

State of U.P. Vs. Satendra Singh Tomer

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Court : Allahabad

Decided On : Mar-02-2001

Reported in : 2001CriLJ2509; (2001)2UPLBEC1015

Judge : S.K. Sen, C.J. and ;Sudhir Narain, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 2 and 10; Indian Penal Code (IPC) - Sections 19 and 20

Appeal No. : Criminal Contempt No. 821 of 1993

Appellant : State of U.P.

Respondent : Satendra Singh Tomer

Advocate for Def. : A.D. Giri and ;H.R. Misra, Advs.

Advocate for Pet/Ap. : A.G.A.

Judgement :

Sudhir Narain, J.

1. This is one of the cases in contempt proceedings where a Judicial Officer is alleged to have been assaulted, humiliated and put to mental torture in the performance of his judicial function.

2. The factual matrix of the case is that Sri N.K. Jain, the complainant, (hereinafter referred to as the officer) was functioning as Judge, Small Causes Court, Saharanpur at the relevant time. He had decided a case under Section 21 of the U.P. Urban Buildings Regulation Act registered as P.A. Case No. 33 of 1993, Nisar v. Anwar. Irfan is alleged to have filed an application for setting aside the said order. This application was rejected on 16.4.1993. It is further alleged that on 17th April, 1993 Sri Satendra Singh Tomar, the contemner, appeared before the officer with an application that the process for ejectment of the applicant in P.A. Case No. 33 of 1993 be recalled from the executing authority concerned. To put in the words of the complaint-officer on Saturdays regular work was not taken up because lawyers used to observe each Saturday as strike day as part of their campaign for the establishment of a Bench of High Court in the Western district. Sri Satendra Singh Tomar, Advocate (hereinafter referred to as contemner), entered into his chamber and requested that his application in P.A. case be heard on the same day. At that time Sri Kulbhushan Gupta, Panel Lawyer (Criminal) attached with his Court was also present in the chamber. The officer moved to his courtroom after the record was brought to the Court from the office by the clerk concerned, namely, Sri Praveen Kumar Sharma. The officer occupied his seat at the dais and scrutinised the papers of P.A. Case No. 33 of 1993. He did not find power (Vakalatnama) of Sri Satendra Singh Tomar on the record. The application, which was brought for orders, was signed by another Advocate namely Sri Anwar Ali who was not present in the Court room. Sri Satendra Singh Tomar was pointed out this omission and he promised to file Vakalatnama in the midst of the arguments. The officer, after hearing him, dictated the detailed order rejecting his prayer at the date itself and retired to his chamber and, thereafter the following incidence took place as stated in paragraphs 10, 11, 12 and 13 of the complaint made by the officer, which reads as under :

'10. That in the meantime the aforesaid contemner snatched the entire case record and steno note book from the Steno of the petitioner, namely, Shri Pradeep Kumar Mittal and without any permission entered the chamber of the petitioner shouting that if the personal work of the lawyer will not be done he will teach a lesson to the petitioner. This behaviour of the contemner was an act to bring into disrespect the judicial system and the dignity of the Court.

11. That not only this, the contemner thereafter assaulted the petitioner causing bodily injuries and dashing the petitioner on the ground throwing to winds the entire judicial dignity which is the only asset of a judicial officer. That the contemner(s) contemptuous behaviour could not rest even then and he also torn the judicial record and shirt of the petitioner by grabbing the petitioner's collar.

12. That in the meantime petitioner's staff members, namely, Sarvasri Praveen Kumar Sharma, Pradeep Kumar Mittal, Mangoo Lal Singhal, Rampal and Seth Pal, orderly, peon reached there and petitioner was rescued. In the process of rescuing the petitioner from the contemner Sri Praveen Kumar Sharma also received injuries. The wrist watch of the contemner also fell down on the ground in the chamber which could have been a valuable evidence of this sorry episode.

13. That afterwards when Sri Rajendra Chand, Additional District Judge, Sri R.N. Verma, Additional District Judge, Sarvasri S.P. Tiwari, N.K. Bahal, N.A. Zaidi (All Addl. Civil Judge), O.P. Tiwari and Laxmi Chand (Addl. C.J. Ms.) reached in my chamber and were deliberating the matter, when the contemner aware of the fact, as a lawyer he is, that his wrist watch has been left in the chamber of the petitioner which could incriminate him, rushed inside the petitioner's chamber accompanied by another lawyer, Sardar Surendrapal Singh, and forcibly took away his wrist watch and the stenographer's note book containing the order which was dictated against him and mentioned above in paragraph 9. The contemner removed the pages containing the relevant order from the stenographer's notebook and threw the notebook with the Reader.'

3. The officer on the same date reported the matter to the District and Sessions Judge, Saharanpur requesting him to take necessary action in the matter and provide him with the security. He also got, on the same date, examined himself by a doctor of District Hospital, Saharanpur. Sri Praveen Kumar Sharma was also examined in the hospital who had also received injuries. The next day i.e. on 18th April, 1993 he submitted a reference to the Registrar, High Court of Judicature at Allahabad requesting that the matter may be placed before this Court to draw contempt proceeding against the contemner under Section 2(c) of the [Contempt of Courts Act, 1971](#) with the allegations referred to above. On 21.4.1993 he also sent

the affidavits sworn by Sri Mangoo Lal Singhal, Reader, Sri Pradeep Kumar Mittal, Steno, Sri Praveen Kumar Sharma, Ahalmad, Sri Rampal, Ardali, Sri Seth Pal Sharma, Peon and the affidavit of Sri Kulbhushan Gupta, Panel Lawyer (Criminal). The matter was placed before the then Hon'ble Chief Justice and the matter was directed to be placed before the Court exercising the jurisdiction in criminal contempt matter.

4. The Division Bench framed the charges against the contemner which reads as under:

'Firstly that on 17.4.93 at about 1.10 p.m. you came to the Court of Judge, Small Causes, Saharanpur presided over by Sri N.K. Jain in order to pass the application moved by Sri Anwar Ali Advocate without filing your Vakalatnama on behalf of the Applicant, seeking to stay the ejectment of the tenant in P.A. Misc. Case No. 33 of 1993, Nisar v. Irfan and during the course of the arguments mentioned again and again that the applicant was his friend and he should be favoured in the matter and thereby tended to interfere in the due course of Judicial Proceedings.

Secondly that the presiding officer Sri N.K. Jain rejected the above applicant on after hearing you and retired to his chamber and in the meantime you snatched the entire case record and steno note book from the Steno Sri Pradeep Kumar Mittal and without any permission entered the chamber of the petitioner shouting that if the personal work of the lawyer was not done he will teach a lesson to the Presiding Officer Sri N.K. Jain. Your behaviour tended to lower the dignity of the Court and was meant to bring disrespect to the judicial system.

Thirdly that inside the chamber of the Presiding Officer Sri N.K. Jain you assaulted him causing bodily injuries to him, felled him on the ground, tore the shirt of the Presiding Officer Sri N.K. Jain by grabbing his collar and also tore the judicial record of the case and thereby you interfered in the administration of justice and tended to lower the authority of the Court and in this process you also caused injuries to Sri Pravin Kumar Sharma.

5. The contemner filed affidavit. He admitted that he had appeared before the officer on 17th April, 1993 to press the application for staying proceedings of

ejection P.A. Case No. 33 of 1992 but he denied that he assaulted the officer in chamber. His version is that Irfan had submitted an application in person on 17th April, 1993 before the officer for grant of time to obtain stay order from the higher Court against his order rejecting the application filed by Irfan on previous day and to recall order in respect of execution proceedings. The officer demanded from him Rs. 15,000/- and aggrieved by such demand he made a complaint of it before the President of Bar Association. The contemner on listening about the aforesaid demand of illegal gratification, he like a cautious citizen and after hearing story from Irfan, decided to inform the President Officer i.e. the complainant-officer to the said fact. He went to the Court at about 12.45 noon. He requested the officer to pass order on the application of Irfan by granting him time. The officer raised objection that in absence of Vakalatnama executed in favour of the contemner, only the party concerned can be heard on the application. This objection was overcome as he asked the contemner to make submission in respect of the application and file power later on. The contemner made submissions before him. The officer told the contemner that no time will be granted as he had made an observation in this respect to the party concerned. The officer left the Court in the midst of the arguments but while leaving the Court he angrily called upon the contemner to meet him in the chamber in presence of the Advocates there. He went in the chamber. The officer in the chamber asked the contemner to instruct the client i.e. Irfan to pay Rs. 15,000/- for obtaining a favourable stay order on his application or else to face conviction. The contemner is alleged to have protested against such demand. The officer is alleged to have become furious and threatened the contemner to give him a lesson.

6. The question is which of the version is correct. It is not denied on 17th April, 1993 the contemner had pressed an application on behalf of Irfan for grant of stay of the order. It is also admitted that the application was signed by another Advocate, namely Anwar Ali, and he was not present. The contemner had not filed any power either with the application or earlier to it. He was not a Counsel at any point of time in the case. It is also admitted that on the same day he entered in the chamber of the officer. His version is that the officer expressed his opinion in the Court that he will not grant stay order but on the other hand asked the contemner to come in the chamber and there he demanded the amount. The version of the

contemner is false for the reasons as under :

(1) The version of the contemner is that Irfan had moved application for stay on 17.4.1993 before officer but when the officer asked for illegal gratification for passing a favourable order, he submitted a complaint to the President of the Bar Association against the officer, a copy of the said complaint has been filed as Annexure CA-I to the affidavit filed by the contemner. The application is purported to have been addressed to the President of the Bar Association, Saharanpur. There does not seem any reason as to why Irfan did not contact Sri Anwar Ali his Counsel who had put in his signatures on the application which was presented to the officer by him for grant of stay. The normal courses of conduct would have been that Irfan would have contacted his Counsel Sri Anwar Ali first, instead of approaching the President, Bar Association, Saharanpur.

(2) Irfan is alleged to have given complaint to the President of the Bar Association and, thereafter, the contemner came to know about the conduct of the officer. He has given the details in para 8 of his affidavit as to how he came to know about the version of Irfan as under :

'That, however, on listening about the aforesaid illegal demand of illegal gratification from one Shri G.M. Shah alias Peeru a Social and Political worker while sitting in Bar room, a notice of the said complaint was taken by few of the Members of the Bar Association, Saharanpur present there. Like a cautious citizen and after hearing lawful story of Irfan, few of the advocates present there including the deponent had rightly taken ill of it and consequently they had decided to inform the learned Presiding Officer i.e. the petitioner of the said fact. On repeated request of those persons including Irfan, the deponent went to the Court at about 12.45 noon.'The contemner has not filed the affidavit of Sri G.M. Shah from whom he is alleged to have receiver the information. In para 8 of the affidavit, he further state that few members of the Bar Association, Saharanpur were present at that time. He did not file any affidavit of any of those Advocate. He has also not filed the affidavit of the President of the Bar Association, Saharanpur who could verify as to whether Irfan had given such complaint to him. In absence of any evidence in this respect, the version of the contemner as contained in para 8 of his affidavit

cannot be relied upon.

(3) The contemner himself admitted that on Saturdays the lawyers used to go on strike in pursuance of the decision taken by the Bar Association for establishment of a Bench in the western district of Uttar Pradesh. The Presiding Officers did not hold the Court proceedings and attended to the cases only when the applications were presented by the parties concerned. Para 5 of the affidavit reads as under :

'5. That in reply to the contents of paragraph 8 of the petition. It is submitted that in honour of the decision taken by the Bar Association, the deponent to obtain from attending the Court work on Saturdays. However, so far as learned Presiding Officers are concerned most of them also do not hold the Court proceedings and attend to the cases only when the applications are prevented by the parties concerned.'

(4) The version of the contemner in para 8 of his affidavit is that he visited the Court room of the officer at about 12.45 noon and pressed the application of Irfan. On the contrary version of the officer is that he was not in Court room as there was strike by lawyers and he was sitting his chamber on 17.4.1993. There does not seem any reason as to how the officer will be functioning in the Court at 12.45 noon when no Court proceedings were going on. The averments made in para 5 of the affidavit of the contemner itself belies the version which has been given in para 8 of the affidavit of the contemner that when he visited Court at 12.45 noon, the officer was functioning in the Court.

(5) The contemner is alleged to have appeared in open Court on 17th April, 1993 at 12.45 noon and pressed the application for grant of stay. The officer is alleged to have raised objection that the contemner has not filed Vakalatnama and cannot be heard but later on the officer withdrew his objection subject to the condition that the contemner would file Vakalatnama later on. The Officer is alleged to have left the Court without permitting the contemner to complete his submission and angrily called upon the contemner to meet him in his chamber. In para- graph it is stated: 'While leaving the Court room the petitioner had angrily called upon the deponent to meet him in the chamber in presence of the Advocate present there.'

7. The contemner thereafter, it is alleged, went to his chamber where the officer asked the contemner to instruct his client i.e. Irfan to pay Rs. 15,000/- for obtaining

favourable order on his application, else to face ejectment. The version of the applicant cannot be believed. The officer having expressed opinion earlier, will not call the contemner to his chamber to give him illegal gratification.

8. It may be noted that in January, 1992 the officer was working as Chief Judicial Magistrate, Saharanpur. The contemner had filed bail application before the complainant-officer in Crime No. 17 of 1992, State v. Pramod Rane. In paragraph 14 of the reference the officer has alleged that the contemner had threatened him that the bail should be granted to the accused as he is related to him. The prayer was not accepted by the officer and the contemner had threatened him and this fact noted by him in the file of that case. In para 21 of the counter- affidavit, the contemner has admitted that he had applied for bail and he has faced the anger of the officer.

9. In the month of July/August, 1991 it is alleged that the contemner and some of his associates had assaulted an employee of the Civil Court and abused and threatened the officer in the judgeship. The matter was referred to this Court where the contemner tendered unconditional apology.

10. With the above past history, it is improbable that the complainant officer will ask the contemner to visit his chamber and there is the chamber he will ask the contemner to instruct his client to give illegal gratification to him.

11. On the other hand the evidence on the record leaves no doubt that the allegations made against the contemner are correct. 17th April, 1993 was a Saturday. It is well known that on Saturdays in the western districts including Saharanpur the lawyers remain on strike but in urgent matters they file application. The officers, unless there is some important work presented to them in the Court, normally do sit in the chamber. It is for this reason that the application for time appears to have been signed by Anwar Ali, Advocate but he did not appear in the case due to strike. The contemner is alleged to have gone to the chamber and requested the officer to take up the matter and the officer thereafter came to the Court to hear the application. The fact that the contemner had come to the chamber is proved by the affidavit of Sri Kulbhushan Gupta, Advocate. He is Panel Lawyer (Criminal) and in his affidavit he has stated that he had gone in the

chamber of the officer to request him that necessary letters may be sent summoning the witnesses as the witnesses were not being produced by the police. The contemner Satendra Singh Tomar had come to the chamber at 1.10 p.m. requesting the officer that he wants to submit an application. The officer asked Sri Praveen Kumar Sharma, the Clerk to present the application with record in Court room and told the contemner that he would hear the arguments in the Court room. There is no reason to disbelieve the affidavit of Sri Kulbhushan Gupta, Advocate. Praveen Kumar Sharma was Ahalmad. He filed affidavit stating that at about 1.50 p.m. the officer gave him instructions to bring the file of Case No. 33 of 1993, Nisar v. Anwar. He brought the file there and thereafter on the instruction of the officer concerned he took it to the Court room.

12. As regards the incidence in the Court, the officer in Paragraph 9 of the reference has stated that the contemner mentioned again and again that the applicant was his friend and the officer should favour him in this matter. After hearing the contemner, the officer in his presence dictated a detailed order rejecting his prayer on the dais itself and retired to the chamber. In paragraph 10 it is stated that in the meantime the aforesaid contemner snatched the entire case record and the steno note book from the Steno. Sri Pradeep Kumar Mittal was working as Steno. Sri Mangoo Lal Singhal was working as Reader, Rampal was Ardali and Sethpal was a peon. They have filed affidavit supporting the allegations of the officer. There is no reason to disbelieve their version.

13. Learned Counsel for the contemner, Sri H.N. Sharma, urged that the affidavit of these persons cannot be relied upon as they were subordinate to the officer concerned and they were attached with him. The mere fact that they were attached to the officer itself will not be a ground to reject the version in the affidavit. It is not denied that these persons who had filed affidavits were attached with the officer. It is also not the case of the contemner that they were absent from duty. They were the eye-witnesses and they could only depose as to what had happened. He has relied upon the decision in Dr. H. Singh Khalsa v. B.L. Narendra and Anr., 1998 Cr LJ 768, wherein the Court observed that affidavits of persons closely related cannot be accepted. This case is not applicable to the facts of the present case.

14. On the other hand the contemner is alleged to have approached the Court when the members of the bar association showed their anguish with the conduct of the officer on hearing on complaint of Irfan. The contemner did not state that he did come along with other advocates to press the officer not to take illegal gratification and pass the order in accordance with law. It is also not his case that there were other advocates when he argued the application in the Court. It is also unusual conduct if the contemner had come to the Court only on the basis of complaint against the officer and he would come all alone without other lawyers who had expressed against the conduct of the officer as stated by the contemner himself in paragraph 8 of the counter-affidavit.

15. It is further contended that the affidavit is vague and has not been verified. The affidavits filed by the persons have been duly sworn by the notary and the paragraphs have been verified on personal knowledge. We do not find any infirmity in these affidavits. The cases relied by the contemner are not applicable on the faces of the present case.

16. The next incident took place when the officer had retired to his chamber. In paragraph 11 of the complaint it is stated that he was assaulted by the contemner causing bodily injuries and dashing the officer. This version is supported by the medical report submitted by the doctor of the District Hospital, Saharanpur. It was open for the contemner to, summon and examine the doctors. The officer as well as Praveen Kumar Sharma both had suffered injuries and injury report is on the record. The contention of the learned Counsel for the contemner is that there is a difference of timing in regard to the examination of the officer in the District Hospital and that of Praveen Kumar Sharma. The difference of timing is in respect of examination of these two persons but that does not believe that they had suffered injuries. It is contended that these medical reports have not been proved. The medical reports do not require formal proof in contempt proceedings. Praveen Kumar Sharma had filed affidavit stating that he was duly examined by the doctors.

17. The third visit of the contemner in the chamber takes place when he goes there to list his wristwatch which he had left after he assaulted the officer. This fact

is proved by the letter of the six Judicial Officer, namely, Sri Rajesh Chandra, IIIrd Additional District Judge, Saharanpur, Sri R.N. Verma VIIth Additional District Judge, Saharanpur, Sri O.P. Tiwari, Additional Chief Judicial Magistrate, Saharanpur, Sri S.P. Tiwari, Additional Civil Judge, Saharanpur, Sri S.P. Tiwari, Additional Civil Judge, Saharanpur, Sri M.K. Banal, Additional Civil Judge, Saharanpur and Sri N.A. Zaidi, Additional Civil Judge, Saharanpur. They had gone to meet the officer after coming to know about the incident of assaulting the officer. The contention of Sri Sharma, learned Counsel for the contemner, is that the incident had not taken place before these officers and the letter written by them is hardly relevant. This may be correct that they were not eye-witness of the incident but this proves the version of the officer that the contemner had left his wrist watch and he had taken it away. This establishes that the contemner of the officer as narrated by him. Secondly, if no incident had taken place there was hardly any reason that most of the officers immediately on happening of the alleged incident would have assembled in the chamber of the officer.

18. It is then urged that the officer has neither filed affidavit in support of his complaint nor he has filed any rejoinder affidavit. Rule 10 of Chapter 35-E of the High Court Rules framed under Section 23 of the contempt of Courts Act, 1971 provides that after giving information about commission of contempt of Court by any persons or person, an informant shall have no right to appear or plead or argue before the Court unless he is called upon by the Court especially to do so. The officer had informed the Court through the Registrar about the incident. The Court had never asked him to file any affidavit. The other six persons had filed affidavits supporting the version of the officer. The officer had written a letter dated February 10, 1994 to the Registrar whether he is required to file any rejoinder affidavit. The copy of the said letter is on the record. It appears the Registrar never informed him to file any affidavit. In para 99 of the judgment In Re : Vinaya Chandra Mishra their Lordships of the Supreme Court has held that in facie curiae contempt the Judge is not required to appear or give evidence.

19. Learned Counsel for the contemner then contended that the contemner is entitled to benefit of doubt as is evident from the record, the version of the officer has not been fully established. We are of the opinion that there is not the least

doubt about the contempt alleged to have been committed by the contemner as alleged by the officer.

20. One of the points raised by the contemner is that the incident is alleged to have taken place in the chamber and the chamber is not a Court and, therefore, the contemnor cannot be held guilty of contempt of Court, Section 2(a) of the Act defines 'Contempt of Court' but it does not define the word 'Court'. The meaning of the Court and the Court subordinate to the High Court was considered by the Supreme Court in *Brijnandan Sinha v. Jyoti Narain* : 1956 CriLJ156 . Their Lordships of the Supreme Court referred to Sections 19 and 20 of the Indian Penal Code. The word 'Judge' has been defined under Section 19 as not only the person who is officially designated as a Judge but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive judgment or a judgment which, if confirmed by some other authority, would be definitive. Section 20 defines the words 'Court of Justice' which means a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

21. Section 3 of the Evidence Act defines 'Court' as including all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence. This definition, however, held to be not exhaustive but framed only for the purpose of Evidence Act and has not to be extended where such an extension is not warranted. The Judge has been conferred power to decide the matter and if he has such an authority he is himself a Court. The place where he exercises that judicial power is popularly called a Court because the Judge performs judicial functions there. If the contempt is committed at any other place other than the place where the judicial function is being exercised, still it is contempt of Court. The mere fact that the contempt is committed in the chamber attached to Court room will not absolve the contemner on the ground that the contempt was committed in a place where the Judge was not performing judicial function in the Court room. The contemner will be liable to be convicted and sentenced even if he has committed contempt outside the Court room.

22. The allegation against the official is that he committed criminal contempt. The criminal contempt has been defined under Section 2(c) of the 1971 Act as follows :-

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

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

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

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

23. On the facts found above that the contemner assaulted and scandalised the Judge in the course of his judicial function amounts to criminal contempt. All the three charges levelled against the contemner have been duly proved and his conduct is gross criminal contempt of Court.

24. Learned Counsel for the contemner further raised a plea that this Court should not proceed with the criminal proceedings as a Criminal Case No. 151 of 1993 against the contemner which is pending before the Judicial Magistrate for the offences alleged to have been committed by him under Sections 332, 353, 427, 452, 380 IPC read with Section 7 of the Criminal Law Amendment Act. He has referred to the proviso to Section 10 of the Act which provides that no High Court shall take cognizance of contempt in respect of a Court subordinate to it where such contempt is an offence punishable under the provisions of Indian Penal Code. The Court repelled the contention. The incidence in this case was that the advocates started making filthy remarks and used abusive language against the reader of the Court. When the reader entered the Courtroom the advocates prevented him from going to his seat along with the files and gave him fist blows and in this assault his shirt was torn. The Court relying upon the decision of the

Supreme Court in Bathinaram Krishna Reedy (supra) held that the offence committed by the advocates may be an offence under the Indian Penal Code but not as Contempt of Court. The Court had a power to proceed with a contempt proceeding. In view of these decisions the contention of the learned Counsel for the contemner that the Court should not proceed with the contempt proceedings cannot be accepted,

25. The next question is as to what sentence is to be awarded to the contemner. An advocate is a responsible officer to the Court. He is to assist the Court and has to shoulder responsibility in the administration of justice. If he himself abuses, assaults, intimidates the Court, it lowers the dignity of the Court and amounts to interference in the administration of justice.

26. The contemner at no stage of proceedings has expressed his apology. He, instead of expressing apology for his own conduct, has further scandalised the officer. In paragraph 10 of the affidavit he has averred alleged to have been committed in respect of Court subordinate to it where such contempt is an offence punishable under Indian Penal Code. Similar provision was contained under Section 2(3) of Contempt of Courts Act, 1926. In Bathinaram Krishna Reedy v. State of Madras : 1952 CriLJ832 , proceedings were taken against the contemner on a publication of an article alleging that the Sub-Magistrate of Kovvu was a bribe taker and was in the habit of harassing litigants. An argument was raised that as the offence is punishable under the Indian Penal Code, the High Court had no jurisdiction to take any action for contempt under the said Act. This contention was repelled by the Supreme Court with the following observation :-

'What is made punishable in the Indian Penal Code is the offence of defamation as defamation and not as contempt of Court. If the defamation of a subordinate Court amounts to contempt of Court proceedings can certainly be taken under Section 2, Contempt of Courts Act, quite apart from the fact that other remedy may be open to the aggrieved officer under Section 499, Penal Code.'

27. This question was further considered by Full Bench of the Delhi High Court in the matter of D.B. Vohra, 1971 Criminal Law Journal 899. It was urged that High Court is not empowered to punish for contempt of a subordinate Court when the

offensive matter is cognizable and punishable Court when the provisions of Indian Penal Code on the ground that the proviso to Section 10 prohibits the High Court from taking cognizance of a contempt alleged to have been committed :-

'That following the said instruction of the petitioner the deponent went in his chamber but there the petitioner asked to instruct his client i.e. Irfan to pay Rs. 15,000/- otherwise to face the eviction.'

In paragraph 17 he stated that 'the petitioner is making attempt to shadow his own misdeed by.....'

28. When an advocate scandalises the Court by making allegations against the Judge it is highly offensive, vicious, malicious and beyond condonable limit. The same amounts to onslaught on the independence of judiciary. In *Pritam Pal v. High Court of Madhya Pradesh* : 1992 CriLJ1269 , the High Court convicted the advocate for contempt and awarded two months' imprisonment. The Hon'ble Supreme Court upheld the judgment holding that when the contemner is an advocate but neither expressed any contrition nor has any repentance for the vicious allegations made against the Judge, he is not entitled for any lenient view. It was observed :

'Coming to the question of sentence, it appears from the order of the High Court that the appellant had adopted a defiant attitude and tried to justify the aspersions made by him even without thinking it necessary to apologise. Before this Court also, the appellant has neither expressed any contrition nor has he any repentance for the vicious allegations made against the learned Judges of the High Court. But on the other hand, he has exhibited a dogged determination to pursue the matter, come what may. A reading of his memorandum of grounds and the written and signed arguments show that he has ventured into another out of allegations against the High Court Judges and persisted in his campaign of verification. His present conduct has aggravated rather than mitigating his offence.'

29. In the present case as observed above the contemner assaulted the Judge while he was performing his judicial function. He took false plea in this Court and never expressed any apology. On the other hand in the affidavit filed by the

contemner, he has made vicious allegations against him which itself amounts to contempt of Court.

30. In the year 1991 a reference was made to this Court that the contemner had assaulted an employee of the Civil Court and abused and threatened the officer. The contemner then submitted an apology. Hardly after two years the contemner assaulted the officer while exercising the judicial function.

31. Taking into consideration all the aspects and the conduct of the contemner, he is awarded six weeks simple imprisonment.

S.K. Sen, C.J.

32. I have the opportunity of perusing the judgment/prepared by learned brother Sudhir Narain, J. and while agreeing with the same I like to express my views on certain aspects of the matter. It is not necessary to reiterate the facts, which have already been narrated by learned brother Sudhir Narain, J.

33. Under the common law definition, 'contempt of Court' is/defined as an act or omission calculated to interfere with the due administration of justice. This covers criminal contempt (that is, acts which so threaten the administration of justice that they require punishment) and civil contempt (disobedience of an order made in a civil cause).

34. From the facts which have been elaborately narrated in the judgment rendered by my brother it is clear that the allegations against the contemner, if true, would amount to criminal contempt as defined in 2(c) of the Act. The act and conduct of the contemner on the basis of the records appears to be derogatory and there is no other way but to strongly condemn the same. It is an act unbecoming of the conduct of an Advocate. If a learned Advocate behaves in such a manner that will seriously effect the administration of justice. The conduct of the contemner who also happens to be an Advocate has tended to prejudice and caused serious obstruction in the administration of justice. It appears that by his unruly conduct and act the contemner who is an Advocate of the Court tended to over-awe the Court and tried to prevent the officer of the Court to perform 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. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the Court by creating distrust in its working, the edifice of the judicial system gets eroded. It is expected from an Advocate to be zealous in maintaining rule of law and in strengthening the people's confidence in the judicial institutions. It, however, appears that the contemner has acted exactly contrary to his obligations and has in reality set a bad example to others while at the same time contributing to weakening of the confidence of the people in the Courts. In fact there is no sincere regret for the disrespect he showed to the presiding officer and for the harm that he has done to the judiciary. The Court will be failing in its duty to protect the administration of justice from attempts to denigrate and lower the authority of the judiciary officers entrusted with the sacred task of delivering justice. A failure on the part of this Court to punish the offender on an occasion such as this would thus be a failure to perform one of its essential duties solemnly entrusted to it by the Constitution and the people. It must be the principle that self-restraint and respectful attitude towards the Court, presentation of correct facts and law with a balanced mind and without overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentleman first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the Court.

35. In this connection we may take note of the judgment and decision of the Supreme Court in *Re : Vinay Chandra Mishra* JT 1996 (3) SC 587. It must be the principle that cases are won and lost in the Court daily as observed by the Supreme Court in the aforesaid decision which is quoted below :

'Cases are won and lost in the Court daily. One or the other side is bound to lose. The remedy of the losing lawyer or the litigant is to prefer an appeal against the decision and not to indulge in a running battle of words with the Court. That is the least that is expected of a lawyer. Silence on some occasions is also an argument.

The lawyer is not entitled to indulge in unbecoming conduct either by showing his temper or using unbecoming language.'

36. It cannot be disputed that the conduct indulged into by the contemnor in the present case, as per report of the District Judge, amounts to criminal contempt of Court.

37. The Supreme Court in paragraphs 40 and 41 of the said decision has further observed which reads as under :

'40. Use of intemperate language is not assertion of right nor is a threat an argument. Aumility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the Court, presentation of correct facts and law with a balanced mind and without overstatement, suppression, distortion or embellishment are requisits of good advocacy. A lawyer has to be a gentleman first. His most valuable asset is the respect and good will he enjoys among his colleagues and in the Court.'

41. The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution, which is above all individuals and institutions and where the power of judicial review is vested in the superior Courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. 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. It is for this purpose that the Courts are entrusted with the extra-ordinary power of punishing those who indulge in acts whether inside or outside the Courts, which tend to undermine their authority and bring them in disrepute and disrespect by

scandalising them and obstructing them from discharging their duties without fear or favour. When the Court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalized, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the Court by creating distrust in its working, the edifice of the judicial system gets eroded.'

38. The duty of the High Court in protecting the subordinate judiciary has been elaborately considered in the case of *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Ors* : 1991 CriLJ3086 . In this connection we may refer to relevant portion of the judgment which is reproduced below:

'24. In India prior to the enactment of the Contempt of Courts Act, 1926, High Court's jurisdiction in respect of contempt of subordinate and inferior Courts and regulated by the principles of Common Law of England. The High Courts in the absence of statutory provision exercised power of contempt to protect the subordinate Courts on the premise of inherent power of a Court of record, Madras High Court in the case of *Venkata Rao*, 21 Mad LJ 832 : 1911 (10) Cri LJ 525, held that it being a Court of record had the power to deal with the contempt of subordinate Courts. The Bombay High Court in *Mohandas Karam Chand Gandhi's case* 1920 (28) Bom LR 368 : AIR 1920 Bom 175 (FB), held that the High Court possessed the same powers to punish the contempt of Court possessed the same powers to punish the contempt of subordinate Courts as the Court of the King's Bench Division had by virtue of the Common Law of England. Similar view was expressed by the Allahabad High Court in *Abdul Hassan Jauhar's case* (*Hadi Hussain v. Nasir Uddin Haider* AIR 1926 All 523 and *Shanta Nand Gir v. Basudevanand* : AIR1930 All225 . In *Abdul Hassan Jauhar's case* (supra) a Full Bench of the Allahabad High Court after considering the question in detail held : 'The High Court as a Court of record and as the protector of public justice throughout its jurisdiction has power to deal with contempts directed against the administration of justice, whether those contempts are committed in face of the

Court or outside it, and independently or whether the particular Court is sitting or not sitting and whether those contempts relate to proceedings concerning an inferior Court, and in the latter case whether those proceedings might not to some stage come before the High Court.'

36. Advent of freedom, and promulgation of Constitution have made drastic changes in the administration of justice necessitating new judicial approach. The Constitution has assigned a new role to the Constitutional Courts to ensure rule of law in the country. These changes have brought new perceptions. In interpreting Constitution, we must have regard to the social, economic and political changes, need of the community and the independence of judiciary. The Court cannot be a helpless spectator, bound by precedents of colonial days which have most relevance. Time has come to have a fresh look to the old precedents and to lay down law with the changes perceptions keeping in view the provisions of the Constitution. 'Law' to use the words of Lord Coleridge, 'grows and though principles of law remain unchanged, yet their application is to be changed with the changing circumstances of the time'. The considerations which weighed with the Federal Court in rendering its decision in Gauba's AIR 1942 FC, 1 and Jaitley's cases, 1944 FCR 364, are no more relevant in the context of the constitutional provisions.'

39. It is not necessary for us to observe at length the other portion of the judgment which has elaborately dealt with the same.

40. The other decision of the Supreme Court in the case of Preetam Pal v. High Court of Madhya Pradesh, Jabalpur, reported in : 1992 CriLJ1269 , may also be considered in this connection. The Supreme Court in the aforesaid decision discussed and quoted from various judgments, the principles relating to law of contempt and duty of Court for taking effective steps in contempt matter. The relevant paragraphs of the judgment is reproduced below :

'47. In Morris v. The Crown Office, (1970) 1 All ER 1097 at page 1081, Board Denning M.R. said : 'The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society.'

49. In the same case, Lord Justice Salmon spoke :

'the sole purpose of proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.'⁵⁰. Frankfurter, J. in *Offutt v. U.S.*, (1954) 348 US 11, expressed his view as follows :

'It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage.'⁵¹. in *Jennison v. Baker*, (1972) 1 All ER 997 at page 1006, it is stated :

'The law should not be seen to sit by idly, while those who defy it go free, and those who seek its protection lose hope.'⁵². Chinappa Reddy, J. Speaking for the Bench in *Advocate General, Bihar v. M.P. Khair Industries* : 1980 CriLJ684 , citing those two decisions in the cases of *Offutt* and *Jennison* (supra) stated thus (para 7 of AIR):

'....it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty to protect the interest of the public in the due administration of justice and, so it is entrusted with the power to commit for contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression 'Contempt of Court' may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfere with.'⁵³. Krishna Iyer, J. in his separate judgment in *Re S. Mulgaokar* AIR 1978 SC 787 (supra), while giving the broad guidelines in taking punitive action in the matter of contempt of Court has stated (Para 33):

'.....if the Court considers the attack on the judge or judges sacrilegious, offensive, intimidatory or malicious beyond condonable limits, the strong arm of

the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream'.⁵⁴ In the case of *Brahma Prakash* : 1954 CriLJ238 (supra), this Court after referring to various decisions of the foreign countries as well as of the Privy Council stated thus (at p. 14):

'It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement : it is enough if it is likely or tends in any way, to interfere with the proper administration of law.'⁵⁵ In *Asharam M. Jain v. A.T. Gupta* : 1983 CriLJ1499 , the facts were thus :

56. The petitioner who filed a special leave petition accompanying by an affidavit affirming the statement made in the said SLP indulged in wild and vicious diatribe against the then Chief Justice of the High Court of Maharashtra. When the SLP was heard, this Court directed notice to be issued to the petitioner as to he should not be committed for contempt under the [Contempt of Courts Act, 1971](#). After hearing the parties and then not accepting the unconditional apology of the petitioner, this Court convicted the petitioner for contempt and sentenced him to suffer simple imprisonment for a period of two months. In that case, Chinnappa Reddy, J. speaking for the Bench said :

'The strains and mortifications of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of judges. It is not that judges need be protected : judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected.'⁵⁷ Reference may be made to a recent decision of this Court in *M.B. Singhi v. High Court of Punjab and Haryana* : 1991 CriLJ2648a . In that case, the appellant, a practicing advocates having failed to persuade the learned Subordinate Judges to grant an adinterim injunction pending

filing of a counter by the opposite party, made certain derogatory remarks against the learned Judge who instead of succumbing to such unprofessional conduct made a record of the derogatory remarks and forwarded the same to the High Court through the District Judge to initiate proceedings for Contempt of Court against the appellant. The High Court holding that the remarks made in the learned sub-judge are disparaging in character and derogatory to the dignity of the judiciary found the appellant guilty of Section 2(c)(i) of the Contempt of Courts Act. The appellant therein though denied to have made the remarks, however, offered an unqualified apology. But the High Court without accepting the apology punished the appellant therein with a fine of Rs. 1,000/- Ahmed, J. of this Court in his separate judgment has observed (at pp. 1835-36 of AIR):

'The tendency of maligning the reputation of judicial officers by disgruntled elements who failed to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realize that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system.'⁵⁸. After having made the above observation, the learned Judge concurred with the conclusion of Agarwal, J. dismissing the appeal and while doing so, he expressed his painful thought as follows : "When a member of the bar is required to be punished for use of contemptuous language it is highly painful-it pleases none but painful duties have to be performed to uphold the honour and dignity of the

individual judge and his office and the prestige of the institution. Courts are generally slow in using their contempt jurisdiction against erring members of the profession in the hope that the concerned Bar Council will chasten its member for failure to maintain proper ethical norms. If timely action is taken by the Bar Councils, the decline in the ethical values can be easily arrested.'

41. We may also note the observations made in paragraph 62 of the Supreme Court in the aforesaid decision which read as under :

'62. To punish an advocate for Contempt of Court, no doubt, must be regarded as an extreme measure, but to preserved the proceedings of the Courts from being deflected or interfered with, and no keep the streams of justice, pure, sarena and undefiled, it becomes the duty of the Court, though painful, to punish the contemnor in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt, if his act or conduct in relation to Court or Court proceeding interferes with or in calculated to obstruct the due causes of justice.'

42. In the instant case, the alleged contemner, who is an advocate had adopted defiant attitude and tried to justify the aspersions made by him even without thinking it necessary to apologies. He has neither expressed any contrition nor has he any repentance for the vicious allegations made against the presiding officer of the Court and on the other hand, he has exhibited a dogged determination to purpose the proceedings in the matter, come what may. Having regard to the gracity of the offence committed by the contemner I have no hesitation in holding him guilty of contempt of Court. I am of the view that awarding him sentence of six weeks simple imprisonment, as directed by learned brother is fully justified. Contemner convicted.