangers or by judicial colleagues. A federal judge must be independent of every other judge.... Neither one alone nor any number banded together can act as censor and place sanctions on him. It is vital to preserve the opportunities for judicial individualism."

g 12. He further opined that to give the administrative officer any supervision or control over the exercise of purely judicial function would be to destroy the very fundamentals of the theory of government.

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1 1981 Supp SCC 87
2 398 US 74 · 26 L Ed 2d 100 (1970)

80

470

SUPREME COURT CASES

(1995) 5 SCC

"An independent judiciary is one of this Nation's outstanding characteristics. Once a federal judge is confirmed by the Senate and takes his oath, he is independent of every other judge. He commonly works with other federal judges who are likewise sovereign. But neither one alone nor any number banded together can act as censor and place sanctions on him. Under the Constitution the only leverage that can be asserted against him is impeachment, where pursuant to a resolution passed by the House, he is tried by the Senate, sitting as a jury. Our tradition even bars political impeachments as evidenced by the highly partisan, but unsuccessful, effort to oust Justice Samuel Chase of this Court in 1805 ... there is no power under our Constitution for one group of federal judges to censor or discipline any federal judge and no power to declare him inefficient and strip him of his power to act as a judge."

At page 139 it was further pointed out that:

"It is time that an end be put to these efforts of federal judges to ride herd on other federal judges. This is a form of 'hazing' having no place under the Constitution. Federal judges are entitled, like other people, to the full freedom of the First Amendment. If they break a law, they can be prosecuted. If they become corrupt or sit in cases in which they have a personal or family stake, they can be impeached by Congress. But I search the Constitution in vain for any power of surveillance which other federal judges have over those aberrations. Some of the idiosyncrasies may be displeasing to those who walk in more measured, conservative steps. But those idiosyncrasies can be of no possible constitutional concern to other federal judges. It is time we put an end to the monstrous practices that seem about to overtake us...."

13. In *Chandler*², a United States District Judge had filed a motion for leave to file a petition for a writ of mandamus or alternatively a writ of prohibition addressed to the Judicial Council of the Tenth Circuit. His petition sought resolution of questions of first impression concerning, inter alia, the scope and constitutionality of the powers of the Judicial Councils under 28 USC §§ 137 and §§ 332. The Judicial Council of each federal circuit is under that statute, composed of the active circuit judges of the circuit. Petitioner asked the Court to issue an order under the All Writs Act telling the Council to "cease acting in violation of its powers and in violation of Judge Chandler's rights as a federal judge and an American citizen". Majority held that in essence, petitioner challenged all orders of the Judicial Council relating to assignment of cases in the Western District of Oklahoma and fixing conditions on the exercise of his constitutional powers as a Judge. Specifically, petitioner urged that the Council has usurped the impeachment power, committed by the Constitution to the Congress exclusively. While conceding that the invoked statute conferred some powers on the Judicial Council, petitioner contended that the legitimate administrative purposes to which it may be turned, do not include stripping a judge of his judicial functions as, he claimed, was done there. No writ was issued.

C. RAVICHANDRAN IYER v. JUSTICE A.M. BHATTACHARJEE (*K. Ramaswamy, J.*) 471

14. The arch of the Constitution of India pregnant from its Preamble, Chapter III (Fundamental Rights) and Chapter IV (Directive Principles) is to
- a establish an egalitarian social order guaranteeing fundamental freedoms and to secure justice — social, economic and political — to every citizen through rule of law. Existing social inequalities need to be removed and equality in fact is accorded to all people irrespective of caste, creed, sex, religion or region subject to protective discrimination only through rule of law. The Judge cannot retain his earlier passive judicial role when he administers the
 - b law under the Constitution to give effect to the constitutional ideals. The extraordinary complexity of modern litigation requires him not merely to declare the rights to citizens but also to mould the relief warranted under given facts and circumstances and often command the executive and other agencies to enforce and give effect to the order, writ or direction or prohibit them to do unconstitutional acts. In this ongoing complex of adjudicatory
 - c process, the role of the Judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. Therefore, the Judge is required to take judicial notice of the social and economic ramification, consistent with the theory of law. Thereby, the society demands active judicial roles which formerly were
 - d considered exceptional but now a routine. The Judge must act independently, if he is to perform the functions as expected of him and he must feel secure that such action of his will not lead to his own downfall. The independence is not assured for the Judge but to the judged. Independence to the Judge, therefore, would be both essential and proper. *Considered judgment of the court would guarantee the constitutional liberties which would thrive only in*
 - e *an atmosphere of judicial independence.* Every endeavour should be made to preserve independent judiciary as a citadel of public justice and public security to fulfil the constitutional role assigned to the Judges.

15. The Founding Fathers of the Constitution advisedly adopted a cumbersome process of impeachment as a mode to remove a Judge from office for only proved misbehaviour or incapacity which implies that
- f impeachment process is not available for minor abrasive behaviour of a Judge. It reinforces that independence to the Judge is of paramount importance to sustain, strengthen and elongate rule of law. Parliament sparingly resorts to the mechanism of impeachment designed under the Constitution by political process as the extreme measure only upon a finding of proved misbehaviour or incapacity recorded by a committee constituted
 - g under Section 3 of the Act by way of address to the President in the manner laid down in Article 124(4) and (5) of the Constitution, the Act and the Rules made thereunder.

16. In all common law jurisdictions, removal by way of impeachment is the accepted norm for serious acts of judicial misconduct committed by a Judge. Removal of a Judge by impeachment was designed to produce as
- h little damage as possible to judicial independence, public confidence in the

82

efficacy of judicial process and to maintain authority of courts for its effective operation.

17. In United States, the Judges appointed under Article III of the American Constitution could be removed only by impeachment by the Congress. The Congress enacted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (the 1980 Act) by which Judicial Council was explicitly empowered to receive complaints about the judicial conduct "prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability".

18. Jeffrey N. Barr and Thomas E. Willging conducted research on the administration of the 1980 Act and in their two research volumes, they concluded that "several Chief Judges view the Act as remedial legislation designed not to punish Judges but to correct aberrant behaviour and provide opportunity for corrective action as a central feature of the Act". From 1980 to 1992, 2388 complaints were filed. 95 per cent thereof resulted in dismissal. 1.7 per cent of the complaints ended in either dismissal from service or corrective action of reprimands — two of public reprimands and one of private reprimand. Two cases were reported to judicial conference by the judicial councils certifying that the grounds might exist for impeachment.

19. Our Constitution permits removal of the Judge only when the motion was carried out with requisite majority of both the Houses of Parliament recommending to the President for removal. In other words, the Constitution does not permit any action by any agency other than the initiation of the action under Article 124(4) by Parliament. In *Sub-Committee on Judicial Accountability v. Union of India*³ this Court at p. 54 held that the removal of a Judge culminating in the presentation of an address by different Houses of Parliament to the President, is committed to Parliament alone and no initiation of any investigation is possible without the initiative being taken by the Houses themselves. At p. 71 it was further held that the constitutional scheme envisages removal of a Judge on proved misbehaviour or incapacity and the conduct of the Judge was prohibited to be discussed in Parliament by Article 121. Resultantly, discussion of the conduct of a Judge or any evaluation or inferences as to its merit is not permissible elsewhere except during investigation before the Inquiry Committee constituted under the Act for this purpose.

20. Articles 124(4) and 121 would thus put the nail squarely on the projections, prosecutions or attempts by any other forum or group of individuals or Associations, statutory or otherwise, either to investigate or inquire into or discuss the conduct of a Judge or the performance of his duties and on/off court behaviour except as per the procedure provided under Articles 124(4) and (5) of the Constitution, and Act and the Rules. Thereby, equally no other agency or authority like the CBI, Ministry of Finance, the Reserve Bank of India (Respondents 8 to 10) as sought for by the petitioner,

C RAVICHANDRAN IYER v. JUSTICE A M. BHATTACHARJEE (*K. Ramaswamy, J.*) 473

- would investigate into the conduct or acts or actions of a Judge. No mandamus or direction would be issued to the Speaker of Lok Sabha or
- a Chairman of Rajya Sabha to initiate action for impeachment. It is true, as contended by the petitioner, that in *K. Veeraswami v. Union of India*⁴ majority of the Constitution Bench upheld the power of the police to investigate into the disproportionate assets alleged to be possessed by a Judge, an offence under Section 5 of the Prevention of Corruption Act, 1947 subject to prior sanction of the Chief Justice of India to maintain
 - b independence of the judiciary. By interpretive process, the Court carved out primacy to the role of the Chief Justice of India, whose efficacy in a case like one at hand would be considered at a later stage.

Duty of the Judge to maintain high standard of conduct. Its judicial individualism — Whether protection imperative?

- c 21. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher
- d standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal
- e conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.

- f 22. In *Krishna Swami v. Union of India*⁵ (SCC at pp. 650-51) one of us (*K. Ramaswamy, J.*) held that the holder of office of the Judge of the Supreme Court or the High Court should, therefore, be above the conduct of ordinary mortals in the society. The standards of judicial behaviour, both on and off the Bench, are normally high. There cannot, however, be any fixed or set principles, but an unwritten code of conduct of well-established traditions
- g is the guidelines for judicial conduct. The conduct that tends to undermine the public confidence in the character, integrity or impartiality of the Judge must be eschewed. It is expected of him to voluntarily set forth wholesome standards of conduct reaffirming fitness to higher responsibilities.

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- 4 (1991) 3 SCC 655 1991 SCC (Cn) 734
5 (1992) 4 SCC 605

84

474

SUPREME COURT CASES

(1995) 5 SCC

23. To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behaviour. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or of any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office-holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.

Scope and meaning of 'misbehaviour' in Article 124(4)

24. Article 124(4) of the Constitution sanctions action for removal of a Judge on proved misbehaviour or incapacity. The word 'misbehaviour' was not advisedly defined. It is a vague and elastic word and embraces within its sweep different facets of conduct as opposed to good conduct. In the *Law Lexicon* by P. Ramanatha Aiyar, 1987 Edn. at p. 821, collected from several decisions, the meaning of the word 'misconduct', is stated to be vague and relative term. Literally, it means wrong conduct or improper conduct. It has to be construed with reference to the subject-matter and the context wherein the term occurs having regard to the scope of the Act or the statute under consideration. In the context of disciplinary proceedings against a solicitor, the word misconduct was construed as professional misconduct extending to conduct "which shows him to be unworthy member of the legal profession". In the context of misrepresentation made by a pleader, who obtained adjournment of a case on grounds to his knowledge to be false a Full Bench of the Madras High Court in *First Grade Pleader, Re*⁶ held that if a legal practitioner deliberately made, for the purpose of impeding the course of justice, a statement to the court which he believed to be untrue and thereby gained an advantage for his client, he was guilty of gross improper conduct and as such rendered himself liable to be dealt with by the High Court in the exercise of its disciplinary jurisdiction. Misconduct on the part of an arbitrator was construed to mean that misconduct does not necessarily comprehend or include misconduct of a fraudulent or improper character, but it does comprehend and include action on the part of the arbitrator which is, upon the face of it, opposed to all rational and reasonable principles that should govern the procedure of any person who is called upon to decide upon questions in difference and dispute referred to him by the parties. Misconduct in office was construed to mean unlawful behaviour or include negligence by public officer, by which the rights of the party have been affected. In *Krishna Swami case*⁵, one of us, K. Ramaswamy, J., considered

⁶ AIR 1931 Mad 422 : ILR 54 Mad 520 : 32 Cri LJ 657

85

C. RAVICHANDRAN IYER v. JUSTICE A.M. BHATTACHARJEE (*K. Ramaswamy, J.*) 475
the scope of 'misbehaviour' in Article 124(4) and held in para 71 that: (SCC p. 651)

- a "Every act or conduct or even error of judgment or negligent acts by higher judiciary per se does not amount to misbehaviour. Wilful abuse of judicial office, wilful misconduct in the office, corruption, lack of integrity, or any other offence involving moral turpitude would be misbehaviour. Misconduct implies actuation of some degree of mens rea by the doer. Judicial finding of guilt of grave crime is misconduct.
- b Persistent failure to perform the judicial duties of the Judge or wilful abuse of the office *dolus malus* would be misbehaviour. Misbehaviour would extend to conduct of the Judge in or beyond the execution of judicial office. Even administrative actions or omissions too need accompaniment of mens rea."
- c 25. Guarantee of tenure and its protection by the Constitution would not, however, accord sanctuary for corruption or grave misbehaviour. Yet every action or omission by a judicial officer in the performance of his duties which is not a good conduct necessarily, may not be misbehaviour indictable by impeachment, but its insidious effect may be pervasive and may produce deleterious effect on the integrity and impartiality of the Judge. Every misbehaviour in juxtaposition to good behaviour, as a constitutional tautology, will not support impeachment but a misbehaviour which is not a good behaviour may be improper conduct not befitting to the standard expected of a Judge. Threat of impeachment process itself may swerve a Judge to fall prey to misconduct but it serves disgrace to use impeachment process for minor offences or abrasive conduct on the part of a Judge. The bad behaviour of one Judge has a rippling effect on the reputation of the judiciary as a whole. When the edifice of judiciary is built heavily on public confidence and respect, the damage by an obstinate Judge would rip apart the entire judicial structure built in the Constitution.
- d 26. Bad conduct or bad behaviour of a Judge, therefore, needs correction to prevent erosion of public confidence in the efficacy of judicial process or dignity of the institution or credibility to the judicial office held by the obstinate Judge. When the Judge cannot be removed by impeachment process for such conduct but generates widespread feeling of dissatisfaction among the general public, the question would be who would stamp out the rot and judge the Judge or who would impress upon the Judge either to desist from repetition or to demit the office in grace? Who would be the appropriate authority? Who would be the principal mover in that behalf? The hiatus between bad behaviour and impeachable misbehaviour needs to be filled in to stem erosion of public confidence in the efficacy of judicial process. Whether the Bar of that Court has any role to play either in an attempt to correct the perceived fallen standard or is entitled to make a demand by a resolution or a group action to pressurise the Judge to resign his office as a Judge? The resolution to these questions involves delicate but pragmatic approach to the questions of constitutional law.
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Role of the Bar Council or Bar Associations — Whether unconstitutional?

27. The Advocates Act, 1961 gave autonomy to a Bar Council of a State or Bar Council of India and Section 6(1) empowers them to make such action deemed necessary to set their house in order, to prevent fall in professional conduct and to punish the incorrigible as not befitting the noble profession apart from admission of the advocates on its roll. Section 6(1)(c) and rules made in that behalf, Sections 9, 35, 36, 36-B and 37 enjoin it to entertain and determine cases of misconduct against advocates on its roll. The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional standards among the members of the Bar are preconditions even for high ethical standards of the Bench. Degeneration thereof inevitably has its eruption and tends to reflect the other side of the coin. The Bar Council, therefore, is enjoined by the Advocates Act to maintain high moral, ethical and professional standards which of late is far from satisfactory. Their power under the Act ends *thereat* and extends no further. Article 121 of the Constitution prohibits discussion by the members of Parliament of the conduct of any Judge of the Supreme Court or of High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as provided under Article 124(4) and (5) and in the manner laid down under the Act, the Rules and the rules of business of Parliament consistent therewith. By necessary implication, no other forum or fora or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a Judge of the Supreme Court or the High Court, much less a Bar Council or group of practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf.

28. Section 2(c) of the Contempt of Courts Act, 1971, defines "criminal contempt" to mean publication whether by words spoken or written, signs, visible representations or otherwise of any matter or the doing of any act whatsoever which scandalises or tends to scandalise, lowers or tends to lower the authority of any court or prejudices or interferes or tends to interfere with the due course of any judicial proceeding, or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

29. In *Halsbury's Laws of England* (4th Edn.) Vol. 9, para 27, at p. 21, it is stated that scandalising the court would mean any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court. Scurrilous abuse of a Judge or court, or attacks on the personal character of a Judge, are punishable contempts. Punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual Judges of the court from repetition of the attack, but for protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the

C RAVICHANDRAN IYER v. JUSTICE A.M. BHATTACHARJEE (*K. Ramaswamy, J.*) 477

a court has regarded with particular seriousness allegations of partiality or bias on the part of a Judge or a court. Criticism of a Judge's conduct or of the conduct of a court even if strongly worded, is, however, not contempt, provided that the criticism is fair, temperate and made in good faith and is not directed to the personal character of a Judge or to the impartiality of a Judge or court.

30. In *Oswald's Contempt of Court* (3rd Edn.), 1993, at p. 50 it is stated that libel upon courts is made contempt

b "to keep a blaze of glory around them, and to deter people from attempting to render them contemptible in the eyes of the public.... A libel upon a court is a reflection upon the King, and telling the people that the administration of justice is in weak or corrupt hands, that the fountain of justice itself is tainted, and consequently that judgments which stream out of that fountain must be impure and contaminated."

c A libel upon a Judge in his judicial capacity is a contempt, whether it concerns what he did in court, or what he did judicially out of it. At p. 91, it is stated that all publications which offend against the dignity of the court, or are calculated to prejudice the course of justice, will constitute contempt. One of the natures of offences is scandalising the courts. In *Contempt of Court* (2nd Edn.) by C.J. Miller at p. 366, Lord Diplock is quoted from *Chokolingo v. Attorney General of Trinidad and Tobago*⁷ who spoke for the Judicial Committee summarising the position thus:

e " 'Scandalising the court' is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice."

f In *Borrie and Lowe's Law of Contempt* (2nd Edn.) at p. 226 it is stated that the necessity for this branch of contempt lies in the idea that without well-regulated laws a civilised community cannot survive. It is therefore thought important to maintain the respect and dignity of the court and its officers, whose task it is to uphold and enforce the law, because without such respect, public faith in the administration of justice would be undermined and the law itself would fall into disrepute. Even in the latest Report on Contempt of Court by Phillimore Committee to revise the penal enforcement of contempt, adverting to Lord Atkin's dictum that courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them, in paragraph 162, the Committee had stated that at one stage

g "we considered whether such conduct should be subject to penal sanctions at all. It was argued that any Judge who was attacked would have the protection of the law of defamation, and that no further protection is necessary. We have concluded, however, that some restraints are still required, for two reasons. First, this branch of the law of contempt is concerned with the protection of the administration of

7 (1981) 1 All ER 244, 248; (1981) 1 WLR 106

justice, and especially the preservation of public confidence in its honesty and impartiality; it is only incidentally, if at all, concerned with the personal reputations of Judges. Moreover, some damaging attacks, for example upon an unspecified group of Judges, may not be capable of being made the subject of libel proceedings at all. Secondly, Judges commonly feel constrained by their position not to take action in reply to criticism, and they have no proper forum in which to do so such as other public figures may have. These considerations lead us to the conclusion that there is need for an effective remedy ... against imputations of improper or corrupt judicial conduct."

The Contempt of Courts Act, 1971 engrafted suitable amendments accordingly.

Freedom of expression and duty of Advocate

31. It is true that freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial independence which alone would protect the life, liberty and reputation of the citizen. So the nation's interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary.

32. It is enough if all of us bear this in mind while expressing opinions on courts and Judges. But the question that still remains is when the Bar of the Court, in which the Judge occupies the seat of office, honestly believes that the conduct of the Judge or of the Bench fouls the fountain of justice, or undermines or tends to undermine the dignity expected of a Judge and the people are tending to disbelieve the impartiality or integrity of the Judge, who should bear the duty and responsibility to have it/them corrected so as to restore the respect for judiciary?

33. In *Brahma Prakash Sharma v. State of U.P.*⁸ the Bar Association passed resolutions and communicated to the superior authorities that certain judicial officers were incompetent due to their conduct in the court and High Court took action for contempt of the court. The question was whether the members of the Executive Committee of the Bar Association had committed contempt of the court? This Court held that the attack on a Judge is a wrong

C. RAVICHANDRAN IYER v JUSTICE A.M. BHATTACHARJEE (*K. Ramaswamy, J.*) 479

- done to the public and if it tends to create apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge and to deter
a actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties, it would be scandalising the court and be dealt with accordingly.

34. The threat of action on vague grounds of dissatisfaction would create a dragnet that would inevitably sweep into its grasp the maverick, the
b dissenter, the innovator, the reformer — in one word the unpopular. Insidious attempts pave way for removing the inconvenient. Therefore, proper care should be taken by the Bar Association concerned. First, it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of a
c reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehaviour. In all fairness to the Judge, the responsible office-bearers should meet him in camera after securing interview and apprise the Judge of the information they had with them. If there is truth in it, there is every possibility that the Judge would mend himself. Or to avoid embarrassment to the Judge, the office-bearers can approach the Chief Justice of that High
d Court and apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately.

Primacy of the Chief Justice of India

35. It is true that this Court has neither administrative control over the High Court nor power on the judicial side to enquire into the misbehaviour
e of a Chief Justice or Judge of a High Court. When the Bar of the High Court concerned reasonably and honestly doubts the conduct of the Chief Justice of that Court, necessarily the only authority under the Constitution that could be tapped is the Chief Justice of India, who in common parlance is known as the head of the judiciary of the country. It is of importance to emphasise here that impeachment is meant to be a drastic remedy and needs to be used in
f serious cases. But there must exist some other means to ensure that Judges do not abuse the trust the society has in them. It seems to us that self-regulation by the judiciary is the only method which can be tried and adopted. Chief Justice of India is the first among the Judges. Under Articles 124(2) and 217(1), the President of India always consults the Chief Justice of India for appointment of the Judges in the Supreme Court and High Courts.
g Under Article 222, the President transfers Judges of High Courts in consultation with the Chief Justice of India. In *Supreme Court Advocates-on-Record Assn. v. Union of India*⁹ it was reinforced and the Chief Justice of India was given centre stage position. The primacy and importance of the office of the Chief Justice was recognised judicially by this Court in *Veeraswami case*⁴ (in para 60 at p. 709). This Court, while upholding power
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to register a case against a retired Chief Justice of the High Court, permitted to proceed with the investigation for the alleged offence under Section 5 of the Prevention of Corruption Act. The Constitution Bench per majority, however, held that the sanction and approval of the Chief Justice of India is a condition precedent to register a case and investigate into the matter and sanction for prosecution of the said Judge by the President after consultation with the Chief Justice of India. a

36. In *Sub-Committee on Judicial Accountability*³ also the same primacy had been accorded to the Chief Justice at p. 72 thus: (SCC p. 758, para 112) b

"It would also be reasonable to assume that the Chief Justice of India is expected to find a desirable solution in such a situation to avoid embarrassment to the learned Judge and to the institution in a manner which is conducive to the independence of judiciary and should the Chief Justice of India be of the view that in the interests of the institution of judiciary it is desirable for the learned Judge to abstain from judicial work till the final outcome under Article 124(4), he would advise the learned Judge accordingly. It is further reasonable to assume that the concerned learned Judge would ordinarily abide by the advice of the Chief Justice of India." c

37. International Bar Association at its 19th Biennial Conference held at New Delhi in October 1982 had adopted minimum standards for judicial conduct. Paras 27 to 72 relate to judicial removal and discipline. Para 31 says that "the head of the Court may legitimately have supervisory powers to control judges on administrative matters". d

38. In "*Chilling Judicial Independence*", Irving R. Kaufman, Chief Judge, US Court of Appeals for the Second Circuit [See: Yale Law Journal (Vol. 88) 1978-79, p. 681, at p. 712] stated that it seems unwise to allow bureaucrats, whether lawyers or not, to determine, even in part, the fate of Judges. The sheer magnitude of the disciplinary engine would be a major nuisance. Judges frequently receive hostile or threatening correspondence from disappointed litigants. Creation of a new disciplinary scheme would transform a minor annoyance into a constant threat of official action. At the very least, it would require time-consuming responses by the Judge. Even if the Judge were not eventually condemned, the mere invocation of the statutory provisions might taint him with a devastating stigma. The vestment of authority might remain but the aura of respect and confidence so essential to the judicial function would be forever dissipated. He, therefore, suggested that pressure by the peers would yield salutary effect on the erring Judge and, therefore, judicial system can better survive by pressure of the peers instead of disciplinary actions. At p. 709 he stated: e

"Peer pressure is a potent tool. It should not be underestimated because it is neither exposed to public view nor enshrined in law." f

39. Harry T. Edwards, Chief Judge, US Courts of Appeal for the District of Columbia Circuit [See: Michigan Law Review (Vol. 87) p. 765] in his h

91

C. RAVICHANDRAN IYER v. JUSTICE A.M. BHATTACHARJEE (*K. Ramaswamy, J.*) 481
article "*Regulating Judicial Misconduct and Divining 'Good Behaviour' for Federal Judges*", after the 1980 Act, suggested that:

- a "I believe that federal judges are subject to some measure of control by peers with respect to behaviour or intimidation that adversely affects the work of the court and that does not rise to the level of impeachable misconduct. 'I would submit that the ideal of judicial independence is not compromised when judges are monitored and are regulated by their own peers.' This limited system of judicial self-regulation resists no constitutional dilemma as long as removal power remains with Congress. 'I argue that judiciary alone should monitor this bad behaviour through a system of self-regulation.'"
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He opined that self-regulation would bridge the hiatus between bad behaviour and impeachable conduct to yield salutary effect.

- c 40. Bearing all the above in mind, we are of the considered view that where the complaint relates to the Judge of the High Court, the Chief Justice of that High Court, after verification, and if necessary, after confidential enquiry from his independent source, should satisfy himself about the truth of the imputation made by the Bar Association through its office-bearers against the Judge and consult the Chief Justice of India, where deemed necessary, by placing all the information with him. When the Chief Justice of India is seized of the matter, to avoid embarrassment to him and to allow fairness in the procedure to be adopted in furtherance thereof, the Bar should suspend all further actions to enable the Chief Justice of India to appropriately deal with the matter. This is necessary because any action he may take must not only be just but must also appear to be just to all concerned, i.e., it must not even appear to have been taken under pressure from any quarter. The Chief Justice of India, on receipt of the information from the Chief Justice of the High Court, after being satisfied about the correctness and truth touching the conduct of the Judge, may tender such advice either directly or may initiate such action, as is deemed necessary or warranted under given facts and circumstances. If circumstances permit, it may be salutary to take the Judge into confidence before initiating action. On the decision being taken by the Chief Justice of India, the matter should rest at that. This procedure would not only facilitate nipping in the bud the conduct of a Judge leading to loss of public confidence in the courts and sustain public faith in the efficacy of the rule of law and respect for the judiciary, but would also avoid needless embarrassment of contempt proceedings against the office-bearers of the Bar Association and group libel against all concerned. The independence of judiciary and the stream of public justice would remain pure and unsullied. The Bar Association could remain a useful arm of the judiciary and in the case of sagging reputation of the particular Judge, the Bar Association could take up the matter with the Chief Justice of the High Court and await his response for the action taken thereunder for a reasonable period.
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92

482

SUPREME COURT CASES

(1995) 5 SCC

41. In case the allegations are against Chief Justice of a High Court, the Bar should bring them directly to the notice of the Chief Justice of India. On receipt of such complaint, the Chief Justice of India would in the same way act as stated above qua complaint against a Judge of the High Court, and the Bar would await for a reasonable period the response of the Chief Justice of India. e

42. It would thus be seen that yawning gap between proved misbehaviour and bad conduct inconsistent with the high office on the part of a non-cooperating Judge/Chief Justice of a High Court could be disciplined by self-regulation through in-house procedure. This in-house procedure would fill in the constitutional gap and would yield salutary effect. Unfortunately, recourse to this procedure was not taken in the case at hand, may be, because of absence of legal sanction to such a procedure. t

43. Since the 1st respondent has already demitted the office, we have stated as above so that it would form a precedent for future. c

44. The writ petition is accordingly disposed of.

(1995) 5 Supreme Court Cases 482

(BEFORE K. RAMASWAMY AND N. VENKATACHALA, JJ.)

LIC OF INDIA AND ANOTHER

.. Appellants; c

Versus

CONSUMER EDUCATION & RESEARCH
CENTRE AND OTHERS

.. Respondents. e

Civil Appeals No. 7711 of 1994† with No. 5651 of 1995,
decided on May 10, 1995

A. Constitution of India — Arts. 12, 298, 21, 14, 19 and Preamble & Part IV — State action in contractual field — Action of State instrumentality or public authority having public element — Must be just, fair and reasonable, in public interest and in consonance with the constitutional conscience and socio-economic justice — Insurance policies of LIC — Terms and conditions prescribed therein involve public element — While LIC is entitled to evolve policies on business principles, it cannot restrict a policy to a class of persons only thereby denying others its benefits — Term insurance policy under Table 58 of LIC — Object — Held, policy cannot be restricted only to salaried persons in Govt., quasi-Govt. or reputed commercial firms — Such condition in Table 58 declared unconstitutional — But that condition being severable from rest of the conditions, entire Table 58 need not be declared unconstitutional — Universal Declaration of Human Rights, Art. 25(2) — International Covenant of Economic, Social and Cultural Rights, Art. 7 f

B. Constitution of India — Art. 21 — Right to life and livelihood — Comprehends right to life insurance policies of LIC — Such policies must be within the paying capacity and means of the insured g

† From the Judgment and Order dated 31-1-1994 of the Gujarat High Court in S.C.A. No. 2614 of 1980 h

93

406

SUPREME COURT CASES

(1991) 4 SCC

(1991) 4 Supreme Court Cases 406

(BEFORE K.N. SINGH, KULDIP SINGH AND N.M. KASLIWAL, JJ.)

Writ Petition (Criminal) No. 517 of 1989[†]

a

DELHI JUDICIAL SERVICE ASSOCIATION,
TIS HAZARI COURT, DELHI

.. Petitioner;

Versus

STATE OF GUJARAT AND OTHERS

.. Respondents. b

With

Writ Petition (Criminal) No. 518 of 1989

A.K. SRIVASTAVA AND OTHERS

.. Petitioners;

Versus

UNION OF INDIA AND OTHERS

.. Respondents. c

With

Contempt Petition (Criminal) No. 6 of 1989

N.L. PATEL

.. Petitioner; d

Versus

STATE OF GUJARAT AND OTHERS

.. Respondents.

With

Writ Petition (Criminal) Nos. 523-24 of 1989

BHUSHAN B. OZA AND ANOTHER

.. Petitioners; e

Versus

UNION OF INDIA AND OTHERS

.. Respondents.

With

Writ Petition (Criminal) Nos. 525-26 of 1989

f

GUJARAT JUDICIAL SERVICE ASSOCIATION

.. Petitioner;

Versus

STATE OF GUJARAT AND OTHERS

.. Respondents.

With

g

Writ Petition (Criminal) No. 527 of 1989

BAR COUNCIL OF GUJARAT, AHMEDABAD

.. Petitioner;

Versus

STATE OF GUJARAT AND OTHERS

.. Respondents. h

i

[†] Under Article 32 of the Constitution of India

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT 407

With

Criminal Miscellaneous Petition No. 1110 of 1990

a COMPLAINT RECEIVED FROM DELHI JUDICIAL
SERVICE ASSOCIATION, TIS HAZARI, DELHI .. Petitioner;

Versus

STATE OF GUJARAT AND OTHERS .. Respondents.

b *With*

Cri. Misc. Petition Nos. 4271, 4272, 4274, 4277-4282 of 1989

DELHI JUDICIAL SERVICE ASSOCIATION .. Petitioner;

Versus

c STATE OF GUJARAT AND OTHERS .. Respondents.

With

Criminal Contempt Petition No. of 1989

R.L. PANJWANI, ADVOCATE, SUPREME COURT .. Petitioner;

Versus

d S.R. SHARMA, POLICE INSPECTOR NADIAD
AND OTHERS .. Respondents.

With

Criminal Miscellaneous Petition No. 1110 of 1990

e N.L. PATEL, CJM, NADIAD .. Petitioner;

Versus

STATE OF GUJARAT AND OTHERS .. Respondents.

Writ Petition (Criminal) Nos. 517, 518, 523-24, 525-26, 527 of 1989;
Contempt Petition (Criminal) No. 6 of 1989 and Criminal Miscellaneous
Petition Nos. 1110 of 1990 and 4271, 4272, 4274 and 4277-4282 of 1989,
decided on September 11, 1991

f
g Contempt of Courts Act, 1971 — Sections 2(c) and 12 — Criminal con-
tempt — Police officers assaulting, arresting on flimsy grounds, handcuffing
and tying with a rope a Chief Judicial Magistrate to wreak vengeance and to
humiliate him in order to show superiority of police power and privilege —
Held, constituted clear case of criminal contempt — Quantum of punishment
to be awarded to each contemner found guilty of contempt determined having
regard to the degree and extent of part played by him — Guidelines laid down
by Supreme Court to be followed by State Governments as well as High Courts
h while arresting Judicial Officers — Judicial Officers should not visit any police
station except in connection with official and judicial duties and with prior
intimation to District and Sessions Judge

i Contempt of Courts Act, 1971 — Section 12 — Criminal contempt —
Object of punishing the contemner is to protect the administration of public
justice and not to protect the judges personally

95

408

SUPREME COURT CASES

(1991) 4 SCC

Constitution of India — Articles 129, 32, 136, 141, 142 — Supreme Court has inherent power and jurisdiction to take action for contempt of subordinate or inferior courts also — But it should exercise this power sparingly when such contempt is likely to have repercussions throughout the country

Soon after the posting of 'P' as Chief Judicial Magistrate at Nadiad in State of Gujarat in October 1988, he found that the local police was not co-operating with the courts in effecting service of summons, warrants and notices on accused persons, as a result of which the trials of cases were delayed. He made complaint against the local police to the District Superintendent of Police and forwarded a copy of the same to the Director General of Police but nothing concrete happened. On account of these complaints, 'S', the then Police Inspector Nadiad, became annoyed with the Chief Judicial Magistrate and withdrew constables posted in the CJM Court. When 'P' directed the police to drop the criminal cases against certain persons who had caused obstruction in judicial proceedings on their tendering unqualified apology, 'S' reacted strongly to the direction and made complaint against the CJM to the Registrar of the High Court through District Superintendent of Police. On September 25, 1989, 'S' met the CJM in his chambers to discuss a case where the police had failed to submit charge-sheet within 90 days. During discussion 'S' invited the CJM to visit the police station to see the papers and further assured that his visit would mollify the sentiments of the police officials. Accordingly, at about 8.40 p.m. 'S' sent a police jeep at the residence of 'P' and on that vehicle 'P' went to the police station. When he arrived in the chamber of 'S' in the police station he was forced to consume liquor and on his refusal he was assaulted. He was handcuffed and tied up with a thick rope by the Police Inspector, a Sub-Inspector, a Head Constable and a Constable. This was deliberately done in defiance of Police Regulations and Circulars issued by the Gujarat Government and the law declared by Supreme Court in *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526. A panchnama showing the drunken state of 'P' was prepared on the dictation of 'S' and was signed by 'S' as well as two panchas — a Mamlatdar and a Fire Brigade Officer. Thereafter, 'P' was taken to Civil Hospital handcuffed and tied with thick rope where he was deliberately made to sit outside in the verandah on a bench for half an hour to enable the public to have a full view of the CJM in that condition. A press photographer was brought on the scene and the policemen posed with 'P' for the press photograph. The photographs so taken were published in newspapers. A belated justification for this was pleaded by the police that 'P' desired to have himself photographed in that condition. A request made by 'P' in the casualty ward of the Civil Hospital, to the doctors to contact the District Judge and inform him about the incident was not allowed by 'S' and other police officers. On examination at the hospital, the body of 'P' was found to have a number of injuries. His blood was taken and chemical examination conducted without following the procedure prescribed by the Rules and the Circulars issued by the Director of Medical Services, Gujarat. The Chemical Examiner submitted the report holding that the blood sample of 'P' contained alcohol on the basis of the calculation made by him in the report, though he later clearly admitted that he had never determined the quantity of liquor by making calculation in any

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT

409

- other case before. At the initial stage only one case was registered against 'P' by the police under the Bombay Prohibition Act, but when lawyers met 'S' for securing release of 'P' on bail, the offence being bailable, 'S' registered another case under Sections 332 and 506 IPC in order to frustrate the attempt to get 'P' released as offence under Section 332 is non-bailable. The then District Superintendent of Police did not take any immediate action in the matter; instead he created an alibi for himself alleging that he had gone elsewhere and stayed in a Government Rest House there. The register at the Rest House indicating the entry regarding his stay was found to have been manipulated subsequently by making interpolation. All these facts were found established by a then sitting Judge of Allahabad High Court who was appointed as Commissioner by the Supreme Court to hold inquiry and submit report after the Court took cognizance of the matter and issued notices to the State of Gujarat and other police officers pursuant to the writ petitions under Article 32 filed and telegrams sent to the Court from all over the country by Bar Councils, Bar Associations and individuals for saving the dignity and honour of the judiciary. Two basic questions arose before the Supreme Court: (1) Whether the incident constituted contempt of court? (2) Whether Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior courts under Article 129 and whether the inherent jurisdiction and power of the Supreme Court is restricted by the Act? Disposing of the writ petitions, contempt petitions and criminal miscellaneous petitions the Supreme Court

Held:

- (1) The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. The power to punish for contempt is thus for the protection of public justice, whose interest requires that decency and decorum is preserved in Courts of Justice. Those who have to discharge duty in a Court of Justice are protected by the law, and shielded in the discharge of their duties. Any deliberate interference with the discharge of such duties either in court or outside the court by attacking the presiding officers of the court, would amount to criminal contempt and the courts must take serious cognizance of such conduct. (Paras 42 and 43)

- In this case the CJM was assaulted, arrested, handcuffed and tied with a thick rope around his arms and body by the police officers as if he was a wild animal. He was taken in that condition to the hospital for medical examination where he was made to sit in the verandah exposing him to the public gaze, providing opportunity to the members of the public to see that the police had the power and privilege to apprehend and deal with a Chief Judicial Magistrate according to its sweet will. The incident is not a case of physical assault on an

97

410

SUPREME COURT CASES

(1991) 4 SCC

individual judicial officer; instead it is an onslaught on the institution of the judiciary itself, a clear interference with the administration of justice, lowering its judicial authority. Its effect was not confined to one District or State, it had a tendency to effect the entire judiciary in the country. The incident highlights a dangerous trend that if the police is annoyed with the orders of a presiding officer of a court, he would be arrested on flimsy manufactured charges, to humiliate him publicly as has been done in the instant case. The conduct of police officers in assaulting and humiliating the CJM brought the authority and administration of justice into disrespect, affecting the public confidence in the institution of justice. The Chief Judicial Magistrate is head of the Magistracy in the district who administers justice to ensure, protect and safeguard the rights of citizens. The subordinate courts at the district level cater to the need of the masses in administering justice at the base level. By and large the majority of the people get their disputes adjudicated in subordinate courts. It is therefore, in the general interest of the community that the authority of subordinate courts is protected. If the CJM is led into trap by unscrupulous police officers and if he is assaulted, handcuffed and roped, the public is bound to lose faith in courts, which would be destructive of basic structure of an ordered society. If this is permitted Rule of Law shall be supplanted by Police Raj.

(Paras 40 and 43)

Prem Shankar Shukla v. Delhi Administration, (1980) 3 SCC 526; 1980 SCC (Cri) 815; *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494; 1979 SCC (Cri) 155, *relied on* *Helmores v. Smith*, (1886) 35 Ch D 436; (1886) 31 Sol Jo 60; *Offutt v. U.S.*, (1954) 348 US 11; 99 L Ed 11; *Attorney General v. Times Newspapers*, (1974) AC 273; (1973) 3 All ER 54, *referred to*

Therefore, 'S', the Police Inspector, who had pre-planned the entire scheme, the SI, the Head Constable and the Constable who had taken active part in this shameful episode with a view to malign and denigrate the CJM on account of his judicial orders against the police were guilty of contempt of court. The Mamlatdar was also in complicity with 'S' and he having actively participated in the preparation of the document to malign and humiliate the CJM and to prepare a false case against him, is also guilty of contempt of court. Besides, the then District Superintendent of Police did not discharge his duty like a responsible police officer; instead he identified himself with the Police Inspector and actively abetted the commission of onslaught on the CJM. Therefore, he was also guilty of contempt of court.

(Paras 45 and 46)

In determining the punishment, the degree and the extent of part played by each of the contemnors has to be kept in mind. The Police Inspector, who had planned the entire episode, being the main culprit, deserves the maximum punishment. He shall undergo simple imprisonment for a period of six months and he shall pay fine of Rs 2000. The Sub-Inspector, who took active part in assaulting and tying the CJM at the behest of the Inspector, shall undergo simple imprisonment for a period of five months and pay a fine of Rs 2000 and in default he shall undergo one month's simple imprisonment. The Head Constable and the Constable, who also took active part in the incident, but as subordinate officials, acted under the orders of his superior officer and therefore, both are convicted and awarded simple imprisonment for a period of two

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT

411

- months and a fine of Rs 500 each, in default they would undergo simple imprisonment for a further period of 15 days. The Mamlatdar who was friendly to the Inspector but had no axe to grind against the CJM and acted under the influence of the Inspector, is, convicted and awarded two months' simple imprisonment and a fine of Rs 1000 and in default he would undergo one month's simple imprisonment. The then District Superintendent of Police, who had actively abetted the commission of the onslaught on the CJM, is convicted and sentenced to imprisonment for a period of one month and to pay a fine of Rs 1000 and in default to undergo simple imprisonment for 15 days. So far as other respondents, against whom notices of contempt have been issued by the Court, are concerned there is no adequate material on record to hold them guilty of contempt of court. Accordingly, notice issued to them are discharged. However, the then D.G., Police was totally indifferent to the news that a CJM was arrested, handcuffed, roped and assaulted. He took this news as a routine matter without taking any steps to ascertain the correct facts or effective action against the erring police officers. If the head of the police administration in the State exhibits such indifference to a sensitive matter which shook the entire judicial machinery in the State, nothing better could be expected from his subordinate officers. He did not act like a responsible officer. The State Government should take action against him departmentally on the basis of the findings recorded by the Commission. Discharge of contempt notices does not absolve these officers of their misconduct. The State Government is directed to proceed with the disciplinary proceedings for taking appropriate action against them. (Paras 52 and 53)

- It is hoped that the State Government will take effective measures to avoid reoccurrence of any such instance. The State Government should further take immediate steps for the review and revision of the Police Regulations in the light of the findings recorded by the Commission. However, the following guidelines are laid down which should be followed in case of arrest and detention of a Judicial Officer :

- (A) A Judicial Officer should be arrested for any offence under intimation to District Judge or the High Court as the case may be.

- (B) In case of necessity for immediate arrest of a Judicial Officer only a technical or formal arrest may be effected.

- (C) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

- (D) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

- (E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and Judicial Officers, including the District and Sessions Judge.

- (F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the

412

SUPREME COURT CASES

(1991) 4 SCC

presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) Ordinarily there should be no handcuffing of a Judicial Officer.

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The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a Judicial Officer. These guidelines should be implemented by the State Government as well as by the High Courts.

(Paras 54, 55 and 56)

b

Further, no Judicial Officer should visit a Police Station on his own except in connection with his official and judicial duties and functions. If it is necessary for a Judicial Officer or a Subordinate Judicial Officer to visit the Police Station in connection with his official duties, he must do so with prior intimation of his visit to the District and Sessions Judge.

(Para 57)

c

(2) Since the Supreme Court has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country. It has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The subordinate and inferior courts do not have adequate power under the law to protect themselves. Therefore, it is necessary that the Supreme Court should protect them. Under the constitutional scheme the Supreme Court has a special role in the administration of justice. The powers conferred on it under Articles 32, 136, 141 and 142 form part of basic structure of the Constitution. The amplitude of the power of the Court under these articles of the Constitution cannot be curtailed by law made by Central or State legislature. Though High Courts have power to persist for the contempt of subordinate courts but that does not affect or abridge the inherent power of the Supreme Court under Article 129. The Supreme Court and the High Court both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Articles 32 and 226. Therefore the Supreme Court's jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice throughout the country. For that purpose it must wield the requisite power to take action for contempt of subordinate courts. Ordinarily, the High Court would protect the subordinate court from any onslaught on their independence, but in exceptional cases, such as when attack on judges or Magistrates of subordinate courts may have wide repercussions throughout the country, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, the Supreme Court may directly take cognizance of contempt of subordinate courts. However, Court will sparingly exercise its inherent power in taking cognizance of the contempt of subordinate courts, as ordinarily matters relating to contempt of subordinate courts must be dealt with by the High Courts. The instant case is of exceptional nature, as the incident created a situation where functioning of the subordinate courts all over

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100

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT 413

the country was adversely affected, and the administration of justice was paralysed. Therefore, the Supreme Court took cognizance of the matter.

a (Para 37)

K.L. Gauba v. Hon'ble the Chief Justice and Judges of the High Court of Judicature at Lahore, AIR 1942 FC 1: 43 Cri LJ 311: 1941 FCR 54; *Purshottam Lal Jaitly v. King-Emperor*, 1944 FCR 364, distinguished and limited

b Constitution of India — Articles 136 and 124 — Supervisory and appellate jurisdiction of Supreme Court of India — Held, appellate jurisdiction under Article 136 is plenary unaffected by Courts own rules of practice such as exhaustion of alternate remedies — Also this jurisdiction unaffected by Articles 132, 133, 134 and 134A — From this plenary jurisdiction under Article 136 flows supervisory jurisdiction over all courts and tribunals in India

c Held :

The Court's appellate power under Article 136 is plenary. It may entertain any appeal by granting special leave against any order made by any Magistrate, tribunal on any other subordinate court. The width and amplitude of the power is not affected by the practice and procedure followed by the Supreme Court in insisting that before invoking the jurisdiction of the Court under Article 136, the aggrieved party must exhaust remedy available under the law before the appellate authority or the High Court. Self-imposed restrictions by the Supreme Court do not divest it of its wide powers to entertain any appeal against any order or judgment passed by any court or tribunal in the country without exhausting alternative remedy before the appellate authority or the High Court. In view of the expression "notwithstanding anything in this Chapter" occurring in Article 136 the power of the Supreme Court thereunder is unaffected by Articles 132, 133, 134 and 134-A. (Para 15)

f The Supreme Court has wide power to interfere and correct the judgment and orders passed by any court or tribunal in the country. In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of the Supreme Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. The Supreme Court has, therefore, supervisory jurisdiction over all courts in India. (Paras 18 and 31)

g *Durga Shankar Mehta v. Thakur Raghuraj Singh*, AIR 1954 SC 520: (1955) 1 SCR 267: 9 ELR 494; *Arunachalam v. P.S.R. Sadhanantham*, (1979) 2 SCC 297: 1979 SCC (Cri) 454, relied on

h Constitution of India — Articles 129, 215, 136 and 227 — Contempt of court — When High Courts as Courts of Record have inherent jurisdiction to take action for contempt of subordinate or inferior courts, a fortiori, Supreme Court, having judicial superintendence over all courts in India under Article 136, has the same jurisdiction — Jurisdiction and power of Supreme Court is not limited in any manner — Supreme Court can determine its own jurisdiction in such matters and it will be final — Contempt of Courts Act does not curtail this power

101

414

SUPREME COURT CASES

(1991) 4 SCC

Constitution of India — Articles 129 and 215 — 'Courts of Record' — Meaning — Have power to summarily punish for contempt of court — Words and Phrases

Constitution of India — Articles 129 and 246 and Schedule VII List I Entry 77 — Central legislation under Entry 77 of List I read with Article 246 cannot impinge upon Supreme Court's power under Article 129 to take action against contempt of subordinate courts — Contempt of Courts Act, 1971, Section 15

Contempt of Courts Act, 1971 — Section 15 — It is only a procedural and not substantive provision and does not confer on Supreme Court or High Courts any power for taking action for contempt

It was contended that Articles 129 and 215 demarcate the respective areas of jurisdiction of the Supreme Court and the High Courts respectively. The Supreme Court's jurisdiction under Article 129 is confined to the contempt of itself only and it has no jurisdiction to indict a person for contempt of an inferior court subordinate to the High Court. It was urged that even if the Supreme Court is a court of record, it has no power to take action for the contempt of a Chief Judicial Magistrate's court as neither the Constitution nor any statutory provision confers any such jurisdiction or power on the Supreme Court. It was further urged that so far as the High Court is concerned, it has power of judicial and administrative superintendence over the subordinate courts and further Section 15 of the Act expressly confers power on the High Court to take action for the contempt of subordinate courts. The Supreme Court being a court of record has limited jurisdiction to take action for contempt of itself under Article 129; it has no jurisdiction to indict a person for the contempt of subordinate or inferior courts. Rejecting the contentions

Held :

Both the Supreme Court as well as High Courts are courts of record. The Constitution does not define "Court of Record", but this expression is well recognised in juridical world. A Court of Record is "a court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony" and has power of summarily punishing contempt of itself as well as of subordinate courts. (Paras 19 and 21)

Jowitt's Dictionary of English Law; *Wharton's Law Lexicon*; *Words and Phrases* (Permanent Edition Vol. 10, page 429); *Halsbury's Laws of England*, 4th Edn., Vol. 10, para 709, page 319, relied on
Sukhdev Singh Sodhi v. Chief Justice and Judges of the PEPSU High Court, AIR 1954 SC 186; 1954 SCR 454; 1954 Cri LJ 460, relied on
Rex v. Almon, 97 ER 94; 1765 Wilm 243; *Rainy v. Justices of Seirra Leone*, (1853) 8 Moore's PCC 54; *Surendranath Banerjee v. Chief Justice and Judges of the High Court at Fort William in Bengal*, ILR 10 Cal 109; 10 IA 171; 4 Sar 474, referred to

The High Court being a court of record has inherent power in respect of contempt of itself as well as of its subordinate courts even in the absence of any express provision in any Act. A fortiori the Supreme Court being the Apex Court and a superior court of record has power to determine its jurisdiction under Article 129 and it has jurisdiction to initiate or entertain proceedings for

102

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT

415

contempt of subordinate courts also. This view does not run counter to any provision of the Constitution. (Paras 31 and 38)

- a Article 227 confers supervisory jurisdiction on the High Court and in exercise of that power High Court may correct judicial orders of subordinate courts. In addition to that, the High Court has administrative control over the subordinate courts. Supreme Court's power to correct judicial orders of the subordinate courts under Article 136 is much wider and more effective than that contained under Article 227. Absence of administrative power of superintendence over the High Court and subordinate court does not affect the Supreme Court's wide power of judicial superintendence of all courts in India. Once there is power of judicial superintendence, all the courts whose orders are amenable to correction by the Supreme Court would be subordinate courts and therefore, the Supreme Court also possesses similar inherent power as the High Court has under Article 215 with regard to the contempt of subordinate courts. (Para 31)
- b
- c The jurisdiction and power of a superior Court of Record to punish contempt of subordinate courts was not founded on the Court's administrative power of superintendence; instead the inherent jurisdiction was conceded to superior Court of Record on the premise of its judicial power to correct the errors of subordinate courts. (Para 31)
- d While courts constituted under a law enacted by the Parliament or the State legislature have limited jurisdiction and they cannot assume jurisdiction in a matter, not expressly assigned to them, that is not so in the case of a superior court of record constituted by the Constitution. Such a court does not have a limited jurisdiction; instead it has power to determine its own jurisdiction. No matter is beyond the jurisdiction of a superior court of record unless it is expressly shown to be so under the provisions of the Constitution. In the absence of any express provision in the Constitution the Apex Court being a court of record has jurisdiction in every matter and if there be any doubt, the Court has power to determine its jurisdiction. If such determination is made by High Court, the same would be subject to appeal to the Supreme Court, but if the jurisdiction is determined by the Supreme Court it would be final. (Para 38)
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- f *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1: (1966) 3 SCR 744, distinguished
Halsbury's Laws of England, 4th edn., Vol. 10, para 713, relied on
Special Reference No. 1 of 1964, AIR 1965 SC 745: (1965) 1 SCR 413, approved
Ganga Bishan v. Jai Narain, (1986) 1 SCC 75, relied on
- g Inherent powers of a superior Court of Record have remained unaffected even after codification of Contempt Law. There is no provision in the Contempt of Courts Act, 1971 curtailing the Supreme Court's power with regard to contempt of subordinate courts. Section 15 of the Act prescribes modes for taking cognizance of criminal contempt by the High Court and Supreme Court. It is not a substantive provision conferring power or jurisdiction on the High Court or on the Supreme Court for taking action for the contempt of its subordinate courts. The whole object of prescribing procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court and the Supreme Court being wasted by frivolous complaints of contempt of court. (Paras 26 and 27)
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103

416

SUPREME COURT CASES

(1991) 4 SCC

Venkat Rao, Re, 21 Mad LJ 832; 10 MLT 209; 12 IC 293 (FB); *Mohandas Karamchand Gandhi, Re*, AIR 1920 Bom 175; 21 Cri LJ 835 (FB); (1920) 22 Bom LR 368; *Abdul Hassan Jauhar case*, AIR 1926 All 623; 24 ALJ 849 (FB) (Cited in the report as *In re Hadi Husian v. Nasir Uddin Haider*); *Shantha Nand Gir Chela v. Basudevanand*, AIR 1930 All 225; 1930 ALJ 402 (FB); *Mt. Hirabai v. Mangalchand*, AIR 1935 Nag 46; 156 IC 666; 31 NLR 154; *Harkishen Lal v. Emperor*, AIR 1937 Lah 497; 38 Cri LJ 883; 39 PLR 733 (SB); *Mohammad Yusuf v. Imtiaz Ahmad Khan*, AIR 1939 Oudh 131; 40 Cri LJ 421; 1939 OLR 194 (FB), approved

Legal Remembrancer v. Motilal Ghosh, ILR 41 Cal 173; 17 CWN 1253; 18 CLJ 452 (SB), overruled

Sukhdev Singh Sodhi v. Chief Justice and Judges of the PEPSU High Court, AIR 1954 SC 186; 1954 SCR 454; 1954 Cri LJ 460; *R.L. Kapur v. State of T.N.*, (1972) 1 SCC 651; 1972 SCC (Cri) 380; AIR 1972 SC 858; *S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow v. Vinay Chandra Misra*, (1981) 1 SCC 436; (1981) 2 SCR 331; 1981 SCC (Cri) 175, relied on

Rex v. Parke, (1903) 2 KB 432; (1900-3) All ER Rep 721; *King v. Davies*, (1906) 1 KB 32; (1904-7) All ER Rep 60; *King v. Editor of the Daily Mail*, (1921) 2 KB 733; (1921) All ER Rep 476; *Attorney General v. British Broadcasting Corpn.*, (1980) 3 All ER 161; (1980) 3 WLR 109, referred to

Entry 77 of List I of the Seventh Schedule read with Article 246 confers power on the Parliament to enact law with respect to the constitution, organisation, jurisdiction and powers of the Supreme Court including the contempt of the Supreme Court. The Parliament is thus competent to enact a law relating to the powers of Supreme Court with regard to 'contempt of itself'; such a law may prescribe procedure to be followed and it may also prescribe the maximum punishment which could be awarded and it may provide for appeal and for other matters. But the Central legislature has no legislative competence to abridge or extinguish the jurisdiction or power conferred on this Court under Article 129. The Parliament's power to legislate in relation to law of contempt relating to Supreme Court is limited. Therefore the Act does not impinge upon this Court's power with regard to the contempt of subordinate courts under Article 129 (Para 28)

Constitution of India — Article 129 — 'Including the power to punish for contempt of itself' — Word 'including' — Interpretation of — Indicates Supreme Court has power to punish for contempt of itself as well as subordinate courts — Words and Phrases

Interpretation of the Constitution — Construction rendering any expression of the provision superfluous or redundant not acceptable

Held :

The expression "including the power to punish for contempt of itself" used in Article 129 is not restrictive, instead it is extensive in nature. The expression "including" extends and widens the scope of power. The plain language of Article 129 clearly indicates that the Supreme Court as a Court of Record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the

104

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT

417

- a Supreme Court. Since the Supreme Court is designed by the Constitution as a Court of Record and as the Founding Fathers were aware that a superior court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression "including" was deliberately inserted in the article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible of two interpretations, the interpretation which would preserve the inherent jurisdiction of the Supreme Court being the superior Court of Record has to be accepted, to safeguard and protect the subordinate judiciary, which forms the very backbone of administration of justice. The subordinate courts administer justice at the grassroot level. Their protection is necessary to preserve the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level.

c (Para 29)

Constitution of India — Article 129 — Inherent power of Supreme Court under, to punish for contempt of itself as well as subordinate courts not affected by conferment of appellate power under Section 19 of Contempt of Courts Act, 1971

- d Disputing the inherent power of the Supreme Court with regard to the contempt of subordinate courts it was contended that inherent powers are always preserved, but they do not authorise a court to invest itself with jurisdiction when that jurisdiction is not conferred by law. It was urged that the status of an appellate court like High Court, does not enable the High Court to claim original jurisdiction not vested by law. Similarly, the Supreme Court having e appellant jurisdiction under Section 19 of the Contempt of Courts Act, 1971, cannot invest itself with original jurisdiction for contempt of subordinate courts. Rejecting the contention

Held :

- f Where jurisdiction is conferred on a court by a statute, the extent of jurisdiction is limited to the extent prescribed under the statute. But there is no such limitation on a superior court of record in matters relating to the exercise of constitutional powers. The conferment of appellate power on the Supreme Court under Section 19 of the Contempt of Courts Act does not and cannot affect the width and amplitude of its inherent powers under Article 129.

g (Para 30)

Raja Soap Factory v. S.P. Shantharaj, AIR 1965 SC 1449: (1965) 2 SCR 800, distinguished

- h Constitution of India — Articles 142, 32 and 136 — Scope of Supreme Court's power under — Supreme Court has power to quash criminal proceedings pending against a person in order to do complete justice once it has taken selsin of the cause or matter — 'Cause' or 'matter' would include proceedings pending in court, civil or criminal — Need of 'complete justice' would depend upon facts and circumstances of each case — When Supreme Court already taken cognizance of contempt matter arising out of an incident which was subject matter of trial before criminal court, held, it had ample power to quash the

i

105-

418

SUPREME COURT CASES

(1991) 4 SCC

criminal proceedings to do complete justice and prevent abuse of process of the court — This power cannot be restricted by any statute

It was contended that in the present contempt proceedings the Supreme Court had no jurisdiction or power to quash the criminal proceedings pending against the CJM. It was urged that once a criminal case is registered against a person the law requires that the court should allow the case to proceed to its normal conclusion and there should be no interference with the process of trial. Rejecting the contention

Held :

Article 142(1) provides that Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any 'cause' or 'matter' pending before it. The expression 'cause' or 'matter' would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. Though there is no provision like Section 482 of the Criminal Procedure Code conferring express power on the Supreme Court to quash or set aside any criminal proceedings pending before a criminal court to prevent abuse of process of the court, but the inherent power of the Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before the Supreme Court. If the Supreme Court is satisfied that the proceedings in a criminal case are being utilised for oblique purposes or if the same are continued on manufactured and false evidence or if no case is made out on the admitted facts, it would meet the ends of justice to set aside or quash the criminal proceedings. Once the Supreme Court is satisfied that the criminal proceedings amount to abuse of process of court it would quash such proceedings to ensure justice. It is idle to suggest that in such a situation the Supreme Court should be a helpless spectator. (Paras 50 and 49)

The Supreme Court's power under Article 142(1) to do "complete justice" is entirely of different level and of a different quality. What would be the need of "complete justice" in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of the Supreme Court. Once the Supreme Court has seisin of a cause or matter before it, it has power to issue any order or direction to do "complete justice" in the matter. This constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law. No enactment made by Central or State legislature can limit or restrict the power of the Supreme Court under Article 142, though while exercising power under Article 142, the Supreme Court must take into consideration the statutory provisions regulating the matter in dispute. (Para 51)

Since the foundation of the criminal trial of the CJM is based on the facts which have already been found to be false, it would be in the interest of justice and also to do complete justice in the cause to quash the criminal proceedings. (Para 51)

106

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT

419

Prem Chand Garg v. Excise Commissioner, U.P., Allahabad, AIR 1963 SC 996: 1963 Supp 1 SCR 885; *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372, distinguished

- a *Harbans Singh v. State of U.P.*, (1982) 2 SCC 101: (1982) 3 SCR 235: 1982 SCC (Cri) 361; *State of U.P. v. Poozu*, (1976) 3 SCC 1: (1976) 3 SCR 1005: 1976 SCC (Cri) 368; *Ganga Bishan v. Jai Narain*, (1986) 1 SCC 75; *Navnit R. Kamani v. R.R. Kamani*, (1988) 4 SCC 387; *B.N. Nagarajan v. State of Mysore*, AIR 1966 SC 1942: (1966) 3 SCR 682: (1967) 1 LLJ 698; *Special Reference No. 1 of 1964*, AIR 1965 SC 745: (1965) 1 SCR 413; *State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561: (1982) 3 SCR 121: 1982 SCC (Cri) 283; *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre*, (1988) 1 SCC 692: 1988 SCC (Cri) 234, relied on

Constitution of India — Article 20(3) — Ingredients of

- c Constitution of India — Articles 20(3), 129, 32 — Public Interest Litigation — Contempt proceedings — Mere issue of notice to the contemnors and inquiry made and evidence recorded against them by Commissioner appointed by the Supreme Court, held, not hit by Article 20(3) — Contemnors not 'persons accused of an offence' within the meaning of Article 20(3)

Contempt of Courts Act, 1971 — Sections 2(c) and 15 — Criminal contempt proceedings — Different from proceedings for ordinary criminal offence

- d It was contended on behalf of the police officers that the findings recorded by the Commission cannot be taken into account as those findings are hit by Article 20(3) because the police officers against whom criminal cases have been registered were compelled to be witnesses against themselves by filing affidavits and by subjecting them to cross-examination before the Commissioner. Any finding recorded on the basis of their evidence is violative of Article 20(3).
e Rejecting the contention

Held :

- f In order to avail the protection of Article 20(3) three conditions must be satisfied. Firstly, the person must be accused of an offence. Secondly, the element of compulsion to be a witness should be there and thirdly it must be against himself. All the three ingredients must necessarily exist before protection of Article 20(3) is available. If any of these ingredients do not exist, Article 20(3) cannot be invoked (Para 12)

Balkishan A. Devidayal v. State of Maharashtra, (1980) 4 SCC 600: 1981 SCC (Cri) 62, relied on

- g Mere issue of notice or pendency of contempt proceedings do not attract Article 20(3) as the contemnors against whom notices were issued were not accused of any offence. A criminal contempt is punishable by the superior courts by fine or imprisonment, but it has many characteristics which distinguishes it from ordinary offence. Since, the contempt proceedings are not in the nature of criminal proceedings for an offence, the pendency of contempt
h proceedings cannot be regarded as criminal proceedings merely because it may end in imposing punishment on the contemner. A contemner is not in the position of an accused. It is open to the court to cross-examine the contemner and even if the contemner is found to be guilty of contempt, the court may accept apology and discharge the notice of contempt, whereas tendering of apology is
i no defence to the trial of a criminal offence. This peculiar feature distinguishes

107

420

SUPREME COURT CASES

(1991) 4 SCC

contempt proceedings from criminal proceedings. In a criminal trial where a person is accused of an offence there is a public prosecutor who prosecutes the case on behalf of the prosecution against the accused but in contempt proceedings the court is both the accuser as well as the judge of the accusation. Contempt proceeding is sui generis. In this view the contemnors do not stand in the position of a "person accused of an offence" merely on account of issue of notice of contempt by this Court and the Commission which was acting on behalf of this Court had full authority to record the testimony of the contemnors. (Paras 12 and 13)

Tushar Kant Ghosh, Re and Another, AIR 1935 Cal 419; 36 Cri LJ 1053; 39 CWN 394, approved

Sukhdev Singh Sodhi v. Chief Justice and Judges of the PEPSU High Court, AIR 1954 SC 186; 1954 SCR 454; 1954 Cri LJ 460; *Debabrata Bandopadhyay v. State of W.B.*, AIR 1969 SC 189; (1969) 1 SCR 304; 1969 MLJ (Cri) 404, relied on

Constitution of India — Article 32 — Public Interest Litigation — Appointment of Commissioner — High Court Judge appointed as Commissioner by Supreme Court to hold inquiry and submit report in respect of allegations made in the petition — Commissioner acting judicially in a fair and objective manner in holding the inquiry, affording opportunity to the concerned persons and submitting report based on good reasons in respect of findings supported by material on record — Held on facts, there was no ground to reject the well reasoned findings — Commissioner had full authority to record evidence and cross-examine witnesses on behalf of the court (Paras 8 and 9)

Constitution of India — Article 374(2) — Nature and effect of — Does not render decisions of Federal Court binding on Supreme Court

Precedents — Decisions of Federal Court — Though not binding on Supreme Court but entitled to great weight — Court should not blindly follow the old precedents — Changes brought about by the Constitution to be kept in mind while considering a Federal Court or Privy Council decision — Judicial Activism — Jurisprudence

It was urged that assumption of contempt jurisdiction with regard to the contempt of subordinate courts on the interpretation of Article 129 is foreclosed by the decisions of Federal Court [in *K.L. Gauba*, 41 FCR 54 and *Purshottam Lal Jaithy*, 1944 FCR 364 cases]. It was urged that the Supreme Court being successor to Federal Court was bound by the decisions of the Federal Court under Article 374(2) of the Constitution. Rejecting the contention

Held :

Article 374(2) made provision for two things, firstly it directed the transfer of all suits, appeals and proceedings, civil or criminal, pending before the Federal Court to the Supreme Court. Secondly, it provided that any orders and judgments delivered or made by the Federal Court before the commencement of the Constitution shall have the same force and effect as if those orders or judgments had been delivered or made by the Supreme Court. This was necessary for the continuance of the proceedings before the Supreme Court. Article 374(2) is in the nature of transitory provision to meet the exigency of the situation on the abolition of the Federal Court and setting up of the Supreme Court.

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT

421

a There is no provision in this article to the effect that the decisions of the Federal Court shall be binding on the Supreme Court. The decisions of Federal Court and the Privy Council made before the commencement of the Constitution are entitled to great respect but those decisions are not binding on the Supreme Court and it is always open to the Supreme Court to take a different view. (Para 32)

b *Om Prakash Gupta v. United Provinces*, AIR 1951 All 205; ILR (1952) 2 All 467; *State of Bombay v. Gajanan Mahadev Badley*, AIR 1954 Bom 351; 56 Bom LR 172; 9 DLR Bom 55, approved
State of Bihar v. Abdul Majid, AIR 1954 SC 245; 1954 SCR 786; (1954) 2 LLJ 678; *Shrinivas Krishnarao Kango v. Narayan Devji Kango*, AIR 1954 SC 379; (1955) 1 SCR 1, referred to

c While considering the decision of Federal Court, it is necessary to bear in mind that the Federal Court did not possess wide powers as the Supreme Court has under the Constitution. There are marked differences in the constitution and jurisdiction and the amplitude of powers exercised by the two courts. In addition to civil and criminal appellate jurisdiction, the Supreme Court has wide powers under Article 136 over all the courts and tribunals in the country. The Federal Court had no such power; instead it had appellate power but that too could be exercised only on a certificate issued by the High Court. The Federal Court was a court of record under Section 203 but it did not possess any plenary or residuary appellate power over all the courts functioning in the territory of India like the power conferred on the Supreme Court under Article 136. Therefore, the Federal Court had no judicial control or superintendence over subordinate courts. (Para 35)

e Advent of freedom, and promulgation of Constitution have made drastic changes in the administration of justice necessitating new judicial approach. The Constitution has assigned a new role to the Constitutional Courts to ensure rule of law in the country. These changes have brought new perceptions. In interpreting the Constitution, regard must be had to the social, economic and political changes, need of the community and the independence of judiciary. The court cannot be a helpless spectator, bound by precedents of colonial days which have lost relevance. Time has come to have a fresh look at the old precedents and to lay down law with the changed perceptions keeping in view the provisions of the Constitution. (Para 36)

g Criminal Procedure Code, 1973 — Section 6 and Chapter XII — Chief Judicial Magistrate — Position of — Coordination, cooperation and role of police indicated (Para 39)

R-M/TM/10876/CR

Advocates who appeared in this case :

h Soli J. Sorabjee, Attorney General, Ashok H. Desai, Solicitor General, R.K. Garg, G. Ramaswamy, F.S. Nariman, Dr L.M. Singhvi, G.A. Shah, T.U. Mehta, V.M. Tarkunde, B.K. Mehta and S.S. Ray, Senior Advocates (A.K. Gupta, S.K. Dhingra, T.C. Sharma, Kishan Dutt, R.J. Trivedi, Manoj Swarup, M.N. Shroff, Sudarsh Menon, Sushil Kumar Jain, Bahl Singh Malik, Gopal Subramaniam, Ms Binu Tamta, S.K. Jain, Shahid Rizvi, D.K. Singh, T. Ray, Pramod Swarup, Praveen Swarup, P.H. Parekh, Sunil Dogra, C.L. Sahu, G.L. Sahu, G.L. Gupta, Brij Bhushan, N.S. Dass Bahl, Ms H. Wahi, Harish Javeri and S. Ganesh, Advocates, with them) for the appearing parties.

109

422

SUPREME COURT CASES

(1991) 4 SCC

The Judgment of the Court was delivered by

K.N. SINGH, J.— On September 25, 1989, a horrendous incident took place in the town of Nadiad, District Kheda in the State of Gujarat, which exhibited the berserk behaviour of police undermining the dignity and independence of judiciary. S.R. Sharma, Inspector of Police, with 25 years of service posted at the Police Station, Nadiad, arrested, assaulted and handcuffed N.L. Patel, Chief Judicial Magistrate, Nadiad and tied him with a thick rope like an animal and made a public exhibition of it by sending him in the same condition to the hospital for medical examination on an alleged charge of having consumed liquor in breach of the prohibition law enforced in the State of Gujarat. The Inspector S.R. Sharma got the Chief Judicial Magistrate photographed in handcuffs with rope tied around his body along with the constables which were published in the newspapers all over the country. This led to tremors in the Bench and the Bar throughout the whole country.

2. The incident undermined the dignity of courts in the country, Judicial Officers, Judges and Magistrates all over the country were in a state of shock, they felt insecure and humiliated and it appeared that instead of Rule of Law there was Police Raj in Gujarat. A number of Bar Associations passed Resolutions and went on strike. The Delhi Judicial Service Association, the All India Judges Association, Bar Council of Uttar Pradesh, Judicial Service of Gujarat and many others approached the Apex Court by means of telegrams and petitions under Article 32 of the Constitution of India for saving the dignity and honour of the judiciary. On September 29, 1989, this Court took cognizance of the matter by issuing notices to the State of Gujarat and other police officers. The Court appealed to the members of the Bar and Judiciary to resume work to avoid inconvenience to the litigant public. Subsequently, a number of petitions were filed under Article 32 of the Constitution of India for taking action against the police officers and also for quashing the criminal proceedings initiated by the police against N.L. Patel, Chief Judicial Magistrate. A number of Bar Associations, Bar Councils and individuals appeared as interveners condemning the action of the police and urging the Court for taking action against the police officers.

3. In Petition No. 518 of 1989 along with Contempt Petition No. 6 of 1989 filed by the President, All India Judges Association, notices for contempt were issued by this Court on October 4, 1989 to seven police officials, D.K. Dhagal, DSP, A.M. Waghela, Dy. SP, S.R. Sharma, Police Inspector, Kuldeep Singh Lowchab, Police Inspector (Crime), K.H. Sadia, Sub-Inspector of Police, Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable. N.L. Patel, CJM, Nadiad also filed an applica-

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 423

tion in W.P. No. 517 of 1989 with a prayer to quash the two FIRs lodged against him, to direct the trial of the complaint filed by him as State case and to award compensation.

4. On February 13, 1990 notices for contempt were issued to K. Dadabhoy, ex-DGP, Gujarat, Dr Bhavsar, Senior Medical Officer of Government Hospital Nadiad and M.B. Savant, Mamlatdar, Nadiad. The Court during the proceedings also issued notices to R. Bala Krishnan, Additional Chief Secretary (Home), Government of Gujarat and S.S. Sudhalkar, District Judge, Nadiad to show cause why action be not taken against them in view of the Report of Justice Sahai.

5. N.L. Patel was posted as Chief Judicial Magistrate at Nadiad in October, 1988. He soon found that the local police was not co-operating with the courts in effecting service of summons, warrants and notices on accused persons, as a result of which the trials of cases were delayed. He made complaint against the local police to the District Superintendent of Police and forwarded a copy of the same to the Director General of Police but nothing concrete happened. On account of these complaints S.R. Sharma, Police Inspector Nadiad was annoyed with the Chief Judicial Magistrate, he withdrew constables posted in the CJM Court. In April 1989 Patel filed two complaints with the police against Sharma and other police officials, Nadiad for delaying the process of the court. On July 25, 1989 Patel directed the police to register a criminal case against 14 persons who had caused obstruction in judicial proceedings but subsequently since they tendered unqualified apology, the CJM directed the Police Inspector to drop the cases against those persons. Sharma reacted strongly to Patel's direction and he made complaint against the CJM to the Registrar of the High Court through District Superintendent of Police. These facts show that there was hostility between the Police of Nadiad and the CJM. On September 25, 1989, S.R. Sharma met Patel, CJM in his chambers to discuss the case of one Jitu Sport where the police had failed to submit charge-sheet within 90 days. During discussion Sharma invited the CJM to visit the police station to see the papers and further his visit would mollify the sentiments of the police officials. It is alleged that at 8.35 p.m. Sharma sent a police jeep at Patel's residence, and on that vehicle Patel went to the Police Station. What actually happened at the Police Station is a matter of serious dispute between the parties. According to the CJM, he arrived in the chamber of Sharma in the Police Station, he was forced to consume liquor and on his refusal he was assaulted, handcuffed and tied with rope by Sharma, Police Inspector, Sadia, Sub-Inspector, Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable. It is further alleged that Patel was sent to hospital for medical examination under handcuffs where he was made to sit on

111

424

SUPREME COURT CASES

(1991) 4 SCC

a bench in the veranda exposing him to the public gaze. Sharma, Police Inspector and other police officers have disputed these allegations. According to Sharma, Patel entered his chamber at the Police Station at 8.45 p.m. on September 25, 1989 in a drunken state, shouting and abusing him, he caught hold of Sharma and slapped him, since he was violent he was arrested, handcuffed and sent to hospital for medical examination. Patel himself wanted to be photographed while he was handcuffed and tied with ropes, a photographer was arranged to take his photograph which was published in the newspapers. a b

6. Since there was serious dispute between the parties with regard to the entire incident, the Court appointed Justice R.M. Sahai senior puisne Judge of the Allahabad High Court (as he then was) to inquire into the incident and to submit report to the Court. Justice Sahai was appointed to hold the inquiry on behalf of this Court and not under the provisions of the Commission of Inquiry Act. Justice Sahai visited Nadiad and held sittings there. The learned Commissioner/Judge invited affidavits/statements, and examined witnesses including S.R. Sharma the Police Inspector, D.K. Dhagal, DSP and other police officers, lawyers, N.L. Patel, CJM, and doctors and other witnesses. Justice Sahai afforded full opportunity to all the concerned persons including the State Government, police officers and lawyers to lead evidence and to cross-examine witnesses. He submitted a detailed Report dated November 28, 1989 to this Court on December 1, 1989. On receipt of the Report this Court directed copies to be delivered to concerned parties and permitted the parties and the contemnors to file their objections, if any, before this Court. The objections were filed by the police officers and the contemnors disputing the findings recorded by the Commissioner. c d e f

7. On December 12, 1989, when the matter came up for final disposal the Court issued notices to the Attorney General and Advocate General of the State of Gujarat. On January 10, 1990 the Court directed the State of Gujarat to file affidavit stating as to what action it had taken or proposed to take against the officers in the light of the Report of Justice Sahai. The Court further issued notices to R. Bala Krishnan, Additional Chief Secretary (Home), Government of Gujarat, K. Dadabhoy, Director General of Police, S.S. Sudhalkar, District Judge, to show cause as to why action should not be taken against them in view of the Report of Justice Sahai. The State Government was further directed to explain as to why action against D.K. Dhagal, DSP, S.R. Sharma, Police Inspector and other police officers had not been taken. On February 13, 1990 a notice for contempt of this Court was issued to K. Dadabhoy on the same date in view of the findings recorded by Justice Sahai, notices g h i

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 425

for contempt of court were issued to Dr Bhavsar and M.B. Savant, Mamlatdar, Nadiad also.

- a 8. In his affidavit, S.R. Sharma, Police Inspector has raised a number of objections to the findings recorded by the Commissioner. The objections are technical in nature, challenging the authority and jurisdiction of the Commissioner in collecting evidence and recording findings against him. Sharma has further stated in his objections that the Commissioner acted as if he was sitting in judgment over the case. Other police officers have also raised similar objections. We find no merit in the objections raised on behalf of Sharma, Police Inspector and other contemnors. The Commissioner had been appointed by this Court to hold inquiry and submit his report to the Court. Justice Sahai was acting on behalf of this
- b
- c Court and he had full authority to record evidence and cross-examine witnesses and to collect evidence on behalf of this Court. Since the main incident of Chief Judicial Magistrate's arrest, assault, handcuffing and roping was connected with several other incidents which led to the confrontation between the Magistracy and local police, the learned Commissioner was justified in recording his findings on the background and
- d genesis of the entire episode. The Police Inspector Sharma raised a grievance that he was denied opportunity of cross-examination of Patel, CJM and he was not permitted to produce Dr Jhala as a witness. Sharma's application for the recall of CJM for further cross-examination
- e and for permission to produce Dr Jhala, retired Deputy Director, Medical and Health Services, Gujarat, was rejected by a well reasoned order of the Commissioner dated November 9, 1989. We have gone through the order and we find that the Commissioner has given good reasons for rejecting the recall of CJM for further cross-examination, as he had been
- f cross-examined by the counsel appearing on behalf of the police officials including Sharma. The police officers and the State Government and CJM were represented by counsel before the Commissioner and every opportunity was afforded to them for cross-examining the witnesses. Dr
- g Jhala's evidence was not necessary, the Commissioner rightly refused Sharma's prayer.

9. On behalf of the contemnors it was urged that in the absence of any independent testimony the Commission was not justified in accepting interested version of the incident as given by the CJM with regard to his
- h visit to the Police Station and the incident which took place inside the Police Station. There was oath against oath and in the absence of any independent testimony the Commission was not justified in accepting the sole interested testimony of Patel, CJM. We find no merit in this objection. The learned Commissioner has considered the evidence as well as
- i the circumstances in support of his findings that Patel had been invited

113

426

SUPREME COURT CASES

(1991) 4 SCC

by Sharma to visit the Police Station and he had sent a police jeep in which Patel went to the Police Station. This fact is supported by independent witnesses as discussed by the Commissioner. If Patel had gone on the invitation of Sharma in police jeep and not in the manner as alleged by Sharma, Patel could not be drunk and there appears no reason as to why he would have assaulted Sharma as alleged by the police. The circumstances as pointed out by the Commissioner fully justify the findings recorded against the police officers. It is settled law that even in a criminal trial, accused is convicted on circumstantial evidence in the absence of an eye-witness. Learned Commissioner acted judicially in a fair and objective manner in holding the inquiry, he afforded opportunity to the affected police officers and other persons and submitted his Report based on good reasons in respect of his findings which are amply supported by the material on record. The Commissioner did a commendable job in a record time. After hearing arguments at length and on perusal of the statements recorded by the Commissioner and the documentary evidence submitted by the parties, and a careful scrutiny of the affidavits and objections filed in this Court, we find no valid ground to reject the well reasoned findings recorded by the learned Commissioner. The Commissioner's Report runs into 140 pages, which is on record. The contemners and other respondents have failed to place any convincing material before the Court to take a different view. We accordingly accept the same.

10. After hearing learned counsel for the parties and on perusal of the affidavits, objections, applications and the Report of the Commissioner, we hold that the following facts and circumstances are fully proved:

- (1) N.L. Patel, Chief Judicial Magistrate found that the Police of Nadiad was not effective in service of summons and it had adopted an attitude of indifference to court orders. He tried to obtain the assistance of the District Superintendent of Police in February 1989 and addressed a letter to the Director General of Police but no response came from the Police Authorities, even though the government had reminded D.K. Dhagal, DSP, Kheda to do the needful. Patel, the CJM filed two complaints against police officers of Nadiad Police Station and the Inspectors, and forwarded it to the District Superintendent of Police on July 19 and 24, 1989 for taking action against them. Sharma, the Police Inspector who had by then been posted at Nadiad reacted to the CJM's conduct by withdrawing constables working in the courts of Magistrates on the alleged pretext of utilising their services for service of summons. This

114

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 427

led to confrontation between the local police and the Magistracy.

- a (2) On July 25, 1989, the CJM had directed the registration of a case against 14 accused persons for misbehaviour and causing obstruction in the judicial proceedings. Since the accused persons had later expressed regret and tendered unqualified apology to the court, the CJM sent a letter to the Police Inspector, Sharma to drop proceedings. Sharma went out of his way, to b send a complaint to the High Court through the DSP saying that Patel was functioning in an illegal manner in the judicial discharge of his duties. The action of Sharma, Police Inspector was highly irresponsible and Dhagal, DSP should not have c acted in a casual manner in forwarding Sharma's letter to the Registrar of the High Court directly.
- d (3) Remand period of Jitu Sport was to expire on September 27, 1989, the CJM directed the Police Inspector to produce complete papers before the expiry of the period of remand but he applied for the extension of the judicial remand. The CJM directed the Police Inspector to produce papers on September 22, 1989, Sharma did not appear before the CJM as directed, on the contrary he interpolated the order sent to him, indicating that he was required to appear before the CJM on September 23, 1989, which was admittedly a holiday.
- e (4) On September 25, 1989, Sharma met the CJM in his chamber and as a pretext requested him to come to the Police Station to see the papers which could not be brought to the Court, as that could satisfy him that the police was doing the needful for complying with the orders of the Court. Sharma pleaded with CJM f that his visit to Police Station will remove the feeling of confrontation between the Police and Magistracy. The CJM agreed to visit the Police Station and Sharma offered to send police jeep to CJM's house for bringing him to the Police Station.
- g (5) On September 25, 1989 after the Court hours the CJM went to the officers' club where he remained in the company of Sudhalkar, District Judge and Pande, Civil Judge till 8.30 p.m. Thereafter, he went to his residence. A police jeep came to his residence at about 8.40 p.m. in the Officers Colony, he went in that police jeep to the Police Station situate at a distance of about 2 kms. Patel had not consumed liquor before he went to h the Police Station.
- i (6) The police version that Patel had consumed liquor before coming to the Police Station and that he assaulted the Police Inspector Sharma and misbehaved with him at the Police Station is a cooked up story. Patel did not go to the Police Station

115

on foot as alleged by Sharma, instead, he went to the Police Station in a police jeep on Sharma's invitation. Patel was handcuffed and tied with rope, and he received injuries at the Police Station, he was assaulted and forced to consume liquor after he was tied to the chair on which he was sitting, Police Inspector Sharma, Sub-Inspector Sadia, Head Constable Valjibhai Kalabhai and Constable Pratap Singh took active part in this episode. They actively participated in the assault on Patel and in forcing liquor in his mouth. They acted in collusion with Sharma to humiliate and teach a lesson to Patel.

- (7) On the direction of Sharma, Police Inspector, Patel was handcuffed at the Police Station and he was further tied up with a thick rope by the Police Inspector, Sharma, Sadia, Sub-Inspector, Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable. This was deliberately done in defiance of Police Regulations and Circulars issued by the Gujarat Government and the law declared by this Court in *Prem Shankar Shukla v. Delhi Administration*¹. Patel had not committed any offence nor he was violent and yet he was handcuffed and tied up with rope without there being any justification for the same. There were seven police personnel present at the Police Station and most of them were fully armed while Patel was empty handed, there was absolutely no chance of Patel escaping from the custody or making any attempt to commit suicide or attacking the Police Officers and yet he was handcuffed and tied up with a thick rope like an animal with a view to humiliate and teach him a lesson. For this wanton act there was absolutely no justification and pleas raised by Sharma that Patel was violent or that he would have escaped from the custody are a figment of imagination made for the purpose of the case.
- (8) The panchnama showing the drunken state of Patel prepared on the dictation of Sharma, Police Inspector, and signed by Sharma as well as by two panchas, M.B. Savant, Mamlatdar and P.D. Barot, Fire Brigade Officer, Nadiad, did not represent the correct facts, instead, it was manufactured for the purpose of preparing a false case against CJM Patel, justifying his arrest and detention.
- (9) On examination at the Civil Hospital Patel's body was found to have a number of injuries. The injury on the left eye was very clear which appeared to have been caused by external force. His body had bruises and abrasions which could be caused by fists and blows. While in the casualty ward of the Civil Hospital, Patel requested the doctors to contact the District Judge and inform him about the incident. Dr Parashar tried to ring up the

1 (1980) 3 SCC 526: 1980 SCC (Cri) 815

116

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 429

District Judge but he was prevented from doing so by Sharma and other police officers who were present there. Dr Parashar and Dr Bhavsar found the speech of Patel normal, gait steady, he was neither violent, nor he misbehaved. His blood was taken for chemical examination but the Forms used were not according to the rules and the blood was not taken in accordance with procedure prescribed by the Rules and the Circulars issued by the Director of Medical Services, Gujarat. The chemical examination of the blood sample taken in the Civil Hospital was not correctly done. The blood sample was analysed by a teenager who was not a testing officer within the Bombay Prohibition Act and necessary precautions at the time of analysis were not taken. The phial in which the blood sample had been sent to the Chemical Examiner did not contain the seal on phial and the seal was not fully legible. The Chemical Examiner who submitted the report holding that the blood sample of Patel contained alcohol on the basis of the calculation made by him in the report clearly admitted before the Commission that he had never determined the quantity of liquor by making calculation in any other case and Patel's case was his first case.

- 10) When Patel was taken to Civil Hospital handcuffed and tied with thick rope he was deliberately made to sit outside in the veranda on bench for half an hour in public gaze, to enable the public to have a full view of the CJM in that condition. A press photographer was brought on the scene and the policemen posed with Patel for the press photograph. The photographs were taken by the press reporter without any objection by the police, although a belated justification was pleaded by the police that Patel desired to have himself photographed in that condition. This plea is totally false. The photographs taken by the press reporter were published in '*Jan Satta*' and '*Lokmat*' on September 26, 1989 showing Patel handcuffed and tied with rope and the policemen standing beside him. This was deliberately arranged by Sharma to show to the public that police wielded real power and if the CJM took confrontation with police he will not be spared.
- 11) At the initial stage, one case was registered against Patel by the police under the Bombay Prohibition Act. Two Advocates Kantawala and Brahmhatt met Sharma at 11.30 p.m. for securing Patel's release on bail, as offences under the Prohibition Act were bailable. The lawyers requested Sharma to allow them to meet the CJM who was in the police lock-up but Sharma did not allow them to do so. With a view to frustrate the lawyers' attempt to get Patel released on bail, Sharma registered another

er case against Patel under Sections 332 and 506 of Indian Penal Code as offence under Section 332 is non-bailable.

- (12) D.K. Dhagal, the then District Superintendent of Police, Kheda exhibited total indifference to CJM's complaint regarding the unsatisfactory state of affairs in the matter of execution of court processes. Dhagal identified himself with Sharma, Police Inspector who appeared to be his favourite. Instead of taking corrective measures in the service of processes, he became party along with Sharma in forwarding his complaint to the High Court against Patel's order in a judicial matter. The incident which took place in the night of September 25/26, 1989, had the blessing of Dhagal. He did not take any immediate action in the matter instead he created an alibi for himself alleging that he had gone to Lasundara and then to Balasinor Police Station and stayed there in a Government Rest House. The register at the Rest House indicating the entry regarding his stay was manipulated subsequently by making interpolation. On the direction of Additional Chief Secretary (Home) Dhagal submitted his report on September 27, 1989 but in that report he did not make any reference of handcuffing and roping of the CJM although it was a matter of common knowledge and there was a great resentment among the judicial officers and the local public. Dhagal's complicity in the sordid episode is further fortified by the fact that he permitted Sharma, the main culprit of the entire episode to carry on investigation against Patel in the case registered against him by Sharma and also in the case registered by Patel against Sharma.
- (13) Police Inspector Sharma had pre-planned the entire incident and he had even arranged witnesses in advance for preparing false case against N.L. Patel, CJM, as M.B. Savant, Mamlatdar (sic) in the Police Station, immediately on the arrival of Patel, CJM, and they acted in complicity with Sharma in preparing the panchnama which falsely stated that Patel was drunk. M.B. Savant and P.D. Barot both were hand in glove with Sharma to falsely implicate Patel in Prohibition Case.

11. Learned Commissioner has adversely commented upon the conduct of various officers including K. Dadabhoy, the then Director General of Police, Gujarat, Kuldip Singh Lowchab, CID Inspector, Dr Bhavsar, Senior Medical Officer, Nadiad, M.B. Savant, Mamlatdar, P.D. Barot, Fire Brigade Officer and A.N. Patel, Chemical Examiner, Nadiad. After considering the material on record, we agree with the view taken by the Commissioner that their conduct was not above board as expected from responsible officers. We do not consider it necessary to burden the judg-

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 431

ment by referring to the details of the findings as the same are contained in the Commissioner's Report.

- a 12. Mr Nariman contended on behalf of the police officers that the findings recorded by the Commission cannot be taken into account as those findings are hit by Article 20(3) of the Constitution. Inspector Sharma and other police officers against whom criminal cases have been registered were compelled to be witnesses against themselves by filing affidavits and by subjecting them to cross-examination before the Commissioner. Any finding recorded on the basis of their evidence is violative of Article 20(3) of the Constitution. Article 20(3) of the Constitution declares that no person accused of any offence shall be compelled to be a witness against himself. In order to avail the protection of Article 20(3) three conditions must be satisfied. Firstly, the person must be accused of an offence. Secondly, the element of compulsion to be a witness should be there and thirdly it must be against himself. All the three ingredients must necessarily exist before protection of Article 20(3) is available. If any of these ingredients do not exist, Article 20(3) cannot be invoked
- d sec: *Balkishan A. Devidayal v. State of Maharashtra*². In the instant case this Court had issued notices for contempt to Sharma, Police Inspector and other contemnors. Mere issue of notice or pendency of contempt proceedings do not attract Article 20(3) of the Constitution as the contemnors against whom notices were issued were not accused of any offence. A criminal contempt is punishable by the superior courts by fine or imprisonment, but it has many characteristics which distinguishes it from ordinary offence. An offence under the criminal jurisdiction is trial by a Magistrate or a Judge and the procedure of trial is regulated by the Code of Criminal Procedure, 1973 which provides an elaborate procedure for framing of charges, recording of evidence, cross-examination, argument and the judgment. But charge of contempt is tried on summary process without any fixed procedure as the court is free to evolve its own procedure consistent with fair play and natural justice.
- f In contempt proceedings unlike the trial for a criminal offence no oral evidence is ordinarily recorded and the usual practice is to give evidence by affidavits. Under the English law a criminal offence is tried by criminal courts with the aid of jury but a criminal contempt is tried by courts summarily without the aid and assistance of jury. Ordinarily, process of trial for contempt is summary. A summary form of trial is held in the case of civil contempt and also in the case of criminal contempt where the act is committed in the actual view of the court or by an officer of justice. The summary procedure is applicable by immemorial usage when criminal contempt was committed out of court by a stranger. The practice of
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2 (1980) 4 SCC 600; 1981 SCC (Cri) 62

proceeding summarily for the punishment of contempt out of court has been the subject of comment and protest, but the practice is founded upon immemorial usage, it has, since the eighteenth century, been generally assumed. We do not consider it necessary to refer to decisions from English courts which have been discussed in detail in the *History of Contempt of Court* by Fox J. C. (1927). Proceedings for contempt of court are not taken in the exercise of original criminal jurisdiction. Proceedings for contempt of court are of a peculiar nature; though it may be that in certain aspects they are quasi-criminal, but in any view they are not exercised as part of the original criminal jurisdiction of the court, as was held in *Tushar Kanti Ghosh, Re*³. The High Court held that since the proceedings for contempt of court do not fall within the original criminal jurisdiction of the Court no leave could be granted for appeal to Privy Council under clause 41 of the letters patent of that Court.

13. In *Sukhdev Singh Sodhi v. Chief Justice and Judges of the PEPSU High Court*⁴, Sukhdev Singh Sodhi approached this Court for transfer of contempt proceedings from PEPSU High Court to any other High Court under Section 527 of the Criminal Procedure Code, 1898. This Court rejected the application holding that Section 527 of the Criminal Procedure Code did not apply to the contempt proceedings as the contempt jurisdiction is a special jurisdiction which is inherent in all courts of record and the CrPC excludes such a special jurisdiction from the Code. The Court further held that notwithstanding the provisions contained in the Contempt of Courts Act, 1926 making an offence of contempt punishable, the Act does not confer any jurisdiction or create the offence, it merely limits the amount of the punishment which could be awarded and it removes a certain doubt. The jurisdiction to initiate the proceedings and take seisin of the contempt is inherent in a court of record and the procedures of the Criminal Procedure Code do not apply to contempt proceedings. Section 5 of the Code of Criminal Procedure lays down that nothing contained in this Code shall, in the absence of the specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The power to take proceedings for the contempt of court is an inherent power of a court of record, the Criminal Procedure Code does not apply to such proceedings. Since, the contempt proceedings are not in the nature of criminal proceedings for an offence, the pendency of contempt proceedings cannot be regarded as criminal proceedings mere-

³ AIR 1935 Cal 419; 36 Cri LJ 1053; 39 CWN 394

⁴ 1954 SCR 454; AIR 1954 SC 186; 1954 Cri LJ 460

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 433

- ly because it may end in imposing punishment on the contemner. A contemner is not in the position of an accused, it is open to the court to
- a cross-examine the contemner and even if the contemner is found to be guilty of contempt, the court may accept apology and discharge the notice of contempt, whereas tendering of apology is no defence to the trial of a criminal offence. This peculiar feature distinguishes contempt proceedings from criminal proceedings. In a criminal trial where a person
 - b is accused of an offence there is a public prosecutor who prosecutes the case on behalf of the prosecution against the accused but in contempt proceedings the court is both the accuser as well as the judge of the accusation as observed by Hidayatullah, C.J. in *Debabrata Bandopadhyay case*⁵. Contempt proceeding is sui generis, it has peculiar features which
 - c are not found in criminal proceedings. In this view the contemnors do not stand in the position of a "person accused of an offence" merely on account of issue of notice of contempt by this Court and the Commission which was acting on behalf of this Court had full authority to record the testimony of the contemnors. Commission issued notice and directed
 - d Sharma, Police Inspector and other police officials to place their version of the incident before it and there was no element of compulsion. In this view there has been no violation of Article 20(3) of the Constitution and Commission's findings are not vitiated.

- e 14. Mr F.S. Nariman contended that this Court has no jurisdiction or power to indict the police officers even if they are found to be guilty as their conduct does not amount to contempt of this Court. He urged that Articles 129 and 215 demarcate the respective areas of jurisdiction of the Supreme Court and the High Courts respectively. This Court's jurisdiction
- f under Article 129 is confined to the contempt of itself only and it has no jurisdiction to indict a person for contempt of an inferior court subordinate to the High Court. The Parliament in exercise of its legislative power under Entry 77 of List I read with Entry 14 of List III has enacted Contempt of Courts Act, 1971 (hereinafter referred to as the
- g 'Act') and that Act does not confer any jurisdiction on this Court for taking action for contempt of subordinate courts. Instead the original jurisdiction of High Courts in respect of contempt of subordinate courts is specifically preserved by Sections 11 and 15(2) of the Act. The Supreme Court has only appellate powers under Section 19 of the Act
- h read with Articles 134(1)(c) and 136 of the Constitution. The constitutional and statutory provisions confer exclusive power on the High Court for taking action with regard to contempt of inferior or subordinate court, and the Supreme Court has no jurisdiction in the matter. Shri

⁵ *Debabrata Bandopadhyay v. State of W.B.*, AIR 1969 SC 189; (1969) 1 SCR 304; 1969 MLJ (Cri) 404

121

434

SUPREME COURT CASES

(1991) 4 SCC

Nariman further urged that in our country there is no court of universal jurisdiction, and the jurisdiction of all courts including Supreme Court is limited and this Court cannot enlarge its jurisdiction. Shri Soli J. Sorabjee learned Attorney General (as he then was) urged that power to punish contempt is a special jurisdiction which is inherent in a court of record. A superior court of record has inherent power to punish for contempt of itself and it necessarily includes and carries with it the power to punish for contempt committed in respect of subordinate or inferior courts. A superior court of record having power to correct the order of inferior court has power to protect that court by punishing those who interfere with the due administration of justice of that court. Articles 129 and 215 do not confer any additional jurisdiction on the Supreme Court and the High Court. The constitutional provisions as well as the legislative enactment "The Contempt of Courts Act" recognise and preserve the existing contempt jurisdiction and power of the court of record for punishing for contempt of subordinate or inferior courts. The Act has not affected or restricted the suo moto inherent power of the Supreme Court being a court of record which has received constitutional sanction under Article 129. Mr Sorabjee further urged that even otherwise the Act does not restrict or affect the suo moto exercise of power by the Supreme Court as a court of record in view of Section 15(1) of Act. The Supreme Court as the Apex Court is the protector and guardian of justice throughout the land, therefore, it has a right and also a duty to protect the courts whose orders and judgments are amenable to correction, from commission of contempt against them. This right and duty of the Apex Court is not abrogated merely because the High Court also has this right and duty of protection of the subordinate courts. The jurisdictions are concurrent and not exclusive or antagonistic.

15. The rival contentions raise the basic question whether the Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior courts under Article 129 of the Constitution and whether the inherent jurisdiction and power of this Court is restricted by the Act. The answer to the first question depends upon the nature and the scope of the power of this Court as a court of record, in the background of the original and appellate jurisdiction exercised by this Court under the various provisions of the Constitution. It is necessary to have a look at the constitutional provisions relating to the original and appellate jurisdiction of this Court. Article 124 lays down that there shall be a Supreme Court of India consisting of Chief Justice of India and other Judges. Article 32 confers original jurisdiction on this Court for enforcement of fundamental rights of the citizens. This jurisdiction can be invoked by an aggrieved person even without exhausting his remedy

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 435

- before other courts. Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court *including* the power to punish for contempt of itself. Article 131 confers original jurisdiction on the Supreme Court in certain matters. Article 132 confers appellate jurisdiction on this Court against any judgment, decree or final order of the High Courts in India. Articles 133, 134 and 134-A confer appellate jurisdiction in the Supreme Court in appeals from High Courts in regard to civil and criminal matters respectively on certificate to be issued by the High Court. Article 136 provides for special leave to appeal before the Supreme Court, notwithstanding the provisions of Articles 132, 133, 134 and 134-A. Article 136 vests this Court with wide powers to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India except a court or tribunal constituted by or under any law relating to the Armed Forces. The Court's appellate power under Article 136 is plenary, it may entertain any appeal by granting special leave against any order made by any Magistrate, tribunal on any other subordinate court. The width and amplitude of the power is not affected by the practice and procedure followed by this Court in insisting that before invoking the jurisdiction of this Court under Article 136 of the Constitution, the aggrieved party must exhaust remedy available under the law before the appellate authority or the High Court. Self-imposed restrictions by this Court do not divest it of its wide powers to entertain any appeal against any order or judgment passed by any court or tribunal in the country without exhausting alternative remedy before the appellate authority or the High Court. The power of this Court under Article 136 is unaffected by Articles 132, 133, 134 and 134-A in view of the expression "notwithstanding anything in this Chapter" occurring in Article 136.

16. This Court considered the scope and amplitude of plenary power under Article 136 of the Constitution in *Durga Shankar Mehta v. Thakur Raghuraj Singh*⁶. Mukherjea, J. speaking for the Court observed: (SCR p. 272)

- "The powers given by Article 136 of the Constitution however are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land. The article itself is worded in widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by granting of special leave, against any kind of judgment or order made by a court or tribunal in any cause or matter and the powers could be exercised in spite of the specific

⁶ (1955) 1 SCR 267; AIR 1954 SC 520; 9 ELR 494

123

436

SUPREME COURT CASES

(1991) 4 SCC

provisions for appeal contained in the Constitution or other laws. The Constitution for the best of reasons did not choose to fetter or circumscribe the powers exercisable under this article in any way."

17. In *Arunachalam v. P.S.R. Sadhanantham*⁷ this Court entertained an appeal under Article 136 of the Constitution of India by special leave at the instance of a complainant against the judgment and the order of acquittal in a murder case and on appraisal of evidence, it set aside the order of acquittal. Objections raised on behalf of the accused relating to the maintainability of the special leave petition under Article 136 of the Constitution, were rejected. Chinnappa Reddy, J. speaking for the Court held as under: (SCC p. 300, para 4)

"Article 136 of the Constitution of India invests the Supreme Court with a plenitude of plenary, appellant power over all courts and tribunals in India. The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the Court to set limits to itself within which to exercise such power. It is now the well established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or a decision shocks the conscience of the Court. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted 'perversely or otherwise improperly'."

With regard to the competence of a private party, distinguished from the State, to invoke the jurisdiction of this Court under Article 136 of the Constitution, the Court observed: (SCC pp. 300-01, para 5)

"Appellate power vested in the Supreme Court under Article 136 of the Constitution is not to be confused with ordinary appellate power exercised by appellate courts and appellate tribunals under specific statutes. As we said earlier, it is a plenary power, 'exercisable outside the purview of ordinary law' to meet the pressing demands of justice (vide *Durga Shankar Mehta v. Thakur Raghuraj Singh*⁸). Article 136 of the Constitution neither confers on anyone the right to invoke the jurisdiction of the Supreme Court nor inhibits anyone from invoking the Court's jurisdiction. The power is vested in the Supreme Court but the right to invoke the Court's jurisdiction is vested in no one. The exercise of the power of the Supreme Court is not circumscribed by any limitation as to who may invoke it."

⁷ (1979) 2 SCC 297: 1979 SCC (Cri) 454

124

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 437

18. There is therefore no room for any doubt that this Court has wide power to interfere and correct the judgment and orders passed by any court or tribunal in the country. In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India.
19. Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself. The Constitution does not define "Court of Record". This expression is well recognised in juridical world.
- In Jowitt's *Dictionary of English Law*, "Court of Record" is defined as:
- "A court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority."
- In Wharton's *Law Lexicon*, Court of Record is defined as:
- "Courts are either of record where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison; or not of record being courts of inferior dignity, and in a less proper sense the King's Courts — and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. These proceedings are not enrolled or recorded."
- In *Words and Phrases* (Permanent Edition Vol. 10 page 429) "Court of Record" is defined as under:
- "Court of Record is a court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the 'record' of the court, and are of such high and supereminent authority that their truth is not to be questioned."
- Halsbury's Laws of England*, 4th Edn., Vol. 10, para 709, page 319, states:
- "Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record. In the case of courts not expressly declared to be courts of record, the answer to the question whether a court is a court of record seems to depend in general upon whether it has

125

438

SUPREME COURT CASES

(1991) 4 SCC

power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein." a

20. In England a superior court of record has been exercising power to indict a person for the contempt of its authority and also for the contempt of its subordinate and inferior courts in a summary manner without the aid and assistance of jury. This power was conceded as a necessary attribute of a superior court of record under Anglo-Saxon System of Jurisprudence. The concept of inherent power of the superior court of record to indict a person by summary procedure was considered in detail in *Rex v. Almon*⁸ commonly known as *Almon case*. In that case King's Bench initiated proceedings for contempt against John Almon, a book-seller for publishing a libel on the Chief Justice, Lord Mansfield. On behalf of the contemner objection was taken to the summary procedure followed by the court. After lengthy arguments judgment was prepared by Chief Justice Wilmot holding that a libel on a Judge was punishable by the process of attachment without the intervention of a jury, as the summary form of procedure was founded upon immemorial usage. The judgment prepared with great learning and erudition could not be delivered as the proceedings were dropped following the change of government. After long interval Wilmot's judgment was published in 1802. The judgment proceeded on the assumption that the superior Common Law Courts did have the power to indict a person for contempt of court, by following a summary procedure on the principle that this power was 'a necessary incident to every court of justice'. Undelivered judgment of Wilmot, J. has been subject of great controversy in England and Sir John Fox has severely criticised *Almon case*⁸, in his celebrated book *The History of Contempt of Court: The Form of Trial and Mode of Punishment*. In spite of serious criticism of the judgment of Wilmot, J. the opinion expressed by him has all along been followed by the English and Commonwealth Courts. In *Rainy v. Justices of Seirra Leone*⁹, on an application for leave to appeal against the order of the Court of Seirra Leone for contempt of court, the Privy Council upheld the order on the ground that the Court of Seirra Leone being a Court of Record was the sole and exclusive judge of what amounted to contempt of court. b c d e f g h

21. In India, the courts have followed the English practice in holding that a court of record has power of summarily punishing contempt of itself as well as of subordinate courts. In *Surendranath Banerjee v. Chief*

8 97 ER 94 : (1765) Wilm 243

9 (1853) 8 Moore's PCC 47, 54

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (Singh, J.) 439

- Justice and Judges of the High Court at Fort William in Bengal*¹⁰, the High Court of Calcutta in 1883 convicted Surendranath Banerjea, who was
- a Editor and Proprietor of weekly newspaper for contempt of court and sentenced him to imprisonment for two months for publishing libel reflecting upon a Judge in his judicial capacity. On appeal the Privy Council upheld the order of the High Court and observed that the High Courts in Indian Presidencies were superior courts of record, and the
 - b powers of the High Court as superior courts in India are the same as in England. The Privy Council further held that by common law every court of record was the sole and exclusive judge of what amounts to a contempt of court. In *Sukhdev Singh Sodhi case*¹¹ this Court considered the origin, history and development of the concept of inherent jurisdiction of
 - c a court of record in India. The Court after considering Privy Council and High Courts' decisions held that the High Court being a court of record has inherent power to punish for contempt of subordinate courts. The Court further held that even after the codification of the law of contempt in India the High Court's jurisdiction as a court of record to initiate
 - d proceedings and take seisin of the matter remained unaffected by the Contempt of Courts Act, 1926.

- e 22. Mr Nariman contended that even if the Supreme Court is a court of record, it has no power to take action for the contempt of a Chief Judicial Magistrate's court as neither the Constitution nor any statutory provision confers any such jurisdiction or power on this Court. He further urged that so far as the High Court is concerned, it has power of judicial and administrative superintendence over the subordinate courts and further Section 15 of the Act expressly confers power on the
- f High Court to take action for the contempt of subordinate courts. This Court being a court of record has limited jurisdiction to take action for contempt of itself under Article 129 of the Constitution; it has no jurisdiction to indict a person for the contempt of subordinate or inferior courts.

- g 23. The question whether in the absence of any express provision a Court of Record has inherent power in respect of contempt of subordinate or inferior courts, has been considered by English and Indian courts. We would briefly refer to some of those decisions. In the leading case of *Rex v. Parke*¹¹, Wills, J. observed: (KB p. 442)

- h "This Court exercises a vigilant watch over the proceedings of inferior courts, and successfully prevents them from usurping powers which they do not possess, or otherwise acting contrary to law. It would seem almost a natural corollary that it should possess

¹⁰ ILR 10 Cal 109; 10 IA 171; 4 Sar 474

¹¹ (1903) 2 KB 432, 442; (1900-3) All ER Rep 721

correlative powers of guarding them against unlawful attacks and interferences with their independence on the part of others."

In *King v. Davies*¹² Wilks, J. further held that the King's Bench being a court of record must protect the inferior courts from unauthorised interference, and this could only be secured by action of the King's Bench as the inferior courts have no power to protect themselves and for that purpose this power is vested in the superior court of record. Since the King's Bench is the *custos morum* of the kingdom it must apply to it with the necessary adaptations to the altered circumstances of the present day to uphold the independence of the judiciary. The principle laid down in *Rex v. Davies*¹² was followed in *King v. Editor of the Daily Mail*¹³ where it was held that the High Court as a court of record has inherent jurisdiction to punish for contempt of a court martial which was an inferior court. Avory, J. observed: (KB p. 752)

"The result of that judgment (*Rex v. Davies*¹²) is to show that wherever and whenever this Court has power to correct an inferior court, it also has power to protect that court by punishing those who interfere with due administration of justice in that court."

In *Attorney General v. British Broadcasting Corpn.*¹⁴ the House of Lords proceeded on the assumption that a court of record possesses protective jurisdiction to indict a person for interference with the administration of justice in the inferior courts but it refused to indict as it held that this protection is available to a court exercising judicial power of the State and not to a tribunal even though the same may be inferior to the court of record. These authorities show that in England the power of the High Court to deal with the contempt of inferior court was based not so much on its historical foundation but on the High Court's inherent jurisdiction being a court of record having jurisdiction to correct the orders of those courts.

24. In India prior to the enactment of the Contempt of Courts Act, 1926, High Court's jurisdiction in respect of contempt of subordinate and inferior courts was regulated by the principles of Common Law of England. The High Courts in the absence of statutory provision exercised power of contempt to protect the subordinate courts on the premise of inherent power of a Court of record. Madras High Court in *Venkatrao, Re*¹⁵ held that it being a court of record had the power to deal with the contempt of subordinate courts. The Bombay High Court in *Mohandas Karamchand Gandhi, Re*¹⁶ held that the High Court possessed the same

12 (1906) 1 KB 32 : (1904-7) All ER Rep 60

13 (1921) 2 KB 733 : (1921) All ER Rep 476

14 (1980) 3 All ER 161 : (1980) 3 WLR 109

15 21 Mad LJ 832 : 10 MLT 209 : 12 IC 293 (FB)

16 (1920) 22 Bom LR 368 : AIR 1920 Bom 175 : 21 Cri LJ 835 (FB)

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (Singh, J.) 441

powers to punish the contempt of subordinate courts as the Court of the King's Bench Division had by virtue of the Common Law of England.

- a Similar view was expressed by the Allahabad High Court in *Abdul Hassan Jauhar case*¹⁷ and *Shantha Nand Gir Chela v. Basudevanand*¹⁸. In *Abdul Hassan Jauhar case*¹⁷ a Full Bench of the Allahabad High Court after considering the question in detail held:

- b "The High Court as a court of record and as the protector of public justice throughout its jurisdiction has power to deal with contempts directed against the administration of justice, whether those contempts are committed in face of the court or outside it, and independently or whether the particular court is sitting or not sitting, and whether those contempts relate to proceedings directly concerning itself or whether they relate to proceedings concerning an inferior court, and in the latter case whether those proceedings might or might not at some stage come before the High Court."

- c Similar view was taken by the Nagpur and Lahore High Courts in *Mt. Hirabai v. Mangalchand*¹⁹, *Harkishen Lal v. Emperor*²⁰ and the Oudh Chief Court took the same view in *Mohammad Yusuf v. Imtiaz Ahmad Khan*²¹. But, the Calcutta High Court took a contrary view in *Legal Remembrancer v. Motilal Ghosh*²² holding that there was no such inherent power with the High Court.

- d 25. Judicial conflict with regard to High Court's power with regard to the contempt of subordinate court was set at rest by the Contempt of Courts Act, 1926. The Act resolved the doubt by recognising the power of High Courts in regard to contempt of subordinate courts, by enacting Section 2 which expressly stated that the High Courts will continue to have jurisdiction and power with regard to contempt of subordinate courts as they exercised with regard to their own contempt. Thus the Act reiterated and recognised the High Court's power as a court of record for taking action for contempt of courts subordinate to them. The only exception to this power was made in sub-section (3) of Section 2 which provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. Section 3 of the Act restricted the punishment which could be passed by the High Court. Since doubt was raised whether the High Court as a

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17 AIR 1926 All 623 : 24 ALJ 849 (FB) (Cited in the report as *In re Hadi Husain v. Nasir Uddin Haider*)

18 AIR 1930 All 225 : 1930 ALJ 402 (FB)

19 AIR 1935 Nag 46 : 156 IC 666 : 31 NLR 154

20 AIR 1937 Lah 497 : 38 Cri LJ 883 : 39 PLR 733 (SB)

21 AIR 1939 Oudh 131 : 40 Cri LJ 421 : 1939 OLR 194 (FB)

22 ILR 41 Cal 173 : 17 CWN 1253 : 18 CLJ 452 (SB)

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court of record could punish contempt of itself and of courts subordinate to it if contempt was committed outside its territorial jurisdiction, the Parliament enacted the Contempt of Courts Act, 1952 removing the doubt. Section 3 of the 1952 Act again reiterated and reaffirmed the power, authority and jurisdiction of the High Court in respect of contempt of courts subordinate to it, as it existed prior to the enactment. It provided that every High Court shall have and exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself. Section 5 further expanded the jurisdiction of the High Court for indicting a person in respect of contempt committed outside the local limits of its jurisdiction. The Parliamentary legislation did not confer any new or fresh power or jurisdiction on the High Courts in respect of contempt of courts subordinate to it, instead it reaffirmed the inherent power of a Court of Record, having same jurisdiction, power and authority as it has been exercising prior to the enactments. The effect of these statutory provisions was considered by this Court in *Sukhdev Singh Sodhi case*⁴, and the Court held that contempt jurisdiction was a special one inherent in the very nature of a court of record and that jurisdiction and power remained unaffected even after the enactment of 1926 Act as it did not confer any new jurisdiction or create any offence, it merely limited the amount of punishment which could be awarded to a contemner. The jurisdiction of the High Court to initiate proceedings or taking action for contempt of its subordinate courts remained as it was prior to the 1926 Act. In *R.L. Kapur v. State of T.N.*²³ the Court again emphasised that in view of Article 215 of the Constitution, the High Court as a court of record possesses inherent power and jurisdiction, which is a special one, not arising or derived from Contempt of Courts Act and the provisions of Section 3 of 1926 Act, do not affect that power or confer a new power or jurisdiction. The Court further held that in view of Article 215 of the Constitution, no law made by a legislature could take away the jurisdiction conferred on the High Court nor it could confer it afresh by virtue of its own authority.

26. The English and the Indian authorities are based on the basic foundation of inherent power of a Court of Record, having jurisdiction to correct the judicial orders of subordinate courts. The King's Bench in England and High Courts in India being superior Courts of Record and having judicial power to correct orders of subordinate courts enjoyed the inherent power of contempt to protect the subordinate courts. The Supreme Court being a Court of Record under Article 129 and having wide power of judicial supervision over all the courts in the country, must

²³ (1972) 1 SCC 651 : 1972 SCC (Cri) 380 : AIR 1972 SC 858

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 443

- possess and exercise similar jurisdiction and power as the High Courts had prior to Contempt Legislation in 1926. Inherent powers of a superior
- a Court of Record have remained unaffected even after codification of Contempt Law. The Contempt of Courts Act, 1971 was enacted to define and limit the powers of courts in punishing contempts of courts and to regulate their procedure in relation thereto. Section 2 of the Act defines contempt of court including criminal contempt. Sections 5, 6, 7, 8
- b and 9 specify matters which do not amount to contempt and the defence which may be taken. Section 10 relates to the power of High Court to punish for contempt of subordinate courts. Section 10 like Section 2 of 1926 Act and Section 3 of 1952 Act reiterates and reaffirms the jurisdiction and power of a High Court in respect of its own contempt and of
- c subordinate courts. The Act does not confer any new jurisdiction instead it reaffirms the High Court's power and jurisdiction for taking action for the contempt of itself as well as of its subordinate courts. We have scanned the provisions of the 1971 Act, but we find no provision therein curtailing the Supreme Court's power with regard to contempt of sub-
- d ordinate courts, Section 15 on the other hand expressly refers to this Court's power for taking action for contempt of subordinate courts. Mr Nariman contended that under Section 15 Parliament has exclusively conferred power on the High Court to punish for the contempt of subordinate courts. The legislative intent being clear, this Court has no
- e power under its inherent jurisdiction or as a court of record under Article 129 of the Constitution with regard to contempt of subordinate courts. Section 15 of the Act reads as under:

f "15. *Cognizance of criminal contempt in other cases.*— (1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or a motion made by—

- (a) the Advocate General, or
- (b) any other person, with the consent in writing of the Advocate General, or
- g (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may by notification in the official Gazette, specify in this behalf, or any other person, with the consent in writing of such
- h Law Officer.

(2) In the case of any criminal contempt of a subordinate court the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General or, in relation to a Union territory, by such Law Officer as the Central

i Government may, by notification in the official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.— In this section, the expression 'Advocate General' means—

- (a) in relation to the Supreme Court, the Attorney General or the Solicitor General;
- (b) in relation to the High Court, the Advocate General of the State or any of the States for which the High Court has been established;
- (c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the official Gazette, specify in this behalf."

27. Under sub-section (1) the Supreme Court and High Court both have power to take cognizance of criminal contempt and it provides three modes for taking cognizance. The Supreme Court and the High Court both may take cognizance on its own motion or on the motion made by the Advocate General or any other person with the consent in writing of the Advocate General. Sub-section (2) provides that in case of any criminal contempt of subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General, and in, relation to a Union territory, on a motion made by any officer as may be specified by the government. Thus Section 15 prescribes modes for taking cognizance of criminal contempt by the High Court and Supreme Court, it is not a substantive provision conferring power or jurisdiction on the High Court or on the Supreme Court for taking action for the contempt of its subordinate courts. The whole object of prescribing procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court and the Supreme Court being wasted by frivolous complaints of contempt of court. Section 15(2) does not restrict the power of the High Court to take cognizance of the contempt of itself or of a subordinate court on its own motion although apparently the section does not say so. In *S.K. Sarkar, Member, Board of Revenue, U.P. Lucknow v. Vinay Chandra Misra*²⁴ this Court held that Section 15 prescribed procedure for taking cognizance and it does not affect the High Court's suo moto power to take cognizance and punish for contempt of subordinate courts.

28. Mr Nariman urged that under Entry 77 of List I of the Seventh Schedule the Parliament has legislative competence to make law curtailing the jurisdiction of Supreme Court. He further urged that Section 15 curtails the inherent power of this Court with regard to contempt of sub-

²⁴ (1981) 1 SCC 436: 1981 SCC (Cri) 175: (1981) 2 SCR 331

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 445

a ordinate courts. Entry 77 of List I states: "Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such court), and the fees taken therein; persons entitled to practise before the Supreme Court." This entry read with Article 246 confers power on the Parliament to enact law with respect to the constitution, organisation, jurisdiction and powers of the Supreme Court including the contempt of this Court. The Parliament is thus competent to enact a law relating to the powers of Supreme Court with regard to 'contempt of itself'; such a law may prescribe procedure to be followed and it may also prescribe the maximum punishment which could be awarded and it may provide for appeal and for other matters. But the Central legislature has no legislative competence to abridge or extinguish the jurisdiction or power conferred on this Court under Article 129 of the Constitution. The Parliament's power to legislate in relation to law of contempt relating to Supreme Court is limited, therefore the Act does not impinge upon this Court's power with regard to the contempt of subordinate courts under Article 129 of the Constitution.

d 29. Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court *including the power to punish for contempt of itself* (emphasis supplied). The expression used in Article 129 is not restrictive instead it is extensive in nature. If the Framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity for inserting the expression "*including the power to punish for contempt of itself*". The article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression "including". The expression "including" has been interpreted by courts, to extend and widen the scope of power. The plain language of Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression "including" was deliberately inserted in the article. Article 129 recognised the existing inherent power of a

132

446

SUPREME COURT CASES

(1991) 4 SCC

court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdiction of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very backbone of administration of justice. The subordinate courts administer justice at the grassroot level, their protection is necessary to preserve the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level.

30. Disputing the inherent power of this Court with regard to the contempt of subordinate courts, Mr Nariman contended that inherent powers are always preserved, but they do not authorise a court to invest itself with jurisdiction when that jurisdiction is not conferred by law. He urged that the status of an appellate court like High Court, does not enable the High Court to claim original jurisdiction not vested by law. Similarly, the Supreme Court having appellant jurisdiction under Section 19 of the Contempt of Courts Act, 1971, cannot invest itself with original jurisdiction for contempt of subordinate courts. He placed reliance on the decision of this Court in *Raja Soap Factory v. S.P. Shantharaj*²⁵. We are unable to accept the contention. In *Raja Soap Factory case*²⁵, High Court had entertained an original suit and issued injunction under the Trade and Merchandise Marks Act, 1958 although under the Act the suit was required to be instituted in the District Court. In appeal before this Court, order of the High Court was sought to be justified on the ground of High Court's power of transfer under Section 24 read with its inherent power under Section 151 of the Code of Civil Procedure. This Court rejected the submission on the ground that exercise of jurisdiction under Section 24 of Code of Civil Procedure was conditioned by lawful institution of the proceeding in a subordinate court of competent jurisdiction, and transfer thereof to the High Court. The Court observed that power to try and dispose of proceedings, after transfer from a court lawfully seized of it, does not involve a power to entertain a proceeding which is not otherwise within the cognizance of the High Court. Referring to the claim of inherent powers under Section 151 to justify entertainment of the suit and grant of injunction order, the Court observed that the inherent power could be exercised where there is a proceeding lawfully before the High Court; it does not, however, authorise the High Court to invest itself with jurisdiction where it is not conferred by law. The facts and circumstances as available in the *Raja Soap Factory case*²⁵, were quite different and the view expressed in that case do not have any bearing on the inherent power of this Court. In

²⁵ (1965) 2 SCR 800 : AIR 1965 SC 1449

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 447

- Raja Soap Factory case*²⁵ there was no issue before the Court regarding the inherent power of a superior court of record; instead the entire case related to the interpretation of the statutory provisions conferring jurisdiction on the High Court. Where jurisdiction is conferred on a court by a statute, the extent of jurisdiction is limited to the extent prescribed under the statute. But there is no such limitation on a superior court of record in matters relating to the exercise of constitutional powers. No doubt this Court has appellate jurisdiction under Section 19 of the Act, but that does not divest it of its inherent power under Article 129 of the Constitution. The conferment of appellate power on the court by a statute does not and cannot affect the width and amplitude of inherent powers of this Court under Article 129 of the Constitution.
31. We have already discussed a number of decisions holding that the High Court being a court of record has inherent power in respect of contempt of itself as well as of its subordinate courts even in the absence of any express provision in any Act. A fortiori the Supreme Court being the Apex Court of the country and superior court of record should possess the same inherent jurisdiction and power for taking action for contempt of itself as well as for the contempt of subordinate and inferior courts. It was contended that since High Court has power of superintendence over the subordinate courts under Article 227 of the Constitution, therefore, High Court has power to punish for the contempt of subordinate courts. Since the Supreme Court has no supervisory jurisdiction over the High Court or other subordinate courts, it does not possess powers which High Courts have under Article 215. This submission is misconceived. Article 227 confers supervisory jurisdiction on the High Court and in exercise of that power High Court may correct judicial orders of subordinate courts, in addition to that, the High Court has administrative control over the subordinate courts. Supreme Court's power to correct judicial orders of the subordinate courts under Article 136 is much wider and more effective than that contained under Article 227. Absence of administrative power of superintendence over the High Courts and subordinate courts does not affect this Court's wide power of judicial superintendence of all courts in India. Once there is power of judicial superintendence, all the courts whose orders are amenable to correction by this Court would be subordinate courts and therefore this Court also possesses similar inherent power as the High Court has under Article 215 with regard to the contempt of subordinate courts. The jurisdiction and power of a superior Court of Record to punish contempt of subordinate courts was not founded on the Court's administrative power of superintendence, instead the inherent jurisdiction was conceded to

134

448

SUPREME COURT CASES

(1991) 4 SCC

superior Court of Record on the premise of its judicial power to correct the errors of subordinate courts.

32. Mr Nariman urged that assumption of contempt jurisdiction with regard to contempt of subordinate and inferior courts on the interpretation of Article 129 of the Constitution is foreclosed by the decisions of Federal Court. He placed reliance on the decisions of Federal Court in *K.L. Gauba v. Hon'ble the Chief Justice and Judges of the High Court of Judicature at Lahore*²⁶ and *Purshottam Lal Jaitly v. King-Emperor*²⁷. He urged that this Court being successor to Federal Court was bound by the decisions of the Federal Court under Article 374(2) of the Constitution. Mr Sorabjee, the learned Attorney General, seriously contested the proposition. He contended that there is a marked difference between the Federal Court and this Court, former being established by a statute with limited jurisdiction while this Court is the apex constitutional court with unlimited jurisdiction, therefore, the Federal Court decisions are not binding on this Court. He urged that Article 374(2) does not bind this Court with the decisions of the Federal Court, instead it provides for meeting particular situation during transitory period. In the alternative learned Attorney General urged that the aforesaid two decisions of Federal Court in *Gauba case*²⁶ and *Jaitly case*²⁷ do not affect the jurisdiction and power of this Court with regard to contempt of subordinate and inferior courts as the Federal Court had no occasion to interpret any provision like Article 129 of the Constitution in the aforesaid decisions. Article 374 made provision for the continuance of Federal Court Judges as the Judges of the Supreme Court on the commencement of the Constitution and it also made provisions for transfer of the proceedings pending in the Federal Court to the Supreme Court. Clause (2) of Article 374 is as under:

"374. (2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court."

On the promulgation of the Constitution, Federal Court ceased to exist and the Supreme Court was set up and with a view to meet the changed situation, provisions had to be made with regard to the matters pending before the Federal Court. Article 374(2) made provision for two things.

²⁶ AIR 1942 FC 1 : 43 Cri LJ 311 : 1941 FCR 54

²⁷ 1944 FCR 364

135

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (Singh, J.) 449

- firstly it directed the transfer of all suits, appeals and proceedings, civil or criminal, pending before the Federal Court to the Supreme Court.
- a Secondly, it provided that any orders and judgments delivered or made by the Federal Court before the commencement of the Constitution shall have the same force and effect as if those orders or judgments had been delivered or made by the Supreme Court. This was necessary for the continuance of the proceedings before the Supreme Court. The Federal Court may have passed interlocutory orders, it may have delivered judgments in the matters pending before it and in order to maintain the continuance of validity of orders or judgments of Federal Court a legal fiction was created stating that those judgments and orders shall be treated as of Supreme Court. Article 374(2) is in the nature of transitory provision to meet the exigency of the situation on the abolition of the Federal Court and setting up of the Supreme Court. There is no provision in the aforesaid article to the effect that the decisions of the Federal Court shall be binding on the Supreme Court. Similar view was taken by the Allahabad High Court in *Om Prakash Gupta v. United Provinces*²⁸
 - b and Bombay High Court in *State of Bombay v. Gajanan Mahadev Badley*²⁹. The decisions of Federal Court and the Privy Council made before the commencement of the Constitution are entitled to great respect but those decisions are not binding on this Court and it is always open to this Court to take a different view. In *State of Bihar v. Abdul Majid*³⁰ and *Shrinivas Krishnarao Kango v. Narayan Devji Kango*³¹, Federal Court decisions were not followed by this Court. There is, therefore, no merit in the contention that this Court is bound by the decisions of the Federal Court.
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 - f 33. But even otherwise the decisions of Federal Court in *K.L. Gauba case*²⁸ and *Purshottam Lal Jaitly case*²⁷ have no bearing on the interpretation of Article 129 of the Constitution. In *K.L. Gauba case*²⁸ the facts were that K.L. Gauba, an Advocate of Lahore High Court was involved in litigation of various kinds including a case connected with his insolvency. A Special Bench of the High Court of Lahore was constituted to decide his matters. His objection against the sitting of a particular Judge on the Special Bench, was rejected. His application for the grant of certificate under Section 205 of the Government of India Act to file appeal against the order of the High Court before the Federal Court was refused. Gauba filed a petition before the Federal Court for the issue of direction for the transfer of his case to Federal Court from High Court. The Federal Court held that appeal against the order of the
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28 AIR 1951 All 205, para 43; ILR (1952) 2 All 467

29 AIR 1954 Bom 351, para 14; 56 Bom LR 172; 9 DLR Bom 55

30 1954 SCR 786, 795; AIR 1954 SC 245; (1954) 2 LLJ 678

31 (1955) 1 SCR 1, 24 and 25; AIR 1954 SC 379

High Court refusing to grant certificate was not maintainable. Gauba argued that the High Court was guilty of contempt of Federal Court as it had deliberately and maliciously deprived the Federal Court's jurisdiction to hear the appeal against its orders. Gwyer, C.J. rejected the contention in the following words: (AIR p. 2) a

"We have had occasion more than once to construe the provisions of Section 205, and we repeat what we have already said, that no appeal lies to this Court in the absence of the certificate prescribed by that section: a certificate is the necessary condition precedent to every appeal. We cannot question the refusal of a High Court to grant a certificate or investigate the reasons which have prompted the refusal; we cannot even inquire what those reasons were, if the High Court has given none. The matter is one exclusively for the High Court; and, as this Court observed in an earlier case, it is not for us to speculate whether Parliament omitted per incuriam to give a right of appeal against the refusal to grant a certificate or trusted the High Courts to act with reasonableness and impartiality: 1939 FCR 13 at 16[†]. The jurisdiction of the Court being thus limited by the statute in this way, how could it be extended by a High Court acting even perversely or maliciously in withholding the certificate?" b
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34. In *Purshottam Lal Jaithy case*[†] an application purporting to invoke extraordinary original jurisdiction of the Federal Court under Section 210(2) of the Government of India Act, 1935 was made with a prayer that the Federal Court should itself deal directly with an alleged contempt of a civil court, subordinate to the High Court. By a short order the Court rejected the application placing reliance on its decision in *K.L. Gauba case*²⁴. The Court observed as under: e

"The expression 'any contempt of Court' in that provision must be held to mean 'any act amounting to contempt of this Court'. This was the view expressed in *Gauba case*²⁴ and we have been shown no reason for departing from that view. Under the Indian law the High Courts have power to deal with contempt of any court subordinate to them as well as with contempt of the High Courts. It could not have been intended to confer on the Federal Court a concurrent jurisdiction in such matters. The wider construction may conceivably lead to conflicting judgments and to other anomalous consequences." f
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In the case of *K.L. Gauba*²⁴ the Federal Court found itself helpless in the matter as the Government of India Act, 1935 did not confer any power on it to entertain an appeal against the order of High Court refusing to grant certificate. The decision has no bearing on the question with which h

[†] *Pashupati Bharti v. Secretary of State*, AIR 1938 FC 1 i

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 451

- we are concerned. In *Purshottam Lal Jaitly case*²⁷ the decision turned on the interpretation of Section 210(2) of the 1935 Act. Section 210 made provisions for the enforcement of decrees and orders of Federal Court. Sub-section (2) provided that Federal Court shall have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents or the investigation or "punishment of any contempt of court", which any High Court has power to make as respects the territory within its jurisdiction, and further the Federal Court shall have power to award costs and its orders shall be enforceable by all courts. While interpreting Section 210(2) the Federal Court held that it had no power to deal with contempt of any court subordinate to High Court and it further observed that the wider constructions may lead to conflicting judgments and to other anomalous consequences. It is not necessary for us to consider the correctness of the opinion expressed by the Federal Court, as in our view the Federal Court was a court of limited jurisdiction, it was not the Apex Court like this Court as against the judgment, order and decree of the Federal Court appeals lay to the Privy Council. The Federal Court exercised limited jurisdiction as conferred on it by the 1935 Act. The question regarding the inherent power of the Superior Court of Record in respect of the contempt of subordinate court was neither raised nor discussed in afore-said decisions. The Federal Court observed that if the High Court and the Federal Court both have concurrent jurisdiction in contempt matters it could lead to conflicting judgments and anomalous consequences. That may be so under the Government of India Act as the High Court and the Federal Court did not have concurrent jurisdiction, but under the Constitution, High Court and the Supreme Court both have concurrent jurisdiction in several matters, yet no anomalous consequences follow.

35. While considering the decision of Federal Court, it is necessary to bear in mind that the Federal Court did not possess wide powers as this Court has under the Constitution. There are marked differences in the constitution and jurisdiction and the amplitude of powers exercised by the two courts. In addition to civil and criminal appellate jurisdiction, this Court has wide powers under Article 136 over all the courts and tribunals in the country. The Federal Court had no such power, instead it had appellate power but that too could be exercised only on a certificate issued by the High Court. The Federal Court was a court of record under Section 203 but it did not possess any plenary or residuary appellate power over all the courts functioning in the territory of India like the power conferred on this Court under Article 136 of the Constitution, therefore, the Federal Court had no judicial control or superintendence over subordinate courts.

138

452

SUPREME COURT CASES

(1991) 4 SCC

36. Advent of freedom, and promulgation of Constitution have made drastic changes in the administration of justice necessitating new judicial approach. The Constitution has assigned a new role to the Constitutional Courts to ensure rule of law in the country. These changes have brought new perceptions. In interpreting the Constitution, we must have regard to the social, economic and political changes, need of the community and the independence of judiciary. The court cannot be a helpless spectator, bound by precedents of colonial days which have lost relevance. Time has come to have a fresh look at the old precedents and to lay down law with the changed perceptions keeping in view the provisions of the Constitution. "Law", to use the words of Lord Coleridge, "grows; and though the principles of law remain unchanged, yet their application is to be changed with the changing circumstances of the time". The considerations which weighed with the Federal Court in rendering its decision in *Gaubha*²⁶ and *Jaitly case*²⁷ are no more relevant in the context of the constitutional provisions.

37. Since this Court has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The subordinate and inferior courts do not have adequate power under the law to protect themselves, therefore, it is necessary that this court should protect them. Under the constitutional scheme this court has a special role, in the administration of justice and the powers conferred on it under Articles 32, 136, 141 and 142 form part of basic structure of the Constitution. The amplitude of the power of this Court under these articles of the Constitution cannot be curtailed by law made by Central or State legislature. If the contention raised on behalf of the contemners is accepted, the courts all over India will have no protection from this Court. No doubt High Courts have power to persist for the contempt of subordinate courts but that does not affect or abridge the inherent power of this Court under Article 129. The Supreme Court and the High Court both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Articles 32 and 226 of the Constitution, therefore this Court's jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. There may be occasions when attack on Judges and Magistrates of subordinate courts may have wide repercussions throughout the country, in that situation it may not be possible for a High Court to contain the same, as a result of which the administration of justice in the country may be paralysed, in that situation the Apex

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 453

a Court must intervene to ensure smooth functioning of courts. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice throughout the country, for that purpose it must wield the requisite power to take action for contempt of subordinate courts. Ordinarily, the High Court would protect the subordinate court from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, this Court may directly take cognizance of contempt of subordinate courts. We would like to strike a note of caution that this Court will sparingly exercise its inherent power in taking cognizance of the contempt of subordinate courts, as ordinarily matters relating to contempt of subordinate courts must be dealt with by the High Courts. The instant case is of exceptional nature, as the incident created a situation where functioning of the subordinate courts all over the country was adversely affected, and the administration of justice was paralysed, therefore, this Court took cognizance of the matter.

d 38. Mr Nariman contended that in our country there is no court of universal jurisdiction, as the jurisdiction of all courts including the Supreme Court is limited. Article 129 as well as the Contempt of Courts Act, 1971 do not confer any express power on this Court with regard to contempt of the subordinate courts, this Court cannot by construing e Article 129 assume jurisdiction in the matter which is not entrusted to it by law. He placed reliance on the observations of this Court in *Naresh Shridhar Mirajkar v. State of Maharashtra*²². We have carefully considered the decision but we find nothing therein to support the contention of Mr Nariman. It is true that courts constituted under a law enacted by the f Parliament or the State legislature have limited jurisdiction and they cannot assume jurisdiction in a matter, not expressly assigned to them, but that is not so in the case of a superior court of record constituted by the Constitution. Such a court does not have a limited jurisdiction instead it has power to determine its own jurisdiction. No matter is beyond the g jurisdiction of a superior court of record unless it is expressly shown to be so, under the provisions of the Constitution. In the absence of any express provision in the Constitution the Apex Court being a court of record has jurisdiction in every matter and if there be any doubt, the Court has power to determine its jurisdiction. If such determination is h made by High Court, the same would be subject to appeal to this Court, but if the jurisdiction is determined by this Court it would be final. *Halsbury's Laws of England*, 4th Edn., Vol. 10, para 713 states:

i

140

454

SUPREME COURT CASES

(1991) 4 SCC

"Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court."

The above principle of law was approved by this Court in *Special Reference No. 1 of 1964*³³ in holding that the High Court being a superior court of record was entitled to determine its own jurisdiction in granting interim bail to a person against whom warrant of arrest had been issued by the Speaker of a State legislature. In *Mirajkar case*³² this Court again reiterated the principles that a superior court of record unlike a court of limited jurisdiction is entitled to determine about its own jurisdiction. In *Ganga Bishan v. Jai Narain*³⁴ the Court emphasised that the Constitution has left it to the judicial discretion of Supreme Court to decide for itself the scope and limits of its jurisdiction in order to render substantial justice in matters coming before it. We therefore hold that this Court being the Apex Court and a superior court of record has power to determine its jurisdiction under Article 129 of the Constitution, and as discussed earlier it has jurisdiction to initiate or entertain proceedings for contempt of subordinate courts. This view does not run counter to any provision of the Constitution.

39. Constitutional hurdles over, now we would revert back to the incident which has given rise to these proceedings. The genesis of the unprecedented attack on the subordinate judiciary arose out of confrontational attitude of the local police against the Magistracy in Kheda. The Chief Judicial Magistrate is head of the Magistracy in the district. Under the provisions of Chapter XII of the Code of Criminal Procedure, 1973, he exercises control and supervision over the investigating officer. He is an immediate officer on the spot at the lower rung of the administration of justice of the country to ensure that the police which is the law enforcing machinery acts according to law in investigation of crimes without indulging in excesses and causing harassment to citizens. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations

³³ (1965) 1 SCR 413, 499: AIR 1965 SC 745

³⁴ (1986) 1 SCC 75

141

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (Singh, J.) 455

- a of police officers and police excesses in dealing with the law and order situation have been the subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police to take maximum care in exercising that power. The police must bear in mind, as held by this Court that if a person is arrested
- b for a crime, his constitutional and fundamental rights must not be violated. See *Sunil Batra v. Delhi Administration*³⁵. In *Prem Shankar Shukla case*¹ this Court considered the question of placing a prisoner under handcuff by the police. The Court declared that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of
- c custody or escort. The Court emphasised that the police did not enjoy any unrestricted or unlimited power to handcuff an arrested person. If having regard to the circumstances including the conduct, behaviour and character of a prisoner, there is reasonable apprehension of prisoner's escape from custody or disturbance of peace by violence, the police may
- d put the prisoner under handcuff. If a prisoner is handcuffed without there being any justification, it would violate prisoner's fundamental rights under Articles 14 and 19 of the Constitution. To be consistent with Articles 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security of a prisoner. In *Prem Shankar Shukla case*¹,
- e Krishna Iyer, J. observed: (SCC p. 529, para 1)

"If *today* freedom of the forlorn person falls to the police somewhere, *tomorrow* the freedom of many may fall elsewhere with none to whimper *unless* the court process invigilates in time and polices the police before it is too late." (emphasis in original)

- f The prophetic words of Krishna Iyer, J. have come true as the facts of the present case would show.

- g 40. In the instant case, Patel, CJM, was assaulted, arrested and handcuffed by Police Inspector Sharma and other police officers. The police officers were not content with this, they tied him with a thick rope round his arms and body as if N.L. Patel was a wild animal. As discussed earlier, he was taken in that condition to the hospital for medical examination where he was made to sit in veranda exposing him to the public gaze, providing opportunity to the members of the public to see that the
- h police had the power and privilege to apprehend and deal with a Chief Judicial Magistrate according to its sweet will. What was the purpose of unusual behaviour of the police, was it to secure safety and security of N.L. Patel, or was it done to prevent escape or any violent activity on his part justifying the placing of handcuffs and ropes on the body of N.L.
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35 (1978) 4 SCC 494 : 1979 SCC (Cri) 155

142

456

SUPREME COURT CASES

(1991) 4 SCC

Patel? The Commission has recorded detailed findings that the object was to wreak vengeance and to humiliate the CJM who had been policing the police by his judicial orders.

41. We agree with the findings recorded by the Commission that there was no justification for this extraordinary and unusual behaviour of Police Inspector Sharma and other police officers although they made an attempt to justify their unprecedented, dehumanising behaviour on the ground that Patel was drunk, and he was behaving in violent manner and if he had not been handcuffed or tied with ropes, he could have snatched Sharma's revolver and killed him. We are amazed at the reasons given by Sharma justifying the handcuffs and ropes on the body of N.L. Patel. Patel was unarmed, he was at the Police Station in a room, there were at least seven police officials present in the room who were fully armed, yet, there was apprehension about Patel's escape or violent behaviour justifying handcuffs and roping. The justification given by them is flimsy and preposterous. S.R. Sharma acted in utter disregard of this Court's direction in *Prem Shankar Shukla case*¹. His explanation that he was not aware of the decision of this Court is a mere pretence as the Commissioner has recorded findings that Gujarat Government had issued circular letter to the police incorporating the guidelines laid down by this Court in *Prem Shanker Shukla case*¹ with regard to the handcuffing of prisoners.

42. What constitutes contempt of court? The Common Law definition of contempt of court is: "An act or omission calculated to interfere with the due administration of justice." [Bowen L.J. in *Helmores v. Smith* (No. 2)²]. The contempt of court as defined by the Contempt of Courts Act, 1971 includes civil and criminal contempt. Criminal contempt as defined [in Section 2(c)] by the Act:

"means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which

- (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice

143

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 457

or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage." (Frankfurter, J. in *Offutt v. U.S.*³⁷) The object and purpose of punishing contempt for interference with the administration of justice is not to safeguard or protect the dignity of the Judge or the Magistrate, but the purpose is to preserve the authority of the courts to ensure an ordered life in society. In *Attorney General v. Times Newspapers*³⁸, the necessity for the law of contempt was summarised by Lord Morris as: (AC p. 302)

"In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted and their authority wanes and is supplanted."

43. The Chief Judicial Magistrate is head of the Magistracy in the district who administers justice to ensure, protect and safeguard the rights of citizens. The subordinate courts at the district level cater to the need of the masses in administering justice at the base level. By and large the majority of the people get their disputes adjudicated in subordinate courts. It is, in the general interest of the community that the authority of subordinate courts is protected. If the CJM is led into trap by unscrupulous police officers and if he is assaulted, handcuffed and roped, the public is bound to lose faith in courts, which would be destructive of basic structure of an ordered society. If this is permitted Rule of Law shall be supplanted by Police Raj. Viewed in this perspective the incident is not a case of physical assault on an individual judicial officer instead it is an onslaught on the institution of the judiciary itself. The incident is a clear interference with the administration of justice, lowering its judicial authority. Its effect was not confined to one District or State, it had a tendency to effect the entire judiciary in the country. The incident

³⁷ (1954) 348 US 11, 14: 99 L ed 11

³⁸ (1974) AC 273, 302: (1973) 3 All ER 54

144

458

SUPREME COURT CASES

(1991) 4 SCC

highlights a dangerous trend that if the police is annoyed with the orders of a presiding officer of a court, he would be arrested on flimsy manufactured charges, to humiliate him publicly as has been done in the instant case. The conduct of police officers in assaulting and humiliating the CJM brought the authority and administration of justice into disrespect, affecting the public confidence in the institution of justice. "The summary power of punishment for contempt has been conferred on the courts to keep a blaze of glory around them, to deter people from attempting to render them contemptible in the eyes of the public. These powers are necessary to keep the course of justice free, as it is of great importance to society." (Oswald on *Contempt of Court*). The power to punish contempt is vested in the Judges not for their personal protection only, but for the protection of public justice, whose interest requires that decency and decorum is preserved in Courts of Justice. Those who have to discharge duty in a Court of Justice are protected by the law, and shielded in the discharge of their duties, any deliberate interference with the discharge of such duties either in court or outside the court by attacking the presiding officers of the court, would amount to criminal contempt and the courts must take serious cognizance of such conduct.

44. It takes us to the question against which of the contemnors contempt is made out. On behalf of the petitioners it was urged that the police officers' conduct amounts to criminal contempt as their action lowered the authority of the Chief Judicial Magistrate and it further caused interference with the administration of justice. Mr Soli J. Sorabjee, learned Attorney General contended that all those who abetted and helped the police officers in their conduct and design are also guilty of contempt of court. On behalf of the contemnors it was urged that the incident which took place in the Police Station does not make out any contempt of court. The Chief Judicial Magistrate had consumed liquor and in drunken state he went to the Police Station and slapped the Police Inspector, Sharma, thereby he committed offence under the Bombay Prohibition Act as well as under Sections 332, 504 and 506 of the Indian Penal Code. Criminal cases have been registered against N.L. Patel, CJM and after investigation charge-sheets have been submitted to the court. In this context, it was urged that no action could be taken against the contemnors as the facts in issue in the present proceedings are the same as involved in the criminal prosecutions pending against N.L. Patel, CJM. The question raised on behalf of the contemnors need not detain us long. Proceedings for contempt of court are different than those taken for the prosecution of a person for an offence under the criminal jurisdiction. Contempt proceedings are peculiar in nature although in certain aspects they are quasi-criminal in nature but they do

145

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 459

not form part of criminal jurisdiction of the court. Criminal prosecution pending against the CJM or against the contemnors has no bearing on the contempt proceedings initiated by this Court as the present proceedings are not for the purpose of punishing the contemnors for the offence of wrongful detention and assault on N.L. Patel, Chief Judicial Magistrate, instead these proceedings have been taken to protect the interest of the public in the due administration of justice and to preserve the confidence of people in courts. We, accordingly, reject the contemner's objection.

45. We have already recorded findings that Sharma, Police Inspector, Nadiad had preplanned the entire scheme, he deliberately invited Patel to visit Police Station where he was forced to consume liquor and on his refusal he was assaulted, arrested, handcuffed and tied with rope. S.R. Sharma, K.H. Sadia, Sub-Inspector, Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable, all took active part in this shameful episode with a view to malign and denigrate the CJM on account of his judicial orders against the police. We, therefore, hold S.R. Sharma, Police Inspector, K.H. Sadia, Sub-Inspector, Valjibhai Kalabhai Head Constable and Pratap Singh, Constable guilty of contempt of court. M.B. Savant, Mamlatdar had been summoned by Sharma, Police Inspector, to the Police Station in advance for purposes of being witness to the panchnama drawn up by Sharma describing drunken condition of Patel, CJM. The document was false and deliberately prepared to make out a case against Patel, CJM. M.B. Savant was in complicity with Sharma, he actively participated in the preparation of the document to malign and humiliate the CJM and to prepare a false case against him, he is also, therefore, guilty of contempt of court.

46. As regards D.K. Dhagal, the then District Superintendent of Police, Kheda, we have already recorded findings that he was hand in glove with Sharma, Police Inspector. The circumstances pointed out by the Commission and as discussed earlier, show that though D.K. Dhagal, had not personally participated in the shameful episode but his conduct, act and omission establish his complicity in the incident. It is difficult to believe or imagine that a Police Inspector would arrest, humiliate, assault and handcuff a CJM and the Police Chief in the district would be indifferent, or a mute spectator. The circumstances unequivocally show that Sharma was acting under the protective cover of Dhagal as he did not take any immediate action in the matter instead he created an alibi for himself by interpolating the entries in the register at the Government Rest House, Balasinor, In his report submitted to the Addl. Chief Secretary (Home) on September 27, 1989, Dhagal did not even remotely mention the handcuffing and roping of the CJM. It is unfortunate that

146

460

SUPREME COURT CASES

(1991) 4 SCC

Dhagal as the District Superintendent of Police did not discharge his duty like a responsible police officer instead he identified himself with Sharma, Police Inspector and actively abetted the commission of onslaught on the CJM. We, accordingly, hold D.K. Dhagal, the then DSP, Kheda guilty of contempt of court. a

47. This takes us to the petition filed by N.L. Patel for quashing the criminal cases initiated against him on the basis of two first information reports made by Police Inspector S.R. Sharma. As noticed earlier Sharma, Police Inspector, had registered two FIRs on September 25, 1989 against N.L. Patel for the offences under Section 85(1)(3) read with Section 66(1)(b) and also under Section 110 of Bombay Prohibition Act on the allegations that Patel had consumed liquor without permit or pass and under the influence of alcohol entered into Sharma's chamber and behaved in an indecent manner. The FIR further alleged that Patel caught hold of Police Inspector Sharma and slapped him. The second FIR was lodged by Sharma against Patel for offences under Sections 332, 353, 186 and 506 of the Indian Penal Code on the same allegations as contained in the earlier FIR. During the pendency of the contempt proceedings before this Court, the police continued the investigation and submitted charge-sheet in both the cases against N.L. Patel and at present Criminal Cases Nos. 1998 of 1990 and 1999 of 1990 are pending in the Court of Chief Judicial Magistrate, Nadiad. These proceedings are sought to be quashed. b c d e

48. On behalf of the State and the police officers, it was urged that since charge-sheets have already been submitted to the court, Patel will have full opportunity to defend himself before the court where witnesses would be examined and cross-examined, therefore, this Court should not interfere with the proceedings. The gravamen of the charge in the two cases registered against N.L. Patel is that he had consumed liquor without a pass or permit and under the influence of liquor, he entered the chamber of Police Inspector Sharma at the Police Station and assaulted him. The police overpowered and arrested him and a panchnama was prepared and he was taken to the hospital for medical examination, and the report of medical examination indicates that he had consumed liquor. These very facts have been inquired into by the Commissioner and found to be false. We have recorded findings that Police Inspector Sharma and other police officers manipulated records and manufactured the case against N.L. Patel with a view to humiliate and teach him a lesson as the police was annoyed with his judicial orders. We have already recorded findings holding S.R. Sharma, Police Inspector, Sadia, Sub-Inspector, Valjibhai Kalabhai, Head Constable, Pratap Singh, Constable, M.B. Savant, Mamlatdar, and D.K. Dhagal, DSP guilty of f g h i

147

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 461

- contempt of court. These very persons are specified as witnesses in the two charge-sheets. The Commission's as well as our findings clearly demonstrate that the allegations contained in the two FIRs are false. If police is permitted to prosecute Patel on those allegations merely on the basis that charge-sheets have been submitted by it, it would amount to gross abuse of the process of the court. In the circumstances, proceedings against N.L. Patel are liable to be quashed.
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- b 49. Learned counsel, appearing on behalf of the State of Gujarat and the police officers, urged that in the present proceedings this Court has no jurisdiction or power to quash the criminal proceedings pending against N.L. Patel, CJM. Elaborating his contention, learned counsel submitted that once a criminal case is registered against a person the law
- c requires that the court should allow the case to proceed to its normal conclusion and there should be no interference with the process of trial. He further urged that this Court has no power to quash a trial pending before the criminal court either under the Code of Criminal Procedure or under the Constitution, therefore, the criminal proceedings pending
- d against Patel should be permitted to continue. Learned Attorney General submitted that since this Court has taken cognizance of the contempt matter arising out of the incident which is the subject matter of trial before the criminal court, this Court has ample power under Article 142 of the Constitution to pass any order necessary to do justice and to
- e prevent abuse of process of the court. The learned Attorney General elaborated that there is no limitation on the power of this Court under Article 142 in quashing a criminal proceeding pending before a subordinate court. Before we proceed to consider the width and amplitude
- f of this Court's power under Article 142 of the Constitution it is necessary to remind ourselves that though there is no provision like Section 482 of the Criminal Procedure Code conferring express power on this Court to quash or set aside any criminal proceedings pending before a criminal court to prevent abuse of process of the court, but this Court has power
- g to quash any such proceedings in exercise of its plenary and residuary power under Article 136 of the Constitution, if on the admitted facts no charge is made out against the accused or if the proceedings are initiated on concocted facts, or if the proceedings are initiated for oblique purposes. Once this Court is satisfied that the criminal proceedings amount
- h to abuse of process of court it would quash such proceedings to ensure justice. In *State of W.B. v. Swapan Kumar Guha*³⁹, this Court quashed first information report and issued direction prohibiting investigation into the allegations contained in the FIR as the Court was satisfied that on admitted facts no offence was made out against the persons named in
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39 (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : (1982) 3 SCR 121

148

462

SUPREME COURT CASES

(1991) 4 SCC

the FIR. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre*⁴⁰, criminal proceedings were quashed as this Court was satisfied that the case was founded on false facts, and the proceedings for trial had been initiated for oblique purposes. a

50. Article 142(1) of the Constitution provides that Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any 'cause' or 'matter' pending before it. The expression 'cause' or 'matter' would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. The inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court. If the court is satisfied that the proceedings in a criminal case are being utilised for oblique purposes or if the same are continued on manufactured and false evidence or if no case is made out on the admitted facts, it would be in the ends of justice to set aside or quash the criminal proceedings. It is idle to suggest that in such a situation this Court should be a helpless spectator. b c d

51. Mr Nariman urged that Article 142(1) does not contemplate any order contrary to statutory provisions. He placed reliance on the Court's observations in *Prem Chand Garg v. Excise Commissioner, U.P., Allahabad*⁴¹ and *A.R. Antulay v. R.S. Nayak*⁴², where the Court observed that though the powers conferred on this Court under Article 142(1) are very wide, but in exercise of that power the Court cannot make any order plainly inconsistent with the express statutory provisions of substantive law. It may be noticed that in *Prem Chand Garg*⁴¹ and *Antulay case*⁴² observations with regard to the extent of this Court's power under Article 142(1) were made in the context of fundamental rights. Those observations have no bearing on the question in issue as there is no provision in any substantive law restricting this Court's power to quash proceedings pending before subordinate court. This Court's power under Article 142(1) to do "complete justice" is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do "complete justice" in the matter. This constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law. In *Harbans Singh v. State of U.P.*⁴³, e f g h

40 (1988) 1 SCC 692 : 1988 SCC (Cri) 234

41 1963 Supp 1 SCR 885, 899 : AIR 1963 SC 996

42 (1988) 2 SCC 602 : 1988 SCC (Cri) 372

43 (1982) 2 SCC 101 : 1982 SCC (Cri) 361 : (1982) 3 SCR 235, 243 i

149

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 463

A.N. Sen, J. in his concurring opinion observed: (SCC pp. 107-08, para 20)

- a "Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any
b extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice."

- c No enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of "complete justice" in a cause or matter would depend upon the facts and circumstances of each case
d and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter. This has been the consistent view of this Court as would appear from the decisions of this Court in *State of U.P. v. Poosu*⁴⁴; *Ganga Bishan v. Jai Narain*⁴⁵; *Navnit R. Kamani v. R.R. Kamani*⁴⁶; *B.N. Nagarajan v. State of Mysore*⁴⁷; *Special Reference No. 1 of 1964*⁴⁸ and *Harbans Singh v. State of U.P.*⁴⁹ Since the foundation of the criminal trial of N.L. Patel is based on the facts which have already been found to be false, it would be in the
e ends of justice and also to do complete justice in the cause to quash the criminal proceedings. We accordingly quash the criminal proceedings pending before the Chief Judicial Magistrate, Nadiad in Criminal Cases Nos. 1998 of 1990 and 1999 of 1990.

- g 52. The question arises what punishment should be awarded to the contemnors found guilty of contempt. In determining the punishment, the degree and the extent of part played by each of the contemnors has to be kept in mind. Sharma, Police Inspector who was the main actor in the entire incident and who had planned the entire episode with a view to humiliate the CJM in the public eye is the main culprit, therefore, he
h deserves maximum punishment. Sadia, Sub-Inspector took active part in assaulting and tying the CJM at the behest of Sharma, Police Inspector.

44 (1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005

45 (1986) 1 SCC 75

46 (1988) 4 SCC 387

47 (1966) 3 SCR 682 : AIR 1966 SC 1942 : (1967) 1 LLJ 698

150

464

SUPREME COURT CASES

(1991) 4 SCC

Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable also took active part in handcuffing and tying the CJM with ropes, but as subordinate officials they acted under the orders of his superior officer. M.B. Savant, Mamlatdar was friendly to Sharma, Police Inspector, he had no axe to grind against the CJM but he acted under the influence of Sharma, Police Inspector. So far as D.K. Dhagal is concerned, he actively abetted the commission of onslaught on the CJM. Having regard to the facts and circumstances and individual part played by each of the aforesaid contemnors we hold them guilty of contempt and award punishment as under:

S.R. Sharma, the then Police Inspector, Nadiad shall undergo simple imprisonment for a period of six months and he shall pay fine of Rs 2000. K.H. Sadia, Sub-Inspector, Nadiad shall undergo simple imprisonment for a period of five months and will pay a fine of Rs 2000 and in default he will undergo one month's simple imprisonment. Valjibhai Kalabhai, Head Constable and Pratap Singh, Constable, both are convicted and awarded simple imprisonment for a period of two months and a fine of Rs 500 each, in default they would undergo simple imprisonment for a further period of 15 days. M.B. Savant, Mamlatdar is convicted and awarded two months' simple imprisonment and a fine of Rs 1000 and in default he would undergo one month's simple imprisonment. D.K. Dhagal, the then District Superintendent of Police, Kheda, is convicted and sentenced to imprisonment for a period of one month and to pay a fine of Rs 1000 and in default to undergo simple imprisonment for 15 days. So far as other respondents against whom notices of contempt have been issued by the Court, there is no adequate material on record to hold them guilty of contempt of court, we accordingly discharge the notices issued to them.

53. Before we proceed further, we would like to express the Court's displeasure on the conduct of K. Dadabhoy, the then Director General of Police, Gujarat. As the head of the police in the State he was expected to intervene in the matter and to ensure effective action against the erring police officers. We are constrained to observe that he was totally indifferent to the news that a CJM was arrested, handcuffed, roped and assaulted. He took this news as a routine matter without taking any steps to ascertain the correct facts or effective action against the erring police officers. If the head of the police administration in the State exhibits such indifference to a sensitive matter which shook the entire judicial machinery in the State, nothing better could be expected from his subordinate officers. K. Dadabhoy did not act like a responsible officer. The State Government should take action against him departmentally on the basis of the findings recorded by the Commission. The State Government

151

DELHI JUDICIAL SERVICE ASSN. v. STATE OF GUJARAT (*Singh, J.*) 465

a has initiated proceedings against other erring officers in respect of whom the Commission has adversely commented, we would make it clear that discharge of contempt notices does not absolve those officers of their misconduct, the State Government is directed to proceed with the disciplinary proceedings for taking appropriate action against them.

b 54. We are constrained to observe that the State Government did not immediately take effective steps against the erring officials. In spite of the direction issued by this Court the erring police officers were neither arrested nor placed under suspension. It was only after this Court took serious view of the matter and directed the State Government to suspend the erring police officers and arrest them, the State Government moved in the matter. The apathy of the State Government in taking effective action against the erring police officers leads to an impression that in the State of Gujarat, police appears to have upper hand, as the administration was hesitant in taking action against the erring police officers. If this practice and tendency is allowed to grow it would result in serious erosion of the Rule of Law in the State. We hope and trust that c the State Government will take effective measures to avoid reoccurrence of any such instance. The State Government should further take immediate steps for the review and revision of the Police Regulations in the light of the findings recorded by the Commission.

e 55. The facts of the instant case demonstrate that a presiding officer of a court may be arrested and humiliated on flimsy and manufactured charges which could affect the administration of justice. In order to avoid any such situation in future, we consider it necessary to lay down guidelines which should be followed in the case of arrest and detention of a Judicial Officer. No person whatever his rank, or designation may be, is above law and he must face the penal consequences of infraction of criminal law. A Magistrate, Judge or any other Judicial Officer is liable to criminal prosecution for an offence like any other citizen but in view of the paramount necessity of preserving the independence of judiciary and at the same time ensuring that infractions of law are properly g investigated, we think that the following guidelines should be followed:

(A) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

h (B) If facts and circumstances necessitate the immediate arrest of a Judicial Officer of the subordinate judiciary, a technical or formal arrest may be effected.

i (C) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

152

466

SUPREME COURT CASES

(1991) 4 SCC

(D) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

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(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and Judicial Officers, including the District and Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded nor any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

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(G) There should be no handcuffing of a Judicial Officer. If, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

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56. The above guidelines are not exhaustive but these are minimum safeguards which must be observed in case of arrest of a Judicial Officer. These guidelines should be implemented by the State Government as well as by the High Courts. We, accordingly, direct that a copy of the guidelines shall be forwarded to the Chief Secretaries of all the State Governments and to all the High Courts with a direction that the same may be brought to the notice of the concerned officers for compliance.

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57. We do not approve N.L. Patel's conduct in visiting the Police Station on the invitation of Police Inspector Sharma. In our opinion, no Judicial Officer should visit a Police Station on his own except in connection with his official and judicial duties and functions. If it is necessary for a Judicial Officer or a Subordinate Judicial Officer to visit the Police Station in connection with his official duties, he must do so with prior intimation of his visit to the District and Sessions Judge.

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58. Pursuant to this Court's appeal made on September 29, 1989, the members of the Bar as well as the members of the Judiciary throughout the country refrained from going on strike as a result of which inconvenience to general public was avoided and the administra-

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153

C.I.T. v. CELLULOSE PRODUCTS OF INDIA LTD.

467

tion of justice continued. The Court is beholden to the members of the Bar and members of the Judiciary for their response to this Court's appeal.

59. We record our appreciation of the able assistance rendered to the Court by the learned counsel for the parties. We are beholden to Sri Soli J. Sorabjee, the then Attorney General, who at our request ably assisted the Court in resolving complex questions of law.

60. The writ petitions, contempt petitions and criminal miscellaneous petitions are disposed of accordingly.

(1991) 4 Supreme Court Cases 467

(BEFORE S. RANGANATHAN, V. RAMASWAMI AND N.D. OJHA, JJ.)

COMMISSIONER OF INCOME TAX, GUJARAT .. Appellant;

Versus

CELLULOSE PRODUCTS OF INDIA LTD. .. Respondent.

Civil Appeal No. 1314(NT) of 1976[†], decided on September 4, 1991

Income Tax — New industrial undertaking — A.Y. 1966-67 — Exemption under Section 84 of Income Tax Act, 1961 (as it stood prior to its deletion w.e.f. April 1, 1968) — Relief available for AY relevant to the previous year in which the undertaking begins to manufacture or produce the article and for the four AYs immediately succeeding — 'Article' must be a finished marketable product irrespective of whether a final or an intermediate one — As to when undertaking begins to produce the article is a question of fact — Licence granted to respondent for production of Carboxy Methyl Cellulose (CMC) — Production of cellulose pulp, meant for use as raw material for manufacture of CMC, commenced from March 18, 1961 and production of CMC commenced from June 15, 1961 — Tribunal finding that cellulose pulp was itself a finished marketable commodity and that its production having been started in March, 1961 the first AY was 1961-62 and the last AY in which respondent was entitled to relief was 1965-66 and not 1966-67 — Held, finding proper and was not open to interference by High Court in reference — Income Tax Act, 1961, Section 84(7) (as stood prior to its deletion by Finance No. 2 Act 1967) (now Section 80-J)

Income Tax — Reference to High Court — Scope of interference with findings of Tribunal — Income Tax Act, 1961

Interpretation of Statutes — Taxing statute — Strict construction required where language is plain and unambiguous — Liberal construction to effectuate object of the provision may be resorted to only in case of genuine doubt or possibility of forming two alternative opinions

[†] From the Judgment and Order dated November 15, 1975 of the Gujarat High Court in Income Tax Reference No. 160 of 1974

154

600

SUPREME COURT CASES

(1991) 3 SCC

(1991) 3 Supreme Court Cases 600

(BEFORE A.M. AHMADI AND S.C. AGRAWAL, JJ.)

M.B. SANGHI, ADVOCATE

.. Appellant; a

Versus

HIGH COURT OF PUNJAB AND
HARYANA AND OTHERS

.. Respondents.

Criminal Appeal (Contempt) No. 144 of 1987, decided on July 31, 1991

Contempt of Courts Act, 1971 — Sections 2(c)(i), 12 and 19 — Disparaging and derogatory remarks made by a practising lawyer against a judge — On refusal to grant ad interim by Sub-Judge in a suit against Municipal Committee, appellant advocate stating that the judge was deciding the case as an Administrator of the Municipal Committee, that he was acting like a contractor of the Municipal Committee and that he was in collusion with Deputy Commissioner and was under his influence — High Court holding the appellant guilty under Section 2(c)(i) — Held, no interference of Supreme Court called for

Contempt of Courts Act, 1971 — Section 12 — Apology — Should reflect remorse and contrition of the contemner and should not serve as mere defence against rigours of law — Contemner-appellant denying to have made the alleged contemptuous remarks against the judge but also tendering 'unqualified apology' in case court comes to a contrary conclusion — Contempt proceedings had been initiated against him in an earlier occasion also but accepting his apology he was let off — High Court considering the apology to be not sincere and finding the appellant to be addicted in using contemptuous language not accepting his apology and punishing him with fine of Rs 1000 — Held, no interference of Supreme Court called for

Held :

Per Agrawal, J.

The appellant had made an attack on the Subordinate Judge which was disparaging in character and derogatory to his dignity and would vitally shake the confidence of the public in him and the aspersions made by the appellant had the effect of scandalising the court in such a way as to create distrust in the people's mind and impair confidence of the people in court. The appellant has, therefore, been rightly held guilty of having committed the contempt of court under Section 2(c)(i) of the Act. (Para 11)

An apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. The apology that was tendered by the appellant before the High Court was to be taken into consideration in the event of the High Court finding the appellant guilty of having committed contempt of court. Moreover in the present case, it has been found that this was not the first occasion but on an earlier occasion also proceedings for contempt of court had been initiated against the appellant for his disparaging remarks against a judge and in those proceedings the rule issued against him was discharged on his tender-

155

MB. SANGHI v. HIGH COURT OF PUNJAB AND HARYANA (*Ahmadi, J.*) 601

- a ing unqualified apology before the High Court. Keeping in view the said circumstance, the High Court has found that the appellant was addicted to using contemptuous language and making scurrilous attacks on judges. Having regard to the fact that incidents of insubordination and use of improper language towards the judges are on the increase, the High Court was of the view that the appellant could not be allowed to get away by simply feeling sorry by way of apology as the easiest way. The High Court was justified in taking this view in view of the circumstances of the case and the fact that the appellant, a fairly senior advocate, is prone to use disparaging and contemptuous remarks against judges. This is not a case in which the apology by the appellant may be accepted. (Paras 12 and 13)

M.Y. Shareef v. Hon'ble Judges of the High Court of Nagpur, AIR 1955 SC 19: (1955) 1 SCR 757: 1955 Cri LJ 133, *relied on*

- c *Per Ahmadi, J. (concurring)*

- d The intention of the appellant was to cast aspersions on the integrity of the Judge and to lower him in the esteem of others by creating doubts regarding his honesty, judicial impartiality and independence. The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. The much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. (Para 2)

- f The appellant-contemner is a member of the profession who has repeated his performance presumably because he was let off lightly on the first occasion. Soft justice is not the answer — he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse — no regret — it was only a device to escape the rigour of the law. This is no apology, it is merely a device to escape. The High Court rightly did not accept it. (Para 2)

- g *L.D. Jaikwal v. State of U.P.*, (1984) 3 SCC 405: 1984 SCC (Cri) 421, *relied on*
Courts are generally slow in using their contempt jurisdiction against erring members of the profession in the hope that the concerned Bar Council will chasten its member for failure to maintain proper ethical norms. If timely action is taken by Bar Councils, the decline in the ethical values can be easily arrested. (Para 2)

- h Appeal dismissed R-M/T/10709/CR

The Judgments of the Court were delivered by

- i AHMADI, J. (*concurring*) — I am in complete agreement with my learned brother Agrawal, J. that there is no merit in this appeal but I would like to add a few words of my own.

2. The appellant, a practising advocate, having failed to persuade the learned Subordinate Judge to grant an ad-interim injunction pending filing of a counter by the opposite party, switched gear from persuasive advocacy to derogatory remarks in the fond hope that such tactic would succeed and the learned Judge would be browbeaten into submission. Fortunately the learned Judge was made of sterner stuff and refused to succumb to such unprofessional conduct. Instead he made a record of the disrespectful and derogatory remarks made with intent to tarnish his image as a Judicial Officer and forwarded a report to the District Judge who in turn reported the matter to the High Court to enable it to initiate proceedings for contempt of court against the appellant. The exact words uttered by the appellant, reproduced in the judgment of my learned brother, leave no doubt that the intention of the appellant was to cast aspersions on the integrity of the learned Judge and to lower him in the esteem of others by creating doubts regarding his honesty, judicial impartiality and independence. The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the struggle strong-willed judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence

M.B. SANGHI v. HIGH COURT OF PUNJAB AND HARYANA (*Ahmadi, J.*) 603

- a to secure small gains it only betrays a lack of respect for the martyrs of
judicial independence and for the institution itself. Their sacrifice would
go waste if we are not jealous to protect the fair name of the judiciary
from unwarranted attacks on its independence. And here is a member of
the profession who has repeated his performance presumably because he
was let off lightly on the first occasion. Soft justice is not the answer —
not that the High Court has been harsh with him — what I mean is he
b cannot be let off on an apology which is far from sincere. His apology was
hollow, there was no remorse — no regret — it was only a device to
escape the rigour of the law. What he said in his affidavit was that he had
not uttered the words attributed to him by the learned Judge; in other
words the learned judge was lying — adding insult to injury —, and yet if
c the court finds him guilty (he contested the matter tooth and nail) his
unqualified apology may be accepted. This is no apology, it is merely a
device to escape. The High Court rightly did not accept it. That is what
this Court had done in a similar situation in *L.D. Jaikwal v. State of U.P.*¹
This Court described it as a 'paper' apology and refused to accept it in
d the following words: (SCC pp. 408-09, para 6)

- "We do not think that merely because the appellant has
tendered his apology we should set aside the sentence and allow him
to go unpunished. Otherwise, all that a person wanting to intimidate
a Judge by making the grossest imputations against him has to do, is
e to go ahead and scandalize him, and later on tender a formal empty
apology which costs him practically nothing. If such an apology were
to be accepted, as a rule, and not as an exception, we would in fact
be virtually issuing a 'licence' to scandalize courts and commit con-
tempt of court with impunity. It will be rather difficult to persuade
f members of the bar, who care for their self-respect, to join the
judiciary if they are expected to pay such a price for it. And no sit-
ting Judge will feel free to decide any matter as per the dictates of
his conscience on account of the fear of being scandalized and per-
secuted by an advocate who does not mind making reckless allega-
g tions if the Judge goes against his wishes. If this situation were to be
countenanced, advocates who can cow down the Judges, and make
them fall in line with their wishes, by threats of character assassina-
tion and persecution, will be preferred by the litigants to the advo-
cates who are mindful of professional ethics and believe in maintain-
ing the decorum of courts."

- h When a member of the bar is required to be punished for use of con-
temptuous language it is highly painful — it pleases none — but painful
duties have to be performed to uphold the honour and dignity of the
individual judge and his office and the prestige of the institution. Courts

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1 (1984) 3 SCC 405 : 1984 SCC (Cri) 421

158

604

SUPREME COURT CASES

(1991) 3 SCC

are generally slow in using their contempt jurisdiction against erring members of the profession in the hope that the concerned Bar Council will chasten its member for failure to maintain proper ethical norms. If timely action is taken by Bar Councils, the decline in the ethical values can be easily arrested. a

3. By refusing to interfere with the impugned order of the High Court this Court is not merely punishing the appellant but is in fact upholding the independence of the judiciary. Let me conclude with the hope that this Court will not be called upon to deal with such a situation in future. b

4. For the above reasons I agree that the appeal be dismissed.

AGRAWAL, J.— This appeal filed under Section 19(1)(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') is directed against the judgment and order of the High Court of Punjab and Haryana dated January 13, 1987 whereby the appellant has been convicted for having committed contempt of court under Section 2(c)(i) of the Act and has been sentenced to pay Rs 1000 as fine and in case of default in payment of fine to undergo simple imprisonment for seven days. c d

6. The appellant, who is practising as an advocate at Narnaul, was representing the plaintiff in civil suit titled *Hari Ram v. Municipal Committee*. On September 20, 1985, the appellant appeared in the said suit for the plaintiff and orally prayed for ex-parte ad-interim stay. The said request was declined by the Subordinate Judge, Narnaul, who ordered for issuance of notice to the defendants for September 24, 1985. On September 24, 1985, Shri Banwari Lal Sharma appeared for the defendants and requested for a date for filing a reply to the said application which request was not opposed by the appellant but the appellant prayed for ad-interim stay in favour of the plaintiff. The Subordinate Judge told the appellant that the question of ad-interim stay would be considered after filing of the reply by the defendants and adjourned the case for September 26, 1985. It appears that the appellant was not satisfied with this order passed by the Subordinate Judge and according to the Subordinate Judge, Shri S.R. Sharma, the appellant uttered the following words in the court: e f g

"You are wholly favouring the Municipal Committee. Are you sitting as Judge or as Administrator of Municipal Committee? To me it seems that you are deciding the case as Administrator of Municipal Committee. You are acting as if you are a contractor of the Municipal Committee. I do not expect any justice from you. I do not think that you will grant stay to me as you are fully siding with h i

MB. SANGHI v. HIGH COURT OF PUNJAB AND HARYANA (*Agrawal, J.*) 605

a the Municipal Committee. You are not granting stay to me as you are in collusion with the Deputy Commissioner and under his (Deputy Commissioner's) influence, you do not want to grant stay to me and that he will complain against me to the Hon'ble High Court."

b 7. On September 25, 1985, the Subordinate Judge submitted a report Ex. P.A. to the District and Sessions Judge, Narnaul for taking necessary action against the appellant wherein the aforementioned words alleged to have been uttered by the appellant were set out. The District and Sessions Judge, Narnaul submitted a report dated October 12, 1985, to the High Court and on the basis of the said report, proceedings for contempt were initiated against the appellant by the High Court. c The appellant submitted a reply by way of affidavit wherein he denied to have uttered the words mentioned in the report of Shri S.R. Sharma, Subordinate Judge, Narnaul to the District and Sessions Judge, Narnaul and also offered an unqualified apology. Shri S.R. Sharma filed his affidavit in the High Court and he was also examined as a witness. In d addition, the High Court examined Shri Krishan Kumar Sharma, who was at the relevant time reader in the court of Shri S.R. Sharma, and three advocates, namely, Shri Banwari Lal Sharma, Shri Gyan Chand Sharma and Shri Satya Narain Sharma. The appellant did not examine himself as a witness before the High Court.

e 8. The High Court found that the appellant had attacked the integrity of the learned Sub-Judge by saying that he was a contractor of the Municipal Committee, that he was in collusion with the Deputy Commissioner and he was under his influence and that the attack made f on the learned Sub-Judge disparaging in character and derogatory to his dignity would vitally shake the confidence of the public in him and that the aspersions made against the Sub-Judge were much more than merely insult and, in fact, they scandalise the court in such a way as to create distrust in the people's mind and impair confidence of the people in court. g The High Court was, therefore, of the view that the appellant had brought himself clearly within the ambit of contempt of court and he was accordingly found guilty under Section 2(c)(i) of the Act. As regards the apology tendered by the appellant, the High Court observed that this was not the first occasion and earlier also the proceedings for contempt had h been initiated against him in pursuance of a report made by Shri K.K. Chopra, the then Chief Judicial Magistrate, Narnaul in C.O.C.P. No. 12 of 1983 wherein also the appellant had tendered an unqualified apology in the High Court and the rule against him was discharged and that the appellant is addicted to using contemptuous language and making scurrilous attacks on the judges. The High Court held that apology must, in i

order to dilute the gravity of the offence, be voluntary, unconditional and indicative of remorse and contrition and it should be tendered at the earliest opportunity and further, that the aspersions mentioned in the letter Ex. P.A. at 'A' to 'A' sent by Shri S.R. Sharma to the District and Sessions Judge, Narnaul were made by the appellant with a design and were not simply thoughtless and in such a case, the appellant cannot be allowed to get away by simply feeling sorry by way of apology as the easiest way. The High Court did not, therefore, accept the apology by the appellant.

9. Shri Mahabir Singh, the learned counsel appearing for the appellant, has submitted that the High Court was in error in holding that the appellant had uttered the words mentioned in the letter Ex. P.A. sent by Shri S.R. Sharma to the District and Sessions Judge, Narnaul. Shri Mahabir Singh has invited our attention to the statements of the witnesses who were examined before the High Court and has laid particular emphasis on the statement of Shri Banwari Lal Sharma, advocate, who was representing the defendant Municipal Committee in the civil suit before the Subordinate Judge and was present in the court at the relevant time and who has stated that the appellant has not used any unparliamentary or foul language towards Shri S.R. Sharma, Sub-Judge. Shri Mahabir Singh has also referred to the statements of Shri Gyan Chand Sharma, advocate and Shri Satya Narain Sharma, advocate who have stated that they were present in the court of Sub-Judge, Narnaul on September 24, 1985 at about 2 or 2.15 p.m. when the appellant had requested the Subordinate Judge to grant ad-interim stay against the Municipal Committee for demolition of a chabutra in the case of *Hari Ram v. Municipal Committee* and the said request of the appellant was declined by Shri S.R. Sharma and that the appellant did not use any discourteous or impolite language against Shri S.R. Sharma.

10. We have carefully perused the statements of the three advocates mentioned above on which reliance has been placed by Shri Mahabir Singh. Their evidence has to be considered along with the statements of the Sub-Judge, Shri S.R. Sharma, Narnaul and Shri Krishan Kumar Sharma, who was posted as reader in the court of Shri S.R. Sharma at that time. Shri S.R. Sharma, during the course of examination-in-chief has stated that when he did not pass orders for interim injunction in favour of the appellant, he started speaking loudly and used defamatory language. He has also repeated the language which was used by the appellant which in substance was in the same terms as mentioned in his letter Ex. P.A. addressed to the District and Sessions Judge, Narnaul. Shri Krishan Kumar Sharma in his deposition has stated:

161

M.B. SANGHI v. HIGH COURT OF PUNJAB AND HARYANA (*Agrawal, J.*) 607

a "... Shri M.B. Sanghi repeatedly tried to compel Shri Sita Ram Sharma to issue the ad-interim injunction in favour of his client, but Shri Sita Ram Sharma had declined that request without hearing the arguments. Shri M.B. Sanghi then stated that he had no hope of justice from Shri Sita Ram Sharma as the latter was behaving like an Administrator of the Municipal Committee. Shri M.B. Sanghi, addressed Shri Sita Ram Sharma saying that he (Shri Sita Ram Sharma) was under the pressure of Deputy Commissioner, Narnaul."

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c 11. Nothing has been brought out during the course of examination-in-chief of these witnesses which may show that they were deposing falsely against the appellant. The High Court has placed reliance on the testimony of these witnesses in preference to the testimony of three advocates, namely, Shri Banwari Lal Sharma, Shri Gyan Chand Sharma and Shri Satya Narain Sharma. After considering the evidence of all the witnesses, I am inclined to agree with the appreciation of the evidence by the High Court. I find no reason to discard the testimony of Shri S.R. d Sharma who has been corroborated by his reader, Shri Krishan Kumar Sharma. Considering the language used by the appellant in the court of Shri S.R. Sharma, as mentioned by him in his report Ex. P.A. to the District and Sessions Judge, Narnaul and repeated by him in his statement before the High Court it must be held that the appellant had made an e attack on the learned Subordinate Judge which was disparaging in character and derogatory to his dignity and would vitally shake the confidence of the public in him and that the aspersions made by the appellant had the effect of scandalising the court in such a way as to create distrust in the people's mind and impair confidence of the people in court. f The appellant has, therefore, been rightly held guilty of having committed the contempt of court under Section 2(c)(i) of the Act.

g 12. Shri Mahabir Singh has urged that the appellant is a fairly senior advocate and has been practising for more than 20 years and since he had tendered unqualified apology before the High Court the same ought to have been accepted. With regard to apology in proceedings for contempt of court, it is well settled that an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness. (See *M.Y. Shareef v. Hon'ble Judges of the High Court of Nagpur*²). In the h instant case, I find that in his affidavit in reply to the notice issued by the High Court which is annexed at Annexure II, the appellant first denied having used the words as mentioned by Shri S.R. Sharma in his report sent to the District and Sessions Judge, Narnaul or having shown disrespect in any manner whatsoever to Shri S.R. Sharma, the presiding i

officer of the court of Sub-Judge, Narnaul on September 24, 1985. In para 3 of the said affidavit, the appellant has stated as under:

"That if this Hon'ble Court comes to the conclusion that the deponent has committed contempt, the deponent tenders an unqualified apology to this Hon'ble Court and begs for forgiveness. The deponent is a senior and respected member of the Narnaul Bar besides that being-law-abiding citizen has greatest respect and regards for the judiciary and all the Presiding Officers."

13. This would show that the apology that was tendered by the appellant before the High Court was to be taken into consideration in the event of the High Court finding the appellant guilty of having committed contempt of court. Moreover in the present case, it has been found that this was not the first occasion in which proceedings for contempt of court had been initiated against the appellant and on an earlier occasion also proceedings for contempt of court had been initiated against the appellant in pursuance of a report of Shri K.K. Chopra, the then Chief Judicial Magistrate, Narnaul and in those proceedings the rule issued against the appellant was discharged on his tendering unqualified apology before the High Court. In those proceedings also the appellant is said to have made disparaging remarks against the judge. Keeping in view the said circumstance, the High Court has found that the appellant was addicted to using contemptuous language and making scurrilous attacks on judges. Having regard to the fact that incidents of insubordination and use of improper language towards the judges are on the increase, the High Court was of the view that the appellant could not be allowed to get away by simply feeling sorry by way of apology as the easiest way. I am unable to say that the High Court was not justified in taking this view. Taking into consideration the facts and circumstances of the case and the fact that the appellant, a fairly senior advocate, is prone to use disparaging and contemptuous remarks against judges, I am of the opinion that this is not a case in which the apology by the appellant may be accepted.

14. I, therefore, find no merit in the appeal and the same is accordingly dismissed.

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i

163

466

SUPREME COURT CASES

(1996) 6 SCC

in that behalf has been enumerated in sub-section (2) of Section 5. Since the appellant-School is not an educational institution established under the Act as it was established in 1929, it does not require recognition under the Act. But it is an educational agency defined under Section 3(b) of the Act and, therefore, it is a deemed school established under the Act by operation of Section 3(b). Accordingly the appellant-School has been receiving grants-in-aid under the Act. Under Article 29(2) of the Constitution

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

Thereby the educational institution receiving aid is an instrumentality or education agency of the State imparting education on behalf of the State which is a fundamental right of the citizens. It is not in dispute that the entire expenditure for the acquisition is being met from the public funds, as accepted by the High Court. Under those circumstances, it is clearly a case of public purpose. It could be seen that when the order of eviction was sought to be enforced, this Court while upholding the decree of eviction had imposed a condition that the undertaking shall not be enforced when the land is sought to be acquired. This Court had recognised the need for the continuance of the educational institution in the said place and that the State had taken action to acquire the land at the expense of the State to provide the education to the middle school-going children. Under those circumstances, the High Court was wholly wrong in its conclusion that public purpose is not served in acquiring the land but benefits the private individuals.

3. The appeal is accordingly allowed but in the circumstances without costs. The writ petition stands dismissed.

(1996) 6 Supreme Court Cases 466

(BEFORE KULDIP SINGH AND FAIZAN UDDIN, JJ.)

IN RE : HARJAI SINGH AND ANOTHER
IN RE : VIJAY KUMAR

Contempt Petitions Nos. 206-207 of 1996 in Writ Petition (C) No. 26 of 1995†, decided on September 17, 1996

A. Constitution of India — Art. 129 — Contempt of Supreme Court by the Press — Publishing false news having serious repercussions without taking care to ascertain its correctness cannot be said to have been done in good faith — Absence of intention or knowledge about correctness of the news published cannot be a valid defence for the publisher, editor and reporter — They must be extra careful — News item published in a newspaper (Tribune and Punjab Kesari) scandalising a Judge of Supreme Court (grant of petrol pump outlets by the Minister concerned out of his discretionary quota in favour of sons of a Supreme Court Judge) — Editor and publisher of the newspaper stating that the news was published on the basis of information and material supplied by a

† Under Article 32 of the Constitution of India

164

senior journalist/reporter — Journalist/reporter stating that the information was obtained from a highly reliable source who used to give many such informations earlier also, and as such the information was believed to be true —
a However, on verification after the publication the news found to be incorrect — Accordingly, an apology already published in the newspaper — Unconditional apology also tendered and sincere remorse shown by the editor, publisher and reporter before Supreme Court — Held, they are guilty of contempt of the court — But in the circumstances their apology acceptable and no punishment need be imposed — Contempt of Courts Act, 1971, Ss. 2(c) & 12

b B. Constitution of India — Art. 129 — Contempt of Supreme Court — Unconditional apology tendered by contemner — When can be accepted — Contempt of Courts Act, 1971, S. 12

c C. Constitution of India — Art. 19(1)(a) & (2) — Freedom of the Press — Not absolute and unfettered — Subject to reasonable restrictions — Journalists must be conscientious in disseminating information which must be dispassionate, objective and impartial — Journalists and publishers have greater responsibility towards the society to safeguard public order, decency and morality — Mischievously false, baseless or distorted publication of news not protected — Journalists — Role of

Held:

In the present case neither the printer nor the publisher nor the editor or reporter took the necessary care in evaluating the correctness and credibility of the
d information published by them as the news items in the newspapers in respect of an allegation of a very serious nature having great repercussions causing an embarrassment to the Supreme Court. An editor is a person who controls the selection of the matter which is to be published in a particular issue of the newspaper. The editor and publisher are liable for illegal and false matter which is published in their newspaper. Such an irresponsible conduct and attitude on the part of the editor, publisher and the reporter cannot be said to be done in good faith, but
e distinctly opposed to the high professional standards as even a slightest enquiry or a simple verification of the alleged statement about grant of petrol outlets to the two sons of a Senior Judge of the Supreme Court, out of discretionary quota, which is found to be patently false would have revealed the truth. But it appears that even the ordinary care was not resorted to by the contemnors in publishing such a false news item. This cannot be regarded as a public service, but a disservice to the public by
f misguiding them with a false news. Obviously, this cannot be regarded as something done in good faith. At common law, absence of intention or knowledge about the correctness of the contents of the matter published (for example as in the present case, on the basis of information received from the journalist/reporter) will be of no avail for the editors and publishers for contempt of court but for determining the quantum of punishment which may be awarded. Thus they cannot escape the responsibility for being careless in publishing the news without caring to verify its correctness. However, since they have not only expressed repentance on the incident
g but have expressed their sincere written unconditional apology, the same is accepted with the warning that they should be careful in future. (Paras 11 and 12)

The reporter also acted in gross carelessness. Being a very experienced
h journalist of long standing it was his duty while publishing the news item relating to the members of the Apex Court, to have taken extra care to verify the correctness and if he had done so the publication would have been avoided which not only caused great embarrassment to the Supreme Court but conveyed a wrong message to the public at large jeopardizing the faith of the illiterate masses in our judiciary. The

165

468

SUPREME COURT CASES

(1996) 6 SCC

reporter has no doubt committed a serious mistake but he has realised his mistake and expressed sincere repentance and has tendered unconditional apology for the same. He was present in the Court and virtually looked to be gloomy and felt repentant of what he had done. This sufferance itself is sufficient punishment for him. He being a senior journalist and an aged person and, therefore, taking a lenient view of the matter, we accept his apology also. (Para 12)

The Supreme Court is not hypersensitive in matters relating to contempt of courts and has always shown magnanimity in accepting the apology on being satisfied that the error made in the publication was without any malice or without any intention of disrespect towards the courts or towards any member of the judiciary. The Supreme Court has always entertained fair criticism of the judgments and orders or about the person of a Judge. Fair criticism within the parameters of law is always welcome in a democratic system. (Para 12)

A free and healthy press is indispensable to the functioning of a true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. The press should have the right to present anything which it thinks fit for publication. (Para 9)

Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, *Express Newspapers P. Ltd. v. Union of India*, (1986) 1 SCC 133 : AIR 1986 SC 872, referred to

However, freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by court of law. The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression. (Para 10)

R-M/16734/C

IN RE. HARIJAI SINGH · IN RE : VIJAY KUMAR (*Faizan Uddin, J.*) 469

Advocates who appeared in this case :

Petitioner in person;

- a K.T.S. Tulsi, Additional Solicitor General, Ram Jethmalani and Ashwini Kumar, Senior Advocates (Prashant Bhushan, P.H. Parekh, Arvind Sharma, Sameer Parekh, Ms Bina Madhavan and K.S. Chauhan, Advocates, with them) for the appearing parties.

Chronological list of cases cited

- | | | <i>on page(s)</i> |
|---|--------------------------------------------------------------------------------------------|-------------------|
| | 1. (1986) 1 SCC 133 : AIR 1986 SC 872, <i>Express Newspapers P. Ltd. v. Union of India</i> | 472g |
| b | 2. (1985) 1 SCC 641, <i>Indian Express Newspapers v. Union of India</i> | 472g |

The Judgment of the Court was delivered by

- c FAIZAN UDDIN, J.— When this Court was seized of writ petition filed by the "Common Cause, A Registered Society" with regard to the alleged misuse and arbitrary exercise of discretionary power by the Petroleum and Natural Gas Ministry in relation to the allotment of retail outlets for petroleum products and LPG dealership, from discretionary quota, a news item in box with a caption "*Pumps for all*" was published in the daily newspaper *The Sunday Tribune* dated 10-3-1996 which is reproduced hereunder:

"PUMPS FOR ALL

- d Believe it or not, Petroleum Minister Satish Sharma has made 17 allotments of petrol pumps and gas agencies to relatives of Prime Minister Narasimha Rao out of his discretionary quota. Allotments in this category can only be made to members of the weaker sections of society and war widows. Yet five of the Prime Minister's grandchildren have been favoured as have been five of his nephews from the family of
- e V. Rajeshwar Rao, MP. Besides, three wards of his brother Manohar Rao, two relatives of P. Venkata Rao and the son of A.V.R. Krishnamurthy whose family lives with the Prime Minister have been allocated petrol pumps and gas agencies. Similarly, Rao's daughter, Vani Devi, who is the official hostess has a petrol pump allotted in the name of her daughter, Jyotirmai. She was also favoured by the Airport
- f Authority of India which released a prime piece of land located in Begumpet area to her for just Rs 3 lakhs. The market value is stated to be over Rs 1 crore. It has been registered in the name of Shri Sai Balaji Agency. However, the Prime Minister's kin are not the only ones who have benefited from these allotments. Two children of Lok Sabha Speaker Shivraj Patil have also been favoured as have the two sons of a
- g Senior Judge of the Supreme Court. Interestingly, the Supreme Court had recently asked the Government to supply a list of all discretionary allotments made by the Ministry. However, the Minister has so far managed to withhold this crucial document. But it has hardly helped as the list has been leaked by Sharma's own men."
- h 2. A similar news item was also published in the Hindi newspaper *Punjab Kesari* dated 10-3-1996, the English translation of which is as follows:

167

"17 POOR MEMBERS OF THE FAMILY OF THE PRIME MINISTER

Out of the short cut ways of becoming rich, one way is to obtain petrol pump or gas agency. But the power to allot the same lies with the Petroleum Minister. He has the discretionary powers to allot petrol pumps or gas agencies in charity. This power of doing such charities has been entrusted in some special cases which include the people belonging to the poor, backward classes and the wives of those who were killed in the war. But all those persons to whom these agencies have been allotted by the Petroleum Minister Capt. Satish Sharma turned out to be a scam in itself. The matter was referred to the Supreme Court in which the Government was directed to submit a list. The Petroleum Minister suppressed the list. The list was demanded in Parliament. But the list was not presented. Now the list has been leaked out from the Petroleum Ministry. Believe it, there are 17 relatives of the Prime Minister Narasimha Rao in that list. Five persons are his grandsons and granddaughters. Five others are the members of the family of V. Rajeshwar Rao. He is a Member of Parliament and the relative of the Prime Minister. Manohar Rao is the brother of Narasimha Rao. These agencies were also allotted to his three children. There is one more relative — P. Venkata Rao. Two allottees have been found in his family. One is A.V.R. Krishnamurthy who resides in the residence of the Prime Minister. He has also been allotted the agency at the Bolarum Road at Sikandrabad. But the most interesting story is of Jyotirmai. Narasimha Rao is her real maternal grandfather.

The authorised hostess of the Prime Minister's residence is Vani Devi who is the daughter of the Prime Minister and mother of Jyotirmai. Their agency is situated at Begumpet under the name and style 'Sri Sai Balaji Agency'. The land of 2000 sq. m. of the Indian Aviation Authority was given to Sri Sai Balaji Agency merely for rupees three lakhs. Presently, the cost of this land is more than one crore. The Petroleum Minister also allotted the agencies to the two children of Shivraj Patil, Speaker of the Lok Sabha. You should not be astonished if you find the names of two sons of Mr Ahmadi, Chief Justice of India in the list of the discretionary quota. Otherwise the names of such poor and backward persons are also available in this list."

3. Since the aforesaid news items contained an allegation that two sons of a Senior Judge of the Supreme Court and two sons of the Chief Justice of India were also favoured with the allotments of petrol outlets from the discretionary quota of the Ministry and, therefore, by our order dated 13-3-1996, we issued a notice to the Secretary, Ministry of Petroleum and Natural Gas to file an affidavit offering his comments and response to the facts stated in the aforesaid two news items. Pursuant to the said notice, Shri Vijay L. Kelkar, Secretary in the Ministry of Petroleum and Natural Gas, Government of India, filed his affidavit dated 20-3-1996 stating that since the allegation regarding allotment under the discretionary quota in favour of two sons of a Senior Judge of the Supreme Court are vague and in the absence of specific names, it is difficult to deal with the same. Thereafter

IN RE HARIJAI SINGH . IN RE VIJAY KUMAR (*Faizan Uddin, J.*) 471

when the matter again came up before this Court on 21-3-1996 Shri Altaf Ahmed, learned Additional Solicitor General stated that he would look into the records and file further affidavit of a responsible officer giving response to the other allegations regarding relations of VIPs. We, therefore, granted time for the purpose and at the same time directed the relevant files to be produced in Court. It was thereafter that Shri Devi Dayal, Joint Secretary in the Ministry of Petroleum and Natural Gas, Government of India, filed his affidavit dated 26-3-1996. In para 5 of his affidavit, he made a categorical statement that there is no allotment in favour of son/sons of any Supreme Court Judge. After verification of records and affidavits referred to above, we found that the news items referred to above were patently false and, therefore, by our order dated 27-3-1996, we initiated contempt proceedings against the editors and publishers of the dailies *The Sunday Tribune*, Chandigarh and the *Punjab Kesari*, Jalandhar and issued notices to them to show cause why they may not be punished for the contempt of this Court.

4. In response to the contempt notice, Shri Hari Jaisingh, the Editor of *The Sunday Tribune* filed an affidavit dated 24-6-1996 admitting that the news item published in *The Sunday Tribune* dated 10-3-1996 with regard to the allotment of petrol outlets to the sons of a Senior Judge of the Supreme Court was not correct and, therefore, tendered unqualified apology and has prayed for mercy and pardon. He has stated that it was an inadvertent publication made bona fide on the faith that the item supplied by an experienced journalist, Shri Dina Nath Misra, who is generally reliable would not be factually incorrect. It has been stated that Dina Nath Misra is a journalist of standing for over 30 years and there have been no complaints about the correctness of the material contributed by him and believing the said item of news to be correct it was published without any further scrutiny in good faith. He has submitted that he has the highest respect for the judiciary in general and for this Court in particular and has tendered his unqualified apology with a feeling of remorse. He has submitted that since it was noticed that the news item was not correct, an apology was already published by him in *The Tribune* dated 12-5-1996 and necessary instructions to all members of the editorial staff were issued to be careful in assuring the factual accuracy of all legal reports.

5. Lt. Col. S.L. Dheer (Retd.), the publisher of *The Tribune*, in response to the contempt notice has also filed his affidavit dated 27-6-1996 more or less in the same terms as the one filed by Shri Hari Jaisingh and has tendered his apology and prayed for mercy and pardon due to the bona fide mistake.

6. In response to the contempt notice, Shri Vijay Kumar Chopra, editor and publisher of the daily *Punjab Kesari*, Jalandhar has also filed his affidavit dated 29-6-1996 stating that the news item in the daily *Punjab Kesari* referred to above was published on the basis of the news report sent by a senior journalist which due to inadvertence escaped the attention of the editor. He has stated that immediately after the incorrectness of the news item was noticed a contradiction and apology was carried out prominently in the issue of the paper dated 7-4-1996. He has stated that the said news item

169

472

SUPREME COURT CASES

(1996) 6 SCC

was not actuated by any malice towards the judiciary and that the mistake was bona fide. He has also tendered his unconditional and unqualified apology.

7. On being apprised that the news items referred to above were found to be false which were published on the basis of the information and material supplied by the journalist/reporter Dina Nath Misra to *The Sunday Tribune* and *Punjab Kesari*, we issued a similar contempt notice to Dina Nath Misra by our order dated 9-7-1996. The journalist Dina Nath Misra in his affidavit dated 1-8-1996 admitted to have written a capsule item about the allotment of petrol pumps to the sons of a Senior Judge of the Supreme Court which was not factually correct and he has, therefore, tendered his unqualified apology for the lapse that he had committed. He has stated that he has been a journalist for about 4 decades and is known for his integrity and commitment towards professionalism. He has further stated that a highly reliable source who had earlier given many reliable informations to the deponent gave this information also which was believed by him to be true, but it turned out to be incorrect. He has stated various other facts to show that the mistake was bona fide, but we find the said excuses and explanations to be not acceptable at all. He has, however, expressed his deep repentance and tendered unqualified apology and seeks forgiveness for this honest and inadvertent blunder. In yet another additional affidavit dated 29-8-1996, he has reiterated the said facts and admitted that he has committed a grievous error in writing news items which have absolutely no basis, and has again offered unconditional apology to Hon'ble the Chief Justice as well as to this Court.

8. It may be relevant here to recall that the freedom of press has always been regarded as an essential prerequisite of a democratic form of Government. It has been regarded as a necessity for the mental health and the well-being of the society. It is also considered necessary for the full development of the personality of the individual. It is said that without the freedom of press truth cannot be attained. The freedom of press is a part of the freedom of speech and expression as envisaged in Article 19(1)(a) of the Constitution of India. Thus, the freedom of press is included in the fundamental right of freedom of expression. The freedom of press is regarded as "the mother of all other liberties" in a democratic society. Further, the importance and the necessity of having a free press in a democratic Constitution like ours was immensely stressed in several landmark judgments of this Court. The case of *Indian Express Newspapers v. Union of India*¹, is one of such judgments rendered by Venkataramiah, J. (as he then was). Again in another case of *Express Newspapers P. Ltd. v. Union of India*², A.P. Sen, J. (as he then was) described the right to freedom of press as a pillar of individual liberty which has been unfailingly guarded by the courts.

¹ (1985) 1 SCC 641

² (1986) 1 SCC 133 : AIR 1986 SC 872

9. It is thus needless to emphasise that a free and healthy press is indispensable to the functioning of a true democracy. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action. The primary function, therefore, of the press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatma Gandhi in his autobiography has stated that one of the objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among the people certain desirable sentiments; and the third is to fearlessly express popular defects. It, therefore, turns out that the press should have the right to present anything which it thinks fit for publication.

10. But it has to be remembered that this freedom of press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by court of law. The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations "If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline". It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by

171

474

SUPREME COURT CASES

(1996) 6 SCC

them and to be published as a news item. The presentation of the news should be truthful, objective and comprehensive without any false and distorted expression.

11. In the present case, as we have noticed above, neither the printer, publisher nor the editor and reporter took the necessary care in evaluating the correctness and credibility of the information published by them as the news items in the newspapers referred to above in respect of an allegation of a very serious nature having great repercussions causing an embarrassment to this Court. An editor is a person who controls the selection of the matter which is to be published in a particular issue of the newspaper. The editor and publisher are liable for illegal and false matter which is published in their newspaper. Such an irresponsible conduct and attitude on the part of the editor, publisher and the reporter cannot be said to be done in good faith, but distinctly opposed to the high professional standards as even a slightest enquiry or a simple verification of the alleged statement about grant of petrol outlets to the two sons of a Senior Judge of the Supreme Court, out of discretionary quota, which is found to be patently false would have revealed the truth. But it appears that even the ordinary care was not resorted to by the contemners in publishing such a false news items. This cannot be regarded as a public service, but a disservice to the public by misguiding them with a false news. Obviously, this cannot be regarded as something done in good faith.

12. But it may be pointed out that various judgments and pronouncements of this Court bear testimony to the fact that this Court is not hypersensitive in matters relating to contempt of courts and has always shown magnanimity in accepting the apology on being satisfied that the error made in the publication was without any malice or without any intention of disrespect towards the courts or towards any member of the judiciary. This Court has always entertained fair criticism of the judgments and orders or about the person of a Judge. Fair criticism within the parameters of law is always welcome in a democratic system. But the news items with which we are concerned can neither be said to be fair or made in good faith but wholly false and the explanation given is far from satisfactory. Shri Hari Jaisingh, editor of *The Sunday Tribune* and Lt. Col. H.L. Dheer, publisher as well as Vijay Kumar Chopra, editor and publisher of daily *Punjab Kesari* have taken the stand that they had taken the news items to be correct on the basis of the information supplied by a very senior journalist of long standing, Dina Nath Misra. But this cannot be accepted as a valid excuse. It may be stated that at common law, absence of intention or knowledge about the correctness of the contents of the matter published (for example as in the present case, on the basis of information received from the journalist/reporter) will be of no avail for the editors and publishers for contempt of court but for determining the quantum of punishment which may be awarded. Thus they cannot escape the responsibility for being careless in publishing it without caring to verify the correctness. However, since they have not only expressed repentance on the incident but have expressed their sincere written unconditional apology, we accept the same

172

VIJAY SINGH v VIJAYALAKSHMI AMMAL

475

- a with the warning that they should be very careful in future. As regards the case of Dina Nath Misra, we find he acted in gross carelessness. Being a very experienced journalist of long standing it was his duty while publishing the news item relating to the members of the Apex Court, to have taken extra care to verify the correctness and if he had done so, we are sure there would not have been any difficulty in coming to know that the information supplied to him had absolutely no legs to stand and was patently false and the publication would have been avoided which not only caused great embarrassment to this Court but conveyed a wrong message to the public at large jeopardizing the faith of the illiterate masses in our judiciary. Shri Dina Nath Misra has no doubt committed a serious mistake but he has realised his mistake and expressed sincere repentance and has tendered unconditional apology for the same. He was present in the Court and virtually looked to be gloomy and felt repentant of what he had done. We think this sufferance itself is sufficient punishment for him. He being a senior journalist and an aged person and, therefore, taking a lenient view of the matter, we accept his apology also. We, however, direct that the contemnors will publish in the front page of their respective newspapers within a box their respective apologies specifically mentioning that the said news items were absolutely incorrect and false. This may be done within two weeks. The Contempt Petitions Nos. 206-207 of 1996 are disposed of accordingly.
- b
- c
- d

(1996) 6 Supreme Court Cases 475

(BEFORE KULDIP SINGH, M.M. PUNCHHI, N.P. SINGH,
M.K. MUKHERJEE AND S. SAGHIR AHMAD, JJ.)

- e VIJAY SINGH AND OTHERS .. Appellants;
Versus
VIJAYALAKSHMI AMMAL .. Respondent.

Civil Appeals Nos. 5948 to 5950 of 1990†, decided on October 10, 1996

- f **Rent Control and Eviction — Demolition and reconstruction of building —**
Eviction under S. 14(1)(b) of T.N. Rent Control Act on ground of bona fide requirement of landlord for immediate purpose of demolishing and re-erecting — Eviction cannot be ordered on mere asking of landlord that the building was required for immediate demolition and reconstruction — Relevant factors to be considered — Whether demolition sought with the sole object of getting rid of the tenant relevant for ascertaining bona fide requirement of landlord — Expression “immediate purpose of demolishing” does not indicate that the building must be in a dilapidated or decrepit condition requiring its immediate demolition — But age and condition of the building relevant factor — Financial position of the landlord for demolition and reconstruction also to be considered — Held, on facts, eviction order passed by Rent Controller was having regard to relevant factors and hence justified — T.N. Buildings (Lease and Rent Control) Act, 1960, Ss. 14(1)(b) & 16
- g

- h † From the Judgment and Order dated 27-6-1990 of the Madras High Court in C.R.Ps Nos. 1268 and 1332 of 1990

173

IN RE S. MULGAOKAR

339

(1978) 3 Supreme Court Cases 339

(BEFORE BEG, C.J. AND V. R. KRISHNA IYER AND P. S. KAILASAM, JJ.)

Original Jurisdiction

IN RE S. MULGAOKAR

Contempt of Courts Act, 1971 — Section 2(1)(c) — Attitude of Judges to Contempt of Court — What constitutes contempt — Constitution of India, Article 129 — Criticism of the Judges of the Supreme Court — Proceedings dropped

The Chief Justice of India sent letters to the Chief Justices of the various High Courts suggesting inter alia that the Chief Justices should meet and draft a code of ethics themselves or through a Committee of Chief Justices so as to prevent possible lapses from the path of rectitude and propriety on the part of the Judges. A newspaper published a report regarding these letters that "so adverse has been the criticism that the Supreme Court Judges some of whom who prepared the draft code have disowned it", on the assumption, that Judges of the Supreme Court had a hand in drafting the Code. Since Judges of the Supreme Court had nothing to do with it there was no question of disowning the supposed code by any Judge and the Chief Justice himself had never disowned the suggestions made by him. The Registrar, Supreme Court wrote to the Editor of the newspaper pointing out the mistake. But instead of publishing any correction the Editor offered to publish the whole material in his possession and ended the article by attempting to make a distinction between the wonderful performance of the High Court Judges and the disappointing record of the Supreme Court. It was suggested this was due to the fact that the Supreme Court was packed by the former Prime Minister, with "pliant and submissive judges except for a few". On a show-cause notice the counsel for the writer and Editor pointed out that there was no intention on the part of the writer of the article or the editor to injure the dignity or position of the Court but the intention was only to direct public attention to matters of extreme importance to the nation. The proceedings for contempt were thereafter decided to be dropped.

Per Beg, C.J.

If the intention of the writer of the article and the Editor was as represented, it is certainly desirable object but there are proper and permissible ways of carrying out such an object. Comments about the judges of the Supreme Court suggesting that they lack moral courage to the extent of having "disowned" what they have done at least verges on contempt. The Editors of responsible newspapers should be aware that it is the courts of law and not newspaper readers who have to try certain issues which the courts alone are empowered to determine. A suggestion that a code of ethics should be formulated by Judges themselves was characterised in the article as "inimical to the independence of judiciary, violative of constitutional safeguards and offensive to the self-respect of the Judges as to make one wonder how it was conceived in the first place". The writer of an article of a responsible newspaper on legal matters is expected to know that there is no constitutional safeguard or provision relating to the independence of the judiciary which could possibly prevent Judges themselves meeting to formulate a code of judicial ethics or to constitute a committee to formulate such a code. In the United States, the American Bar Association has formulated a Code of this kind. Neither the Indian Constitution nor any law in India could conceivably be infringed if Judges were

179

to meet to devise means to prevent situations arising in which an accusing finger could be raised against the conduct of a Judge. The article, however, proceeded under the assumption that there was already formulated a code of ethics sent to the Chief Justices. In fact, nothing more than some suggestions or examples of the kind of conduct which a possible code could deal with were sent to the Chief Justices. If there was anything inappropriate in those suggestions they could be criticised and set right and better suggestions could be made and incorporated in a proper code of judicial ethics and etiquette if that could be framed by Judges themselves. However, since the country was passing through a period of exceptional strain and stress and excitement in which unusual remarks made have not been confined to what appears in newspapers but extraordinarily and surprisingly erroneous statements were made which could not have been made if rules of judicial ethics were formulated and strictly adhered to, even in solemn pronouncements of this Court on rare occasions. The judiciary certainly is not immune from criticism but when that criticism is based on obvious distortion or gross mis-statement and made in a manner which is designed to lower the respect of the judiciary and destroy public confidence in it, it cannot be ignored. Action for contempt of court which is discretionary should not be frequently or lightly taken but at the same time courts should not abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. But when there appears some scheme and a design to bring about results which must damage confidence in the judicial system and demoralise Judges of the highest Court by making malicious attacks, any one interested in maintaining the high standards of fearless, impartial and unbending justice will feel perturbed. One may be able to live in a world of Yogic detachment when unjustified abuses are hurled at one's self personally, but when the question is of injury to an institution such as the highest Court of justice in the land one cannot overlook its effect upon national honour and prestige in the comity of nations. It becomes a matter deserving consideration of all serious-minded people who are interested in seeing that democracy does not flounder or pale in this country. If fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks on them.

(Paras 4, 5, 7, 8, 9, 12, 13 & 16)

Per Krishna Iyer, J.

In contempt jurisprudence bearing on scandalizing the Judges *qua* Judges, it is not high-falutin rhetoric but hard-headed realism, illumined by constitutional values that must set the limit and interpret the statute relating to contempt of court. It is a disturbing development in our country that the media and some men in the trade of traducement are escalatingly scandalizing Judges with flippant or motivated write-ups wearing a *pro bono publico* veil and mood of provocative mock-challenge. The court shall not meditate nor hesitate but shall do stern justice to such professional contemnners, not shrink because they are scurrilous, influential or incorrigible. Even so, to be gentle is to be just and the quality of mercy is not strained. So, it is that a benign neglect, not judicial genuflexion is often the prescription, and to inhibit haphazardness or injustice it is necessary that the Bar and the Press evolve a dignified consensus on the canons of ethics in this area with due regard to the Constitution and the laws so that the Bench may give it a close look and draw up the objective line of action. In doing so, certain principles have to be kept in mind. They are :

(1) Wise economy of the use of the contempt power by the court. The court

175

should act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. Otherwise, the court should ignore—the dogs may bark, the caravan will pass.

- (2) The constitutional values of free criticism including the Fourth Estate and the need for fearless curial process and its presiding functionary, the Judge, must be harmonised and a happy balance must be struck between the two.
- (3) The difference between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process must be clearly kept in mind because, the former is not contempt, but the latter is.
- (4) The Fourth Estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy should be given free play within *responsible limits* when the focus of its critical attention is the court including the highest Court.
- (5) Judges should not be hypersensitive even when distortions and criticisms overstep the limits but they should deflate such vulgar denunciations by dignified bearing, condescending indifference and repudiation by judicial rectitude ; and
- (6) If the court considers, after evaluating the totality of factors, that the attack on the Judge or Judges was scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the Rule of Law by fouling its source and stream.

The process of arriving at these norms by those mighty forces who influence public opinion cannot be delayed, and until then, the law laid down in precedents of this Court will go into action when judge-baiting is indulged in by masked men or media might. Freedom is what freedom does and Justice fails when Judges quail.
(Paras 27, 28, 29, 31, 32, 33 & 55, 57)

Phillimore Committee Report on Contempt of Court in the United Kingdom, (1974); *Nicholls*, (1911) 12 CLR 280-285 ; *Special Reference from Bahama Islands*, (1893) AC 138 ; *A. G. v. Times Newspapers Ltd.*, (1972) 3 All ER 1136 (DC) ; (1973) 1 All ER 815 (CA) ; (1973) 3 All ER 54 (HL) ; *R. v. Brett*, (1950) VLR 226 ; *Queen v. Gray*, (1900) QBD 36 ; *McLeod v. St. Aubyn*, (1899) AC 549 ; *Ambard v. Attorney-General for Trinidad and Tobago*, 1936 AC 322 ; *R v. Metropolitan Police Commissioner ex p. Blackburn*, (1968) 2 WLR 1204 ; *Shambhu Nath Jha v. Kedar Prasad Sinha*, (1972) 1 SCC 573, 577 ; 1972 SCC (Cri) 337 ; *Perspective Publications Ltd. v. State of Maharashtra*, (1969) 2 SCR 779 ; *R. C. Cooper v. Union of India*, (1970) 2 SCC 298, 301 ; *Brahma Prakash Sharma v. State of U. P.*, 1953 SCR 1169 at 1178-1180 ; *Devi Prasad v. King Emperor*, 70 IA 216 ; *B. R. Reddy v. State of Madras*, 1952 SCR 425 ; *In re : Motilal Ghosh*, ILR 45 Cal 269 at 283 ; *C. K. Daphutary v. O. P. Gupta*, (1971) 1 SCC 626 ; 1971 SCC (Cri) 286 ; *Shri Baradakanta Mishra v. The Registrar of Orissa High Court*, (1974) 1 SCC 374 ; *Bridges v. California* 319 US 252 (1941) at 279, 283, 284 ; *Craig v. Harney*, 331 US 367 ; *Sheppard v. Maxwell*, 384 US 333 (1966) ; *Nebraska Press Association v. Stuart*, (1976) 96 Sup Ct 2791 and *Los Angeles Times* case, 314 US 263, referred to

Per Kailasam, J.

When the matter was taken up in the court the contempt proceedings were dropped without calling upon the learned Counsel who was appearing for the respondent in response to the notice. Under the circumstances, it is not necessary to say anything more about the matter.

(Para 60)

VPS/3810/CR

Advocates who appeared in this case :

V. M. Tarkunde, Senior Advocate (A. N. Goyal, Advocate, with him), for the alleged contemner ;

S. N. Kacker, Sol. Genl. (R. N. Sachthey and Miss A. Subhashini, Advocates, with him) for the Sol. Genl. ;

Dr. L. M. Singhvi, Senior Advocate (D. Bhandari and S. K. Jain, Advocates, with him), for the Intervener.

The Orders* of the Court were given by

BEG, C.J.—The matter before us arises out of a publication in the Indian Express newspaper dated December 13, 1977. Some people perhaps believe that attempts to hold trials of everything and everybody by publications in newspapers must include those directed against the highest Court of Justice in this country and its pronouncements. If this is done in a reasonable manner, which pre-supposes accuracy of information about a matter on which any criticism is offered, and arguments are directed fairly against any reasoning adopted, I would, speaking for myself, be the last person to consider it objectionable even if some criticism offered is erroneous. In *Bennett Coleman & Co. v. Union of India*¹, I had said (at p. 828) (SCC pp. 827-28):

John Stuart Mill, in his essay on "Liberty", pointed out the need for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what may be called the 'dialectical' process of a struggle with wrong ones which exposes errors. Milton, in his "Areopagitica" (1644) said :

Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple ; whoever knew Truth put to the worse, in a free and open encounter ? . . . Who knows not that Truth is strong, next to the Almighty ; she needs no policies, no stratagems, no licensings to make her victorious ; those are the shifts and defences that error makes against her power

Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded. Voltaire expressed a democrat's faith when he told an adversary in arguments : "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis

* [Ed. : The expositions by Krishna Iyer, J. and Kailasam, J. are also labelled in the blue print as "Order".]

1. (1973) 2 SCR 757, 828-29: (1972) 2 SCC 788

creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members.

Although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19(1)(a) of the Constitution, yet, it is well-recognised that the Press provides the principal vehicle of expression of their views to citizens. It has been said :

Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so subtle. But, like other liberties, this also must be limited.

2. I find, however, that gross distortions of what was actually held by this Court in what is known as the habeas corpus case (*Additional District Magistrate, Jabalpur v. Shivakant Shukla*)*, are being made presumably to serve ulterior objects. Some of these distortions have been exposed by me in a separate statement of detailed reasons which place on record my difference of opinion with the order ultimately passed by a majority in this Court upon a case resulting from a news item published in the Times of India recently.* I have, unfortunately, now to take notice of a much milder publication in the Indian Express newspaper, in which the following sentence occurs about the supposed code of judicial ethics assumed wrongly to have been drafted by some Judges of the Supreme Court:

So adverse has been the criticism that the Supreme Court Judges, some of whom had prepared the draft code, have disowned it.

3. Judges of this Court were not even aware of the contents of the letter before it was sent by me as Chief Justice of India to Chief Justices of various High Courts suggesting, inter alia, that Chief Justices could meet and draft a code of ethics themselves or through a Committee of Chief Justices so as to prevent possible lapses from the path of rectitude and propriety on the part of Judges. The error of the assumption that Judges of the Supreme Court had any hand in drafting a code which I could have had at the back of my mind when I sent my suggestions to Chief Justices of High Courts was pointed out to the Editor of the Indian Express in a letter sent by the Registrar of this Court. No question of disowning the supposed code by any Judge could, in the circumstances, arise. And, I had never "disowned" the suggestions made by me. The Registrar of this Court, therefore, wrote to inform the Editor of the mis-statement which ought to have been corrected. In reply, the Registrar received a letter from the Editor showing that the contents of my letter to Chief Justices of High Courts, which were confidential, were known to the Editor. Instead of publishing any correction of the mis-statement about the conduct of Judges of this Court, the Editor offered to publish the whole material in his possession, as though there was an issue to be tried between the Editor of the newspaper and this Court and the readers were there to try it and decide it.

1. AIR 1976 SC 1207 : (1976) 2 SCC 521

* *In re Sham Lal*, (1978) 2 SCC 479

4. Comments about Judges of the Supreme Court suggesting that they lack moral courage to the extent of having "disowned" what they had done, or, in other words, to the extent of uttering what was untrue, at least verge on contempt. I do not think that anyone could say that such suggestions would not make Judges of this Court look ridiculous or even unworthy, in the estimation of the public, of the very high office they hold if they could so easily "disown" what they had done after having really done it. The readiness with which possible correctness of such a suggestion could be accepted by the Editor of a newspaper has its own implications about the general fall in standards and values in life which Judges are supposed to share.

5. It seems to me that Editors of at least responsible newspapers should be aware that it is courts of law and not newspaper readers who have to try certain issues which courts alone are empowered to determine. Courts adopt a procedure designed to prevent, as far as possible, unfair prejudices, irrelevances, and untruths creeping in. The character and the legal consequences of any publication about conduct of Judges are certainly matters for courts to determine. Editors of newspapers are expected to know also something of the special place of this Court in the Republic's Constitution which amply protects its Judges so that they may not be exposed to approbrious attacks by either malicious or ignorant persons.

6. This Court is armed, by Article 129 of the Constitution, with very wide and special powers, as a Court of Record, to punish its contempts. Elsewhere, I have said in an attempt to explain the principle of the supremacy of the Constitution which this Court represents and expounds :

Thus, the principle of supremacy of the Constitution requires for its maintenance in full force and vigour : firstly, an executive which respects the judiciary and its verdicts and does not take away, by the exercise of its constitutional powers, judicial powers to deal with the rights of citizens even against executive actions of the State ; and secondly the absence of any legislative interference with judicial functions in a manner characterised by Dean Roscoe Pound as "legislative lynching" or threats of any kind held out for reaching particular conclusions however unpalatable they may be to any one. Articles 121 and 211 of our Constitution, prohibiting discussion of the conduct of a Supreme Court or a High Court Judge in the discharge of his duties even by Parliament or a State Legislature, except upon a motion for his removal by the constitutionally prescribed procedure of addresses presented by each House of Parliament after proved misconduct or incapacity of a Judge and resolutions by two-third majorities of each House present and voting, are there in our Constitution to ensure this. Can ordinary citizens do elsewhere, with impunity, what members of Parliament cannot do in Parliament and legislators cannot do in a State Legislature, and, if so, to what extent ? Such questions will have to be answered by courts with reference to the facts of particular cases if and when brought to their notice.

I also said there :

It would be a sad day for the supremacy of the Constitution and for the Rule of Law, which it implies, if malicious or ill-informed persons, filled

with the irrationality involved in the spirit of what Dean Pound called "lynching" or misguided zest or vindictiveness, acting in a manner freed from the restraints of law or reason, were allowed to take upon themselves the task of passing judgments on actions of others particularly of Judges performing judicial functions. That would certainly sound the death-knell of what Dean Roscoe Pound calls "judicial justice" and the Rule of Law. The supremacy of the Constitution can only be maintained when there is a spirit of law abidingness and discipline amongst citizens so that principles of law can be applied scientifically to facts by Courts of Justice, which are the custodians of what has been described by political philosophers as the abiding or continuing "Real Will" of the whole nation embodied in the Constitution as contrasted with the will or wishes of some or majority of citizens for the time being expressed in legislatures or elsewhere. Judges, who have taken oaths of allegiance to the Constitution, are bound to uphold it conscientiously "without fear or favour, affection or ill will". They have to give their honest judgments without caring for popular approval or disapproval.

7. It seemed particularly necessary to point out the protections enjoyed by this Court and its Judges in order to safeguard the supremacy of the Constitution and the rule of law, which speak through pronouncements of this Court, because it was found that, soon after the incorrect stand taken by the Editor of the Indian Express, in the manner mentioned above, an article appeared, entitled "Behaving like a Judge", in this very newspaper. The suggestion that a code of ethics should be formulated by Judges themselves was characterised in this article as "so utterly inimical to the independence of the judiciary, violative of the constitutional safeguards in that respect, and offensive to the self-respect of the Judges as to make one wonder how it was conceived in the first place". The writer of the article asserted a right of the public to know what I, at any rate, would be quite willing to tell him if he came to me as a citizen wanting, in good faith, correct information.

8. The writer of an article of a responsible newspaper on legal matters is expected to know that there is no constitutional safeguard or provision relating to the independence of the judiciary which could possibly prevent Judges themselves meeting to formulate a code of judicial ethics or to constitute a committee to formulate a code of judicial ethics and etiquette. This is what was suggested to Chief Justices of High Courts. Indeed, in America, the American Bar Association has formulated a code of this kind. None has been formulated so far in this country. A purported enactment which tried to prevent Judges from meeting and formulating such a code of ethics and etiquette, so as to be clear about points on which, at times, there is uncertainty in the minds of Judges themselves, would not be valid. Such a purported law would offend against Article 19(1)(a) of the Constitution. Neither our Constitution nor our law, could conceivably be infringed if Judges were to meet to devise means to prevent situations arising in which an accusing finger could be raised against the conduct of a Judge, whether inside or outside the Court, let alone involving constitutional provisions of Article 124 for his removal after an inquiry by a body constituted under the Judges (Inquiry) Act, 1968. A code

of this kind, if scrupulously observed by all the Judges, could only enhance their independence and prestige and not injure these in any way whatsoever.

9. This article proceeds on the assumption that there is already a formulated code of ethics sent to the Chief Justices. In fact, nothing more than some suggestions or examples of the kind of conduct which a possible code could deal with were sent to the Chief Justices. If there was anything inappropriate which could be found in those suggestions, that could be criticised and set right or discarded. Better suggestions could be made and incorporated in a proper code of judicial ethics and etiquette, if that could be framed. Indeed, in case the Judges felt bolder, it was suggested that they could formulate a mode of action to deal with allegations which are sometimes made baselessly or maliciously against Judges. If a Committee of Chief Justices or Judges could consider the allegations made against any individual Judge and was to find them baseless or malicious it would protect the unfortunate Judge who was made a victim of malicious onslaughts. On the other hand if there was substance in the very serious allegations which are sometimes made against Judges of High Courts (I am glad to say that their number is extremely small and limited), the Committee could itself forward its findings for appropriate action under Article 124 of the Constitution, to the Central Government which could then set up a Committee of Inquiry. In this way in serious cases, the Judge concerned would get a consideration from his peers as well as by the Committee provided by the Judges (Inquiry) Act, 1968.

10. The article of December 21, 1977, referred to above, ends by attempting to make a distinction between the wonderful performance of High Court Judges and the "disappointing" record of the Supreme Court. It was suggested there that this was due to the fact that the Supreme Court is "packed" by the former Prime Minister, Mrs. Gandhi, "with pliant and submissive Judges except for a few". Questions, naturally, must arise in the public minds : To what do they become "pliant" ? Is it to the dictates or directions of the Executive ? When and how have they done so ? Had such insinuations any factual basis—which they, fortunately, do not have—I would, at any rate, be among those who would say that the sooner this Court is wound up the better it would be for the country.

11. The supposed writer of the article was evidently so shaky about his ability to substantiate his suggestions, on the strength of his own knowledge or opinion, that he took shelter behind views alleged to have been expressed by Mr. Jayaprakash Narayan on some occasion to the effect alleged by him in the article. We cannot pass any judgment upon such views without giving notice to other parties, and without taking evidence about the circumstances and the context, which largely determine the real meaning, in which any opinion to that effect may or may not have been expressed by anybody.

12. Mr. Jethmalani appearing for A. G. Noorani, to whom we had issued no notice, tried to convince us that there was no intention on the part of the

writer of the article or the Editor to injure the dignity or position of this Court but the intention was only to direct public attention to matters of extreme importance to the nation. If this were so it would be a desirable object. But, as we should all know, there are proper and permissible ways of carrying out such an object and others which are not permitted by law, or, at least by elementary rules of fairness.

13. A reason which has also weighed with me in dropping this and a similar earlier proceeding is that, we have been passing through a period of exceptional strain and stress and excitement in this country in which unusual remarks made have not been confined to what appears in newspapers. Indeed, extraordinary and surprisingly erroneous statements, which could not be there if rules of judicial ethics were formulated and strictly adhered to, have found place even in solemn pronouncements of this Court on rare occasions. However, I do not want to expatiate on that theme here. All I can say is that, if this is a correct observation, it would also disclose a need for rules of judicial ethics or propriety for Judges of even this august Court.

14. The statement made above by me should remove the misapprehension, if there was really any in the mind of whoever wrote the article in the Indian Express of December 13, 1977, condemning my proposals for framing a code of judicial ethics on the ground, inter alia, that it was proposed to have one only for High Court Judges. I think that there should be codes of ethics not merely for Judges but for occupants of every office—high or low—and for members of every profession and calling. Without such codes, progress in right directions in any sphere becomes more uncertain and problematic than it could be with such codes of ethics.

15. National interest requires that all criticisms of the judiciary must be strictly rational and sober and proceed from the highest motives without being coloured by any partisan spirit or tactics. This should be a part of national ethics. Newspapers, in particular, ought to observe such a rule imbued with what Montesquieu considered essential for a healthy democracy: the spirit of "virtue". They should, if they are interested in promoting national welfare and progress, support proposals for framing correct rules of ethics for every class of office-holder and citizen in the country. And, the judiciary must, in its actions and thoughts and pronouncements, hold aloft the values and the spirit of justice and truth enshrined in the Constitution and soar high above all other lower loyalties and alignments if it is to be truly independent.

16. The judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. I am not one of those who think that an action for contempt of court, which is discretionary, should be frequently or lightly taken. But, at the same time, I do not think that we should abstain from using this weapon even when its use is needed to correct standards

of behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. But, when there appears some scheme and design to bring about results which must damage confidence in our judicial system and demoralize Judges of the highest Court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial, and unbending justice will feel perturbed. I sincerely hope that my own undisguised perturbation at what has been taking place recently is unnecessary. One may be able to live in a world of yogic detachment when unjustified abuses are hurled at one's self personally, but, when the question is of injury to an institution, such as the highest Court of justice in the land, one cannot overlook its effects upon national honour and prestige in the comity of nations. Indeed, it becomes a matter deserving consideration of all serious-minded people who are interested in seeing that democracy does not flounder or fail in our country. If fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them. However, as we have not proceeded further in this case, I do not think that it would be fair to characterize anything written or said in the Indian Express as really malicious or ill-intentioned and I do not do so. We have recorded no decision on that although the possible constructions on what was written there have been indicated above.

17. My opinion on matters touched by my learned brother Krishna Iyer is that, although, the question whether an attack is malicious or ill-intentioned, may be often difficult to determine, yet, the language in which it is made, the fairness, the factual accuracy, the logical soundness of it, the care taken in justly and properly analysing the materials before the maker of it, are important considerations. Moreover, in judging whether it constitutes a contempt of court or not we are concerned more with the reasonable and probable effects of what is said or written than with the motives lying behind what is done. A decision on the question whether the discretion to take action for contempt of court should be exercised in one way or the other must depend on the totality of facts and circumstances.

18. After I had drafted my reasons for dropping the proceedings I have had the benefit of perusing the views expressed by my learned brother Kailasam. I would like to make it quite clear that there is, as I have already mentioned above, no finding given here by me against any person. I entirely agree that it would not be fair or legal, without giving opportunities to be heard to any persons against whom any aspersions are to be cast or any remarks are to be made to record findings against them. But, I think that we are entitled to express our separate and individual opinions for dropping the proceedings now before us. Indeed, my separate judgment in the case* relating to the recent publication in the Times of India was a dissenting one. It was, there-

* *In re Sham Lal*, (1978) 2 SCC 479

fore, all the more necessary for me to record my reasons for a dissent. In the case now before us, we are all agreed that the proceedings should be dropped. Nevertheless, I think that we are completely justified in giving and are free to give our separate reasons why this should be done either with or without comment so long as we do not give any finding which may be unfair to anyone. I would, therefore, like to make it clear once again that, as the matter has not proceeded beyond putting the cause of the notice to learned Counsel and hearing only their prima facie reactions on whether the proceedings should be dropped or not, we have accepted the submissions of Mr. Tarkunde and Mr. Jethmalani that we should not proceed further; there is no question of recording any finding against anyone and I have not done so. It was, however, necessary to indicate the way in which and reasons for which the notice was issued. It seems to me that it was also necessary for me to refer to the reasons why I consider codes of ethics, and, in particular, judicial ethics are necessary. That is a matter of conscience and of my understanding of what is right for a Judge to do "without fear or favour, affection or ill will".

19. The need for appropriate standards relating even to what our judgments should or should not contain is so great that I think this matter has to be taken up soon by Judges themselves at some stage or other. Even the difference of views between learned Judges of this Court on such a question illustrates that. If we had clear rules of judicial practice and ethics on even such matters our judgments would not be encumbered with what should not be there. If such rules are absent, there may be, sometimes, serious disagreement as to what a judgment should or should not contain. In such a case, the only sound rule I could follow is to hear all those who are to be heard according to law but no others and then to express the opinion I feel bound by my conscience to express without allowing any other consideration to weigh with me.

20. As I have already pointed out above, I think that the need for appropriate norms of conduct exists in practically every sphere of life in which enlightened people strive to attain exalted ends irrespective of consequences. If our separate statements of reasons for dropping the proceedings before us succeed in at least emphasizing that need they would not have been made in vain. I concur in the order that the proceedings before us be dropped at this stage without any finding against any individual.

KRISHNA IYER, J. (*concurring*)—Silence is no sanctuary for me when speech from the Chief Justice persuades my pen into a divergent course. I profoundly appreciate and deeply respect his sense of hurt and obligation for explanation but prefer to travel along another street in stating why I agreed to jettison the contempt proceedings. My judgment is more an explanation than an expostulation and certainly not a reflection on the respondents.

22. We had unanimously directed that the above proceedings in con-

temptation of contempt action be dropped but the fact that we had converged to this conclusion did not rule out—as is now apparent—our divergence in the process of reasoning. Minds differ as rivers differ. Such, perhaps, in part, is the case here.

23. The contempt power, though jurisdictionally large, is discretionary in its unsheathed exercise. Every commission of contempt need not erupt in indignant committal or demand punishment, because Judges are judicious, their valour non-violent and their wisdom goes into action when played upon by a volley of values, the least of which is personal protection—for a wide discretion, range of circumspection and rainbow of public considerations benignantly guide that power. Justice is not hubris; power is not petulance and prudence is not pusillanimity, especially when Judges are themselves prospectors and mercy is a mark of strength, not whimper of weakness. Christ and Gandhi shall not be lost on the Judges at a critical time when courts are on trial and the people ("We, the People of India") pronounce the final verdict on all national institutions. Such was the sublime perspective, not plural little factors, that prompted me to nip in the bud the proceeding started for serving a larger cause of public justice than punitive action against a publisher, even assuming (without admitting) he was guilty. The preliminary proceeding has been buried publicly; let it lie in peace. Many values like free press, fair trial, judicial fearlessness and community confidence must generously enter the verdict, the benefit of doubt, without absolutist insistence, being extended to the defendant. Such are the dynamics of power in this special jurisdiction. These diverse indicators, carefully considered, have persuaded me to go no further, by a unilateral decision of the Bench. This closure has two consequences. It puts the lid on the proceedings without pronouncing on the guilt or otherwise of the opposite parties. In a quasi-criminal action, a presumption of innocence operates. Secondly, whatever belated reasons we may give for our action, we must not proceed to substantiate the accusation, if any. To condemn unheard is not fair play. Bodyline bowling, perhaps, is not cricket. So my reasons do not reflect on the merits of the charge.

24. Poise and peace and inner harmony are so quintessential to the judicial temper that huff, 'haywire' or even humiliation shall not besiege; nor, unvarnished provocation, frivolous persiflage nor terminological inexactitude throw into palpitating tantrums the balanced cerebration of the judicial mind. The integral yoga of *shanti* and *neeti* is so much the cornerstone of the judicial process that criticism, wild or valid, authentic or anathematic, shall have little purchase over the mentation of the Court. I quite realise how hard it is to resist, with sage silence, the shafts of acid speech; and, how alluring it is to succumb to the temptation of argumentation where the thorn, not the rose, triumphs. Truth's taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens. In contempt jurisdiction, silence is a sign of strength since our power is wide and we are prosecutor and judge.

185

25. Why did I concur in the short order? Why do I now strike a variant note to that of the learned Chief Justice? I do not take up the position that scandalising the Judges does not come within the contempt clutches of the Court. The Court's jurisdiction to initiate proceedings and punish for constructive contempt *suo motu* crystallized in the eighteenth century even though it is clear that the Court's inherent powers in this regard were not as wide as *Wilmot, J.* made them out to be in his posthumously published opinion in *R. v. Almon*³. Fortunately, the attacks on the judiciary have been comparatively few in most countries, having regard to the character assassination of the personnel in the other great branches of Government. Even so, the law which punishes those who scandalize Judges is as old as the Common Law itself. The existence of the contempt power, however, does not obligate its exercise on every occasion but triggers it only in special situations, not routinely.

26. What then are the complex of considerations dissuasive of punitive action? To be exhaustive is a baffling project; to be pontifical is to be impractical; to be flexible is to be realistic. What, then, are these broad guidelines—not a complete inventory, but precedentially validated judicial norms?

27. The first rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offences: the dogs may bark, the caravan will pass. The Court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt.

28. The second principle must be to harmonise the constitutional values of free criticism, the Fourth Estate included, and the need for a fearless curial process and its presiding functionary, the Judge. A happy balance has to be struck, the benefit of the doubt being given generously against the Judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant contemnors, be they the powerful press, gang-up of vested interests, veteran columnists of olympian establishmentarians. Not because the Judge, the human symbol of a high value, is personally armoured by a regal privilege but because "be you—the contemner—ever so high, the law—the People's expression of justice—is above you". Curial courage overpowers arrogant might even as judicial benignity forgives errant or exaggerated critics. Indeed, to criticise the Judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a demo-

3. 1765, published in (1802) *Wilmot's Opinions*. See further R. Dhavan: "Contempt of Court and the Phillimore Committee Report", (1976) 5 *Anglo American Law Review*, 186, 194 and the literature cited there.

cracy. For, it blesseth him that gives and him that takes. Where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it, constitutionally speaking. A free people are the ultimate guarantors of fearless justice. Such is the cornerstone of our Constitution ; such is the touchstone of our Contempt Power, oriented on the confluence of free speech and fair justice which is the scriptural essence of our Fundamental Law. Speaking of the social philosophy and philosophy of law in an integrated manner as applicable to contempt of court, there is no conceptual polarity but a delicate balance, and judicial 'sapience' draws the line. As it happens, our Constitution-makers foresaw the need for balancing all these competing interests. Section 2(1)(c) of the Contempt of Courts Act, 1971 provides :

"Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court.

This is an extremely wide definition. But, it cannot be read apart from the context of the constitutional provisions within which the Founding Fathers of the Constitution intended all past and future statutes to have meaning. All laws relating to contempt of court had, according to the provisions of Article 19(2), to be "reasonable restrictions" on the exercise of the right of free speech. The courts were given the power—and, indeed, the responsibility—to harmonize conflicting aims, interests and values. This is in sharp contrast to the *Phillimore Committee Report on Contempt of Court in the United Kingdom*⁴ which did not recommend the defence of public interest in contempt cases.

29. The *third* principle is to avoid confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is *not* contempt, the latter is, although overlapping spaces abound.

30. Because the law of contempt exists to protect public confidence in the administration of justice, the offence will not be committed by attacks upon the personal reputation of individual Judges as such. As Professor Goodhart has put it⁵ :

Scandalising the court means any hostile criticism of the Judge as Judge ; any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel.

Similarly, Griffith, C.J. has said in the Australian Case of *Nicholls*⁶ that :

In one sense, no doubt, every defamatory publication concerning a Judge may be said to bring him into contempt as that term is used in the law of libel, but it does not follow that everything said of a Judge calculated to bring him into contempt in that sense amounts to contempt of court.

4. (1974) *bund.* S. 794, paras 143-5, pp. 61-2

5. See '*Newspapers on Contempt of Court*', (1935) 48 *Harv LR* 885, 898

6. (1911) 12 *CLR* 280, 285

Thus in *In the matter of a Special Reference from the Bahama Islands*⁷ the Privy Council advised that a contempt had not been committed through a publication in the Nassau Guardian concerning the resident Chief Justice, who had himself previously criticised local sanitary conditions. Though couched in highly sarcastic terms the publication did not refer to the Chief Justice in his official, as opposed to personal, capacity. Thus while it might have been a libel it was not a contempt.

31. The *fourth* functional canon which channels discretionary exercise of the contempt power is that the fourth estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest Court.

32. The *fifth* normative guideline for the Judges to observe in this jurisdiction is *not* to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude.

33. The *sixth* consideration is that, after evaluating the totality of factors, if the Court considers the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

34. Speaking generally, there are occasions when the right to comment may be of supreme value (for instance, the *Thalidomide Babies* cases in England⁸) and the law of contempt must adjust competing values and be modified, in its application by the requirements of a free society and the shifting emphasis on paramount public interest in a given situation.

35. Indeed, there is an interesting Australian decision (*R. v. Brett*⁹) which has a meaningful relevance for our case and I quote from the *Australian Law Journal* :

In *R. v. Brett*, the publisher of a newspaper was called on to show cause why he should not be committed for contempt of court. It appeared that the newspaper, under the heading "Mr. Justice Sholl—Die-hard Tory" had criticised the appointment of Mr. Justice Sholl and inferentially of all his brethren except one not specified, because they were out of touch with the life of the people and had no experience (it was alleged) in the Criminal Court "the only court where even a semblance of the problems of the people arise", and it concluded that his appointment showed that the judiciary was "an institution forming an integral part of the repressive machinery of the State".

⁷ 1893 AC 138.

⁸ I prefer the judgment of Lord Denning M. R. in the Court of Appeal to those in the Divisional Court or House of Lords in the *Thalidomide* case: *Att.*

Gen. v. Times Newspapers Ltd., (1972) 3 All ER 1136 (DC); (1973) 1 All ER 815 (CA); (1973) 3 All ER 54 (HL).

⁹ 1950 VLR 226.

O' Bryan, J., pointed out that the fact that the article made ridiculous mistakes of fact and that its logic was greatly at fault, did not prove that it was a contempt. The question was whether the article, honestly though mistakenly and offensively, criticised the policy of this and previous administrations in appointing Judges, or whether it did indeed set out to lower the authority of the Court as such and to excite misgivings as to its partiality. With very great hesitation, his Honour came to the conclusion that a case for the exercise of the extraordinary summary jurisdiction of the Court had not been made out and he discharged the order nisi.

36. Another useful illustration from the Australian jurisdiction is contained in short report made of a decision in *Australian Law Journal* :

The *Tasmanian* case (*The King v. Ogilvie*¹⁰) concerned statements made by the respondent at public meetings, imputing lack of impartiality to Mr. Justice Crisp, and asserting that the respondent was personally disliked by his Honour, and that respondent's clients could not get justice from him. Nicholls, C.J., in delivering the judgment of the Court, agreed with the authorities that fair comment on judicial actions is not only justifiable, but beneficial. He then pointed out "that we regard these proceedings as instituted and our powers conferred, not for the benefit or comfort of the Judges personally, to protect them from criticism or even from libel, but simply to secure that this institution, the Supreme Court, which in the final analysis has to declare and enforce the rules which hold the community together, shall be challenged only in the proper ways, which are two" first, by appeal, and secondly by approach in the proper form to Parliament.

37. A quick flashback to English decisions also is instructive. As early as 1900 in *Queen v. Gray*¹¹, Gray published in a newspaper an article which was personal scurrilous abuse of a Judge as a Judge". Lord Russel of Killowen, C.J. observed :

It is not too much to say that it is an article of scurrilous abuse of a Judge in his character of a Judge—scurrilous abuse in reference to the conduct of the Judge while sitting under the Queen's Commission, and scurrilous abuse published in a newspaper in the town in which he was still sitting under the Queen's Commission. It cannot be doubted—indeed it has not been argued to the contrary by the learned Counsel who represents Howard Alexander Gray—that the article does constitute a contempt of court : but, as these applications are, happily, of an unusual character, we have thought it right to explain a little more fully than is perhaps necessary what does constitute a contempt of court, and what are the means which the law has placed at the disposal of the Judicature for checking and punishing contempt of court. Any act done or writing published calculated to bring a court or a Judge of the court into contempt, or to lower his authority, is a contempt of court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the courts is a contempt of court. The former class belongs to the category which Lord Hardwicke, L. C. characterised as "scandalising a court or a Judge".

The learned Law Lord, however, indicated a guideline which is extremely important :

10. (1928-29) 2 ALJ 145, 146

11. (1900) 2 QB 36

Judges and courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of court. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published ; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of the Queen. Now, as I have said, no one has suggested that this is not a contempt of court and nobody has suggested, or could suggest that it falls within the right of public criticism in the sense I have described. It is not criticism : I repeat that it is personal scurrilous abuse of a Judge as a Judge . . . (emphasis, added).

The tone of *R. v. Gray* (supra) sharply contrasted with the much more liberal tone adopted by the Privy Council in *McLeod v. St. Aubyn*¹² even though certain aspects of the latter decision assume a somewhat imperialist tone. Dr. Rajeev Dhavan has observed¹³ :

For some strange reason the Privy Council judgment was neither referred to by the Chief Justice or even cited to the Court even though a time-lag of nine months separates the two judgments.

A harmonious blend and a balanced co-existence of a free press and fearless justice desiderates that the law ought not to be too astute in such cases and that public criticism has a part to play, even if it over-steps the limit, in preserving the democratic health of public institutions. But beyond a point, the wages of contempt is committal.

38. In *Ambard v. Attorney General for Trinidad and Tobago*¹⁴, the Privy Council pronounced on a case of public criticism of the administration of justice. Lord Atkin stated, with admirable accuracy, the law on this branch of contempt of court :

But whether the authority and position of an individual Judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way. The wrong-headed are permitted to err therein ; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful, even though outspoken comments of ordinary men.

Indeed, Lord Morris in *McLeod v. St. Aubyn* (supra) had commented :

Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. But it must be considered that in small colonies, consisting principally of coloured populations, the enforcement in proper cases of committal for contempt of court for attacks on the court may be absolutely necessary to preserve in such a community the dignity of and respect for the court.

12. 1899 AC 549

13. See R. Dhavan : "Contempt of Court and the Phillimore Committee Report", (1976)

5 Anglo American Law Review 186, 203

14. 1936 AC 322

39. I will not condemn the Indian people with the contempt manifest in Lord Morris' observation regarding small colonies and coloured populations. We are cultured people with traditions and canons and may at least be equated in these matters with Englishmen.

40. A very valuable and remarkably fresh approach to this question of criticism of courts in intemperate language and invocation of contempt of court against the contemner, a person of high position, is found in *Regina v. Metropolitan Police Commissioner ex. p. Blackburn*¹⁴. Lord Denning's judgment is particularly instructive in the context of the obnoxious comments made by Quintin Hogg in an article in the "Punch" about the members of the Court of Appeal. The remarks about the Court of Appeal were highly obnoxious and the barbed words thrown at the Judges obviously were provocative. Even so, in a brief but telling judgment, Lord Denning held this not to be contempt of court. It is illuminating to excerpt a few observations of the learned Judge :

This is the first case, so far as I know, where this Court has been called on to consider an allegation of contempt against itself. It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise : more particularly as we ourselves have an interest in the matter.

▪ Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, will deter us from doing what we believe is right ; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.

41. The Indian precedents must naturally receive referential attention from us and so I switch over to the cases of this Court which have relevance to that branch of the contempt jurisprudence bearing upon scandalising the Judges. After a brief survey, I will summarise the conclusions. In *Sambhu Nath Jha v. Kedar Prasad Sinha*¹⁵ (SCC p. 577, para 14) :

It would follow from the above that the courts have power to take action against a person who does an act or publishes a writing which is

15. (1968) 2 WLR 1204

16. (1972) 3 SCR 183, 189; (1972) 1 SCC 573; 1972 SCC (Cri) 337

calculated to bring a court or Judge into contempt or to lower his authority or to obstruct the due course of justice or due administration of law. ... in such cases, the court would exercise circumspection and judicial restraint in the matter of taking action for contempt of court. The court has to take into account the surrounding circumstances and the material facts of the case and on conspectus of them to come to a conclusion whether because of some contumacious conduct or other sufficient reason the person proceeded against should be punished for contempt of court.

42. In *Perspective Publications (P) Ltd. v. State of Maharashtra*¹⁷ Grover J., speaking on behalf of the Court, reviewed the entire case-law and stated the result of the discussion of the cases on contempt as follows (SCR pp. 791-92) :

(1) It will not be right to say that committals for contempt for scandalizing the court have become obsolete.

(2) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.

(3) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a Judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men".

(4) A distinction must be made between a mere libel or defamation of a Judge and what amounts to a contempt of the court.

The test in each case would be whether the impugned publication is a mere defamatory attack on the Judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by this Court. It is only in the latter case that it will be punishable as contempt.

(5) Alternatively the test will be whether the wrong is done to the Judge personally or it is done to the public. To borrow from the language of Mukherjee, J. (as he then was) (*Brahma Prakash Sharma's case*¹⁸) the publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties.

43. Hidayatullah, C.J., in *R. C. Cooper v. Union of India*¹⁹ observed:

There is no doubt that the Court like any other institution does not enjoy immunity from fair criticism. This Court does not claim to be always right although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the Judges. They do not think themselves in possession of all truth or hold that wherever others differ from them, it is so far error. No one is more conscious of his limitations and fallibility than a Judge but because of his training and the assistance

17. (1969) 2 SCR 779: AIR 1971 SC

221: 1971 Cri LJ 268

18. *Brahma Prakash Sharma v. State of U.P.*,

1953 SCR 1169: AIR 1954 SC 10:

1954 Cri LJ 238

19. (1970) 2 SCC 298, 301

he gets from learned Counsel he is apt to avoid mistakes more than others We are constrained to say also that while fair and temperate criticism of this Court or any other court even if strong, may not be actionable, attributing improper motives, or tending to bring Judges or courts into hatred and contempt or obstructing directly or indirectly with the functioning of courts is serious contempt of which notice must and will be taken. Respect is expected not only from those to whom the judgment of the Court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of courts, administration of justice and the instruments through which the administration acts, should take heed for they will act at their own peril. We think this will be enough caution to persons embarking on the path of criticism.

44. In *Brahma Prakash Sharma v. State of U. P.*²⁰ this Court said :

It seems, therefore, that there are two primary considerations which should weigh with the court when it is called upon to exercise the summary powers in cases of contempt committed by "scandalising" the court itself. In the first place, the reflection on the conduct or character of a Judge in reference to the discharge of his judicial duties would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not by stifling criticism that confidence in courts can be created. "The path of criticism", said Lord Atkin (*Ambard v. Attorney General for Trinidad and Tobago*²¹) "is a public way. The wrong-headed are permitted to err therein ; provided that members of the public abstain from imputing motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice, or attempt to impair the administration of justice, they are immune".

In the second place, when attacks or comments are made on a Judge or Judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the Judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the Judge is concerned does not necessarily make it a contempt. The distinction between a libel and a contempt was pointed out by a Committee of the Privy Council, to which a reference was made by the Secretary of State in 1892 (*In the matter of a special reference from the Bahama Islands*²²). A man in the Bahama Islands, in a letter published in a colonial newspaper criticised the Chief Justice of the Colony in an extremely ill-chosen language which was sarcastic and pungent. There was a veiled insinuation that he was an incompetent Judge and a shirker of work and the writer suggested in a way that it would be a providential thing if he were to die. A strong Board constituting of 11 members reported that the letter complained of, though it might have been made the subject of proceedings for libel, was not, in the circumstances, calculated to obstruct or interfere with the course of justice or the due administration of the law and therefore did not constitute a contempt of court. The same principle was reiterated by Lord Atkin in the case of *Devi Prasad v. King Emperor*²³ referred to above. It was followed and approved of by the High Court of Australia in *King v. Nickolls*²⁴, and has

20. 1953 SCR 1169, 1178-80

21. 1936 AC 122, 335

22. 1893 AC 138

23. 70 LA 216

24. 12 Com LR 280

193

been accepted as sound by this Court in *B. R. Reddy v. State of Madras*²⁵. The position therefore is that a defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libeller in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the Judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well-established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law²⁶.

45. There is no doubt that condign and quick punishment for scandalising publication has been awarded by this Court (*Vide C. K. Daphtary v. O. P. Gupta*²⁷).

46. Another one is *Shri Baradakanta Mishra v. The Registrar of Orissa High Court*²⁸. In the latter case, I had occasion to examine the root principles of Indian Contempt Jurisprudence and I summed up thus :

Judges and courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and administrative acts of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the countervailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally over-zealous, criticism cannot be overlooked. Justice is no cloistered virtue. (p. 409, para 82)

The Court being the guardian of people's rights, it has been held repeatedly that the contempt jurisdiction should be exercised "with scrupulous care and only when the case is clear and beyond reasonable doubt". (p. 412, para 91)

47. I relied on an observation made by Justice Gajendragadkar, C.J., in Special Reference 1 of 1964 and proceeded to state the key to the jurisdiction (p. 413, para 92) :

"We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely, and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never

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| 25. 1952 SCR 425; AIR 1952 SC 149; 1952 Cri LJ 832 | 27. 1971 Supp. SCR 76, 92-93; (1971) 1 SCC 626; 1971 SCC (Cri) 286 |
| 26. <i>Mr. Mookerjee, J. in In re: Motilal Ghosh</i> , ILR 45 Cal 269, 283 | 28. (1974) 1 SCC 374 |

194

forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach and by the restraint, dignity and decorum which they observe in their judicial conduct."

If Judges decay the contempt power will not save them and so the other side of the coin is that Judges like Caesar's wife, must be above suspicion.

To wind up, the key word is "justice", not "Judge"; the key-note thought is unobstructed public justice, not the self-defence of a Judge; the cornerstone of the contempt law is the accommodation of two constitutional values—the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel.

48. Indeed, I am convinced that democratic institutions, including the court system and Judges, must suffer criticism and benefit from it. This approach has been emphasised by me in that case (SCC p. 411, para 88) :

Even so, if Judges have frailties—after all they are human—they need to be corrected by independent criticism. If the judicature has serious shortcomings which demand systemic correction through socially-oriented reform initiated through constructive criticism, the contempt power should not be an interdict. All this, far from undermining the confidence of the public in courts, enhances it and, in the last analysis, cannot be repressed by indiscriminate resort to contempt power. Even bodies like the Law Commission or the Law Institute and researchers, legal and sociological, may run 'contempt' risks because their professional work sometimes involves unpleasant criticism of Judges, judicial processes and the system itself and thus hover perilously around the periphery of the law if widely construed. Creative legal journalism and activist statesmanship for judicial reform cannot be jeopardised by an undefined apprehension of contempt action.

49. American legal history has lessons for us but when national conditions vary adaptation, not imitation, is the creative alternative, to avoid breakdown on the rock of real life. New York is not New Delhi and New York Times deals with different customers from the Times of India. The law of contempt fluidly flows into the mould of life. This fact once noted, there is instructive thought in the American cases.

50. Their lofty approach, grounded on constitutional values, has an appeal for us. The issue is one of the gravest moment for free peoples and to choose between the cherished basics of free expression and fair hearing is a trying task. For a free press it may be argued, as did the U. S. Judges :

What is at stake here is a societal function of the First Amendment in preserving free public discussion of governmental affairs... (P)ublic debate must not only be unfettered; it must also be informed. For that reason this Court has repeatedly stated that First Amendment concerns encompass the receipt of information and ideas as well as the right of free

195

expression An informed public depends on accurate and effective reporting by the news media. No individual can obtain for himself the information needed for the intelligent discharge of his political responsibilities. For most citizens the prospect of personal familiarity with newsworthy events is hopelessly unrealistic. In seeking out the news the press therefore acts as an agent of the public at large.

It is the means by which the people receive that free flow of information and ideas essential to intelligent self-government. By enabling the public to assert meaningful control over the political process, the press performs a crucial function in effecting the societal purpose of the First Amendment. That function is recognized by specific reference to the press in the text of the Amendment and by the precedents of this Court.

The argument further asserts that a curtailment of press freedom is a serious matter. If they can be justified at all, it must be in terms of some serious substantive evil which they are designed to avert. The substantive evil here sought to be averted has been variously described below. It appears to be double disrespect for the judiciary; and disorderly and unfair administration of justice. The assumption that respect for the judiciary can be won by shielding Judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence however limited solely in the name of preserving the dignity of the Bench would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

51. We glance at the vigorous dissent of Mr. Justice Frankfurter to this reasoning in *Bridge v. California*²⁹ :

Our whole history repels the view that it is an exercise of one of the civil liberties secured by the Bill of Rights for a leader of a large following or for a powerful metropolitan newspaper to attempt to overawe a Judge in the matter immediately pending before him. The view of the majority deprives California of means for securing to its citizens justice according to law—means which, since the Union was founded, have been the possession, hitherto unchallenged, of all the States. This sudden break with the uninterrupted course of constitutional history has no constitutional warrant. To find justification for such deprivation of the historic powers of the States is to misconceive the idea of freedom of thought and speech as guaranteed by the Constitution . . .

A trial is not a "free trade in ideas", nor is the best test of truth in a court-room "the power of the thought to get itself accepted in the competition of the market" A court is a forum with strictly defined limits for discussion. It is circumscribed in the range of its inquiry and in its methods by the Constitution, by laws, and by age-old traditions. Its Judges are restrained in their freedom of expression by historic compulsions resting on no other officials of government. They are so circumscribed precisely because Judges have in their keeping the enforcement of rights and the protection of liberties which, according to the wisdom of the ages, can only be enforced and protected by observing such methods and traditions.

29. 319 US 252 (1941) at 279, 283, 284

... The Fourteenth Amendment does not forbid a State to continue the historic process of prohibiting expressions calculated to subvert a specific exercise of judicial power. So to assure the impartial accomplishment of justice is not an abridgment of freedom of speech or freedom of the press as these phases of liberty have heretofore been conceived even by the stoutest libertarians. In fact, these liberties themselves depend upon an untrammelled judiciary whose passions are not even unconsciously aroused and whose minds are not distorted by extra-judicial considerations.

Of course freedom of speech and of the press are essential to the enlightenment of a free people and in restraining those who wield power. Particularly should this freedom be employed in comment upon the work of courts, who are without many influences ordinarily making for humor and humility, twin antidotes to the corrosion of power. But the Bill of Rights is not self-destructive. Freedom of expression can hardly carry implications that nullify the guarantees of impartial trials. And since courts are the ultimate resorts for vindicating the Bill of Rights, a State may surely authorize appropriate historic means to assure that the process for such vindication be not wrenched from its rational tracks into the more primitive melee of passion and pressure. The need is great that courts be criticized, but just as great that they be allowed to do their duty.

52. The representative thinking on the subject is neatly summed up by John R. Brown, Chief Judge :

Thus does Alexander again confront the Gordian knot. For our history demands that breaches of the unqualified commands of the First Amendment cannot be tolerated and freedom of the press must be given the broadest scope that a liberty-loving people can allow.... On the other hand, our fundamental concepts of absolute fairness in trials dictate that the environment within which justice is administered must be maintained unpolluted by the potential infamous notoriety and biased predilections which a completely unfettered but omnipresent press can irrevocably engender in an age of the mass media...

53. It is apparent from this long discussion that the future of Free Press and of Fair Justice desiderates a juristic socio-political national debate, not *ex cathedra* admonitions from the Bench or assertions from the Bar. We must evolve a know-how for the co-existence of free speech and free justice in tune with the Preamble and Article 19. Scurrilous attacks on Judges or on parties to pending cases foul the course of justice. Mischievous half-truths, brazen untruths and virulent publicity by partisan media, political organs and spokesmen for vested interests can be traumatic to the cause of social justice.

54. In an area of competing social values absolutist approaches are sure to err. And yet benign neglect of courts to arrest injurious publicity may be misread as impotence and timely affirmative action may stem the rot. *Sheppard*³⁰ is an American case in point. Remember, a 'free' press is often a monopoly press and has been made gargantuan by modern technology.

30. *Sheppard v. Maxwell*, (1966) 384 US 333

Of course, we must also remember, courts work in public and publishing their proceedings fairly cannot be taboo. Please remember, further, that those who cry 'wolf' against Contempt Power are more often the Proprietariat, not the Proletariat, with exceptions which prove the rule.

55. Prejudicial publicity, indulged in by a 'free' press owing no institutional responsibility or public accountability, cannot be all that good, especially when Judges are personally vilified, assured that the 'robes' traditionally, and for good reasons, do not and should not wrestle with calumniating columnists or yellow journalists. Likewise, a litigant or Judge, run down by powerful vested interests wearing the mask of mass media owned by them or hiring the pen of arch spokesmen of political or economic reactionaries, cannot run riot, raising the alarm that free speech is in peril and get away with it. Heroism on the face may often be villainy at heart and the law cannot retreat from its justice—function scared by slogans. Balancing of values is difficult, delicate but indispensable. Neither the Press nor the courts are above the People. Otherwise, even gutter talk or, to borrow the phraseology of Justice Stevens in *Nebraska*³¹, shabby, intrusive or perversely motivated media practices, may be dignified as free press and given protective constitutional status, leaving the citizen litigant demoralised and citizen Judge powerless, panicked by the ballyhoo of press restraint.

56. The court is not an inert abstraction ; it is people in judicial power. And when drawing up standards for press freedom and restraint, as an 'interface' with an unafraid court, we must not forget that in our constitutional scheme the most fundamental of all freedoms is the free quest for justice by the small man. "When beggars die, there are comets seen" and "when the bull elephants fight, the grass is trampled". The contempt sanction, once frozen by the high and mighty press campaign, the sufferer, in the long run, is the small Indian who seeks social transformation through a fearless judicial process. Social justice is at stake if foul press unlimited were to reign. As Justice Frankfurter stated, may be "Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions" (a question I desist from deciding here), but when comment darkens into coercive imputation or calculated falsehood, threats to impartial adjudication subtly creeps. Not because Judges lack firmness nor that the dignity of the Bench demands enhanced respect by enforced silence, as Justice Black observed in the *Los Angeles Times* case³² but because the course of justice may be distorted by hostile attribution. Said Justice Jackson in *Craig v. Harney*³³:

I do not know whether it is the view of the Court that a Judge must be thick-skinned or just thick-headed, but nothing in my experience or observation confirms the idea that he is insensitive to publicity. Who does not prefer good to ill report of his work ? And if fame—a good public name—is, as Milton said, the "last infirmity of noble mind", it is frequently the first infirmity of a mediocre one.

31. *Nebraska Press Association v. Stuart*,
(1976) 96 Supp. Ct 2791

32. 314 US 263 et al
33. 331 US 367

I do not dogmatise but indicate the perils. Of course, the evil must be substantive and substantial, not chimerical or peripheral.

57. A concluding note. I have launched on this long, inconclusive essay in contempt jurisprudence bearing on scandalizing the judges *qua* judges, aware that not high falutin rhetoric but hard-headed realism, illumined by constitutional values, must set the limit and interpret the statute. It is a disturbing development in our country that the media and some men in the trade of traducement are escalatingly scandalizing Judges with flippant or motivated write-ups wearing a *pro bono publico* veil and mood of provocative mock-challenge. The Court shall not meditate nor hesitate but shall do stern justice to such 'professional' contemnners, not shrink because they are scurrilous, influential or incorrigible. Even so, to be gentle is to be just and the quality of mercy is not strained. So, it is that a benign neglect, not judicial genuflexion, is often the prescription, and to inhibit haphazardness or injustice it is necessary that the Bar and the Press evolve a dignified consensus on the canons of ethics in this area, with due regard to the Constitution and the laws, so that the Bench may give it a close look and draw the objective line of action. The process of arriving at these norms by those mighty forces who influence public opinion, cannot be delayed and until then the law laid down in precedents of this Court will go into action when Judge-baiting is indulged in by masked men or media might. Freedom is what Freedom does and Justice fails when Judges quail. For sure, my plea is not for judicial pachydermy, but for dignified detachment which ignores ill-informed criticism in its tolerant stride, but strikes when offensive excesses are established. Frankly, all these are hypothetical and have no specific reference to the present case. These *obiter dicta* are intended to indicate the pros and cons, not to pontificate on the precise limits for exercise of contempt power and to emphasize what Chief Justice Warren Burger mentioned in *Nebraska Press Association*³⁴ as 'something in the nature of a fiduciary duty' of the press to act responsibly, and I may add, respectfully.

An afterword

58. An afterword has become necessitous because the learned Chief Justice has, in his reasons, made some critical observations on men and matters based on his rich experience, high responsibility and urge to right wrongs. While respecting his feeling of hurt and attempt to set the record straight regarding his prior judgment and letters on canons of judicial ethics, I desist from comments on the author or the article, including its correctness and propriety, for fear that an indelible word, writ incautiously, may fester into an incurable wound. I am in no mood to pronounce on these subjects or to judge these generalities. Many an arrow at random sent hits a mark the archer never meant, and *ex cathedra* generalisations run the genetic risk of noetic imperfections. The Almighty does not share His omniscience with the Judiciary.

34. (1976) 96 Sup Ct 2791, 2803

KAILASAM, J. (*concurring*)—I had the benefit of reading the judgments proposed to be delivered by My Lord the Chief Justice and Justice Krishna Iyer.

60. I would have been contented with stating that, in my view, on taking into account the facts and circumstances of the case this is not a fit case to be proceeded with under the Contempt of Court Act, 1971. But now it has become necessary for me to state whether I agree with the judgments to be delivered.

61. My learned brother Justice Krishna Iyer in his concluding note has expressed that he had launched on this long inconclusive essay which relates to hypothetical questions and has no specific reference to the present case. The judgment which he himself characterises as *obiter dicta* may be left alone without any comments.

62. When the matter was taken up in the Court on January 27, 1978, the contempt proceedings were dropped without calling upon the learned Counsel who was appearing for the respondent in response to the notice. Without hearing the parties concerned, it is not right and proper to make any comments about the facts of the case. In this view I refrain from referring to the publication in "The Indian Express" or about the article in the newspaper by Shri A. G. Noorani.

63. Contempt proceedings will stand dropped.

ORDER BY FULL COURT*

For reasons to be given later, we drop the proceedings.

(1978) 3 Supreme Court Cases 365

(BEFORE Y. V. CHANDRACHUD, C.J. AND P. N. BHAGWATI, V. R. KRISHNA IYER, R. S. SARKARIA, N. L. UNTWALIA, P. S. KAILASAM AND V. D. TULZAPURKAR, JJ.)

TARA PRASAD SINGH ETC. ETC. .. Petitioners ;
Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition Nos. 111, 150-151, 180, 205-210, 220-226, 270-271, 346-352, 355, 403, 396-398, 599, 541, 543, 626, 635-639, 661, 687-692 and 758 of 1977, decided on May 5, 1978

[Ed. : Stay orders — Modified — Reasons to follow later — No question of law — Hence not printed.]

(3917)

* Dated January 27, 1978.

incident. Section 151 will however be attracted only if there was evidence to show that the assembly had been "lawfully commanded to disperse". But there is nothing in the statements of the three police witnesses to show that they gave any such command. They have merely stated that they warned the two factions who were pelting stones, and none of them has stated that any command for dispersal was given by any of them. The High Court therefore erred in invoking Section 151, IPC for the purpose of convicting the other accused with the aid of Section 149, IPC.

11. It would thus appear that there is no reliable evidence to prove that the accused assembled at the terrace of Reddigari Ramireddy's house for the purpose of committing any offence. On the other hand, it has been established from the statements of PWs 4 and 5 that they went there on their aggressive call. There is also no evidence to show that the other members of the assembly knew that those who were armed with guns were likely to use them or that they exhorted or encouraged the firing. The version regarding their being armed with spears cannot be accepted as it has not been mentioned in the first information report. Moreover, as has been pointed out, spears could not possibly have been used because of the intervening distance and it is a fact that no injury was inflicted on anyone with those weapons. The distance which separated the two parties was so considerable that even stones did not hit anyone. We are therefore unable to uphold the conviction of the other accused with the aid of Section 149, IPC and they deserve to be acquitted.

12. In the result the appeal fails in so far as the conviction and sentences of appellants A-4, A-6 and A-9 are concerned, but it is allowed in respect of the other eight appellants and they are acquitted of the offences of which they have been convicted and sentenced by the High Court. They are in jail and shall be released forthwith.

(1978) 2 Supreme Court Cases 479

(Original Jurisdiction — Proceedings under Article 129)

(BEFORE M. H. BEG, C.J. AND N. L. UNTWALIA AND P. S. KAILASAM, JJ.)

IN RE SHRI SHAM LAL

Decided on January 18, 1978

Constitution of India — Article 129 — Contempt of the Supreme Court — Proceedings against editor of newspaper for carrying a news report of a document supposedly signed by several prominent public men attacking some of the Judges for their judgments in a particular case — Statements reported therein, held not contemptuous (Beg, C.J. contra) and proceedings dropped — Detailed statement of reasons by Beg, C.J. explaining the real purport of the judgments in question and for a finding of commission of contempt of court

A. D. M., Jabalpur v. S. Shukla, (1976) 2 SCC 521, explained.

A. K. Gopalan v. State of Madras, 1950 SCR 88 : AIR 1950 SC 27 : 51 Cri LJ 1383 ; *Satwant Singh Sawhney v. D. Ramarathnam*, Assistant Passport Officer, Government of India, (1967) 3 SCR 525 : AIR 1967 SC 1836 ;

201

480

SUPREME COURT CASES

(1978) 2 SCC

Kharak Singh v. State of U. P., (1964) 1 SCR 332 : AIR 1963 SC 1295 : (1963) 2 Cr LJ 329 ; *I. C. Golak Nath v. State of Punjab*, (1967) 2 SCR 762 : AIR 1967 SC 1643 ; *Liversidge v. Anderson*, 1942 AC 204 and *State of M. P. v. Thakur Bharat Singh*, (1967) 2 SCR 454 : AIR 1967 SC 1170, referred to.

M/3800/CR

Advocates who appeared in this case :

V. M. Tarkunde, Senior Advocate, *P. H. Parekh*, *Mrs. Manju Sharma* and *Kailash Vasdev*, Advocates, for the alleged contemner ;

Miss A. Subhashini, Advocate, for the Solicitor General ;

S. K. Jain, Advocate, for the Intervener.

The Orders of the Court were given by

BEG, C.J. (*dissenting*) — I am afraid I am unable to concur with the majority view on the case before us which arises out of the publication of a news item in the Times of India newspaper of January 7, 1978. on which a notice to show cause why proceedings for contempt of Court be not initiated against the editor of the newspaper was issued. I think that it is a serious matter if persons in the position of those whose names are given in the offending news item as having subscribed to a document containing a vituperous attack upon a particular judgment of this Court reported in *Additional District Magistrate, Jabalpur v. S. Shukla*¹, are really signatories of this document. The attack is primarily irrational and abusive even if it is partially based on ignorance and the rest on misconception. The view of this Court in that case was that the effect of the Presidential Order under Article 359 of the Constitution considered there was to disable High Courts from investigating questions relating to violation of the fundamental rights to personal liberty, protected by Article 21, in proceedings under Article 226 of the Constitution.

2. Article 21 of the Constitution reads as follows :

No person shall be deprived of his life or personal liberty except according to procedure established by law.

3. It is clear beyond the shadow of doubt that what this article protects is a right of every person in India, whether he is an Indian citizen or not, to be dealt with in accordance with law whenever a question of depriving him of his life or personal liberty by executive authorities arises. The law on the view adopted in *A. K. Gopalan v. State of Madras*², which was not questioned by anybody before us on this aspect, was statutory law or "lex" and not "jus" so far as preventive detention, the very concept of which seems opposed to normal notions of "jus", is concerned. If suspended, investigation of alleged violations of the statutory protections is in abeyance because the guarantee given by Article 21 is itself that of protection by statutory provision only at least as regards preventive detention.

1. (1976) 2 SCC 521 : AIR 1976 SC 1207

2. 1950 SCR 88 : AIR 1950 SC 27 : 51 Cr LJ 1383

4. The majority view, that the right to obtain a release on a writ of habeas corpus against executive authorities was suspended, meant no more than that the use of Articles 32 and 226 only was suspended by the President against these authorities. No question arose at all in that case of depriving anyone of life itself without complying with law. On the other hand, the Attorney General repeatedly said there that criminal and civil laws, in general and their protections were not suspended at all. Deprivation of life contrary to law was punishable murder or homicide not amounting to murder just as it was before the Presidential Order which made no difference here. Only the use of Articles 32 and 226 to enforce specified fundamental rights against executive authorities was suspended by the order under Article 359. In fact, all the Judges of this Court held this. Nevertheless, certain interested persons, with motives which could be presumed to be ulterior and unhealthy, have continued to misrepresent to the public that what the majority of Judges of this Court held was that rights to life and liberty themselves were suspended. No Judge had held that. Speaking for myself, I would be certainly shocked to hear that any Judge or Court had or could have, in the twentieth century, possibly held that. All I can say to anyone who claims that any Judge of this Court has so held is to ask him to show me anything which could possibly have this meaning.

5. It may be that some people go on making assertions about judgments of this Court without reading or understanding them. But, the way in which this has been going on, as a part of a consistent scheme to malign the Court and its Judges, shows that their intention is to deliberately shake the confidence of the public in this Court. In any case, this would be the result if nothing is done by anyone to check such a campaign of vilification.

6. I will only reproduce here three paragraphs from my very long judgment on the case to show what we had held and what the Attorney General had conceded. I said there :

Para 250 (SCC p. 599, para 168) : Enforceability, as an attribute of a legal right, and the power of the judicial organs of the State to enforce the right, are exclusively for the State, as the legal instrument of society, to confer or take away in the legally authorised manner. It follows from these basic premises of our constitutional jurisprudence that Courts cannot, during a constitutionally enjoined period of suspension of the enforceability of Fundamental Rights through Courts, enforce what may even be a "fundamental right" sought to be protected by Part III of the Constitution. The Attorney General has, very fairly and rightly, repeatedly pointed out that no substantive right, whether declared fundamental or not, except the procedural rights converted into substantive ones by Article 32, could be suspended. Even the enforcement in general, of all such rights is not suspended. Only the enforcement of specified rights through Courts is suspended for the time being.

Para 251 (SCC p. 600, para 169) : The enforceability of a right by a constitutionally appointed judicial organ has necessarily to depend upon the fulfilment of two conditions : firstly, its recognition by or under the

203

Constitution as a right ; and, secondly possession of the power of its enforcement by the judicial organs. Now, if a right is established on facts, as a right, it will certainly satisfy the first condition. But if the right is unenforceable, because the power of its enforcement by Courts is constitutionally suspended or inhibited, for the duration of the Emergency, its mere recognition or declaration by Courts, either as a right or as a fundamental right, could not possibly help a petitioner to secure his personal liberty. Article 226 of the Constitution is not meant for futile and unenforceable declarations of right. The whole purpose of a writ of habeas corpus is to enforce a right to personal freedom after the declaration of a detention as illegal when it is so found upon investigation.

Para 254 (SCC pp. 600, 601, para 173) : In this country, the procedure for deprivation as well as enforcement of a right to personal freedom is governed partly by the Constitution and partly by ordinary statutes. Both fall within the purview of 'procedure'. Article 21 of the Constitution guarantees, though the guarantee is negatively framed, that 'No person shall be deprived of his life or personal liberty except according to procedure established by law'. If an enforcement of this negatively framed right is suspended, a deprivation contrary to the prescribed procedure is not legalized. The suspension of enforcement does not either authorise or direct any authority to violate the procedure. It has to be clearly understood that what is suspended is really the procedure for the enforcement of a right which could be said to flow from the infringement of a statutory procedure. If the enforcement of a right to be free, resulting derivatively from both the constitutional and statutory provisions, based on an infraction of the procedure, which is statutory in cases of preventive detention, is suspended, it seems to me to be impossible to lay down that it becomes enforceable when that part of the procedure which is mandatory is violated but remains unenforceable so long as the part of the procedure infringed is directory. Such a view would, in my opinion, introduce a distinction which is neither warranted by the language of Article 359 of the Constitution nor by that of the Presidential Orders of 1975. If the claim to assert the right is one based on violation of procedure, the degree of violation may affect the question whether the right to be free is established at all, but it should not, logically speaking, affect the result where the enforcement of the right, even in a case in which it has become apparent, is suspended.

7. It has been made absolutely clear in the passages cited above that no fundamental right itself was suspended by a Presidential Order under Article 359. What was held to have been suspended was the power of the Court itself to enforce the widely conferred right of personal liberty under Article 21 by resorting to Articles 32 and 226 against executive authorities. On this aspect of the case — that the power of the Court to enforce fundamental constitutional rights was suspended — Khanna, J., stated as one of the conclusions of his judgment (SCC p. 776, para 593) :

A Presidential Order under Article 359(1) can suspend during the period of emergency only the right to move any Court for enforcement of the fundamental rights mentioned in the Order.

This could only mean that the power of the Court to enforce specified fundamental rights was suspended. In the course of the judgment, Khanna, J.,

204

expressed the view (para 152) (SCC p. 747, para 525) :

The effect of the suspension of the right to move any Court for the enforcement of the right conferred by Article 21, in my opinion, is that when a petition is filed in a Court, the Court would have to proceed upon the basis that no reliance can be placed upon that article for obtaining relief from the Court during the period of emergency.

8. Therefore, it could be said that this statement of the position by Khanna, J. himself was, roughly speaking, an expression of a unanimously held view of all the Judges. Indeed, in the passages, quoted already from my judgment, the effect is shown to be less drastic for the citizen than it is given in the last quoted passage. I have repeatedly pointed out in my judgment that it is not so much the right of the citizen to move the Court as the power of the Court to enforce fundamental rights which is, in substance, temporarily suspended.

9. Neither the validity of the Presidential Order nor of the constitutional amendment, by which this Court's very jurisdiction to entertain the question of validity of the Presidential Order "on any ground" was declared to be non-existent, was questioned by any counsel before this Court either for conflict with the basic structure of the Constitution or for mala fides of any sort (legal or factual). Yet, without questioning the validity of the Presidential Order or even the constitutional amendment barring judicial scrutiny of grounds of its validity, this Court was expected, to judge from the tenor of the attacks made upon the judgment of this Court, without indicating where the Court's reasoning went wrong, to hold that the emergency itself was unconstitutional. Even Mr. Justice Khanna did not hold that because no materials were placed and no grounds urged before the Court to enable it to hold that the declaration of emergency was itself invalid. The obvious suggestion and threat held out to Judges of the Court is that they will be maligned and punished if they could not in future so decide cases as to protect the interests or voice the opinions of whatever political or other sort of group those who have signed the document mentioned in the newspaper may represent. No more insidious a danger to judicial independence could exist. It implies nothing more nor less than blackmail to demoralise upright Judges. People who could indulge in it certainly do not represent those who say that law, as found in the Constitution, must be always declared by Judges fearlessly and honestly. I cannot conceive of a grosser or clearer case of contempt of Court than the implications of this document, if we were to think about them, would constitute.

10. To blame and abuse the Judge after shutting one's eyes to what may be the shortcomings of his own case or the law, as it exists, may be even forgiven in a certain type of litigant blinded by personal feelings. But, if those who purport to act pro bono publico to protect the Constitution and the law conduct themselves in this fashion, and, if responsible daily newspapers publish what could be regarded, in addition to being defamatory and abusive, as gross contempts of this Court, one wonders whether time has not come to remind

205

such people of what the law says about it and what their duties are to the Court, to the public, and to the individuals maligned.

11. Although there was no difference of opinion at all between the Judges of this Court in *Shukla's* case that the Presidential Order under Article 359 of the Constitution did suspend enforcement of fundamental rights including the right to personal liberty — a right which had been given a very comprehensive meaning and scope by a series of decisions of this Court from *Gopalan's* case through *Satwant Singh's*³ and *Kharak Singh's* cases⁴ upto *Golak Nath's* cases⁵ — yet, there was a difference of opinion between the majority opinions of Judges of this Court and the view of Khanna, J. on the question whether any statutory rights remained, apart from the fundamental right to personal liberty, which could still be enforced during the emergency, and, if so, how. Mr. Justice Khanna said that there were such "statutory" rights which could be enforced. But, the majority of Judges of this Court could not see how even a distinction between the fundamental rights to personal liberty and a statutory right to personal liberty could possibly help a detainee in preventive detention when the fundamental right to personal liberty protected by Article 21 itself guaranteed protection by "law" and this "law", according to *Gopalan's* case, was 'lex' or only statutory law where 'preventive detention' was involved as it was in the habeas corpus cases. If the enforcement of that protection of personal liberty by statutory law was specifically suspended by the Presidential Order how did any right of enforcement of the statutory protection to personal freedom still remain active? To say that it did seemed an obvious contradiction to the majority. Moreover, the distinction made by Khanna J. lost all its importance when the majority confined the suspension of enforcement only to what could be done under Articles 226 and 32 of the Constitution. As is clear from the passages cited above from my judgment in *Shukla's* case, the Attorney General had conceded that the statutory protections surrounding life and liberty, outside Articles 226 and 32 of the Constitution, were not suspended at all and could be enforced. This meant that everyone, whether an officer or a dignitary of State, such as a Minister, could be prosecuted for murder or for illegal and malicious confinement of anybody just like any ordinary alleged offender. The kind of evidence which could not be given in proceedings under either Article 32 or Article 226 could be put forth in other types of legal proceedings.

12. One wonders whether it is an exhibition of dishonesty or of real inability to understand what this Court had clearly and actually held when some people go on suggesting that this Court could and did hold that the executive authorities could do whatever they might like to do to destroy life and liberty but Courts will give no relief or redress, due to the emergency, even

3. *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Govt. of India*, (1967) 3 SCR 525: AIR 1967 SC 1836

4. *Kharak Singh v. State of U. P.*, (1964) 1 SCR 332: AIR 1963 SC 1295: (1963) 2 Cri LJ 329

5. *I. C. Golak Nath v. State of Punjab*, (1967) 2 SCR 762: AIR 1967 SC 1643

206

if cases falling outside the area of "preventive detention", where release through writs of habeas corpus was suspended, were brought before them. In any case, such assertions are gross distortions of what this Court actually held in *Shukla's* case.

13. In *Shukla's* case, I pointed out that, although, for reasons which were outside the purview of judicial scrutiny, Courts had been deprived of the power to test preventive detentions by applying norms of "judicial justice", yet, the duties of the executive were not diminished but were enhanced on that account so that the executive must see that the detainee gets justice at its hands. I said there (at p. 1315) (SCC p. 637, para 305) :

It appears to me that it does not follow from a removal of the normal judicial superintendence, even over questions of vires, of detention orders, which may require going into facts behind the returns, that there is no rule of law during the emergency or that the principles of ultra vires are not to be applied at all by any authority except when, on the face of the return itself, it is demonstrated in a Court of Law that the detention does not even purport to be in exercise of the executive power or authority or is patently outside the law authorising detention. It seems to me that the intention behind emergency provisions and of the Act is that, although such executive action as is not susceptible to judicial appraisal, should not be subjected to it, yet, it should be honestly supervised and controlled by the hierarchy of executive authorities themselves. It enhances the powers and, therefore, the responsibilities of the executive.

14. It is surprising that even passages indicating that, although, Judges expressing the majority view in *Shukla's* case did not like measures of preventive detention without trial even during an emergency, yet, they were bound by the Constitution and the law to perform the unpleasant duty to declare what the law was and not to run away from it, are cited sometimes to indicate that Judges, for some reason, are partial to repressive laws. In fact, I quoted a long passage from Erskine May's *History of England* to show the plight of persons detained on suspicion. The suggested inference was that such powers, unless duly supervised, are bound to be misused. It was impossible for the Court to do anything more than to warn the executive of the dangers of arrogating unto itself so great a share of power over the person of the individual citizen.

15. It is true that this Court held that preventive detention was practically removed from judicial supervision during an emergency. The common statement of a conclusion at the end of the judgments in the *Habeas Corpus* case, based on the majority view but signed by all the Judges, including Khanna J., was perhaps misleading as it gave the impression that no petition at all would lie under either Article 226 or 32 to assert the right of personal liberty because the locus standi of the citizen was suspended. Had a review petition been filed before us I would have certainly made it clear that the statement of a conclusion reached by the majority did not accurately set out at least my conclusion which is found at the end of my judgment. It seems to me that the majority conclusion is rather loosely and vaguely expressed at the end of

207

our judgments. A legitimate criticism could, therefore, be that this Court should draft and state its majority conclusions better. However, a reading of all the judgments would have revealed that what was really meant by stating the conclusion as it was done was nothing more than that the power of Courts under Article 226 to afford relief was suspended but the power to entertain petitions was not suspended. The term 'locus standi', with regard to what was suspended, was used because of a similar use of it in previous judgments of this Court. Speaking for myself, I made it quite clear that I did not understand those judgments as laying down anything more than that the power of the Court to afford relief was suspended so that hearings of cases could be resumed after the suspension was lifted. And, the practice followed by this Court, during the emergency, was also to suspend proceedings or to keep them in cold storage, so as to revive them later, but not to dismiss them outright for want of 'locus standi' of petitioners.

16. Some people have said that an exception should have been made in cases of mala fide detentions falling outside the statutory and emergency provisions. I may quote here the exact words used by me with regard to allegations of 'malice in fact' which, even apart from emergency provisions, are not generally triable in summary inquiries into causes of detention upon habeas corpus petitions but left to suits or other proceedings for false imprisonment. I held that this right was intact even during the emergency. I said there (SCC p. 641, para 318) :

As regards the issue of 'malice in fact', as I have already pointed out, it cannot be tried at all in a habeas corpus proceeding although it may be possible to try it in a regular suit the object of which is not to enforce a right to personal freedom but only to obtain damages for a wrong done which is not protected by the terms of Section 16 of the Act. The possibility of such a suit should be another deterrent against dishonest use of these powers of detaining officers.

17. Some people mention the English decision of the House of Lords in *Liversidge v. Anderson*⁶ to support the view that an issue of "malice in fact" should have been left open by the Supreme Court for decision by the Courts. This assumes that the majority in *Shukla's* case did not leave that course open for suits for damages for false imprisonment just as was the position in *Liversidge's* case where, although, there was nothing equivalent to Section 16A(9) of the Act, which could prevent English Courts from going into the grounds, yet, the House of Lords held, practically as a matter of public policy, that the mere belief or satisfaction of the Secretary of State was enough and could not be challenged and he could not be asked to give particulars for his belief. In fact, the British Courts have gone much further than we did. The view of the best legal circles in England was, I have heard, that the majority view in *Shukla's* case is absolutely correct because it accords with principles on which law relating to emergencies in even the most democratic countries is based. According

6. 1942 AC 204

to those principles the Constitution says to the judiciary on matters covered by emergency provisions : "Hands off : The executive knows more and understands better what is to be done here. You are not judges of these matters". That is evident also from what our Constitution says. The Judges cannot be held responsible for what the Constitution contains. That is the responsibility of those who made it. Others have the power to change it. The Judges can only declare what the Constitution contains and what its meaning and effects are. Beyond that comes the function of the law-makers who can set right the law if it is defective or wanting in any respect.

18. The constitutional position regarding emergency provisions and the principle underlying them were well stated by Khanna, J. in *Shukla's* case as follows (para 201) (SCC p. 766, para 574) :

No one can deny the power of the State to assume vast powers of detention in the interest of the security of the State. It may indeed be necessary to do so to meet the peril facing the nation. The considerations of security of the State must have a primacy and be kept in the forefront compared to which the interests of the individuals can only take a secondary place. The motto has to be "who lives, if the country dies". Extraordinary powers are always assumed by the government in all countries in times of emergency because of the extraordinary nature of the emergency. The exercise of the power of detention, it is well settled, depends upon the subjective satisfaction of the detaining authority and the Courts can neither act as Courts of Appeal over the decisions of the detaining authority nor can they substitute their own opinion for that of the authority regarding the necessity of detention.

19. Even in times when there was no declaration of emergency and no amendments had been made in the law so as to deprive Courts of power to lock into the grounds of detention, claims for relief on grounds of either "malice in fact" or "malice in law" could be judged only by looking at the grounds of detention in proceedings under either Article 32 or 226. But, as the majority of Judges in *Shukla's* case pointed out, Section 16A, sub-section (9), was added during the emergency so that its validity could not be questioned for violation of fundamental rights because Article 359(1A) of the Constitution, which is absolutely clear on the point, made such a course impossible. Section 16A(9), therefore, also deprived Courts of powers to find out how detention was for a collateral purpose or suffered from even what is called "malice in law". Hence, there was no alternative before the Court except to say that, due to insurmountable obstacles placed by constitutional provisions and statutory law, made during the emergency declared and protected by constitutional provisions, neither a High Court acting under Article 226 nor the Supreme Court under Article 32 could investigate the legality of a detention in such a way as to enforce a fundamental right against an executive authority empowered to pass and actually passing a prima facie valid detention order. But, that did not bar other legal proceedings mentioned by me specifically in *Shukla's* case which were still open to persons aggrieved even by prima facie valid detention orders, although what

could be done under Article 32 or Article 226 in normal times could not be achieved by other proceedings.

20. Indeed, I pointed out in *Shukla's* case that, although High Courts were disabled by Section 16A(9) of the Maintenance of Internal Security Act, which was added during the emergency, from calling for and examining grounds of detention, yet, if, upon the face of an order of detention, it appeared that it was defective for some reason, or, on the return filed in reply to a petition, it appeared that there could be or was no detention order, such as the one required by statute, a writ of habeas corpus could be issued to release the detainee as if he was in private detention and not in "purported" detention of an executive authority, — even "purported" orders were protected by statute. I indicated how the writ of habeas corpus lies not only against executive authorities but also against private individuals. Hence, if a detention was, on the face of the detention order, without a further investigation which could not obviously, take place without grounds, utterly illegal detention, ordered by an officer with no authority to order it, it would be on par with a detention by a private individual against whom a writ of habeas corpus would go. In fact, this was the only way in which what Mr. Justice Khanna seemed to have had in view when he spoke of statutory rights against actions outside the Act and the emergency provisions could be enforced despite the Presidential Orders of 1975 and statutory amendments. The suspension operated only against purported action of executive authorities. The fundamental rights were also guaranteed against acts of authorities which were parts of "the State". Those laws which recognise and protect the rights of the individual to be free from illegal confinement, from assault, and from murder, could, on the very concessions made by the Attorney General, be invoked by the aggrieved citizen even during the period of emergency against private persons. Such rights are not given against executive authorities, as such, but against all wrong-doers, whoever they may be, operating outside the protected area. Therefore, whenever it was evident, on the face of the "return" to a notice by the Court, that a detaining officer was acting outside the protected field, release could be ordered. This is what I specifically held. And, there seemed nothing in the views expressed by other learned Judges contrary to what I said on this aspect.

21. With regard to the power of High Courts to issue writs of habeas corpus even in cases of alleged preventive detention by officers of State I specifically said there (at p. 1311) (SCC p. 632, para 288) :

Detentions which not only do not but could not possibly have any apparent, ostensible, or purported executive authority of the State whatsoever to back them, could be equated with those by private persons. The suspension of enforcement of specified fundamental rights operates only to protect infringements of rights by the State and its authorised agents, acting or purporting to act in official capacities which they could and do hold. A claim to an order of release from such a patently illegal detention, which is not by the State or on its behalf, could be enforced

even during the current emergency. But, there is no such case before us.

22. With regard to one of the cases cited before us, *State of M. P. v. Thakur Bharat Singh*⁷, it was pointed out that Shah, J. had upheld the view that, although, the validity of a provision empowering preventive detention enacted during the emergency could not be challenged due to Article 359(1A), yet, if it was made before the declaration of emergency, it could be so challenged and declared void. Commenting on this case, the majority view, expressed by me, was (at p. 1312) (SCC p. 633, para 289) :

I do not think that there is any such case before us. It seems to me to be possible to distinguish the case on the ground that it was a case of patent voidness of the order passed so that the principle of legality, which is not suspended, could be affirmed even apart from enforcement of a specified fundamental right. I think it was placed on such a footing by Shah, J., speaking for this Court.

23. Similarly, all previous cases of this Court were distinguished by references to the differently framed Presidential Orders and statutory provisions which were applicable to their facts, but, the changed wording of the emergency orders of 1975 and amendments of the Maintenance of Internal Security Act intended to oust the power of Courts to make orders of release even in cases of "purported" detention made Courts quite powerless to act under Article 226. Hence, there was no use in saying that nine High Courts had taken some other view. The various High Courts had, upto the stage when cases were brought up here, merely repeated what this Court had held in other circumstances with reference to other laws. Most of them had not decided the question of validity of Section 16A(9) of the Act by the time the cases came up before this Court at an intermediate stage.

24. If the minority view of Khanna, J. had prevailed, some more time would have been spent in the High Courts upon further enquiries which could not proceed far for want of grounds of detention, but, the writ petitions would have been ultimately dismissed in all those cases where there were prima facie valid detention orders as there seemed to be in all cases which came up before this Court. And, in those cases where there were no such prima facie valid detention orders, the detainees could be released even upon the reasoning of the majority if the view, as explained above, and, in greater detail in my judgment on *Shukla's* case, contained the true ratio of the majority decision.

25. The enquiries made by the High Courts could not be more than very superficial if grounds of detention could not be sent for and perused by them because Section 16A(9) introduced by Act XIV of 1976 was valid. Most of the High Courts had not ruled upon the validity of this provision. One of the grounds on which this Court had entertained the appeals by the State authorities at an intermediate stage was that, in view of Section 16A(9) of the

7. (1967) 2 SCR 454 : AIR 1967 SC 1170

211

Act, further enquiry may not be called for in the High Courts if the provision was valid. Khanna, J., thought that the question of validity of this provision should be decided by this Court only after all the High Courts had determined it. The majority acted on the assumption that, after entertaining the appeals and hearing very full and long arguments on it, there was a duty cast on this Court to give a decision on this matter also.

26. Speaking for myself, I do not think that any other conclusion except the one which the majority really reached in those cases before sending them back to the High Courts for disposal according to law, was legally or constitutionally possible on the materials placed and arguments advanced before us. This was that the enforcement of the right to personal liberty, by the issue of writs of habeas corpus, against prima facie valid detention orders of executive authorities of the State, was suspended during the emergency. Facts of each case were not before this Court as no facts could be placed before it at that stage. And, grounds of detention — the main legal weapon of attack upon detention orders — could not be there at all at any stage before the High Courts due to Section 16A(9) of the Act. On the last mentioned question, four Judges of this Court decided that the constitutional validity of the provisions could not be challenged during the emergency whereas one learned Judge (Khanna, J.) held that all the High Courts should first decide that matter themselves so that it could come up before us again at a later appellate stage. Postponing decision of this Court on this question after hearing such full arguments was neither necessary nor helpful to detainees. The majority acted on the assumption that to postpone decision on what was so clearly covered by Article 359(1A) could only prolong the agony of those who wanted justice according to law. And, if this question was decided against the detainees and "enforcement" of the fundamental right to personal freedom as protected by statutory provisions, was suspended what was there before the Courts to enforce under Article 226 and how was it to be done? Those who live in the world of law as it exists and not in one of romantic dreams could only give the answers which the majority of Judges gave in *Shukla's* case.

27. Even if *Shukla's* case could be one in which two views were possible on any question, I do not think that any newspaper could be allowed to describe one of the two views in the way in which signatories of the document cited in the news item have chosen to do it by calling it a "misdeed" and suggesting that Judges should have held what they could not honestly believe to be correct in law. The signatories are also reported to have said that Judges who gave such decisions would be "ostracised" in other countries. Those who drafted the document seemed to be aware of the perils of their irresponsible language. They, therefore, took shelter behind some article in a foreign newspaper presumably based on sources interested in distortion or no better informed and with no better motives than those of the signatories of the document quoted in the news item before us. However, as two of my learned brethren are of the view that we should ignore even such news items and not proceed further,

212

I can do no more than to state the reasons for my dissent before signing a common order dropping these proceedings.

UNTWALIA AND KAILASAM, JJ. — Having considered every pros and cons of the matter in regard to the amended notice issued to the editor of the Times of India on January 11, 1978, to show cause why "proceedings for contempt of this Hon'ble Court under Article 129 of the Constitution should not be initiated against you in respect of the statements made in the aforesaid news item in respect of the habeas corpus case (*A. D. M., Jabalpur v. S. Shukla*) and the judgments of this Court in that case", we are of the view that it is not a fit case where a formal proceeding for contempt should be drawn up. We accordingly drop the proceedings.

ORDER

29. In view of the majority opinion, the proceedings for contempt against the editor of the Times of India are dropped.

(1978) 2 Supreme Court Cases 491

(BEFORE V. R. KRISHNA IYER AND V. D. TULZAPURKAR, JJ.)

RAM PARKASH SHARMA

Versus

STATE OF HARYANA

Appellant ;

Respondent.

Criminal Appeal No. 184 of 1978*, decided on April 18, 1978

Criminal Procedure Code, 1973 — Section 457 — Court has power to order release of property seized from any person in connection with an offence even though the property was not produced before Court and trial has not commenced — Court however has to decide on release only after considering whether property will be required to be produced at the trial or not

The police recovered a considerable sum of money (notes) from the appellant in connection with an offence registered against a third party accused. The money was not yet produced before the Court (a Special Judge trying the offence) and the appellant applied for its return, but the Special Judge held he had no power to pass orders at that stage. On appeal by special leave the Supreme Court

Held :

The Special Judge has power to release the seized property but that would not mean that whenever the claimants ask for its return he should give it back (Para 3)

Chapter 34, Cr. P. C., deals with disposal of property. Section 451 deals with property produced before Court, Section 452 with property after the trial is concluded and Section 457 with property seized and not produced before Court, as in the present case. But the question of releasing the property

*Appeal by Special Leave from the Judgment and Order dated 7-10-1977 of the Punjab and Haryana High Court in Criminal Misc. 4623-M of 1977.

374

SUPREME COURT CASES

(1974) 1 SCC

(1974) 1 Supreme Court Cases 374

(From Orissa High Court)

[BEFORE A. N. RAY, C. J., AND D. G. PALEKAR, Y. V. CHANDRACHUD,
P. N. BHAGWATI AND V. R. KRISHNA IYER, JJ.]

Criminal Appeal No. 41 of 1973

SHRI BARADAKANTA MISHRA .. Appellant ;

Versus

THE REGISTRAR OF ORISSA HIGH COURT
AND ANOTHER .. Respondents.

and

Criminal Appeal No. 77 of 1973

STATE OF ORISSA .. Appellant ;

Versus

SHRI BARADAKANTA MISHRA
AND ANOTHER .. Respondents.

Criminal Appeals Nos. 41 and 77 of 1973,* decided on November 19,
1973

Contempt of Courts Act, 1971 (70 of 1971) — Section 2(c)(i) — Scandaliza-
tion of Court — Vilificatory allegations made by appellant in appeal to Governor
against suspension order of High Court preliminary to disciplinary proceedings —
High Court issuing show-cause notice for contempt — Appellant further making
allegations in special leave petition to Supreme Court against refusal of High Court
to decide preliminary objection in the above contempt proceedings — Whether
the statements made in both the instances amounted to contempt of court

Contempt of Courts Act, 1971 (70 of 1971) — Sections 2(c), 3 and 13 —
Meaning and scope — Sub-clauses (i), (ii) and (iii) of Section 2(c) — Relative
scope — When matter not grave enough for punishment — Applicability of Sec-
tions 5 and 13

Contempt of Courts Act, 1971 (70 of 1971) — Section 2(c)(i) — Allegations
and statements made in appeal to higher Court or in remedial representation to a
correctional authority such as Governor against disciplinary order of High Court —
Whether constitutes contempt within the meaning of sub-clause (i)

Contempt of Courts Act, 1971 (70 of 1971) — Section 2(c)(i) — Whether
criticism of the administrative acts of the Court even in vilificatory terms exempted
— Test applicable — Whether taking disciplinary action against clerks and minis-
terial officers of the Court or against Judges of subordinate Courts are acts in
furtherance of administration of justice by the Court — Use of phrase "adminis-
tration of justice" in Letters Patent for Bombay, Madras and Calcutta — Clauses
8 and 9, Government of India Act, 1915, Section 106 and Government of India
Act, 1935, Sections 223 and 224 and Constitution of India, Articles 235, 225 and
227

Contempt of Courts Act, 1971 (70 of 1971) — Preamble — Indian approach

* (Appeals under Section 19 of the Contempt of Courts Act, 1971, from the
Judgment and Order dated 5th February, 1973 of the Orissa High Court
at Cuttack in Criminal Miscellaneous Case No. 8 of 1972).

to law of contempt under the Constitution vis-a-vis the English and American approaches — Republican approach in keeping with the freedom of speech and expression under Art. 19(1)(a)

Contempt of Courts Act, 1971 (70 of 1971) — Section 12 — Punishment — Six contempt proceedings against appellant for contempt of High Court — Appellant defiant and offering no apology — High Court giving lenient sentence of two months imprisonment — Supreme Court, in view of the appellant being at the stage of retirement substituting a fine of Rs.1,000 or in default imprisonment for three months

Contempt of Courts Act, 1971 (70 of 1971) — Section 2(c) — Criminal contempt — Past acts of contempt not relevant and to be avoided — Contemnor entitled to benefit of doubt, if any (Para 59)

Criminal Trial — Sentence — Generally — A lighter sentence which can serve as well as a heavy one should be preferred — Contempt of Court — Fine substituted for sentence of imprisonment

The appellant, a senior District Judge, had a very unsatisfactory record as judicial officer in Orissa. He had been reverted, suspended and subjected to disciplinary proceedings during his career.

At one stage he was suspended by the High Court under Article 235 of the Constitution and disciplinary proceedings started. Against this the appellant appealed to the Governor which letter was withheld by the Registrar, High Court. After charges were framed, the appellant wrote three letters. The first letter was to the Registrar intimating his request to the Governor for transfer of the disciplinary proceedings from the High Court to the Administrative Tribunal. The second letter was to the Governor through the High Court to call for the earlier appeal withheld by the High Court. The third letter was a direct petition to the Governor with a copy to the Registrar with the remark that the High Court should send their comments on his petition to the Governor. He wrote yet another letter to the Registrar intimating that he would not submit any explanation to the charges framed against him until his representation to the Governor was disposed of. Also he could not wait for permission of High Court to leave the Headquarters as directed earlier.

Against these letters (Annexures 8, 13, 14, 16 and 20) a show-cause notice was issued to the appellant. The appellant raised preliminary objection to the contempt proceedings contending that the Court has no jurisdiction as he had made no reference to the judicial functions of any judge. He pressed for a decision on this point which was refused by the Division Bench. The appellant filed appeal to the Supreme Court for cancellation of contempt proceedings and complained bias and prejudice of the High Court particularly the Chief Justice and another puisne Judge.

The appeal to the Supreme Court was, however, withdrawn. At the instance of the Division Bench a Full Bench of five Judges was constituted. Additional charges were framed on the basis of allegations made in the appeal to the Supreme Court. The Full Bench unanimously held all the above letters and allegations to be contemptuous and recorded a conviction. Against that the appellant came to the Supreme Court in appeal.

HELD:

(i) Per Ray, C. J., Palekar and Chandrachud, JJ.

The effect of the different letters has been correctly summarized by the High Court.

On the facts, held, that even if Annexures 13 and 14 be dismissed as nothing more than disrespectful fulminations of an angry insubordinate officer, there is

hardly any doubt that Annexures 8, 16 and 20 contain statements which are deliberately made to grossly scandalize the High Court. The Judges of the High Court and especially the Chief Justice are charged with mala fides, improper motives, bias and prejudice. It is insinuated that they are oppressing the appellant, have become vindictive and are incapable of doing him justice. It is also suggested that they do not administer justice fearlessly because in one matter affecting the appellant, they dropped a charge against him for fear of the Supreme Court. All this, prima facie, amounts to gross scandalization of the High Court.

(Para 32)

Per Krishna Iyer and Bhagwati, JJ. (concurring)

Regarding the statements made in the appeal to the Governor against the order of the High Court, the answer arises from another question viz., is the suspension of the District Judge so woven into and integrally connected with the administration of justice that it can be regarded as not purely an administrative act but a para-judicial function? The answer must, on the facts here, be in the affirmative. The appeal was against the suspension which was a preliminary to contemplated disciplinary action. What was that action about? Against the appellant in his judicial capacity, for acts of judicial misconduct. The control was, therefore, judicial and hence the unbridled attack on the High Court for the step was punishable as contempt.

(Para 83)

(ii) Per Ray, C. J., Palekar and Chandrachud, JJ.

(a) As regards Section 2(c) defining "Criminal Contempt" the terminology used in the definition is borrowed from the English Law of Contempt and embodies concepts which are familiar to that Law which, by and large, was applied in India. The expressions "scandalize", "lowering the authority of the Court", "interference", "obstruction" and "administration of justice" have all gone into the legal currency of our sub-continent and have to be understood in the sense in which they have been so far understood by our Courts with the aid of the English Law, where necessary.

(Para 34)

(b) Under sub-clause (i) scandalous attacks upon the Judges on the principle that they are against the public, not the Judge, are an obstruction to public justice. Sub-clause (i) includes cases when by publication of the act the administration of justice is held to ridicule and contempt. This is regarded as an "obstruction" of public justice whereby the authority of the Court is undermined.

(Para 35)

Scandalization of the Court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the Court has to ask is whether the vilification is of the Judge as a judge or it is the vilification of the Judge as an individual. Secondly, the Court will have also to consider the degree of harm caused as affecting administration of justice and, if it is slight and beneath notice, Courts will not punish for contempt. This salutary practice is adopted by Section 13 of the Contempt of Courts Act, 1971. The jurisdiction is not intended to uphold the personal dignity of the Judges. That must rest on surer foundations. Judges rely on their conduct itself to be its own vindication.

(Para 49)

Queen v. Gray, (1900) 2 QB 36, 40, relied on.

Sub-clause (i) refers to one species of contempt of which "obstruction" is an important element. Sub-clause (ii) speaks of interference with due course of judicial proceedings and is directly connected with administration of justice in its common acceptance.

(Para 35)

While clauses (i) and (ii) deal with obstruction and interference respectively in the particular way described therein, clause (iii) is a residuary provision by which any other type of obstruction or interference with the administration of

justice is regarded as a criminal contempt. In other words, all the three sub-clauses referred to above define contempt in terms of obstruction of or interference with administration of justice. (Paras 36 and 37)

Broadly speaking our statute accepts what was laid down by the Privy Council and other English authorities that proceedings in contempt are always with reference to the administration of justice. (Para 37)

So scandalization within the meaning of sub-clause (i) must be in respect of the Court or the Judge with reference to administration of justice. (Para 38)

Debi Prasad Sharma v. The King-Emperor, 70 IA 216 : AIR 1943 PC 202 : 46 Cri LJ 318, approved

McLeod v. St. Aubyn, 1899 AC 549 : 68 LJ (PC) 137 : 81 LT 158, referred to.

In re a Special Reference from the Bahama Islands, 1893 AC 138, referred to.

Queen v. Gray, (1900) 2 QB 36 : 69 LJ (QB) 502 : 82 LT 534, referred to.

Rex v. Almon, 1765 Wilmot's Notes of Opinions 243 : 97 ER 94, referred to.

Per Krishna Iyer and Bhagwati, JJ. (concurring)

The emphasis in Section 2(c), Section 3 and Section 13 to the interference with the course of justice or obstruction of the administration of justice or scandalizing or lowering the authority of the Court — not the Judge — highlights the judicial area as entitled to inviolability and suggests a functional rather than a personnel or 'institutional' immunity. The unique power to punish for contempt of itself inheres in a court qua court, in its essential role of dispenser of public justice. (Para 67)

The Court being the guardian of people's rights, it has been held repeatedly that the contempt jurisdiction should be exercised "with scrupulous care and only when the case is clear and beyond reasonable doubt". (Para 91)

The key word is "justice", not "judge"; the key-note thought is unobstructed public justice, not the self-defence of a Judge; the corner-stone of the contempt law is the accommodation of two constitutional values — the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel. (Para 93)

C. K. Daphtary v. O. P. Gupta, (1971) 1 SCC 626, 638 : 1971 SCC (Cri) 286, 298, relied on.

Black's Law Dictionary, Fourth Edn. 425, relied on.

Special Reference No. 1 of 1964, (1965) 1 SCR 413, 501 : AIR 1965 SC 745 : (1965) 1 SCJ 847, relied on.

(iii) Per Ray, C. J., Palekar and Chandrachud, JJ.

The right of appeal does not give the right to commit contempt of Court, nor can it be used as a cover to bring the authority of the High Court into disrespect and disregard. (Para 40)

Jugul Kishore v. Sitamarhi Central Co-op. Bank, AIR 1967 SC 1494 : (1967) 3 SCR 163 : 1967 Cri LJ 1380, followed.

Per Krishna Iyer and Bhagwati, JJ. (dissenting)

Ordinarily matters stated in an appeal or in remedial representation should be out of bounds for the contempt power. The publication may be enough for

law of libel but being not intended for broadcast to the general public, cannot undermine the authority of the Court. However, a remedial process like a transfer application cannot be a mask to malign a Judge. A certain generosity or indulgence is justified in evaluating the allegations against the Judge. Similarly irrelevant or unvarnished imputations under the pretext of grounds of appeal amount to foul play and perversion of legal process. (Para 87)

State of U. P. v. Shyam Sundar Lal, AIR 1954 All 308 : 1954 Cri LJ 645 : ILR (1954) 2 All 278, approved.

Rex v. B. S. Nayyar, AIR 1950 All 549, 554 : 51 Cri LJ 1500, approved.

* State of M. P. v. Reva Shankar, 1959 SCR 1367 : AIR 1959 SC 102 : 1959 Cri LJ 251, explained.

Govind Ram v. State of Maharashtra, (1972) 1 SCC 740 : 1972 SCC (Cri) 446, explained.

Swarnamayi Panigrahi v. B. Nayak, AIR 1959 Ori 89 : ILR 1958 Cut 631 : 1959 Cri LJ 626, approved.

If the judicature has serious shortcomings which demand systemic correction through socially-oriented reform initiated through constructive criticism, the contempt power should not be an interdict. All this, far from undermining the confidence of the public in Courts, enhances it and, in the last analysis, cannot be repressed by indiscriminate resort to contempt power. Creative legal journalism and activist statesmanship for judicial reform cannot be jeopardised by an undefined apprehension of contempt action. (Para 88)

Quintin Hogg case, (1968) 2 WLR 1204, 1206-07, relied on.

(iv) Per Ray, C. J., Palekar and Chandrachud, JJ.

Whether contemptuous imputations made with reference to the "administrative act" of the High Court do not amount to contempt of court, will depend upon whether the imputations do or do not affect administration of justice. That is the basis on which contempt is punished and must afford the necessary test. (Paras 41 and 42)

Administration of justice is exclusively associated with the Courts of justice constitutionally established. Such Courts have been established throughout the land by several statutes. The Presiding Judge of a Court embodies in himself the Court, and when engaged in the task of administering justice is assisted by a complement of clerks and ministerial officers whose duty it is to protect and maintain the records, prepare the writs, serve the processes, etc. The acts in which they are engaged are acts in aid of administration of justice by the Presiding Judge. (Para 43)

Judicial administration is an integrated function of the Judge and cannot suffer any dissection so far as maintenance of high standards of rectitude in judicial administration is concerned. The whole set up of a court is for the purpose of administration of justice, and the control which the Judge exercises over his assistants has also the object of maintaining the purity of administration of justice. These observations apply to all Courts of justice in the land whether they are regarded as superior or inferior Courts of Justice. (Para 43)

The Judge of the superior Court in whom this disciplinary control is vested functions as much as a Judge in such matters as when he hears and disposes of cases before him. The procedures may be different. The place where he sits may be different. But the powers are exercised in both instances in due course of judicial administration. Disciplinary control is vested in the Court and not in a Judge as a private individual. Control, therefore, is a function as conducive

to proper administration of justice as laying down the law or doing justice between the parties. (Para 45)

When the Chief Justice appoints ministerial officers and assumes disciplinary control over them, that is a function which though described as administrative is really in the course of administration of justice. (Para 46)

The disciplinary control over the misdemeanours of the subordinate judiciary in their judicial administration is a function which the High Court must exercise in the interest of administration of justice. It is a function which is essential for the administration of justice in the wide connotation it has received and, therefore, when the High Court functions in a disciplinary capacity, it only does so in furtherance of administration of justice. (Para 46)

State of W. B. v. Nripendra Nath Bagchi, (1966) 1 SCR 771 : AIR 1966 SC 447 : 1968 (1) Lab LJ 270, relied on.

So it is to protect the traditional confidence in Courts that justice will be administered that contempt proceedings are constituted. The object, as already stated, is not to vindicate the Judge personally but to protect the public against any undermining of their accustomed confidence in the Judge's authority. (Para 48)

Rex v. Almon, 1765 Wilmot's Notes of Opinions 243 : 97 ER 94, relied on.

If the attack on the Judge functioning as a Judge substantially affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a Judge is alleged to have done in the exercise of his administrative responsibilities. A Judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function. (Para 50)

"Judicial capacity" is an ambivalent term which means "capacity of or proper to a Judge" and is capable of taking in all functional capacities of a Judge whether administrative, adjudicatory or any other, necessary for the administration of justice. (Para 51)

Brahma Prakash Sharma v. State of U. P., 1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238, distinguished.

Gobind Ram v. State of Maharashtra, (1972) 1 SCC 740 : 1972 SCC (Cri) 446, explained.

State v. The Editors and Publishers of Eastern Times and Prajatantra, AIR 1952 Ori 318 : ILR 1952 Ori 1 : 53 Cri LJ 1605, explained.

So vilificatory criticism of a Judge functioning as a Judge even in purely administrative or non-adjudicatory matters amounts to criminal contempt. There is no such thing as a denigration of a Judge function-wise. (Para 52)

Rex v. Almon, 1765 Wilmot's Notes of Opinions 243 : 97 ER 94, relied on.
Moti Lal Ghose and Others, 45 Calcutta 169 : 21 CWN 1161 : 45 1 C 338, relied on.

State of Bombay v. Mr. "P.", AIR 1959 Bom 182 : 60 Bom LR 873 : 1959 Cri LJ 567, relied on.

Debi Prasad Sharma v. The King-Emperor, 70 IA 216 : AIR 1943 PC 202 : 46 Cri LJ 318, followed.

In re Special Reference from the Bahama Islands, 1893 AC 138, 144, referred to.

Hence, there is no warrant for the narrow view that the offence of scandalization of the Court takes place only when the imputation has reference to the adjudicatory functions of a Judge in the seat of justice. (Para 53)

Per Krishna Iyer and Bhagwati, JJ. (dissenting)

The text of the Contempt of Courts Act must take its colour from the general context and confine the contempt power to the judicial cum para-judicial areas including those administrative functions as are intimately associated with the exercise of judicial power.

If the nature of a 'court' is considered, the accent is on the functional personality which is pivotal to securing justice to the people. Purely administrative acts, like recruitments, transfers and postings, routine disciplinary action against subordinate staff, executive acts in running the establishment and ministerial business ancillary to office-keeping — these are common to all departments in the public sector and merely because they relate to the judicial wing of government cannot enjoy a high immunity from criticism. The quintessence of the contempt power is protection of the public, not judicial personnel. (Para 69)

From the ambit of contempt jurisdiction must be excluded purely administrative acts of Courts and non-judicial functions of judges. (Para 70)

Helmere v. Smith, (1887) 35 Ch D. 449, 455, referred to

Craig v. Harney, 331 US 367, 376 (1947), referred to,

Bridges v. California, (1941) 314 US 252, 289, referred to.

In the matter of a Special Reference from the Bahama Islands, 1893 AC 138, 149, relied on.

Debi Prasad Sharma v. The King-Emperor, 70 IA 216 : AIR 1943 PC 202 : 46 Cri LJ 318, relied and explained.

Kayath Damodaran v. Induchoodan, AIR 1961 Ker 321 : 1961 (2) Cri LJ 771 : ILR (1961) 1 Ker 264, approved.

The deep concern of the law of contempt is to be inhibit sully essays on the administration of justice in which the public have a vital interest and not to warn off or victimise criticisms, just or unjust, of judges as citizens, administrators, non-judicial authorities, etc. Contempt is no cover for a guilty judge to get away with it but a shield against attacks on public justice. (Paras 75 and 76)

K. L. Gauba's case, ILR 1942 Lah 411, 419 : AIR 1942 Lah 105 : 43 Cri LJ 599, referred to.

Rex v. B. S. Nayyar, AIR 1950 All 549, 551, 555 : 51 Cri LJ 1500, approved.

It is not as if a judge doing some non-judicial public duty is protected from criticism. The basic public duty of a Judge in his judicial capacity is to dispense public justice in Court and anyone who obstructs or interferes in this area does so at his peril. Likewise, personal behaviour of judicial personnel, if criticised severely or even sinisterly, cannot be countered by the weapon of contempt of court. (Para 79)

In re S. B. Sarbadhary, (1906) 34 IA 41 : 4 ALJ 34 : 17 Mad LJ 74 : 9 Bom LR 9, relied on.

State v. N. Nagamani, AIR 1959 Pat 373 : 1959 Cri LJ 1013, dissented.

In the matter of an Advocate of Allahabad, AIR 1935 All 1 : 1935 ALJ 125 : 154 IC 955, dissented.

BARADAKANTA MISHRA v. REGISTRAR OF ORISSA HIGH COURT (*Palekar, J.*) 381

The paramount but restrictive jurisdiction to protect the public against substantial interference with the stream of justice cannot be polluted or diffused into an intimidatory power for the Judges to strike at adverse comments on administrative, legislative (as under Articles 225, 226 and 227) and extra-judicial acts. Commonsense and principle can certainly accept a valid administrative area so closely integrated with court work as to be stamped with judicial character such as constitution of benches, transfer of cases, issue of administrative directions regarding submission of findings or disposal of cases by subordinate Courts, supervision of judicial work of subordinate Courts and the like. Not everything covered by Articles 225, 227 and 235 will be of this texture.

Judges and Courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and administrative acts of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the counter-vailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally overzealous, criticism cannot be overlooked. Justice is no cloistered virtue. (Paras 81 and 82)

(v) *Per Krishna Iyer and Bhagwati, JJ.*

The Indian approach to law of contempt has to be in consonance with the freedom of speech and expression granted by a democratic republican constitution permitting criticism of important institutions including the Judiciary. Unlike the English we are not subjects of the King but citizens of a republic. Our orientation should be more akin to American Jurisprudence. We must move away from old English decisions and decisions of British Indian days on law of contempt. Our approach must keep up with the societal changes. (Paras 60 to 64)

The law of contempt intended for preserving the faith of the public in the judicial system should not be so used to provoke public hostility. If not properly delineated and defined, the power to punish for contempt may trench upon civil liberties. So, as protectors of our freedoms, the Supreme Court and the High Courts, must vigilantly protect freedom of speech even against judicial umbrage. (Para 65)

Appeal No. 41 of 1973 dismissed. Sentence altered.

M/1791/CR

Advocates who appeared in this case:

- A. K. Sen, Senior Advocate (G. L. Mukhoty and C. S. S. Rao, Advocates, with him) for the Appellant (in Cr. A. 41/73);
- A. K. Sen, Senior Advocate (C. S. S. Rao, Advocate, with him) for Appellant (in Cr. A. 77/73);
- F. S. Nariman, Additional Solicitor General for India (B. M. Patnaik and Vinoo Bhagat, Advocates, with him) for the Respondent No. 1 (in Cr. A. 41/73) and Respondent No. 2 (in Cr. A. 77/73).
- G. Rath, Advocate-General, Orissa (U. P. Singh, Advocate, with him) for Respondent No. 1 (in Cr. A. 41/73).
- G. Rath, Advocate-General, Orissa (B. Parthasarty, Advocate, with him) for the Respondent No. 1 (in Cr. A. 77/73).

The Judgments of the Court were delivered by

PALEKAR, J. (*for himself, A. N. Ray, C. J. and Y. V. Chandrachud, J.*)
—This is (Criminal Appeal No. 41 of 1973) an appeal by one

Baradakanta Mishra from his conviction and sentence under the Contempt of Courts Act, 1971 by a Full Bench of five Judges of the Orissa High Court.¹

2. The appellant started his career as a Munsif in 1947. His career as a Judicial Officer was far from satisfactory. In 1956 he was promoted on trial basis to the rank of a Subordinate Judge with the observation that if he was found incompetent, suitable action would be taken. In due course, he was confirmed as a Subordinate Judge. On April 2, 1962 he was promoted, again on trial basis, to the rank of Additional District Magistrate (Judicial) which is a post in the cadre of the Orissa Superior Judicial Service (Junior Branch). As his work was found unsatisfactory, he was reverted to his substantive post of a Subordinate Judge on January 4, 1963. The order of reversion was challenged by him in a Writ Petition which was dismissed by a Bench of Ahmad, C. J., and Barman, J.² An appeal to the Supreme Court was dismissed on February 6, 1967. While working as a Subordinate Judge, after reversion, he was suspended from service from May 15, 1964 to April 9, 1967 during the pendency of a disciplinary proceeding against him. That proceeding ended in a light punishment of two of his increments being stopped. From the above order of punishment, the appellant filed on October 10, 1967 an appeal to the State Government. The State Government by its order dated July 15, 1970 allowed the appeal on the ground that the Public Service Commission had not been consulted by the High Court before imposing the punishment, and that the charge-sheet served on the appellant, having indicated the proposed punishment vitiated the disciplinary proceedings. After the case was sent back to the High Court the charges which had been earlier established, were framed again and served on him on February 13, 1971 and we are informed that the proceeding is still pending.

3. In the meantime, it appears, he was promoted to the post of the Additional District Magistrate in February, 1968 though the High Court was of opinion that he was unbalanced, quarrelsome, reckless and indisciplined. The High Court specifically observed that though the appellant suffered from these defects, he was sincere and hardworking and the other officers who had superseded him as Additional District Magistrates were not much better. The promotion was made on trial basis for a period of one year with the observation that if during that period his work was found to be unsatisfactory, he would be reverted to the rank of Subordinate Judge.

4. In that year the High Court had to face an abnormal situation by the retirement of many District Judges on account of the decision of the Government reducing the age of retirement from 58 to 55 years. Many vacancies occurred and the appellant was then promoted as an Additional District and Sessions Judge on trial basis for six months in July, 1968. In January, 1969 he was allowed to continue on a temporary

1. *Registrar of Orissa High Court v. Baradakanta Mishra*, ILR 1973 Cuttack 134.

ATR 1973 Ori 244.
2. ILR 1966 Cuttack*503.

BARADAKANTA MISHRA D. REGISTRAR OF ORISSA HIGH COURT (*Palekar, J.*) 383

basis till further orders subject to further review of his work at the time of confirmation. It is worthy of note that this decision to continue was taken on the report of the present Chief Justice G. K. Misra who was at that time the Administrative Judge.

5. On May 12, 1969 his services were placed at the disposal of the Government in the Law Department, who appointed him as Joint Secretary, Law, till October 12, 1969. From October 13, 1969 to December 4, 1970 he was appointed by the Government as the Commissioner of Endowments. The Government was thoroughly dissatisfied with his work and on December 5, 1970 his services were re-placed at the disposal of the High Court. The appellant went on leave.

6. On his return to the Judicial cadre, he functioned as Additional District and Sessions Judge, Cuttack till July 14, 1971 when he was posted to act as District and Sessions Judge for 12 days in the temporary leave vacancy of the permanent District Judge Mr. P. K. Mohanty. When he was thus acting as District and Sessions Judge for a short period by way of stop-gap arrangement, the High Court placed several restrictions on his administrative powers.

7. In the brief period that he was working as Additional District and Sessions Judge, Cuttack, the appellant showed gross indiscipline by defying a request made by the District Judge in due course of administration. He also committed a grave judicial misdemeanour. He heard an appeal and posted it for judgment on June 22, 1971. The judgment was delivered on that date and the appeal was dismissed. The order-sheets of the judgment were signed by the appellant and the judgment was duly sealed. Later in the day, however, the appellant scored through his signatures both in the order-sheet and in the judgment and returned the record of the appeal to the District Judge for disposal by making a false statement that the judgment has not been delivered and that the parties being known to him it was not desirable that he should further hear the appeal, after taking additional evidence for which a petition had been filed. This was something quite extraordinary from a Judge of the appellant's standing. When these matters were brought to the notice of the High Court the Registrar by Order of the High Court recommended to the Government that the appellant be reverted to the post of the Additional District Magistrate (Judicial). There were already three departmental proceedings pending against the appellant and he had also been convicted in a contempt case. The High Court expressly informed the Government that these four matters had not been taken into consideration in recommending his reversion and that his reversion was solely due to the fact that his work was found unsatisfactory. The recommendation was accepted by the Government who on September 1, 1971 reverted the appellant to the post of the Additional District Magistrate.

8. On September 10, 1971 the appellant made a representation to the Chief Minister praying for the withdrawal of the order of reversion and, if necessary, to suspend him after drawing up a regular departmental

proceeding. The representation was forwarded to the Government with the comments of the High Court.

9. Something unusual happened. Without any further consultation with the High Court, the Governor cancelled the reversion order by Notification dated March 21, 1972 and on the same day the Chief Minister wrote a confidential D. O. to the Chief Justice by name explaining the circumstances under which the reversion order was cancelled. The Chief Minister appeared to rely upon a decision of the Orissa High Court which had no application to the facts of this particular case. But any way, it would appear that by reason of the Order dated March 21, 1972 the reversion of the appellant to the post of the Additional District Magistrate stood cancelled and he continued to act in the post of the Additional District and Sessions Judge, Cuttack.

10. The D. O. letter of the Chief Minister remained unopened till the return of the Chief Justice from New Delhi where he had gone to attend the Chief Justices Conference. It was opened by the Chief Justice on return on March 26, 1972. But in the meantime the appellant, who had gone on leave, having known about the order passed on March 21, 1972 asked for his posting. The rules required that on return from leave he should produce a medical certificate and he was, accordingly, directed to produce one.

11. On March 28, 1972 the Chief Justice placed the letter of the Chief Minister for consideration before the Full Court. The Full Court took the decision to start a disciplinary proceedings against the appellant and, pending the same, to place him under suspension in exercise of their powers under Article 235 of the Constitution. Accordingly on March 30, 1972 the appellant was placed under suspension and his Headquarters were fixed at Cuttack.

12. The present contempt proceedings arise out of events which took place after the suspension order. On receiving the suspension order the appellant addressed by letter an appeal to the Governor of Orissa for cancelling the order of suspension and for posting him directly under the Government. That is Annexure 8. As the High Court was of the view that no appeal lay from an order of suspension pending disciplinary charges it did not forward the appeal to the Governor. In fact on April 28, 1972 the Registrar of the High Court intimated the State Government that the appeal filed by the appellant to the Governor had been withheld by the High Court as no such appeal lies against the order of suspension pending disciplinary proceedings. The appellant was also intimated accordingly.

13. On April 29, 1972 charges in the disciplinary proceeding were framed by the High Court and communicated to the appellant and the appellant was directed to file his reply to the charges by a certain date.

14. On May 14, 1972 the appellant wrote three letters. One was to the Registrar and is Annexure 13. By this letter the appellant inti-

mated that he had moved the Governor to transfer the disciplinary proceedings to the Administrative Tribunal and that he would take all other alternative steps — administrative and judicial — to avoid the proceeding being dealt with by the High Court. The second letter was addressed to the Governor and is Annexure 15. It purports to be a representation with a prayer to direct the High Court to forward the appeal withheld by it. There was a third letter of the same date addressed directly to the Governor purporting to be a representation. That is Annexure 16. The prayer was that the departmental proceedings be referred to the Administrative Tribunal. A copy of this letter was sent to the Registrar of the High Court with the following remark :

"As the Honourable Court are likely to withhold such petitions, this is submitted direct with copy to the Honourable Court for information. Honourable Court may be pleased to send their comments on this petition to the Governor."

15. On May 22, 1972 the appellant addressed a letter (Annexure 14) to the Registrar intimating him that he would not submit any explanation to the charges framed against him until his representation to the Governor was disposed of. He also stated therein that he may file a writ application for the purpose and would take the matter to the Supreme Court, if necessary. He also stated that he cannot wait for the permission of the High Court for leaving the Headquarters.

16. It is the contents of these letters on which a show-cause notice for contempt was issued to the appellant under the orders of the Full Court on July 3, 1972.

17. On July 27, 1972 the appellant filed his preliminary objection to the show-cause notice challenging its maintainability on the ground that whatever he had said had no reference to the judicial functions of any Judge of the High Court and, therefore, no contempt proceedings would lie. He pressed for a decision on the point. When the matter came before a Division Bench on August 3, 1972 the appellant was directed to file his full reply to the show-cause notice. Accordingly, it was filed on August 7, 1972 and the appellant again pressed for a decision on his preliminary objection. The Division Bench refused to deal with the preliminary objection and so, on August 30, 1972 the appellant filed Criminal Appeal No. 174 of 1972 in this Court praying for cancellation of the contempt proceedings challenging therein the maintainability of the proceedings and complaining of bias and prejudice of the High Court particularly the Honourable Chief Justice and Mr. Justice R. N. Mishra. He said he apprehended that he would not get a fair deal if the matter is disposed of by the High Court.

18. On November 21, 1972 the Supreme Court appeal was withdrawn. At the instance of the Division Bench, a Full Bench of five Judges was constituted by the Chief Justice and the case came on for hearing before the Full Bench on December 4, 1972. In the meantime the appeal memo filed by the appellant in the Supreme Court was available and since it contained matter which amounted to contempt, additional charges were framed and a show-cause notice was issued to the appellant

225

in respect of these additional charges. A copy of the appeal memo containing the statements amounting to contempt is Annexure 20.

19. The Annexures were examined by the Court with a view to consider whether the statements therein amount to a criminal contempt. On a full and prolonged consideration the Full Bench came to the unanimous conclusion that Annexures 8, 13, 14, 16 and 20 contain matters which amounted to gross contempt of Court and since the appellant had not even offered an apology, this was a matter in which serious notice ought to be taken, especially, in view of previous convictions for contempt, and, accordingly sentenced the appellant to two months simple imprisonment, though, in their opinion, he deserved the maximum sentence of six months.

20. The several Annexures referred to above have been extracted by the Full Bench in its judgment and it is not necessary to reproduce them here. It will be sufficient to reproduce only those portions which were regarded as grossly contemptuous and had been underlined in the judgment.

ANNEXURE 8.

21. As already stated this is a letter in the form of an appeal addressed to the Governor of Orissa complaining against the suspension and praying for stay of operation of the suspension order on the basis of the advance copy sent to the Governor for its cancellation and for posting the appellant directly under the Government. It is dated April 10, 1972. The appeal had been routed through the High Court but the High Court did not forward the same. In this annexure reference is made to the previous appeal filed by him against the order of the High Court stopping his two increments after a departmental proceeding and how the Governor in appeal had cancelled even the very departmental proceeding in the appeal. An interpretation was put on that order which it did not bear and it was made out, though falsely, that the punishment had been set aside on the basis of the allegations made by the appellant that some Honourable Judges of the High Court had been biased and prejudiced against him. The appellant also asked the Governor to appreciate that by the said departmental proceedings the High Court had put the Exchequer to a very heavy loss "*all on account of the palpable incorrect views of the High Court*". Then the appellant says that the present action, namely, the order of suspension clearly disclosed mala fides. He suggested that there were several "embarrassing events" which he could offer for consideration of the Governor but he was content at this stage to refer to only one of them. In this connection he referred to the fact that when he intimated to the High Court that he desired to join duties after his leave on March 20, 1972 he was informed by the High Court on March 23, 1972 that his re-posting after leave would be decided after the medical board reported as to his fitness to join after leave. This, according to the appellant, showed that the High Court had already taken a decision in the absence of the Chief Justice that the appellant should be re-posted. But on the return of the Chief

BARADAKANTA MISHRA V. REGISTRAR OF ORISSA HIGH COURT (*Palekar, J.*) 387

Justice from New Delhi there was a sudden change. He clearly suggested that after the Chief Justice's return the Court took the decision to suspend him and in this connection he made the following observations :

"This decision of the High Court, reached at before the Honourable the Chief Justice attended the High Court on the 27th March after his 10 days of absence, clearly indicates that no proceeding, much less suspension, against the appellant was under contemplation till that day, but on the other hand, the appellant's place of posting was under consideration of the High Court. Circumstances clearly disclose that after the return of the Honourable Chief Justice, the Government's order, disapproving the High Court's views about the appellant's demotion, was not accepted gracefully by the High Court, and so subterfuge was adopted to counteract the said decision of the Government by a novel step, thus to deprive the appellant of the result of the said decision. In view of this patent mala fide alone, such an action is liable to be quashed, by any competent Court of law."

Then at a later stage the appellant says :

"The appellant happens to be the senior-most judicial officer in the State as regards length of service, and he has already 20 more months before attaining the age of superannuation. Hence, he may not deserve the present unwarranted, sudden and mysterious suspension, giving rise to speculations, touching his integrity."

Then again he says :

"... the treatment of the High Court may require that after cancellation of this order of suspension, he be brought under the direct control of the Government in a special post for the rest of his service career of hardly 20 months more."

The High Court at para 61 of the judgment has observed as follows :

"In the appeal memo (Annexure-8) the contemner attributed mala fides, bias and prejudiced to the High Court. He made false insinuations that the Governor cancelled the previous disciplinary proceeding against the contemner on the ground that the same was vitiated as the High Court had prejudged the matter and the Government set aside the punishment on the ground that three of the Honourable Judges were biased and prejudiced against him. He alleged that the disciplinary proceeding involved the Government in heavy expenses on account of the palpably incorrect views of the High Court. He asserted that the order of suspension as per Annexure-6 was mala fide. He stated that he would produce more facts relating to the mala fides of the High Court before the Governor. He alleged that the High Court did not gracefully accept the Government's order cancelling his demotion, and the High Court resorted to a subterfuge to counteract the said decision of the Government by taking a novel step, and that the High Court's action suffered from patent mala fide. He stated that there was a turn of event after return of the Chief Justice from the Chief Justices' Conference and that the High Court did not accept Government's decision gracefully, and that the other Judges had no independent judgment of their own, and were influenced by the Chief Justice to take a view, different from "what they had already taken, to give a posting order to the contemner, and that the High Court resorted to a subterfuge. He wanted protection of the Governor against the High Court which he insinuates as an engine of oppression. He characterised the High Court's order of suspension as mysterious and prayed that the Government should post him directly under it."

We have no doubt that the Full Bench has correctly summarized the effect of Annexure 8, and we have nothing more to add.

227

ANNEXURES 13 & 14.

22. Annexures 13 and 14 should go together. Annexure 13 is a letter by the appellant to the Registrar dated May 14, 1972 in which he told him that he had moved the Governor, Orissa with a prayer to refer his matter to the Tribunal under the provisions of the Disciplinary Proceedings Rules, 1951 and also that he would take all other alternative steps "administrative and judicial" to avoid this proceeding being dealt with by the High Court and for this purpose would have to consult some prominent Advocates of Calcutta and Delhi. Annexure 14 is a further letter dated May 22, 1972 to the Registrar intimating him that he would not submit any explanation to the charges framed until his representation to the Governor was disposed of. In this letter he further pointed out that it would not be possible for him to wait for the permission of the High Court to leave Headquarters, because he may be called by his legal advisers at any moment and in those circumstances he said, "I hereby inform the Honourable Court that I may be absent during the entire period mentioned in my letter dated the 14th May, 1972, and the Honourable Court may kindly approve of the same".

23. The effect of Annexures 13 and 14 has been summarised by the Full Bench in these words :

"Thus, in Annexures-13 and 14, the contemner exhibited a contemptuous defiance of the Court's order, by declaring that he would not obey the order, and would leave the station without waiting for permission from the High Court, as his first consideration was to "go out in connection with legal advice and filing applications and appeals in the Supreme Court" in matters connected with his suspension, and to take all steps to avoid the proceeding being dealt with by the High Court. These passages depict, in unequivocal terms, that the dispensation of justice by the Judges of the High Court on its administrative side, is most atrocious and vindictive and it is on that ground, the contemner would not obey the Court's order, would not submit any explanation, and would take all possible measures before the Supreme Court, the Governor and the Chief Minister not to surrender to the jurisdiction of the High Court. His entire attempt has been to present a lurid picture of the administration of justice, by the High Court."

24. In the context, we are not prepared to say that this summary of the effect of Annexures 13 and 14 is far wrong.

ANNEXURE 16

25. That brings us to Annexure 16. It is dated May 14, 1972 and purports to be a representation made by the appellant direct to the Governor without routing it through the High Court. The following passages have been underlined by the Full Bench as being grossly contemptuous :

"... the High Court have already contemplated in this departmental proceedings, a very heavy punishment for the petitioner."

"If on two such allegations, bias and prejudice of the High Court was disclosed by strongly pleading for demotion of the petitioner, the multiple number of such charges may naturally make the petitioner, apprehensive of the result of the proceedings, if conducted by the High Court."

BARADAKANTA MISHRA v. REGISTRAR OF ORISSA HIGH COURT (*Palekar, J.*) 389

"...the High Court even without any authority or jurisdiction in this regard and on the face of the directions of the Government in Political and Services Department communicated in the Government's Memo No. 3559-Gen., dated the 15th March 1958, have placed the petitioner under suspension."

"The High Court have also taken unusual move in placing the petitioner under suspension in a 'contemplated proceeding'."

"...the High Court on the administrative side, is seriously prejudiced and biased against him, and they act, as if the charges stand established, requiring extreme punishment and as such, justice may not be meted out to the petitioner by the High Court, if they conduct this departmental inquiry."

"...the petitioner considers it risky to submit his explanation to the High Court."

"...the High Court in the best interest of justice, should not enquire into these charges."

26. A copy of the above representation was sent to the Registrar and the following endorsement appears thereon:

"As the Honourable Court are likely to withhold petitions this is submitted direct with copy to the Honourable Court for information. The Honourable Court may be pleased to send their comments on this petition to the Governor."

27. The summary of the effect of Annexure 16 is given by the Full Bench in para 70 of the judgment which is as follows:

"In Annexure-16 the contemner has suggested that the Court has already prejudged the matter and has taken a previous decision to impose a heavy punishment. Bias and prejudice on the part of the Court were also alleged by the contemner. He suggested that the Court is not in a position to weigh the evidence and consider the materials on record and to impose a sentence commensurate with his delinquency. The action taken by the High Court has been branded as 'unusual'..."

"A copy of this Annexure-16 was sent to the High Court with a contemptuous remark that since the High Court was likely to withhold the representation it was submitted direct to the Governor. Not being satisfied with that, he issued a further directive to the Court to send their comments on his representation to the Governor."

28. The above summary of the effect of Annexure 16 is, in our view, correct.

ANNEXURE 20

29. This annexure is the memo of appeal filed by the appellant in the Supreme Court in Criminal Appeal No. 174 of 1972. The appeal had been filed because the Division Bench had refused to consider his preliminary objection with regard to the maintainability of the present contempt proceedings. The grievance before the Supreme Court was that the Orissa High Court had taken six contempt proceedings against him and in view of what happened in some of those proceedings, the appellant entertained apprehension that the Court may impose substantive punishment and may refuse bail or time to the appellant for getting redress from the Supreme Court if the present contempt proceedings were

also to go on before the same High Court. In the first contempt proceeding though the proceedings were dropped, adverse comments were made against his conduct thus depriving him of an opportunity to go in appeal and have the adverse comments expunged. In one of the other cases he says ".....the appellant was brought down to the Court-hall, and the Honourable Judges convicted and sentenced the appellant and without affording him an opportunity to obtain stay of the sentence from this Honourable Court, executed the sentence by administering admonition in the open Court and sounding warning that, if at any time such contumacious conduct of his was noticed, a very serious view would be taken about punishment".

30. In the other contempt matter, he alleged, a judge wanted to add a new charge. The appellant objected to the same and went in appeal to the Supreme Court. The appellant says that when the appellant filed his appeal in this Court and brought this fact to the notice of the Honourable Judges, they dropped the additional charge. In another proceeding, he says, the Honourable Judges while dropping the proceeding found out a very innocent and inconsequential mistake in the sworn counter-affidavit of the appellant and on that account ordered the filing of a criminal complaint for an offence under Section 199 of the I. P. C. In ground (1) the appellant alleged that the appellant fears bias of the Honourable High Court against him in view of the facts and circumstances stated above.

31. The Full Bench in its judgment has considered each one of the allegations in the appeal memo and shown how the insinuations were false and how plain facts were distorted. They are entirely right in summarising these facts of Annexure 20 in these words :

"Thus in Annexure-20 the contemner has, in clearest terms, alleged bias and prejudice against the High Court and its Chief Justice. He has taken the plea that the Court itself has become disqualified to deal with the case. In his view the Judges of this Court have fallen from the path of rectitude, and are vindictive and have already decided to impose substantive sentence and refuse bail, and they are not in a position to mete out even-handed justice."

32. Even if we dismiss Annexures 13 and 14 as nothing more than disrespectful fulminations of an angry insubordinate officer, there is hardly any doubt that Annexures 8, 16 and 20 contain statements which are deliberately made to grossly scandalize the High Court. The Judges of the High Court and especially the Chief Justice are charged with mala fides, improper motives, bias and prejudice. It is insinuated that they are oppressing the appellant, have become vindictive and are incapable of doing him justice. It is also suggested that they do not administer justice fearlessly because in one matter affecting the appellant, they dropped a charge against him for fear of the Supreme Court. All this, prima facie, amounts to gross scandalization of the High Court.

33. The law applicable to this case is the law as contained in the Contempt of Courts Act, 1971 (No. 70 of 1971). Section 2 defines "Contempt of Court", as either "civil contempt" or "criminal contempt".

Clause (c) defines "criminal contempt" as follows :

"(c) 'criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) scandalises or tends to scandalise, or lowers or tend to lower the authority of, any court; or
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

34. It will be seen that the terminology used in the definition is borrowed from the English Law of Contempt and embodies concepts which are familiar to that Law which, by and large, was applied in India. The expressions "scandalize", "lowering the authority of the Court", "interference", "obstruction" and "administration of justice" have all gone into the legal currency of our sub-continent and have to be understood in the sense in which they have been so far understood by our Courts with the aid of the English Law, where necessary.

35. The first sub-clause generally deals with what is known as the scandalization of the Court discussed by *Halsbury's Laws of England*, 3rd Edition in Volume 8, page 7 at para 9 :

"Scandalous attacks upon Judges are punished by attachment or committal upon the principle that they are, as against the public, not the judge, an obstruction to public justice; and a libel on a judge, in order to constitute a contempt of court, must have been calculated to cause such an obstruction. The punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual judges of the court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired".

Sub-clause (i) embodies the above concept and takes in cases when by the publication of the act the administration of justice is held to ridicule and contempt. This is regarded as an "obstruction" of public justice whereby the authority of the Court is undermined. Sub-clause (i) refers to one species of contempt of which "obstruction" is an important element. Sub-clause (ii) speaks of interference with due course of judicial proceedings and is directly connected with administration of justice in its common acceptance.

36. While clauses (i) and (ii) deal with obstruction and interference respectively in the particular way described therein, clause (iii) is a residuary provision by which any other type of obstruction or interference with the administration of justice is regarded as a criminal contempt.

37. In other words, all the three sub-clauses referred to above define contempt in terms of obstruction of or interference with administration of justice. Broadly speaking our statute accepts what was laid down by the Privy Council and other English authorities that proceedings in contempt are always with reference to the administration of justice. It

is enough for our purpose to refer to *Debi Prasad Sharma v. The King-Emperor*,³ in which Lord Atkin delivering the judgment of the Judicial Committee observed at page 223 as follows :

"In 1899 this Board pronounced proceedings for this species of contempt (scandalization) to be obsolete in this country, though surviving in other parts of the Empire, but they added that it is a weapon to be used sparingly and always with reference to the administration of Justice: *McLeod v. St. Aubyn*.⁴ In *In re a Special Reference from the Bahama Islands*⁵ the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law. In *Queen v. Gray*⁶ it was shown that the offence of scandalizing the court itself was not obsolete in this country. A very scandalous attack had been made on a Judge for his judicial utterances while sitting in a criminal case on circuit, and it was with the foregoing opinions on record that Lord Russell of Killowen, C. J., adopting the expression of Wilmot, C. J., in his opinion in *Rex v. Almon*⁷ which is the source of much of the present law on the subject, spoke of the article complained of as calculated to lower the authority of the judge."

38. It is, therefore, clear that scandalization within the meaning of sub-clause (i) must be in respect of the Court or the Judge with reference to administration of justice.

39. The contention of Mr. Sen on behalf of the appellant is that, in the first place, it must be remembered that the publication or acts complained of are in the course of the appellant challenging his suspension and holding of disciplinary proceedings in an appeal or representation to the Governor from the orders passed by the High Court. In Annexure 20 he was challenging the Order of the High Court before the Supreme Court. The appellant, in his submission, bona fide believed that he had a right to appeal and, in pursuance of the right he thus claimed he had given expression to his grievance or had otherwise acted, not with a view to malign the Court or in defiance of it, but with the sole object of obtaining the reversal of the orders passed by the High Court against him. In the second place, Mr. Sen contended, the passages about which the complaint was made did not amount to contempt of court since they did not purport to criticize any 'judicial' acts of the Judges sitting in the seat of justice. It may be that in some places disrespectful references have been made to the Judges which, Mr. Sen assures us, he should have never done. At the same time, in his submission, criticism of administrative acts of the High Court even in vilificatory terms did not amount to contempt of court.

40. So far as the first part of the argument is concerned, the same must be dismissed as unsubstantial because if, in fact, the language used amounts to contempt of court it will become punishable as criminal contempt. The right of appeal does not give the right to commit contempt of court, nor can it be used as a cover to bring the authority of the

3. 70 IA 216 : AIR 1943 PC 202 : 46 CH LJ 318.

4. 1899 AC 549 : 68 LJ (PC) 137 : 81 LT 158.

5. 1893 AC 138.

6. (1900) 2 QB 36 : 69 LJ (QB) 502 : 82 LT 534.

7. 1765 Wilmot's Notes of Opinions, 243 : 97 ER 94.

BARADAKANTA MISHRA P. REGISTRAR OF ORISSA HIGH COURT (*Palekar, J.*) 393

High Court into disrespect and disregard. It has been held by this Court in *Jugal Kishore v. Sitamarhi Central Co-op. Bank Ltd.*⁸ that allegations of mala fides in the grounds of appeal to the Joint Registrar of Co-operative Societies from the Order of the Assistant Registrar would constitute gross contempt.

41. A point of some substance is in the second part of Mr. Sen's argument and it will be necessary to decide in the present case whether contemptuous imputations made with reference to the "administrative acts" of the High Court do not amount to contempt of court.

42. The answer to the point raised by Mr. Sen will depend upon whether the imputations referred to above do or do not affect administration of justice. That is the basis on which contempt is punished and must afford the necessary test.

43. We have not been referred to any comprehensive definition of the expression "administration of justice". But historically, and in the minds of the people, administration of justice is exclusively associated with the Courts of justice constitutionally established. Such Courts have been established throughout the land by several statutes. The Presiding Judge of a Court embodies in himself the Court, and when engaged in the task of administering justice is assisted by a complement of clerks and ministerial officers whose duty it is to protect and maintain the records, prepare the writs, serve the processes etc. The acts in which they are engaged are acts in aid of administration of justice by the Presiding Judge. The power of appointment of clerks and ministerial officers involves administrative control by the Presiding Judge over them and though such control is described as administrative to distinguish it from the duties of a judge sitting in the seat of justice, such control is exercised by the Judge as a judge in the course of judicial administration. Judicial administration is an integrated function of the Judge and cannot suffer any dissection so far as maintenance of high standards of rectitude in judicial administration is concerned. The whole set up of a court is for the purpose of administration of justice, and the control which the Judge exercises over his assistants has also the object of maintaining the purity of administration of justice. These observations apply to all Courts of justice in the land whether they are regarded as superior or inferior Courts of justice.

44. Courts of justice have, in accordance with their constitution, to perform multifarious functions for due administration of Justice. Any lapse from the strict standards of rectitude in performing these functions is bound to affect administration of justice which is a term of wider import than mere adjudication of causes from the seat of justice.

45. In a country which has a hierarchy of Courts one above the other, it is usual to find that the one which is above is entrusted with disciplinary control over the one below it. Such control is devised with

8. AIR 1967 SC 1494: (1967) 3 SCR 163: 1967 Cri LJ 1380.

a view to ensure that the lower Court functions properly in its judicial administration. A judge can foul judicial administration by misdemeanours while engaged in the exercise of the functions of a judge. It is therefore as important for the superior Court to be vigilant about the conduct and behaviour of the Subordinate Judge as a judge, as it is to administer the law, because both functions are essential for administration of justice. The Judge of the superior Court in whom this disciplinary control is vested functions as much as a judge in such matters as when he hears and disposes of cases before him. The procedures may be different. The place where he sits may be different. But the powers are exercised in both instances in due course of judicial administration. If superior Courts neglect to discipline subordinate Courts, they will fail in an essential function of judicial administration and bring the whole administration of justice into contempt and disrepute. The mere function of adjudication between parties is not the whole of administration of justice for any court. It is important to remember that disciplinary control is vested in the Court and not in a judge as a private individual. Control, therefore, is a function as conducive to proper administration of justice as laying down the law or doing justice between the parties.

46. What is commonly described as an administrative function has been, when vested in the High Court, consistently regarded by the statutes as a function in the administration of justice. Take for example the Letters Patent for the High Court of Calcutta, Bombay and Madras. Clause 8 thereof authorises and empowers the Chief Justice from time to time as occasion may require "to appoint so many and such clerks and other ministerial officers it shall be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the said High Court by these Letters Patent". It is obvious that this authority of the Chief Justice to appoint clerks and ministerial officers for the administration of justice implies an authority to control them in the interest of administration of justice. This controlling function which is commonly described as an administrative function is designed with the primary object of securing administration of justice. Therefore, when the Chief Justice appoints ministerial officers and assumes disciplinary control over them, that is a function which though described as administrative is really in the course of administration of justice. Similarly Section 9 of the High Courts Act, 1861 while conferring on the High Courts several types of jurisdictions and powers says that all such jurisdictions and powers are "for and in relation to the administration of justice in the Presidency for which it is established". Section 106 of the Government of India Act, 1915 similarly shows that the several jurisdictions of the High Court and all their powers and authority are "in relation to the administration of justice including power to appoint clerks and other ministerial officers of the Court". Section 223 of the Government of India Act, 1935 preserves the jurisdictions of the existing High Courts and the respective powers of the Judges thereof in relation to the administration of justice in the Court. Section 224 of that Act declares that the High Court shall have superintendence over all courts in India

234

BARADAKANTA MISHRA v. REGISTRAR OF ORISSA HIGH COURT (*Palekar, J.*) 395

for the time being subject to its appellate jurisdiction and this superintendence, it is now settled, extends both to administrative and judicial functions of the subordinate Courts. When we come to our Constitution we find that whereas Articles 225 and 227 preserve and to some extent extend these powers in relation to administration of justice, Article 235 vests in the High Court the control over District Courts and Courts Subordinate thereto. In the *State of West Bengal v. Nripendra Nath Bagchi*,⁹ this Court has pointed out that control under Article 235 is control over the conduct and discipline of the Judges. That is a function which, as we have already seen, is undoubtedly connected with administration of justice. The disciplinary control over the misdemeanours of the subordinate judiciary in their judicial administration is a function which the High Court must exercise in the interest of administration of justice. It is a function which is essential for the administration of justice in the wide connotation it has received and, therefore, when the High Court functions in a disciplinary capacity, it only does so in furtherance of administration of justice.

47. We thus reach the conclusion that the Courts of justice in a State from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all those who have or likely to have business therein that the Court perform all their functions on a high level of rectitude without fear or favour, affection or ill-will.

48. And it is this traditional confidence in the Courts that justice will be administered in them which is sought to be protected by proceedings in contempt. The object, as already stated, is not to vindicate the Judge personally but to protect the public against any undermining of their accustomed confidence in the Judges' authority. Wilmot, C. J., in his opinion in the case of *Rex v. Almon* (supra) already referred to says: "The arraignment of the justice of the Judges, is arraignment the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges, and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever: not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for the giving justice that free, open, and uninterrupted current, which it has, for many ages, found all over this kingdom,". Further explaining what he meant by the words "authority of the Court", he observed "the word 'authority' is frequently used to express both the right of declaring the law, which is properly called jurisdiction, and of enforcing obedience to it, in which sense it is equivalent to the word power: but by the word 'authority',

9. (1966) 1 SCR 771; ATR 1966 SC 447; (1968) 1 Lab I.J 270.

I do not mean that coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity".

49. Scandalization of the Court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the Court has to ask is whether the vilification is of the Judge as a judge. (*See Queen v. Gray*),¹⁰ or it is the vilification of the Judge as an individual. If the latter the Judge is left to his private remedies and the Court has no power to commit for contempt. If the former, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. Secondly, the Court will have also to consider the degree of harm caused as affecting administration of justice and, if it is slight and beneath notice, Courts will not punish for contempt. This salutary practice is adopted by Section 13 of the Contempt of Courts Act, 1971. The jurisdiction is not intended to uphold the personal dignity of the Judges. That must rest on surer foundations. Judges rely on their conduct itself to be its own vindication.

50. But if the attack on the Judge functioning as a judge substantially affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a judge is alleged to have done in the exercise of his administrative responsibilities. A judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function.

51. The Full Bench has considered a very large number of cases and come to the conclusion that there is no foundation for the view that an attack on the Court in its exercise of administrative functions does not amount to contempt. In *Brahma Prakash Sharma and Others v. The State of Uttar Pradesh*,¹¹ it is pointed out that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals but is intended as protection to the public whose interest would be very much affected, if by the act or by the conduct of any party the authority of the Court is lowered and the sense of confidence which the people have in the administration of justice by it is weakened. The case is no authority for the proposition put forward by Mr. Sen. In *Gobind Ram v. State of Maharashtra*,¹² some observations of Jagan-nadhadas, C.J. (as he then was) in the *State v. The Editors and Publishers of Eastern Times and Prajatantra*,¹³ were quoted by this Court with

10. (1900) 2 QB 36, 40.

11. 1953 SCR 1169: AIR 1954 SC 10:
1954 Cri LJ 238.

12. (1972) 1 SCC 740: 1972 SCC (Cri)
446.

13. AIR 1952 Ori 318: ILR 1952 Ori 1:
33 Cri LJ 1605.

approval. Those observations are :

"A review of the cases in which a contempt committed by way of scandalization of the court has been taken notice of for punishment shows clearly that the exercise of the punitive jurisdiction is confined to cases of very grave and scurrilous attack on the court or on the Judges in their judicial capacity the ignoring of which could only result encouraging a repetition of the same with the sense of impunity which would thereby result in lowering the prestige and authority of the court."

Mr. Sen has particularly emphasised the words "judicial capacity" and argued that this only refers to the Judge functioning in the seat of justice. It does not appear from the report of the Orissa case that the High Court was in any way concerned with the alleged dichotomy between the Judges' administrative functions and his adjudicatory functions. "Judicial capacity" is an ambivalent term which means "capacity of or proper to a Judge" and is capable of taking in all functional capacities of a judge whether administrative, adjudicatory or any other, necessary for the administration of justice. There is no sufficient warrant to hold that the Orissa High Court used the words "judicial capacity" with a view to exclude all other capacities of the Judges except the capacity to adjudicate, nor for holding that this Court approved the use of the expression as limited to the Judges' adjudicatory function.

52. On the other hand, there is high authority for the proposition that vilificatory criticism of a judge functioning as a judge even in purely administrative or non-adjudicatory matters amounts to criminal contempt. The case of *Rex v. Almon* (supra) already referred to is a case of this kind. Almon published a pamphlet in which the Chief Justice and, impliedly, all the Judges of the Court of King's Bench were accused of deliberately delaying or defeating the issue of the process of habeas corpus by introducing a new rule that a petition praying for the issue of that process should be accompanied by an affidavit. It was held that this constituted contempt of court. The Chief Justice and the Judges were not criticized for what they were doing in a judicial proceeding from the "seat of justice" but for making a rule which, in the opinion, of the writer was deliberately designed to delay or defeat the process of habeas corpus. Apparently the rule had been made by the Court under its power to regulate proceedings in Court and not in any judicial proceeding between parties to a cause. The rule was made under the rule-making function of the Court and not in exercise of any adjudicatory function as narrowly interpreted now, and still it was held that the Court was scandalized and its authority lowered. In *Moti Lal Ghose and Others*,¹⁴ a strong Special Bench of five Judges held that an imputation made against the Chief Justice of the Calcutta High Court suggesting that he was improperly motivated in constituting a packed Bench to hear a particular class of appeals was held to amount to contempt. Sanderson, C. J., observed at page 180 : "I have no doubt that this article, read by itself, constitutes a very serious reflection upon the administration of the Court, which everyone knows is in the hands of the Chief Justice". Woodroffe, J.,

14. 45 Cal 169; 21 CWN 1161; 45 IC 338.

at page 199 observed : "The Court, however, in such cases does not seek to vindicate any personal interests of the Judges, but the general administration of justice, which is a public concern". Mookerjee, J., at page 231 observed : "it seems to me indisputably plain that the implication of the second article, whether taken along with or independently of the first, is that, at the instance of persons interested in the Calcutta Improvement Trust, the Chief Justice has constituted a Special Bench to ensure a decision favourable to the Trust in the appeals against the judgment of Mr. Justice Greaves". Proceeding further he held "an imputation of this character constitutes a contempt of court". It was the function of the Chief Justice as Chief Justice of the Court to administratively form, from time to time, Benches for the disposal of the business of the Court. To attribute improper motives to him in the exercise of this function was held to be a contempt because that was bound to undermine the confidence of the people in the High Court and its Judges in relation to administration of justice. Similarly, in *The State of Bombay v. Mr. "P."*¹⁵ a scurrilous attack on the Court receiver for alleged misbehaviour in his official duties and a charge against the Chief Justice and the administrative judges for deliberately conniving at it were held to constitute contempt. The same argument as is now put forward was made in that case (see para 14 of the report), but was rejected in these words :

"By making these foul attacks upon the Judges, the respondent has tried to create an apprehension in the mind of the public regarding the integrity of these Judges and has done a wrong to the public. He has attempted to shake the confidence of the public in the Judges of this Court and in the justice that is being administered by these Judges of this Court."

There is no such thing as a denegration of a judge function-wise. This is brought out clearly in the judgment of the Judicial Committee in *Debi Prasad Sharma v. The King-Emperor* (supra) referred to earlier. In that case the appellant had suggested falsely that the Chief Justice of the Allahabad High Court had, in his administrative capacity, issued a circular to the Judicial Officers under his jurisdiction enjoining on them to raise contributions to the war-funds which, it was said, would lower the prestige of the Court in the eyes of the people. In holding that the imputation did not constitute contempt of court but, at the most, a personal defamation of the Chief Justice in his individual capacity, Lord Atkin said at page 224 :

"When the comment in question in the present case is examined it is found that there is no criticism of any judicial act of the Chief Justice, or any imputation on him for anything done or omitted to be done by him in the administration of justice. It can hardly be said that there is any criticism of him in his administrative capacity, for, as far as their Lordships have been informed, the administrative control of the subordinate courts of the Province, whatever it is, is exercised, not by the Chief Justice, but by the court over which he presides."

53. The words underlined* above are important. In holding that only ordinary remedies for defamation were open to the Chief Justice,

15. AIR 1959 Bom 182 : 60 Bom LR 873 : * Ed. Herein given in bold.
1959 Cri LJ 567.

their Lordships had to ask the substantial question, as suggested by Lord Watson during the course of the arguments in *Re Special Reference from the Bahama Islands*¹⁶ "whether the letter complained of referred to him in his official capacity". With that case obviously in mind — and the case was referred to earlier in the judgment — Lord Atkin showed in the words quoted above that the criticism did not refer (i) to any judicial act, meaning thereby any adjudicatory act, and (ii) to any administrative act, because the Chief Justice alone had no administrative control over the subordinate Courts but only the High Court as a whole. The plain implication is that if the circular had been alleged to have been issued by the Chief Justice under the authority of the High Court, then the imputation having the effect of lowering the prestige and authority of the High Court could conceivably have been regarded as contempt. Their Lordships of the Privy Council are not known to waste their words over matters not relevant to the issue. It was absolutely necessary for their Lordships to eliminate the possibility of the alleged action of the Chief Justice being connected in any manner with any adjudicatory or administrative function of the High Court by pointing out that it did not refer to any official act in the administration of justice or, as stated in *Queen v. Gray* already referred to, "the act of a Judge as a Judge", in which case alone the imputation would have amounted to scandalization of the Court. The above authorities are sufficient to show that there is no warrant for the narrow view that the offence of scandalization of the Court takes place only when the imputation has reference to the adjudicatory functions of a judge in the seat of justice. We are unable, therefore, to accept the submission of Mr. Sen on this aspect of the case.

54. We have already shown that the imputations in Annexures 8, 16 and 20 have grossly vilified the High Court tending to affect substantially administration of justice and, therefore, the appellant was rightly convicted of the offence of criminal contempt.

55. As regards the sentence, it is enough to say that the Full Bench has considered the question at great length. There were six contempt proceedings against the appellant and the Court had treated him generously. In two proceedings he was let off with a fine. Even in the present case the Full Bench was of the opinion that the maximum sentence under the law was deserved by the appellant but imposed on him only a sentence of simple imprisonment for two months. The appellant, through out, took a defiant attitude and did not even think it necessary to offer an apology. Ordinarily we would be most reluctant to interfere with the sentence imposed by the High Court, but for the fact that we notice that he has almost come to the end of his judicial career and during the last few years has been gripped by a sort of mania against the High Court which clouded his reason. We think the object of punishment will be served by directing him to pay a fine of Rs.1,000 or in default to suffer simple imprisonment for 3 months in substitution of the sentence inflicted by the High Court.

16. 1893 AC 138 at 144.

56. It remains now to point out that when dealing principally with the contempt of the appellant, the Court also thought it fit to hear the parties including the Advocate-General on some subsidiary but important questions on the relative position of the Government of Orissa and the High Court in the matter of disciplinary control over Subordinate Judges. It appears that the State Government framed what are known as the Orissa Civil Services (Classification and Control) Rules, 1962 and they appear to apply to all Government servants under the State. The Full Bench held that some of the rules, in their application to the Subordinate Judiciary of the State, contravened Articles 235 which vested control over the Subordinate Judiciary in the High Court. From these findings the State of Orissa has come in appeal and that appeal is numbered Criminal Appeal No. 77/1973. In our opinion, the principal matter before the Full Bench was in relation to the contempt committed by the appellant. The constitutional issue between the State Government and the High Court came in only by way of a side-wind. In fact it would appear from the judgment that the learned Advocate-General had requested the Court not to express any opinion on these constitutional matters, and the Court also seems to have thought that the constitutionality of the Rules had no relation to the commission of the contempt. However, the Court thought that the issue became relevant, especially, on the question of sentence and hence applied its mind to the constitutionality of some of the Rules. It has struck down those Rules which, in the opinion of the Court, contravened Article 235 in their application to the Subordinate Judiciary. We have considered whether it is necessary for us to deal with those questions here, but are inclined to think that we should express no opinion on the constitutionality of the impugned Rules.

57. Accordingly, Appeal No. 41 is dismissed with the modification in the sentence as suggested above and Criminal Appeal No. 77 of 1973 is permitted to be withdrawn without prejudice to the contentions raised by the State in regard to the constitutionality of the Rules struck down by the High Court.

KRISHNA IYER, J. (*for himself and P. N. Bhagwati, J.*)—We have had the advantage of reading the leading opinion of our learned brother, Palekar, J., and, concurring as we do in the ultimate conclusion, to depart from the option of silence needs a word of explanation. Graver issues bearing on free speech raised in these proceedings and the correct approach to be made to what in substance is a criminal charge, bring to the fore our divergence in legal reasoning and constitutional perspective which we proceed to set out in a separate opinion.

59. The facts of the present case, fully laid bare in the judgment of Palekar, J., are in a sense peculiar. The contemnor is himself a Senior District Judge. The alleged multiple contempt relates partly to (i) an administrative act of the High Court preliminary to disciplinary proceedings and is stated to be contained in a representation filed by him before the Governor, under a rule which apparently authorises such appeals,

BARADAKANTA MISHRA V. REGISTRAR OF ORISSA HIGH COURT (*Krishna Iyer, J.*) 401

against the suspension order of the High Court, and (ii) averments in a special leave petition filed by him in this Court, aggrieved by the refusal of the High Court, to decide a preliminary objection in these very contempt proceedings on the judicial side. A Full Bench of the High Court convicted the appellant for contempt, the action itself having been initiated by an administrative full Court. The questions we are called upon to decide are (a) whether criticism of an administrative act of the High Court or of any court could at all amount to contempt of court; (b) whether pejorative imputations about a court or judge, however offensive, true or honestly held even if contained in an appeal to a higher Court or in a remedial representation to a correctional authority, constitute contempt. The legal touchstone adopted by the High Court is that any statement which in some manner may shake the confidence of the community in a judge or in the judicial system, is straight-way contempt, regardless of context or purpose or degree of publication or absence of any clear and present danger of disaffection or its being a bona fide plea for orderly change in the judicature and its process. On the facts, we agree that the spirit of defiance, extenuated partly by a sense of despair, is writ large in the writings of the appellant but wish to warn ourselves that his reported past violations should not prejudice a judicial appraisal of his alleged present criminal contempt. And the benefit of doubt, if any, belongs to the contemnor in this jurisdiction.

60. The dilemma of the law of contempt arises because of the constitutional need to balance two great but occasionally conflicting principles — freedom of expression and fair and fearless justice — remembering the brooding presence of Articles 19(1)(a), 19(2), 129 and 215 of the Constitution.

61. In a sense, the Indian approach is a little different from the English and its orientation is more akin to American Jurisprudence, although there is much that is common to all the three. The pronouncement of Wilmot, C. J., posthumously published, has influenced the law of contempt in the United States and the Commonwealth countries, but it is a moot point whether we should still be bound to the regal moorings of the law in *Rex v. Almon*:¹⁷

"... by our constitution the King is the fountain of justice and . . . he delegates the power to the judges . . . arraignment of the justice of the judges is arraigning the King's justice. It is an impeachment of his wisdom in the choice of his judges . . . it excites dissatisfaction with judicial determination and indisposes the minds of people to obey them. . . ."

62. Maybe, we are nearer the republican justification suggested in the American system:¹⁸

"In this country, all courts derive their authority from the people, and hold it in trust for their security and benefit. In this state, all judges are elected by the people, and hold their authority, in a double sense, directly from them; the power they exercise is but the authority of the people themselves, exercised through courts as their agents. It is the authority and laws emanating from the people,

17. *Wilmot's Notes* 243 (Wilmot Ed. 1802) as cited in Fox: *Contempt of Court* 1927.

18. 18 USCA 3691 (formerly 28 USC 386, 389).

which the judges sit to exercise and enforce. Contempt against these courts, the administration of their laws, are insults offered to the authority of the people themselves, and not to the humble agents of the law, whom they employ in the conduct of their government."

63. This shift in legal philosophy will broaden the base of the citizen's right to criticise and render the judicial power more socially valid. We are not subjects of a king but citizens of a republic and a blanket ban through the contempt power, stifling criticism of a strategic institution, namely, administration of Justice, thus forbidding the right to argue for reform of the judicial process and to comment on the performance of the judicial personnel through outspoken or marginally excessive criticism of the instrumentalities of law and justice, may be a tall order. For, change through free speech is basic to our democracy, and to prevent change through criticism is to petrify the organs of democratic government. The judicial instrument is no exception. To cite vintage rulings of English Courts and to bow to decisions of British Indian days as absolutes is to ignore the law of all laws that the rule of law must keep pace with the rule of life. To make our point, we cannot resist quoting McWhinney,¹⁹ who wrote :

"The dominant theme in American philosophy of law today must be the concept of change — or revolution — in law. In Mr. Justice Oliver Wendell Holmes' own aphorism, it is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. The prestige argument, from age alone, that because a claimed legal rule has lasted a certain length of time it must automatically be valid and binding at the present day, regardless of changes in basic societal conditions and expectations, is no longer very persuasive. According to the basic teachings of the Legal Realist and policy schools of law, society itself is in continuing state of flux at the present day; and the positive law, therefore, if it is to continue to be useful in the resolution of contemporary major social conflicts and social problems, must change in measure with the society. What we have, therefore, concomitantly with our conception of society in revolution is a conception of law itself, as being in a condition of flux, of movement. On this view, law is not a frozen, static body of rules but rules in a continuous process of change and adaptation; and the judge, at the final appellate level anyway, is a part — a determinant part — of this dynamic process of legal evolution."

This approach must inform Indian law, including contempt law.

64. It is very necessary to remember the legal transformation in our value system on the inauguration of the Constitution, and the dogmas of the quiet past must change with the challenges of the stormy present. The great words of Justice Holmes²⁰ uttered in a different context bear repetition in this context :

"But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that

19. *Canadian Bar Review* (Vol. 45) 1967, 582-583.

242

SARADAKANTA MISHRA V. REGISTRAR OF ORISSA HIGH COURT (*Krishna Iyer, J.*) 403

we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."

65. Before stating the principles of law bearing on the facets of contempt of court raised in this case we would like to underscore the need to draw the lines clear enough to create confidence in the people that this ancient and inherent power, intended to preserve the faith of the public in public justice, will not be so used as to provoke public hostility as overtook the Star Chamber. A vague and wandering jurisdiction with uncertain frontiers, a sensitive and suspect power to punish vested in the prosecutor, a law which makes it a crime to publish regardless of truth and public good and permits a process of *brevi manu* conviction, may unwittingly trench upon civil liberties and so the special jurisdiction and jurisprudence bearing on contempt power must be delineated with deliberation and operated with serious circumspection by the higher judicial echelons. So it is that as the palladium of our freedoms, the Supreme Court and the High Courts, must vigilantly protect free speech even against judicial umbrage — a delicate but sacred duty whose discharge demands tolerance and detachment of a high order.

66. The present proceedings challenge the projection of the power to punish for contempt into administrative domains of the Court and its extension to statements in remedial proceedings. One recalls the observations of the American Supreme Court:²¹

"Contempt of Court is the Proteus of the Legal World, assuming an almost infinite diversity of forms."

67. Considerations such as we have silhouetted led to the enactment of the Contempt of Courts Act, 1971, which makes some restrictive departures from the traditional law and implies some wholesome principles which serve as unspoken guidelines in this branch of law. Section 5 protects *fair comment* on the merits of cases finally decided, and Section 13 absolves from sentence all contempts which do not *substantially* interfere or tend *substantially to interfere with the due course of justice*. Statements which disparage a subordinate judicial officer presiding over a court are not contempt if made in *good faith* to the High Court or any other lower Court to which the offended judge is subordinate. The emphasis in Section 2(c), Section 3 and Section 13 to the interference with the *course of justice* or obstruction of the *administration of justice* or scandalizing or lowering the authority of the Court — not the Judge — highlights the judicial area as entitled to inviolability and suggests a functional rather than a personnel or 'institutional' immunity. The unique power to punish for contempt of itself inheres in a court qua court, in its essential role of dispenser of public justice. The phraseological image projected by the catena of expressions like Court, course of justice,

20. *The Supreme Court and Civil Liberties* by Osmond K. Fracknel—Published for the American Civil Liberties Union in its 40th anniversary year-Porena Publi-

cations, Inc. New York (1960):page 40.
21. Moskowitz: *Contempt of Injunctions*, Criminal and Civil, 43 Columbia L. Rev. 780 (1943).

243

administration of justice, civil and criminal proceedings, judicial proceedings, merits of any case, presiding officer of the Court, judicial proceeding before a court sitting in chamber or in camera, undertaking given to a court, substantial interference with the due course of justice, etc., occurring in the various sections of the Act, the very conspectus of the statutory provisions and the ethos and *raison d'être* of the jurisdiction persuade us to the conclusion that the text of the Act must take its colour from the general context and confine the contempt power to the judicial cum para-judicial areas including those administrative functions as are intimately associated with the exercise of judicial power.

68. What then is a Court? It is²²

"an agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purposes of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorised to exercise its powers in due course of law at times and places previously determined by lawful authority." *Isbill v. Stovall*, Rex. Civ. App. 92 S. W. 2d 1057, 1070."

"... an organised body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings. *Ex parte Gardner*, 22 Nev. 280, 39 p. 570; *Hertman v. Hertman*, 104 Cr. 423, 208 p. 580, 582."

69. In short, the accent is on the functional personality which is pivotal to securing justice to the people. Purely administrative acts, like recruitments, transfers and postings, routine disciplinary action against subordinate staff, executive acts in running the establishments and ministerial business ancillary to office-keeping — these are common to all departments in the public sector and merely because they relate to the judicial wing of government cannot enjoy a higher immunity from criticism. The quintessence of the contempt power is protection of the public, not judicial personnel. Excerpts from a few Anglo-American authorities will attest our standpoint:

"The object of the discipline enforced by the Court in case of contempt of Court is not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice."²³

"The law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate."²⁴

"Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities. There have sometimes been martlets upon the bench as there have also been pompous wielders of authority who have

22. *Black's Law Dictionary*, Fourth Edn. 425.

23. *Bowen, L. J.—Helmors v. Smith*, (1887) 35 Ch D 449, 455.

24. *Douglas, J., Craig v. Hane*, 331 US 367, 376 (1947).

BARADAKANTA MISHRA v. REGISTRAR OF ORISSA HIGH COURT (*Krishna Iyer, J.*) 405

used the paraphernalia of power in support of what they called their dignity. Therefore, judges must be kept mindful of their limitations and their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt."²⁵

70. If we accept this slant on judicialisation as a functional limitation on the contempt jurisdiction we must exclude from its ambit interference with purely administrative acts of Courts and non-judicial functions of Judges. This dichotomy is implicit in the decided cases although the twilight of the law blurs the dividing lines now and then. To cast the net wider is unreasonable and unwarranted by precedent. To treat, as the High Court has done, "the image and personality of the High Court as an integrated one" and to hold that every shadow that darkens it is contempt is to forget life, reason and political progress. For, if a judge has an integrated personality and his wife openly accuses him of neglect or worse, she would certainly reduce the confidence of the public in him as judge! Will her accusation be personalised contempt? If a judge expresses on a platform crude views on moral lapses and is severely criticised in public for it, it will undoubtedly debunk him as a judge. Will such censure be branded contempt?

71. As early as 1892, the Privy Council in *The matter of a Special Reference from the Bahama Islands*²⁶ had to upset a sentence of indefinite imprisonment imposed by the Chief Justice of Bahamas on one Mr. Moseley for two 'letters to the editor' full of snub and sarcasm about Yelverton, Esq., Chief Justice. In these there was cynical reference to the Chief Justice's incompetence and imprudence, couched in stinging satire. The Judicial Committee held:

"(a) That the letter signed 'Colonist' in *The Nassau Guardian* though it might have been made the subject of proceedings for libel was not, in the circumstances, calculated to obstruct or interfere with the course of justice or the due administration of the law, and therefore did not constitute a contempt of Court."

72. The Attorney-General struck a sound note when in the course of the arguments he summed up the law thus:

"A libel upon a Judge, holding him up to contempt and ridicule in his character as a judge, so as to lower him in the estimation of the public amongst whom he exercises office is a contempt of court." (emphasis supplied)

73. Lord Atkin, in the celebrated case of *Debi Prasad Sharma v. The King-Emperor* (supra), where the printer, publisher and editor of the *Hindustan Times* were found guilty of contempt by the Allahabad High Court for criticising the Chief Justice by falsely imputing to him a circular communication to the subordinate judiciary to raise collections for the war fund, set aside the conviction holding that the proceedings in contempt were misconceived. The learned Law Lord observed:

"When the comment in question in the present case is examined it is found that there is no criticism of any judicial act of the Chief Justice, or any imputa-

25. *Frankfurter, J., Bridges v. California*, 314 US 252, 289 (1941). 26. 1893 AC 138, 149.

245

tion on him for anything done or omitted to be done by him in the administration of justice. It can hardly be said that there is any criticism of him in his administrative capacity, for, as far as their Lordships have been informed, the administrative control of the subordinate courts of the Province, whatever it is, is exercised, not by the Chief Justice, but by the court over which he presides. The appellants are not charged with saying anything in contempt of the subordinate courts or the administration of justice by them. In truth, the Chief Justice is alleged, untruly, as is now admitted, to have committed an ill-advised act in writing to his subordinate judges asking (as the news item says), enjoining (as the comment says) them to collect for the War Fund. If the facts were as alleged they admitted of criticism. No doubt it is galling for any judicial personage to be criticised publicly as having done something outside his judicial proceedings which was ill-advised or indiscreet. But judicial personages can afford not to be too sensitive. A simple denial in public of the alleged request would at once have allayed the trouble. If a judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation if he should feel impelled to use them."

74. The whole emphasis and ratio of the decision consists in the impugned editorial not being an attack on the administration of justice and, therefore, not amounting to contempt of court. The learned Additional Solicitor-General, however, stressed the significance of the passing observation made in the judgment that the administrative control of the subordinate judiciary vested in the whole Court and not only in the Chief Justice, and argued that by implication their lordships must be deemed to have regarded animadversion on even acts of administrative control as potential prey to the contempt law. An obscure reference to the Chief Justice not being even the exclusive administrative authority over the lower judiciary, meant perhaps to bring into bold relief the irrelevance of the criticism as reflecting even on the executive functions of the Chief Justice, cannot be considered to reach a reverse result, ignoring the setting and the thrust of the whole dictum.

75. A Division Bench of the Kerala High Court, in *Kayiath Damodaran v. Induchoodan*,²⁷ has relied on this Privy Council ruling for the proposition that administrative acts of the Court — in that case the transfer of a Magistrate criticised as promoted by extraneous pressure — was not a fit subject for punitive action. (In that case, of course, the contemnor was convicted for another publication.) The deep concern of the law of contempt is to inhibit sullyng essays on the administration of justice in which the public have a vital interest and not to warn off or victimize criticisms, just or unjust, of judges as citizens, administrators, non-judicial authorities, etc.

76. *K. L. Gauba's case*,²⁸ was naturally pressed into service at the Bar against the contemnor but such an extreme case of wild and vicious attacks on the Chief Justice rarely serves in the search for any abiding principle in an excited setting. That ruling reminds us that, whatever the provocation, a judge, by reason of his office, has to halt at the gates of controversy but as enlightenment spreads and public opinion ripens this judicial self-abnegation will be appreciated better and not

27. AIR 1961 Ker 321; 1961 (2) Cr LJ 771; ILR (1961) 1 Ker 264.

28. ILR 1942 Lah 411, 419; AIR 1942 Lah 105; 43 Cr LJ 599.

BARADAKANTA MISHRA v. REGISTRAR OF ORISSA HIGH COURT (*Krishna Iyer, J.*) 407

"embolden the licentious to trample upon everything sacred in society and to overthrow those institutions which have hitherto been deemed the best guardians of civil liberty". Again, while Young, C. J., in that case rules out the tenability of truth as a valid defence against contempt actions, we observe, not without pertinence in the constitutional context of restrictions on free expression having to be reasonable, that in most of the reported cases Courts have hastened to hold the imputations false before proceeding to punish. Contempt is no cover for a guilty judge to get away with it but a shield against attacks on public justice. *Gauba's* case, on the facts, was a mud-slinging episode on the judicial target as such — and the conviction accords with the policy of the law we have set out.

77. A Division Bench of the Allahabad High Court, in *Rex v. B. S. Nayyar*,²⁹ had to deal with a representation by a litigant against a Magistrate with reference to a case adversely decided, and Kidwai, J., cleared the confused ground right in the beginning by observing :

"The first thing to be remembered is that Courts are not concerned with contempt of any authority except Courts of law in the exercise of their judicial functions. Thus, any speech, writing or act which does not have the effect of interfering with the exercise of their judicial functions by the Courts cannot be the subject of proceedings in contempt. In India very often the same officers exercise executive as well as judicial functions. Sometimes it becomes difficult to draw a distinction between their two capacities but nevertheless a distinction must be drawn and it is only if the criticism is of judicial acts that action by way of proceedings in contempt may be taken."

78. A letter to the President of the Congress party complaining about the appointment of a judicial officer who was the brother-in-law of the Private Secretary of a Minister (belonging to that party) and of the transfer of cases to his Court wherein congressmen were involved, was sought to be punished as contempt of court. Kidwai, J., made the following useful remarks exonerating the contemnor :

"In this passage also the attack is on the appointment of the judicial officer and the transfer of cases to him but there is no attack upon the officer himself. Both these attacks are upon the system and not upon any Magistrate in respect of the performance by him of his judicial functions. They wish to see laid down a salutary principle by which justice should not only be done but should also appear to be done. There is no contempt of Court in this — rather it is an endeavour to free Courts from all extraneous shackles and proceedings to contempt are wholly uncalled for."

79. The Judicial Committee in *In re S. B. Sarbadhicary*³⁰ considered the misconduct of a Barrister for publishing an article where he cast reflections upon Judges of the Allahabad High Court. The merits of the case apart, the Judicial Committee emphasized the judicial capacity of the Judges which attracted the contempt jurisdiction. Sir Andrew Seoble observed :

"There is no doubt that the article in question was a libel reflecting not only upon Richards, J., but other judges of the High Court in their judicial capacity

29. AIR 1950 All 549, 551, 555: 51 Cri LJ 1500.

30. (1906) 34 IA 41: 4 ALJ 34: 17 Mad LJ 74: 9 Bom LR 9.

247

and in reference to their conduct in the discharge of their public duties." (emphasis added)

"The public duty" in their "judicial capacity" was obviously in contradistinction to merely personal activities of administrative functions. It is not as if a judge doing some non-judicial public duty is protected from criticism in which case any action by him as Dean of Law or Vice-Chancellor in a University or as Acting Governor or President or Member of the Law or Finance Commission would also be punishable as contempt. The basic public duty of a judge in his judicial capacity is to dispense public justice in Court and anyone who obstructs or interferes in this area does so at his peril. Likewise, personal behaviour of judicial personnel, if criticized severely or even sinisterly, cannot be countered by the weapon of contempt of court, for to use the language of Mukherjea, J., in *Brahma Prakash Sharma v. State of Uttar Pradesh* (supra), "the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals". (emphasis added) Otherwise, a grocer who sues a judge for price of goods with an imputation that the defendant has falsely and maliciously refused to honour the claim, or a servant of a judge who makes personal allegations of misconduct against his master may be hauled up for contempt. This is no amulet worn by judges for all purposes. "The punishment is inflicted nor for the purpose of protecting either the Court as a whole or the individual judges of the Court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the Tribunal is undermined or impaired." (vide para 9, *Halsbury's Laws of England*, 3rd Edn. Vol. VIII). Indeed, if we peer through the mists of English Judicial history, Courts of record were not qua such courts, acting in any administrative capacities. How then could contempt action, going by genesis, be warranted in purely administrative matters of Courts?

80. Of course, there have been cases sounding a different note. In *State v. M. Nagamani*,³¹ one Mr. Nagamani, an impetuous I. A. S. officer, wrote a letter making critical remarks couched in disrespectful and improper language about the inspection report of his Court by a Judge of the High Court of Patna. However, Mr. Nagamani tendered an unqualified apology and the Court discharged the rule for contempt since in their view the contempt was purged by the apology. Of course, there was no need to consider in detail whether the letter reflecting upon the Judge who held the inspection was contempt; it was treated as such and the apology accepted. And the High Court's inspection of the judicial work of the subordinate judiciary is a judicial function or is at least para-judicial. The Allahabad High Court punished the late Shri C. Y. Chintamani and Shri K. D. Malaviya for publishing a criticism to the effect that comparatively undeserving lawyers were being frequently raised

31. AIR 1959 Pat 373; 1959 Cri LJ 1013.

BARADAKANTA MISHRA v. REGISTRAR OF ORISSA HIGH COURT (*Krishna Iyer, J.*) 409

to the Bench. The Court held them guilty of contempt holding the criticism of the Judges as a vicious reflection and a case of contempt. (See *In the matter of an Advocate of Allahabad*)³² Borderline cases draw us to the penumbra of law and cannot light up dark corners.

81. The learned Additional Solicitor-General, in an endeavour to expand the meaning of "administration of justice" so as to rope in criticisms of executive acts of Judges, drew our attention to Articles 225, 227 and 235, and the provisions of earlier Government of India Act [c. f. Section 224(1) 1935 Act] which vest the power to appoint the staff and do other incidental management functions, in the High Court as part of the administration of justice. Several High Court Acts clothe Chief Justices with administrative powers and Civil Courts Acts and Letters Patents charge Judges with administrative duties, the goal being effective administration of justice. If the appointment of clerks is part of the administration of justice, denunciation of the Judges in these acts interferes with the administration of justice, liable to be visited with punishment. This means that if a judge in charge of appointments chooses relations or unqualified men or takes other consideration, the public must hold its tongue on pain of contempt. The paramount but restrictive jurisdiction to protect the public against substantial interference with the stream of justice cannot be polluted or diffused into an intimidatory power for the Judges to strike at adverse comments on administrative, legislative (as under Articles 225, 226 and 227) and extra-judicial acts. Commonsense and principle can certainly accept a valid administrative area so closely integrated with Court work as to be stamped with judicial character such as constitution of benches, transfer of cases, issue of administrative directions regarding submission of findings or disposal of cases by subordinate Courts, supervision of judicial work of subordinate Courts and the like. Not everything covered by Articles 225, 227 and 235 will be of this texture. To overkill is to undermine — in the long run.

82. We may now sum up. Judges and Courts have diverse duties. But functionally, historically and jurisprudentially, the value which is dear to the community and the function which deserves to be cordoned off from public molestation, is judicial. Vicious criticism of personal and administrative acts of Judges may indirectly mar their image and weaken the confidence of the public in the judiciary but the counter-vailing good, not merely of free speech but also of greater faith generated by exposure to the actinic light of bona fide, even if marginally over-zealous, criticism cannot be overlooked. Justice is no cloistered virtue.

83. The first part of the present case directly raises the question whether statements made in an appeal to the Governor against an order of the High Court on the administrative side attracts the contempt law. To our mind the answer arises from another question. Is the suspension of the District Judge so woven into and integrally connected with the administration of justice that it can be regarded as not purely an adminis-

32. AIR 1935 All 1 : 1935 ALJ 125 : 151 IC 955.

249

trative act but a para-judicial function? The answer must, on the facts here, be in the affirmative. The appeal was against the suspension which was a preliminary to contemplated disciplinary action. What was that action about? Against the appellant in his judicial capacity, for acts of judicial misconduct. The control was, therefore, judicial and hence the unbridled attack on the High Court for the step was punishable as contempt. A large margin must be allowed for allegations in remedial representations but extravagance forfeits the protection of good faith. In this case reckless excess has vitiated what otherwise could have been legitimate grievance at least in one flagrant instance, the others being less clear. One of the grounds for taking disciplinary action was based on the disposal of a civil appeal by the contemnor as Additional District Judge. He heard it, delivered judgment dismissing the appeal, signed the order sheet and judgment and sealed the judgment. Later in the day, the contemnor scored off his signatures in the order-sheet and judgment, and returned the record to the principal District Judge for disposal falsely stating that the judgment had not been delivered. The High Court took the view that this action was without jurisdiction and revealed utter disregard of truth and procedure deserving disciplinary action. Obviously, the impugned conduct of the contemnor was qua Judge and the evil criticism was of a supervisory act of the High Court and the critic would — and should — necessarily court contempt action. And in his memorandum of appeal the contemnor used expressions like 'mala fides' and 'subterfuge' without good faith, and in such a case no shelter can be sought in the alibi of 'administrative act'.

84. The second part of the charge relates to objectionable statements in the special leave petition to this Court. Ordinarily they must be out of bounds for the contempt power; for, fearless seeking of justice will otherwise be stifled.

85. In *State of Uttar Pradesh v. Shyam Sundar Lal*,³³ a complaint about the conduct of a judicial officer in a petition to the Prime Minister was held not to constitute contempt. The representation was forwarded by the Prime Minister's office to the Chief Secretary from whom it reached the District Magistrate. Certainly there was therefore sufficient publication in the law of libel but the Court held:

"A letter sent to the Prime Minister and not intended to be broadcast to the public or any section of the public cannot create an apprehension in the mind of public regarding the integrity, ability or fairness of the judge."

86. Similarly, in *Rex v. B. S. Nayyar*,³⁴ the Court considered a representation made to the Premier of the State about a judicial officer and also to the President of the All India Congress Committee. The Court took the view that such complaints may be addressed to the Premier about judicial officers since Government had to consider under the then rules the conduct of judicial personnel. "If these complaints are genuine and are made in a proper manner with the object of obtaining

33. AIR 1954 All 308; 1954 Cri LJ 645; ILR (1954) 2 All 278.

34. AIR 1950 All 549, 554; 51 Cri LJ 1500.

BARADAKANTA MISHRA v. REGISTRAR OF ORISSA HIGH COURT (*Krishna Iyer, J.*) 411

redress, and are not made mala fide with a view either to exert pressure upon the Court in the exercise of its judicial functions or to diminish the authority of the Court by vilifying it, it would not be in furtherance of justice to stifle them by means of summary action for contempt, *but rather the reverse.*" (emphasis added). A pregnant observation made by the Court deserves mention :

"It would indeed be extraordinary if the law should provide a remedy — the conduct of even a member of the highest Judicial Tribunal in the exercise of his judicial office may be the subject of enquiry with a view to see whether he is fit to continue to hold that office — and yet no one should be able to initiate proceedings for an enquiry by a complaint to the appropriate authority by reason of a fear of being punished for contempt, and I can find no justification for this view."

87. At this stage it must be noticed that in the *State of Madhya Pradesh v. Reva Shankar*,³⁵ this Court ruled that aspersions of a serious nature made against a Magistrate in a transfer petition could be punishable as a contempt if made without good faith. However, in *Govind Ram v. State of Maharashtra*,³⁶ this Court reviewed the decisions on the point and ruled that if in the garb of a transfer application scurrilous attacks were made on a court imputing improper motives to the Judge there may still be contempt of Court, although the Court referred with approval to the ruling in *Swarnamayi Panigrahi v. B. Nayak*,³⁷ that a latitudinarian approach was permissible in transfer applications. The core of the pronouncement is that a remedial process like a transfer application cannot be a mask to malign a judge, a certain generosity or indulgence is justified in evaluating the allegations against the Judge. Eventually, Grover, J., held that the allegations made in the proceeding in question were not sufficiently serious to constitute contempt. A liberal margin is permissible in such cases but batting within the crease and observing the rules of the game are still necessary. Irrelevant or unvarnished imputations under the pretext of grounds of appeal amount to foul play and perversion of legal process. Here, the author, a senior judicial officer who professionally weighs his thoughts and words, has no justification for the immoderate abuse he has resorted to. In this sector even truth is no defence, as in the case of criminal insult — in the latter because it may produce violent breaches and is forbidden in the name of public peace, and in the former because it may demoralise the community about Courts and is forbidden in the interests of public justice as contempt of court.

88. Even so, if Judges have frailties — after all they are human — they need to be corrected by independent criticism. If the judicature has serious shortcomings which demand systemic correction through socially-oriented reform initiated through constructive criticism, the contempt power should not be an interdict. All this, far from undermining the confidence of the public in Courts, enhances it and, in the last analysis, cannot be repressed by indiscriminate resort to contempt power. Even

35. 1959 SCR 1367; AIR 1959 SC 102: 1959 Cri LJ 251.

36. (1972) 1 SCC 740: 1972 SCC (Cri)

446.

37. AIR 1959 Ori 89: 1LR 1958 Cut 631: 1959 Cri LJ 626.

251

bodies like the Law Commission or the Law Institute and researchers, legal and sociological, may run 'contempt' risks because their professional work sometimes involves unpleasant criticism of judges, judicial processes and the system itself and thus hover perilously around the periphery of the law if widely construed. Creative legal journalism and activist statesmanship for judicial reform cannot be jeopardised by an undefined apprehension of contempt action.

89. Even in England a refreshingly pro-free-speech approach has been latterly adopted. Any episode in the administration of justice may be publicly or privately criticised, provided that the criticism is fair and temperate and made in good faith. Lord Denning, in the famous *Quintin Hogg case*,³⁹ laid down remarkable guidelines in the matter of actions for contempt. The learned Law Lord said :

"It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise; more particularly as we ourselves have an interest in the matter.

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done."

90. This Court has held that the law of contempt is valid notwithstanding Article 19(1). The contention was persisted in *C. K. Daphary v. O. P. Gupta*.³⁸ This Court came to the conclusion that the existing law of contempt imposes reasonable restrictions within the meaning of Article 19(2). "Apart from this, the Constitution makes this Court a guardian of fundamental rights conferred by the Constitution and it would not desire to enforce any law which imposes unreasonable restrictions on the precious right of freedom of speech and expression guaranteed by the Constitution". (Sikri, C. J.).

91. The Court being the guardian of people's rights, it has been held repeatedly that the contempt jurisdiction should be exercised "with scrupulous care and only when the case is clear and beyond reasonable doubt". [vide *R. v. Gray* (supra).]

38. (1958) 2 WLR 1204, 1206-07.

39. (1971) 1 SCC 626, 638 (Para 48) : 1971 SCC (Cri) 286, 298.

252

BARADAKANTA MISHRA V. REGISTRAR OF ORISSA HIGH COURT (*Krishna Iyer, J.*) 413

92. The policy directive can be gleaned from the ruling in *Special Reference No. 1 of 1964*,⁴⁰ where Gajendragadkar, C. J., speaking for the Court observed :

"We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely, and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct."

If judges decay the contempt power will not save them and so the other side of the coin is that Judges, like Caesar's wife, must be above suspicion.

93. To wind up, the key word is "justice", not "judge"; the key-note thought is unobstructed public justice, not the self-defence of a judge; the corner-stone of the contempt law is the accommodation of two constitutional values — the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel.

94. We have sought to set our legal sights in line with the new constitutional order and endeavoured so to draw the grey contours of the contempt law that it fulfils its high purpose but not more. We have tried to avoid subjectivism in the law, recognising, by a re-statement, the truth that "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by".⁴¹

95. The facts of the present case disclose that an incorrigible contemnor, who had made it almost his latter-day professional occupation to cross the High Court's path, has come to this Court in appeal. He has been reckless, persistent and guilty of undermining the High Court's authority in his intemperate averments in both petitions. But having regard to the fact that he is a senior judicial officer who has at some stage in his career displayed zeal and industry and is now in the sombre evening of an official career, a punishment short of imprisonment would have met the ends of justice and inspired in the public mind confidence in the justice administration by showing that even delinquent judges will be punished if they play with or pervert the due course of justice, as the contemnor here has done. A heavy hand is wasted severity where a lighter sentence may serve as well. A fine of Rs.1,000 with three months' imprisonment in default of payment will meet the ends of justice and we impose this sentence in substitution of the infliction of imprisonment by the High Court. With this modification Civil Appeal No. 41 of 1973 is dismissed. On the appeal by the State the course adopted in the leading judgment of Palekar, J., has our concurrence.

40. (1965) 1 SCR 413, 501 : AIR 1965 SC 745 : (1965) 1 SCJ 847.

41. Benjamin N. Cardozo—*The Nature of the Judicial Process*, New Haven : Yale University Press—Page 168.

(2/s.c.c.) E. M. S. NAMBOODRIPAD v. T. N. NAMBIAR : Hidayatullah, C. J.) 325

violation of Article 311 of the Constitution. This writ petition was rejected on August 25, 1969. In the special leave application, the appellant has averred that the Judicial Magistrate passed the order under Section 138 of the Indian Railways Act on August 30, 1969—only five days after the order of the High Court dismissing his writ petition—and it is contended that the impugned order must for that reason be held to have been inspired by malice against the appellant. We do not find any warrant for this assumption.

10. The appellant had also filed several miscellaneous applications in this Court which were dismissed by us after hearing him. He wanted to summon some witnesses and also some documents for proving that the allotment of the stalls had been made to him for the purpose of rehabilitating him as a displaced person. We did not consider it necessary to take evidence in this Court on that point. The written agreements, in our view, conclude the matter. The appellant also sought adjournment of this appeal on the ground that he wanted to engage a senior counsel to argue his appeal, but that counsel could only appear after the summer vacation. We did not consider that to be a sufficiently cogent ground for adjourning the appeal, the hearing of which was expedited on April 13, 1970. The appellant also applied for referring this case to the Constitution Bench because, according to him, the question raised was of great constitutional importance. We did not find any cogent ground for acceding to this prayer.

11. The appellant has, in his arguments, laid repeated stress on the submission that the impugned action of the railway administration would deprive him and his family of the only source of livelihood. That consideration has little relevance because this appeal has to be decided on the merits on the existing record in accordance with law. That indeed is a matter between the appellant and the railway administration. His request for allotment, we have no doubt, will be considered on its merits in accordance with the law and the relevant departmental practice. It is not for us in these proceedings to express any opinion on the merits of his claim.

12. This appeal fails and is dismissed.

1970(2) Supreme Court Cases 325

(Front Kerala)

[BEFORE M. HIDAYATULLAH, C. J. AND G. K. MITTER AND A. N. RAY, JJ.]

E. M. SANKARAN NAMBOODRIPAD

.. Appellant

Versus

T. NARAYANAN NAMBIAR†

.. Respondent.

Criminal Appeal No. 56 of 1968, decided on 31st July, 1970

Contempt of court—Scandalising the Judiciary in India as a whole—Chief Minister of Kerala's Press Conference Judges guided by class hatred and class interests—Bias against the poor—Favouritism to the rich—View based on Marx and Engels—Plea for election of Judges and change in the Constitutional set up.

†Appeal from the Judgment and Order, dated 9-2-1968 of the Kerala High Court in C. P. No. 5032 of 1967 (Contempt).

254

This is an appeal from the conviction for the contempt of court by the majority opinion (Mathew, J., dissenting) of the Kerala High Court, certified as fit for appeal under Article 134(1)(c) of the Constitution.

The conviction is based on certain utterances of the appellant, when he was Chief Minister, at a Press Conference held by him at Trivandrum, on November 9, 1967. The report of the Press Conference was published the following day in some Indian newspapers. The proceedings were commenced in the High Court on the sworn information of an Advocate of the High Court, based mainly on the report in the Indian Express. The appellant showed cause against the notice sent to him and in an elaborate affidavit stated that the report 'was substantially correct, though it was incomplete in some respects'. (Paras 1 and 2)

The offending passages of the news report of the Press Conference stated inter alia "Marx and Engels considered the Judiciary as an instrument of oppression and even today when the State set up his (sic), not undergone any change it continues to be so.....the Judges are guided and dominated by class hatred, class interests and class prejudices and where the evidence is balanced between a well dressed pot-bellied rich man and a poor ill-dressed and illiterate person, the judge instinctively favours the former..... Election of Judges would be a better arrangement, but unless the basic state set up is changed it cannot solve the problem".

The Chief Minister added that his party had always taken the view, the Chief Minister said that judiciary is part of the class rule of the ruling classes and there are limits to the sanctity of the judiciary. The Judiciary is weighted against workers, peasants and other sections of the working classes and the law and the

system of judiciary essentially serve the exploiting classes. Even where the judiciary is separated from the executive it is still subject to the influence and pressure of the executive. To say this is not wrong. The Judiciary he argued was only an institution like the President or Parliament or the Public Service Commission. Even the President is subject to impeachment. After all, sovereignty rested not with any one of them but with the people. Even with regard to Judges confidential records are being kept why? The judge is subject to his own idiosyncracies and prejudices. "We hold the view that they are guided by individual idiosyncracies, guided and dominated by class interests, class hatred, and class prejudices. In these conditions we have not pledged ourselves not to criticise the judiciary or even individual judgments".

This did not mean, he explained that they could challenge the integrity of the individual judge or cast reflections on individual judgments, the Chief Minister contended.

He did not subscribe to the view that it was an aspersion on integrity when he said that judges are guided and dominated by class hatred and class prejudices. "The High Court and the Supreme Court can haul me up, if they want" he said. (Para 3)

In his affidavit before the High Court the Chief Minister explaining his Press Conference stated that it did not offend the majesty of law, undermine 'the dignity of courts' or obstruct the administration of justice. Nor did it have any such tendency. He claimed that it contained a fair criticism of the system of judicial administration in an effort to make it conform to the peoples' objective of a democratic and egalitarian society based on socialism. He considered that it was not only his right but also his duty to educate public opinion. He claimed that the statement read as a whole amounted to a

(2)S.C.C.] E. M. S. NAMBOODRIPAD (T. N. NAMBIAR *Hidayatullah, C. J.*) 327

fair and reasonable criticism of the present judicial system in our country, that it was not intended to be a criticism of any particular judge, his judgment or his conduct, and that it could not be construed as contempt of court. He added that he had always enforced the judgments of the courts and shown respect to the judiciary and had advocated the

independence of the judiciary and decried all attempt to make encroachments upon it. Criticism of judiciary, according to him, was his right and it was being exercised by other parties in India. He denied that it was for the courts to tell the people what the law was and asserted that the voice of the Legislatures should be supreme.

Concept of scandalizing the Judges—If gone into desuetude—Scandalizing whole Judicial system if contempt.

The Supreme Court held :

(i) The chief forms of contempt are insult to judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court and scandalising the judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a single judge or a single court but may, in certain circumstances, be committed in respect

of the whole of the judiciary or judicial system. (Para 6)

(ii) It is not correct to say that the species of contempt called 'scandalising the court has gone into desuetude'.

Cases relied on :

Andre Paul Terence Ambard v. The Attorney General of Trinidad and Tobago, AIR 1936 PC 141 at 143; *Queen v. Gray*, (1900) 2 QB 36 at 40.

Cases explained and referred :

McLeod v. St. Aubyn, LR 1899 AC 549; *The Government Pleader, High Court, Bombay v. Tulsidas Subhanoo Jadhav*, ILR 1938 Bom 179; *R. v. Metropolitan Police Commissioner*, (1968) 2 WLR 1204; *In re Basudeo Prasad*, Advocate, Patna High Court.

(Paras 7 and 8)

Freedom of speech—Constitution of India—Articles 19(1)(a) and 19(2)—Provisions to be read with Articles 129 and 215—Freedom cannot prevail if contempt is manifest, mischievous or substantial.

The Court held :

(iii) The right to freedom of speech in Article 19(1)(a) is subject to the restrictions in Article 19(2).

These provisions are to be read with Articles 129 and 215 which specially confer on this Court and the High Courts the power to punish for contempt of themselves. Article 19(1)(a) guarantees complete freedom of speech and expression but it also makes an exception in respect of contempt of court. The guaranteed

right on which the functioning of our democracy rests, is intended to give protection to expression of free opinions to change political and social conditions and to advance human knowledge. While the right is essential to a free society, the Constitutional as itself imposed restrictions in relation to contempt of court and it cannot therefore be said that the right abolishes the law of contempt or that attacks upon judges and courts will be condoned. (Para 11)

256

(iv) Freedom of speech and expression will always prevail except where contempt is manifest, mischievous or substantial.

Relies on:

Samuel Roth v. United States of America, 1 L. Ed. 2d 1489 at 1506;

Charlotte Anita Whitney v. People of the State of California, 71 L. Ed 1093; *Arthur Terminiello v. City of Chicago*, 93 L. Ed. 1131 at 1134; *New York Times Company v. L. B. Sullivan*, 11 L. Ed. 2nd 686.

Kedar Nath Singh v. State of Bihar, (1962) 2 Supp CR 769, explains.

What is the import of the teachings of Marx, Engels and Lenin—Appellant guilty of distortion of these teachings.

Courts in India if sui generis—Interpretative jurisdiction of courts under the Constitution—If law defective, reform in law called for and nor maligning courts which is contempt—Good faith of Judges cannot be attacked—Imputing class bias is contempt—Lowering prestige of courts in the eyes of the people—

Reduction of fine to meet ends of Justice.

The Court held:

(v) that the appellant attacked the judiciary directly as "an instrument of oppression" and the judges as "dominated by class hatred, class interests and class prejudices", "instinctively" favouring the rich against the poor. He said that as part of the ruling classes the judiciary "works against workers" and "the law and system of judiciary essentially serve the exploiting classes". (Para 14)

These statements he bases on the teachings of Marx, Engels and Lenin. This is not correct. The teachings of Marx, Engels and Lenin are different.

(Paras 16—27)

Engels regarded courts as are of the means adopted by the law for effectuating itself. (Para 26)

He only said that judicial functionaries must be divested of 'sham independence' which marked their subservience to succeeding Governmentshe was not charging the judiciary with taking sides but only as an evil adjunct of the administration of class legislation. The fault was with the State and the laws, and not with the judiciary. (Para 27)

Either the appellant does not know the teachings of Marx, Lenin and Engels or has deliberately distorted their writings for his own purpose. (Para 29)

(vi) The Courts in India are not sui generis. They function under the Constitution which alone is supreme. The power of interpretation by Courts has never been used with bias in favour of Government or the rich classes.

(Para 30)

(vii) If the Constitution and the law are defective the path of reform is open. The courts cannot be malign-ed if there is defect in the law.

The courts must do their duty according to their own understanding of the laws and the obligations of the Constitution. They cannot take their cue from sentiments of politicians nor even indirectly give support to something which they consider to be wrong or against the Constitution and the laws. The good faith of the judges is the firm bed-rock on which any system of administration securely rests and an attempt to shake the people's confidence in the courts is to strike at the very root of our system of democracy. The oft-quoted anger of the Executive in the United States at the time of the New Deal and the threat to the Supreme Court should really point the other way and it should be noted that today the security of the United States rests upon its dependence on Constitution for nearly 200 years and that is mainly due to the Supreme Court. (Para 31)

257

(2)S.C.C.] E. M. S. NAMBOODIRIPAD & T. N. NAMBIAR (*Hidayatullah, C. J.*) 329

(viii) To charge the judiciary as an instrument of oppression, the Judges as guided and dominated by class hatred, class interests and class prejudice, instinctively favouring the rich against the poor is to draw a very distorted and poor picture of the judiciary. It is clear that it is an attack upon Judges which is calculated to raise in the minds of the people a general dissatisfaction with and distrust of all judicial decisions. It weakens the authority of law and law courts. (Para 32)

(ix) The law punishes not only acts which in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. Judged from the angle of courts and administration of justice there is not a semblance of doubt that the appellant was guilty of contempt of court. Whether he misunderstood the teachings of Marx, and Engels or deliberately distorted them is not to much purpose. The

likely effect of his words must be seen and they have clearly the effect of lowering the prestige of judges and courts in the eyes of the people. That he did not intend any such result may be a matter for consideration in the sentence to be imposed on him but cannot serve as a justification.

(Para 34)

(x) The ends of justice are amply served by (a) exposing the appellant's error about the true teachings of Marx and Engels (b) and sentencing him to a nominal fee. Fine is reduced from Rs. 1,000 to Rs. 50. In default of payment simple imprisonment for one week will follow. With this modification the appeal is dismissed. (Para 35)

Advocates who appeared in this case :

V. K. Krishna Menon, Senior Advocate
(D. P. Singh, Advocate of Messrs. Ramamurthi & Co. and N. Natar and V. J. Francis, Advocates with him), for Appellant.

A. V. V. Nair, Advocate (Respondent also appeared in person), for Respondent.

M. R. K. Pillai, Advocate, for Intervener.

The Judgment of the Court was delivered by

HIDAYATULLAH, C. J.—Mr. E. M. S. Namboodiripad (former Chief Minister of Kerala) has filed this appeal against his conviction and sentence of Rs. 1,000/- fine or simple imprisonment for one month by the High Court of Kerala for contempt of Court. The judgment, February 9, 1968, was by majority—Mr. Justice Raman Nair (now Chief Justice) and Mr. Justice Krishnamoorthy Iyer formed the majority. Mr. Justice Mathew dissented. The case has been certified by them as fit for appeal to this Court under Article 134(1)(c) of the Constitution.

2. The conviction is based on certain utterances of the appellant, when he was Chief Minister, at a Press Conference held by him at Trivandrum, on November 9, 1967. The report of the Press Conference was published the following day in some Indian newspapers. The proceedings were commenced in the High Court on the sworn information of an Advocate of the High Court, based mainly on the report in the Indian Express. The appellant showed cause against the notice sent to him and in an elaborate affidavit stated that the report 'was substantially correct, though it was incomplete in some respects'.

3. The offending parts of the Press Conference will be referred to in this judgment, but we may begin by reading it as a whole. This is what was reported :

"Marx and Engels considered the judiciary as an instrument of oppression and even today when the State set up his (sic) not undergone

any change it continues to be so, Mr. Nambudiripad told a news conference this morning. He further said that judges are guided and dominated by class hatred, class interests and class prejudices and where the evidence is balanced between a well-dressed pot-bellied rich man and a poor ill-dressed and illiterate person the judge instinctively favours the former, the Chief Minister alleged.

The Chief Minister said that election of Judges would be a better arrangement, but unless the basic State set up is changed, it could not solve the problem.

Referring to the Constitution the Chief Minister said the oath he had taken was limited only to see that the constitutional provisions are practised. 'I have not taken any oath' the Chief Minister said "that every word and every clause in the Constitution is sacred".

Before that he had also taken an oath, Mr. Nambudiripad said, holding aloft a copy of the Marxist party's programme and read out extracts from it to say that the oath had always held that nothing much could be done under the limitations of the Constitution.

Raising this subject of Constitution and judiciary *suo motu* at the lag end of his news conference the Chief Minister said so many reports have appeared in the press that Marxists like himself, Mr. A. K. Gopalan, and Mr. Imbichi Baba (Transport Minister) were making statements critical of the judiciary "presumably with the idea that anything spoken about the court is contempt of Court".

His party had always taken the view, the Chief Minister said that judiciary is part of the class rule of the ruling classes. And there are limits to the sanctity of the judiciary. The judiciary is weighted against workers, peasants and other sections of the working classes and the law and the system of judiciary essentially serve the exploiting classes. Even where the judiciary is separated from the executive it is still subject to the influence and pressure of the executive. To say this is not wrong. The judiciary he argued was only an institution like the President or Parliament or the Public Service Commission. Even the President is subject to impeachment. After all, sovereignty rested not with any one of them but with the people. Even with regard to Judges confidential records are being kept why? The Judge is subject to his own idiosyncracies and prejudices. 'We hold the view that they are guided by individual idiosyncracies, guided and dominated by class interests, class hatred, and class prejudices. In these conditions we have not pledged ourselves not to criticise the judiciary or even individual judgments'.

This did not mean, he explained that they could challenge the integrity of the individual judge or cast reflections on individual judgments, the Chief Minister contended.

He did not subscribe to the view that it was an aspersion on integrity when he said that judges are guided and dominated by class hatred and class prejudices. 'The High Court and the Supreme Court can haul me up, if they want' he said.

4. The affidavit which he filed later in the High Court explained his observations at the press conference, supplied some omissions and pleaded want of intention to show disrespect and justification on the ground that the offence charged could not be held to be committed, in view of guarantees

(2;S.C.C.) E. M. S. NAMBOODRIPAD v. T. N. NAMBIAR (*Hidayatullah, C. J.*) 331

of freedom of speech and expression under the Constitution. He stated that his observations at the press conference did no more than give expression to the Marxist philosophy and what was contained in Chapter 5 of the Programme of the Communist Party of India (Marxist) adopted in November 1964. His pleas in defence were accepted by Justice Mathew who found nothing objectionable which could be termed contempt of court. The other two learned Judges took the opposite view. Judgment was entered on the basis of the majority view.

5. In explaining his press conference the appellant added that it did not offend the majesty of law, undermine 'the dignity of courts' or obstruct the administration of justice. Nor did it have any such tendency. He claimed that it contained a fair criticism of the system of judicial administration in an effort to make it conform to the peoples' objective of a democratic and egalitarian society based on socialism. He considered that it was not only his right but also his duty to educate public opinion. He claimed that the statement read as a whole amounted to a fair and reasonable criticism of the present judicial system in our country, that it was not intended to be a criticism of any particular judge, his judgment or his conduct, and that it could not be construed as contempt of court. He added that he had always enforced the judgments of the courts and shown respect to the judiciary and had advocated the independence of the judiciary and decried all attempt to make encroachments upon it. Criticism of the judiciary, according to him, was his right and it was being exercised by other parties in India. He denied that it was for the courts to tell the people what the law was and asserted that the voice of the Legislatures should be supreme. He, however, found his party at variance with the other parties in that according to the political ideology of his party the State (including all the three limbs—the Legislature, the Executive and the Judiciary) was the instrument of the dominant class or classes, so long as society was divided into exploiting and exploited classes, and parliamentary democracy was an organ of class oppression. He concluded that his approach to the judiciary was :

- (a) the verdicts of the courts must be respected and enforced ;
- (b) no aspersions should be cast on individual judges or judgments by attributing motives to judges ;
- (c) criticism of the judicial system or of judges going against the spirit of legislation should be permissible ; and
- (d) education of the people that the State (including the judiciary) was an instrument of exploitation of the majority by the ruling and exploiting classes, was legitimate.

These principles he submitted, were not transgressed by him and also summed up his observations and the press conference.

6. The law of contempt stems from the right of the courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in facie curiae and by the superior courts on their own behalf or on behalf of courts subordinate to them even if committed outside the courts. Formerly, it was regarded as inherent in the powers of a Court of Record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempts. The chief forms of contempt are insult to judges, attacks upon them, comment on pending proceedings with

a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court and scandalising the judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a single judge or a single court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system. The question is whether in the circumstances of this case the offence was committed.

7. In arguing the case of the appellant Mr. V. K. Krishna Menon contended that the law of contempt must be read without encroaching upon the guaranteed freedom of speech and expression in Article 19(1)(a) of the Constitution, that the intention of the contemner in making his statement at the press conference should be examined in the light of his political views as he was at liberty to put them before the people and lastly the harm done to the courts by his statements must be apparent. He admitted that it might be possible to say that the speech constituted contempt of court but submitted that it would be inexpedient to do so. He stated further that the species of contempt called 'scandalising the court' had fallen in desuetude and was no longer enforced in England and relied upon *McLeod v. St. Aubyn*.¹ He further submitted that the freedom of speech and expression gave immunity to the appellant as all he did was to give expression to the teachings of Marx, Engels and Lenin. Lastly, he contended that general remark regarding courts in general did not constitute contempt of court and relied upon *The Government Pleader, High Court, Bombay v. Tulsidas Subbanrao Jadhav*² and the observations of Lord Denning M. R. in *R. v. Metropolitan Police Commissioner*.³

8. It is no doubt true that Lord Morris in 1899 A. C. 549 at p. 561 observed that the contempt of court known from the days of the Star Chamber as *Scandalum Justiciar Curiae* or scandalising the judges, had fallen into disuse in England. But as pointed out by Lord Atkin in *Andre Paul Terence Ambard v. The Attorney General of Trinidad and Tobago*⁴ the observations of Lord Morris were disproved within a year in *The Queen v. Gray*.⁵ Since then many convictions have taken place in which offence was held to be committed when the act constituted scandalizing a judge.

9. We may dispose of the Bombay case above cited. The contemner in that case had expressed contempt for all courts. Beaumont, C. J. (Wasoodew, J., concurring) held that it was not a case in which action should be taken. The case did not lay down that there could never be contempt of court even though the court attacked was not one but all the courts together. All it said was that action should not be taken in such a case. If the Chief Justice intended laying down the broad proposition contended for we must overrule his dictum as an incorrect statement of law. But we think that the Chief Justice did not say anything like that. He was also influenced by the unconditional apology and therefore discharged the rule.

10. Another case cited in this connection may be considered here. In Criminal Appeal No. 110 of 1960 (*In Re Basudeo Prasad, Advocate, Patna High Court*) decided on May 3, 1962, the offending statement was that many

1. LR 1899 AC 549.

2. ILR 1958 Bom 179.

3. (1968) 2 WLR 1204.

4. AIR 1936 PC 141 at 143.

5. (1900) 2 QB 36 at 40.

261

(2)S.C.C.] E. M. S. NAMBOODRIPAD & T. N. NAMBIAR (*Hidayatullah, C. J.*) 333

lawyers without practice get appointed as judges of the High Courts. The remark was held by this court not to constitute contempt of court. The remark was made after the report of the Law Commission was published and this Court held that the person concerned, who was then the Secretary of the Indian Council of Public Affairs and an advocate, was entitled to comment on the choice of judges and that the remarks were within the proper limits of public criticism on a question on which there might be differences of opinion. In our judgment that case furnishes no parallel to the case we have here. Each case must be examined on its own facts and the decision must be reached in the context of what was done or said.

11. The appellant has contended before us that the law of contempt should be so applied that the freedom of speech and expression are not whittled down. This is true. The spirit underlying Article 19(1)(a) must have due play but we cannot overlook the provisions of the second clause of the article. While it is intended that there should be freedom of speech and expression, it is also intended that in the exercise of the right, contempt of court shall not be committed. The words of the second clause are :

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the sub-clause.....in relation to contempt of court, defamation or incitement to an offence."

These provisions are to be read with Articles 129 and 215 which specially confer on this Court and the High Courts the power to punish for contempt of themselves. Article 19(1)(a) guarantees complete freedom of speech and expression but it also makes an exception in respect of contempt of court. The guaranteed right on which the functioning of our democracy rests, is intended to give protection to expression of free opinions to change political and social conditions and to advance human knowledge. While the right is essential to a free society, the Constitution has itself imposed restrictions in relation to contempt of court and it cannot therefore be said that the right abolishes the law of contempt or that attacks upon judges and courts will be condoned.

12. Mr. V. K. Krishna Menon read to us observations from *Samuel Roth v. United States of America*⁶, *Arthur Terminiello v. City of Chicago*⁷, *Charlotte Anita Whitney v. People of the State of California*⁸ and *New York Times Company v. L. B. Sullivan*⁹, on the high-toned objective in guaranteeing freedom of speech. We agree with the observations and can only say that freedom of speech and expression will always prevail except where contempt is manifest, mischievous or substantial. The question always is on which side of the line the case falls. The observations of this Court in *Kedar Nath Singh v. State of Bihar*¹⁰ in connection with sedition do not lend any assistance because the topic there discussed was different. Freedom of speech goes far but not far enough to condone a case of real contempt of court. We shall, therefore, see whether there was any justification for the appellant which gives him the benefit of the guaranteed right.

13. The appellant has maintained that his philosophy is based upon that of Marx and Engels. Indeed he claims to be descended from the last

6. 1 L Ed 2d 1489 at 1506.

7. 93 L Ed 1131 at 1134.

8. 71 L Ed 1095.

9. 11 L Ed 2d 686.

10. (1962) 2 Supp SCR 769.

philosopher and seeks to educate the exploited peoples on the reality behind class oppression. As a Marxist-Leninist he advocates the radical and revolutionary transformation of the State from the coercive instrument of exploiting classes to an instrument which the exploited majority can use against these classes. In this transformation he wishes to make the state wither away and with the state its organs, namely, the Legislature, the Executive and the Judiciary also to change. He has justified the press conference as an exposition of his ideology and claims protection of the first clause of Article 19(1) which guarantees freedom of speech and expression. The law of contempt, he says, cannot be used to deprive him of his rights.

14. All this is general but the appellant attacked the judiciary directly as "an instrument of oppression" and the judges as "dominated by class hatred, class interests and class prejudices", "instinctively" favouring the rich against the poor. He said that as part of the ruling classes the judiciary "works against workers, peasants and other sections of the working classes" and "the law and the system of judiciary essentially serve the exploiting classes". Even these statements, he claims, are the teachings of Marx, Engels and Lenin whose follower he is. This was also the submission of his counsel to us.

15. The appellant is only partly right. He and his counsel may be said to have distorted the approach of Marx, Engels and Lenin, and we proceed to explain how. Marx believed in man's inherent rationalism and virtue and depended upon them to create a better society where there would be no injustice and oppression and everyone would be able to share the fruits of man's labour and genius. He attacked all forms of social evils. Hence his sympathy for the neglected and the 'injured and insulted' labouring masses. Marx was neither first nor alone in this. Before him the Judeo-Christians demanded social justice. Others who preached social equality and denounced social injustice were the Utopian Socialists and the Christian Socialists. They had all pointed out inequalities of civilization based on urban industrial development. We had thus Auguste Comte's *Cours de philosophie positive*, Feuerbach's *History of New Philosophy* and the writings of Hegel.

16. Marx's contribution was to create a scientific and ethical approach to the problem of inequality. He adopted the Hegelian dialectical form to explain how the capitalist society had arisen and showed how it would meet its fall. His view was that it nursed within itself the germ of its own destruction. In his classic book *Das Kapital* he disclosed the clues for the transition from capitalism to socialism. His labour theory was that the capitalist did not give to labour a due share from the value of the goods produced by labour because of the iron law of wages and this left the surplus labour value thereby saved in the hands of the capitalist. In this way the capitalist became an exploiter who grew rich on the exploited labour surplus and could indulge in what he called 'capitalist luxuries'. The introduction of machinery further cut down labour value and increased unemployment leading to reduction of wages. In this way the means of production passed into the hands of a few. Marx saw that this led to tensions which Marx thought would ultimately destroy the capitalist system. He saw the Revolution drawing nearer which would destroy 'classes' and the exploitation of man by man. There was in his view one obstruction to the triumph of the working classes and that was government established by the capitalists who could frame law to enforce the differences. From this stemmed his hostility to the State, its government and its laws.

17. The Communist Manifesto, which spoke of class struggle, particularly

(2)S.C.C.] E. M. S. NAMBOODRIPAD v. T. N. NAMBIAR (*Hidayatullah, C. J.*) 335

between the bourgeoisie and the proletarians, gave a history of the domination of the ruling classes converting everyone not belonging to itself into paid wage-labourers. He said that these reactionaries were gearing all production to their own benefit and power. Describing the communists in this context, the Manifesto said that they had no separate interests but represented the proletariat as a whole, irrespective of nationalities and that the class struggle was universal. The communists were to settle the lines of action and their aim was abolition of property—not property of the common man but the bourgeois property of the capitalist created by surplus from wage-labour and resulting in accumulation of capital in the hands of the capitalist. According to the communists, this capital became not a personal but social power and the fight visualized in the Manifesto was the termination of its class character. Wage-labour would thus leave no surplus, nor would it lead to accumulation of more wage-labour yielding still greater surplus but the gains of production would go to enrich labour in the communist society. Freedom according to the Manifesto never meant the abolition of property in toto but the abolition of the bourgeois individuality. What was done away with was not property but the means of subjugating labour of others to one's own use. This in short is the communist thesis of social equality as one gathers from the Manifesto.

18. Next follow the steps for achieving the betterment of what Saint-Simon described as the largest and poorest class. Engels in his *Analysis of Socialism* explained the different types but we are not concerned with them here. The radicals' appeal followed the forces of reaction released in the 1880s by Tzar Alexander III. The Populists of Plekhanov were routed and driven out. Then in 1890s the young intellectuals took up the cause of socialism and Marxism provided the answer where the moderation and escapism of the Populists had failed. The former was based on a scientific approach while Populism was empiric and tended to make Russia, as Bulgakov wrote, 'a peasant and crude country'. The Populists based themselves on the Peasant Communes. The rise of Vladimir Lenin at this time determined the future of Marxism and his classic "the State And Revolution", appears to be in the mind of the appellant when he made his pronouncements. We are doubtful if he has fully appreciated the literature, if he has read it.

19. Lenin's teaching on the State had removed the distortions of Marxism from the minds of the people. He quoted long extracts from Marx and Engels to establish his points. Lenin first took up Engel's *Origin of the Family, Private Property and the State*. The State, according to Engels, was not the image and reality of Reason as Hegel has maintained before. It was the product of society, a power standing above society like the Leviathan of Hobbes. According to Lenin the State was the product and manifestation of the irreconcilability of class antagonism. The State emerged when class antagonisms could not objectively be reconciled. The distortion which had crept into Marxism was that the State was regarded as an organ for the reconciliation of the classes. Lenin reinterpreted Marx and, according to him, the State could neither arise nor maintain itself if it were possible to reconcile classes. Marx had thought of the State as an organ of class rule and an organ of oppression. The view of the Mensheviks and other Socialist revolutionaries were exactly the converse.

20. The disputes which have arisen in our country over the inviolability of property as a fundamental right have the same foundations. One side views that the chapter on Fundamental Rights reconciles, through itself, the basic and fundamental class antagonisms and the State is no longer required to play any part. The other side would give to one of the organs of the State, namely,

264

the Legislature, a continual power of readjustment through laws and amendments of the Constitution. Both views do not accord with the Communist Manifesto and hence the distrust of the Constitution by the communists disclosed by the appellant.

21. Lenin, however, thought that the State degenerated into an instrument for the exploitation of the oppressed classes and wielded special public powers to tax and maintain armies. Engels thought that this made the State stand above society and the officers of the State were specially protected as they had the protection of the laws. From this sprung his hostility to the State. Engels summed it up thus:

"The State is by no means a power forced on society, from without. Neither as little is it 'the reality of the ethical idea', 'the image and reality of reason' as Hegel maintains. The state is a product of society at certain stage of development; it is the admission that this society has become entangled in an insoluble contradiction with itself, that it is cleft into irreconcilable antagonisms which it is powerless to dispel. But in order that these antagonisms, classes with conflicting economic interests, might not consume themselves and society in sterile struggle, a power seemingly standing above society becomes necessary for the purpose of moderating the conflict, of keeping it within the bounds of 'order'. And this power, arisen out of society, but placing itself above it, and increasingly alienating itself from it, is the State."

Lenin resumed this thought further thus:

"This expresses with perfect clarity the basic idea of Marxism on the question of the historical role and meaning of the State. The State is the product and the manifestation of the irreconcilability of class antagonisms. The State arises when, where and to the extent that class antagonisms objectively cannot be reconciled. And, conversely, the existence of the State proves that the class antagonisms are irreconcilable."

22. Having viewed the state in this way these writers from Marx to Lenin viewed it as the instrument for the exploitation of the oppressed classes. The Paris Commune of 1871 had stated its conclusions how the state gets above society but it was blurred in a reactionary manner later by Kautsky in 1912. Lenin cleared the misconception in an exposition of Engel's philosophy:

".....As the state arose from the need to hold class antagonisms in check, but as it arose, at the same time, in the midst of the conflict of these classes, it is, as a rule, the state of the most powerful economically dominant class, which through the medium of the state, becomes also the politically dominant class and thus acquires means of holding down and exploiting the oppressed classes.....the modern representative state is an instrument of exploitation of wage labour by capital."

Engels added further:

"In a democratic republic wealth exercises its power indirectly, but all the more surely 'first by means of the direct corruption of officials' and the second, by means of 'an alliance between the Government and Stock Exchange'."

Lenin gave the example that "at the present time, imperialism and the domination of the banks have 'developed' both these methods of upholding and giving effect to the omnipotence of wealth in democratic republics of all

265

(2) S.C.C.] E. M. S. NAMBOODRIPAD D. T. N. KAMBIAN (*Hidayatullah, C. J.*) 337

descriptions into an unusually fine art". He concluded that "a democratic republic is the best possible political shell for capitalism" and that "it establishes its power so securely, so firmly, that no change whether of persons, of institutions, or of parties in the bourgeois-democratic republic can shake it".

23. Therefore, Marx, Engels and Lenin thought in terms of 'withering away of the state'. Although Lenin thought that Engel's doctrines were an adulteration of Marxism, he was not right. Marx himself believed in this. In his *Poverty of Philosophy*, Marx says :

".....The working class, in the course of development, will substitute for the old bourgeois society an association which will exclude classes and their antagonism, and there will be no more political power properly so-called, since political power is precisely the official expression of antagonism in bourgeois society."

Marx and Engels in the *Manifesto* had considered the true state to be 'the proletariat organised as the ruling class'. It was the Kautskyites (the Dictatorship of the Proletariat) who, misunderstanding the doctrines of Marx, taught that the proletariat needed the state. According to Marx the proletariat needed a state which must wither away leading to the dictatorship of the proletariat.

24. In this fight for power the Communist Manifesto gave a purely abstract solution. It was the substitution of the Commune for the bourgeois State machinery and a fuller democracy. The Army was to be replaced by armed people, the officials were to be elected and also the judges. The Commune was not to be 'a talking parliament' but a 'working body'. It was to be the executive and the Legislature at the same time. The principles were formulated by Engels thus :

"The necessity of political action by the proletariat and of its dictatorship as the transition to the abolition of classes and with them the State.....".

25. The thesis on the withering away of the State was to be accompanied by a restatement of the functions of the law. Law made by the bourgeois rulers was castigated as involving class supremacy. The Hegelian doctrine of the apotheosis of reason was replaced by the invocation of economic necessity as the only foundation for laws. The laws which preserved privileges were to go, laws which kept the power of the bourgeois above the people were to go, only laws creating equality and preserving society from internal decay and disruption were to be tolerated.

26. In all the writings there is no direct attack on the judiciary selected as the target of people's wrath. Nor are the judges condemned personally. Engels regarded the courts as one of the means adopted by the law for effectuating itself. It was thus that he wrote :

"The centralised State power, with its ubiquitous organs, standing army, police, bureaucracy, clergy and judicature organs wrought after the plan of a systematic and hierarchic division of labour—originates from the days of absolute monarchy, serving nascent middle-class society as mighty weapons in its struggles against feudalism."

27. This is not a castigation of the judiciary as being dishonestly ranged against the people but only a recital of a historic fact in feudal societies. He only said that the judicial functionaries must be divested of 'sham independence' which marked their subservience to succeeding governments, and,

266

therefore, be elected. In one of his letters to the Spanish Federal Council of the International Workingmen's Association, London, February 13, 1871, he talked of the power of the possessing classes—the landed aristocracy and the bourgeoisie—and said that they kept the working people in servitude not only by their wealth got by the exploitation of labour but also by the power of the State, by the army, the bureaucracy, and the courts. He was not charging the judiciary with taking sides but only as an evil adjunct of the administration of class legislation. The fault was with the State and the laws and not with the judiciary. Indeed in no writing which we have seen or which has been brought to our notice, Marx or Engels has said what the appellant quotes them as saying.

28. We have summarized into a very small compass, many thousands of words in which these doctrines have been debated from Plekhanov to Lenin through the thoughts of Kautsky, Kerensky, Lasalle, Belinsky and others who attempted a middle line between the revisionism of Bernstein and the Bolshevik views of Lenin. We have done so because Mr. V. K. Krishna Menon sneered that many people learn about communism through Middleton Murray!

29. It will be noticed that in all these writings there is not that mention of judges which the appellant has made. Either he does not know or has deliberately distorted the writings of Marx, Engels and Lenin for his own purpose. We do not know which will be the more charitable view to take. Marx and Engels knew that the administration of justice must change with laws and changes in society, there was thus no need to castigate the judges as such beyond saying that the judicial system is the prop of the State.

30. The courts in India are not *sui generis*. They owe their existence, form, powers, and jurisdiction to the Constitution and the laws. The Constitution is the supreme law and the other laws are made by Parliament. It is they that give the courts their obligatory duties, one such being the settlement of disputes in which the State (by which we mean those in authority) are ranged against citizens. Again they decide disputes in which class interests are apparent. The action of the courts when exercised against the State proves irksome to the state and equally when it is between two classes, to the class which loses. It is not easily realized that one of the main functions of courts under Constitution is to declare actions, repugnant to the Constitution or the laws (as the case may be), to be invalid. The courts as well as all the other organs and institutions are equally bound by the Constitution and the laws. Although the courts in such cases imply the widest powers in the other jurisdictions and also give credit where it belongs they cannot always decide either in favour of State or any particular class. There are innumerable cases in which the decisions have gone against what may be described in the language of communism as the exploiting classes.

31. For those who think that the laws are defective, the path of reform is open but in a democracy such as ours to weaken the judiciary is to weaken democracy itself. Where the law is silent the courts have discretion. The existence of law containing its own guiding principles, reduces the discretion of courts to a minimum. The courts must do their duty according to their own understanding of the laws and the obligations of the Constitution. They cannot take their cue from sentiments of politicians nor even indirectly give support to something which they consider to be wrong or against the Constitution and the laws. The good faith of the judges is the firm bed-rock on which any system of administration securely rests and an attempt to shake

(2)S.C.C.] **Z. M. S. NAMBOODRIPAD V. T. N. NAMBIAR** (*Hidayatullah, C. J.*) 339

the people's confidence in the courts is to strike at the very root of our system of democracy. The oft-quoted anger of the Executive in the United States at the time of the New Deal and the threat to the Supreme Court (which the United States had the good sense not to pursue) should really point the other way and it should be noted that today the security of the United States rests upon its dependence on Constitution for nearly 200 years and that is mainly due to the Supreme Court.

32. The question thus in this case is whether the appellant has said anything which brings him out of the protection of Article 19(1)(a) and exposes him to a charge of contempt of court. It is obvious that the appellant has misguided himself about the true teachings of Marx, Engels and Lenin. He has misunderstood the attack by them on State and the laws as involving an attack on the judiciary. No doubt the courts, while upholding the laws and enforcing them, do give support to the State but they do not do so out of any impure motives. They do not range themselves on the side of the exploiting classes and indeed resist them when the law does not warrant an encroachment. To charge the judiciary as an instrument of oppression, the judges as guided and dominated by class-hatred, class interests and class-prejudices, instinctively favouring the rich against the poor is to draw a very distorted and poor picture of the judiciary. It is clear that it is an attack upon judges which is calculated to raise in the minds of the people a general dissatisfaction with, and distrust of all judicial decisions. It weakens the authority of law and law courts.

33. Mr. V. K. Krishna Menon tried to support the action of the appellant by saying that judges are products of their environment and reflect the influences upon them of the society in which they move. He contended that these subtle influences enter into decision making and drew our attention to the writings of Prof. Laski, Justice Cordozo, Holmes and others where the subtle influences of one's upbringing are described. This is only to say that judges are as human as others. But judges do not consciously take a view against the conscience or their oaths. What the appellant wishes to say is that they do. In this he has been guilty of a great calumny. We do not find it necessary to refer to these writings because in our judgment they do not afford any justification for the contempt which has patently been committed. We agree with Justice Raman Nair that some of them have the exaggerations of the confessional. Others came from persons like the appellant, who have no faith in institutions hallowed by age and respected by the people.

34. Mr. V. K. Krishna Menon exhorted us to give consideration to the purpose for which the statement was made, the position of the appellant as the head of a State, his sacrifices, his background and his integrity. On the other hand, we cannot ignore the occasion (a press conference), the belief of the people in his word as a Chief Minister and the ready ear which many in his party and outside would give to him. The mischief that his words would cause need not be assessed to find him guilty. The law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. Judged from the angle of courts and administration of justice, there is not a semblance of doubt in our minds that the appellant was guilty of contempt of court. Whether he misunderstood the teachings of Marx and Engels or deliberately distorted them is not to much purpose. The likely effect of his words must be seen and they have clearly the effect of lowering the prestige of judges and courts in the eyes of the people. That he did not intend any such result may be a matter for consideration in the sentence to be imposed on him but cannot serve as a justification. We uphold the conviction.

35. As regards sentence we think that it was hardly necessary to impose a heavy sentence. The ends of justice in this case are amply served by exposing the appellant's error about the true teachings of Marx and Engels (behind whom he shelters) and by sentencing him to a nominal fine. We accordingly reduce the sentence of fine to Rs. 50/-. In default of payment of fine he will undergo simple imprisonment for one week. With this modification the appeal will be dismissed.

1970(2) Supreme Court Cases 340

(Original Jurisdiction)

[BEFORE S. M. SIKRI, J. M. SHELAT, V. BHARGAVA, G. K. MITTER AND
C. A. VAIDMALINOAM, JJ.]

SHRI N. SRI RAMA REDDY, ETC.

Petitioners;

Versus

SHRI V. V. GIRI

Respondent.

Election Petitions Nos. 4 and 5 of 1969, decided on April 27, 1970

**Evidence Act, 1872 (1 of 1872)—Section 146—Exceptions 2, 151, 155
—Clause 3—Applicability.**

Section 146 deals with question lawful in cross-examination and, in particular, clause(1) thereof provides for a witness being cross-examined by questions being put to him which tend to test his veracity. Section 153 generally deals with exclusion of evidence to contradict answers to questions testing veracity, but exception 2 states that if a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted. Section 155 deals with impeaching the credit of witness by the various ways dealt with in clauses (1) to (4). One of the ways

by which the credit of a witness may be impeached is dealt with in clause (3) and that is by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted. It may be that clause (3) of Section 146 may have to be read along with the main Section 153, clause (3) but clause (1) of Section 146 and exception (2) to Section 153 deal with different aspects. Under Section 146(1) questions may be put to a witness in cross-examination to test his veracity and, under Exception 2 to Section 153 a witness may be contradicted when he denies any question tending to impeach his impartiality.

Evidence Act, 1872 (1 of 1872)—Section 146(1), Section 153, Exception 2—Tape-recorded conversation—Admissibility—Tape-recorded conversation.

Held—Admissible—Can be received in evidence.

In Election Petition No. 5 of 1969 the petitioners alleged that the offences of undue influence for the election of the President of India had been committed by the returned candidate Shri V. V. Giri and by his supporters with the connivance of returned candidate. It was also alleged in the

Petition that with the object of interfering with the free exercise of electoral rights by Shri N. Sanjiva Reddy, a candidate at the election, one Shri Jagat Narain and certain other persons named in the said petition who were described as supporters and workers of the returned candidate in general

1952 SCR 425: AIR 1952 SC 149: 1952 Cri LJ 832

Bathina Ramakrishna Reddy v. State of Madras

BATHINA RAMAKRISHNA REDDY . . . Appellant;

Versus

STATE OF MADRAS . . . Respondent.

On Appeal by Special Leave from the Judgment and Order dated 10th April, 1950 of the High Court of Judicature at Madras (Rajamannar, C.J. and Balakrishna Ayyar, J.) in Contempt Application No. 10 of 1949.

Criminal Appeal No. 13 of 1951, decided on 14th day of February, 1952.

Present:

THE HON'BLE CHIEF JUSTICE M. PATANJALI SASTRI

THE HON'BLE JUSTICE MEHR CHAND MAHAJAN

THE HON'BLE JUSTICE BIJAN KUMAR MUKHERJEA

THE HON'BLE JUSTICE SUDHI RANJAN DAS

THE HON'BLE JUSTICE N. CHANDRASEKHARA AYYAR

For the Appellant: S.P. Sinha, Senior Advocate, (S.S. Prakasam Advocate, with him) instructed by S. Subramanian, Agent.

For the Respondent: R. Ganapathy Iyer, Advocate, instructed by P.A. Mehta, Agent.

The Judgment of the Court was delivered by

MUKHERJEA, J.— This appeal has come up before us on special leave granted by this Court on May 23, 1950, and it is directed against a judgment of a Division Bench of the Madras High Court dated April 10, 1950, by which the learned Judges found the appellant guilty of contempt of court and sentenced him to serve simple imprisonment for three months.

2. The appellant is the publisher and managing editor of a Telugu weekly known as "Praja Rajyam" which is edited and published at Nellore in the State of Madras. In the issue of the said paper dated 10th February, 1949, an article appeared under the caption "Is the Sub-Magistrate, Kovvur, corrupt?" The purport of the article was that Surya Narayan Murthi, the stationary Sub-Magistrate of Kovvur, was known to the people of the locality to be a bribe taker and to be in the habit of harassing litigants in various ways. He was said to have a broker, through whom negotiations in connection with these corrupt practices were carried on. Several specific instances were cited of cases tried by that officer, where it was rumoured that he had either taken bribes or had put the parties to undue harassment, because they were obdurate enough to refuse the demands of his broker. The article, which is a short one, concludes with the following paragraph:

"There are party factions in many villages in Kovvur Taluk. Taking advantage of those parties many wealthy persons make attempt to get the opposite party punished either by giving bribes or making recommendations. To appoint Magistrates who run after parties for a Taluk like this ... is to betray the public. It is tantamount to failure of justice. Will the Collector enquire into the matter and allay the public of their fears?"

3. The attention of the State Government being drawn to this article, an application was filed by the Advocate-General of Madras before the High Court on November 14, 1949, under Section 2 of the Contempt of Courts Act (Act 12 of 1926) praying that suitable action might be taken against the appellant as well as three other persons, of whom two were respectively the editor and sub-editor of the paper, while the third was the owner of the Press where the paper was printed.

4. On receiving notice, the appellant appeared before the High Court and filed an affidavit taking sole responsibility for the article objected to and asserting that the article was published because of his anxiety to uphold the highest traditions of the judiciary in the land and to create popular confidence in courts, the duty of which was to dispense justice without fear or favour and without any discrimination of caste, creed or community. It was said that before the article was published, numerous complaints had reached him from various quarters imputing corruption and disreputable conduct to this Magistrate and the only desire of the appellant was to draw the attention of the higher authorities to the state of public opinion in the matter and to invite an enquiry into the truth or otherwise of the allegations which were not asserted as facts but were based only on hearsay.

5. The High Court after hearing the parties came to the conclusion that the publication in question did amount to contempt of court, as it was calculated to lower the prestige and dignity of courts and bring into disrepute the administration of justice. As the appellant was not prepared to substantiate the allegations which he made and which he admitted to be based on hearsay and did not think it proper even to express any regret for what he had done, the court sentenced him to simple imprisonment for three months.

6. The other three respondents, through their counsel, tendered unqualified apology to the court and the learned Judges considered that no further action against them was necessary.

7. The propriety of the decision of the High Court so far as it relates to the appellant has been challenged before us in this appeal and Mr Sinha, who appeared in support of the same, raised before us a two-fold contention his first and main contention is that as the contempt in this case was said to have been committed in respect of a court subordinate to the High Court and the allegations made in the article in question constitute an offence under Section 499 of the Indian Penal Code, the jurisdiction of the High Court to take cognizance of such a case is expressly barred under Section 2(3) of the Contempt of Courts Act. The other contention advanced by the learned counsel relates to the merits of the case and it is urged that in publishing the article objected to, the appellant acted in perfect good faith and as the article amounted to nothing else but a demand for enquiry into the conduct of a particular person who was believed to be guilty of corrupt practices in the discharge of

his judicial duties, there was no contempt of court either intended or committed by the appellant.

8. So far as the first point is concerned, the determination of the question raised by the appellant would depend upon the proper interpretation to be put upon Section 2(3) of the Contempt of Courts Act which runs as follows:

"No High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code."

According to Mr Sinha, what the sub-section means is that if the act by which a party is alleged to have committed contempt of a subordinate court constitutes offence of any description whatsoever punishable under the Indian Penal Code, the High Court is precluded from taking cognizance of it. It is said that in the present case the allegations made in the article in question amount to an offence of defamation as defined by Section 499 of the Indian Penal Code and consequently the jurisdiction of the High Court is barred. Reliance is placed in support of this proposition upon the decision of the Nagpur High Court in *Kisan Krishna Ji v. Nagpur Conference of Society of St. Vincent de Paul*¹. This contention, though somewhat plausible at first sight, does not appear to us to be sound. In our opinion, the sub-section referred to above excludes the jurisdiction of High Court only in cases where the acts alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code. This would be clear from the language of the sub-section which uses the words "where such contempt is an offence" and does not say "where the act alleged to constitute such contempt is an offence". It is argued that if such was the intention of the legislature, it could have expressly said that the High Court's jurisdiction will be ousted only when the contempt is punishable as such under the Indian Penal Code. It seems to us that the reason for not using such language in the sub-section may be that the expression "contempt of court" has not been used as description of any offence in the Indian Penal Code, though certain acts which would be punishable as contempt of court in England, are made offences under it.

9. It may be pointed out in this connection that although the powers of the High Courts in India established under the Letters Patent to exercise jurisdiction as Superior Courts of Record in punishing contempt of their authority or processes have never been doubted, it was a controversial point prior to the passing of the Contempt of Courts Act, 1926, as to whether the High Court could, like the court of King's Bench in England, punish contempt of courts subordinate to it in exercise of its inherent jurisdiction. The doubt has been removed by Act 12 of 1926 which expressly declares the right of the High Court to protect subordinate courts against contempt, but subject to this restriction, that cases of contempt which have already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court. This seems to be the principle underlying Section 2(3) of the Contempt of Courts Act. What these cases are need not be exhaustively determined for purposes of the present case, but some light is undoubtedly thrown upon this matter by the provision of Section 480 of the Criminal Procedure Code, which empowers any civil, criminal or revenue court to punish summarily a person who is found guilty of committing any offence under Sections 175, 178, 179, 180 or Section 228 of the Indian Penal Code in the view or presence of the court. We are not prepared to say, as has been said by the Patna High Court in *Jnanendra Prasad v. Gopal*² that the only section of the Indian Penal Code which deals with contempt committed against a court of justice or judicial officer is Section 228. Offences under Sections 175, 178, 179 and 180 may also, as Section 480 of the Criminal Procedure Code shows, amount to contempt of court if the "public servant" referred to in these sections happens to be a judicial officer in a particular case. It is well known that the aim of the contempt proceeding is "to deter men from offering any indignities to a court of justice" and an essential feature of the proceeding is the exercise of a summary power by the court itself in regard to the delinquent. In the cases mentioned in Section 480 of the Indian Penal Code, the court has been expressly given summary powers to punish a person who is guilty of offending its dignity in the manner indicated in the section. The court is competent also under Section 482 of the Criminal Procedure Code to forward any case of this description to a Magistrate having jurisdiction to try it, if it considers that the offender deserves a higher punishment than what can be inflicted under Section 480. Again, the court is entitled under Section 484 to discharge the offender on his submitting an apology, although it has already adjudged him to punishment under Section 480 or forwarded his case for trial under Section 482. The mode of purging contempt by tendering apology is a further characteristic of a contempt proceeding. It seems, therefore, that there are offences which are punishable as contempt under the Indian Penal Code and as subordinate courts can sufficiently vindicate their dignity under the provisions of criminal law in such cases the legislature deemed it proper to exclude them from the jurisdiction of the High Court under Section 2(3) of the Contempt of Courts Act; but it would not be correct to say that the High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code.

10. This view has been taken and, in our opinion quite rightly, in a number of decisions by the Calcutta³, Patna⁴, Allahabad⁵ and Lahore⁶ High Courts. The only authority which Mr Sinha could cite in support of his contention is the decision of the Nagpur High Court in *Kisan Krishna Ji v. Nagpur Conference of Society of St. Vincent de Paul*⁷. The authority is undoubtedly in his favour as it proceeds upon the assumption that the idea underlying the provision of Section 2(3) of the Contempt of Courts Act is that if a person can be punished by some other tribunal, then the High Court should not entertain any proceeding for contempt. It is to be noticed that the learned Judge, who decided this case, himself took the opposite view in the case of *Subordinate Judge, First Class, Hoshangabad v. Jawaharlal*⁸.

and definitely held that the prohibition contained in Section 2(3) of the Contempt of Courts Act refers to offences punishable as contempt of court by the Indian Penal Code and not to offences punishable otherwise than as contempt. This decision was neither noticed nor dissented from in the subsequent case, and it is quite possible that the attention of the learned judge was not drawn to this earlier pronouncement of his, in which case the matter would certainly have been more fully discussed. We think further that the decision of the Calcutta High Court in *V.M. Basom v. A.H. Skone*⁹ which was the basis of the decision of the learned Judge in the subsequent case does not really support the view taken in it. In the Calcutta case what happened was, that a clerk of the Attorney, who appeared for the respondent decreeholder, went to serve a notice under Order 21 Rule 37(1) of the Civil Procedure Code upon the appellant judgment-debtor. The judgment debtor refused to take the notice and abused and assaulted the Attorney's clerk. Upon that, contempt proceedings were started against him and Mr Justice C.C. Ghosh, sitting on the original side of the High Court of Calcutta, held the appellant guilty of contempt and fined him Rs 200. On appeal, this judgment was affirmed by the appellate Bench and there was a general observation made by Chief Justice Sanderson at the close of his judgment that it is not desirable to invoke the special inherent jurisdiction of the High Court by way of proceeding for contempt if ordinary proceedings in a Magistrate's court are sufficient to meet the requirements of a case. This was not a case under Section 2(3) of the Contempt of Courts Act at all and no question either arose or was decided as to whether if an act is otherwise punishable as an offence under the Indian Penal Code the jurisdiction of the High Court under that section would be ousted. Undoubtedly the High Court had jurisdiction in that case and whether such jurisdiction, which is certainly of a special character and is exercised summarily, should be called into aid in the circumstances of a particular case would depend upon the discretion of the court. This has, however, no bearing on the point that has arisen for consideration before us. We would hold, therefore, that the right view was taken by the learned Judge of the Nagpur High Court in the earlier case and not in the later one.

11. It is next urged by Mr Sinha that even assuming that this view is correct, the language of Section 499 of the Indian Penal Code is wide enough to cover a case of contempt of court. What is said is, that if a libel is published against a judge in respect of his judicial functions, that also is defamation within the meaning of Section 499 of the Indian Penal Code and as such libel constitutes a contempt of court, it may be said with perfect propriety that libel on a judge is punishable as contempt under the Indian Penal Code. We do not think that this contention can be accepted as sound. A libellous reflection upon the conduct of a judge in respect of his judicial duties may certainly come under Section 499 of the Indian Penal Code and it may be open to the judge to take steps against the libeller in the ordinary way for vindication of his character and personal dignity as a judge; but such libel may or may not amount to contempt of court. As the Privy Council observed in *Surendra Nath Banerjee v. Chief Justice and Judges of the High Court*¹⁰, "although contempt may include defamation, yet an offence of contempt is something more than mere defamation and is of a different character." When the act of defaming a judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of courts of law which exist for their good. As was said by Willmot, C.J.¹¹,

"attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determinations... and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the judges as private individuals but because they are the channels by which the King's justice is conveyed to the people".

What is made punishable in the Indian Penal Code is the offence of defamation as defamation and not as contempt of court. If the defamation of a subordinate court amounts to contempt of court, proceedings can certainly be taken under Section 2 of the Contempt of Courts Act, quite apart from the fact that other remedy may be open to the aggrieved officer under Section 499 of the Indian Penal Code. But a libel attacking the integrity of a judge may not in the circumstances of a particular case amount to a contempt at all, although it may be the subject-matter of a libel proceeding. This is clear from the observation of the Judicial Committee in the case of *Matter of a Special Reference from the Bahama Islands*¹². The first contention of Mr Sinha, therefore, fails.

12. The second point raised by the learned counsel does not appear to us to have any real substance. The article in question is a scurrilous attack on the integrity and honesty of a judicial officer. Specific instances have been given where the officer is alleged to have taken bribes or behaved with impropriety to the litigants who did not satisfy his dishonest demands. If the allegations were true, obviously it would be to the benefit of the public to bring these matters into light. But if they were false, they cannot but undermine the confidence of the public in the administration of justice and bring judiciary into disrepute. The appellant, though he took sole responsibility regarding the publication of the article, was not in a position to substantiate by evidence any of the allegations made therein. He admitted that the statement was based on hearsay. Rumours may have reached him from various sources, but before he published the article it was incumbent upon him as a reasonable man to attempt to verify the informations he received and ascertain, as far as he could whether the facts were true or mere concocted lies. He does not appear to have made any endeavour in this direction. As the appellant did not act with reasonable care and caution, he cannot be said to have acted bona fide, even if good faith can be held to be a defence at all in a proceeding for contempt. What is more, he did not express any regret for what he had done either in the High Court or before us and his behaviour does not show the least trace of contrition. In these circumstances, we think that the appeal cannot succeed and must be dismissed.

1. AIR (1943) Nag. 334
2. 12 Pat 172
3. Narayan Chandra v. Panchu Pramanik, AIR 1935 Cal. 684; Naresh Kumar v. Umarmal, AIR 1951 Cal. 489
4. Kaulashia v. Emperor, 12 Pat. 1
5. State v. Brahma Prakash, AIR 1950 All 556; Emperor v. Jagannath, AIR 1938 All. 358
6. Bennett Coleman v. G.S. Monga, ILR 1937 Lah. 34
7. AIR 1943 Nag. 334
8. AIR 1940 Nag. 407
9. ILR 53 Cal. 401
10. ILR 10 Cal. 109 at 131
11. Willmot's Opinions page 256; Rex v. Davies 30 at p. 40-41
12. 1893 AC 138

[Search Text : "AIR 1952 SC 149"]

(1966) 1 SCR 493: AIR 1966 SC 523: 1966 Cri LJ 459—

S. Dutt (Dr) v. State of U.P.

Appeal by Special Leave from the Judgment and Order dated 12th February, 1965 of the Allahabad High Court in Criminal Revision No. 260 of 1963.

S. DUTT DR .. Appellant;

Versus

STATE OF U.P. .. Respondent.

Criminal Appeal No. 90 of 1965, decided on 18th day of August, 1965.

Present:

THE HON'BLE JUSTICE K.N. WANCHOO
THE HON'BLE JUSTICE M. HIDAYATULLAH
THE HON'BLE JUSTICE J.C. SHAH

For the Appellant: A.S.R. Chari, Senior Advocate (A.N. Sinha and A.K. Nag, Advocates with him).
For the Respondent: K.K. Jain and O.P. Rana, Advocates.

The Judgment of Court was delivered by

HIDAYATULLAH, J.— Dr S. Dutt who appeals to this Court by special leave against the judgment and order of Mr Justice Misra of the Allahabad High Court (Lucknow Bench) dated February 12, 1965 was examined as an expert witness by the defence in a sessions trial (*State v. Matadin* — ST No. 60 of 1957) in the Court of Additional Sessions Judge, Hardoi. Dr Dutt claimed to hold a diploma from the Imperial College of Science and Technology, London to the effect that he had specialised in the subject of criminology. He was cross-examined inter alia about this claim by the District Government Counsel who was assisted by one Mr Shyam Narain, Deputy Superintendent, Police (CID), Lucknow. Mr Shyam Narain earlier had deposed himself as an expert witness for the prosecution. Dr Dutt's testimony ran counter to the testimony of Mr Shyam Narain and the credentials of Dr Dutt were challenged. The Judge asked Dr Dutt to produce all his academic diplomas and certificates for his inspection. Dr Dutt produced the aforesaid diploma and it was taken on file as Ex. P-71 together with a statement which was marked Ex. P-72. The Sessions Judge pronounced judgment on October 29, 1957 acquitting Matadin and the other accused. He passed strictures on the prosecution and did not accept the evidence of Mr Shyam Narain. Government did not appeal against the acquittal and that matter ended there.

2. On November 12, 1957 prosecution applied to the Sessions Judge under Section 195 of the Code of Criminal Procedure for the prosecution of Dr Dutt under Section 193 of the Indian Penal Code. It was stated in the application that "the Defence Witness 3 Dr S. Dutt has committed forgery of certain diploma produced in this Hon'ble Court during the course of his evidence and he has used these forged documents as genuine". This application was rejected on November 12, 1957. Two days later Mr Shyam Narain lodged a report at Police Station, Hardoi alleging that Dr Dutt had committed an offence under Section 466/477 (subsequently changed to Section 465/471 of the Indian Penal Code in the Court of the Additional sessions Judge, Hardoi while giving evidence in Sessions trial *State v. Matadin*. The first information report stated that the diploma of the Imperial College of Science and Technology, London and the statement produced by Dr Dutt were forged and that Dr Dutt had "used them in the court with a bad motive, passing them as genuine". On October 26, 1958 a charge-sheet under Section 465/471 of the Indian Penal Code was filed against Dr Dutt in the Court of the Judicial Officer III, Hardoi by the CID, Police, Lucknow.

3. The case went before the Additional District Magistrate (Judicial), Hardoi on transfer and at the commencement of the trial Dr Dutt objected that he could not be legally prosecuted as the alleged facts disclosed and offence under Section 193 of the Indian Penal Code and a complaint in writing of the court was required under Section 195 of the Code of Criminal Procedure before cognizance could be taken. Dr Dutt also contended that Sections 465/471 did not apply to the alleged facts and that the prosecution was attempting to evade the provisions of Section 195 of the Code of Criminal Procedure. During arguments on his petition Dr Dutt also claimed that Section 196 and not Section 471 of the Indian Penal Code applied to the facts of the case and that even that offence required that the procedure of Section 195 should have been gone through. The prosecution, on the other hand, contended that Dr Dutt was being prosecuted for forgery of the diploma and for using the said forged document and, therefore, the offence fell within Sections 465/471 of the Indian Penal Code. The Additional District Magistrate (Judicial) rejected the contentions of Dr Dutt and held that there was no bar to the trial under Section 465/471 of the Indian Penal Code. Dr Dutt filed revisions against the order in the Court of Sessions and in the High Court but without success. The order of the High Court was pronounced on February 12, 1965 and the present appeal is against that order.

4. Section 195 of the Code of Criminal Procedure which brings in the question of jurisdiction in the case deals with prosecutions for contempt of lawful authority of public servants and provides inter alia that prosecutions for certain offences against public justice shall not be taken cognizance of except on the complaint in writing of a court before which the offence is committed or of some other court to which that court is subordinate. These offences are enumerated in the section and among them are Sections 193 to 196, 199 and 200 of the Indian Penal Code. Section 195 further provides that prosecution for any offence of forgery described in Section 463 or of using a forged document as genuine punishable under Section 471, Section 475 or Section 476 of the Indian Penal Code in respect of a document produced or given in evidence in a court by a party requires a complaint in writing of the court. The gist of the provision is that offences of forgery of a document as described in Section 463 IPC and of using such forged documents, if produced or given in evidence by a person other than a party to a proceeding in a court, do not require a complaint in writing of the court concerned, but prosecution in respect of offences under

Sections 193 to 196, 199 and 200 (among others) committed in a judicial proceeding by a person (whether a party or not) requires a complaint in writing of the court before which the offence is committed or of some other court to which such court is subordinate. It is this difference which has apparently induced the selection of Sections 463/471 rather than Sections 193/196 of the Indian Penal Code. The former do not require a complaint by the court but the latter do, and this is the main point of controversy before us also.

5. Mr Chari for Dr Dutt first draws attention to certain observations of this Court in *Basir-ul-Huq v. State of West Bengal* and *Nur-ul-Huda v. State of West Bengal*¹ where it is observed that Section 195 of the Code of Criminal Procedure must not be evaded if the bar created by it stands in the way of the prosecution. The observations of this Court are as follows:

"Though, in our judgment, Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195 of the Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it."

Mr Chari concedes that Section 195(1)(c) of the Code of Criminal Procedure would not bar the present prosecution of Dr Dutt if the offence fell within Section 465/471 of the Indian Penal Code, because the procedure contemplates a complaint by the court only if the offence is committed by a party. His contention, however, is that the offence, if any, was not under Section 465 nor under Section 471, but one under Section 193 or 196 of the Indian Penal Code for which the procedure of Section 195 of the Code of Criminal Procedure was imperative. It is, therefore, necessary to examine the ambit of the provisions which are set in opposition by the parties.

6. Sections 465 and 471 occur in Chapter XVIII of the Indian Penal Code which deals with offences relating to documents and to Property Marks and consists of thirty-one sections. It is divided into three parts. We are not concerned with the last two parts which deal with counterfeiting of Property and other Marks and currency notes and bank-notes. The first part deals inter alia with forgery, making of false documents and their use. Sections 193 and 196 occur in Chapter XI which deals with false evidence and offences against public justice. Section 193 punishes the giving or fabricating of false evidence and Section 196 punishes the using of evidence known to be false. Which of these two groups of sections applies here is the question; on that depends whether the court had jurisdiction to take cognizance of the case.

7. Section 463 of the Penal Code defines the offence of forgery in these words:

"463. Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery."

Section 464 next defines the expression "makes any false document". It is not necessary to quote it here. It is divided into three clauses. The first clause embraces cases of *dishonest* and *fraudulent* making, signing, sealing and executing of a document or a part of document with the intention of causing it to be believed that it is made etc. by another person or by his authority. The second clause deals with cases of *dishonest* or *fraudulent* alteration of a document in a material part after its execution and the third with cases of causing *dishonestly* or *fraudulently* any person who is insane or drunk to execute or alter a document or by practising deceit on him.

8. It is not the case of the prosecution here that Dr Dutt forged the diploma personally in any one of the three ways mentioned in the section but it is the case that the diploma was a forged and false document and he used it as genuine. Section 465 punishes the offence of forgery with imprisonment which may extend to two years or with fine, or with both. Section 471 punishes the using of a forged document as genuine. It provides:

"471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document".

It is contended that Dr Dutt fraudulently or dishonestly used the diploma as genuine which he knew or had reason to believe to be a forged document and thus committed an offence under Sections 465/471 of the Indian Penal Code.

9. Before we analyse these sections in relation to Dr Dutt's conduct we may refer to the other group of sections on which Mr Chari relies. Chapter XI, where they occur, is headed "Of False Evidence and Offences against Public Justice". Section 191 defines the offence of giving false evidence which is known as perjury in English law. It consists, speaking generally, of the making, while on oath, of a statement which is known to be false or believed to be false or not believed to be true. In this sense Dr Dutt, when he claimed to hold a diploma, if he did not, may be said to have given false evidence. Section 192 then defines compendiously the offence of fabricating false evidence. The portion which Mr Chari claims applies here may be set out:

"Whoever causes any circumstance to exist ... or makes any document containing a false statement intending that such circumstance ... or false statement may appear in evidence in a judicial proceeding ... and that such circumstance ... or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said 'to fabricate false evidence.'"

The offence of intentionally giving false evidence described in Section 191 or of fabricating false evidence described in Section 192 is punishable under Section 193 with imprisonment which may extend to seven years and fine, if the evidence is given or fabricated to be used in any stage of judicial proceeding. Section 196 next provides:

"196. Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated shall be punished in the same manner as if he gave or fabricated false evidence".

It is, of course, not necessary to mention again that for the offences under Sections 193 and 196 of the Indian Penal Code there could be no prosecution without a complaint in writing of the court concerned. An attempt was, in fact, made to have Dr Dutt prosecuted under Section 193 but the court declined to file a complaint.

10. The broad distinction between offences under the two groups is this. Section 465 deals with the offence of forgery by the making of a false document and Section 471 with the offence of using forged document *dishonestly* or *fraudulently*. Section 193 deals with the giving or fabricating of false evidence and Section 196 with corruptly using evidence known to be false. The gist of the offence in the first group is the making of a false document and the gist of the offences in the second group is the procuring of false circumstances or the making of a document containing a false statement so that a judicial officer may form a wrong opinion in a judicial proceeding on the faith of the false evidence. Another important difference is that whereas Section 471 requires a user to be either *fraudulent*, *dishonest* or *both*, Section 196 is satisfied if the user is *corrupt*. The Penal Code defines the expressions *fraudulently* and *dishonestly* but not the expression *corruptly*.

11. We shall now attempt to apply the two groups of offences contained in Chapter XI and Chapter XVIII, to the proved acts of Dr Dutt. We shall begin with Chapter XI. The definition of the expression "fabricating false evidence" in Section 192, already quoted, quite clearly covers this case. If Dr Dutt fabricated the false diploma he made a document containing a false statement intending that it may appear in evidence and so appearing in evidence may cause any person who is to form an opinion upon it to entertain an erroneous opinion touching on point material to the result of a judicial proceedings. Dr Dutt, as alleged, was falsely posing as an expert and was deposing about matters which were material to the result of the trial. He had a document to support his claim should occasion arise. He produced the document, although asked to do so, intending that the presiding Judge may form an erroneous opinion about Dr Dutt and the relevancy of his evidence. The case was thus covered by Section 192. When Dr Dutt deposed, let us assume falsely about his training, he committed an offence under Section 193. Again, when Dr Dutt used the diploma as genuine his conduct was *corrupt*, whether or not it was *dishonest* or *fraudulent*. The word "corrupt" does not necessarily include an element of bribe taking. It is used in a much larger sense as denoting conduct which is morally unsound or debased. The word "corrupt" has been judicially construed in several cases but we refer here to two cases only. In *Emperor v. Rana Nana*² Chief Justice Macleod considered the word to be of wider import than the words *fraudulently* or *dishonestly* and did not confine it to the taking of bribes or cases of bribery. In *Bibkhranjan Gupta v. King*³ Mr Justice Sen dealt at length with this word. He was contrasting Section 196 with Section 471 and observed that the word *corruptly* was not synonymous with *dishonestly* or *fraudulently* but was much wider. According to him it even included conduct which was neither fraudulent nor dishonest if it was otherwise blameworthy or improper.

12. It would thus be seen that the action of Dr Dutt was covered by Sections 192 and 196 of the Penal Code. If Dr Dutt gave false evidence in court or if he fabricated false evidence the offence under Section 193 was clearly committed. If he used fabricated evidence an offence under Section 196 was committed by him. These offences would have required a complaint in writing of the Sessions Judge before cognizance could be taken.

13. We may now consider whether the narrower offence of forgery of the diploma or of the user of the forged diploma as genuine was committed. If these offences were committed then prosecution for them could be launched without a complaint by the court concerned. It may be pointed out at once that it was not suggested before us that Dr Dutt made a false document within the definition of the expression in Section 464 of the Indian Penal Code. In fact, there was no complaint that he committed the forgery himself. He was said to have used a false document as genuine *dishonestly* and *fraudulently*. The word *dishonestly* is defined by Section 24 of Penal Code. A person who does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". Dr Dutt's conduct involved neither a gain to any person nor loss to another. He was asked to produce the diploma in court and he did. It is a matter of some doubt whether he can be said to have used the diploma because he did not voluntarily bring the diploma to court. There is authority to show that such a user is not contemplated by Section 471 of the Indian Penal Code (See *Assistant Sessions Judge North Arcot v. Ramammal*⁴ and *Ma Ain Lon v. Ma On Nu*⁵). Even if one were to hold that he did use the document as genuine his intention in producing it was to support his statement and not to cause a wrongful gain to himself or to cause a wrongful loss to another. This part of the section does not apply. The next question is whether his conduct can be said to be fraudulent. The word "fraudulently" is defined by Section 25 of the Penal Code. A person is said to do a thing fraudulently if he does that thing with *intent to defraud* but not otherwise. The last three words "but not otherwise" clearly indicate that the intent must be an "intent to defraud". This expression has given a great deal of trouble as the rulings show. It may be