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**Court :** Mumbai

**Decided On :** Feb-19-1958

**Reported in :** AIR1959Bom182; (1958)60BOMLR873; 1956CriLJ567

**Judge :** K.T. Desai and ;Mody, JJ.

**Acts :** Contempt of Courts Act, 1952 - Sections 2, 2(1), 3, 3(1), 4 and 5; [Constitution of India](#) - Articles 19(1), 19(2), 21, 215 and 225; ;Bombay High Court (Orginal Side) Rules - Rules 4, 58 and 1088; Charters Act; Contempt of Courts Act, 1926 - Sections 2; [Government of India Act, 1915](#) - Sections 108 and 223; [Government of India \(Amendment\) Act, 1935](#) - Sections 219 and 220; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 556; [Code of Criminal Procedure \(CrPC\) , 1898](#)

**Appeal No. :** O.C.J. Misc. Appln. No. 58 of 1958

**Appellant :** The State of Bombay

**Respondent :** P.

**Advocate for Def. :** K.L. Gauba, Adv.

**Advocate for Pet/Ap. :** Adv. General

**Judgement :**

**K.T. Desai, J.**

1. The respondent in this case is a Barrister of England and an Advocate of this Court. He was appointed to officiate as third Assistant to the Court Receiver and Liquidator in August 1949. His work was not found to be satisfactory. On 30-1-1954, Dr. Banaji, the Court Receiver and Liquidator, made a report to the Honourable the Chief Justice against the conduct of the respondent in connection with a tool box containing a complete kit for repairing air conditioning machines etc. This box belonged to a firm which the Court Receiver sold as a going concern in 1951. The box was found laying in the respondent's room till as late as 1954. The report was considered by the Honourable Mr. Justice Coyajee as the Administrative Judge and by the Honourable the Chief Justice. The Hon'ble the Chief Justice disapproved of the conduct of the respondent and severely warned him to be more careful about his work in future. His Lordship directed the Court Receiver and Liquidator to submit a report on the general work of the respondent after 6 months. On 22-6-1954, Dr. Banaji as the Court Receiver and Liquidator submitted a report. In that report he stated that the respondent continued to neglect his work on one pretext or another and took casual leave on flimsy grounds. The respondent went on leave out of India from 10-3-1954 and went to Japan. After returning from Japan, he saw the Honourable the Chief Justice at his residence and stated that he had some grievances.

His Lordship informed the respondent that if he had any complaints to make, he should make them in the proper form through the proper channel and that the complaints would then be considered. No such complaint was forwarded through the proper channel. The respondent was thereafter appointed to officiate as an Associate in the Prothonotary's office from 25-9-1954. On 31-1-1955 the respondent saw the Prothonotary and stated that he had some grievances. He was asked to put his grievances in writing and was told that they would thereafter be considered and dealt with. Thereupon he stated that he had no grievances. On 19-2-1955 the respondent addressed a letter to the Honourable the Chief Justice in which he thanked His Lordship for transferring him to the Prothonotary's office and tendered his sincere apology for having annoyed His Lordship in various ways. The respondent gave an assurance that he would carry out his duties sincerely and honestly and abide by His Lordship's orders whatever they were.

2. On 21-6-1955 the respondent applied for leave for two months on medical grounds and the leave was granted. Whilst the respondent was on leave, he addressed two letters, one dated 15-7-1955 to Mr. Justice Coyajee as officiating Chief Justice and another dated 22-7-1955 to the permanent Chief Justice. Both these letters contained objectionable material. After considering the letters the Honourable the Chief Justice ordered that a disciplinary inquiry be held against the respondent. The respondent was suspended from service and Mr. Justice Tendolkar was requested to 17-8-1955 the respondent tendered his resignation from service and the same was accepted.

3. On 4-2-1958 the respondent circulated a cyclostyled document dated 3-2-1958 among the members of the Bar in the premises of the High Court and among the members of the public outside the Council Hall, where the Honourable the Chief Justice was holding a public inquiry pursuant to a Commission appointed by the Central Government popularly known as the Mundhra Inquiry. That document contains objectionable material. In respect of the matter contained in that document the present petition has been filed for the issue of a rule against the respondent to show cause if any, why he should not be committed to jail and/or be otherwise dealt with for having committed contempt of Court by issuing the said document. On 7-2-1958 myself and my brother Justice Mody issued a rule against the respondent.

4. The document complained of contains a scurrilous attack upon the Honourable the Chief Justice, the Honourable Mr. Justice S.T. Desai and Mr. N.H.C. Coyajee, an ex-judge of this Court who has recently retired. Though the rule has these three persons, the learned Advocate General who appears for the State, has not pressed the petition in respect of the remarks made against Mr. N.H.C. Coyajee in order to avoid any controversy on the subject, as the said Judge has retired from the Bench. In considering the matter before us we are not taking into account the remarks made against Mr. N.H.C. Coyajee.

5. This document is couched in deliberately insulting language. It is the language of calculated malice and disrespect towards the Honourable the Chief Justice and Mr. Justice S.T. Desai. The language that has been used, the epithets that have

been hurled and the charges that have been levelled are such as would affect the faith and confidence of the public in the Bombay High Court as a court of justice. They are calculated to lower the authority of the Court and undermine, impair and obstruct the administration of justice by the Court. The language used, in our view, constitutes a clear contempt of the Court. We cannot dismiss the allegations that have been made as aberrations of a deranged mind or a mind that is not normal. Considerable cunning has been shown in the drafting of this document. The fair name of the Attorney General of India has been brought in with a view to bolster up the attack. The words of the learned Attorney General have been quoted so as to give a meaning to those words which was not intended by the Attorney General. A reference has been made in the document to what the Attorney General has stated in the course of a letter addressed by him to the respondent on 31-12-1955. In a subsequent letter dated 4-6-1956 the Attorney General stated in clear terms that he could not say without going into all the facts himself and seeing what the other side had to say that he believed in what was stated by the respondent in his correspondence with various people. The Attorney General in his letter further stated that he had heard that his letter was being used as a proof of his belief in all that the respondent had stated and as if it constituted a support for the respondent's case. The Attorney General was at pains to point out that what he had stated was on the assumption that the facts stated by the respondent were correct and not an opinion pronounced after studying the whole matter and the complainant complained that the respondent was using the letter as if it represented an opinion pronounced after studying the whole matter. In the end the Attorney General stated that he had repeatedly advised the respondent to drop the matter and that, in any case, he did not wish to be represented as having given an opinion in favour of the respondent on the facts of the controversy. In spite of being in possession of this subsequent letter, the respondent has deliberately chosen to quote the words contained in the earlier letter of the Attorney General as if those words represented the pronounced opinion of the Attorney General after studying the whole matter. This indicates the length to which the respondent has gone. He has shown himself as being an utterly unscrupulous person in pressing into service the remarks of the Attorney General torn out of their context. He has used them for giving a meaning to the words which they were not intended to bear.

What is more, in his impugned document the respondent has cunningly suppressed the subsequent letter of the Attorney General.

6. The respondent has made a reference in that document to what Shri Moraji Desai, who was then the Chief Minister of the State of Bombay, is alleged to have told the respondent. That representation is belied by what is stated by the respondent himself in his letter to the Attorney General, dated 31-5-1956. Even the personal views and philosophy of the learned Chief Justice have been made the basis of scandalous allegations and attack. In the course of the document complained of, the respondent has pressed God and high principles of morality into service. He has done so in order that the attack which he has made upon the Honourable the Chief Justice and Mr. Justice S.T. Desai may be more telling and in order to make it more believable by the unknowing public. The time and the place chosen for publication clearly indicate great deliberation on the part of the respondent. It was at a time when keen public interest was aroused by the Mundhra Inquiry. One of the places which the respondent selected was the place where the public gathered in large number to follow the proceedings of the Mundhra inquiry which was being held in public. The time and the place selected were such as to ensure a wide publicity and a keen public interest in the matter. It was at a time when keen public interest was also centred round the person, who was holding the Inquiry viz., the Chief Justice. A scurrilous attack has been made in order to malign the Honourable the Chief Justice and to represent to the public that the gentleman, who was holding that public inquiry, was not worthy of occupying such a position and was equally not worthy of occupying the position of the Chief Justice of this Court.

7. Not being content with what has been stated in the impugned document, the respondent taking the benefit of the opportunity which was given to him to show cause has put in an affidavit exhibiting a matter which would constitute contempt of another judge of this Court. This matter consists of an anonymous letter stated to have been received by the respondent since the filing of the petition. It contains a foul attack upon Mr. Justice Tendolkar, who is lying seriously ill since some time and is unable to attend the Court due to his illness. That illness itself has been referred to in that exhibit as being an indication of the divine displeasure visited

upon the Judge. To say the least, it shows the debased mentality of the respondent who has used that letter knowing it to be anonymous. In that anonymous letter itself it has been stated that that letter was sent in strictest confidence and that it should not be shown to any one and it should be destroyed after taking notes therefrom. Instead of destroying it, that letter has been pressed into service by the respondent in the affidavit intended to be an affidavit for the purpose of his defence. By using such material the respondent has aggravated the wrong which he has already done.

8. The words used by the respondent are not mere words of libel for which the remedy would be by way of proceedings other than proceedings for contempt of court. An attempt has been made to show that the fountain of justice in the State is sullied. Attacks have been made on the Hon'ble the Chief Justice and Mr. Justice S.T. Desai in words which leave no room for doubt that the respondent is guilty of contempt of court. The document read as a whole and also read in some of its different parts contains matter which constitutes gross contempt of court. The respondent has disgraced his position as a Barrister of England and as an Advocate of this Court in making these remarks.

9. The law on the subject of contempt both in England and in India is well settled. In the case of *The Queen v. Gray*, reported in (1900) 2 QB 36, Lord Russell of Killowen C.J., has observed at page 40 as follows:

'Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke L.C. characterised as scandalising a Court or a Judge'. That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of Court. The law ought not to be astute in such cases of criticise adversely what under such

circumstances and with such an object is published.'

10. In the case of *Ambard v. Attorney-General for Trinidad and Tobago*, which came up before the Judicial Committee of the Privy Council, reported in 1936 AC 322: AIR 1936 PC 141, it has been observed at p. 329 (of A.C.) (at p. 142 of AIR), that acts constituting contempt were quasi criminal acts and that the orders punishing them should generally speaking be treated as orders in criminal case. At p. 335 (of AC): (at pp. 145-146 of AIR), of the judgment, it has been stated as under:

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

In this case, it cannot be said that the respondent in making a scurrilous attack upon the judges of this Court was exercising in good faith the ordinary right of criticism. Far from abstaining from imputing improper motive, the respondent has attributed the most improper motives to both these judges in the exercise of their functions as Judges in relation to the Court Receiver. It cannot be said that the respondent in this case was acting without malice. There is abundant evidence, as I have already stated, of express malice exhibited by the respondent. It is an attempt to impair the administration of justice and to shake the confidence of the public in these two judges of this Court. The remarks made are far from respectful. There is a vulgar abuse of the Chief Justice and most improper motives have been attributed to the Chief Justice and Justice S.T. Desai in connection with the exercise of their office as judges.

11. So far as the law in India is concerned, the case of Brahma Prakash Sharma v. The State of Uttar Pradesh, : 1954 CriLJ238 , lays down the law in the clear terms on the subject. At pp. 1175 and 1176 (of SCR): (at p. 13 of AIR), Mukherjea J., observed as follows:

'The test is whether the allegations are of such character or are made in such circumstances as would tend to obstruct or interfere with the course of justice or the due administration of law. It admits of no dispute that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts. It would be only repeating what has been said so often by various judges that the object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals: it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened.'

In our opinion, there can be no doubt that the objectionable matter complained of is intended and calculated to lower the authority of Honourable the Chief justice and of Mr. Justice S.T. Desai and to impair the sense of confidence which the people have in the administration of justice at their hands.

12. Mr. Justice Mukherjea further proceeds to observe in that case as under:

'There are indeed innumerable ways by which attempts can be made to hinder or obstruct the due administration of justice in courts. One type of such interference is found in cases where there is an act or publication which amounts to scandalising the court itself' an expression which is familiar to English lawyers since the days of Lord Hardwick. The scandalising might manifest itself in various ways but, in substance, it is an attack on individual judges or the Court as a whole with or without reference to particular cases, casting unwarranted and defamatory aspersions upon the character or ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair the confidence of the people in the courts which are of prime importance to

the litigants in the protection of their rights and liberties.'

In the present case, an attack has been made upon the learned Chief Justice and another Judge of this Court casting unwarranted and defamatory aspersions upon their character as judges. The aspersions cast tend to create distrust in the popular mind and the calculated and tend to impair the confidence of the people in the actions and conduct of these two judges as judges of this Court.

13. At page 1179 (of SCR) : (at p. 14 of AIR), Mr. justice Mukherjea observes that when attacks or comments are made on a judge or judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the judge is concerned does not necessarily make it a contempt. At p. 1180 (of SCR) : (at p. 14 of AIR), the learned Judge observes as under:

'The position, therefore, is that a defamatory attack on a judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libellor in a proper action if he so chooses. If however, the publication of the disparaging statement is calculated to interfere with the due process of justice or proper administration of law by such Court it can be punished summarily as contempt. One is a wrong done to the judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or of the judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interfere wit the administration of the justice by reason of such defamatory statement; it is enough if it is likely, or tends if any way, to interfere with the proper administration of law.'

14. Mr. Gauba, the learned counsel for the respondent pleaded that however gross the libel that may be contained in the impugned document and however defamatory may be the remarks, there is no contempt of Court committed by the respondent. He contends that the attack that has been made by the respondent is

an attack on the Court Receiver and that what the respondent has stated in respect of the Judges in connection with the Court Receiver in what he has stated of them, not in respect of their character as judges in the exercise of their functions as judges and that what has been stated about them does not constitute an interference with the Courts of justice, and is not calculated to impair the confidence of the public in the judges in the exercise of their function as judges. Mr. Gauba's argument fails to take note of the fact that the Court Receiver is an officer of the Court. The Court Receiver is being appointed as a Receiver in litigations for the protection and preservation of estates and properties of litigants, who are before the Court. It is the duty of the Court to see that the estate and properties of which the Court Receiver is appointed a Receiver are preserved and protected. Such estates Receiver acts under the directions of the Court and it is really the Court which has through its Receiver dominion and control over such estates and properties. It is the duty of the Chief Justice in the exercise of his functions as Chief Justice to see that the abuse by the Court Receiver of any of his powers is remedied when brought to his notice and the possibility of its recurrence is prevented. Scandalous allegations have been made that the Court Receiver contrary to the duties of his office has done acts which are unworthy of his and the said judges are charged with not only conniving at it but with actively participating in it. The remarks made in connection with Mr. Justice S.T. Desai are less violent and less numerous than those made against the Chief Justice, but they are of the same category and are equally offensive. Mr. Justice S.T. Desai had for a long time sat on the Original Side of the High Court and had in numerous cases appointed the Court Receiver as various suits. The remarks made against Mr. Justice S.T. Desai are equally applicable to him as a Judge in the exercise of his functions and his duties as a Judge. By making these foul attacks upon the Judges, the respondent has tried to create an apprehension in the mind of the public regarding the integrity of these Judges and has done a wrong to the public. He has attempted to shake the confidence of the public in the Judges of this Court and in the justice that is being administered by these Judges as Judges of this Court.

15. Mr. Gauba has raised two interesting points for our decision. He argues that myself and my brother Justice Mody have no jurisdiction to try the respondent. He

argues that the contempt alleged is of the Bombay High Court and that therefore, the jurisdiction to hear the petition is in the Bombay High Court and that all the Judges of this Court sitting together as a body alone can exercise that jurisdiction. He further urges that in view of the provisions of Article 21 of the Constitution, the Court has no jurisdiction in summary proceedings to inflict any punishment of imprisonment upon the respondent.

16. In connection with the first point of jurisdiction urged on behalf of the respondent, Mr. Gauba relies upon the case of *Narayan Vithal Samant v. Jankibai*, reported in ILR Bom 604 : : AIR1915 Bom146 . In that case the Court held that it was not competent to a single Judge of the Bombay High Court, exercising the ordinary original civil jurisdiction of the Court, to stay the hearing of a suit pending for trial in the subordinate Judge's Court in the mofussil, unless authorised so to do by rules. He relies upon the observations made by Justice Batchelor at p. 620 (of ILR Bom): (at pp. 147-148 of AIR). After referring to Statute 24 and 25 Vic. c. 104 and the Letters Patent, the learned Judge observes as follows:

'The intent and effect of these provisions seems to me to be that the jurisdiction conferred is conferred on the Court as a body, it is the Court which is to 'have and exercise' the jurisdiction granted; but, inasmuch as it would not be 'convenient for the due administration of justice' that the entire Court should have to sit for the valid determination of every suit and appeal and application, power is given to the Court to make rules for the exercise of the Court's jurisdiction by one or more Judges within the limits and subject to the conditions prescribed by the Rules. The powers so delegated would thus fix the limit within which such Judge or Judges would be competent to exercise the Court's jurisdiction, and any order made by a Judge or Judges in excess of this authority would be void as being beyond the jurisdiction which the Judge or Judges were legally authorised to exercise.'

Relying on these observations the learned counsel for the respondent observes that no rules exist relating to the exercise of the inherent jurisdiction of the Court in dealing with matters of contempt and that as no such rules have been framed, myself and my brother Justice Mody sitting as a Division Bench, have no jurisdiction to deal with the matter.

17. The jurisdiction which the Court exercises in dealing with matters of contempt is the inherent jurisdiction which the Court possesses as a Court of Record. The case cited by Mr. Gauba is not a case relating to contempt at all. It is not a case relating to the exercise of the inherent powers of the Court to punish for contempt. If Mr. Gauba's argument was to be accepted, then a Judge sitting singly or a Division Bench of the Court would not be able to deal with case of contempt, which is ex-facie the Court. The jurisdiction which each Judge of this Court possesses and exercises as constituting a Court of record is a jurisdiction which is inherent in the Court itself for punishment for contempt of Court, whether it is ex-facie the Court or otherwise. For the exercise of that jurisdiction, it is not necessary to refer either to the Letters Patent or the rules framed by the Court thereunder. It is a jurisdiction which is being exercised in the same manner as was exercised in the Court of the King's Bench Division in England. That jurisdiction has been preserved under the Charters Act, under the Letters Patent and under the Constitution. Article 225 of the Constitution provides as under:

'225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sitting of the Court and the members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.....'

The High Court immediately before the commencement of the Constitution and power as a Court of Record to punish persons for contempt and that jurisdiction and that power has been exercised since the inception of this Court by Judges sitting singly or by Judges constituting a Division Bench. So far as we are aware, there has not been a single case of all the Judges of the Court having sat together for the purpose of the exercise of this jurisdiction. The Constitution itself by Article 215 provides that every High Court shall be a Court of Record and shall have all the power of such a Court including the power to punish for contempt of itself. The powers which a Court of Record has in relation to contempt are powers

exercisable by one or more Judges of the Court and not merely or only by all the Judges of the Court sitting together. If the argument of the learned advocate for the respondent is right, if one Judge of the Court is not available either account of illness or any other reason, the Court would be powerless to act.

18. Immediately before the commencement of the Constitution there was the Contempt of Courts Act (XII of 1926). By Section 2 of that Act, it was provided as under:

'2(1). Subject to the provisions of Sub-section (3), the High Court of judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure, and practice, in respect of contempts of Courts subordinate to them as they have and exercise in respect of contempts of themselves....'

By this section, statutory recognition has been given to the exercise by this High Court of the jurisdiction, powers and authority in accordance with its prevailing procedure and practice in respect of contempts of itself. Not merely the jurisdiction, but even the procedure and practice of this Court in respect of contempt have received statutory recognition and have been extended in respect of contempts of Courts subordinate to this High Court. Numerous authorities were cited by the learned Advocate General to show that this jurisdiction has been exercised by the Judges of this Court sitting singly or as constituting a Division Bench. The matter is so well-established and well-known that it is not necessary to refer to the various authorities cited by the learned Advocate General. As I have already stated, this jurisdiction which is being exercised by this Court as a Court of record is the same as the one exercised by Judges in the Kings' Bench Division in England. So far as England is concerned, it is equally a well-established practice that Judges of the Court concerned sitting singly or as constituting Division Benches of the Court have exercised that jurisdiction. Numerous cases in the law reports show that.

19. The Contempt of Courts Act, 1926, now stands repealed and in its place we have now the Contempt of Courts Act, 1952. Section 3 of the new Act is in these terms:

'3(1). Subject to the provisions of Sub-section (2), every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself....'

The observation which I have made in connection with similar provisions contained in the Contempt of Courts Act, 1926, apply to the provisions contained in Section 3 of this Act of 1952. Section 5 of the new Act of 1952 provides as follows:

'A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any Court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the person alleged to be guilty of the contempt, is within or outside such limits.'

By this section, the territorial limitation of the jurisdiction of the High Court in matters of contempt was removed. Section 4 of the said Act is as under:

'Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. x x x

Provided further that notwithstanding anything elsewhere contained in any law for the time being in force, no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.'

So far as Contempt of Court subordinate to the High Court are concerned, the High Court is empowered to deal with those cases by the express provisions of this Act. It has been expressly provided by this Act in connection with such cases that the High Court shall exercise the same jurisdiction in accordance with the same procedure and practice as it has and exercises in respect of contempts of itself. It being established that the procedure and practice followed by the High Court in connection with matters of contempt of itself being that a Judge sitting singly or Judges constituting a Division Bench deal with matters of contempt of

Court, a Judge of the High Court sitting singly or a Division Bench of the Court has statutory authority and power to deal with matters relating to contempt of Courts subordinate to it and to inflict punishment for such contempt. It is too much to say that though a Judge of the High Court sitting singly can inflict punishment for contempt of a Court subordinate to it, he cannot punish a person for contempt, even though it may be ex-facie the Court. In our view, any single Judge of this Court and any Division bench of this Court has power, authority and jurisdiction to deal with matters of contempt of Court and to inflict punishment for such contempt.

20. Even though it is not necessary to refer to the provisions of the Letters Patent or the High Court rules for the purpose of showing that a Judge sitting singly or a division bench of this Court has jurisdiction to deal with matters of contempt, a reference may be made to the relevant provisions which also show that a Judge of the High Court sitting singly or a Division Bench of this Court has jurisdiction to deal with matters pertaining to contempt. In dealing with contempt of itself, the Court is exercising Original Jurisdiction. On whatever side of the Court this jurisdiction is exercised, it is original jurisdiction. It is a matter which originates before the Court itself and does not come before it by way of a reference or an appeal from any other Court or tribunal. Clause 36 of the Letters Patent provides as under:

'And we do hereby declare that any function which is hereby directed to be performed by the said High Court for Judicature at bombay, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Bench thereof, appointed or constituted for such purpose, in pursuance of section one hundred and eight of the [Government of India Act, 1915](#).'

Section 108 of the [Government of India Act, 1915](#), is as under:

'Each High Court may by its own rules provide as it thinks fit for the exercise, by one or more Judges or by division Courts constituted by two or more Judges of the High Court of the original and appellate jurisdiction vested in the Court.

(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief

Justice, are to constitute the several division Courts.'

21. When one turns to the rules framed by the Bombay High Court (Original Side), it is provided by Rule 58 that nay Judge of the High Court may, subject to any rules of court, exercise in Court or in Chambers all or any part of the jurisdiction vested in the High Court on its Original Side. Rule I and Part II of Chapter I, provides that a Court for the exercise of the Original jurisdiction of the High Court on its several sides may be held before one or more Judges of the High Court. Rule 1088 provides as under:

'Where no other provision is made by the Code of Civil Procedure or by the rules contained in the aforementioned Pars, the present procedure and practice remain in force.'

In view of these provisions, a Judge of the High Court sitting singly is empowered and is entitled to exercise Original jurisdiction and so also a Division Bench of the Court. So far as the present bench is concerned, it has been constituted by the Honourable the Chief Justice in exercise of the powers vested in him under the provisions hereinbefore mentioned. In view of the provisions referred to above, even if there was any necessity to rely upon the provisions of the letters Patent and the rules for the purpose of the exercise of jurisdiction in matters of contempt by a single Judge or by a Division Bench of this Court, we find that there is ample authority for the same.

22. In this connection, we may refer to a Full Bench decision of the Patna High Court, cited before us by the learned Advocate General. It is the case of in re Murli Manohar Prasad, reported in ILR Pat 323: : AIR1929 Pat72 . In that case the Court was dealing wit the provisions of Clause 28 of the Letters Patent of the Patna High Court corresponding to Clause 36 of the Letters Patent of this Court. It was held by the Full Bench that under Clause 28 of the Letters Patent of the Patna High Court, a Division Bench his power to issue a rule to show cause against committal for contempt. In that case it was argued that there were no rules framed by that Court under the authority given to the court under Section 108 of the [Government of India Act, 1915](#), and that as no such rules had been framed, all the Judges as a body were required to sit together before the jurisdiction in matters of contempt

could be exercised. That argument was negative by the Full Bench. At pp. 330-331 (of ILR Pat): (at p. 73 of AIR), the Chief Justice of the Patna High Court observes as follows:

'It was conceded that if a rule were in fact issued such rule could on its return be dealt with by any single Judge or any Bench of Judges selected by the Chief Justice and it cannot be denied that, if I had chosen to make a formal order in this particular case that the matter of the issue of this rule should be dealt with by myself alone, that such order would have been effective under the Letters Patent and under the Government of India Act. Such an order though not formally made must be implied from the fact that the rule was issued by Fazl Ali, J. and myself. Further it has been the invariable practice for rules of this nature to be issued by any single Judge or any number of Judges of a Court of record. Indeed it is impossible to conceive how the jurisdiction could be effectively exercised unless such a procedure were resorted to. In none of the reported cases has this point ever been raised and although it is true that state of affairs does not preclude the respondents from raising it in this case yet a decision that it was well founded would involve a complete change of a practice which has been uniformly followed which has received the approval of every High Court in India and has been followed in case which have reached the Privy Council. In our opinion, the point has no substance.'

23. Mr. Gauba urged this very point about 15 years back before a Full Bench of the Lahore High Court and that Full Bench negated his contention. That case is reported in ILR Lah 411 in the matter of K.L. Gauba, ILR (1942) Lah 411 : AIR 1942 Lah 105. In that case Mr. Gauba urged that the Chief Justice of the Lahore High Court had no power under the law to constitute the Bench, which was hearing that matter. Dealing with that point, Chief Justice Young observes as under:

'By Section 223 of the Government of India Act, 1935, the jurisdiction of the existing High Courts and the powers of the Judges in relation to the administration of justice, including the power to make rules of Court and to regulate the sittings of the Courts and of members thereof sitting alone or in Division Courts as it existed

before the commencement of Part III of the Act has been specifically preserved. Before the commencement of Part III of the Act, the [Government of India Act, 1915](#), was in force which by Section 108 provided.....'

Section 108 of the [Government of India Act, 1915](#), is then set out. Thereafter some of the rules framed by the Lahore High Court have been set out. Proceeding further with the matter, the learned Chief Justice observes as under:

'K.L. Gauba contends that summary proceedings for contempts are neither original nor appellate and that the Chief Justice's power to constitute Benches under the second sub-section of Section 108 is limited to cases which come to the High Court in the exercise of its original or appellate jurisdiction. Rule 4 of the Rules and Orders, however, is very general in its terms as it applies to all cases and not only to cases in the exercise of the original or appellate jurisdiction of the High Court. Nor do I think that the power of the Chief Justice to appoint the several Division Courts is limited to the class of cases that is mentioned in the first sub-section of that section. But even if it is, I think that the word 'original' in Sub-section (1) of that section is used in contradiction to the word 'appellate' and therefore proceedings which are started by the Court itself can properly be described as original. The Chief Justice's power to nominate Special Benches for the disposal of contempt cases has been recognised in *Moti Lal Ghose*, In re reported in : AIR1929 Pat72 , and a decision of this court in C.M. 15/L of 1941 in L.P.A. No. 39 of 1941, *K.L. Gauba v. The Punjab Cotton Press*. I therefore hold that this Bench has been properly constituted.'

In that case it was held that the Lahore High Court was a Court of record by virtue of Sections 219 and 220 of the Government of India Act, 1935, and as such the power to commit for contempt was a necessary incident and attribute of the Lahore High Court and therefore it possessed the ordinary jurisdiction of a Court of Record and could proceed summarily to try contempt cases. It was further held that the provisions of the Code of Criminal Procedure were not applicable to summary proceedings taken for punishing a contempt and, therefore, Section 556 of that Code did not apply because proceedings for punishing contempt were taken not with a view of protect the Court as a whole or the individual Judges of

the Court from a repetition of the attack but with a view to protect the public and especially those who either voluntarily or by compulsion were subject to the jurisdiction of the Court from the mischief they would incur if the authority of the Court be undermined or impaired.

The Gravamen of the charge was an endeavour to shake the confidence of the public in the Court. Since the date of the said judgment, no change in the legal position has taken place by reason of the coming into force of the Constitution. The present bench consisting of myself and my brother Justice Mody has been constituted by the Chief Justice to hear the matter that is before us. We hold that we have jurisdiction to hear and determine the matter that is now before us.

24. It is next urged by Mr. Gauba that his client is entitled to the protection of Article 19(1)(a) of the Constitution. He says that his client is a citizen of India and that his client has the fundamental right to freedom of speech and expression. This right to freedom of speech and expression does not embrace the freedom to commit contempt of court. Article 19(2) of the Constitution expressly provides as under:

'Nothing in Sub-clause (a) of Clause (1) shall effect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clauses in the interests of the security of the State, friendly relation with foreign State, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.'

Article 215, which is already referred to by us, expressly preserves the power of the Court to punish for contempt of itself. There is no substance in this point urged by Mr. Gauba.

25. Mr. Gauba next urges that his client is entitled to protection under Article 21 of the Constitution. He says that under that Article no person can be deprived of his life or personal liberty except according to procedure established by law. He urges that in proceedings for contempt, punishment by way of fine may be imposed, but if punishment by ways of imprisonment is sought to be inflicted, it can only be

done after due compliance with the provisions of Article 21. He says that there is no procedure established by law in relation to contempt so far as the exercise by the High Court of its inherent jurisdiction to deal with the matter is concerned and that we are not entitled to inflict any punishment by way of imprisonment so as to deprive the respondent of his personal liberty in the present proceedings. He strongly relies upon the decision of the Supreme Court in *A.K. Gopalan v. The State of Madras*, : 1950 CriLJ1383 . He referred to various passages from the judgments of various judges who sat to decide that matter. In particular, he invited our attention to a passage appearing at p. 199 (of SCR): (at p. 72 of AIR) from the judgment of Mr. Justice Patanjali Sastri, where the learned Judge observes as under:

'Giving full effect to these principles, however, I am unable to agree that the term 'law' in Article 21 means the immutable and universal principles of natural justice. 'Procedure established by law' must be taken to refer to a procedure which has a statutory origin, for no procedure is known or can be said to have been established by such vague and uncertain concepts as 'the immutable and universal principles of natural justice.' In my opinion 'law' in Article 21 means 'positive or State-made law.'

Mr. Gauba also drew our attention to the remarks of the learned Judge appearing at p. 205 (of SCR): (at p. 74 of AIR), which are as follows:

'After giving the matter my most careful and anxious consideration, I have come to the conclusion that there are only two possible solutions of the problem. In the first place, a satisfactory via media between the two extreme positions contended for on either side may be found by stressing the word 'established' which implies some degree of firmness, permanence and general acceptance, while it does not exclude origination by statute. 'Procedure established by law' may well be taken to mean what the Privy Council referred to in *King Emperor v. Benoari Lal Sharma* as 'the ordinary and well-established criminal procedure', that is to say, those settled usages and normal modes of proceeding sanctioned by the Criminal Procedure Code which is the general law of criminal procedure in the country.'

He also referred to the observations of Mr. Justice Das, as he then was, appearing at p. 307 (of SCR): (at p. 114 of AIR), where the learned Judge observed as follows:

'The claim of learned counsel for the petitioner is that Article 21 prescribes a procedure. This procedure, according to learned counsel, means those fundamental immutable rules of procedure which are sanctioned or well established by principles of natural justice accepted in all climes and countries and at all times. Apart from the question whether any rule of natural procedure exists which conforms to the notions of justice and fair play of whether the language of Article 21 will permit its introduction into our Constitution. The question then arises as to what is the meaning of the expression 'procedure established by law.' The word 'procedure' in Article 21 must be taken to signify some step or method or manner of proceeding leading up to the deprivation of life or personal liberty. According to the language used in the article, this procedure has to be 'established by law.' The word 'establish' according to the Oxford English dictionary, Vol. III, p. 297, means, amongst other things, 'to render stable or firm; to strengthen by material support; to fix, settle, institute or ordain permanently by enactment or agreement.' According to Dr. Annandale's edition of the New Gresham Dictionary the word 'establish' means, amongst other things, 'to found permanently,' to institute, to enact or decree; to ordain; to ratify; to make firm.' It follows that the word 'established' in its ordinary natural sense means amongst other things, 'enacted'. 'Established by law' will, therefore, mean 'enacted by law.' If this sense of the word 'established' is accepted, then the word 'law' must mean State-made law and cannot possibly mean the principles of natural justice, for no procedure can be said to have ever been 'enacted' by those principles.'

He also referred to the passages from the judgment of Mr. Justice Mukherjea, appearing at pp. 264, 276 and 278 (of SCR): (at pp. 97, 102 and 103 of AIR). He also drew our attention to the passages from the judgment of the Chief Justice, which appear at page 111, 112 and 114 (of SCR): (at pp. 39, 40 of AIR). He also referred to the dissenting judgment of Mr. Justice Fazal Ali and to the passage appearing at pages 167 and 168 (of SCR): (at p. 60 of AIR), and also to the passage where the learned Judges observe that the word 'law' used in Article 21

does not mean only State-made law was clear from the fact that though there is no statute laying down the complete procedure to be adopted in contempt of Court cases, when the contempt is not within the view of the Court, when the contempt is not within the view of the Court, yet such procedure as now prevails in these cases in part of our law.

26. In dealing with the judgment, the learned Advocate General observed that this case should be read in the context of that which was before the Supreme Court. The Supreme Court in that case laid down that law within the meaning of Article 21 did not cover the principles of natural justice. He urges that the decision of the Supreme Court could not be meant to negative judge-made law. He says that the Supreme Court was not concerned in dealing with the settled law administered by the Courts to punish contempt of itself. He referred to the judgment of the Supreme Court in *Sukhdeo Singh v. The Chief Justice and Judges of the Pepsu High Court*, reported in : [1954]1SCR454 , and observed that in that case the Supreme Court has itself considered the procedure to be followed in cases of contempt and has itself laid down that the Court was free to follow its own procedure, subject to the requirements laid down in that decision. The expression used in Article 21 is 'procedure established by law.' A citizen can be deprived of his personal liberty only in accordance with such procedure. So far as contempt of Court is concerned, statutory recognition has been given by the Contempt of Courts Act, 1952, to the practice and procedure observed by the High Courts in dealing with matters of contempt. By Section 3 of the Act, to which we have already referred, it is provided that every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempt of itself, so that in respect of contempts of courts subordinate to the High Court, we have a procedure not merely established by law, but enacted by law. That law has been enacted after the coming into force of the Constitution. That Act, as we have already observed, by Section 5 expressly provides that a High Court shall have jurisdiction to inquire into or try a contempt of itself. Section 4 deals with the limit of punishment for contempt of Court, which the High Court can inflict, and under Section 3, statutory recognition has been given to the practice and procedure followed by the High Court prior to the coming into

force of the Act. Having regard to the provisions of the Act, we consider that the procedure followed by the High Court in dealing with matters relating to contempts of itself is a procedure established by law within the meaning of Article 21 of the Constitution.

27. Apart from the provisions contained in the Contempt of Court Act, 1952, we have also the provisions contained in Clause 38 of the Letters patent. That clause runs as follows:

'And we do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature....at Bombay in the exercise of its ordinary original criminal Jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these Presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto be competent legislative authority for India.....'

The proceedings by way of contempt in the present case are criminal in nature and the case in connection therewith is a criminal case, over which the High Court has jurisdiction within the meaning of Clause 38 of the Letters Patent. It cannot be disputed that the Letters Patent constitute law and the procedure and practice which was in use in this High Court immediately before the publication of the Letters Patent is required to be followed in such cases and such procedure and practice has been enacted by law by virtue of this Clause of the Letters Patent. In view of these provisions, the procedure which is being followed by the High Court since prior to the coming into force of the Letters Patent in dealing with matters of criminal contempt in the exercise of its inherent jurisdiction as a Court of Record is a procedure enacted by law and this Court is entitled to deprive a person of his liberty in matters relating to contempt when that procedure has been followed. Even if the expression procedure established by law under Article 21 of the Constitution meant procedure enacted by law the provisions of Article 21 have been complied with in the present case.

28. We may mention that the learned Advocate General cited before us the case of *Hearts of Oak Assurance Co. Ltd. v. Attorney General*, reported in 1932 AC 392, and in particular to the observations of Viscount Dunedin at p. 405. In dealing with the practice which existed under the Companies Act, Viscount Dunedin observes in that case as follows:

'But had the question that is raised here been raised in such a case I feel I should have felt myself entitled to say that the practice had so long existed that it had, so to speak, been crystallized into something equivalent to a direction in the Act itself.'

The case before us is stronger than the one which was before the House of Lords in that reported judgment.

29. The learned Advocate General has strongly relied upon the decision of the Supreme Court in : [1954]1SCR454 , to which a reference has been previously made by us. That case covers some of the points that have been raised before us by Mr. Gauba. In that case, the question that had arisen related to the power of the Supreme Court to transfer from one High Court to another, proceedings which had been instituted in a High Court for contempt of itself. At pp. 463 and 464 (of SCR) : (at p. 190 of AIR) the Supreme Court has laid down what should be done by a High Court in dealing with matters of contempt. Mr. Justice Bose, who delivered the judgment of the Court observes at p. 463 (of SCR): (at p. 190 of AIR) as follows:

'The Contempt of Courts Act, 1926, was repealed by Act 32 of 1952. Section 3 of the new Act is similar to Section 2 of the old and far from conferring a new jurisdiction, assumes, as did the old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction, powers and authority 'in accordance with the same procedure and practice.' These words are new and would be inappropriate if the Criminal Procedure Code applied. In any case so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate Court, the Constitution vests these rights in every High Court. So no Act of a legislature could take away that

jurisdiction and confer it afresh by virtue of its own authority. It is true Section 5 expands the ambit of the authority beyond what was till then considered to be possible but it does not confer a new jurisdiction. It merely widens the scope of an existing jurisdiction of a very special kind.

On reflection it will be apparent that the Code could not be called in aid in such cases, for if the Code applies it must apply in its entirety. In that event how could such proceedings be instituted? The maximum punishment is now limited to six months simple imprisonment or a fine of Rupees 2000 or both because of the 1952 Act. Therefore under the second schedule to the Code contempt would be triable by a Magistrate and not by a High Court and the procedure would have to be a summons procedure. That would take away the right of a High Court to deal with the matter summarily and punish, a right which was well established by the case law up to 1945 and which no subsequent legislation has attempted to remove. So also Section 556 could not apply, nor would the rule which prohibits a Judge from importing his own knowledge of the facts into the case. We hold therefore that 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. This rule was laid down by the Privy Council in *re Pollard*, (1868) 2 P.C. 106 and was followed in India and in Burma in *In re Vallabhdas*, ILR 27 Bom 394 and *Ebrahim Mamoojee Parekh v. King Emperor*, ILR Rang 257 : AIR 1926 Rang 188 . In our view that is still the law.'

The learned Judge further observes as follows:

'We wish however to add that though we have no power to order a transfer in an original petition of this kind we consider it desirable on general principles of justice that a judge who has been personally attacked should not as far as possible hear a contempt matter which, to that extent, concerns him personally. It is otherwise when the attack is not directed against him personally. We do not lay down any general rule because there may be cases where that is impossible, as for example in a court where there is only one judge or two and both are attacked. Other cases

may also arise where it is more convenient and proper for the judge to deal with the matter himself, as for example in a contempt in facie curiae. All we can say is that this must be left to the good sense of the judges themselves who, we are confident, will comport themselves with that dispassionate dignity and decorum which befits their High office and will bearing mind the oft quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person who should always be given, as far as that is humanly possible, a feeling of confidence that he will receive a fair, just and impartial trial by judges who have no personal interest or concern in his case.'

30. In our view, there is no merit in any of the technical objections that have been raised by Mr. Gauba.

31. Before we proceed to consider that punishment should be inflicted upon the respondent, we would like to observe that after Mr. Gauba finished his argument in the case and sat down and the learned Advocate General rose to give a reply, the respondent got up and stated that he wanted to make a statement in Court. He was told that so long as his counsel appeared before us, he could not address the Court. Thereupon, he discharged his counsel and Mr. Gauba asked for leave to withdraw from the case, which we granted. Even though the respondent was not entitled to be heard after his counsel had urged all that could be said for the respondent and had sat down, in order not to leave the respondent under any sense of grievance, we permitted the respondent to address us. Taking advantage of the indulgence which we gave to him, he read out in a loud tone the correspondence that passed between him and the Attorney General. The letters were read not with a view to defend himself in respect of the charges that have been levelled against him, but we apprehend, in order to give publicity to the contents of what he had written to the Attorney General. The letters written by the respondent contain aspersions on numerous individuals and contain remarks which are derogatory to some of them. This reading was again interspersed with oral remarks about various conversations which the respondent had with various persons, which were not on affidavit, and in spite of several warnings given to him, he went on making these remarks which were not on affidavit.

32. We gave an opportunity to the respondent to make his submission on the question of the punishment that should be inflicted upon him having regard to the judgment we had thus far delivered in Court. The respondent made a statement sating that he did not desire to be shown any mercy or sympathy and that he was content to suffer the punishment, which we could inflict upon him.

33. In view of the gravity of the charges levelled by the respondent against the Honourable the Chief Justice and Mr. Justice S.T. Desai, in view of the calculated malice which he has shown and the unscrupulousness which he has betrayed in drafting the document, and also having regard to the amount of publicity given and the occasion on which such publicity was given and the unrepentant attitude of the respondent, we consider that in the interest of the public, the ends of justice require that we should inflict upon him the highest penalty permissible under the law for the offence which he has committed. We sentence him to suffer simple imprisonment for six months and to pay a fine of Rs. 2000/-. We direct the Sheriff of Bombay to arrest him and to lodge him in jail on the criminal side.

34. As regards the question of costs, the petitioner was fully justified in bringing this matter before the Court and would be entitled to costs. The learned Advocate General, however, has made a statement as follows:

'Without creating any precedent, the Advocate concerned in the case for the petitioner do not desire to charge any fees in this Court, having regard to the fact that the respondent is a member of the Bar. The Solicitors also do not desire to make any charge in this Court. In the circumstances no order for costs is asked for.'

Having regard to the statement made by the learned Advocate General, we do not make any order as regards costs. We express our thanks to the Advocate General, to the Advocates who assisted him and to the Solicitors in the case for having placed fairly the whole matter before us.

35. Application allowed.