

Suo Motu Vs. Sri M.S. Ravi, the Printer and Publisher,

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Court : Kerala

Decided On : Mar-25-2009

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Judge : K. Balakrishnan Nair and; M.L. Joseph Francis, JJ.

Acts : [Contempt of Courts Act, 1971](#) - Sections 2 and 15; Contempt of Courts (High Court of Kerala) Rules, 1988 - Rules 9, 13 and 14; [Constitution of India](#) - Article 143

Appeal No. : Contempt Case (Crl.) No. 2/2009

Appellant : Sua Motu

Respondent : Sri M.S. Ravi, the Printer and Publisher, ;sri M.S. Mani, Editor-in-chief, ;sri Deepu Ravi, Managing

Advocate for Def. : P.A. Ahammed, Adv.

Advocate for Pet/Ap. : Sua Motu

Judgement :

Balakrishnan Nair, J.

1. This contempt case is initiated suo motu by the High Court of Kerala, pursuant to the decision by the Full Court on the administrative side. Whether the decision

of the Chief Justice alone is sufficient or that of the Full Court is necessary, is a debatable point, as there are conflicting decisions on this aspect. But, the decision of the Full Court lends legitimacy to the proceedings and the same cannot be now described as the brainchild of the master of the roster or the Judge designated by him.

2. The brief facts of the case are the following: Kerala Kaumudi is one of the leading dailies in Malayalam. It published an editorial on 18.12.2008 under the caption 'Comfort of the blindfolded eyes of the Goddess of Justice'. The said editorial was one dealing with the proceedings pending before this Court in the form of Bail Application Nos. 7311, 7508 and 7551 of 2008 in Crime No. R.C. 8(S)/93/SPE/KER/CBI, popularly referred as 'Abhaya Case'. It was a case of unnatural death of a nun, who was an inmate of Saint Pius Xth Convent, Kottayam. Her dead body was found in the well of the said Convent on 27.3.1992. Initially, the investigating agencies of the State thought that it was a case of suicide. On the basis of the motion made by late Abhaya's father, the case was transferred to the Central Bureau of Investigation (CBI). The CBI also, initially, was of the view that it may be a case of suicide. Finally, the suspects were subjected to Narco Analysis and apparently, based on the informations so extracted, two priests and a nun were arrested as the accused in the case. Naturally, the case roused great public interest because of the involvement of the priests and the nun. A section of the people was applauding and encouraging the CBI for having performed a heroic act of arresting the culprits finally. Another section of the public felt that it was a false case foisted upon the priests and the nun and there was not sufficient material to implicate them. Some of their leaders even went up to the extent of beatifying the accused by comparing the difficulties faced by them to the travails of Jesus Christ on his way to Calvary Mount for crucifixion. The newspapers also published both the views. Majority of the Press was highlighting the former view and a small section of the Press was giving prominence to the latter view. While so, Bail Applications were moved by the three accused and they were being heard by a learned Judge of this Court. Print and electronic media were publishing everything that was said or omitted to be said in the Court Hall. It appears, during the hearing, the learned Judge made certain observations regarding the merits of the prosecution case. The CBI, apprehending bias, filed a

petition on the administrative side before the Hon'ble the Chief Justice, praying to transfer the case from the Bench of the said learned Judge. The media was giving wide coverage to these developments. While so, an interview given by a former Judge of the Supreme Court was published by the Deepika daily, in which he made certain comments on the trial of the accused by media and the unreliability of Narco Analysis. The said daily is controlled by the Church, to which the accused belonged. Kerala Kaumudi was a newspaper generally supportive of the efforts made by the CBI to bring the culprits before law. It felt that the timing of the publication of the interview by the Deepika daily was chosen deliberately to influence the pending proceedings before this Court for bail filed by the accused. While so, the motion made by the CBI for transfer of the Bail Applications to another Bench was dismissed by the Hon'ble the Acting Chief Justice. In the above background, the aforementioned editorial was published.

3. This Court, prima facie, was of the view that the publication of the article was an interference with the due course of justice and decided on the administrative side, to initiate contempt proceedings. The main offending portions of the editorial are quoted below for convenient reference.

Just a perusal is enough to understand that the plea submitted by the CBI demanding transfer of bail application from the Bench of Justice Hema, who is considering the application involves serious legal questions. The CBI alleges that many observations which would adversely affect the progress of the case are being made, and decisions that favour the accused are being evolved in the open court. Now it is convinced that there is nothing surprising in the rejection of the plea to change the Bench submitted by the CBI.

It is further stated in the editorial as follows:

When a venerable person, who retired from the Supreme court and who is considered as the pillar of Christianity, wrote, in the daily of Christians, under his name criticizing interventions of the CBI in this case as cheap tactics, and this case came before the bench of the noble lady who was the junior of that person while he was practicing as an advocate, and now a High Court Judge, can the public be blamed if they suspect that the allegation made by the CBI may be true?

Especially, when the venerable person, holding the office of The Chief Justice at the time the CBI filed the petition, left that office and another venerable person came as Acting Chief Justice, who fortunately or unfortunately, happened to be a Christian has only helped to magnify the suspicion of the people....

This Court felt that by publishing the above editorial, the publishers/editors of the Kerala Kaumudi daily have committed criminal contempt as defined under Section 2(c) of the [Contempt of Courts Act, 1971](#) (hereinafter referred to as 'the Act'). Therefore, it was felt that action should be initiated against them, as provided under Section 15 of the Act. The matter was placed before the Bench on the judicial side for preliminary hearing under Rule 9 of the Contempt of Courts (High Court of Kerala) Rules, 1988 (hereinafter referred to as 'the Rules'). After hearing the learned Advocate General, it was felt that a prima facie case has been made out against the respondents. So, notice was ordered to be served on them. But, their personal appearance was dispensed with.

4. The 1st respondent is the Printer and Publisher, the 2nd respondent is the Editor-in-Chief, the 3rd respondent is the Managing Editor and the 4th respondent is the Editor of Kerala Kaumudi. The respondents 1 to 3 appeared through learned Counsel Mr. P.A. Ahamed and filed separate replies in the form of affidavits, as contemplated under Rule 13 of the Rules. The 4th respondent appeared through M/s. Menon & Pai, advocates and filed a reply in the form of an affidavit. Mr. T.Krishnanunni, senior advocate was appointed as amicus curiae, to assist the Court.

5. The 1st respondent in the opening portion of his affidavit has submitted as follows:

2. At the outset the respondents respectfully submit that they have the highest respect for the judiciary and further have utmost confidence and faith in the integrity, fairness and impartiality of the Judiciary especially the Honourable High Court of Kerala. It is respectfully submitted that the respondents herein have never attempted to sully the image and fair name of the Honourable High Court of Kerala. The respondents herein respectfully submit that if this Honourable Court is of the view that the editorial captioned 'Comfort of the blindfolded eyes of the

Goddess of Justice' is contumacious or derogatory, they tender an unconditional apology and state that it was neither wilful nor wanton.

The printing/publishing of the editorial was admitted by the 1st respondent. After referring to the history of the Abhaya case and the efforts made by the Kerala Kaumudi to bring the culprits to light, the 1st respondent denied the allegation that the editorial contained contumacious, baseless or derogatory statements against a Sitting Judge of this Court. The 1st respondent added that the editorial only highlighted the action of the former Supreme Court Judge in expressing opinion regarding the handling of the case, when the matter was pending before this Court. It is further submitted that the editorial only reflected the sentiments of the CBI and the general public. It is also pointed out that it was only highlighting the adverse impact of such statements by a former Supreme Court Judge and also the campaigns of the supporters of the accused carried out in public. The 1st respondent concludes his affidavit in the following manner:

11. It is further submitted that several news items published in Mathrubhoomi daily on various dates, highlighting the allegations that invisible hands are working to interfere with the investigation of Abhaya case and to hush up the same. The intention of the respondents was to warn against interference with the case by external force. The respondents never intended to interfere with the due course of justice. In fact, in public interest, as a responsible newspaper, the respondents were voicing its concern against the alleged interference with the due course of justice by interested person. When the editorial is read as a whole, it would show no disrespect for the judiciary. But on the contrary, it was intended against interference with the functioning of the judiciary. Moreover the editorial was only a collective voice of the public who had sent letters to the respondents and some of the letters were also published in the editorial column. It is most respectfully submitted that the respondents have utmost respect and regard for this Honourable High Court and they have never committed Contempt of Court. Despite the above, if the Honourable Court is of a contrary view, the respondents herein tender an unconditional apology to this Honourable Court and pray that this Honourable Court may be pleased to close the contempt against them.

The 1st respondent, thus prayed that further proceedings in the matter may be dropped.

6. Identical affidavits were filed by respondents 2 and 3 also. The 4th respondent filed a reply in the form of an affidavit, stating that he has nothing to do with the printing, publishing or editing of the Kerala Kaumudi daily. According to him, notwithstanding the order of the Hon'ble Supreme Court, he is not allowed to have any say in the editing or publication of the newspaper.

7. In view of the said averments of the 4th respondent, the 2nd respondent has filed an additional affidavit, denying the allegations of the 4th respondent against other respondents. According to the 2nd respondent, the 4th respondent is not attending any of the meetings of the Board of Directors or taking part in the management of the affairs of the company. The said respondent denied the allegation of the 4th respondent that the latter is being prevented from functioning as Editor by others.

8. We heard Mr. Sanjay Ramaswamy, learned senior counsel for respondents 1 to 3, Mr. A.M. Shaffique, learned senior counsel for the 4th respondent, Mr. Noble Mathew, learned senior Government Pleader and Mr. T. Krishnanunni, learned senior counsel who appeared as *amicus curiae*.

9. The learned senior counsel, who appeared for respondents 1 to 3, submitted that if the editorial is read as a whole, it will show that the same will not, in any way, influence the learned Judge hearing the Bail Applications. It was never intended to influence the learned Judge also. The newspaper only wanted to alert the learned Judge not to be influenced by external factors. The learned senior counsel submitted that the newspaper has greatest respect for this Court and read out the apology tendered in paragraphs 2 and 11 of the affidavit of the 1st respondent. The learned senior counsel, in support of his submissions, relied on the decisions in *R. v. Metropolitan Police Commissioner, Ex parte Blackburn* (No. 2) (1968) 2 All E.R. 319, *Andre Paul Terence Ambard v. The Attorney- General of Trinidad and Tobago* (1936) 1 All E.R. 704, *Attorney General v. Times Newspapers Ltd.* (1973) 3 All E.R. 54 and *Vine Products, Ltd. v. Mackenzie & Co., Ltd.* (1965) 3 All E.R. 58.

10. The learned senior counsel for the 4th respondent submitted that the said respondent has nothing to do with the publication of the editorial, as he is not permitted even to enter the office of the newspaper. The learned senior counsel Mr. T.Krishnanunni, who appeared as amicus curiae, took us through Rule 14 of the Rules. The learned senior counsel pointed out that since the respondents have not admitted their guilt and tendered unconditional apology, the Court may proceed to frame the charge and post the case for trial. He also submitted that the averments in the editorial clearly make out a case of criminal contempt. In support of his submissions, the learned senior counsel relied on the decisions in High Court of Kerala v. Prithvi Nandy 1985 K.L.T. 732, In Re An Advocate 1985 K.L.T. 813, Raju Bose v. Prithvi Nandy 1986 K.L.T. 303 and Haridas Das v. Usha Rani 2007(3) K.L.T. 587 (SC).

11. We gave anxious consideration to the submissions made at the Bar. Rule of law is the foundation of a civilized nation. Free and fearless justice contemplates the existence of an independent court. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake that foundation itself. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts. It is a special jurisdiction combining 'the jury, the Judge and the hangman'. This jurisdiction is not exercised to protect the dignity of an individual Judge, but to protect the administration of justice from being maligned. Power to punish for contempt is for maintenance of an effective legal system. But, the said power cannot be invoked to wreak personal vengeance. Contempt jurisdiction is basic to rule of law. It ensures 'Be you ever so high the law is above you'. The contempt power is a power conferred on courts for the benefit of the people to command obedience when justice is at stake and 'authoritarian contumacy attacks judicial supremacy'. The courts should not be unduly sensitive to fair comments or even outspoken comments about their judgments or orders, made objectively, fairly and without any malice, but no one can be permitted to distort orders of the court. In the general interest of the community, it is imperative that authority of the court should not be imperilled and there should be no unjustifiable interference in the administration of justice. In this context, it is appropriate to refer to the words of caution of the Hon'ble Supreme Court, dealing with the exercise of contempt

power by the courts. Gajendragadkar C.J., in In re under Article 143, [Constitution of India](#) AIR 1965 SC 745 held as follows:

We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct.

Sabyasachi Mukharji, J. (as His Lordship then was) in P.N. Duda v. P. Shiv Shanker : 1988 CriLJ1745 observed as follows:

Krishna Iyer, J. in his judgment observed that the Court should act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the Judges, where the attack was calculated to obstruct or destroy the judicial process. The court must harmonize the constitutional values of free criticism, and the need for a fearless curial process and its presiding functionary, the Judge. To criticize a Judge fairly albeit fiercely, is no crime but a necessary right. Where freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it. The Court must avoid confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt but latter is, although overlapping spaces abound. The fourth functional canon is that the Fourth Estate should be given free play within responsible limits even when the focus of its critical attention is the court, including the higher court. The fifth normative guideline for the Judges to observe is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, and the sixth consideration is that if the Court considers the attack on the Judge or judges as scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of law by fouling its

sources and stream.

12. While considering the power of the court to punish for contempt, the right of the citizen to free speech should also be taken into account. Freedom of speech and expression guaranteed by the Constitution is the soul of our democracy. Freedom of speech means freedom to speak ideas we hate. Propounders of popular ideas need no constitutional protection, only heretics require it. Justice Holmes of the U.S. Supreme Court explained the concept of free speech felicitously in the following words: 'But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas-- that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. We should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.'

Lord Denning, M.R. in *R. v. Metropolitan Police Commissioner, Ex parte Blackburn* (1968) 2 All E.R. 319 held as follows:

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

It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms.

We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Krishna Iyer, J. in *In re S. Mulgaokar* : [1978]3SCR162 observed as follows:

The representative thinking on the subject is neatly summed up by John R. Brown, Chief Judge:

'Thus does Alexander again confront the Gordian Knot. For our history demands that breaches of the unqualified commands of the First Amendment cannot be tolerated and freedom of the press must be given the broadest scope that a liberty-loving people can allow..... . On the other hand, our fundamental concepts of absolute fairness in trials dictate that the environment within which justice is administered must be maintained unpolluted by the potential infamous notoriety and biased predilections which a completely unfettered but omnipresent press can irrevocably engender in an age of the mass media'....

13. We may also fruitfully refer to the words of Justice Felix Frankfurter in *Bridges v. California* 314 US 252 (1941), which forcefully advocate for the preservation of contempt power even in the face of right to free speech.

To say that the framers of the Constitution sanctified veiled violence through coercive speech, directed against those charged with adjudication, is not merely to make violence an ingredient of justice; it mocks the very ideal of justice by respecting its forms, while stultifying its uncontaminated exercise.

14. Keeping in mind the above principles laid down by great Judges, now, we will examine the rival contentions urged before us. Here, it is relevant to refer to the definition of criminal contempt contained in Section 2(c) of the [Contempt of Courts Act, 1971](#), It reads as follows:

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

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

The learned senior counsel who appeared for respondents 1 to 3 canvassed for a liberal view in evaluating the contents of the editorial for arriving at a conclusion whether the publication of it would amount to contempt of court. The decision in *Andre Paul Terence Ambard v. The Attorney-General of Trinidad and Tobago* (1936)¹ All E.R. 704 was cited to canvass the proposition that for committal for contempt of court, there must be evidence in the article itself taken as a whole, that the publisher has acted with untruth or malice or that he imputed improper motives to those taking part in the administration of justice. The decision in *Vine Products, Ltd. v. Mackenzie & Co., Ltd.* (1965)³ All E.R. 58 was relied on to canvass the position that a discussion of the rights of a party's case in an action was not automatically a contempt of court, but the test was whether in the circumstances there was a real risk that the fair trial of the action was likely to be prejudiced. The learned senior counsel for respondents 1 to 3 submitted that in fact, the editorial was published after the Bail Applications were heard and reserved for orders. So, the chances of interfering with the fair trial of the case were remote in this case. Special reference was made to the judgment of Lord Atkin rendered on behalf of the Privy Council in *Andre Paul Terence Ambard* (supra) and it was contended that the publication of the Article had no effect on a matter heard and reserved by the learned Judge. The learned senior counsel also submitted that there was a factual mistake in the editorial. Justice Hema had not worked as junior counsel in the advocate's office of the former Judge of the Supreme Court of India, while he was practising at Kottayam. The factual mistake on the above point contained in the editorial was corrected by the newspaper next day itself by publishing an erratum statement.

15. The learned senior counsel Mr. T. Krishnanunni, who appeared to assist the Court, canvassed for taking a strict view on the conduct of the respondents. According to him, the article was published to influence the decision of the learned Judge in the Bail Applications and therefore, it was a contumacious interference with the administration of justice. The decisions of this Court relied on by him were those which took a very strict view concerning criminal contempt. The decision in *Haridas Das v. Usha Rani* (supra) cited by the learned senior counsel was a decision of the Supreme Court, wherein the contumacious references in the pleadings filed before the Apex Court against the Chief Justice of India were taken as gross acts of contempt and punishment was imposed accordingly.

16. We notice that there is a growing tendency among the media to make comments on the merits of the cause pending before the courts, while reporting on pending proceedings. Talk shows are held even on the merits of interim orders passed by the courts. Conflicting views, even on interim orders, are broadcast and the anchor, in some cases, finally pronounce the verdict also. Such trial by media is sure to prejudice either the prosecution/plaintiff/petitioner or the accused/defendant/respondent. Such programmes of the media have the effect of interfering with the administration of justice and therefore, will amount to criminal contempt. The theory of our system of justice is that 'the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by outside influence, whether of private talk or public print'. Such programmes make a mockery of this theory against outside influence. 'The right to sue and defend in courts is the alternative of force in an organised society. It is the right conservative of all other rights and lies at the foundation of orderly Government'. But, the said cardinal right is being infringed by such talk shows. To keep the viewers remain glued to their programme in the evening, the channels broadcast such talk shows. But, in that process, unknowingly, the system of administration of justice of our State is being weakened and distorted. Interference even with police investigation will amount to interference with the due course of justice. Influencing the investigating officer will also amount to contempt of court. In this context, we feel it is apposite to quote the words of McCardie, J in *Fisher v. Oldham Corporation* (1930) 2 KB 364. In the said decision, the learned Judge said:

Suppose that a police officer arrested a man for serious felony. Suppose, too, that the watch committee of the borough at once passed a resolution directing that the felon should be released. Of what value would such a resolution be? Not only would it be the plain duty of the police officer to disregard the resolution, but it would also be the duty of the chief constable to consider whether an information should not at once be laid against the members of the watch committee for a conspiracy to obstruct the course of criminal justice.

Watch committee at the borough council level is the controlling-cum- disciplinary authority of the police. The above statement of the learned Judge has been approved by the Privy Council in *A.G. for New South Wales v. Perpetual Trustee Co. Ltd.* (1955) AC 457. The comments made by the Press in certain cases pending investigation and trial will, definitely, amount to commission of criminal contempt in the technical sense, as per the law of contempt enforced in India.

17. Now, coming to the facts of the case, we are definitely of the view that the editorial had the tendency to bring pressure on the learned Judge, who was hearing the Bail Applications, to decide the petitions in tune with the opinion of a section of the public. Thus, the editorial has the tendency to interfere with the due course of justice. A reading of the editorial as a whole is sure to convey such an impression, though the respondents 1 to 3 would contend otherwise. Though, in this particular case, the comments in the editorial will have the tendency to interfere with the due course of justice, we do not think that the newspaper or the persons running it, have the intention to scandalize this Court and thereby impair its efficacy in administering impartial justice. So, we accept the unconditional apology tendered by the respondents and we feel that further proceedings in the matter should be dropped.

18. In this context, we will advert to the argument of the learned senior counsel Sri. T. Krishnanunni, made with reference to Rule 14 of the Rules. According to the learned senior counsel, since the respondents did not admit the guilt and tender unconditional apology, this Court has no other option, but to proceed to frame the charge and hold the trial of the respondents. The said Rule reads as follows:

14. Hearing of the case and trial:-- Upon consideration of the reply filed by the respondent and after hearing the parties,

(a) if the respondent has tendered an unconditional apology after admitting that he has committed the contempt, the Court may proceed to pass such orders as it deems fit;

(b) if the respondent does not admit that he has committed contempt, the Court may--

(i) proceed to frame the charge (subject to modification or addition by the Court at any time), if it is satisfied that there is a prima facie case; or

(ii) drop the proceedings and discharge the respondent, if it is satisfied that there is no prima facie case, or that it is not expedient to proceed.

(c) the respondent shall be furnished with a copy of the charge framed, which shall be read over and explained to the respondent. The court shall then record his plea, if any;

(d) if the respondent pleads guilty, the Court may adjudge him guilty and proceed to pass such sentence as it deems fit;

(e) if the respondent pleads not guilty, the case may be taken up for trial on the same day or posted to any subsequent date as directed by the Court.

Going by Rule 14(a), if the contemnor admits committing contempt and tenders unconditional apology, the court may proceed to pass appropriate orders. In this case, the publication of the editorial is admitted and in the light of the prima facie view taken by this Court regarding its publication, the respondents have tendered unconditional apology also. Though, they have not admitted that they have committed contempt, still, we feel that their aforementioned conduct concerning the contempt will be covered by Rule 14(a). Further, even assuming it does not come under Rule 14(a), we think that it can be dealt with under Rule 14(b)(ii). The last part of clause (ii) of Sub-rule (b) of Rule 14 empowers the court to drop further proceedings, if it is satisfied that it is not expedient to proceed with the matter.

Having regard to the facts of the case and the stand taken in the affidavits of the respondents, we feel that it is not expedient or necessary to proceed further with the contempt case.

In the result, the contempt case is closed.

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