

In Re: Rajendran and Others

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Court : Chennai

Decided On : Sep-29-1995

Reported in : 1996CriLJ1956

Judge : T.S. Arunachalam and ;Thangamani, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 143, 332, 342, 365 and 506;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 317

Appeal No. : Suo Motu Contempt Appln. No. 286 of 1995

Appellant : In Re: Rajendran and Others

Advocate for Pet/Ap. : N.T. Vanamamalai, Sr. Counsel, for ;R. Karthikeyan, ;M/s D. Veerasekaran and ;Nainar Mohammed, ;M/s. P. Sivathanu, ;Manoharan and ;M. Jagadeesan, Advs., ;K. Subramaniam, Sr. Counsel for ;M/s. V. Rathi

Judgement :

Arunachalam, J.

1. A storm, not one natural, had blown over the campus, which accommodates the Courts of certain Metropolitan Magistrates and Judicial Magistrates, in Saidapet on 26-7-1995. The unusual impact of the storm had led to public dismay and has anguished this Court, the consequence of which is the initiation of this suo moto contempt proceedings.

2. The manner in which these proceedings stood initiated can be best noticed from the order pronounced by us on 7-8-1995, the relevant portion of which reads as hereunder :-

'The Hon'ble the Chief Justice, on receipt of a telegraph from Mrs. T. Lakshmi Bharathi. Advocate, dated 26-7-1995, as well as certain other complaints inclusive of a petition signed by 45 Advocates of Saidapet Bar, coupled with a resolution passed by the Advocates' Association, Madras, had called for a report even on the initial material regarding the actual happenings at the Saidapet Metropolitan Magistrates' Courts campus on 26-7-1995 from about 10 a.m. to late evening after a preliminary enquiry by the Chief Metropolitan Magistrate, Madras, Learned Chief Metropolitan Magistrate, after conducting enquiry, during the course of which he had reduced into writing statements of certain persons, forwarded two reports to the Hon'ble Chief Justice. From those reports it is prima facie seen that before Natarajan, and accused in a registered crime, could enter into the Court premises to surrender along with his Advocates at or about 11-30 a.m. on 26-7-1995, the Advocate as well as Natarajan were taken away by the police forcibly. In the second report, after examination of more number of witnesses, the learned Chief Metropolitan Magistrate has definitely stated as hereunder :

'On a careful consideration of the above statements and also the information collected from other sources it is transparent that the police officials alone are responsible for the closure of the gates.' The report also states that the IV Metropolitan Magistrate, who is the administrative head of Saidapet Unit was not aware of the closure of the gates, since he was sitting in Court and conducting proceedings. According to the IV Metropolitan Magistrate, nobody especially the police of any rank neither approached him seeking permission to close the gate nor informed him about the closure subsequently. The other Magistrates in the campus were also unaware of the closure of the entrance gates.

2A. Statements forwarded along with the report of the learned Chief Metropolitan Magistrate show that even around 10 a.m. on 26-7-1995, Grade - I Police Constable attached to J-4 Police Station was found closing the northern gate in the Court campus and when he was questioned about such closure, he replied

that on account of a proposed procession such closure was needed. It is further seen from the statement of P. Krishnamurthy, Grade I Constable of J-4 Police Station attached to Court Sub Jail that he had closed the gate on the instructions received from Thiru Sathivel, Inspector of Police, J-1 Police Station. Statements of number of witness disclose that between 10 a.m. and 3-45 p.m. on 26-7-1995, the northern gate of the Court campus was completely closed while the southern entrance was partially closed, in that one door was inaccessibly closed, while the other door was partially kept open. Certain photographs have also been forwarded to the Hon'ble Chief Justice along with a complaint from a member of the bar.

3. Of late, throughout the country certain sad events are taking place, which tend to affect the administration of justice. The happening on 26-7-1995 in the Court campus of the Metropolitan Magistrates in Saidapet, both inside and just outside it, is bound to shock the conscience of any reasonable individual. On the one side, it prima facie appears, on the report of the Learned Chief Metropolitan Magistrate that it was the police force, which was responsible for the closure of the gates, while on the other side from the statement of the President of the Saidapet Bar Association, it is clear, that a group of Advocates had got inside the chambers of XVIII Metro-politan Magistrate, Saidapet, inserting on releasing of Natarajan, on bail, though the learned Magistrate had passed an order of remand, earlier in point of time. Disturbances of this nature, quite often surface and it would be necessary to put an end to such pathetic episodes. Not only individuals, but self proclaimed groups as well members of the Bar and law enforcing agencies, appear to be responsible for putting spokes in the wheels of administration of justice. Whomsoever may be responsible will have to face the consequences, for always the majesty of justice will proclaim itself. We have reached a stage, when steps have to be taken to fortify the laws, for otherwise force is bound to get justified. Erosion of well-cherished values cannot be allowed. We are satisfied on the material placed before us that there is prima facie evidence of commission of criminal contempt. Though certain names of contemners are apparent in the records placed before us, many more who may be liable for contempt have to be ascertained, since their identities have not been fully brought out in the report and other material placed before us. We are satisfied that the contemners had done certain acts, which we think would amount to interference with or have a tendency

to interfere with or obstruct the administration of justice. It is well known that Courts are kept open during its working hours, so that any person in need can seek recourse to justice. It is not that even after Court hours in matters of emergency orders are sought for and obtained from Courts in deserving cases. The law enforcing agencies have no right to close the doors of the Court campus, thus preventing ingress and egress to the litigants, the members of the public and Bar, the Court staff and others. May be under extra-ordinary circumstances when security is involved, it will be open to the law enforcing agencies to protect the inmates of the campus, but that is normally done after bringing those facts to the notice of the concerned senior Magistrate in charge of the administration. If the matter happens to be so urgent in respect of security, it will be the bounden duty of the agency concerned to bring it to the notice of the concerned Magistrate about the emergent action already taken, subject to ratification by the authorities concerned. On the papers placed before us we do not find any such emergency that could have led to full closure of the northern gate and partial closure of the southern gate in the campus of the Metropolitan Magistrates' Courts in Saidapet. We find that the following Police Officers appear to be prima facie responsible for the closure of the gates :

- (1) Thiru Rajendran, Deputy Commissioner of Police (Law and Order), Madras South,
- (2) Thiru Mourya, Assistant Commissioner of Police (Law and Order), E-1 Mylapore Range,
- (3) Thiru Murali, Inspector of Police, (Law and Order), E.1 Mylapore Police Station.
- (4) Thiru Periah, Assistant Commissioner of Police (Law and Order) Saidapet Range.
- (5) Thiru Sathivel, Inspector of Police, (Law and order), Saidapet.
- (6) Thiru Kotteeswaran, Inspector of Police, (Law and Order), J-3 Guindy Police Station.
- (7) Thiru V. Krishnamurthy, Grade - I Constable, J-4 Police Station, and

(8) Inspector of Police (Law and Order), Royapettah Police Station, who was on duty at the relevant time in the Court campus, whose name is not known.'

Notice shall issue to these Officers returnable in four weeks, in this contempt application.

4. We are quite sad that a group of members of the bar had gone inside the chambers of the XVIII Metropolitan Magistrate and attempted to pressurize him to pass an order of bail in favour of the accused, whose remand had already been ordered. The advocates appear to have dictated, the manner in which the learned Magistrate should act, by calling for immediate instructions from the Police Officer concerned. It appears that the Learned Magistrate was virtually gheraoed inside his chambers. This act of those members of the Bar would certainly amount to obstruction to the administration of justice. Thiru Babu, President of the Saidapet Bar Association, who claims to have been inside the chambers of the learned XVIII Metropolitan Magistrate, shall furnish to this Court a list of Advocates who were present inside the chambers of the said Magistrate on 26-7-1995, on or before 16-8-1995. The XVIII Metropolitan Magistrate before whom the remand proceedings and bail proceedings were pending will also forward a report to reach this Court on or before 16-8-1995, mentioning the names of the Advocates, who were present inside the chambers wanting orders to be passed either way. The Commissioner of Police will ascertain the name of Inspector of Police (Law and Order), Royapettah, who was on duty on the relevant date and effect service of the notice in the contempt application already directed to be issued to the said Inspector.

5. Apart from this episode in Saidapet, we have come across reports from the press, which portray the happenings in another Court in the city of Madras, when a private complaint was sought to be preferred by an individual. The manner in which the members of the bar had behaved and attempted to dictate to the Presiding Officer the manner in which the Court proceedings ought to be conducted leave a very savoury note. In our view, such instances should never surface, for the Presiding Officers are solely responsible to conduct their Courts in accordance with the rules and judicial discretion. No one will have any right to interfere with exercise of such discretion. If any special matter has to be

mentioned, it will have to be brought to the notice of the Presiding Officer, who will then decide about the course to be adopted.

6. Since instances of this nature not only affect the public, but also the prestige of the Bar as a whole we deem it necessary to order notice in this contempt application to the learned Advocate General, the President of Bar Council of Tamil Nadu President of the Advocates' Association and Bar Association, Women Lawyers' Association, High Court, Madras and the President of the Bar Association, Saidapet. Since the occurrence had taken place in a Court administering criminal justice, we deem it necessary to order notice to the learned Public Prosecutor also. As far as the contemnors to whom notices have been directed to be issued this application will be listed on 11th September, 1995. Notice to the office bearers of several associations, learned Advocate General, and learned Public Prosecutor and President of the Bar Council shall be returnable on 16th August, 1995, when we expect to have a list of Advocates, who had assembled inside the chambers of the XVIII Metropolitan Magistrate to pressurize him to pass orders in a certain manner. It will be decided on that day as to whether notice in this contempt application may have to be issued to others, who fall within the ambit of criminal contempt.

7. Thereafter on 16-8-1995 we passed yet another order, through which we issued notice in this contempt application to certain Advocates of the Saidapet Bar. The relevant portions of the said order also need extraction.

'On the earlier occasion, after ordering notice to the Police Officials, we have stated that on the materials placed before us, we were satisfied that a group of members of the Bar had gone inside the chamber of the XVIII Metropolitan Magistrate and had attempted to pressurize him to pass an order of bail in favour of the accused, whose remand had already been ordered. We were also of the opinion that such an act of those members of the Bar, who had virtually got into the chamber of the XVIII Metropolitan Magistrate, Saidapet would amount to obstruction, to the administration of justice. Thiru Babu, President of the Saidapet Bar Association who claimed to have been inside the chamber of the said Magistrate at the relevant time and who was aware of the identity of the

Advocates, who were inside the said Chambers, virtually gheraoing the learned Magistrate, was directed to furnish to this Court the list of Advocates, who were present inside the chambers of the said Magistrate. Earlier a statement of Thiru Babu, President of the Saidapet Bar Association, was recorded by the Chief Metropolitan Magistrate, Madras during the course of an enquiry conducted by him on the directions of the Hon'ble the Chief Justice. We had also directed the concerned Magistrate to forward a report to this Court mentioning the names of the Advocates, who were present inside the chambers, compelling him to pass orders, either way.

Thiru D. R. Srinivasan, XVIII Metropolitan Magistrate, Saidapet, has forwarded his report dated 14-8-1995 to this Court, wherein he has stated that a group of about twenty advocates forcibly entered into his chambers in an excited manner and surrounded his seat and pressed him to pass orders on bail application. The other details in the said report can be looked into at a later stage. However, the learned Magistrate has stated in his report that he was aware of the names of only a few Advocates, who were inside his chambers. He has given those names, while affirming that it will be possible for him to identify some more Advocates, who were inside his chambers on that particular day, whose names he is not aware of. It also appears from the report, that some of those Advocates, present inside his chambers threatened to commit suicide if no order was passed on the bail application. His movements were restricted. His repeated requests were ignored by those Advocates. It is also seen from the report that some of the members of the Bar, present inside his chambers, represented that if no order was passed on the bail application on that day, there would be State wide agitation by the Advocates. Learned Magistrate, in his report, has mentioned the names of the following six Advocates.

- '1. Mr. Balasubramanian
2. Mr. Ramaswamy
3. Mr. S. K. D. Babu
4. Mr. Ramakrishna Babu

5. Mr. Shanmugasundaram

6. Miss. Neelambika'

Thiru Babu, President of the Bar Association, Saidapet, who is present before us, along with his counsel, affirmed, having already forwarded his affidavit to the Registrar of this Court. Thiru L. Babu has sworn to an affidavit on 14-8-1995. It is seen from his affidavit that some members of the Bar, belonging to the Metropolitan Magistrate's Court, Saidapet, had entered into the chambers of the learned XVIII Metropolitan Magistrate at Saidapet and had compelled him to grant bail to an accused, by name Natarajan. He has furnished the following 14 names.

'1. V. Ramaswamy

2. G. Shanmugasundaram

3. Ramakrishna Babu

4. C. Balasubramanian

5. T. Neelambika

6. N. Thangadurai

7. N. Thambidurai

8. R. Palanivel

9. Deivasigamani

10. S. K. D. Babu

11. K. Raghu

12. G. Sekar

13. B. Palani

14. T. D. Bose

The names of those Advocates mentioned by the learned Magistrate, form part of the 14 names listed by Thiru Babu President of the Saidapet Bar Association.

We have also received a telegram addressed to one of us (Arunachalam, J.) from one Hari Chandran, who has mentioned about the incident at Saidapet Court, which had led to initiation of this Contempt proceedings. He has given out the following eight names :

1. Shanmugasundaram

2. S. K. D. Babu

3. T. Bose

4. Raghu

5. G. Sekar

6. Ezhil

7. Muthalagan

8. Thambidurai.'

Except Ezhil and Muthalagan, other names are found in the list furnished by Mr. Babu, President of the Saidapet Bar Association, in his affidavit. The telegram of Hari Chandran also refers to certain crimes pending against one or other of those eight Advocates mentioned by him. We have requested the learned Public Prosecutor, to find out details of crimes, if any, pending against those eight Advocates. We are prima facie satisfied that the contents of the telegram cannot be ignored at this stage, since the names of six Advocates tally with list furnished by the President of the Saidapet Bar Association.

On the materials placed before us, we are of the opinion that notice will have to be issued in this contempt application to 16 Advocates of the Saidapet Bar, to show cause as to why they should not be punished for contempt, since it is, prima facie seen that they have obstructed Court proceedings. Notice to these 16 Advocates

will be returnable by 14-9-1995.'

'List of Advocates.

1. V. Ramaswamy
2. G. Shanmugasundaram
3. Ramakrishna Babu
4. C. Balasubramanian
5. T. Neelambika
6. N. Thangadurai
7. N. Thambidurai
8. R. Palanivel
9. Deiva Sigamani
10. S. K. D. Babu
11. K. Raghu
12. G. Sekar
13. B. Palani
14. T. D. Bose
15. Ezhil
16. Muthalagan.'

8. On 11-9-1995, when contemnors 1 to 7 (Police Officers) appeared before us, we dispensed with their presence in Court, in future, unless called upon. K. Palanichamy, Police Officer/Contemner No. 8 was then an in-patient in the hospital and hence we dispensed with his appearance on that day and directed his

appearance on a future date, to be fixed. The said Officer was present before us on 25-9-1995. On 14-9-1995, 16 Advocates of the Saidapet Bar, to whom we had issued notice, were present before us. We afforded time to all the contemnners (Police Officer and Advocates) to file counter-statement. After that was done, we commenced hearing in this application on 25-9-1995.

9. Before we list out the submissions made by learned counsel representing the contemnners, learned Advocate General, learned Public Prosecutor, Mr. S. Gopalaratnam, learned Senior Advocate appearing on behalf of the Bar Association, Mr. P. Jayaraman, President, Madras High Court Advocates Association, Mrs. Prabha Sridevan, President Women Lawyers' Association and Mr. Venkatakrishnan, representing Bar Council of Tamil Nadu, it will be necessary and expedient to briefly summarise the counter statements filed by these contemnners.

10. As far as the police officers are concerned, the main counter affidavit has been sworn to by 1st respondent/contemner No. 1, Thiru T. K. Rajendran, Deputy Commissioner of Police, Law and Order (South), Madras, whose statement has been adopted by almost all the police officers, with certain limited individual additions, to which we will make a reference. Almost all the police officers in their sworn affidavits, even at initiation, have stated as hereunder :-

'at the outset, I tender my unconditional apology in the event of this Honourable High Court finding me guilty of contempt in the context of the facts set out in the order of this Honourable High Court and the two reports referred to above.'

Towards the end of the affidavit, they have again stated as hereunder :

'I most respectfully submit that myself and my officers and subordinates have the utmost respect for the dignity and decorum of the Courts and the Presiding Officers (Metropolitan Magistrates and Judicial Magistrates) of the said Court and also the entire judiciary.'

'I, therefore, pray that this Hon'ble High Court may be pleased to accept my apology and drop all further action in the above Suo Motu Contempt Application

and render justice.'

11. It becomes evident from the affidavit of Thiru T. K. Rajendran, that the Taluk Office complex situated on the eastern side of the Taluk Office Road, running north-south in Saidapet, consists of the following courts.

(i) IV Metropolitan Magistrate Court

(ii) IX Metropolitan Magistrate Court

(iii) XI Metropolitan Magistrate Court

(iv) XVII Metropolitan Magistrate Court

(v) XVIII Metropolitan Magistrate Court

(vi) Judicial Magistrate Court, Saidapet.

The entry into this complex has to be through two main gates, one situated on the northern side of the complex and the other situated on the southern side. In the Sub Jail situated in that campus, between 7-7-1991 and 26-5-1995, certain Srilankan Tamils, who were either militants or witnesses in the Rajiv Gandhi assassination case, were kept, that having been converted into a Special Camp for Srilankan Tamils. Considering the security perception of the inmates of the Special Camp, that portion of the complex was in the absolute control of revenue officials in-charge of the Special Camp and monitored by the officials of the Central Bureau of Investigation. During that period, there was permanent closure of the northern gate which, according to the deponent, had not in any way affected the normal functioning of the Courts and other offices situated in this complex, as the southern entrance was wide enough to allow easy passage of vehicles of all types.

12. Counter-Affidavit of Thiru T. K. Rajendran also refers to an incident, which had occurred at the Taluk Office road near the Taluk Office complex on 20-9-1994 at or about 1.20 p.m. when two remand prisoners concerned in Cr. No. 288/93 on the file of R-7 K.K. Nagar Police Station, were hacked to death, by a gang of rowdies, resulting in registration of Cr. No. 919/94 by J-3 Guindy Police Station. After that

incident, in September, 1994 precautionary measures and security were beefed up. One such security measure, which would avoid incidents of this kind and pave way for immediate apprehension of the accused, was by regulating the ingress and egress to this complex by closing the northern gate and regulating the entry through the southern gate.

13. In respect of the incident, that had occurred on 26-7-1995, Thiru T. K. Rajendran has stated, that on the morning of 26-7-1995, Mr. V. Krishnamurthy Grade-I Police Constable, J-4 Kotturpuram Police Station (Respondent/Contemner No. 7) had received information that a procession would be proceeding along the Taluk Office road, Saidapet in the morning and hence to avoid any anti-social elements entering into the said complex and creating any disturbance to the normal functioning, he closed the northern gate. This action was bonafide, the object being to ensure the normal and smooth functioning of various offices as well as the Courts in the said complex. It was also then felt, that entry and exit to the complex could then be easily controlled through the southern gate, which had been so used for, nearly four years, when the special camp was functioning. Then the affidavit of Thiru T. K. Rajendran refers to a complaint preferred by R. Yadhukulathilagam, Grade - I Police Constable attached to the Intelligence Section, Madras City Police, alleging that on the morning of 20-7-1995, when he was on duty, opposite to Door No. 84, T. T. K. Salai, Madras-18, one Maran and six others employees of 'Tamilarasi Press, situated on the opposite side, forcibly dragged him into the basement floor and assaulted him. Thiru Natarajan, owner of the Press, was also one of the persons who assaulted him. Details of injuries sustained by Yadhukulathilagam have been mentioned, which will have no bearing, for the purpose of deciding the issues involved in this contempt application. Cr. No. 1165/95, under Sections 143, 365, 342, 332 and 506(ii) I.P.C., was registered on the complaint of Thiru Yadhukulathilagam by E-1 Mylapore Police Station and investigation was taken up. Five of the accused in the said crime were apprehended by the police on 21-7-1995, while Natarajan, Maran and Nawaz were yet to be apprehended. According to Thiru T. K. Rajendran, their apprehension was necessary for interrogation.

14. Mean while, information was available to the police, that Thiru Natarajan had gone to Tirupathi on 25-7-1995 and would be returning to his residence at Besant Nagar on the forenoon of 26-7-1995. On the basis of this information, R. Ravindran, Inspector of Police, and a few other police personel were deployed at the junction of Sardar Patel Road and the Taluk Office Road. Thiru J. Rajendran, Assistant Commissioner of Police, Law & Order, Guindy and his party were deployed in Besant Nagar to watch the movements of Thiru Natarajan. Thiru T. K. Rajendran, himself along with the Assistant Commissioners of Police, Thiru K. Periaiah and Thiru A.G. Mourya (Respondents 4 and 2 respectively) and Inspectors of Police, Thiru P. Sakthivelu and Thiru V. N. Kotteeswaran (Respondents 5 and 6) stationed themselves near Taluk Office complex on the Taluk Office main road. At or about 11-45 a.m. a Trax jeep, which was proceeding along the Taluk Office road towards Raj Bhavan was stopped and Thiru M. Natarajan who was in the said jeep, was arrested by Thiru S. Murugavel, Assistant Commissioner of Police, Crime General Section, who happened to be the Investigating Officer in Cr. No. 1165/95. On arrest, Thiru Natarajan was informed of the grounds of his arrest. He was then in the company of Thiru C. Balasubramaniam and Thiru Ramakrishna Babu, Advocates (Contemners 12 and 11 respectively) who happen to be his friends.

15. Thiru T. K. Rajendran has further stated in his affidavit, that though Thiru Natarajan was admittedly arrested outside the Taluk Office complex, he attempted to enter into the Court complex by pushing down Thiru P. Sakthivelu, Inspector of Police (Respondent No. 5), presumably with a view to avoid any interrogation by the police authorities and make good his escape. In this process, a small, crowd had gathered and there was a melee. Apprehending that people might enter and create disturbance inside the Court premises, one of the southern gates was closed and the ingress and egress to the complex was regulated through the other opening. Thiru Natarajan was persuaded to get into the police van and was immediately taken to Anna Nagar Police Station. By this time, the crowd had dispersed and the southern gate was opened out.

16. Couter-affidavit of Thiru T. K. Rajendran then narrates, about the telegram despatched by Thiru Natarajan on 26-7-1995 expressing his intention to surrender

before the commissioner of Police, on that afternoon, which was sufficient to establish, that his present claim, that he was prevented from surrendering before the Magistrate at Saidapet, was only an after thought. Details have been furnished in the counter-affidavit about the disposal of cases by Metropolitan Magistrates and Judicial Magistrates at Saidapet on 26-7-1995, to show that there was no hindrance to the litigant public or any other person, who wanted to enter into the Taluk Office complex for any official transaction whatsoever. There was sufficient ingress and egress through the southern gate. None, of the proceedings, was impeded, as a result of the closure of the gates. The official work done in the Taluk Office on that day as well as the number of visitors to the Sub Jail have been specially pointed out, to substantiate the stand of the respondents/police officers.

17. Thiru A. G. Mourya (2nd respondent/Contemnor No. 2) Assistant Commissioner of Police (Law & Order) Mylapore Range, has stated that he had assisted Thiru Murugavel, Assistant Commissioner of Police, Crime (General) in arresting Thiru Natarajan, as well as for complying with the other formalities.

18. Thiru K. Murali (Respondent No. 3) Inspector of Police, Law and Order, E-1 Mylapore Police Station, has mentioned about the registration of Cr. No. 1165/95 by the Mylapore Police Station, and his having taken up the investigation. He has referred to the apprehension of some of the accused in the said crime, and his having transferred the investigation in this crime, to the Assistant Commissioner of Police, General Section, on 26-7-95 based on the orders of the Commissioner of Police. He has taken a specific stand, that he was not at all present near the Court campus on 26-7-1995 and he has furnished certain details, to show, that at 10-05 a.m. he was in Dooming Kuppam and that at 12-25 p.m. he was at Odaikuppam and Thiruvanmiyur Kuppam, before he arrived at E-1 Mylapore Police Station at 2-15 p.m.

19. Thiru K. Periaiah (Respondent No. 4) Assistant Commissioner of Police, Law and Order, Saidapet Range, has stated that, he assisted Murugavel, Assistant Commissioner of Police, in the arrest of Thiru Natarajan and complying with other formalities.

20. Thiru P. Sakthivelu (Respondent No. 5), Inspector of Police, Law and Order, J-1 Saidapet Police Station, would have it, that though Thiru V. Krishnamurthy (Respondent No. 7) Grade-I Police Constable attached to J-4 Kotturpuram Police Station, had deposed, that he had instructed him to close the northern gate the said statement was factually incorrect. On the morning of 26-7-1995, he had informed Thiru Ravindran, Inspector of Police, Law & Order, J-4 Kotturpuram Police Station, that a procession was likely to pass along the Taluk Office road in the fore-noon and that he should issue necessary instructions to Thiru Krishnamurthy, Grade-I Constable, for taking usual precautionary measures, on such occasions. He would categorise the statement of Thiru Krishnamurthy, made before the Chief Metropolitan Magistrate, as one arising out of inadvertance.

21. Thiru Koteeswaran (Respondent No. 6) Inspector of Police, Law & Order, J-3 Guindy Police Station claims to have assisted Thiru Murugavel, Assistant Commissioner of Police, Crime General Section, in the apprehension of Thiru Natarajan. He had done nothing else, either unlawful or illegal.

22. Thiru Krishnamurthy, Grade-I Police Constable, J-4 Kotturpuram Police Station (Respondent No. 7) has mentioned in his affidavit, that for security reasons, he used to close the northern gate whenever he received information of the possible passing of any procession or on such occasions when hardcore criminals were to be produced for remand, the object being to avoid untoward incidents and to ensure the smooth functioning of various Courts and offices situated in that complex. On the morning of 26-7-1995, he received information that a procession was likely to pass, on the Taluk Office road. He immediately contacted Thiru Ravindran, Inspector of Police, J-4 Kotturpuram Police Station, who directed him, to take all precautionary measures. Hence, at or about 10 a.m. he closed the northern gate to prevent entry of anti-social elements, inside the Taluk Office. According to him, due to inadvertance he had stated before the Chief Metropolitan Magistrate on 26-7-1995, that Thiru P. Sakthivel (Respondent No. 5) Inspector of Police, Law and Order. J-1 Saidapet Police Station had instructed him to close the northern gate.

23. Thiru K. Palanichamy (Respondent No. 8) Inspector of Police, Law & Order, E-2 Royapettah Police Station, Madras, has stated in his counter affidavit, that he went over to Saidapet on the morning of 26-7-1995, to appear before the XVIII Metropolitan Magistrate in C.C. No. 6423/92, which was a private complaint initiated against him by one Arumugham. When he met his Advocate, he was informed that since the complaint was called even before his appearance, a petition was filed under Section 317 Cr.P.C., to dispense with his presence on that day and the same was allowed, resulting in postponement of proceedings to 21-8-1995. He found, the northern gate close and thereafter he left for his station.

24. We will now refer to the counter affidavits sworn to by contemnors/Advocates. Almost all the Advocates/Contemnors, except R-12 C. Balasubramaniam and R-13 T. Neelambiga, have expressed unconditional apology in almost identical terms, which read as hereunder :

'I hereby tender my unconditional apology for having involved in the Contempt of Court Proceedings and I pray that this Hon'ble Court may be pleased to accept my unconditional apology and purge me of contempt of Court.'

25. Thiru V. Ramasamy (Respondent No. 9), while denying forcible entry into the chambers of XVIII Metropolitan Magistrate on 26-7-1995, has admitted that he had entered appearance along with some other Advocates to represent Thiru Natarajan who desired, to surrender himself before the XVIII Metropolitan Magistrate, in connection with Cr. No. 1165/95. He was in the Court complex from 9-45 a.m. While he was proceeding to the Court of XVIII Metropolitan Magistrate at or about 11-30 a.m. he found, that the gates of Saidapet Court complex were closed and the police were guarding them. Thiru Natarajan did not turn up for surrendering himself. He was informed later, that Thiru Natarajan was not allowed to enter into the Court campus and was forcibly taken by the police in front of the gate of the Court compound. It was only at 3-45 p.m. Thiru Natarajan was brought before the learned XVIII Metropolitan Magistrate, with elaborate police security. He did enter into the Court hall, to assist the counsel arguing the bail application of Thiru Natarajan, since he was also a counsel on record. Learned Magistrate initially ordered notice to the prosecution, on the bail application. However the

application was pressed on the ground that there was not only no prima facie case against Thiru Natarajan, but also the others, in the very same Crime Number, had been released already, by the same Magistrate. However, the Magistrate was not pleased to pass any order, and retired to his chambers. According to the deponent, thereafter, he went over to attend to other work and did not turn up subsequently. Unfortunately, the learned Magistrate, in his report has included his name also, in the list of Advocates, who are said to have got into his chambers, at or about 7-30 p.m. According to him learned Magistrate has, under misconception, included his name, may be due to his having signed the memo of appearance. He denied that he was present inside the chambers or that he had threatened or restrained the learned Magistrate. While commenting upon the activity of Thiru Babu, President of the Bar Association, Saidapet, he has stated that Thiru Babu belongs to D.M.K. Party, which was politically opposed to the activities of Thiru Natarajan. Since he had appeared as one of the Advocates for Thiru Natarajan, out of political animosity. Thiru Babu, who is appearing against Thiru Natarajan in many cases, had wantonly included his name as one of those persons who had entered into the chambers of the learned Magistrate.

26. Thiru Shanmugasundaram (Respondent No. 10) would claim, that he had openly challenged the misdeeds of Thiru Babu, President of the Saidapet Bar Association, with the support of many Advocates and his familiarity among the members of the local Bar, has resulted in the inclusion of his name in the affidavit of Thiru Babu, as well in the statement of learned XVIII Metropolitan Magistrate. He admits having signed in the memo of appearance, though he claims that he was not an expert in arguing bail applications. He did not take any active part, though he was present while proceedings were going on. He would have it that the learned Magistrate appeared to be in favour of releasing the accused on bail and towards that end he was taking steps to ascertain the views of the police and the Assistant Public Prosecutor. Only for that purpose, he was waiting in his chambers. Even police officers have openly said, that Mr. Natarajan would be released on bail and that was why he was not moved for detention. Learned Magistrate himself was coming out of his Chambers going in, on several occasions and he did not show any sign, that there was restraint or interference against him. Even Thiru Babu, President of the Saidapet Bar Association, who went into the

chambers of the learned Magistrate quite often, did not express any anguish felt by the learned Magistrate, due to the interference by the Advocates. When he questioned Thiru Babu about the proposed action, he intended to take against the police, for illegal closure of gates, he received a reply, that the police had closed the gates, for security reasons and their acts cannot be questioned. According to him, the proceedings in Court were peaceful and nothing untoward happened. Learned Magistrate, on his own and at the request of counsel, tried to give relief, that may be possible and sent for the police, on his own accord. Even on the next day, the proceedings in the Court of that Magistrate went on as usual. He has further stated, that Thiru Babu has placed material irrelevant before the Chief Metropolitan Magistrate. He would add his apprehension, that Thiru Babu should have been behind the telegram purportedly sent by one Harichandran. The act of Thiru Babu has caused great hardship and mental agony, apart from torture, to him, and other Advocates.

27. Thiru Ramakrishna Babu (Respondent No. 11) claims to belong to AIADMK party, apart from being a close confidant and associate of Thiru Natarajan, one of the accused in Cr. No. 1165/95. It was only at his instance, that Thiru Natarajan, had given a complaint against the first informant in Cr.No. 1165/95, for his having trespassed into his premises illegally, for the purpose of surveillance. Such complaints were handed over to the superior police officers, who assured that action would be taken on his complaint. He was also informed that he was not wanted in Cr.No. 1165/95. When his client became aware from newspaper reports, that he was also implicated in Crime No. 1165/95, as a law abiding citizen, he contacted him over the telephone and requested him to make arrangements, for surrender, before the competent Court, where the first information report was pending. 11th Respondent accompanied by Respondent No. 12 (Thiru C. Balasubramanian) escorted Thiru Natarajan, in a tempo trax, at or about 11-45 a.m. on 26-7-1995 and arrived at the Saidapet Court complex at 11-55 a.m. To their shock and surprise, they found, that the northern gates of the Saidapet Court were completely closed, while the southern gate was partially opened and that opening stood blocked by police motor cycles, jeeps and vans, which virtually prevented them from entering inside the Court campus. Police arrested Thiru Natarajan by force and restrained Thiru Balasubramaniam (Respondent No. 12)

and himself from moving further, thus preventing them from performing their lawful duties to their clients. At 3-45 p.m. on the same day, Thiru Natarajan was produced before the XVIII Metropolitan Magistrate and soon thereafter the statement of Natarajan was recorded. He was remanded to judicial custody. Magistrate rose for the day at 4-15 p.m. He was waiting along with Thiru Natarajan, when he became aware, from other counsel, that the learned Magistrate had ordered admission of Thiru Natarajan in the Government General Hospital. He followed Natarajan, in his car, to the hospital. He has added, that he does not belong to the Saidapet Bar and that he had not entered into the chambers of the learned Magistrate. He has never appeared before the learned Magistrate and his identity or his name could not have been within the awareness of the said Magistrate. He expressed shock, at the inclusion of his name in the report of the learned Magistrate. It is unfortunate, that he has added further., that his name has been 'implicated at the instance of Thiru L. Babu, who is in D.M.K. Party'. His familiarity with Natarajan, resulting in appearance with certain photographs in newspapers has resulted in his inclusion in this contempt application. His apology reads as hereunder :

'In spite of the facts mentioned above, if the Hon'ble Court feels that I have committed Contempt of Court for obstructing Court proceedings, I whole heartedly tender my unconditional apology before this Hon'ble Court.'

28. Counter affidavits of Respondents 12 and 13 are fairly identical, though the affidavit of Thiru Balasubramaniam (Respondent No. 12) contains more details. Thiru Balasubramaniam has stated that he had accompanied Thiru Natarajan in a tempo trax, to the Saidapet Court premises at or about 11-45 a.m. on 26-7-1995. When the tempo trax reached near the Court premises, he noticed closure with locks of the main gate on the side of the sub-jail. In the other entrance, one gate was fully closed while the other was kept open. He noticed Respondents 1, 2, 3, 4, 5, 6 and some other police officials in mufti, standing in front of the said entrance. When the tempo trax in which he was travelling with Natarajan entered into the Court premises, it was stopped by the police. After getting down from the vehicle, when they tried to move towards the Court of the XVIII Metropolitan Magistrate, they were prevented and forcibly taken into the police van. They were taken to

Anna Nagar Police Station and around 4-30 p.m. on the same day Thiru Natarajan was produced before the XVIII Metropolitan Magistrate, for remand. Since the Advocates were disturbed over the closure of the Court gates by the police earlier in the day, they requested the learned Magistrate to direct the investigating officer, who caused the arrest of the accused by closing the gates, to appear before the Court, even if his client was not to be released on bail. It was thereafter, that the learned Magistrate sent for the Joint Commissioner, who intimated that the investigating officer was not available. But the learned legislature directed the police, to produce the remand warrant for making an endorsement, for providing treatment to the accused. It was represented by a Sub Inspector of Police, attached to the Central Crime Branch, that they had lost the warrant. Thiru Jayaraman, Inspector of Police, Central Crime of Branch, represented that the investigating officer would come and therefore, all of them were waiting for more than four hours for the arrival of Thiru Murugavel. Due to the closure of gates, general public, Advocates and litigant public were prevented from entering into the Court premises. He has further stated in his counter affidavit, that the telegram dated 14-8-1995, allegedly despatched by one Marichandran as well as the communication dated 12-8-1995 sent by a person, who has described himself as one of the observers keen in public interest and justice, cannot be relied upon for, the authenticity of the said documents were doubtful. He has expressed his grievance in his counter affidavit that Thiru L. Babu, President of the Saidapet Bar Association, has disclosed the names of certain members of the Bar, who, according to him, had interfered in the administration of justice, without explaining or specifying the alleged incident. He has given a list of cases, in which Thiru Babu has appeared against Thiru Natarajan while he was defending him. He has further stated, about the political animosity between him and Thiru Babu. Thiru Babu, has only generally referred about the alleged incident inside the chambers of the learned XVIII Metropolitan Magistrate, when he offered his statement, before the learned Chief Metropolitan Magistrate on 26-7-1995. He is certain that he did not forcibly enter into the chambers of the Magistrate or pressed for orders being passed on the bail application. The Advocates were only insisting to get the investigating officer, to the Court. He has categorised the report of the learned Magistrate as general allegations, without making specific allegation, against any

one of them. In the end, he has pleaded for discharge.

29. Mrs. Neelambika (Respondent No. 13) is the wife of Thiru Balasubramanian (Respondent No. 12). After reiterating all that her husband has stated, she has dubbed the affidavit of Thiru Babu, President of the Bar Association, Saidapet as one containing vague and general allegations. In any event, there was no specific allegation against her. In the absence of details, she was unable to traverse the allegations. Anyhow, she has denied, that she had interfered in the administration of justice. Thiru Babu had not made any reference to her in his statement before the learned Chief Metropolitan Magistrate. She has stated, that she did not enter into the chambers of the learned XVIII Metropolitan Magistrate at all and she was only waiting in the Court hall, after the learned Magistrate retired to his chambers at 4-15 p.m. She did not also press the learned Magistrate to pass orders in the bail application. Since she has not entered into the chambers of the Magistrate, the other allegations generally made against some of the other Advocates, cannot be attributed to her. Even the learned Magistrate has not made any specific allegation against her.

30. Thiru N. Thangadurai (Respondent No. 14) has expressed surprise, as to how his name stood included in the affidavit of Thiru Babu. He happened to be a friend of Thiru Balasubramaniam (Respondent No. 11), who is an Advocate for Thiru Natarajan. He has not known or even seen Thiru Natarajan personally. He had left the Court premises very early on that day. He was not a counsel for Thiru Natarajan. Throughout the day, he did not enter into the Court of the XVIII Metropolitan Magistrate.

31. Thiru N. Thambidurai (Respondent No. 15), who has given his family background, has stated that Thiru L.Babu has not specifically said anything against him, except very vague and general allegations. Learned Magistrate, in his communication, has not stated anything against him. However, he admits having signed in the memo of appearance, though he claims that he did not play a lead role or argue on behalf of Thiru Natarajan, for bail. Thiru Babu had not taken any serious steps against the police, for having closed the gates. He has mentioned the names of certain Advocates against whom he has personal prejudice.

32. R. Palanivel (Respondent No. 16) has stated that police excesses have become an every day affair. Their President was not at all present to take up the matter about the closure of gates with the appropriate authority. At 3-30 p.m. when he questioned the Bar President about his inaction, he simply ignored it. Since he shouted at the President, his name has been falsely included in the affidavit. He had not entered appearance on behalf of Thiru Natarajan or pleaded for his release on bail.

33. Thiru C. Deivasigamani (Respondent No. 17) would have it, that due to his personal inconvenience, he could not go anywhere and that he had become a victim of circumstances. Instead of giving reasons for closure of gates, as an after thought, Thiru Babu has mentioned his name in his affidavit. Thiru Babu has not mentioned his name to the learned Chief Metropolitan Magistrate, and as an after thought he had lugged him in.

34. Thiru S. K. D. Babu (Respondent No. 18) admits that he was one of those Advocates, who had appeared on behalf of Thiru Natarajan. Learned XVIII Metropolitan Magistrate knew about him and that is why nothing has been mentioned against him in the report of the Magistrate. He has stated that when Natarajan was produced, certain leading Advocates requested the local Advocates to sign in the memo of appearance, which was sought to be thwarted by the President. In spite of it, many Advocates offered to sign in the memo and that made the President ferocious. He has stated about the manner in which Thiru Babu got elected. It was he who had presented an application to the learned Magistrate to send Thiru Natarajan for medical assistance. That application was allowed. He has wondered, as to how the President had been a silent spectator when, according to him, the Advocates were misbehaving.

35. Thiru K. Raghu (Respondent No. 19) has stated, that he was not an Advocate or Counsel for Thiru Natarajan. He has not even signed the memo of appearance, though he stood engaged by some of the other accused, in the same crime. He has stated, that Thiru Babu was completely prejudiced against him since his dictatorial and self-assuming activities were questioned by him and certain other Advocates. He has made an insinuation in paragraph 7 of his affidavit that it was

pertinent to bring to the notice of this Court, that Thiru Babu had also sworn to an affidavit on 14-8-1995, the date on which learned XVIII Metropolitan Magistrate has forwarded his communication to this Court. He has pointed out that no specific allegations have been made against him by Thiru Babu.

36. Thiru G. Sekar (Respondent No. 20) has stated, that in the afternoon of 26-7-1995, when he was in the Bar room, counsel appearing for Mr. Natarajan approached him with a request for his signature in the memo of appearance, for, then the XVIII Metropolitan Magistrate would be ready to consider the bail application of Thiru Natarajan, the object being, that the Magistrate would take it, that the Saidapet Bar Association, had no objection in his considering the bail application of Thiru Natarajan, on the same day. He expressed his inability to affix his signature in the memo of appearance and left the Saidapet Court to meet a friend in the City Civil Court complex. He returned at 6.45 p.m. to Saidapet and saw many persons in front of the Bar room as well in front of the Court of the XVIII Metropolitan Magistrate. He did not go inside the chambers of the Magistrate. He has pointed out, that the XVIII Metropolitan Magistrate, in his report, has not mentioned about the presence of Thiru Babu, inside his chambers. He has given out some reasons as to why Thiru Babu should, have with an ulterior motive, included his name in the affidavit.

37. Thiru B. Palani (Respondent No. 21) has pointed out that the learned Magistrate has not included his name in the report. Thiru Babu, who has included his name, has not given out details of the actual overt acts with reference to his involvement. He claims to have stood as an observer in the Court premises. He was prepared to participate in a parade, for identification by the learned Magistrate, since he was certain that he was not one of those persons who had obstructed Court proceedings.

38. Thiru T. Bose (Respondent No. 22), has stated, that Thiru Babu has included his name, with an ulterior motive, he was in the habit of questioning the high-handed acts of the latter in all meetings of the Bar Association. Learned XVIII Metropolitan Magistrate knew him well personally and the mere facts that his name had not been mentioned in the report of the Magistrate would suffice to

show, that he was not connected with any alleged incident that had taken place on 26-7-1995.

39. Thiru Ezhil (Respondent No. 23) has claimed that he was not at all in Madras on 26-7-1995. He left Madras on 26-7-1995, went over to Pondicherry and returned to Madras only on the morning of 27-7-1995. XVIII Metropolitan Magistrate knew him well by his name. If he had been present inside the chambers of the learned Magistrate, he would not have omitted to mention his name, in the report. He has not signed the memo of appearance, for Thiru Natarajan.

40. Thiru Muthalazhagan (Respondent No. 24) while stating, that professional jealousy had led to his inclusion in this contempt proceedings, has specifically stated, that the learned Magistrate had asked him to wait to take up his bail application in some other case and at 7-30 p.m. his bail application was allowed and sureties accepted. Only for that matter, he was waiting in the Court premises and was connected with Natarajan's bail application.

41. Mr. N. T. Vanamamalai, learned senior counsel representing Respondents 1 to 8 (Police Officers), submitted that the Revenue officials were in charge of the Court complex between 7-7-1991 and 26-5-1995, since sub jail premises therein, was then used as a special camp for Srilankan Tamils and thereafter neither the revenue officials nor the Central Bureau of Investigation have any connection with the said campus. He then submitted that security measures were felt necessary by the Police, once in September, 1994 when two persons who were about to be produced for remand, were hacked to death on the taluk office road by a gang of rowdies. He was emphatic in his submission, that though the police officials had not acted 100% properly on 26-7-1995, when they had closed the doors, either partially or fully, it cannot be doubted, that their action was bonafide. He conceded, that neither direction was taken from the senior-most Magistrate in the campus nor information was furnished to the said Magistrate by the police officers after closure of gates. He submitted, though not mentioned in the counter, that the procession, which was expected to pass through the taluk office road on that particular day, was to be taken out, by students belonging to M. C. Raja Hostel, situated about

three furlongs away from the Court premises. Those students had nothing to do with Court proceedings. He further conceded, that there was no entry, of whatever nature, either in general diary or pocket note book, to indicate, information having been received about a students' procession. All that the police officers wanted to safeguard, was possible trouble in the Court campus, in the event of procession, which was likely to be taken out, materialising. This hostel appears to accommodate about 250 to 300 students. He contended that Thiru Natarajan had despatched telegrams as though he was expected to surrender before the Commissioner of Police, on the same day, only with a view to mislead the police officers and hence it was felt necessary, to keep a watch over for Thiru Natarajan near the Court premises as well as on the entire route leading to the Court, from his residence in Besant Nagar. According to Mr. N. T. Vanamamalai, Thiru Natarajan was arrested outside the Court campus and even his apprehension thereafter, when he commenced running, was outside the Court premises. He also pointed out that the police officers were keen on interrogating Mr. Natarajan, since there was a complaint by another policeman, of his having been attacked by Thiru Natarajan and others, which, of course, is the subject matter of Cr. No. 1165/95. He underlined, that no complaints were ever made, of anyone having been prevented access or outlet to and from the Court premises on that particular day and if that be so, it cannot be stated that there was any obstruction to the Court proceedings due to closure of gates. He also submitted, that the policeman had produced Thiru Natarajan at 3-45 p.m. in the evening, before the XVIII Metropolitan Magistrate, when no ill-treatment was alleged. While reiterating, that the police officers had discharged their duties without any malice, he pointed out, that it was possible to visualise, that on certain occasions such discharge of duty may go beyond bounds, but that crossing of usual norms would not take away the bonafides of the police officers, if the fact situation, on that day, were to be taken note. He was at pains to submit, that the apology tendered was unconditional and that deserved acceptance. He placed for our scrutiny certain decided ca ses, which he will refer to at the appropriate stage.

42. Mr. M. Jagadeesan, learned counsel representing the 11th respondent, Mr. Ramakrishna Babu, Advocate, submitted, that all that his client has stated in the counter affidavit were true. He produced a photograph before us, to claim, that

Thiru Natarajan was actually seen inside the Court campus, after having crossed the southern gate and to that extent the police officials had not placed the truth before this Court.

43. Mr. K. Subramaniam, learned senior counsel representing Respondents 12 and 13 (Thiru Balasubramaniam and Mrs. Neelambika respectively) contended, that procedural safeguard were lacking in the impugned contempt proceedings. On that sole ground he would plead for discharge of his clients. Expatiating his submission, he contended that under Section 15(2) of the Contempt of Courts Act, there were inbuilt procedural safeguards, like holding of an enquiry etc. He submitted that it must be possible for this Court, to direct further enquiry by anyone of the subordinate judicial officers, before this contempt application is further processed. While conceding, the power of this Court to initiate suo motu contempt proceedings, he submitted that even then, this Court may have to order an enquiry over-again by a subordinate judicial officer, without which there cannot be a reasonable completion of the impugned proceeding. On the merits of the case, he submitted that tempers had ran high, on that particular evening and even if his clients and other Advocates had exhibited discourtesy which was not the correct way of registering their grievances, even then such action will not amount to obstruction of proceedings. He pointed out, that most often Magistracy conducts judicial proceedings inside chambers and in that context if the Advocates had gone inside the chambers of the Magistrate in a group, they cannot be faulted. He contended, that neither the report of the Magistrate nor the affidavit of the President of the Saidapet Bar Association connects his clients with any overt acts. The presence of 12th respondent inside the chambers of the Magistrate was not disputed. Though it was argued, that material would be furnished, as to the reason, why the 12th respondent had gone inside the chambers of the learned Magistrate on that particular evening, no worthwhile material was placed for our scrutiny. On the basis of the counter affidavit of Respondents 12 and 13, Mr. K. Subramaniam, learned senior counsel, submitted that Thiru Babu, President of the Saidapet Bar Association had animosity against both of them due to professional and political rivalry. He was at pains to draw a line between contumacious conduct and contempt. In his turn, he has referred to certain authorities which we will consider at the relevant time.

44. Mr. C. Rajagopalan, learned counsel appearing on behalf of Respondents 15, 16, 19 and 22 contended that the President of the Saidapet Bar Association was motivated against his clients. He contended that the Advocates will have to respect the Courts and if something untoward had happened on that particular day the whole Bar was sorry for the same. In that context, he wanted us to accept the apologies tendered by his clients. He then contended, that this contempt proceedings cannot be maintained in view of proviso to Section 10 of the Contempt of Courts Act, which states that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, 1860 (45 of 1860). At a later point of time, he sought to give up this contention.

45. Mr. Sivathanu, learned counsel appearing on behalf of Respondents 10 and 17 as well Mr. Sulaiendran learned counsel appearing on behalf of Respondents 14 and 18 adopted the arguments of Mr. C. Rajagopalan.

46. Of these respondents, learned XVIII Metropolitan Magistrate has mentioned about the presence of 10th respondent, Shanmughasundaram and 18th respondent. Thiru S. K. D. Babu, inside his chambers on that fateful evening. When a specific question was put, if they would like to participate, in a parade in which the learned XVIII Metropolitan Magistrate, would be afforded an opportunity to identify such of those persons, who were present in his chambers on that particular evening, whom he could identify, though he was not aware of their names, learned counsel, after consulting his clients, stated, that they were not inclined to participate in any such identification parade.

47. Mr. Vijayaraghavan, learned counsel representing the 20th respondent, admitted that his client had signed in the memo of appearance on behalf of Thiru Natarajan, though he has denied the same in his counter affidavit. He reiterated the apology tendered in writing and was not interested, to participate in a parade, to facilitate identification by the XVIII Metropolitan Magistrate, to confirm his presence or otherwise, inside the chambers of the Magistrate on 26-7-1995.

48. Mr. M. Karpagavinayagam, learned counsel representing the 21st respondent (Thiru Palani), while asserting that his client was not in the chambers of the

Magistrate on that particular evening, was frank enough, in pleading for conduct of a parade, in which his client was willing to participate, to wriggle out the possibility of his having been one of the persons present inside the chambers of the Magistrate, on the impugned evening.

49. Mr. P. Raghunathan, learned counsel representing the 23rd respondent (Thiru Ezhil) and 24th respondent (Thiru Muthalazhagan) was willing to allow his clients to participate in a parade if one such proceeding was ordered by this Court. Initially, Mr. C. Rajagopalan, learned counsel who had also filed appearance on behalf of 23rd respondent (Thiru Ezhil), later resolved it with Mr. S. Raghunathan, Advocate and the latter informed us, that he would be representing the 23rd respondent (Thiru Ezhil).

50. Mr. Veerasekaran, learned counsel representing the 9th respondent (Thiru V. Ramaswamy), invited our attention to the unconditional apology tendered by his client in his affidavit. He further admitted, that his client had entered appearance on behalf of Thiru Natarajan and his name has been mentioned by the Magistrate in his report, though to specific allegations have been made against him. He contended that the President of the Saidapet Bar Association was prejudiced against him, though he cannot allege any bias against him, to the learned Magistrate.

51. Mr. Robert Barnabas, learned Advocate representing Thiru Babu, President of the Saidapet Bar Association, vehemently submitted, that the allegations made by contemners/Advocates imputing motives to his client were totally erroneous. He was at pains to submit, that his client had offered information to this Court, when asked for, and that alone would suffice to indicate that he had no ulterior motive against any member of the Bar, practising in the Courts at Saidapet. When asked about his client's inaction, when the Magistrate communicated to him, about all that was happening in his presence, inside his chambers, he submitted that if he had interfered, the Bar would have turned more violent and the situation might have aggravated itself and hence his client had to refrain himself, the reason being that this client was appearing against Thiru Natarajan, in certain cases.

52. Mr. R. Krishnamoorthy, learned Advocate General, submitted with all solemnity, that the incident that had occurred in the premises of the Saidapet Court on 26-7-1995 was totally unfortunate and on his own assessment of proceedings in this Court was, that none of the contemnors had tried to justify their action. Of course, it will be the prerogative of this Court, to consider, whether the apologies tendered by the contemnors were sincere or otherwise. He submitted, that the Advocates Act and the Bar Council Rules had inbuilt provisions to insist upon the Advocates to respect the Courts, and even least aberration, should not be allowed to surface. He was emphatic in his submission, that there was no right for any Advocate, to enter into the chambers of the Judicial Officer, without permission. He contended, that at the time of enrolment, the members of the Bar are supplied with a book containing Bar Council Rules and lectures were also organised to impress upon them the duties they owe to the Court, the brother members of the Bar, litigants and the public in general. The Advocates Act had enough provisions, to initiate action against the erring Advocate, for his misconduct. Whatever may be the Rules, he stated that one's own wisdom and good sense, as to how one should behave will be the important factor and towards that end revival of apprenticeship, would be a welcome measure. Whatever may be in writing, the Code of conduct in practice, that young members of the bar could get through their apprenticeship course, cannot be gainsaid. He has also placed for our scrutiny certain decided cases.

53. Mr. B. Sriramulu, learned Public Prosecutor, submitted that the Commissioner of Police, Madras, on 23-7-1995 did receive a petition from Thiru Natarajan and also observed, that his complaint would be enquired into. At that point of time the question of arrest in Crime No. 1165/95 did not surface and, therefore, no complaint can legitimately be made against the Commissioner of Police.

54. Mr. S. Gopalaratnam, learned senior counsel representing the Madras Bar Association, underlined, that discipline should be the basic foundation. He agreed with the learned Advocate General that apprenticeship course should be revived, but that should not be restricted to a single year period. He referred to Rule 19 framed by the Madras Bar Association which relates to discipline of its members. He submitted, that it appeared as though, the Advocates had acted in the instant

case, in the heat of movement, without realising the consequences and that it was a case of misguided impulse, or over enthusiasm, in identifying themselves with their clients. While submitting, that self-regulation alone can retrieve the Bar, he added that willingness to enforce the rules available must be exhibited. While concluding his submissions, he stated that the members of the Bar should know their limits. Apart from referring to certain decided cases, he has placed before us, some material on discipline of the members of the Bar as well as lectures on code of conduct, apprenticeship etc., by eminent leaders of the Bar.

55. Mr. Jayaraman, President of the Madras High Court Advocates Association, submitted that members of the Bar must take this incident as a lesson, for future good behaviour. He referred to certain passages, on discipline, in Lord Denning's book. According to him, the code of conduct, that would be required, must be impressed upon the young minds from the stage of legal education, which now requires reorientation and the same should be followed up, at the time of enrolment. He contended, that most often Criminal Courts function inside the chambers of the Magistracy. He then referred to Section 24-A of the Advocates Act and submitted that the words 'moral turpitude' was the case for so many problems. It was unfortunate, that in the flush of enthusiasm, coupled with tension, the Advocates in the instant case, had unwittingly rushed inside the chambers of the learned Magistrate. He submitted that closure of gates could not have been done by the police, without permission from the senior most Magistrate in the campus. As a matter of fact, the Madras Advocates Association, had also passed a resolution, condemning such closure. Anyhow, he attempted to impress upon us, that the exigency of the situation probably demanded, all that had happened, on that particular day and that neither the Advocates nor the police officers had acted in a mala fide manner.

56. Mrs. Prabha Sridevan, President, Women Lawyers' Association, submitted that the after-noon incident had a close connection with the morning closure of gates. Advocates as well as policemen, were important limbs, for the former were right protectors - while the latter were law enforcers. The tension, if any, between them must be comfortably resolved. Re-orientation programmes must be organised.

57. Mr. Venkatakrisnan, representing the Chairman of Bar Council of Tamil Nadu, adopted the arguments advanced by learned Advocate General and Mr. S. Gopalaratnam, learned senior counsel and submitted, that the distance between the Magistrate and the lawyer must be sufficient enough, and if that had to be done, the Magistracy should not be allowed to conduct proceedings inside the chambers. He also submitted that the Bar Council was helpless, in dealing with cases of misconduct.

58. Mr. N. T. Vanamamalai, learned senior counsel, on the general aspect, contended, that henceforth proceedings in chambers, by Magistracy should be avoided. Even orders should not be pronounced inside the chambers. Though not directly involved in this petition, he submitted, that 'long notice' should not be ordered in bail applications for, the liberty of a citizen is paramount, and short notice sufficient enough, should alone be ordered. He referred to a Committee, headed by Mr. Justice N. Krishnaswamy Reddy, along with a police officer and a judicial officer, which had effectively diffused the problems, which had emanated due to clashes between policemen and Advocate and insisted that a committee of that nature should be reintroduced. Mr. Advocate General, in reply on this aspect, submitted, that the committee then constituted, was in respect of the incidents that were referred to it, and nothing more.

59. Before we consider, the impact of the submissions, made by various counsel, before us, it will be necessary to narrate, for completion of facts, that on our directions the IV Metropolitan Magistrate conducted an identification parade at 1-30 p.m. on 26-9-1995, such proceeding having been held in camera. A few of the Advocates, who opted for participating in the parade viz., Respondents 21, 23 and 24 (Thiru Palani, Thiru Ezhil and Thiru Muthalazhagan respectively) were in a group of 15 others Advocates, from Saidapet Bar Association, and all of them were in lawyer's robes. Learned XVIII Metropolitan Magistrate was able to identify Thiru Muthalazhagan (Respondent No. 24), but added that the said Advocate had come down to his chambers at or about 7-30 p.m. on 26-7-1995, for some other matter. As far as Respondents 21 and 23 are concerned, learned Magistrate did not identify them as those present in his chambers, along with a group other Advocates.

60. Law is Supreme and it is intended for the welfare of the people. The Bar had its own tradition, in the past, and it was respected not only for its professional excellence, but also for its participation in all public activity intended for the welfare of the community. Many many lawyers had participated in the freedom struggle and the renaissance of free India was chalked out by great leaders, who were all basically law graduates or lawyers. We cannot always bask on our past glory, but must do our part not only to preserve the glory already attained, but also in add more credit to the already existing dignity on this noble profession. Of late, there have been numerous instances where members of the Bar, have not followed the code of conduct expected of them, be it inside the Court halls or outside it, either in relation, with the client or even with any member of the public. It will be no answer to state, that there has been deterioration in all professions for, the legal profession not only safeguards the rights of several other profession, but is also called upon to perform the professional work, after mastering the nuances in every other profession for, those who seek justice from Courts belong to a variety of professions. Heedless to add that it must be the reason, why the legal profession stands kept in the pinnacle. It may be the right of any member of the Bar, in his personal life, to have his own political affiliation, but when it comes to Court proceedings politics cannot be introduced into it. Similarly the law enforcing agency, the police force, which is expected to do its duty fearlessly cannot dubiously fall a pray in machinations from extraneous power mongering forces in performance of their onerous task. It is quite possible to visualise that quite often spoken are put in the wheels of investigation, by agencies extraneous, but a policeman should have the will power to go ahead with his rightful work, ignoring the possible pinpricks.

61. Quite often we learnt from news media, that under trials brought to Court or prisoners incarcerated in jails make good their escapes. More of tenor, it is stated, that connivance of the authorities incharge, cannot be ruled out. We are not concerned with these instances, but we have referred those aspects, thart the Saidapet Court complex, which as we have stated already, accommodates the Sub Tresury, sub jail, residence of Judicial Officers, residences of the jailers, and the lock-up room apart from the Courts themselves, does not appear to have a permanent watchmen or security. It was represented, that the Tahsildar was in-

charge of the premises. However, the IV Metropolitan Magistrate the senior most amongst the Magistrates in that campus would report that the gates are opened in the mornings at 6.00 a.m. or 6.30 a.m. and closed in the evening by watchmen, not under the control of the Court staff. They are not even locked. We are unable to comprehend the security or safety provided the case property inside the Court complex, the property of the Sub Treasury, functioning inside the campus as well as the fate of the inmates of the sub jail and the lock-up vis-a-vis guarding staff in the sub jail, when so many events unforeseen sudden, surface quite often tending to affect the normal way of administration, whichever department it might be. It will be the duty of the State Government, to immediately take steps to beef up measures to protect safety and security of the Courts and other office inside the Saidapet Court complex. We have expressed our anguish in this regard to the learned Advocate General who has agreed to convey our expression of dissatisfaction, to the State Government. It appears as though, that due to lack of control, in this Court campus, anyone can easily meddle with the gates God forbid not with the other parts of the premises, obviously kept under lock and key.

62. To achieve the supremacy of law, justice has to be administered without fear or favour. Just imagine as to how it could have been done in the instant case. There cannot be a second opinion that Courts will have to act without fear or favour. If there was a storm, that had blows over in the morning of 26-7-1995, there was a tempest that had regard in the evening, in the Court hall and chambers of the learned XVIII Metropolitan Magistrate, when a group of members of the bar, forcibly entered inside the chambers of the Magistrate, and directed him to perform his duties, in one way or the other. Have not the members of the Bar, atleast instilled a complex of fear in the Magistrate concerned, may be physical or anything else. Protection to the Court from annoyance and obstruction must have been ensured by the members of the Saidapet Bar, and that obviously, they had failed to do on that fateful evening.

63. Everyone owes a duty to see to it that the authority of the Court is not lowered and the sense of confidence of the people in the administration of justice is not weakened by any conduct or act of any party any member of the Bar or other persons. The pure fountain of justice shall have to remain unsullied, and that is the

purpose for initiation of this contempt proceedings. It can now be easily visualised, as to why, we have stated earlier in this order, that if law is not fortified, force will get justified. The object of discipline, enforced by Courts, in case of contempt, is not to vindicate the dignity of the Court, but to prevent undue interference with the administration of justice.

64. We have before us the affidavits and counter affidavits. None of the contemnors have made any demand, for attendance of the deponents, be it the learned XVIII Metropolitan Magistrate, the learned Chief Metropolitan Magistrate, the President of the Saidapet Bar Association or any one of those who have made statements before the learned Chief Metropolitan Magistrate, for cross-examination. The broad test that has to be applied is, whether the act complained of, was calculated to obstruct or had an intrinsic tendency to interfere with the courses of justice and the due administration of law. Subordinate Courts administer justice at the grass root level and hence protection is necessary to preserve the confidence of people in the efficacy of Courts and to ensure unsullied flow of justice at its base level.

65-66. There has been a chorus, except a slight discordant note, from one or two learned advocates, that the incident, that had happened, was totally unfortunate, which, if only good sense had prevailed, could have been easily averted. Even the discordant notes do not try to justify the incident, but only make an attempt, to save a few of the contemnors, on the basis of some trite technicalities, which to our minds, do not either surface, or have any relevance, in this pending proceeding. Except the 12th respondent (Thiru Balasubramaniam) and the 13th Respondent (Mrs. Neelambika) every one else, have expressed unconditional apology, in the event of this Court coming to a conclusion that they had obstructed Court proceedings. Some of these contemnors, have made an unconditional apology, without even averring that in the event of his Court finding them guilty of contempt, their apologies could be taken note of.

67. It will be better, to initially dispose of this contempt issue, in relation to Respondents 1 to 8 who are police officers, some of them high ranking. It is no doubt true, that the police officers present near the Court campus, were engaged

in the arresting process of Thiru Natarajan, one of the accused in Cr. No. 1165/95. This crime, as has been confirmed in the affidavits of the police officers, stood registered for offences punishable under sections 143, 365, 342, 332 and 586 (ii), I.P.C. Though the crime was registered on 20-7-1995 and an opportunity presented itself for arrest of Natarajan on 23-7-1995, that chance was left off, and to our minds, the police force have shown an extraordinary fervour of enthusiasm in the instant crime, which is normally absent in crime of this nature. They had forgotten that a bird in hand is worth two in the bush. We will of course be happy about police swiftness, if that could be the normal, rule. We are not concerned, now with general attitude of the police force vis-a-vis crime investigation, but we are constrained to state this, since the definite case of the police officers, is that, there was need there was likelihood of certain students of a nearby hostel, taking out a procession. To our dismay we found, that no record whatever, is available, the information that the police officers had received about the likelihood of a procession being taken out in the taluk office read, on 26-7-1995. It was admitted that neither the general diary entries nor even the pocket note books of the police officers will even remotely show receipt of any such information.

68. Mr. N. T. Vanamamalai, fairly, conceded, that he will not be able to produce any material, show that the police officers and information about the likelihood of a students procession, passing through that way. To another question by Court, learned senior counsel stated, that the students of this hostel, who have taken out processions in the past, had not attempted to enter into the Court premises or any other premises. As a matter of fact, on the particular day, it was realised later, that no procession, in fact, was taken out. These facts clearly leave an indelible impression that the closure of the gates was not ostensibly for the purpose of keeping guard of the premises from the expected onslaught of certain students from a nearby hostel, but apparently for the purpose of arresting Thiru Natarajan, who was expected to pass through the Taluk Office, either on his way to his house, or Court or from his house to any other destination. Police Officers did have power to arrest Thiru Natarajan and we are not concerned with such arrest even in the instant case for, none of the parties before us, have disputed that the arrest initially was outside the Court campus. It is alleged by the police officers that Thiru Natarajan attempted to escape after arrest and that is why he was again

apprehended and taken to the police van. The second apprehension, according to the Police officials, was outside the southern gate, but such apprehension by the police officers, cannot be accepted for, the photographs produced by Mr. N. T. Vanamamalai himself and other learned counsel clearly show, the police officers and Thiru Natarajan, near a water tank, which, admittedly, is inside the Court campus, after crossing of the southern gate. It is popularly believed that once a person, accused of an offence, is, in the precincts of the Court concerned, probably to surrender the police officers have no right to arrest, let us notice the legal position.

69. Special Bench of three Judges of the Calcutta High Court in *Niharendu v. Porter* : AIR1945 Cal107 , stated as hereunder :-

'It has been argued that arrests inside the Court building are improper. I cannot agree with that contention. Persons going to and from the Court upon the business of the Court in connection with litigation are exempt from arrest under civil process, but there is no such exemption in respect of criminal process as the case in (1843) 12 LJ Q.B. (N.S) 49, referred to hereafter, shows. If such general exemption were to obtain, the Court building would become a sanctuary for criminals and the administration of justice in them would become impossible. There have been cases where arrest on criminal process have occurred in the Sessions Court when a prisoner has been acquitted and discharged on one charge and rearrested in the Court. While the Judge is sitting, on another charge. A case occurred sometime back where a litigant in a civil case on the conclusion of his case was arrested as he was leaving the Court room on a criminal charge preferred at Madras.'

Hence it may be, that the police officials have a right to arrest offenders, anywhere it will even be possible in the event of surrender by any of the offenders before Court, for, the police to seek police custody for the purpose of interrogation. It could have been, easily stated by the police officers, in the instant case, that they were expecting, to arrest Thiru Natarajan and a part of apprehension, after initial arrest, had taken place inside the Court campus. Police officers must have intimated to the Senior Magistrate about the closure of northern gate fully and the

southern gate partially and the purpose for which they had closed the gates. They must have equally informed the other heads of the department, in the variety of officers situated in that campus. If there is an emergency, the police can certainly act, without forwarding prior intimation, but even then they would certainly owe a duty to inform the concerned officers of Court as well as other officers soon thereafter about the closure of the gates. In a situation, emergent and the reasons, that led to such closure. It cannot be overlooked, that several hundred of member of the public would usually be visiting this campus in Saidapet. The question is not whether any one of the members of the public or even the Magistrate themselves had complained about the inaccessibility to the premises, leading to obstruction of the course of justice.

70. In *Mcpherson C.L. v. Mcpherson O.L.* 1936 AC 177 PC was concerned about the trial of divorce action, which took place during the lunch on interval in the Judge's law library in the Court House at Edmonton, Alberta, not one of the regular Courts in the Court House. Neither the Judge nor counsel were robed. Access to Judges' law library was through a double swing door in the wall of a public corridor. One wing of that door was always fixed, the other, although swinging close, was usually unfastened. On the fixed wing was a brass plate with the word 'Private' in black letters. The double swing door opened on to an inner corridor in which, opposite, was a door of the Judge's library. The opening wing of the swing door was unfastened during the trial, and the inner door of the library was kept open throughout. At the conclusion of the proceedings a decree nisi was pronounced, which was subsequently made absolute. In an action by the respondent in the divorce suit, brought after the expiry of the time for appealing against the decree absolute, and after the petitioner had remarried, seeking to have the decrees nisi and absolute rescinded and set aside on the ground that the trial of the divorce action in the Judge's law library had not been a trial in open Court, according to law, and that the resultant decree nisi and absolute were null and void, it was held, that even although the actual exclusion of the public resulted only from the word 'Private' on the outer door, the judges on the occasion of the divorce trial, albeit unconsciously, was denying his Court, to the public in breach of their right to be present. Resulting decrees were held to be voidable and not void. This pronouncement will be a direct answer to the contention of Mr. N. T.

Vanamamali that no one has complained, that he was prohibited or prevented from entering into the Court campus and that the fact situation presented by the first contemner would indicate disposal of number of cases in the Courts and happening of transaction in the other officer situated inside the campus. As a matter of fact, it has to be remembered, that even tending to obstruct administration of justice in any other manner or tending to interfere similarly would still amount to contempt. Likelihood of possible prejudice is the criterion. The contention that Mr. Natarajan had not complained of any illtreatment before the Magistrate, when he was produced at 3.45 p.m. on 26-7-1995 is beyond the pale of this proceeding. It is clear, that the police force, who by our experience, are not known to act swiftly in crimes of this nature had probably taken upon themselves this exercise on 26-7-1995, since the crime stood registered on the basis of a complaint made by a member belonging to their clan. It is fairly clear, that no material whatever worthwhile has exhibited itself to conclude that the northern gate was closed fully and the southern gate partially, expecting some law and order problem in view of the likelihood of a procession by students of the hostel nearby. It can easily be concluded that the whole exercise was intended to arrest an offender which of course, they can do without causing inconvenience to those who are expected to use those gates on 26-7-1995. We are unable to visualise any emergency which required closure of gates from about 10 a.m. to 2 p.m. May be at or about the time when they were keen on arresting Thiru Natarajan, they could have resorted to temporary closure of the gates. On the entire material placed before us, we are satisfied that closure of gates was not intended for the purpose, which is now sought to be put forth. Even if we take it, that for the purpose of arresting of an accused, who had certain political leadings since more than two contemnners have claimed that they belonged to AIADMK party and were close associates of the said accused, it is clearly evident that the police had over noted and reached. At the same time, we are unable to hold, that there had been any malice, in the act of the police force. There is no doubt, as fairly conceded by Mr. N. T. Vananmamali, that the police officers had gone beyond bounds, while discharging their lawful duties and hence their apology can be acted upon as bona fide.

70A. A specific plea was made on behalf of Thiru Murali (Respondent No. 3) on the basis of his counter affidavit, that he was not present in the Court campus on that particular day. We find, from the statements made by more than one witness examined by the learned Chief Metropolitan Magistrate, as well as from the letter of the Advocates placed before us through the Hon'ble the Chief Justice, copies of which were supplied to all the contemners, that the presence of Thiru Murali, (Third respondent) at the venue has been clearly stated. A mere refuting through counter affidavit by the third respondent, without material to substantiate it will not suffice. When we specifically questioned Mr. N. T. Vananmamali as to how he would answer to the specific averments available on regard about the presence of the third respondent, he frankly submitted that he had nothing more to say.

71. We have no hesitation in holding, that these police officers, in their over enthusiasm, while indulging in the process of arrest of Thiru Natarajan, had crossed the bound and closed the gates tending to obstruct the course of justice. Any how we are, prepared to accept the unconditional apology and drop further proceedings againts them.

72. As far as respondents 21 and 23 Advocates/Comtemners are concerned, they have not been mentioned by name by the learned XVIII Metropolitan Magistrate, in his report. However, since he had stated in his report, that he will be able to identify those Advocates, whose names he did not know but who were still present inside his chambers as stated earlier, we arranged for an identification parade and there two Advocates were not identified. We do not intend taking note of the telegram addressed by one Harichandran and another anonymous letter for, obviously, they do not have the courage to present themselves before Court, to substantiate their versions. They, obviously, are cowards and on the basis unidentifiable persons these two advocates or, as a matter of fact, any other Advocate cannot be found guilty of contempt of Court. Proceeding against Respondents 21 and 23 shall stand dropped. These proceedings will have to be dropped against Respondent No. 24 (Thiru Muthalazhagan) also, since the learned XVIII Metropolitan Magistrate, though has identified him, as clearly stated, that he was present at 7.30 p.m. in connection with some other case, obviously exonerating him from the group of Advocates who had forcibly entered inside his

chambers on that particular evening.

73. Except Respondents 12 and 13 (Thiru Balasubramaniam and Mrs. Neelambika) whose cases stand on a different footing, the case of other Advocates/Contemners can be disposed of by giving precedence. All these Advocates as we have stated earlier, have tendered unconditional apology in their counter affidavits and have reiterated such repentance in open Courts as well, through their counsel. We cannot overlook, that none of the members of the Bar have alleged any animosity or bias against the Magistrate, which could have tended him, to include one or other of their names, in the report made by him, as the offending Advocates. In this batch, of Advocates, as well, we are bound to mention that the XVIII Metropolitan Magistrate, has specifically referred to the presence of 9th respondent (Thiru V. Ramaswamy), 10th Respondent (Thiru Shanmughasundaram) 11th Respondent (Thiru Ramakrishna Babu,) and 18th respondent (Thiru S. K. D. Babu) in the group of Advocates, who are present in his chambers. Though these Advocates have been specifically mentioned by the learned Magistrate, in his report, they sought to contend that such inclusion must be due to inadvantage or as a consequence of one or the other of them having entered appearance on behalf of Thiru Natarajan. We are unable to countenance such a submission. Learned XVIII Metropolitan Magistrate has been fair enough in his report and has mentioned only six names whom he know certainly to have been present inside his chambers, after gaining forcible entry.

74. It is rather unfortunate, that the 11th respondent has sought to allege, that the report of the Magistrate is also dated 14-8-1975, on which date the President of the Bar Association had also forwarded his report, thus seeking to make an insinuation against the learned Magistrate. However, in open Court his counsel sincerely apologised, that it was an absolutely inadvertent mistake and that should be ignored, for his client has great respect for judiciary as a whole. It was also contended initially, that the 11th Respondent had not appeared before the Magistrate earlier and hence he could not have given out his name in his report. It is not uncommon that lawyers, irrespective of their appearance in any particular Court, or otherwise. Such a submission has neither strength nor merit.

75. 19th Respondent (Thiru K. Raghu) has made a similar insinuation, that only after the receipt of notice from this Court, the learned XVIII Metropolitan Magistrate, had forwarded a communication on 14-8-1995 and it was pertinent to bring to our notice that Thiru Babu also had sworn to an affidavit on the same day. Learned counsel for the 19th respondent pleaded before us, to ignore the said passage. It was the outcome of inadvertence and non-application of mind to a very serious matter. Except Respondents 21, 23 and 24 (Thiru Palani. Thiru Ezhil and Thiru Muthalazhagan respectively) other Advocates/Contemners, whose names have not been mentioned in the report of the Magistrate, but not opted for participation in an identification proceeding, though an opportunity was afforded to them. Hence, it is possible to draw an adverse inference against them and held that they were also present inside the chambers of the learned Magistrate, on the evening of 26-7-1995, and had virtually gheraoed the Magistrate, pressurising him to act in a particular way. Now that the learned counsel appearing for these contemners as well as the learned Advocate General. Thiru, S. Gopalaratnam, learned senior counsel representing the Madras Bar Association, Mr. Jayaraman, President Madras High Court Advocates' Association and Mrs. Prabha Sridevan, President, women Lawyers Association, have submitted with all humility that this was a case of misguided impulse. Wherein Advocates had acted in the heat of the moment, without realising the consequences, we are prepared to accept the unconditional apologies tendered by them. Before doing so, we have to hold that their acts one or other of them had not only obstructed the administration of justice, but had also tended to interfere with such process. We have to only recapitulate at this stage, the report of the XVIII Metropolitan Magistrate, forwarded on our directions. We deem it proper to extract the report in this order :-

'As per the orders of the High Court in the above matter, I submit the following report.

On 26-7-1995 at about 3.45 p.m. the accused Natarajan concerned in Cr. No. 1165/95, of E.1. Mylapore Police Station was produced by Police for remand. He gave statement and after recording that statement I remanded the accused to Judicial custody till 9-8-95. Immediately a bail application was filed on behalf of the accused, by a group of advocates. Since some of the offences were non-bailable. I

stated that the bail application will be posted for Notice to A.P.P. on the next day. But the Advocates represented that APP was available and concerned APP appeared in Court. When notice was given to APP in the bail application, he endorsed As I have to get instructions from Police, pray time till 27-7-95. At once I ordered. At request of APP call on 27-7-95' on the bail application since there was no other Court Work, I retired to my chamber at about 4.15 p.m. for attending to other administrative work, immediately, a group of about twenty advocates forcibly entered into my chamber in an excited manner. They surrounded my seat in my Chambers and pressed me to pass orders on bail application, in spite of my reply that unless APP gives his reply I cannot pass orders. the advocates were insisting that some orders like interim bail should be passed. As I was not inclined to pass any orders, without getting reply from A.P.P. I informed the advocates accordingly. But, the advocates were insisting to get the investigation officer to court and get the reply. Since the Joint Commissioner of Police was available at the Court Complex, he was called for and requested to send for the investigation Officer. But he replied that he was not aware of his movements. The Advocates were in excited manner. The atmosphere was tense. I am aware of the names of only few advocates who were inside my chamber. Some of those advocates threatened to commit suicide, if no order was passed on bail application. As the Advocates surrounded inside chambers, my movements were restricted. My repeated requests were ignored by the Advocates. They were insisting that the investigation Officer should come to Court and offer his remarks on bail application. In spite of waiting till 7.25 p.m. the investigation officer did not come to Court. Then orders on the petition requesting medical treatment for the accused in Judicial custody was passed by me. After that alone I left my chambers at about 7.30 p.m.

I submit that about twenty advocates were inside my chambers. I know names of only some advocates. I can identify some more advocates whose names I don't know personally. Those names of the advocates who were inside my chambers are :

(1) Mr. Balasubramanian (2) Ramaswamy (3) S. K. D. Babu (4) Ramakrishna Babu (5) Shanmuga Sundaram (6) Mrs. Neelambika. The advocates were in

highly emotional mood. Some of them represented that if no orders were passed on bail application on that day, there would be 'State wide agitation by the advocates

It is clear from the report that the learned Magistrate had ordered notice in the bail application and also remanded the accused concerned to judicial custody, after recording his statement. When the APP was made to appear before the Magistrate, he has again endorsed that he had to get instructions from the police and so time can be afforded till next day. Thereafter Learned Magistrate had to his chambers for attending to other administrative work. It was then that a group of about twenty Advocates forcibly entered into his chambers in an excited manner and surrounded him and pressurised him to pass orders on the bail application. They even went to the extent of pleading for passing of an interim order of bail. Least said the better it would be about the manner in which a group of Advocates had behaved inside the chambers of the learned Magistrate. In view of the appeal, in union made by counsel appearing for the Advocates/contemners as well as senior members of the Bar and Presidents of the Association of Advocates, we are inclined to accept the unconditional apologies tendered by Respondents 9, 10, 11, 14, 15, 16, 17, 18, 19, 20 and 22 and drop further action against them.

76. To the contention advanced by Thiru C. Rajagopalan, learned counsel appearing on behalf of certain contemners, that proviso to Sec. 10 of Contempt of Courts Act would necessitate termination of this proceeding, we can only answer that the argument is not only misconceived, but also cannot be upheld, on the basis of the law laid down by the Supreme Court in *State of Madhya Pradesh v. Revashanker*, : 1959 CriLJ251 . In that case, the Supreme Court stated, that whether there was an intention to offer insult to the Magistrate trying the case or not must depend on the facts and circumstances of each case and was not advisable to lay down any inflexible rule thereto. In that case, it was held that the offences under the Indian Penal Code were not attracted and contempt of court proceeding were maintainable. As has been consistently contended by almost all counsel, misguided, impulse had led to a battery of advocates, rushing into the chambers of the learned XVIII Metropolitan Magistrate and it will be prima facie, difficult to hold, that they had the mens rea to commit offences, punishable under

the Indian Penal Code.

77. Now, we will be concerned with the case against Respondent No. 12 (Thiru Balasubramaniam) and Respondent No. 13 (Mrs. Neelambika). We are unable to agree that Section 15(2) of the Act will stand attracted, to the instant case. Section 15 deals with cognizance or criminal contempt in other cases. In the case of a criminal contempt, other than a contempt referred to in Section 14 the Supreme Court or the High Court may take action on its own motion. The other categories are, on a motion made by the Advocates General, or any other persons, with the consent in writing of the Advocates General or in the case of any criminal contempt of a Subordinate Court, on reference made by that court to the High Court on motion made by the Advocate General specifically in that behalf. When reference is made by a Subordinate Court, naturally certain basic material would be necessary before this Court can initiate action. Though we asked Mr. K. Subramaniam, learned Senior Advocate repeatedly, as to what sort of action we should now initiate and how his clients were prejudiced on the suo motu contempt application initiated by us, he was not only not able to answer, but submitted that he was not prepared, to question, the right of this Court to initiate contempt proceedings suo motu as recognised by the Supreme Court in Board of Revenue U.P. v. Vinay Chandra. : 1981 CriLJ283 . In that case, Supreme Court stated that harmoniously construed S. 15(2) does not restrict the power of the High Court to take cognizance of and punish contempt of a Subordinate Court, on its own motion.

78. As a matter of fact, in one of its recent pronouncements in Delhi Judicial Service Association. Tis Hazari Court v. State of Gujarat, : 1991 CriLJ3086 the Supreme Court, has reiterated the principle that the High Court, as Court of record, has inherent power in respect of the contempt of subordinate or inferior Courts. It was held that in view of Art. 215 of the Constitution, no law made by a legislature could take away the jurisdiction conferred on the High Court nor it could convert it afresh by virtue of its own authority. The High Court, as a Court of record possesses inherent power and jurisdiction, which is a special one, not arising or derived from Contempt of Courts Act.

79. We do not deem it necessary to refer to the judgment of the Bombay High Court in Prabhakar Laxman Mokashi v. Sadanand, 1975 Cri 531, for Mr. K. Subramaniam himself submitted, that the observation of the said Court in paragraph 26, that contempt of Subordinate Court is cognizable by a High Court only in two ways as laid down by sub-section (2) of S. 15 and that the High Court cannot suo motu initiate action in regard to the contempt of a subordinate court, cannot be treated to be good law, in view of the consistent pronouncements made by the Supreme Court.

80. We are bound to answer the contention of Mr. K. Subramaniam, learned Senior Advocate, that the learned Magistrate has not mentioned the specific act of obstruction indulged in by these two contemnors. Learned XVIII Metropolitan Magistrate has specifically given out the names of six Advocates in the group, which had forcibly entered inside his chambers. It is not in dispute that the 13th respondent is the wife of the 12th respondent and the 12th respondent, though had not entered appearance, was appearing for Thiru Natarajan and so was his wife the 13th respondent. When about twenty Advocates forcibly enter into the room of the learned Magistrate and indulge in activities, as has been described by the Magistrate in his report, it would be unreasonable to expect the Magistrate to point out specifically the overt act of all these Advocates, who had barged into his chambers. The activities of these Advocates have been clearly portrayed by the learned Magistrate in his report. We cannot overlook that the name of only one woman lawyer has been mentioned by the learned Magistrate in his report and if that be so, it can certainly be taken, that this woman lawyer's activity, along with the group of other lawyers inside his chambers, was specifically noticed by the learned Magistrate and that was the reason why the learned Magistrate was in a position to mention about their names in his report. Even these two respondents do not allege any bias against the Magistrate. We have no hesitation whatever in accepting the report of the Magistrate. We cannot ignore that the 12th respondent, Thiru Balasubramaniam, has claimed that he is a member of the AIADMK party and a close associate of Thiru Natarajan, whom he had accompanied in the tempo van. His interest in Thiru Natarajan is so evident. Similarly, is the position of his wife. When Thiru K. Subramaniam, concluded his arguments he submitted, that in the event of this Court arriving at a conclusion, that his clients have

committed that contempt of Court, he was prepared to instruct them to file an affidavit of apology. We observed that all that was his lookout and not ours. On the next day, these two respondents had chosen to file identical affidavits, which read as hereunder :-

'I state that I have already filed a counter affidavit pursuant to the notice issued by this Hon'ble Court in the above contempt application. I state that I have the greatest respect and regard for the courts. I state, if for any reason, this Hon'ble Court comes to the conclusion that I have committed contempt, I hereby tender unconditional apology for the same. I pray that this Honourable Court may be pleased to accept this affidavit and discharge the notice issued to me.'

It appears rather unfortunate, that even after the conclusion of arguments, when the trend, of the court proceedings, was visibly against the contemner's a belated presumed unconditional apology has been sought to be offered by these two contemners. Merely because they have stated unconditional apology, it does not appear to be so, because it is conditioned by the words, 'If for any reasons, this Hon'ble Court comes to the conclusion

These words, with apology unconditional, if it had been offered initially, the matter might have been different. At a belated stage, when these affidavits were filed Mr. K. Subramaniam, learned Senior Counsel reiterated, that it would be wrong to observe that he had instructed his clients to file these affidavits, for he had advised them to do so. Be it instructions or advice by counsel, it makes no difference, we are not very sure, if these two contemners really want to repent for their action, voluntarily. They appear to have been, in the fore front, counsel for Thiru Natarajan, while entry was made inside the chambers of the Magistrate. We were under the impression, that good sense would prevail after the initial hearing on 25-7-1995, for the hearing continued on the whole of the next day also. We are unable to accept, the apologies tendered, by these two respondents as exhibiting total sincerity. As members of the Bar themselves, they must have known the seriousness of these proceedings, either on their own or on legal advise. They should have acted in a manner befitting the dignity of the profession. They have failed to do so.

81. On procedure we have to reiterate, the well settled legal principles, that the High Court can deal with contempts summarily and adopt its own procedure and all that is required, is that the procedure is fair and the contemner is made aware of the charge against him and is given a fair and reasonable opportunity to defend himself.

82. Another argument was put forth by Mr. K. Subramaniam, that we have to differentiate between contumacious, conduct, contempt and discourtesy. He has referred to the judgment of the Supreme Court in Hargovind Dayal Srivastava v. G. N. Verma, : 1977 CriLJ1003 Appeal Cases 327 (Joseph Orakwud Izuora v. The Queen).

83. In the earlier case, Supreme Court has stated as hereunder :

'The High Court confused 'Criminal Contempt' with 'Contumacious conduct'. The matter becomes clear when the High Court said. 'We do not propose to punish contemnors Nos. 1 & 2 for the contumacious conduct of which we have adjudged them guilty though we express our disapproval of that conduct and hope that the indiscretion will not be repeated.'

The facts are so different and distinguishable. It will be relevant to note that in the course of the judgment; Supreme Court has observed that there was no gainsaying that the members of the Bar did not act with dignity in regard to the resolution. It was the duty of lawyers to protect the dignity and decorum of the judiciary. If lawyers fail in their duty, the faith of the people in the judiciary will be undermined to a large extent. It is said that lawyers are the custodians of civilisation. Lawyers have to discharge their duty with dignity, decorum and discipline.

84. In Joseph Orakwue Tzuora's case (1953 AC 327), the cause was not common but it related to a certain individual. We are unable to hold, that in the instant case they had acted discourteously to the Court, and their conduct had not resulted in obstruction, to court proceedings. As far as these two contemnors are concerned, we are unable to accept their belated apologies. However, in view of the fervent plea made by all the Bar Associations and the learned Advocate General, that the

whole episode was the outcome of misguided impulse, we are not inclined either to sentence these two contemnners to imprisonment or even direct them to pay a fine. We admonish them and thereby put an end to this contempt proceedings, as far as these two contemnners are concerned.

85. Now a word about the President of the Saidapet Bar Association. Of course most of the contemnners have alleged bias against their President. However, we have taken note of the report of the Magistrate, as the basic foundation, which does not stand vitiated by any bias. Further, as we have already referred to some of the contemnners, who have not been mentioned by name by the learned Magistrate, have opted not to participate in the identification proceedings. So the question of personal animosity between the President of the Saidapet Bar Association and one or other of the contemnners, do not appear to loom large in this contempt proceedings. However, it is rather sad, that the President of the Bar Association, Saidapet, after having seen virtually the stifle inside the chambers of the Magistrate, had derelicted his duty in not having tried to act diligently to restore smoothness inside the chambers of the learned Magistrate. We say this much and nothing more on this incident.

86. We agree with Mr. S. Gopalarathnam, learned Senior Counsel, Mr. Advocate General and the Presidents of the various associations of Advocates, that Bar Council Rules and the Rules of Associations do contain provisions to take action for misconduct and there is also a provision under Section 35 of the Advocates Act. This misconduct under S. 35 of the Advocates Act is not only restricted to professional misconduct, put to other misconduct as well. We understand, that Rules have been framed by the Bar Council as well as other Associations, to deal with professional misconduct or other misconduct by the legal fraternity. May be, in theory we have the Rules but those Rules must be utilised when occasions demand. We are reminded of the Tamil saying. If in a particular case, stringent action will have to be taken, to preserve the dignity of the Bar, the Bar Council and the Association should not hesitate to initiate necessary action. In the event of proved misconduct, the consequence must be of such magnitude, that it will be an eye-opener to all the members of the Bar, that misconduct will not be tolerated and will be put down by the Bar Council, with an iron hand, for ultimately the nobility

and the dignity of the profession alone will have to ride high. Of course, as rightly contended, one's own wisdom and good sense as to how one should behave will have to be the foundation, but it will be the duty of all concerned to arrange for that foundation and then strengthen it. It may be that professional culture, must be imbued in the minds of the youngsters, even at the level of initial legal education and continued at the time of enrolment. We were told, that soon after an Advocate is enrolled, he is presented with the Rules of the Bar Council of Tamil Nadu, which contains very useful material on the code of conduct. It contains material with regard to duty to court, duty to client, duty to colleagues etc. We fondly hope, that these rules will not remain on paper alone, but will be put to practical use for, even tons of theory will not be equal to one ounce of practical use. For, practical experience revival of apprenticeship would be very relevant, for it will be akin to gurukule system. Apprentices not only learn nuances of law but get acclimatized to the ethical code of conduct; which will keep them in good stead, for discipline and comradeship is bound to develop in the process. It will be for the members of the Bar, to take up the cause of revival of apprenticeship for, there cannot be a second opinion that such apprenticeship is salutary .

87. We must express our anguish at the casual manner in which the learned counsel appearing on behalf of the Chairman of the Bar Council of Tamil Nadu, stated that the Bar Council is helpless. A body like the Bar Council, cannot consider itself to be helpless. We lament at such a statement. The Bar has eminent members, who will be in a position to rescue the Bar Council, from its helplessness to the stature, it really deserves.

88. We are inclined to extract the speech delivered by Hon'ble Mr. Justice Clarence Thomas, Supreme Court of United States of America, made on 16-5-1994 at Federal Society and Manhattan Institute, brought to our notice by Mr. S. Gopalarathnam. Learned Senior Council.

'An effective Criminal Justice system - one that holds people accountable for harmful conduct-sim-ply cannot be sustained under conditions where there are boundless excuses for violent behaviour and no moral authority for the state to punish. If people know that they are not going to hold accountable because of a

myriad of excuses, how will our society be able to influence behaviour and provide incentives to follow the law How can we leach future generations right from wrong if the idea of Criminal responsibility is riddled with exceptions and our governing institutions and courts lack the moral self-confidence A society that does not hold some one accountable for harmful behaviour can be viewed as condoning - or even worse - endorsing such conduct. Discipline, therefore, is the Sine-gua-non for the society and much more so for the enlightened bar.

89. In K. A. Mohammed Ali v. C. N. Prasannan, (1994 Supp (3) SCC 509) : (1994 AIR SCW 4679) : : 1994ECR209(SC) Supreme Court has stated as hereunder :-

'It should be borne in mind by one and all that lawyers were created for the courts, not courts for the lawyers.'

In that case, Supreme Court was not able to accept the apology tendered belatedly and chose to admonish the contemner under its plenary powers under the Constitution.

90. In U.P. Sales Tax Service Association v. Taxation Bar Association, Agra : 1995(5)SCALE142a Supreme Court stated as hereunder :-

'However, it would be imperative to remind ourselves that self-regulation alone would retrieve the profession from lost social respect and enable the members of the profession to keep the law, as useful instrument of social order'.

It is only in this context, that we have stated that not only self-regulation would retrieve the profession, but there should also be willingness on the part of the Bar Council and Associations of Advocates to enforce their rules of discipline.

91. Reference was made by P. Jayaraman, President, Madras High Court Advocates' Association, to 'The Discipline of Law' by Lord Denning, wherein we find that if a barrister is to be able to do his duty fearlessly and independently, he must not be subject to the threat of an action for negligence. This was referred to in the context of need for reorientation of legal education that would produce stalwarts in the Bar.

92. Administration of Justice is intended for the good of the public. There cannot be any dispute that the Magistracy will have to discharge its duties in open Court and should not resort to conduct proceedings in chambers. Already instructions have been issued by this Court to the Magistracy and other hierarchy of the subordinate judiciary, that all the subordinate judicial officers shall conduct proceedings only in open Court and even pronouncement of orders must be done in open Court. We hasten to add, as rightly pointed out by the learned Advocate General, that the members of the Bar cannot enter into the chambers of any member of the subordinate judiciary without permission. It will be open to the Government to consider about the revival of a committee to solve the problems between the Bar and the Law enforcing agency. May be, in this case it does not arise, but the services rendered by the earlier committee had diffused several situations. Hence the suggestion for revival of a similar committee may have to be given top priority.

93. We cannot overlook the rapid changes that have taken place in the way of living and pattern of behaviour of professionals and others and hence solutions will have to be formulated in the context of the present trend.

94. On legal Education, it will be relevant to quote the speech of Justice A. M. Ahmadi (as he then was). In his speech delivered at first late Shri Mahaveer Chand Bhandari Memorial Lecture, he observed :-

'One is reminded of the typical responds of U.S. Chief Justice Warren E. Burger when his senior Judge gently chided him to wait for a few years before saying what was wrong - 'No I am afraid that if I wait too long I'll get used to it' - and followed it up by remarking - 'My mother taught us that the time to fix the cracks in the plaster is when you first move into a house. Later on you don't pay attention to them'. I think we have waited long enough to repair the cracks in the legal education system of this Country and it is high time that we rise from our arm-chairs and start the repair work in right earnest.'

95. Series of lectures delivered to Apprentices-at-Law on Professional Conduct & Advocacy by Sri K. V. Krishnaswamy Aiyar, is at once inspiring and a clarion call will have to be made now, for emulation.

96. It is universally agreed, that at this stage the Bar - why the legal fraternity as a whole, needs refinement. It was always thought, in the past, that members of the Bar were pillars of the State and in fact they were such pillars. We are afraid, that at present, those expected pillars are tending to become mere caterpillars. The past glory and respect the profession enjoyed will have to be recaptured and we are sure that in the not far off future, the present bleakness would disappear and the radiance of the past will re-emerge.

97. We are very clear and let us transmit a certain message. We are totally conscious, that we have dealt with the contemners, rather lightly, but that has been the outcome after serious and thought provoking process and the positive response of ours, to the fervent, sincere and responsible plea, backed up with purposeful panorama of a possible good era ahead, made by learned senior counsel learned Advocate General and the Presidents of various Associations of Advocates. Let not any one walk out of this Court Hall with an impression, that whatever be the gravity of the offence, one could always escape lightly. The instant untoward incident, has been analysed by all concerned, and the answer in unison was that let this episode serve as a sure foundation or eye opener for fostering of a better tomorrow, with an assurance that recurrence, if any, though chances may be bleak, will have to be gravely taken note of and appropriate punishment meted out.

98. The net result is Respondents 21, 23 & 24 (Thiru Palani, Thiru Ezhil and Muthalazhagan) are totally exonerated. Unconditional apologies tendered, even during initiation, by all respondents, except Respondents 12 and 13 (Thiru Balasubramaniam and MRs. Neelambika) are accepted and further action against them is dropped. In respect of Respondents 12 and 13 the belated apologies tendered by them, do not appear to have the trappings of sincerity and repentance and hence, while finding them guilty of contempt of Court, they are discharged, after due admonition.

99. We place on record, the valuable assistance rendered by the learned Advocate General, Thiru R. Krishnamurthy, learned senior Counsel, Sri S. Gopalarathnam, and Sri N. T. Vanamamalai. Learned Public Prosecutor, Sri S.

Sriramulu and the Presidents of the various Associations of Advocates. We appreciate the solemnity with which most of the counsel representing the contemnors approached the issue involved, being fully conscious, that for the good of all, the Majesty of the process of Administration of Justice, shall have to remain unsullied.

100. Order accordingly.

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