

W. Peter Ramesh Kumar, Advocate Vs. -----

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Court : Chennai

Decided On : Feb-22-2016

Judge : V. Ramasubramanian & K. Ravichandrababu

Appeal No. : Suo-Motu Contempt Petition (MD) No. 1449 of 2015

Appellant : W. Peter Ramesh Kumar, Advocate

Respondent : -----

Judgement :

V. Ramasubramanian, J.

Preamble

"Lawyers ought to know that at least as long as lawful redress is available to aggrieved lawyers, there is no justification for lawyers to join in an illegal conspiracy to commit a gross, criminal contempt of court, thereby striking at the heart of the liberty conferred on every person by our Constitution. Strike is an attempt to interfere with the administration of justice. The principle is that those who have duties to discharge in a court of justice are protected by the law and are shielded by the law to discharge those duties, the advocates in return have duty to protect the courts. For, once conceded that lawyers are above the law and the law courts, there can be no limit to lawyers taking the law into their hands to paralyse the working of the courts.

It is high time that the Supreme Court and the High Court make it clear beyond the doubt that they will not tolerate any interference from anybody or authority in the daily administration of justice. For in no other way can the Supreme Court and the High Court maintain the high position and exercise the great powers conferred by the Constitution and the law to do justice without fear or favour, affection or ill-will."

(H.M.Seervai, a distinguished jurist-quoted by the Supreme Court in Harish Uppal (Ex.Capt) Vs. Union of India reported in [2003 (2) SCC 45]

"If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our Constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society"

(In Re: Vinay Chandra Mishra reported in [1995 (2) SCC 284]

History of the case:

2. This contempt proceeding was initiated suo-motu by a Division Bench vide its order dated 16.9.2015, when the Contemnor barged into a court hall along with a group of lawyers shouting slogans, called out the Advocates present therein to come out, picked up an argument with a lawyer who refused to come out and challenged the learned Judges to take action if they dared. The contemnor appeared before us on 30.11.2015 and sought a copy of the proceedings dated 16.9.2015 to enable him to file a response. After receiving the copy of the proceedings dated 16.9.2015, the contemnor indulged in various tactics which we have recorded in our orders dated 10.12.2015, 7.1.2016 and 19.1.2016. Ultimately, the Contemnor filed a reply dated 27.1.2016. The opportunity given to the Contemnor to submit a reply, was used by him (i) to make scandalous allegations against the Presiding Judge of the Division Bench, which initiated contempt action (ii) to make allegations against the learned Judge who was part of our division bench (NKKJ) (iii) to make a scurrilous attack on others including women lawyers and (iv) to demand the summoning of a sitting Hon'ble Judge of the Supreme court apart from others. Therefore, this Court rejected such

allegations as an outrageous attempt by the Contemnor to denigrate and slander the judiciary and we adjourned the case to 4.2.2016 for framing of charges. In the meantime, finding that the contents of his counter were not published in the print media, he circulated its contents through Whatsapp and Facebook posts.

Charges framed against the Contemnor:

3. Thereafter, this Court framed charges against the Contemnor on 4.2.2016, which were duly served upon him. The charges framed against him are as follows:-

"(1) That you, W.Peter Rameshkumar, the Contemnor above named, on 16.9.2015 at about 10.50 AM, while the court proceedings were on in Court Hall No.2 and being conducted by a Division Bench comprising of Hon'ble Justices R.Sudhakar and V.M.Velumani, trooped into the court hall without wearing formal robes.

(2) That you, W.Peter Rameshkumar, before entering into the court hall, the group of alleged advocates led by you, were heard shouting slogans, which the Division Bench was able to hear. This conduct of yours in leading a procession of slogan shouting advocates is also a violation of the earlier order passed by the Division Bench dated 20.3.2006 and 2.3.2010 made in W.P.No. 7646 of 2006 (S.Venkatraman Vs. Registrar General, High Court, Chennai).

(3) That you W.Peter Rameshkumar, upon entering court hall No.2, in a loud voice, called out for the advocates present in the court to come out of the court hall and join you in support of the boycott call issued by his association i.e the Madurai Bench High Court Advocates Association.

(4) That you W.Peter Rameshkumar, upon entering into court hall No.2 and finding that one D.Selvam, an advocate (also the Chairman of Bar Council of Tamil Nadu and Puducherry) was arguing case (W.A.(MD).No.971 of 2015) listed as item No.14 on behalf of one advocate R.R.Kannan attempted to prevent him from continuing his argument and also asked the advocates present therein to leave the court.

(5) That you W.Peter Rameshkumar entered into a wordy duel with D.Selvam, advocate, when he refused to heed to your request and continued with his argument.

(6) That you W.Peter Rameshkumar, when the Division Bench pointed out that you should not disturb the court proceedings and in case you want to give a lecture to the advocates assembled in the court hall that you may do so outside the court hall, you immediately burst out and addressed the Judges with the following utterances :

'If you have guts, take action against me'.

(7) That you, W.Peter Rameshkumar be informed that the above acts of yours will amount to criminal contempt in terms of Section 2(c) of the Contempt of Courts Act, 1971."

Defence of the Contemnor:

4. In response to the charges framed on 4.2.2016, the Contemnor filed a statement dated 15.2.2016 captioned as denial of charges. Instead of containing any explanation to the specific charges framed against him, the said statement contained allegations against one of us and a request to one of us to recuse from the Bench. The contents of the statement filed by him on 15.2.2016 and the vituperatives made by him in the Court Hall, themselves would tantamount to another contempt. What transpired during the hearing held on 15.2.2016 was recorded by this Court in its order and it will be worth extracting paras 8 and 9 of the order, which are as follows:-

"8. Therefore, in fine, there is no concrete and direct denial of the specific charges framed against the contemnor, on the basis of the judicial order recorded on 16.9.2015 by Division Bench comprising of Hon'ble Justices R.Sudhakar and V.M.Velumani. The attitude of the contemnor, as we have observed in our earlier orders, is one of aggravating the contempt. Even today, he went on shouting in open court raising irrelevant issues and accusing the court. In fact, the behaviour of the contemnor has grown from bad to worse, whenever the contempt was listed.

Even when we were dictating orders today, he kept on interrupting. We have not recorded all his outbursts, as they tantamount to scandalization of the entire judiciary and also due to the fact that this contempt is confined to what happened in open court, on 16.9.2015, as recorded by two learned Judges of this Court in their order dated 16.9.2015.

9. Therefore, we have no alternative except to hold that the contemnor is guilty of the charges framed against him. We accordingly hold the contemnor guilty of the criminal charges of contempt framed against him on 4.2.2016."

The charges against the Contemnor have been proved beyond reasonable doubt.

5. The first justification, apparently a feeble one, provided by the contemnor for his action on 16.9.2015 was that lawyers were fighting for the cause of Tamil and even though he was not an office bearer of the Madurai Bench High Court Advocates Association, which had called for a one day court boycott on 16.9.2015, he had communicated the same to the Judges of the Division Bench sitting in the second court hall. He did not deny that along with a group of office bearers, he had barged into the court hall and was shouting slogans. When confronted by the Presiding Judge of the Division Bench, he did not stop his interruption. On the contrary, as per the record of the court proceedings dated 16.9.2015, he even threw up a challenge to the Judge to take an action against him by uttering the following words:

"If you have guts, take action against me".

6. Since the Contemnor, in his statements, have attempted to justify the court boycott on 16.9.2015 and also about his own role in the incidents of that day, it is necessary to go into the question as to whether the lawyers can go on a court boycott as a matter of right, which came to be considered by the Supreme Court in more than one judgment. In *Harish Uppal (Ex.Capt.) Vs. Union of India* [2003 (2) SCC 45], the Supreme Court dealt with the scope of such court boycotts and also the duty of the court in going ahead with the matters in spite of such strikeouts. In paragraphs 21, 34 and 35 of the judgment, it was held as follows:-

"21. It must also be remembered that an Advocate is an officer of the Court and enjoys special status in society. Advocates have obligations and duties to ensure smooth functioning of the Court. They owe a duty to their client. Strikes interfere with administration of justice. They cannot thus disrupt Court proceedings and put interest of their clients in jeopardy.

34.Conduct in Court is a matter concerning the Court and hence, the Bar Council cannot claim that what should happen inside the Court could also be regulated by them in exercise of their disciplinary powers. The machinery for dispensation of justice according to law is operated by the Court. Proceedings inside the Courts are always expected to be held in a dignified and orderly manner.

35. In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot not attend Courts in pursuance to a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore, in such cases, the President of the Bar must first consult the Chief Justice or the District Judge before Advocates decide to absent themselves from Court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to

adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs, which shall be addition to damages, which he might have to pay his client for loss suffered by him."

7. The frequent court boycott by lawyers in Tamil Nadu and the consequential lawlessness created by the striking lawyers came to be dealt with in a series of decisions. In *Re.Rajendran and others* [1995 CrI.L.J. 1956], it was observed as follows:-

"Let not any one walk out of this Court Hall with an impression, that whatever be the gravity of the offence, one could always escape lightly. The instant untoward incident, has been analysed by all concerned, and the answer in unison was that let this episode serve as a sure foundation or eye opener for fostering of a better tomorrow, with an assurance that recurrence, if any, though chances may be bleak, will have to be gravely taken note of and appropriate punishment meted out."

8. In the aftermath of the incident that took place on 19.2.2009 in the campus of the Principal Bench, a suo-motu public interest litigation was initiated initially by a Full Bench, which was later dealt with by a Division Bench headed by F.M.Ibrahim Kalifulla,J (as he then was), who, in the judgment reported in *The Chief Secretary to Government of Tamil Nadu (suo-motu taken up W.P. (PIL) [2009 WLR Supp 1]*, gave the following directions as found in paras 195, 198 and 199:-

"195. Taking a clue and guided by the above decisions we state that time has now come for this Court to put things straight and make the message loud and clear that hereafter under the guise of boycott of Courts no hindrance should be caused to the public or the working of the Court."

.....

198. The ban imposed (W.P.No.7646 of 2006 dated 20.06.2006) for any one to hold meeting inside the High Court campus other than regular meetings of the Association or any special meetings in their association premises shall be strictly adhered and no political party affiliation shall be permitted inside the High Court campus and other Court premises throughout the State for holding any meeting or demonstration or any other form of agitation inside the premises.

199. In this context, the recent order of the Hon'ble Supreme Court in this case itself dated 26.02.2009, namely that the advocates should not cause any disturbance to the Court proceedings and should not shout slogans inside the Court premises as well as no meeting should be held in the Court premises without the permission of the Chief Justice except other meetings in their Association premises shall be implemented forthwith by the Registry."

9. From the above decisions of the Supreme Court and of this Court, it will be clear that there can be no justification for going on a court boycott. Even otherwise, no one can justify the interruption of the court proceedings and that too by lawyers, causing hindrance to the litigant public. The Contemnor in this case has not only disrupted the court proceedings, but also challenged the authority of the Judge in questioning him about his conduct and threw up an open challenge to the Judge to initiate action against him if he had any "guts". The American Heritage Idioms Dictionary Published by Houghton Mifflin Company explains the usage of the term 'guts' in the following lines:

"Possess the courage, as in Does he have the guts to dive off the high board? This expression replaces the earlier and now obsolete sense of stomach as "courage", a usage from the early 1500s. [late 1800s]"

10. It is also claimed by the Contemnor in his statements that the initiation of suo-motu contempt amounts to double jeopardy, since the Bar Council of India had already suspended 44 advocates including the Contemnor as per the directions found in the order dated 16.9.2015. The direction contained in the order dated 16.9.2015 to the Bar Council of Tamil Nadu is as follows:-

"The Bar Council of India is also the authority to take disciplinary action against such a deviant Advocate. Accordingly, the Registry is directed to forward a copy of this order to the Bar Council of India and to the Bar Council of Tamil Nadu and Puducherry for taking appropriate action."

11. The direction issued by the Division Bench is only in respect of the Contemnor and he has got nothing to do with the cause or reason behind the suspension of other advocates, who are also facing suspension by the Bar Council. It is brought to our notice that the suspension of lawyers belonging to both Chennai and Madurai are for different reasons and not arising out of the incidents of 16.9.2015.

12. The question of double jeopardy does not arise merely because the Bar Council has also initiated appropriate disciplinary proceedings. In any event, the issue raised is no longer res-integra. Merely because the Bar Council is seized of a matter and exercised its power of disciplinary action, it does not take away the power of the court to proceed with a contempt action as was held in Supreme Court Bar Association vs. Union of India [1998 (4) SCC 409]. It was observed as follows:-

"An advocate found guilty of committing contempt of court may also be guilty of committing professional misconduct, depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures."

13. In Re: Vinay Chandra Mishra [1995 (2) SCC 584], it was observed as under:-

"The disciplinary jurisdiction of the State Bar Council and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court. The said jurisdiction co-exist independently of each other. The action taken under one jurisdiction does not bar an action under the other jurisdiction."

14. In Pravin C. Shah vs. KA.Mohd. Ali[2001 (8) SCC 650], it was observed as follows:-

"Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who was found guilty of contempt of court on the previous hour, standing in the court and arguing a case or cross-examining a witness on the same day, unaffected by the contemptuous behaviour he hurled at the court, would erode the dignity of the court and even corrode the majesty of it besides impairing the confidence of the public in the efficacy of the institution of the courts. This necessitates vesting of power with the High Court to formulate rules for regulating the proceedings inside the court including the conduct of advocates during such proceedings. That power should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the High Court should be in control of the former.

Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate."

15. In his statement dated 15.2.2016, the Contemnor has projected a grievance that the 17 witnesses, whose names were furnished in the order of this Court dated 16.9.2015, were not made available for cross-examination. But this does not stand to reason. The two learned Judges, who were conducting proceedings in court hall No.2 at Madurai Bench, have dictated the order in the open court on 16.9.2015 and the record made available by the Judges need not be proved by examining any witness. The proceedings recorded by the learned Judges in open court are a matter of record and they do not call for any further proof. The Contemnor did not deny his presence in the court. He was only attempting to give his own version of the event, which we are not prepared to accept. His second grievance that 10 persons whose names are given by him in his explanation to the show cause notice, ought to have been summoned as witnesses on his side, also does not stand to legal scrutiny. The list of 10 persons submitted by him includes a

sitting Judge of the Supreme court and a retired Judge of this court. The list is submitted obviously with a view to annoy the court. If at all the Contemnor has a defence to the charges levelled against him and wants to prove the same by letting in oral evidence, the obligation to bring such witnesses is upon him. No attempts were made by him to bring such witnesses before this Court. The nature of proceedings in a suo-motu contempt case and the evidence to be gathered were set out by the Supreme Court on more than one decision.

16. In *Sukdev Singh vs. Hon'ble C.J. Teja Singh* [AIR 1954 SC 186], it was observed as follows:-

"The power of a High Court to institute proceedings for contempt and punish when necessary is a special jurisdiction which is inherent in all Courts of Record. Section 1(2) of Criminal P.C. expressly excludes special jurisdictions from its scope. Hence, the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself."

17. Further, In *Re.Vinay Chandra Mishra* [1995 (2) SCC 584], it was observed as follows:-

"10.The provision in specific terms and for obvious reasons, states that in such cases it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, to appear as a witness and the statement placed before the Chief Justice shall be treated as the evidence in the case. The statement of the learned Judge has already been furnished to the contemner and he has replied to the same. We have, therefore, to proceed by treating the statement of the learned Judge and the affidavits filed by the contemner and the reply given by the learned Judge to the said affidavits, as evidence in the case.

....

12. Before we refer to the other contentions raised by the contemner, the question is which of the two versions has to be accepted as correct. The contemner has no doubt asked for an inquiry and an opportunity to produce evidence. For reasons stated earlier, we declined his request for such inquiry, but gave him ample opportunity to produce whatever material he desired to, including the affidavits of whomsoever he desired. Our order dated 15th July, 1994 is clear on the subject. Pursuant to the said order, the contemner has not filed his further affidavit or material or the affidavit of any other person. Instead he tendered a written apology dated 7th October, 1994 which will be considered at the proper place. In his earlier counter additional counter, he has stated that it is not he who had committed contempt but it is the learned Judge who had committed contempt of his own court. According to him, the learned Judge had gagged him from discharging his duties as an advocate and the statement of senior member of the bench concerned was necessary. He has taken exception to the learned Judge speaking in the Court except through the senior Judge of the Bench which according to him, had been the practice in the said High Court and has also alleged that the learned judge did not follow the said convention."

18. Therefore, as already recorded in our order dated 15.2.2016, there is no want of procedural requirement and the conclusion that the charges stand proved, is inescapable. We have indicated this in our earlier order also.

Questioning the Contemnor on the proposed penalty:

19. As per our previous order dated 15.2.2016, the contempt petition was taken up today, namely 22.2.2016 at 2.15 pm, as previously indicated and also as shown in the cause list. But, the contemnor did not appear. Therefore, we have no alternative except to presume that he has nothing to say on the question of penalty.

Punishment:

20. The Contemnor did not show any remorse or regret for his conduct. He did not come forward to tender any apology for his indefensible conduct. The Contemnor did not come forward with any reasonable defense in the course of the two

statements dated 27.1.2016 and 15.2.2016 filed by him before this Court. Those two statements make unfounded allegations against the two Judges, who initiated Suo-Motu Contempt Proceedings as well as against one of us. After finding that the scandalous allegations made by the Contemnor in his statement dated 27.1.2016 did not get the publicity that he expected in the Print Media, the Contemnor circulated these allegations in his Facebook Posts and through Whatsapp messages. Enraged at the attempt of the Contemnor even to scandalise women lawyers, a group of women lawyers came up with applications for intervention, which we did not entertain.

21. In the statement dated 15.2.2016 filed by the Contemnor, an attempt was made to justify his action of entering the court hall with a group of lawyers and his role during the interruption. He had stated as follows:-

"I politely informed Hon'ble Mr.Justice R.Mala firstly, that the Association has resolved to Boycott one day for the arrest and detention of 12 members for Tamil issue at Madras, secondly, I informed Mr.Justice Devadoss the same and finally, the contemnee's bench accompanied by 100 other members. As the elected president of the Association was at Madras High Court Advocate Association, due to their inexperience and the absence of elected president of MBHAA, I helped them out in communicating to three Hon'ble Courts of the General Body's decision of the MBHAA for boycotting Madurai Bench for one-day. This was only to inform Their Lordships of the Association's decision and nothing else."

22. Further, in the statement dated 27.1.2016, he had also stated as follows:-

"I submit that the contemnor after a long practice of 1991 to 2003 before the Madras High Court The contemnor stated his practice before the Madurai Bench from 26.07.2004 onwards, only with a single bail relaxation application and subsequently, elected two times as President of the Madurai Bench High Court Bar Association and the Madurai Bench High Court Advocates Association only through the grace of god."

23. From the above two assertions made by the Contemnor, it will be clear that he is not merely a member of the Bar, but one who was earlier elected as a leader by

the members, in the fond hope that he will lead them (and not mislead them) in the right direction. But, he has belied their hopes.

24. In his statement dated 27.1.2016, he had attempted to portray as if he and other lawyers were being punished for having conducted a protest demanding that Tamil language be made the official High Court language. This Court is certainly not inclined to punish the Contemnor merely for his participation either in the boycott held on 16.9.2015 or any protest meeting attended by him outside the precincts of the court halls. This Suo-Motu Contempt is certainly not to punish anyone for their participation in their court boycott, which disease has been afflicting this Court for over two decades and there has been substantial loss of court working days each year. We are fully aware that the Bar never abides by the series of Judgments given by the Supreme Court and by this Court on the issue of court boycott.

25. On the other hand, the activities of the Contemnor on 16.9.2015 inside court hall No.2, while the Court was in session, are unpardonable. Bringing up a bunch of lawyers, shouting slogans and disrupting the court work and also defying the orders passed by the Presiding Judges and also throwing a gauntlet to the Judges themselves when asked to clear out, are serious acts of contempt, which cannot be ignored. We are conscious of the dictum of the Supreme Court that even in case of an illegal strike and consequential disruption and damage by the workmen, certain distinction will have to be kept in mind while initiating action against them. The said distinction has been delineated by the Supreme Court in *India General Navigation and Railway Co. Ltd., Vs. Their Workmen* [AIR 1960 SC 219], in the following lines:-

"Therefore, the tendency to condone what has been declared to be illegal by a statute, must be deprecated, and it must be clearly understood by those to take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those, who may have acted as mere dumb driven cattle from those, who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence."

26. As already noted, the Contemnor is not a mere participant or a bystander in the court boycott, but had an active role not only in organizing a procession and leading the same, but had also disrupted the Court proceedings. Further, even during this contempt proceedings, his conduct was condemnable. Far from expressing any remorse or regret, he had indulged in mudslinging against the Judges and had also made a slanderous campaign against them both inside as well as outside the court including in social media. As we have pointed out earlier, a Sub-Application was filed by a group of senior women lawyers practising before this Court (SASR No.4174 of 2016) for impleading themselves in this contempt petition. In the affidavit filed in support of the said application, the reason for filing the said application was set out in a supporting affidavit sworn by Ms.Sudha Ramalingam, Advocate and a Human Rights Activist as found in paras 2 and 4, which are as follows:-

"2. The petitioners herein are all women lawyers practising in the Madras High Court. This petition is filed seeking to intervene in these proceedings for the limited purpose of seeking directions to strike off the affidavit dated 27.01.2016 filed in this Contempt Petition by the Contemnor containing slanderous, frivolous and vexatious statements against women advocates and for further directions. We as women lawyers are deeply distressed, shocked and seriously concerned about the slanderous statements made against women lawyers in the affidavits as well as slanderous materials against some women lawyers put out in the social media by the Contemnor in connection with the Contempt Proceedings.

.....

4. I further state that the affidavit and social media posts undermine the dignity of the judiciary and the dignity of women lawyers and is a threat to a safe professional environment."

27. A copy of the Post made by the Contemnor in his Facebook account was also submitted in a pen drive to this Court along with the application. However, as there is no scope for any third party intervention in a suo-motu contempt proceedings, this Court was not inclined to entertain the same. It is mentioned here only to show to what extent the Contemnor will go. Such circumstances are aggravating

circumstances and they have to be taken note of for arriving at the quantum of penalty.

28. This is not the first time the Contemnor is facing contempt action. The Contemnor had faced a suo-motu contempt action before a Full Bench in Suo-Motu Contempt Petition (MD) No.965 of 2013 dated 22.11.2013. The Full Bench decision is reported in 2013 (6) CTC 705. The charges against the Contemnor were set out in paras 1 to 3 of the order, which may be usefully extracted:

"1. A section of Advocates practising at the Madurai Bench of this Court observed boycott on 04.09.2013. Other counsel present in Court were willing to part-take in proceedings. Presumably owing to boycott by sections of Advocates, litigants were present in large numbers.

2. I commenced proceedings at 10.30 a.m and upon hearing counsel and a few of the litigants, I passed orders in a few matters. 15 minutes into the proceedings, a group of advocates led by Mr.Peter Ramesh Kumar approached the Court raising slogans and upon entering my Court hall, Mr.Peter Ramesh Kumar informed that they were observing boycott. Mr.Thangapandiyan, retired Principal of the Madurai Law College, a practising advocate, who was on his legs, continued with his submissions. At such instance, Mr.Peter Ramesh Kumar, proceeded to take hold of Mr.Thangapandiyan and sought to drag him out. Mr.Thangapandiyan resisted. Thereafter, Mr.Peter Ramesh Kumar, with the help of few others dragged Mr.Thangapandiyan, out of the Court hall. There was commotion in the Court hall, some of the advocates challenging the boycott call and others challenging the resistance thereto. Having raised the question if any counsel wished to proceed with their case and being met with silence, I retired to chambers.

3. Being of the view that the conduct of Mr.Peter Ramesh Kumar is gross contempt committed in my presence and hearing, I direct the Registry to initiate suo motu contempt proceedings and pursuant to the Article 215 the Constitution of India. List the matter before Court on 11.09.2013 at 10.30 a.m."

29. The Full Bench found the Contemnor guilty, but put him on probation for one year before imposing a penalty, as seen from paras 13 and 14, of the decision of

the Full Bench, which read as follows:-

"13. We would hold that the manner in which the contemnor has conducted himself before us, and the tone and tenor of his affidavit do not commend him to us at all. If we are to be carried away by Mr.N.G.R.Prasad's refrain, the same would do the contemnor a member of the Bar, no good at all. While we fully would be justified in rejecting the affidavit of the contemnor as apparently it is not one of the heart, we do not wish to cause him harm. We are conscious that any imposition of punishment would visit him with very serious repercussions, particularly since he already stands once condemned by this Court. We find reason to follow the majority view of the Full Bench of the Delhi High Court in the B.D.Kaushik case cited supra and accordingly, we do not propose to award the sentence at present and defer it as we would like to further watch his conduct and behavior for a period of one year from today. In case he repeats any act which tantamounts to contempt of court or undermining the judiciary, he will be called upon to appear in Court to receive the sentence. But if he maintains orderly, good and disciplined behavior and does not indulge in the repetition of such acts within the stipulated period, then the rule shall stand discharged on the expiry of the period.

14. We would, for now, part with the matter with the observation that the Supreme Court has held illegal calls for boycotts of Courts. To impede the Courts and Advocates who do not pay heed to calls for boycott only makes larger the commission of contempt. When called to answer in contempt, the response certainly cannot be to impress upon the Court, strength in numbers. Numbers only multiply the wrong doing and hardly would impress the Court, much less in favour of the contemnor. Contempt petition is ordered accordingly."

30. The Full Bench also noted the earlier conduct of the Contemnor for the purpose of deciding the quantum of penalty. In this regard, the Full Bench extracted the order of another Judge in M.P.(MD) No.3 of 2010 in Crl.O.P(MD).No.5065 of 2010 dated 29.10.2010. In that case, the Contemnor's conduct was severely criticized and strictures were passed against him. The Contemnor along with two others filed a miscellaneous petition to expunge the

remarks made against them. The learned Judge recorded the following finding:-

"On going through the common affidavit, dated 04.10.2010 filed in support of the petition in M.P.(MD) No. 3 of 2010, I am of the considered view that the petition was filed with patently false and defamatory allegations with a view to tarnish the image of the Judge of this Court and the Judicial Institution, which is a clear criminal contempt committed by the petitioners herein."

31. The learned Judge instead of punishing them referred the matter to the Bar Council for appropriate action for professional misconduct. He made the following order:-

"21. I am sure that the entire members of the Bar wherever I served as Subordinate Judge and also High Court Judge know that propere integrity and honesty are being maintained by me throughout for the past 24 years from the date of entering into the Judicial service. Though the petitioners have committed criminal contempt, so as to affect the high dignity of this Court instead of taking contempt proceedings against them, I find it just and reasonable to refer the matter to the Bar Council of Tamil Nadu, the appropriate forum, which is represented by elected members of the Bar for taking appropriate action against the petitioners herein, who committed professional misconduct and contempt of Court."

32. As to what had happened to the reference made to the Bar Council was indicated in the Full Bench Judgment referred to above in the following lines:-

"It is also to be remembered that this Court is proceeding under Article 215 of the Constitution of India and as long as rules of natural justice are not violated, none can complain about the procedure adopted. Thus, we brush aside the technical objection as one not calling for consideration."

33. The Contemnor filed a review petition to review the order dated 22.11.2013 of the Full Bench. That review petition was dismissed by the Full Bench presided over by one of us (V.Ramasubramanian, J) on 9.6.2015. So much for the past conduct of the Contemnor. As noted, the conduct of the Contemnor, both before and during the contempt proceedings, was one of teasing, intimidating,

browbeating and scandalizing the judges. They are therefore aggravating circumstances and relevant criteria in imposing a proper penalty.

34. The Supreme Court, in dealing with the criminal contempt and the nature of penalty, in its decision in *In Re-S.Mulgaokar Vs. Unknown* [1978 (3) SCC 339], had observed as follows:-

"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."

35. Even while considering an apology tendered by an advocate in a contempt proceeding, the Supreme Court, vide its decision in *M.B.Sanghi, Advocate vs. High Court of Punjab and Haryana* [1991 (3) SCC 600], has stated thus :

"And here is a member of the profession who has repeated his performance presumable 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 cannot be let off on an apology which is far from sincere His apology was follow, 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 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."

36. Once again in *In Re Vinay Chandra Mishra* [1995 (2) SCC 584], the Supreme Court had observed as follows:-

"To resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scenes in the Court, to address him by losing temper, are all acts calculated to interfere with and obstruct the course of justice. Such act

tend to overawe the court and to prevent it from performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice."

37. In yet another case of a contempt committed by an advocate, the Supreme Court dealt with the matter both before and after remand. In its two decisions, the Supreme Court emphasized the need for imposing a proper penalty in such circumstances. In its first order reported in *In Re: Ajay Kumar Pandey (I) vs. Unknown* [1996 (6) SCC 510], it had observed as follows:-

"This Court, as the highest court of the land, has not only the right to protect itself from being denigrated, but has also the right, jurisdiction and authority to protect the High Courts and the subordinate courts from being insulted, abused or in any other way denigrated. All the courts, be they the lower or the highest, function for the noble cause of dispensing justice. Since they have to decide litigation between two contesting parties, it is obvious that they have to have full freedom and independence in settling the litigation. The Presiding Officers who run the courts and conduct the proceedings therein have to act fearlessly. Any action on the part of any person or litigant or lawyer, which tends to interfere or obstruct the process of justice, has to be deprecated so that the proceedings may be held in an orderly fashion and everyone who participates in those proceedings may have the feeling of liberty to address the court for proper adjudication of his case."

38. Once again, in its second order reported in *In Re: Ajay Kumar Pandey (II), Advocate vs. Unknown* [1998 (7) SCC 248], it had observed as follows:-

"Scandalising the Judges or the Courts tends to bring the authority and administration of law into disrepute and is an affront to the majesty (and dignity) of law. Such acts constitute criminal contempt of court. No one can be permitted to foul the fountain of justice. If the authority of the court is undermined or impeded by acts or publications, the fountain of justice would get sullied creating distrust and disbelief in the minds of the litigant public and the right thinking public at large.....The liberty of expression cannot be treated as a licence to scandalise the

court and instead of criticising the judgment to criticise the judge who delivered it."

39. Under the said circumstances, there is no alternative except to impose the maximum penalty on the Contemnor in terms of Section 12 of the Contempt of Courts Act, 1971. Accordingly, we impose the penalty of simple imprisonment for six months together with a fine of Rs.2,000/- (Rupees two thousand only) upon the contemnor. The Contemnor shall be kept lodged in the Central Prison at Puzhal for a period of six months and the necessary warrant shall be signed and handed over to the Authorities by the Registrar General of this Court, after taking note of the contents of the last two paragraphs. The Contemnor is given a time limit of one week to pay the fine of Rs.2,000/- and the same shall be paid to the Registrar General of the High Court of Madras and the same will be credited to the appropriate account.

Notice to Bar Council of Tamil Nadu:

40. At this stage, it will be necessary to refer to Section 34(1) of the Advocates Act, 1961 wherein and by which, the High Court may make rules laying down the conditions, subject to which, an advocate shall be permitted to practise in the High Court and the Courts subordinate thereto. Under the power vested therein, this Court has framed Rules. Rule 14 of the said rules read as follows:

"14. No advocate, who has been found guilty of Contempt of Court shall be permitted to appear, act or plead in any Court unless he has purged himself of Contempt."

41. Vide its decision in Pravin C.Shah vs. K.A.Mohd. Ali [2001 (8) SCC 650], the Supreme Court has directed that in cases where an advocate has been held guilty of Contempt, the Bar Council should be informed of the same. The relevant passage may be extracted below:-

"We, therefore, direct that in future, whenever an advocate is convicted by the High Court for Contempt of Court, the Registrar of that High Court shall intimate the fact to all the courts within the jurisdiction of that High Court so that presiding officers of all courts would get the information that the particular advocate is under

the spell of the interdict contained in Rule 11 of the Rules until he purges himself of the Contempt."

42. In view of the above, the Registrar General of this Court is directed to forward a copy of this order to the Bar Council of Tamil Nadu at Chennai and on receipt of the same, the Bar Council shall pass appropriate orders keeping in mind Rule 14 read with Section 34 of the Advocates Act, 1961. Further, all the Judicial Officers and Subordinate Courts shall also be informed of this order as required under law.

Suspension of Sentence pending Appeal:

43. Under Section 19(1)(b) of the Contempt of Courts Act, 1971, the Contemnor, as of right, is entitled to file an appeal to the Supreme Court. In terms of Section 19(3), this Court can also exercise a power to suspend the execution of the punishment, in case we are satisfied that the contemnor intends to file an appeal. But, he did not even appear to say anything on the question of penalty. Despite the above, as an indication of our own sense of fairness and magnanimity, We suspend the sentence of imprisonment alone, imposed upon the contemnor, for a period of 15 days from today, in order to enable the Contemnor (in case he wishes to file appeal) to approach the Supreme Court. But the fine of Rs.2,000/- imposed upon him and the automatic coming into force of Rule 14 of the High court Rules framed under section 34 of the Advocates Act, 1961 will not stand suspended. Therefore, the Contemnor should pay the fine amount within a week as ordered and file a memo to that effect, as otherwise he will not have the benefit of suspension of the sentence of imprisonment. In other words, the suspension of the sentence of imprisonment is subject to the condition that the fine amount is paid within a week.

44. If no appeal is filed and if no order of the Supreme court granting stay of this order is produced within 15 days from today, the Registrar shall take steps to implement this order in its entirety including sending the Contemnor to the Central Prison at Puzhal.

45. This Court places on record the valuable services rendered by Mr.M.K.Kabir, the Amicus Curiae appointed by this Court.

