1 SCOB [2015] HCD 28

HIGH COURT DIVISION
(Special Original Jurisdiction)

Contempt Petition No.264/2010.
(Arising out of Writ Petition No.7694/2010)

Dr.Mohiuddin Khan Alamgir … Petitioner

=Versus=

Sohul Hossain, Election Commissioner, Election Commission for Bangladesh
… Respondent-contemnor

Mr.Rokonuddin Mahmud, Advocate
...For the petitioner
Mr. Mahmudul Islam, Advocate
... For the contemnor
The 10th August, 2010

Present:
Mr.Justice A.H.M. Shamsuddin Choudhury
and
Mr.Justice Sheikh Md.Zakir Hossain.

An act constitutes contempt if it is calculated to or has the tendency of interfering with the due course of justice. The object of the discipline enforced by the court in the case of contempt of court is not to vindicate the dignity of the person of the Judge but to prevent undue interference with the administration of justice. The confidence in courts of justice which the public possess must in no way be tarnished, diminished or wiped out by contumacious behaviour of any person. ...(Para 15)

An unbroken chain of authorities, in prevalence from the days of the Raj, confirm that the power of a Court of record, is inherent. ...(Para 33)

Legislation that derogates or abridges Supreme Court's constitutional and inherent power, is void. ...(Para 35)

It is conceded that although the power cannot be taken away or materially interfered with, the legislature might regulate the exercise of the power by prescribing rules of practice and procedure. It is also stated that the existence of a remedy other than proceedings for contempt does not deprive a Court of its power to adjudicate a person in contempt which means that the fact that an act constituting a contempt is also criminal and punishable by indictment or other method of criminal prosecution, does not deprive the outraged court from punishing the contempt. ...(Para 43)

There is no room for any controversy that the High Courts have power to punish summarily for contempt of Court committed by the publications of libels on the Courts or on the Judges; and, as Superior Courts of record, it also has the inherent jurisdiction to summarily punish contempts. ...(Para 73)

The power to punish summarily for contempt is not a creature of statute but an inherent incident of every Court of record. This inherent jurisdiction cannot be wiped out. ...(Para 76)

The law looks at the conduct of the person proceeded against in order to find out if it was calculated to produce an atmosphere of prejudice in the midst of which, the judicial proceedings have to go on. The test of guilt in such cases depends on the findings whether the matter complained of tended to interfere with the cause of justice, and not on the question whether such was objective sought, much less whether it was achieved. Neither desire to obstruct or prevent administration of justice, nor its fulfillment is counted in proceedings for contempt. ...(Para 78)

Intention is of no relevance or consequence so long as the words used in the publication tend to interfere with the course of justice or prejudice the public or the Court in the trial of the case. ...(Para 79)

It is difficult to enumerate the acts which may amount to contempt of Court. The overriding question in all cases of contempt of Court must, however, be whether the action or remark of the alleged contemnor is or is not calculated to interfere with, interrupt or thwart the course of justice. ...(Para 80)

Nothing is more incumbent upon courts of justice than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard. Anything that tends to prejudice that fair trial by a Court, constitutes a contempt of Court. ...(Para 83)

Contempt is constituted when something is done, which is capable of interfering with the impartial flow of justice. To elaborate this, a plethora of high preponderant authorities command that nobody must make any comment about an issue which is awaiting adjudication in a Court of law because such comment may attempt to pervert the course of justice by influencing the mind of the Court or people at large and also by impliedly suggesting what should be the outcome of the proceeding at the end of the day. ...(Para 84)

It is not essential, in order to constitute a contempt, that the act should be done publicly or publicized in any way. ...(Para 93)

Knowledge of the pendency of the proceeding is not a necessary ingredient of the offence of contempt of Court. All that is necessary is to show that a proceeding was actually pending at the time or was imminent. ...(Para 100)

It is the contemner's duty to take proper care and to make sure before issuing a statement regarding a sub-judice matter that no proceedings were pending before the Court or were contemplated. If he made no such enquiries then he clearly acted negligently and cannot take advantage of his negligence. ...(Para 101)

Fair criticism of the conduct of a Judge, may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sough to be achieved. ...(Para 119)

Now, if a reasonable bystander analyses the ratio of all the cases discussed under the caption, "Kind of Comment that Constitutes Contempt", he will no doubt hold that the comments in question are certainly contemptuous and hence punishable by this Court, because the contemnor has effectively passed a verdict on the matter which is awaiting adjudication by this Division. ...(Para 129)

The impugned comment constituted the offence, because; (1) by this comment the contemnor purported to usurp the function of this Division, (2) the comment has the potential of influencing the minds of the people at large as well of the judges, whether or not it actually generated that effect, (3) the comment amounted to prejudging the cause which was awaiting adjudication, (4) the comment was vibrant enough to lead the public as well as the judges concerned to reckon that by issuing the Rule and passing the interlocutory order, the Court resorted to illegality and that this Court was wrong as the contemnor claimed to have been right, (5) the comment amounted to an aspersion and insinuation on the merit of our order, and was capable of transmitting a suggestion that a wrongly passed order should be reversed, (6) in all, the comment amounted to a trial by a stranger, i.e., the contemner, which could seriously obstruct the right course of justice and cause its deviation. ...(Para 130)

Judgment

A. H. M. SHAMSUDDIN CHOUDHURY, J.

1. This Rule was issued on 28th September, 2010, whereby the contemnor Md. Sohul Hossain, one of the incumbent Election Commissioners, Election Commission of Bangladesh was asked to show cause as to why he shall not be committed for contempt of Court and shall not be punished for his alleged bizarre comment within 7 (seven) days from date.

2. Antecedent facts that led to the issuance of this Rule are figured below in succinct form:

The contempt petitioner, Dr. Mohiuddin Khan Alamgir, a Member of Parliament, received a notification dated 22nd September 2010, issued by an official of the Election Commission for Bangladesh (henceforth the E.C.), whereby the earlier was intimated that his Parliamentary seat has become vacant.

3. On receipt of that notification the petitioner filed a writ petition before this Division, which was registered as Writ Petition No. 7694 of 2010.

4. Upon hearing the petitioner's learned Senior Counsel, Mr. Rokanuddin Mahmud, we issued a Rule on 26th September 2010, requiring the E.C. to explain why the intimation texed in the notification should not be declared to have been issued without lawful authority and is of no effect in the vision of law. We also placed a stay on the operation of the said intimation for a period of 6 (six) months from the date of the Rule.

5. On 27th September, i.e. during the subsistence of the period of stay and while the Rule was awaiting disposal in the form of a judicial review, the contemnor while addressing the media, both electronic and print, stated that the E.C. was quite correct and legal in declaring the seat vacant.

6. His statement was widely televised through the electronic media on the very day he addressed the media and was published in the print media, the following day.

7. The petitioner proffered that "such adverse comment made by the contemnor-respondent is calculated as a deliberate and blatant attempt by him to interfere with the administration of justice, in a matter which is sub-judice" as the legality of the Order dated 22nd September 2010 was under exploration through the process of judicial review by this Court. The petitioner further stated, "By making such derogatory and contumacious statement, the contemnor-respondent has committed flagrant and gross contempt and disregard of the Hon'ble Court. Such contempt has been aggravated by the fact that it has been committed by a public functionary, holding high Constitutional Office who is otherwise under a bounden duty on oath to preserve, protect and defend the Constitution, including Article 112 thereof, which enjoins him to act in aid of the Supreme Court. If public functionaries are allowed, without any restraint and punishment, to make such adverse comment and remark on sub-judice matters with the intention of interfering with the administration of justice, and encroaching upon the jurisdiction and constitutional preserve of the Hon'ble Court, then this would bring the Hon'ble Court into disrepute and public confidence in the demonstrative dispensation of justice is likely to be shaken and eroded".

8. The contemnor filed an affidavit-in-opposition, stating:

> "That the statements made in paragraph no. 2 in respect to the contemnor's comments made to the media on 27/09/2010 published in various newspapers are matters of record; however the statements made in that paragraph of the effect that the contemnor has made comment indicating disapproval of the Hon'ble Court's order are quite incorrect, misconceived and misdirected and as such denied.
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> That the submissions made in the paragraph no. 3 to the effect that the contemnor attempted to interfere with the administration of justice or made derogatory or contemptuous statement or violated his oath to abide by the constitution or encroached upon the constitutional jurisdiction of the Hon'ble Court or brought the Hon'ble Court to disrepute, are altogether incorrect, misconceived and nothing but mere surmises, and as such those are denied.
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> That is respectfully submitted that the petitioner neither did make any derogatory remark against the order of the Hon'ble Court, nor scandalized the Hon'ble Judges or disobeyed any order of the Hon'ble Court by making the alleged comments upon which the rule has been issued, and therefore, those do not come under the scope of contempt of court; and even if the reports made in the newspapers are taken to be fully correct, the same do not constitute contempt of Court.
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> That it is submitted that the contemnor has all the respect for the order of the Hon'ble Court and obliged as his solemn duty to uphold the honor, dignity and prestige of the Hon'ble Court".

9. So, the comment that prompted us to issue the Rule, is not denied by the contemnor. Instead he claims that those comments can not be brought in within the canopy of the contempt of law.

10. The petitioner's case is that by making this statement while the question as to propriety and lawfulness of the decision is pending disposal by this Court and since the matter is sub-judice, the contemnor resorted to something which has the tendency of perverting the course of justice and also undermining the authority of this Court. It is asserted by the contempt petitioner that such comment on a matter which is awaiting adjudication in a Court of law is destined to cause interference with the tide of justice because they are bound to prejudice the minds of the people at large.

11. At the contemnor tried to insist that his comments were neither derogatory nor scandalizing nor reflective of any disobedience to the authority of this Court, the whole fate of the case revolves round the question as to whether the irrefuted comments constituted the offence of contempt of Court.

Power on Contempt Generally

12. The last bulwark of a State is its courts of justice.

13. In the free world today, wherever responsible Governments exist (the U.S.A., U.K., commonwealth countries etc.) concept of special respect to seats of justice, attended with punishment in case of contumacious behaviour, prevails.

14. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation of itself. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the Judge and the hangman" and it is so because the Court is not adjudicating upon any claim between the litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. Power to punish for contempt is for maintenance of effective legal system. Contempt jurisdiction cannot, however, be invoked to wreck personal vengeance against the alleged contemners.

15. An act constitutes contempt if it is calculated to or has the tendency of interfering with the due course of justice. The object of the discipline enforced by the court in the case of contempt of court is not to vindicate the dignity of the person of the Judge but to prevent undue interference with the administration of justice. The confidence in courts of justice which the public possess must in no way be tarnished, diminished or wiped out by contumacious behaviour of any person. (Ajay Kumar Pandey, Advocate, re, (1998) 7 SCC 248. Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409. Kapildeo Prasad Sah v. State of Bihar, (1999) 7SCC 569: 1999 SCC (L&S) 1357. N.C. Das v. M.A. Mohsin, (1997) 7 SCC 438).

16. Bracton observed:

"There is no greater crime than Contempt and Disobedience, for all persons within the Realm ought to be obedient to the King and within his Peace."

17. Justice, an organisation of lawyers, in their 1959 report on Contempt of Court stated:

"...it is essential to the maintenance, and indeed for the very existence of the legal system of any State, that the Court should have ample powers to enforce its orders and to protect itself from abuse of itself, or its procedure. We desire at the outset, to make it clear that we recognise and accept this principle. In our view, any alteration or amendment of the law of Contempt of Court must be such as will, without any doubt, leave the Court with sufficient powers for these purposes."

18. The common Law view was that decisions given by the Courts were the decisions of the King in law. If the King's authority could not be questioned, then authority of the Courts could not be questioned, too. If the King could not be abused or scandalized, so also the Courts could not be abused or scandalized. Just as the proceedings before the King could not be prejudiced, or obstructed; similarly the proceedings before the Court could not be prejudiced or obstructed.

19. If anyone interfered in the administration of justice, he was liable to be punished. It is the genesis of the law of contempt of Courts. King's word was law. He could not be disobeyed. If a person was asked to stay, he had to stay. If he was asked to depart, he had to depart. Anyone, howsoever high he may be, could be punished for disobedience. The punishment had no limits. The condemned man could lose his property, liberty, limbs or even his life. Since the King had the right to punish, he also had the right to pardon. A sincere apology for any lapse could save the man from the wrath of the King.

20. The authority of the King traveled down to superior courts. Their word was also final, in the ladder of various stages of the litigation. No one could question the authority of the Courts. No one could humiliate the Courts or scandalize them. No one could prejudice or obstruct the course of justice, anyone who did all this, was punished.

21. It was Wilmot, J., who pronounced the law on the subject with precision in the case of R.V. Almon, where one John Almon, a book-seller, published a libel on Lord Mansfield, the Chief Justice. An attachment of

the person of John Almon was obtained, but in the warrant of attachment by mistake, instead of writing R.V. Almon, R.V Wilkes was written. Mr. Justice Wilmot (as he then was) urged Sergeant Glyn to accept the amendment, but he as a man of honour, did not agree. The mistake was fatal and the proceedings were dropped. Wilmot, J., thus could not deliver the judgment, which he had written out. The judgment was written in 1765, but it came to light when Wilmot's son published it in 1802, as "Notes of Judges' Opinions and Judgments" (1765 Wilmot 243).

22. In that the judgment recognised as the cornerstone of the law on the subject, Wilmot, J., stated;

"The power which the Courts in 'Westminster Hall have of vindicating their own authority, is coeval' with their foundation and institution; it is a necessary incident to every Court of Justice, whether of record or not, to fine and imprison for a contempt to the Court, acted in the face of it. And the issuing of attachments by the Supreme Courts of Justice in Westminster Hall, for contempts out of Court, stands upon the same immemorial usage, as supports the whole Fabric of the Common Law; in as much the lex terrae, and within the exception of Magna Charta, as the issuing any other legal process whatsoever."

23. He went on to write; "These Courts were originally carved out of the one Supreme Court, and are all divisions of the aula regis, where it is said the King in person dispensed justice, and their power of committing for contempt was an emanation of the royal authority, for any contempt of the Court, would be a contempt of the Sovereign".

24. The dictum of Wilmot, J., was followed by successive Courts and constitutional authorities not only in England, but also in America, as are to be found in Sutherland, J.'s words, in Michaelson v. United States; and Brewer, J.'s words in Besset v W.B. Cankey Co.

25. Oswald, the best known universal authority on the law of contempt, stated that the contempt of Court, irreverently termed as "legal thumbscrow", is so manifold in it's aspects that it is difficult to lay down any exact definitions of the offence (Miller-v-Knox 1878 4 Bing NC 574).

26. Oswald nevertheless, put forward a broader definition stating, "To speak generally, contempt of Court may be said to be constituted by any conduct that tends to bring the authority and the administration of law into disrespect or disregard, or interfere with or prejudice the parties litigant or their witnesses during litigation". (Oswald 3rd Edition, page 6). According to the Oswald's classification contempt may take place in any of the following circumstances:

(1) By abusing, interfering with or obstructing the process of the Court in anyway or disobeying any order of the Court;

(2) Scandalising the Court or Judge in relation to his office into hatred ridicule or contempt;

(3) Doing anything which tends to prejudice the determination of a matter pending before the Court.

27. Oswald in his learned treatise "Contempt of Court", stated;

"Contempt in the legal acceptation of the time, primarily signifies disrespect to that which is entitled to legal regard; but as a wrong purely moral, or affecting an object not possessing a legal status, it has, in the eye of law, no existence".

28. In its origin, all legal contempt will be found to consist in an offence more or less direct against the Sovereign himself as the fountain of law and justice, or against his place, where justice was administered. This clearly appears from the old cases.

29. Blackstone assimilated a number of instances of contempt of Court in a passage occurring at page 285 of his Commentaries, Vol. IV:

"Some of these contempts may arise in the face of the Court as by rude and contumelious behaviour, by obstinacy, perverseness or prevarication, by breach of the peace or any willful disturbance whatever, others in the absence of the party, as by disobeying or treating with disrespect the King's writ or the rules or process of the Court; by perverting such writ or process to the purposes of private malice, extortion or injustice; by speaking or writing contemptuously of the Court or Judges acting in their judicial capacity, by printing false accounts or even true ones, without proper permission, of causes then depending in judgment; and by anything in short that demonstrates a gross want of that regard and respect which, when once Courts of justice are deprived of their authority so necessary for the good order of the Kingdom, is entirely lost among the people".

30. Harwick LC by referring to the definition of contempt, said, there are three different kinds of contempt. One kind is scandalizing the Court itself. There may be, likewise, contempt of this Court in abusing parties who are concerned with cases here. There may be also contempt of this Court in prejudicing mankind against persons before the cause is heard and there cannot be anything of greater consequence than to keep the streams of justice clear, pure, that parties may proceed with safely both to themselves and their characters, (St. James Evening Port Case 1742 2 A+K 469).

31. Our system has adopted British jurisprudence and hence entire law of contempt in our country is based on the lines indicated above. In the version of Markandey Katju J, "The present law of contempt of Court in India is a hangover of the original law on this subject in England."

32. We in Bangladesh derive our power to punish for contempt from our Constitution, the Supreme Law of the land. Article 108 of the Constitution designates "Supreme Court as Court of record and states, "Supreme Court shall be a court of record and shall have all the powers of such a Court including the power, subject to law, to make an order for the investigation of or punishment for any contempt of itself."

33. An unbroken chain of authorities, in prevalence from the days of the Raj, confirm that the power of a Court of record, is inherent.

34. The law that supplements the constitutional power is the Contempt of Court Act, 1926. As the Constitution fortifies the Court of record with power to punish for contempt and as the same is inherently possessed by the Supreme Court, our Court of record, the legislative framework performs a secondary role from the back seat only. In any event this Act does not define contempt. It's only significance lies in that it prescribes the extent of punishment, which have on occasions, been ignored by the Supreme Court.

Legislature can not Abridge or Abrogate this Power

35. As the following high profile decisions reveal, legislation that derogates or abridges Supreme Court's constitutional and inherent power, is void.

36. In the case of Surendra Nath Banerji -V- Chief Justice and Judges of the High Court of Fort William in Bengal, (ILR 1883, 10 Cal 109, the first case of its kind in the Sub-continent, Peacock, J., said:

"Thus a High Court derives the power to punish for contempt of Court from its own existence or creations. It is not a power conferred upon it by any law.

The powers to punish for contempt of Court are not conferred by legislature. They cannot be abrogated or abridged by the legislature".

37. He added;

"The arraignment of the justice of the judges is arraigning 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 law 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 of the obstruction whatsoever, not for the sake of the Judges as private individuals, but because they are channels by which the King's justice is conveyed to the people."

38. This view was affirmed by the Privy Council.

39. The above principle is recognized universally. The American Jurisprudence accepted Wilmot J.'s dicta in toto.

40. There can be no doubt that the High Courts in India, before the commencement of the Government of India Act. 1935, had power, jurisdiction and authority to punish summarily for contempts of themselves and of their Judges. The Government of India Act 1935, preserved this power, authority and special summary jurisdiction for the High Courts that then existed.

41. Views expressed by Indian Supreme and High Courts and *opinio juris* are that so far as contempt of the High court itself is concerned, as distinguished from that of a court subordinate to it, the Constitution vests these rights in every High Court, and so no Act of a Legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. These views expressed from time to time, are, figured below in conspectus;

Articles 129 and 215 of the Constitution of India declare the Supreme Court and every High Court to be Courts of records having all the powers of such a Court including the power to punish for contempt of itself. These articles do not confer any new jurisdiction or status on the Supreme Court and the High Courts. They merely recognise a pre-existing situation that the Supreme Court and the High Courts are Courts of record and by virtue of being so they have inherent jurisdiction to punish for contempt of themselves. Such inherent power to punish for contempt is summary. It is not governed or limited by any rules of procedure excepting the principles of natural justice. The Jurisdiction contemplated by Articles 129 and 215 is inalienable. It cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. The provisions of the Contempt of Courts Act, 1971, are in addition to and not in derogation of Articles 129 and 215 of the Constitution. The provisions of the Contempt of Courts Act, 1971, cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said two articles.

42. In Re: Vinay Chandra Mishara, (1995, 2 SCC 584) with reference to Article 129, the Supreme Court observed:

"The jurisdiction is independent of the statutory law of contempt enacted by Parliament under Entry 77 of List I of Seventh Schedule of the Constitution. The jurisdiction of this Court under Article 129 is sui generis. The jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute".

43. The supremacy of the constitutional power in this context is also recognised in the United States. In American Jurisprudence it is stated that if a Court derives its powers from a constitution, the court's power to punish for contempt cannot be taken away by the legislature. Further "a court has inherent power to punish contempt summarily and the power to determine the kind and character of conduct that constitutes contempt" and "a statute enumerating acts constitute contempt has been construed is not exclusive. But it is conceded that although the power cannot be taken away or materially interfered with, the legislature might regulate the exercise of the power by prescribing rules of practice and procedure. It is also stated that the existence of a remedy other than proceedings for contempt does not deprive a Court of its power to adjudicate a person in contempt which means that the fact that an act constituting a contempt is also criminal and punishable by indictment or other method of criminal prosecution, does not deprive the outraged court from punishing the contempt. The same view was pronounced in the following cases as well; (Sukhdev Singh Sodhi V. Chief Justice and Judges of the PEPSU High Court AIR 1954 SC 186, Delhi Judicial Service Association V. State of Gujarat 1991 (4) SCC 406, R. L. Kapur AIR 1972 SC 858.

44. The law of contempt was identified by the Indian Supreme Court of India as one of the major props, holding together the basic structure of the Indian Constitution.

45. In Surendranath Banerjee V Chief Justice and Judges of the High Court at Fort William in Bengal, supra, the High Court of Calcutta in 1883 convicted Surendranath Banerjee, who was Editor and Proprietor of a 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 powers of the High Courts as superior Courts in India are the same as in England. The Privy Council further held that in common law every Court of record was the sole and exclusive judge of what amounts to contempt of Court.

46. In Sukhdev Singh Sodhi case, supra, the Indian Apex Court considered the origin, history and the development of the concept of inherent jurisdiction of a Court of record in India. That Court, after considering the 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 law of contempt in India, the High Court's jurisdiction as a Court of record to initiate proceedings and take seisin of the matter, remained unaffected by the Contempt of Courts Act, 1926".

47. Once it is realised that the Supreme Court and the High Courts in India are invested with constitutional power to punish under Articles 129 and 215, then the scope and extent of the punishment must also be left to the discretion of the superior courts since no ordinary legislature can restrict or fetter a constitutional power. The Indian Supreme Court also referred to Article 142 to buttress its constitutional power and to reject the suggestion that the power can be limited or restricted by ordinary legislative process. The width of the range of the power to make appropriate orders invoking Article 129 read with Article 142 cannot be encapsuled as illustrated in Delhi Development Authority V. Skipper Construction (1995, 3 SCC 507) where the sentence of imprisonment was deferred subject to several terms and conditions.

48. In the context of the Indian constitutional provisions, contained in Articles 129 and 215, read with Entry 77 of List I of the Seventh Schedule and Entry 14 of List III of the Seventh Schedule, some doubts arose as to the competence of the concerned legislatures to deal with the subject of contempt of Courts.

49. One view was based on the theory that a Court of record not only had the power to punish for contempt of itself but had also the sole and exclusive power to define and determine what amounts to contempt. The other view (as indicated by the Sanyal Committee which drafted the "Contempt of Court Bill", that eventually led to the passage of the "Contempt of Court of 1971" for India) is that Parliament or the concerned legislature has the power to legislate in relation to the substantive law of contempt of the Supreme Court and the High Courts.

50. In dealing with this question the Sanyal Committee observe-

"In view of the interpretation we have placed on the provisions of the Constitution relating to the competency of Parliament to legislate on contempt matters, it may not be quite necessary to consider the theory that a Court of record has not only the inherent power to punish for contempt of itself but has also the sole and exclusive power to define and determine what amounts to contempt, inasmuch as the theory has received some amount of judicial support.

51. As far as the Supreme Court and the High Courts are concerned the twin limitations on exercise of legislative power appear to be –

(i) Since the power of the Supreme Court and the High Courts to punish for contempt have been recognised in express terms by Articles 129 and 215 such power cannot be abrogated, nullified or transferred to some other body, save by an amendment of the Constitution. This view finds support from the following observations of the Supreme Court in Sukhdev Singh V Teja Singh, the Chief Justice, supra.

"In any case, so far as contempt of a High Court, as distinct from a subordinate Court, is concerned, the Constitution vests these rights in every High Court. So no Act of the legislature could take away that jurisdiction and confer it afresh by virtue of its own authority".

The principle laid down in Sukhdev Singh's case, supra, has been recently reiterated by the Supreme Court in Pritam Pal V High Court of Madhya Pradesh. (AIR 1992 SCC 904)

(ii) Articles 129 and 215 are "based on the assumption that there should be an effective power in the Supreme Court and each of the High Courts for dealing with cases of contempt. The power of Parliament to legislate in relation to the law of contempt of these courts, would, therefore, have to be exercised in such a way that the purpose of the constitutional provisions is not defeated. In short Parliament's power to legislate on contempt law, ought not to be exercised as to stultify the status and dignity of these courts.

52. The summary method of trying contempt is inherent in all courts of record. As stated by Peacock, C.J., supra, as early as in 1867, "there can be no doubt that every Court of record has the power of summarily punishing for contempt". The Judge concerned traced the origin of the power to punish for contempt in the Common Law of England. But as Bose, J. would put it, "it is evident from other decisions of the Judicial Committee that the jurisdiction is broader than that". It was noted that the Charter of 1774, which established the Supreme Court of Bengal, provided in Clause 4 of the Charter that the Judges should have the same jurisdiction as the Courts of King's Bench in England. Clause 21 expressly stated that the court is empowered to punish for contempt. When the Supreme Court of Bengal was abolished, the High Courts Act of 1961 conferred those powers on the Chartered High Courts by Sections 9 and 11 and Clause 2 of the Letters Patent of the year 1865, continuing them as courts of record. Despite this, in 1883 the Privy Council did not trace this particular jurisdiction of the Calcutta High Court of Clause 15 of its Charter but to the Common Law of England. It was expressed that Common Law is simply this, that the jurisdiction to punish for contempt is something inherent in every Court of record.

53. In re, Abdul Hussan Jauhar; (AIR 1926 All 623) Sulaiman, J. relying on a number of English authorities stated, " these leading cases unmistakably show that the power of the High Courts in England to deal with the contempt of inferior courts is based not so much on its historical foundation as on the High Courts' inherent jurisdiction".

54. In 1883 the Privy Council held that the Recorder's Court at Sierre Leon also has jurisdiction to punish for contempt not because that Court had inherited the jurisdiction of the English courts but because it was a Court of record. The Privy Council said:

"In this country every court of record is the sole and exclusive Judge of what amounts to a contempt of Court ..... and unless there exists a difference in the constitution of the Recorder's Court at Sierre Leon, the same power must be conceded to be inherent in that Court ... we are of opinion that it is a Court of record and that the

law must be considered the same there as in this country." (Rainy-V-The Justices of Sierra Leone, 8 Moo PC 47).

55. Bose, J., cited in Sukhdev Singh case, supra, the 1884 edition of Chambers Practice of the Civil Courts, where at p. 241 it is said, "every Superior Court of record, whether in the United Kingdom or in the Colonial Possessions or Dependencies of the Crown, has inherent power to punish contempts without its precincts as well as in facie curiale".

56. This is also borne out by Halsbury's statement that the superior Courts have an inherent power to punish criminal contempts.

57. Later, the Government of India Act, 1915, was enacted and under Section 106 of that Act all High Courts then in existence continued to have the same jurisdiction, powers and authority as they had at the commencement of the Act. Section 113 of the Act provided that new High Courts may be established by Letters Patent with the same jurisdiction, powers and authority as are vested in or may be conferred on any High Court existing at the commencement of that Act. In 1926 a Full Bench of the Allahbad High Court dealt with a contempt of a subordinate court under its inherent powers as a court of record. It was in this context that the Contempt of Courts Act of 1926 was passed to 'define, and limit the powers of certain courts in punishing contempts of courts'.

Comments on the Act of 1926

58. Bose, J. said: that an existing power in all Letters Patent High courts to punish for contempt being in recognition, it is evident that the power must have been inherent in themselves because they were Courts of record:.

59. These aspects of inherent summary power were affirmed in later cases by the Lahore High Court (1927) and the Patna High Court (1929). In 1936, Lahore High Court affirmed them again. In the same year the Privy Council's decision in Andre Paul Terence Ambard v. Attorney General of Trinidad and Tobago, (AIR 1936 PC-141) reiterated the inherent power theory and put on the slade the view that 'contempt is quasi-criminal in nature'. In 1942 the full Bench in K.L. Gauba –V-Chief Justice and the Judges of the Lahore High Court (1942 F C 1) reached the same old conclusion and quoted American decisions to affirm that "the power to fine and imprison for contempt from the earliest history of jurisprudence has been regarded as a necessary incident and attribute of a court without which it could no longer exist than without a Judge".

60. In Parashuram Detaram Shamdasani-v-. Emperor (AIR 1945 PC 134) the Privy Council reiterated that the summary power of punishing for contempt is a power which a court must necessarily possess.

61. The Constitution of India which came into force in 1950, does not envisage in its provisions any new Law of Contempt. It recognises the existing law and gives constitutional sanctity to the same. The fundamental right of speech guaranteed in Article 19(1)(a) of the Constitution is made subject to reasonable restrictions on the exercise of the right in the interest of contempt of court, among other thing such as security of State, etc. The existing law of contempt of court is protected in Article 19. The Supreme Court and the High Courts are recognised as Courts of record by virtue of Articles 129 and 215 respectively.

62. In Bijoyananda Patnaik v. Balakrishna Kar (AIR 1953 Ori 249), it was clearly posited that the power to punish for contempt is inherent in a Court of record and this has been recognised from the earliest times in England. The High Courts in India were created Courts of record by Letters Patents. By the Government of India Act, 1935, as well as by Article 129 and Article 215 of the Constitution, the Supreme Court of India and the High Courts are courts of record and it is essential for the administration of justice and protection of individuals that the Courts should be able to punish summarily acts of contempt because in the words of Blackstone, "this is an inseparable attendant upon every Superior Tribunal".

63. Narasimham J in State –v- E&P, E T K P (AIR 1952 Ori 318) expressed,

"The makers of the Constitution were fully aware that the law relating to contempt of Court in India was mainly case law based on the English Common law as interpreted by the English Courts and the Privy Council. The statutory law relating to contempt of Court touches only the fringe of the subject and is to be found in the Contempt of Courts Act, 1926, the Indian Penal Code and the Code of Civil Procedure. The Contempt of Court Act does not define contempt of Court. But sub-section 2(iii) of that Act implies the existence of the offence of contempt of Court, outside the provision of the Indian Penal Code. In Article 215 of the Constitution the fact that every High Court as a Court of record has power to punish contempt of itself is recognised. The contempt of

Court contemplated in this Article could not obviously be that class of contempt dealt with in the Criminal Procedure Code, the Indian Penal Code and the Code of Civil Procedure because those three Codes themselves provide the machinery for punishing contempt of that class. The expression 'Court of record' has got a well recognised meaning in English Law and Courts of record have always power to punish contempt. Prior to the Constitution, the High Courts of India have been exercising this power and in the Government of India Act, 1935, also the status of High Courts as Courts of record was recognised in Section 220. Therefore, when the makers of the Constitution enacted Article 215 in the Constitution, recognising the power of a High Court as a Court of record to punish contempts of itself and when the Contempt of Courts Act, 1926, does not define 'contempt', the obvious inference is that the law relating to contempt as contemplated by them, was not the statutory law described in the aforesaid codes but the common law right of every Court of record recognised in England and applied in India in the various decisions of the High Courts.

There can be therefore no doubt that the phrase 'existing law' in Article 19(2) includes not only statutory law but the entire law of contempt as was recognised in India prior to the advent of the Constitution, based on the English Common Law, and the case law as laid down by the High Courts and Privy Council."

(AIR 1952 Ori 318, 342, also J.R. Parashar v. Prashant Bhushan, (2001) 6 SCC 735.

64. In Sukhdev Singh v. S. Teja Singh, the Chief Justice, supra and Pritam Pal v. High Court of Madhya Pradesh, AIR 1992 SC 94, the Indian Apex Court expressed that Article 129 and 215 of the Indian Constitution recognise the power of the Supreme Court and the High Courts to punish for contempt and that no Act of Legislature can take away that jurisdiction and confer it afresh by virtue of its own authority.

65. In I Manilal Singh –v- Dr. H Barababu Singh, 1994 Supp (1)SCC 718, the Constitution Bench of the same Court, which procured the presence of Dr H. Borobabu Singh, the then Speaker of the Manipur State Legislative Assembly in a contempt proceeding, held that it was clear from the relevant constitutional provisions, particularly Article 129, 141, 142 144 and 145 that the power of the Supreme Court in contempt matter is not confined merely to the provisions of the Contempt of Courts Act, 1971 and the rules framed thereunder but is plenary to punish any person for contempt of court, and for that purpose to require his presence in person in the Supreme Court in the manner considered appropriate in the facts of the case. The court observed, "It is our Constitutional duty which requires us to make this order, to uphold the majesty of law and justify the confidence of the people, that no one in this country is above the law and governance is not of men but of the 'rule of law'. It is unfortunate that this action has to be taken against a person who happens to be the Speaker of a Legislative Assembly, but that does not permit us to apply the law differently to him when he has wilfully and contumaciously driven the court to this course. We must remind overselves that the 'rule of law' permits no one to claim to be above the law and it means- 'be you ever so high the law is above you'. It was said long back: 'to seek to be wiser than the laws, is forbidden by the law'."

66. The Court directed the Government of India to produce the contemner in the court. Subsequent to this direction, the contenmner filed an affidavit expressing his willingness to appear before the court. After the contemner's appearance before the court, contempt proceedings were dropped.

67. In that case, the petitioner/applicant I. Manilal Singh in his capacity as the Secretary of the Manipur Legislative Assembly took steps to implement the orders of the Supreme court. He was compulsorily retired by an order passed by the contemner. Manilal Singh was not allowed to function in spite of the orders of the Supreme Court. As a result, the Supreme Court directed the presence of the contemner before it to answer the contempt action initiated against him. The contemner claimed immunity from personal appearance which was rejected by the Court.

68. In Lakhan Singh –V- Ranbir Singh, AIR 1953 All 342, the following observation reflected the Court's view, "Article 215 vests the High Court with all the powers of a Court of record including the power to punish for contempt of itself. The phrase 'the power to punish for contempt of itself' does not limit such powers of the High Court which it possesses as a Court of record or other powers with which it may be invested by law."

69. In Ahmed Ali-v-Suptd. District Jail, Tejpur , AIR 1987 SC 1491, the Supreme Court of India held, that what amounts to contempt is for the High Court to determine as a Court of record. The definition in Section 2 of 1971 can at best operate as a guide for such determination. But it being not an all inclusive definition and as it is the province of a Court of record to determine the contempt, there is nothing in law that can oust such jurisdiction of the High Court.

Position in Our Own Jurisdiction

70. Our Supreme Court found no reason to deviate from pre or post partition Indian and the Privy Council decisions on the point of inherent power and, maintained the view that this inherent and Constitutional power can not be curtailed, shallowed, narrowed or abridged.

71. So, in Moazzem Hussain Khan –v- State, the Appellate Division observed;

"The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to the lot of men to decide, is not a privilege accorded to Judges. The power to punish for contempt of court is a safeguard not for Judges as persons but for the function which they exercise" (Moazzem Hossain Khan Vs. State 35 DLR (AD) 290.)

72. FKMA Munim CJ expressed that to commit someone for contempt of Court and to punish him for it if is the inherent power of a Court of record. The Supreme Court of Bangladesh is such a Court. The power is no doubt extraordinary. The judge who commits any one for contempt of court is both prosecutor and arbiter of the alleged offence. It is, therefore, not unusual to issue a notice for contempt of court when occasion arises. **(Moazzem Hossain Khan Vs. State, supra).**

73. There is no room for any controversy that the High Courts have power to punish summarily for contempt of Court committed by the publications of libels on the Courts or on the Judges; and, as Superior Courts of record, it also has the inherent jurisdiction to summarily punish contempt's. Sir Barnes Peacock, CJ's formulation and ratio has been followed squarely in our jurisdiction too.

74. In M. Shamsul Haque –V- Bangladesh, this Division knocked down a contempt statute on the of the ground of the said legislation's purported endeavour to prune the Supreme Court's ambit and power in assuming jurisdiction and punishing for contempt of Court. (17 BLT (HC) 523).

75. Opinion of a good number leading Advocates, who acted as amicus curiae, were taken before the said conclusion was arrived at.

76. The above data has been furnished to bring home the point that the power to punish summarily for contempt is not a creature of statute but an inherent incident of every Court of record. This inherent jurisdiction cannot be wiped out. The same has been recognised from time to time in the relevant Letters Patent and the Constitutional Acts in India. The Government of India Act, 1935 stated in Section 220 that every High Court shall be a Court of record and declared in Section 223 that the then existing jurisdiction of High Courts shall be the same as they were immediately before the commencement of Part III of that Act. Section 203 of the Act constituted the Federal Court as a Court of record which was given appellate jurisdiction by Section 205.

Kind of Comments that Constitute Contempt

77. Now, we should concentrate on the question as to whether or not the comment in question can amount to contempt of Court. Again we should take in aid ratio of high preponderant decisions on this count.

78. The law looks at the conduct of the person proceeded against in order to find out if it was calculated to produce an atmosphere of prejudice in the midst of which, the judicial proceedings have to go on. The test of guilt in such cases depends on the findings whether the matter complained of tended to interfere with the cause of justice, and not on the question whether such was objective sought, much less whether it was achieved. Neither desire to obstruct or prevent administration of justice, nor its fulfillment is counted in proceedings for contempt.

79. Intention is of no relevance or consequence so long as the words used in the publication tend to interfere with the course of justice or prejudice the public or the Court in the trial of the case.

80. It is difficult to enumerate the acts which may amount to contempt of Court. The overriding question in all cases of contempt of Court must, however, be whether the action or remark of the alleged contemnor is or is not calculated to interfere with, interrupt or thwart the course of justice.

81. The question in such cases is what the publication can lead to, rather than what result it has actually generated. [1945 Lah 206, 1937 Bom 305, 1945 PC 134, PLD 1953 SC 170, 15 DLR 96, PLD 1962 SC 457, 15 DLR 81].

82. Prejudice: All publications which are calculated to or have the tendency to either excite prejudice against parties or their litigation or to interfere with due course of justice will constitute contempt [PLD 1963 SC 610: 15DLR 355]

83. Nothing is more incumbent upon courts of justice than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard. Anything that tends to prejudice that fair trial by a Court, constitutes a contempt of Court.

84. Now what is clear from the analyses just figured is that contempt is constituted when something is done, which is capable of interfering with the impartial flow of justice. To elaborate this, a plethora of high preponderant authorities command that nobody must make any comment about an issue which is awaiting adjudication in a Court of law because such comment may attempt to pervert the course of justice by influencing the mind of the Court or people at large and also by impliedly suggesting what should be the outcome of the proceeding at the end of the day. Such a scenario is not confined to this sub-continent, but is practiced globally. We would like to cite some or such authorities from the Courts in the subcontinent as well as from the United Kingdom.

85. In the case of Sire Edward Snelson-V-Judges of the High Court of West Pakistan, reported in 1961 PLD S.C 237, the Pakistan Supreme Court observed that "such conduct amounts to contempt of Court which tends to bring the administration of law into disrespect or to disregard or to interfere with or prejudice parties or their witnesses."

86. Pakistan Supreme Court in the same case, echoing Wilmot J's view, further observed, "The power of the Courts to vindicate their own authority is coeval with their first foundation and institution. It authorizes the Courts to deal, effectively with all that has tendency to hinder the normal course of justice. The reason for the existence of this jurisdiction is that unless armed with such a jurisdiction, the courts cannot properly function. It arises in three kinds of ways:

(1) a disobedience to an order of the Court; (2) a publication relating to the merits of a dispute pending before a Court; (3) an act which scandalizes a Court.

87. Pakistan Supreme Court in that case also had this to say, "All publications which offend against the dignity of the court or are calculated to prejudice the course of justice, will constitute contempt."

88. The case reported in PLD 1961 Lah. 78, recorded the following observation:

"Contempt of Court may be committed by:

(1) Scandalizing the Court itself;
(2) Abusing the parties who are concerned in the causes inside the Court;
(3) Prejudicing the public before the cause is heard."

89. Pakistan Supreme Court also observed, "All publications, which are calculated to or have the tendency to either excite prejudice against the parties or their litigations while it is pending, or to interfere with the due course of justice, will constitute contempt.

90. Pakistan Supreme Court further stated, "Publications, the effect of which is to prejudice a material issue in the case before the judgment is pronounced or which has the tendency to create in the public mind a preconception about such issue, are contempt."

91. In the decision which found a place in PLD 1964 Lahore 51, the Court observed:

"There may be contempt of this Court in prejudicing the mankind against persons before whom the cause is heard."

92. In another case, reported in PLD 1964 Lah. 661, Lahore High Court stated; "Any act done or writing published calculated to obstruct or interfere with the due course of justice or lawful process is contempt of Court."

93. It is not essential, in order to constitute a contempt, that the act should be done publicly or publicized in any way.

94. Lahore High Court in the case reported in PLD 1961 Lah. 78, observed:

"The respondent no doubt as a Secretary, Ministry of law, has the right to express his own views about judgments of the High Courts but these views can be expressed by him on confidential office files, the contents of which are not broadcast to the world at large or to the public servants other than those having official concern in the matter... He can not claim the protection which would attach to his secret communication in the discharge of his official duties."

95. In Syed Ahmad Nawaz Shah-V-Waliullah Uhad, reported in PLD 1953 BJ 79, the High Court stated, "For the purpose of the offence of contempt of court it is immaterial whether the mind of the judge concerned was actually prejudiced or not. It is enough that the writing had a tendency to produce an unwholesome impression."

96. Lahore High Court in the case reported in PLD 1950 Lah. 22 observed, "But if the report amounts to a comment or expression of opinion on matters sub-judice or has the tendency to influence the readers' opinion on those matters, it will amount to interference and hence to the offence of contempt of Court."

97. In that case reported in PLD 1963 SC 610: 15DLR 355 Pakistan Supreme Court in the case reported in PLD 1975 SC 383, said "comments in respect of pending proceedings are treated as contempt in order to keep the streams of justice pure and unsullied. Only those comments are punishable which really have the tendency to substantially prejudice the hearing of a case or interfere with the course of justice. The question always is whether the court before which the matter is pending would be so influenced by the Article or speech that its impartiality may be consciously or unconsciously affected. In other words, is there a real possibility of the speech of the Article being calculated to prejudice either party in the pending case."

98. Pakistan Supreme Court in the case reported in PLD 1976 SC 608 observed, "The Article not only prejudged the issue awaiting determination but also created an atmosphere disposing people not to readily accept contrary verdict of the Court. Situation tended to undermine people's confidence in administration of justice."

99. The question in these cases is not whether the publication has in fact, interfered or not or as to what was the intention of the commenter or the publisher, but whether it has the tendency to produce such prejudicial effect. The principle upon which this type of contempt is punished is to keep the streams of justice unsullied so that parties against whom litigations are pending in Courts of law should get a fair trial from the Courts and not to be subjected in advance to a "trial by newspapers". (Sadat Khialy Vs. The State, PLD 1962 Supreme Court 457 - 15 DLR (SC) 81 -1963 (2) PSCR 402. (per Hamoodur Rahman J).

100. Knowledge of the pendency of the proceeding is not a necessary ingredient of the offence of contempt of Court. All that is necessary is to show that a proceeding was actually pending at the time or was imminent.

101. It is the contemner's duty to take proper care and to make sure before issuing a statement regarding a sub-judice matter that no proceedings were pending before the Court or were contemplated. If he made no such enquiries then he clearly acted negligently and cannot take advantage of his negligence. . (Advocate General Vs. Shabir Ahmad, 15 DLR (SC) 355.)

102. Pakistan Supreme Court in the case reported in PLD 1958 SC 528, reiterated that intention is irrelevant in a contempt proceeding as it is a strict liability offence.

103. The same Court in a case reported in PLD 1962 SC 457 stated, "If the Article read reasonably and as a whole was calculated or had the tendency to prejudice mankind against one or other of the parties involved in the legal proceedings, it was enough to amount to interference with the course of justice, for, the question in these cases is not as to whether the publication, has, in fact, interfered or not or as to what was the intention of the author or the publisher but whether it has the tendency to produce such prejudicial effect. The principle upon which this type of contempt is punished is to keep the stream of justice unsullied so that parties against whom litigations are pending, should get a fair trial, and not be subjected in advance to a trial by the commentator."

104. Pakistan Supreme Court in the case cited in PLD 1963 SC 610 observed, "Any publication which has, or is likely to have, the tendency to pervert the course of justice by attempting to excite through the media of newspapers prejudice against the parties or their litigations while they are pending, constitutes contempt. Intention of the maker is wholly irrelevant, for what the Courts are concerned with is to ascertain as to what

effect the publication, read fairly and as a whole, is likely to produce in the minds of reasonable readers." The same view has also been expressed by the Supreme Court in the cases reported in PLD 1962 SC 457 and 15 DLR (SC) 81. The Supreme Court in the case reported in PLD 1963 SC 610 and also in 15 DLR (SC) 355, observed, "There is no difference in principle between a comment on a question of fact and expression of an opinion on a question of law, for a Court, even when dealing with a question of fact is expected not to be influenced by facts which may have come to his knowledge otherwise than in the from of the evidence adduced in the case. Therefore, any expression of opinion on a question of law in similar circumstances should be incapable of producing a like result and a alike pernicious tendency and hence such comments must be dealt with strong hands."

105. In the case of Helmore-v-Smith, reported in 1886 35 Ch D. 449 it was observed: "The main question always being whether or not there has been an interference, or a tendency to interfere with the administration of justice."

106. The Supreme Court of Pakistan in the case of Advocate General-v-Sabbir Ahmed, reported in PLD 1963 SC 610 observed that any attempt to pollute the stream of justice before it has begun to flow or to interfere with its proper and unfettered administration will amount of contempt. A Court dealing with a question of law would not normally allow itself to be influenced by expression of opinion on that question of law in a pending case because of their tendency, not because of the actual effect they produce. Actually there is no difference in principle between a question of law and fact.

107. Oswald (3rd Edition 93) said, "Comments by parties is more serious than those by strangers- It is a graver offence for the parties themselves or their advisors to comment on a pending cause than for a stranger who has no interest in the matter."

108. In the case of Attorney General of Pakistan-v- Abdul Hamid Sheikh, reported in PLD 1963 SC 170, Pakistan's Apex Court observed: "Publication leading to one sided impression in the mind of the public constitutes contempt. Neither intention of the another nor truth or falsity of the allegation is of any consequence. Publication of pleadings in advance amounts to serious interference with the decision of the case."

109. In the cases of Hunt-v-Clarke, 1889 58 LJ QB 490 and James-V-Flower, 1894 11 TLR 122, the Court observed; "Tendency to interfere is the only question. It is not whether there was interference, but whether it tends to interfere with due course of justice."

110. In the case of Sukhde Baiswar-v-Brij Bhushan Misra, reported in AIR 1951 All. 667, it was reiterated that intention has no relevance and so the liability is strict. The same view has also been expressed in Re: Sham Lal, reported in AIR 1978 SC 489.

111. In the case cited in PLD 1963 SC 610 that publication tending to prejudice the fair trial of a case by influencing the mind of the public and also of the court, is contemptuous.

112. In the case of D James Shield-v-N Ramesam, reported in AIR 1955 AP 156, the High Court of Andhra Pradesh said that an Article stating that persons arrested were innocent, amounted to a contempt of court because it amounted to prejudging the issue, which has been pending in a court of law. The same view has been expressed in the cases of State of Uttar Pradesh-v-Padma Kant Malmaviya, reported in AIR 1954 All 523 and Ramakrishna Mabtab-v-Balkrishna Kar, reported in AIR 1954 Ori. 57.

113. In Attorney General-v-Independent T.V. News Ltd. (1995 2 All ER 370) it has been said that if the mind of the jurors might be influenced in the trial, contempt is committed. The same view was also expressed by the House of Lords in the Lonrho PLC case, 1990 2 AC 154 (Per Lord Bridge who voiced similar observation).

114. Patna High Court in Awadh Narain Sing-v-Jwala Prasad Singh, reported in AIR 1956 Pat. 321 observed: "It has been said that publication includes any conduct which leads the public or a section thereof to believe something prejudicial to the other party."

115. In Larakha Hasan Hamirkha-v-Keshablal Dhaneshwar Dwivedi, reported in AIR 1956 SC 102 the observation was; "The test is whether the impugned publication is likely to cause obstruction or interference with the due course of justice……."

116. In the case of Padama Vati Devi Bhargava-v-R.K. Karanjiya (AIR 1963 MP 61), "The High Court of Madhya Prodesh said that even though a newspaper article may not actually prejudice the Court, it may still amount to a preliminary mini trial and hence contemptuous."

117. In the case of P.C. Sen, reported in AIR 1970 SC 1821, the Indian Supreme Court observed: "Where a Chief Minister of the Government broadcasts the sort of point of view which is sub-judice in a writ petition, that broadcast and that opinion amount to a contempt of Court." The same view has been taken by the Court of Appeal in the case of Attorney General-v- MBN Ltd. (1997 1 All ER 456).

118. In the case of R.-v- Mohashae Khural Chand, AIR 1945 Lah. 206, the Privy Council said, "An assertion that a fact exists and is correct when the existence of that fact is in dispute in a pending case, is likely to prejudice a fair trial." The same view has been taken in the cases of Lakhan Singh-v-Balbir Singh (AIR 1953 All. 342 and Gottepulla Bapaiya-v-Peter Bappopayya, AIR 1938 Mad. 975).

Fair Criticism on the Conduct of Judges May not Amount to Contempt

119. Fair criticism of the conduct of a Judge, may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sough to be achieved.

120. In P.N. Duda v. P. Shiv Shanker (1988, 3 SCC 167), the Indian Supreme Court had held that Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e., to defend and uphold the constitution and the laws without fear and favour.

121. In R. Vs. Commr. Of Police (1968)2 QB 150 Lord Denning observed, "Let me say at once that we will never use this jurisdiction 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. All that we ask is that those who criticize us should remember that, from the nature of our duties, we cannot reply to their criticism. We cannot enter into public controversy. We must rely on our conduct itself to be its own vindication.

Krishna Iyer J. on Fair Criticism

122. V.R. Krishna Iyer J. wrote extra judicially on contempt; "The Constitution gives you power. And all public power is held as a trust. If you breach this trust you pay for it: by facing responsible criticism. When there is justice, which is your professional-fundamental duty, criticism loses its sting. And the Preamble to the Constitution spells it out. Social, economic and political justice is your basic obligation, which you have to fulfil without fear or favour. If you fail here, you disrobe yourself and deserve correctional criticism.

123. This judicature is a noble and never a nocent institution. If you goofily debunk and unjustly bring the judiciary into disrepute, you judges commit contempt and get punished. The court is a magnanimous institution, majestic and glorious, and it sustains the confidence of the nation. But if the judiciary behaves as an elite upper sector and denies the rights of the common masses, criticism is what you earn. Remove those judges who conduct themselves with a sense of contempt for social justice and human rights: that is the fascist, authoritarian way.

124. This has become a critical issue. Judges as an instrumentality under the Constitution have vast powers under Article 141 to 144. When the Executive misuses its powers, the court can strike down its actions. When the Legislature commits excesses beyond the Constitution or otherwise defaults, the court can declare it void. When judges themselves are guilty of laws, shortcomings or violations, public criticism is the only way judges can be corrected by, against allegation of corruption, against the sitting judges of the apex Court.

Willing to go to jail, Won't Say Sorry: Shanti Bhushan

125. Recently, India's former Law Minister, Shanti Bhushan told the Supreme Court that he and his lawyer son, Prashant Bhushan, would prefer to go to jail instead of tendering an apology for pointing to corruption in the judiciary. Bhushan told this to the court after he and his son were asked if they were willing to offer an apology.

126. The senior Bhushan said this when he was asked by the court . He became a party to the contempt case by filing an affidavit saying that of 16 chief justices of India, eight were 'definitely corrupt', six were 'definitely honest' and for two of them 'a definite opinion cannot be expressed.'

127. This matter engendered waves of fierce debate in India, raising a basic question as to whether the former Law Minister concerned should be punished for contempt or whether allegations levelled by him should be investigated and, if proved true, steps should be on the way for removing those Judges, against whom such allegation are proved.

128. We do wholeheartedly endorse the views that the law of contempt is not there to vindicate the personal glory of individual Judges or to clean the dirty lincen of those who may indulge on corrupt or unholy or other disgraceful practices, rendering a Judge disqualified to continue with this post. We are also at one with the introspection that the Majesty and the Grandour of the superior Courts depends on the irreproachable credibility and integrity of the Judges that men it and that to protect and hold high the Majesty and the Grandour of the superior Courts, it is absolutely essential that the Judges, (Chief Justice inclusive) against whom allegation of corruption or other impropriety or breach of Code of Conduct are proved, should be removed. Obviously, no High Court or Supreme Court with any corrupt or otherwise depraved Judge, whether he be the Chief Justice or another Judge, can claim any degree of Majesty.

These questions are, however, not relevant in the instant case.

Does the Comment by the instant Contemnor Constitute Contempt ?

129. Now, if a reasonable bystander analyses the ratio of all the cases discussed under the caption, "Kind of Comment that Constitutes Contempt", he will no doubt hold that the comments in question are certainly contemptuous and hence punishable by this Court, because the contemnor has effectively passed a verdict on the matter which is awaiting adjudication by this Division.

130. The impugned comment constituted the offence, because; (1) by this comment the contemnor purported to usurp the function of this Division, (2) the comment has the potential of influencing the minds of the people at large as well of the judges, whether or not it actually generated that effect, (3) the comment amounted to prejudging the cause which was awaiting adjudication, (4) the comment was vibrant enough to lead the public as well as the judges concerned to reckon that by issuing the Rule and passing the interlocutory order, the Court resorted to illegality and that this Court was wrong as the contemnor claimed to have been right, (5) the comment amounted to an aspersion and insinuation on the merit of our order, and was capable of transmitting a suggestion that a wrongly passed order should be reversed, (6) in all, the comment amounted to a trial by a stranger, i.e., the contemner, which could seriously obstruct the right course of justice and cause its deviation.

131. No word or action capable of influencing the destiny of a pending cause can be acceptable in any civilized country and such action, utterances must be dealt with strong handedly, without compassion.

132. It is unfortunate, least said, that a person, who has held several Judicial offices and is also presently holding a quasi judicial office as an Election Commissioner, made prejudicial comment on a sub-judice matter. Even the Chief Election Commissioner, who is not fortified with legal back ground, had the wisdom to realise that no comment should be made on a sub-judice matter, as he refused to be drawn to any comment, reckoning that a comment on a sub-judice matter is devastating to the cause of justice.

133. Worse happened when the contemner demonstrated outrageous disregards and scorn to the authority of law by refusing to appear before this Court when he was ordered to, as if he was above law. This haughty and high handed attitude on the part of a person, reposed with high Constitutional duties, is not only disgracefully and pitiable, but also raises the question as to whether a man with this sort of supercilious propensity, reflective of a tendency to undermine the authority and the rule of law and Constitutional mandate, which requires all authorities in the Republic to work in aid of the Supreme Court, should be allowed to continue with such an important public office with quasi judicial function, whose allegiance to the dictates and the authority of law and the Courts must be impeccable and beyond qualm . The job of an Election Commissioner involves profound responsibility and integrity. Election Commissioners together conduct the national and local elections of the Republic and, to discharge those responsibilities they must have unsullied, indivisible, unfettered and unquestioned regard to the command of law. No person, devoid of such qualities, as the contemnor certainly is, can have competence to hold such an office. It is not only expected, but it is imperative, that the Election Commissioner must show total and un-inoculatable submission to the authority of law. Yet his conduct was such

that he treated the High Court as of no significance. By doing so, he has committed further and aggravated contempt of Court and transmitted a message to the whole world that High Court's order can be flouted with impunity. His conduct was certainly unbecoming of the post he holds.

134. Nobody is above law. As Lord Denning repeated a vintage remark, "be you ever so high the law is above you". Even the Prime Minister of India had to be in Court. The Speaker of a Provincial Assembly of India had to appear before the Supreme Court of India when he was accused of contempt, his plea of privilege was turned down and the Court asked the Government to ensure his appearance, (1. Moniram Singh-V-H. Barababu Singh) supra. In the U.K., the Home Minister of the day eventually submitted to the authority of the Court after his plea of Crown privilege was rejected (M-v- Home Office 1994, 1 AC 377). One Mr Habibullah, a Minister of that time, appeared before the High Court when a contempt Rule was issued against him. An incumbent Election Commissioner, when prosecuted under a Penal law, had to appear before the Court without any hesitation. Even the Prime Minister of the day responded to a contempt Rule Nisi and followed the legal procedure without any hesitation.

135. There is no dearth of such examples: the examples cited above are but only the tip of the iceberg. An order passed by a Court has to be obeyed, come what may, so long as the same pervades.

136. In this context, echoing Indian Supreme Court's observation, we would say, "we must remind ourselves that the rule of law permits none to claim to be above law. (Manilal Singh-v- Dr. H Barababu Singh, the Speaker of Manipur Parliament,) supra.

137. The scornfulness of the instant contemnor is deplorable. However, as Mr.Rokanuddin Mahmud, the learned Senior Advocate appearing for the petitioner prayed that his presence may be dispensed with; we readily agreed to do so. But we cannot be oblivious of the castigatable and abhorable attitude that the contemner hawkishly displayed.

138. Mr. Rokonuddin Mahmud, with all his greatness and nobility, submitted that although contempt of Court has undoubtedly been committed by the contemnor, we should, nevertheless, refrain from proceeding to punish him.

139. When the petitioner himself so prays, we are left with little choice as the Rule was not issued suo-motu, but at his client's behest. We have to swallow this plea with the greatest reluctance though, as we relish an immutable view that the contemnor should face merciless rigor of law for his persistent flagrant and deliberate disregard to this Court, and for treating himself to be above law.

140. Be it as it may, we, because of the petitioner's learned Senior Advocate's graceful and magnanimous plea, feel inclined to exonerate him. We do, therefore, dispose of the Rule with the above observations. We would, nevertheless, expect him to be respectful to the authority of law on all future occasions without any ifs and buts.

141. The Rule is hence disposed without any order as to cost.

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