In Re: R. Kaaruppan

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Court : Chennai

Decided On : Apr-17-2004

Reported in : 2004CriLJ4284

Judge : M. Karpagavinayagam, ;F.M. Ibrahim Kalifullah and ;S. Ashok Kumar, JJ.

Acts : Contempt of Courts Act, 1971 - Sections 2, 12, 14(1), 14(2) and 15; Constitution of India - Article 225; Indian Penal Code (IPC), 1860 - Sections 52

Appeal No. : Suo Motu Contempt Petn. No. 1134 of 2003

Appellant : In Re: R. Kaaruppan

Advocate for Pet/Ap. : N.R. Chandran, Adv. General, ;R. Gandhi, Sr. Counsel, President of the Bar Association, and ;Prabhakaran, President, Advocates Association

Judgement :

M. Karpagavinayagam, J.

1. The Great Poet Thiruvalluvar said in Thirukural:

(Vernacular matter omitted)

The meaning of this Kural is this:

'It would be folly not to fear of what is to be feared.

The truly wise will fear of what is to be feared.'

We are reminded of this Kural while dealing with this suo motu contempt petition.

2. Mr. Karuppan, former President of Madras High Court Advocates Association, who has put in more than 25 years of practice as an advocate, thinking that he is involving in heroic and courageous acts, has challenged the majesty of law, thereby landing himself in the trouble of facing the contempt proceedings before the Full Bench of this Court.

3. This has got a chequered history which is as follows :

'(a) Karuppan, an Advocate of this Court, as a party in-person, claiming himself as a best Rifle shooter, filed various writ petitions and the contempt petition against the Chennai Rifle Club and its office bearers as well as the Government seeking for the direction to the Government for vesting the Chennai Rifle Club with the State Government on the ground of various irregularities committed by one Sivanthi Adityan, the Secretary of the Chennai Rifle Club, and to permit him to have a training in the Coaching Camp and to participate in the National Rifle Association of India and for other directions.

(b) These petitions came up before the Division Bench comprising of M. Karpagavinayagam, J. and S. Ashok Kumar, J. During the pendency of those petitions, it was brought to the notice by the lawyer appearing for Sivanthi Adityan that Karuppan distributed pamphlets among lawyers in the High Court premises criticising the judicial functions of the First Bench presided by the Chief Justice and also the Second Bench presided by Justice V.S. Sirpurkar who decided earlier on the same issue. On being satisfied that there was a prima facie case, a suo motu contempt was initiated against Karuppan by the Bench and opportunity was given to him to file his explanation and make his submissions. After hearing all the matters, the said Division Bench while dismissing all the writ petitions, etc. filed by Karuppan, found him guilty Under Section 2(c) of the Contempt of Courts Act in the suo motu contempt petition and sentenced him to pay a fine of Re.1/- to be paid in one month, in default to undergo one day simple imprisonment. These orders were passed on 5-12-2003.

(c) Aggrieved over this, Mr. Karuppan, on 9-12-2003, filed the petition with an affidavit before the First Bench praying the Chief Justice to post the said matter again before the same Division Bench so that he would argue for recalling the earlier order dated 5-12-2003 on the ground that the said order was a biased one. The Hon'ble Chief Justice however posted the matter before another Division Bench comprised of P.D. Dinakaran, J. and F. M. Ibrahim Kalifullah, J. The matter came up before the said Division Bench on 15-12-2003. Next day, i.e. on 16-12-2003, the matter was heard by the said Bench. There, Mr. Karuppan argued that the earlier order dated 5-12-2003 passed by the Division Bench (MKVJ and SAJ) was to be recalled on the ground of bias, as MKVJ and Sivanthi Adithyan are family friends. The said application was dismissed by the said Bench (PDDJ and FMIKJ) on the same day i.e. 16-12-2003. However, an observation was made by the said Bench that their order would not prevent the Hon'ble Chief Justice to post it before the same Bench for further orders.

(d) Mtr. Karuppan presented another letter before the Chief Justice with the same request. The said letter as well as the order by the other Bench dated 16-12-2003 were placed before the Chief Justice on 17-12-2003. The Hon'ble Chief Justice in response to the said request, directed the Registry to post the matter before the same Division Bench (MKVJ and SAJ) for being mentioned.

(e) When the matter came up before the said Division Bench comprising of MKVJ and SAJ for being mentioned, Mr. Karuppan quoting various reasons for the said Division Bench to recuse itself as the Division Bench headed by Justice M. Karpagavinayagam is a close family friend of Sivanthi Adityan, asked the Bench to set aside its own order and refer to another Bench for fresh hearing.

(f) While hearing, he read over the various allegations against the Judge of the Division Bench contained in the affidavit dated 9-12-2003 and his letter dated 15-12-2003 placed before the Division Bench. The said Division Bench through an elaborate order dated 24-12-2003 rejected his request. While so, the said Division Bench, in the light of the scurrilous averments made against the Judges contained in the affidavit dated 9-12-2003 and the letter dated 15-12-2003, placed before the Bench, issued suo motu contempt notice against Mr. Karuppan. The Division

Bench also ordered notice to the Advocate General and to the Presidents of Bar Association and Advocates' Association to assist the Court. Since it was noticed that whenever Mr. Karuppan gets unfavourable orders from the Judges, he invariably used to criticise them, the Division Bench felt that the matter may be heard by an appropriate larger Bench in the light of the issue involved, the same was directed to be placed before the Hon'ble Chief Justice for passing appropriate orders. Accordingly, as suggested by the Division Bench, the Hon'ble Chief Justice constituted this Full Bench comprising of MKVJ, FMIKJ and SAJ to hear and dispose of the suo motu contempt matter. That was how the matter was posted before us.

(g) The matter came up for the first hearing before this Bench on 23-1-2004. Even at the threshold, the Full Bench advised Karuppan that it would not be proper for him to take a tirade against the Judges who do not pass orders in his favour and he must realise his mistakes and it would be better for him to file a suitable statement as this Bench was not really interested in taking serious contempt action against him as he is a former President of the Advocates' Association. Mr. R. Gandhi, President of Bar Association also requested this Court to give some more time to enable Karuppan to think over the situation and to realise his past mistakes and to file a suitable affidavit. He further stated that he would also advise Karuppan to behave properly in the Courts in future. Mr. Karuppan on that day agreed to think over the same and requested this Court to give some time so that he would decide the issue and file his appropriate statement. Accordingly, the matter was adjourned.

(h) When the matter came up again on 12-3-2004, Mr. Karuppan instead of realising his mistake and filing a suitable statement, raised an objection regarding the jurisdiction under Section 14(2) of the Contempt of Courts Act and requested to refer to some other Bench. When we declined his request, he wanted some time to file his detailed statement. Since he said that he would file comprehensive counter affidavit raising the point of jurisdiction as well as giving explanation to the show cause notice, this Bench granted further time and adjourned accordingly.

(i) The matter came up on the next adjourned date. Mr. Karuppan filed a detailed affidavit. While mentioning so many reasons in justification of his act, he insisted that this Full Bench shall refer the matter before some other Bench under Section 14(2) of the Act. At this point of time, this Court clarified as indicated by the Advocate General that this Full Bench was specially constituted by the Chief Justice and so Section 14(2) would not apply. He insisted for a wilt-ten order on this aspect. When he was questioned by this Bench as to his stand with reference to the show cause notice, he emphatically stated that he has not committed contempt; he is pleading not guilty and has no regret for his conduct. As requested by Mr. Karuppan, this Bench passed the written order rejecting his contention' in respect of Section 14(2) of the Act on the reason that Section 14(2) would not apply as this is the Full Bench specially constituted by the Hon'ble Chief Justice. In the said order, the plea of 'not guilty' also was recorded. He wanted further time to file his additional affidavit. Accordingly, further time was granted and the matter was adjourned.

(j) Then, the matter again came up on 26-3-2004. He filed another affidavit mainly raising the point of jurisdiction on the basis of Section 14(2) of the Act. Then, he was asked to argue on the basis of the two affidavits filed on two different dates, i.e. 19-3-2004 and 26-3-2004.

He argued at length.'

4. The gist of his arguments is as follows :

'(A) The Bench which issued show cause notice in the contempt petition cannot decide the matter and therefore, it is mandatory under Section 14(2) of the Contempt of Courts Act to place it before the Chief Justice for posting it before some other Bench.

(B) The order was pronounced on 5-12-2003. The same was issued only on 8-12-2003. Karuppan therefore felt that the judgment had suffered corrections. There was reasonable apprehension that certain remarks praising Sivanthi Adityan had been deleted in the course of correction. Though he was absent on that day, he heard about the happenings from the members of the Bar. He said in good faith.

Obviously his endeavour was only to say that justice was not seemingly done.

(C) Justice Karpagavinayagam had made some defamatory and untrue re narks about Karuppan's Presidentship of Advocates Association in the earlier order. The Division Bench while issuing show cause notice also issued notice to the Presidents of Advocates

Association and Bar Association. They have no say in the contempt petition in view of the decisions in Advocate General of Tamil Nadu v. Krishnaraju I. L. R. (1981) Mad 246 : 1981 Cri LJ 250 and Baradakanta v. G. Mishra : 1975 CriLJ1 .

(D) In yet another matter, revision against acquittal of murder case, Justice Karpagavinayagam while passing final order made an elaborate disparaging remark about advocacy of Mr. Karuppan. So, Mr. Karuppan has developed some grouse against the Judge. Further grouse against Karpagavinayagam, J's Bench is that it failed to consider his submissions and the G. O. produced by the Advocate General in the writ petitions. It did not consider his additional affidavit in support of his plea for recalling of the order.

(E) The Division Bench comprising Justice M. Karpagavinayagam and another had committed contempt of the Supreme Court's order dated 6-3-2003 by hearing the writ petitions, etc. in piecemeal on a weekly basis for months together and disposed belatedly i.e. on 5-12-2003 even though the Supreme Court directed the High Court to dispose of the same expeditiously.

(F) The earlier suo motu contempt proceedings were conducted in the Chamber in camera. This is not permissible under law. The contempt power is vested with the Chief Justice alone. Therefore, the Division Bench cannot initiate proceedings of the criminal contempt. So, the order of conviction for contempt is wrong.

(G) While hearing the main writ petitions, a G.O. Copy was produced by the Advocate General. That was not considered by the Division Bench. Further, when the application for recalling the order was filed and the same was argued, an additional affidavit of Karuppan also was placed before the Division Bench and the said additional affidavit was not considered by the said Division Bench.

(H) Ibrahim Kalifullah, J., one of the Judges of this Full Bench, earlier convicted Karuppan and imposed a fine of Rs. 2,000/-as costs while sitting with Justice V.S. Sirpurkar in the Division Bench. Further, Kalifullah, J. sitting in the Full Bench wanted to hurry up the matter and showed anxiety to dispose of the matter even without the counter-affidavit. This does not infuse confidence in Justice Ibrahim Kalifullah.

(I) A similar letter was placed before the other Bench comprising of PDDJ and FMIKJ. Some of the portions criticising Justice Karpagavinayagam and Justice Ashok Kumar were deleted in the course of the hearing as per the orders passed by the Division Bench on 16-12-2003. In that Bench, Ibrahim Kalifullah, J. was one of the Judges. That order was not served on Karuppan. Without service of that order, the matter came up before the Division Bench comprising MKVJ and SAJ. Now, MKVJ and SAJ issued notice for the letter and the affidavit, even though some portions have been expunged by the other Bench. So issuance of show cause notice for the expunged portions of contumacious averments is not legal.

(J) He has not committed any contempt. He is pleading not guilty and he has no regret for his conduct. If only the matter is posted before some other Bench, he could elaborately argue on the above points without any embarrassment.'

5. We have heard the Advocate General in regard to the point of jurisdiction. The gist of his submissions is as follows :

'Section 14(2) of the Act will not apply to the present case as the cognizance by this Court has been taken under Section 15 of the Act. Even assuming that Section 14(2) would apply, in this case, the Division Bench which issued contempt notice requested the Chief Justice to constitute the appropriate Bench and then, the Hon'ble Chief Justice has been pleased to post it before a Full Bench specially constituted and as such. this Full Bench has got every right to hear the matter and it is prerogative for the Chief Justice to post a particular matter before a particular Bench and the contemner or litigant has no right to claim that a particular Bench should not hear the matter. He would cite several authorities.

6. We have carefully considered the submissions made by Mr. Karuppan, the contemner as well as the Advocate General.

7. At the outset, it shall be recalled that when this matter came up for hearing on 23-1-2004, the Full Bench advised Mr. Karuppan that his conduct of going on criticising Judges and making allegations against each one of the Judges who does not pass orders in his favour, would not be a befitting one for an experienced lawyer and so, he must realise his mistake and then file a suitable statement before this Court so that this Full Bench will consider the same for dropping further action on this matter. On that day, Mr. Karuppan represented that he would think over the issue as advised by the Full Bench and take a decision and then file a suitable affidavit in the next hearing. Further, as stated above, Mr. R. Gandhi, the President of the Bar Association requested this Court to adjourn the matter so that he also would advise Mr. Karuppan to realise his mistake and make him file undertaking affidavit that he would behave properly in the Courts in future. On the basis of these statements made by Mr. Karuppan and Mr. R. Gandhi, the senior counsel, the Bar Association President, the matter was adjourned.

8. On this day, we were on the hope that Mr. Karuppan would file his statement after realising his mistake as per the advice of the Full Bench as well as the advice of Mr. R. Gandhi, Bar Association President. When the matter again came up on 12-3-2004, to our surprise, Mr. Karuppan without touching the said subject, raised a question of jurisdiction before this Court stating that under Section 14(2) of the Contempt of Courts Act, this Court has no jurisdiction to hear the matter and the same shall be tried by some other Bench. He would also request the Full Bench to seek for the view of the Advocate General on the same day.

9. The Advocate General, who was present on that day, on our request, clarified the position that Section 14(2) of the Act would not apply as it is concerned with the contempt committed in the presence of the Court and in pursuance of the same, the person to be detained in custody at any time before the rising of the Court, on the same day. According to the Advocate General, the cognizance in this case has been taken and notice has been issued under Section 15. Therefore, this Court has jurisdiction to hear the matter. In the light of this view by the

Advocate General, Mr. Karuppan requested this Bench to give some more time to file his statement giving explanation and raising the other legal issues. Accordingly, further time was granted upto 19-3-2004.

10. On 19-3-2004, Karuppan filed an elaborate affidavit giving his explanation as well as raising the question regarding jurisdiction under Section 14(2). On that day, Karuppan read out the said affidavit wholly. In the affidavit, he mentions various reasons as to why the order passed by the Division Bench rejecting the prayer by Mr. Karuppan to recall the earlier order and the contempt notice issued by the Division Bench as well as the constitution of the Full Bench comprising three Judges who have passed orders against Mr. Karuppan in different applications, are wrong. He also read out the averments in the affidavit to the effect that 'I said in good faith obviously my endeavour was only to say that justice was pot seemingly done in the case warranting of the recalling of the order and posting before some other Bench.' He also represented that so many errors committed by the members of this Full Bench could be argued only before the other Bench without any embarrassment. Finally, he insisted that a separate order must be passed with reference to the jurisdiction under Section 14(2) of the Act.

11. After hearing Karuppan on 19-3-2004, we have asked Mr. R. Gandhi, the President of Bar Association, about his promise given to this Bench earlier that he Would suitably advise Mr. Karuppan so that he could mend his ways in the future. Mr. Gandhi, the senior counsel feeling dejected over the failure in his attempt would state that he feels so much embarrassed since Mr. Karuppan would not be amenable for any advice as he thinks that he is very much senior to him and as such. Mr. Karuppan need not be advised by anybody else including him. Mr. Gandhi further stated that the contempt is between the contemner and the Court and as such, he is not in a position to give advice to Mr. Karuppan and the Court can take appropriate decision on the basis of the records available.

12. At that juncture, this Bench explained to Mr. Karuppan that in the last hearing itself, we made it clear that Section 14(2) will not apply since this is the Full Bench constituted by the Chief Justice specially for this purpose. However, Karuppan sought a separate written order on that aspect. When the Court put a specific

question with reference to show cause notice as to whether he committed any contempt, he categorically stated that he has not committed any contempt and is pleading not guilty and he has no regret for his conduct and he is prepared to file a separate affidavit to that effect. Since we did not want to hurry up the matter, we were inclined to give some more time to file his further affidavit. On that day, i.e. on 19-3-2004 as requested by Mr. Karuppan, we passed a written order recording all these things and adjourned the matter to 26-3-2004. The said order dated 19-3-2004 is as follows:

'Today, Mr. Karuppan has filed an affidavit quoting so many instances and asked this Bench to refer the matter to some other Bench by referring to Section 14(2) of the Contempt of Courts Act. We have made it clear in the last occasion itself that this is the Full Bench constituted by the Chief Justice and Section 14(2) will not apply. In fact, in the last hearing, we have directed Mr. Karuppan to file an affidavit giving explanation for the show cause notice. After finishing the reading of the affidavit filed by him today, Mr. Karuppan was asked about his explanation with regard to the show cause notice. He said that he has not committed any contempt and is pleading not guilty and he has no regret for his conduct and he is prepared to file an affidavit to that effect. So, in order to give further opportunity to enable him to file the said affidavit, we think it fit to adjourn the matter to next week. Post on 26-3-2004.'

13. Immediately after the pronouncement of this order adjourning the matter, Mr. Karuppan wanted the copy of the order to be issued immediately to him. This request made us feel that Karuppan may challenge this order before the Supreme Court in regard to our observation with regard to jurisdiction under Section 14(2) of the Contempt of Courts Act. We did not think it fit to curtail his right of getting copy of the order to challenge before the appropriate forum. So, we immediately directed the office to issue the order copy next working day. Accordingly, the order copy was issued. The matter was adjourned to 26-3-2004.

14. When the matter came up on 26-3-2004, Karuppan was present and he filed additional affidavit. This made us know that the earlier order dated 19-3-2004 passed by us with regard to the jurisdiction under Section 14(2) was not

challenged in the highest forum. Therefore, we have entertained the affidavit filed on 26-3-2004. In that affidavit, he again stressed the point of jurisdiction under Section 14(2) of the Act making a specific demand that it should be heard by some other Bench and this Bench shall pass a separate order with reference to the point of jurisdiction. Even though such a written order was passed on 19-3-2004 and copy of the same was directed to be issued immediately, we felt surprised to notice his attitude of demanding yet another separate written order.

15. The narration of facts above would clearly indicate his unrepentant and defiant attitude. The contemner was advised by this Full Bench to realise his mistake and to file his statement and time was given for the same as requested by him. He did not heed to the advice of the Full Bench as well as the advice of the Bar President. On adjourned date, he asked time for filing counter-affidavit. Accordingly, time was given. Again he sought time to file further affidavit. Accordingly, further time was given. On 19-3-2004, he asked for separate written interim order. Accordingly, passed. Again on 26-3-2004, he has demanded another written order. These things would show his anxiety to drag on the matter further without allowing the Full Bench to dispose of the contempt proceedings on some reason or the other.

16. As a matter of fact, as indicated above, this Court gave the said interim order on 19-3-2004 rejecting his prayer with reference to Section 14(2) of the Act. The matter was adjourned on that day to 26-3-2004 only to give opportunity to file an additional affidavit with reference to his further explanation on the show cause notice. Now again filing another affidavit asking this Full Bench not to pass a final order and to pass order only with reference to Section 14(2) of the Act would only reveal the improper conduct of the contemner.

17. In fact, he has already given out his explanation through his affidavit dated 19-3-2004 as well as his oral submissions made before the Court stating that he is pleading not guilty and has no regret for the act of the alleged contempt. As noted above, this also has been recorded on 19-3-2004 through a written order by this Court. Therefore, the contemner cannot again compel this Court to pass another interim order with reference to the jurisdiction. As such, we are constrained to hold that the contemner has been given sufficient opportunity to make his oral and

written submission with reference to the stand taken by him in this matter. On this basis, we are to deal with the issues raised by the contemner.

18. Before dealing with the said main issues, it would be better to go into the incidental objection raised by the contemner to the effect that the notice should not have been issued to the Advocate General as well as to the Presidents of the Advocates Association and the Bar Association. He would also cite two authorities, namely ILR (1981) Mad 246 : 1981 Cri LJ 250 and : 1975 CriLJ1 . As laid down by the Supreme Court in while dealing with similar objection, it is to be stated that there is neither any substance nor any purpose for raising such an objection. It appears to us to be a frivolous objection. When the Court appoints the Advocate General or the President of Advocates Association as Amicus Curiae, it is for the Court to get assistance from them. Power of the Court in making such appointment is plenary and cannot be objected to. Furthermore, the Advocate General has been asked to assist the Court in respect of the legal issues relating to jurisdiction. This Bench directed the Presidents of the Associations to assist the Court with the benign hope that they would try to solve the situation as the contemner happens to be an advocate practising for about 25 years who was former President of the Advocates Association. Without undertaking the bona fide purpose, this untenable objection has been raised by Mr. Karuppan. Furthermore, ILR (1981) Mad 246 : 1981 Cri LJ 250 and : 1975 CriLJ1 would not apply to the present case, since those decisions would deal with the situation where the third parties tried to compel the Courts as of right to implead themselves in the contempt petition to pray to punish a person for contempt of Court. That is not the fact situation here. In this case, this Court voluntarily issued notice to the Presidents of the Advocates Association and Bar Association in order to try for the settlement of issues. Neither the Advocate General nor the Presidents of the Association would venture to compel this Court to punish the contemner. On the other hand, Mr. R. Gandhi, the President of the Bar Association would fairly state that the contempt is between the contemner and the Court and as such, he is not in a position to give any advice to Mr. Karuppan. Therefore, this objection to be rejected outright as a frivolous one.

19. Now, we will come to the relevant issues. Though several contentions have been urged by Mr. Karuppan, the contemner, as contained in the affidavit dated 19-3-2004 and 26-3-2004, it can be stated that in a nutshell, they are two-fold. They are as follows :

(1) Under Section 14(2) of the Contempt of Courts Act, where a person charged with contempt should not be tried by the same Judge in whose presence the offences alleged to have been committed and the said Judge shall cause the matter to be placed before the Chief Justice for posting before some other Judge. In this case, the alleged offence of contempt has been committed before the Division Bench of MKVJ and SAJ. Therefore, this Full Bench consisting of MKVJ and SAJ should place the matter before the Chief Justice to refer to some other Bench. Further, during the course of enquiry in the contempt petition, Justice F.M. Ibrahim Kalifullah wanted to hurry up the matter by not giving adjournment to file a counter. Further, Karuppan has got grouse against Justice M. Karpagavinayagam Bench since his Bench earlier passed a wrong order against him by having failed to consider his submissions and refer to the authorities cited by him and by not referring to the additional affidavit filed by him in support of the recalling of the order. These things do not infuse confidence in the Judges. Further, Justice F.M. Ibrahim Kalifullah earlier convicted him and sentenced to pay costs of Rs. 2,000/- and therefore, he should not be a party to the Full Bench and he must recuse himself. Hence, the matter must be referred to some other Bench.

(2) The request for recalling of the order dated 5-12-2003 was posted before PDDJ and FMIKJ Bench. He argued the matter before the said Bench and the same was dismissed on the same day i.e. on 16-12-2003. Even thereafter, the Chief Justice posted the same matter before the other Division Bench of MKVJ and SAJ. This is violation of rule of law. Therefore, order passed by the Division Bench of MKVJ and SAJ rejecting to recall the order subsequent to the order by the PDDJ Bench on the same issue dated 16-12-2003 is a nullity. As such, the consequent suo motu contempt in the said order also would not be a valid one. Further, the order dismissing all his writ petitions was pronounced on 5-12-2003. The copy of the same was issued only on 8-12-2003. Therefore, he felt that the orders had suffered corrections and the said corrections cannot be done once the

orders are pronounced. There was reasonable apprehension that certain remarks praising Sivanthi Adityan had been deleted in the course of correction. He was absent at the time of pronouncement of the order and subsequently, he heard about the happenings from the members of the Bar. He made such an allegation about correction in good faith because his endeavour was only to say that justice was not seemingly done.

20. Let us now deal with these two points one by one.

21. The first point would relate to the jurisdiction under Section 14(2) of the Contempt of Courts Act and his grouse against the Judges.

22. Before going through Section 14(2), let us first refer Section 14(1):

'When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same, or as early as possible thereafter, shall--

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.'

The reading of Section 14(1) would deal with the ex-facie contempt committed in the presence of the Judge and if such an event is taken place, the Judge of the Supreme Court or the High Court may cause such person to be detained in custody before the rising of the Court on the same day.

23. Let us now refer to Section 14(2):

'Notwithstanding anything contained in Sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.'

Thus, Section 14(2) would indicate that the said section would be invoked only in cases where the contempt cases relating to Section 14(1) are dealt with.

24. It cannot be debated that the proceedings of criminal contempt has been initiated by the Division Bench suo motu taking cognizance under Section 15 of the Act. Hence, it is to be stated that Section 14(2) would not apply. Section 15 would relate to the cognizance taken by the Courts for criminal contempt in other cases other than under Section 14. As per Section 15, the Supreme Court or the High Court may take action on its own motion and initiate proceedings for criminal contempt for the cases other than under Section 14. Thus, it is clear that Section 14(1) would deal with ex-facie contempt committed in the presence of the Judge and such person is detained in custody before the rising of the Court.

25. It is referred to in the Extract of K.J. Aiyars Law of Contempt of Courts, Ninth Edition, page 582:

'Sections 14 and 15 -- Scope of the two sections are different and mutually exclusive to each other.-- Comparing the provisions of the two sections, it can be said that different proceedings have been prescribed for conduct amounting to contempt indulged in two broadly different circumstances. When the offending conduct has been indulged in the presence of the Supreme Court or the High Court, the Court will follow the procedure laid down in Section 14. In all other cases, the procedure prescribed by Section 15 of the Act is to be followed. The character of the procedure under Section 14 is summary and requires detention of the offender in custody immediately. The procedure under Section 15 of the Act is

not summary nor does it require the offender to be detained in custody immediately.'

26. Mr. Karuppan would cite : 1992 CriLJ610 with reference to Section 14(2) of the Act. That case is relating to the act of contemner litigant using insulting language to overawe Court in the Court hall or premises with a view to secure favourable order. The Supreme Court on hearing the insulting words of the litigant standing in the Court issued notice to the contemner who was present in the Court and took action on the same day after putting him in custody. In that context, the Supreme Court intimated the contemner about his right under Section 14(2) to be heard by some other Judge. Then, the litigant said that the very same Bench can dispose of the matter. In that context, a written reply was received. Thereafter, he was sent to jail. The above judgment would not apply to the present facts of the case.

27. Admittedly, this Court has not invoked Section 14(1), since the suo motu contempt action has been taken under Section 15, as contumacious allegations have been made against the Judges of this Court as contained in the affidavit filed before this Court.

28. Now, the objection raised by Mr. Karuppan, the contemner, before this Bench is that the Judges against whom he got grouse should not hear the matter and therefore, the matter must be posted before some other Bench in the light of Section 14(2).

29. When a similar objection was raised before the Supreme Court in Arundhati Roy, in re: : 2002 CriLJ1792 , the Supreme Court rejected the objection and would make the following observations:

'It has been urged on behalf of the respondent that the Hon'ble Judges who issued notice in Criminal Contempt Petition No. 2 of 2001 should not be a party to the present proceedings and the case be transferred to some other Bench, allegedly on the ground that the respondent-contemner had reasonable apprehension of bias on the part of the said Judges to whom she claims to have allegedly attributed motives.....It has to be kept in mind that the present proceedings are distinguishable from the proceedings contemplated under Section 14 of the

Contempt of Courts Act.

In the instant case cognizance of the criminal contempt against the respondent has been taken by the Court, suo motu under Section 15 of the Act. Whereas Sub-section (2) of Section 14 permits a person charged with the contempt to have charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed and the Court is of opinion that it is practicable to do so. No such provision is made under Section 14 of the Act obviously for the reason that when action is at the instance of the Court, there is no question of any motive of and prejudice from any Judge. Accepting the plea raised by the respondent would amount to depriving all the Judges of the Court to hear the matter and then frustrate the contempt proceedings, which cannot be the mandate of law. The: apprehension caused by the respondent is imaginary, without basis and not bona fide. The oral prayer made for one of us not to be member of the Bench, hearing the matter is rejected.'

The above observation of the Supreme Court would apply in all fours to the present facts of this case.

30. Further, it is quite strange to see that an argument was advanced before the other Division Bench (PDDJ and FMIKJ) that the question of bias has to be argued only before the Division Bench of MKVJ and SAJ. Now, an argument has been advanced before the Full Bench that the question of bias shall be argued before some other Bench where the members of the said Division Bench are not constituents. The reason for raising such an issue is that the Judges who issued show cause notice should not hear, since the contemner would feel embarrassed to argue before the same Judges contenting that the issuance of show cause notice by them is wrong.

31. In this context, it would be worthwhile to recall a similar argument that was advanced before the Supreme Court, while the Supreme Court took suo motu contempt proceedings against S.K. Sundaram for having published contumacious information with regard to the date of birth of former Chief Justice Dr. A.S. Anand. However, the point is slightly different. When the suo motu contempt proceedings were posted before K.T. Thomas and R.P. Sethi, JJ., it was argued by Mr.

Karuppan as a counsel that the said Bench is not competent to issue notice and hear the matter and Justice A.S. Anand as Chief Justice alone can issue notice and hear him. While rejecting the said contention, the Hon'ble Supreme Court comprising Justice K.T. Thomas and Justice R.P. Sethi, as reported in (In Re: S.K. Sundaram), would quote the following words of the Constitution Bench of the Supreme Court made in Supreme Court Bar Association v. Union of India, : [1998]2SCR795 :

'The Contempt of Court jurisdiction is not exercised to protect the dignity of an individual Judge, but to protect the administration of justice from being maligned.'

32. Now, the present point urged by Mr. Karuppan before this Full Bench is Division Bench Judges who issued contempt notice are the constituents of this Full Bench and so, this Bench should not hear and some other Bench must hear. The above observation of the Supreme Court is the answer to the question raised by Mr. Karuppan.

33. It is contended that the action for Contempt of Court can be taken only by the Chief Justice and not by other Judges and as such, the Chief Justice should not have posted the contempt petition before the Full Bench.

34. This proposition is preposterous. The Chief Justice is the master of the roster. He has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in Sub-section (3) of Section 15 of the Act, but inheres in him in the very nature of things.

35. The Hon'ble Chief Justice has the inherent power to allocate the judicial business of the High Court including who of the Judges should sit alone and who should constitute the Bench of two or more Judges. No litigant shall, upon such constitution of a Bench or allotment of a case to a particular Judge of the Court will have a right to question the jurisdiction of the Judges or the Judge hearing the case. No person can claim as a matter of right that this petition be heard by a single Judge or a Division Bench or a particular single Judge or a particular Division Bench.

36. The business of the Court will be determined by the Hon'ble the Chief Justice alone, who in his discretion may decide what Judge is to sit alone and what Judges are to constitute different benches and allotted business of the Court. This Letters Patent aforequoted recognises this power of the Hon'ble the Chief Justice of the Court.

37. These principles have been laid down in Mayavaram Financial Corporation Ltd., Mayiladuthurai v. The Registrar of Chits, Pondicherry, 1991 Mad LW 80; Ranka M. v. Honourable Chief Justice of Tamil Nadu, 1991 (2) MLW 98 and Ranka M. v. The Hon'ble Chief Justice of Tamil Nadu, 1994 (2) MLW 135.

38. On considering the arguments advanced by Mr. Karuppan on this aspect in the light of the above principles, one thing is obvious. Mr. Karuppan, the contemner is trying to put some hurdle or the other in disposing of the contempt proceedings. As indicated above, this Full Bench has been constituted under the orders of the Hon'ble Chief Justice. Once the work is entrusted to the Full Bench, this Court cannot shirk its responsibility in deciding the matter. Therefore, all the contentions urged by Mr. Karuppan for posting the matter before some other Bench have to fall, as they are untenable.

39. Let us now go into the second point with reference to the legality of the issuance of show cause notice, question of contempt and the explanation offered.

40. It is contended that already the order rejecting the request for recalling of the order has been passed by PDDJ Bench on 16-12-2003 and as such, posting of the very same before the Division Bench comprising MKVJ and SAJ by the Chief Justice and its consequent hearing and deciding the matter afresh also have become illegal. Therefore, the Division Bench has no authority to issue show cause notice and even assuming that the show cause notice is legal, the averments have been made in the affidavit and the letter are only in good faith.

41. At the outset, it shall be stated that the contentions that the Chief Justice has no authority to post before the Division Bench of MKVJ and SAJ subsequent to the orders passed by the Bench of PDDJ and FMIKJ is quite monstrous.

42. It is to be noted that the final order passed by the Division Bench of MKVJ and SAJ was in the writ petitions and in the suo motu contempt petition on 5-12-2003. On 9-12-2003, Karuppan filed an affidavit before the First Bench requesting the First Bench to post it before the same Division Bench with a request for recalling of the order on the ground of bias. He has also presented a letter. However, the Chief Justice directed the Registry to post it before the other Division Bench of PDDJ and FMIKJ and the same was argued by Karuppan, the contemner at length on 16-12-2003. On the same day, PDDJ Bench rejected his prayer and dismissed the same. However, the Bench indicated that their order would not prevent the Hon'ble Chief Justice to post it before the same Division Bench for further orders. At that time, Mr. Karuppan presented another letter to the Chief Justice with the same request insisting that he could argue only before the same Division Bench which alone has got the competency to recall the order. The said letter as well as the order of the PDDJ Bench was placed before the Chief Justice administratively on 17-12-2003. In view of the insistence of Mr. Karuppan, the contemner, the Hon'ble Chief Justice in order to give further opportunity to the contemner, directed the Registry to post the matter before the same Bench of MKVJ and SAJ. The said Division Bench as directed by the Chief Justice took up the matter for being mentioned and heard Karuppan at length. He also read out the entire portion of the affidavit dated 9-12-2003 and the letter dated 15-12-2003 and demanded for recalling of the order since the Bench presided by MKVJ was biased towards Sivanthi Adityan and refer to send it to some other Bench to rehear the matter. The said request was rejected by the said Division Bench which in turn gave an elaborate order. Even according to the contemner, the said Division Bench (MKVJ and SAJ) alone is competent to deal with the matter relating to the recalling of the order passed by it. Therefore, the order passed by PDDJ and FMIKJ on 16-12-2003 would not make the order of the Chief Justice administratively to post it before the same Division Bench requested by the contemner and the consequent orders by the said Division Bench on 24-12-2003 cannot at all be said to be invalid. Furthermore, it is the Bench of PDDJ and FMIKJ which indicated that the further posting can be done before the same Division Bench by passing administrative order by the Hon'ble Chief Justice. Therefore, there is no point in saying that issuance of show cause notice by the Division Bench is not without any

authority.

43. Let us now deal with the question of contempt and the explanation offered.

44. The show cause notice issued by the Division Bench on the basis of the contumacious allegations made by the contemner in various statements through the affidavit dated 9-12-2003 and the letter dated 15-12-2003. Those allegations made against the Division Bench as quoted in its order dated 24-12-2003 in gist are as follows :

'(i) Both Justice M. Karpagavinayagam and Justice S. Ashok Kumar never sat in the writ portfolio earlier and as such, posting of the writ petitions before the said Judges is wrong.

(ii) The Bench went on to hear piecemeal once in a week and has followed novel procedure in the course of hearing which is not known hitherto. There is no justification to invite Advocate General to address the Court on maintainability.

(iii) The Presiding Judge participated in the function arranged by Sivanthi Adityan and paid encomium to Sivanthi Adityan and his son in the year 1999. Thus, there had been a long-standing relationship between the Presiding Judge and Sivanthi Adityan. In the function, he praised Sivanthi Adityan and his son. In that situation, the Presiding Judge should have recused himself when the matter was posted before his Bench. As such, failure to do so would result in the disqualification on the part of the Presiding Judge to hear the case.

(iv) The judgment was read over by the Presiding Judge in the open Court. In that, a portion praising Sivanthi Adityan and his great qualities was also read out. But, on the same date, the Presiding Judge took the judgment to his residence and corrected the same and after correction, the portion praising Sivanthi Adityan is not to be found. Therefore, the alteration of the judgment after pronouncement by the Presiding Judge is unjustified.'

45. On considering the said four allegations, the Division Bench concluded that those statements are contumacious throwing mud on the Division Bench, particularly on the presiding Judge of the Division Bench. The Division Bench

would meet each and every allegation in the show cause notice itself. According to the Division Bench, the allegation that both the presiding Judge and the companion Judge never sat in the portfolio of writ petitions is not factually correct. The presiding Judge was elevated to the Bench in 1996. He was sitting as single Judge in disposal of writ petitions final disposal for various periods. He was also sitting along with senior Judge in the disposal of writ appeals for some period. The companion Judge also though has been recently elevated, had been entrusted with the work of writ petitions and the same was done by him.

46. It is contended by the contemner that this allegation has been withdrawn before the other Bench (PDDJ and FMIKJ). But, this submission may not be a valid one since both the letter dated 15-12-2003 and the affidavit dated 9-12-2003 containing these allegations were read over before this Court. Therefore, withdrawal of the allegation before the other Bench cannot give a liberty to the contemner to say that this Court cannot take into consideration that portion, especially when those portions in the affidavit and the letter were read out by Mr. Karuppan before the Division Bench.

47. In regard to the second allegation, it is observed by the Division Bench that the Division Bench has every right to invite Advocate General to submit on maintainability of the issue. The matter was heard once a week for some days since both the Judges of the Division Bench were singly sitting in the other Courts. So, it cannot be stated that it was a novel procedure.

48. With regard to the third allegation, the Division Bench also has explained as to how the presiding Judge was participating in the function where Justice M.M. Ismail, former Chief Justice of the Madras High Court was felicitated. That was in the year 1999. The writ petition was disposed of on 5-12-2003. According to the presiding Judge of the Division Bench, he never maintained relationship with Sivanthi Adityan either before the function or after the function. He has no relationship with the family of Sivanthi Adityan.

49. Regarding the last allegation that the presiding Judge of the Division Bench read out the portion praising Sivanthi Adityan and his son and the same has been corrected after pronouncement of the judgment. The Division Bench also would

state that such an allegation is totally false.

50. It would be better to quote the exact observations made by the Division Bench in the show cause notice, meeting each and every allegation :

'The first allegation is that both the Presiding Judge and the companion Judge never sat in the portfolio of writ petitions. This is factually wrong. The Presiding Judge was elevated to the Bench in 1996. He was sitting as single Judge in disposal of writ petitions final disposal for various periods. He was also sitting along with senior Judge in the disposal of writ appeals for some period. The companion Judge also though has been recently elevated, had been entrusted with the work of writ petitions and the same was done by him. This allegation against the Presiding Judge as well as against the companion Judge with reference to their competence to deal with the writ petitions is highly unwarranted. Further, the petitioner who has got a standing for about 25 years should not have resorted to criticise the Hon'ble Chief Justice over his act of allocation of portfolios to the Judges concerned as it is his prerogative right to vest the portfolio with the particular Judge.

The second allegation is that this Bench adopted a novel procedure. It is quite unfortunate on the part of the petitioner to make such an allegation since this Court was compassionate towards the parties, especially to Mr. Karuppan, as this Court felt that he was fighting for the cause for long number of years. That was the reason as to why, though Roster has been changed, the matter was posted for several weeks unmindful of the inconvenience caused to the Judges of this Bench who were at that time sitting in single Judge portfolios. When this Court decided to take suo motu proceedings against the petitioner, we felt that it could be better to have in chamber and to conduct enquiry as in-camera proceeding in order to avoid embarrassment likely to be felt by Mr. Karuppan who is an Advocate. Without understanding the gracious gesture shown by this Bench, Mr. Karuppan has resorted to state in the form of affidavit that this Court adopted a novel procedure which has not been seen so far. This statement is nothing but mischievous. As a matter of fact, as indicated above, the arguments were commenced on 5-8-2003 and heard on several dates and most of the matters were heard in open Court

making the other advocates wait. Lastly, for some hearings, the matter went on as in-camera proceeding in the Chamber to deal with the suo motu proceeding taken against Mr. Karuppan. As mentioned in the main order, we have sufficiently indicated to Mr. Karuppan in the Chamber that he should not have resorted to distribution of pamphlets criticising the Judges of this Court and for that, he must realise his mistake and to file a suitable affidavit to enable this Court to drop the proceedings against him. Mr. Karuppan did not incline to understand this clue given by this Bench. However, he filed a counter-affidavit justifying the act of distribution of pamphlets making scurrilous allegations against the Judges of this Court. In spite of the opportunities given by this Court to Mr. Karuppan to realise his mistake, he has gone to the extent of saying that it is a novel procedure adopted by this Bench without understanding the noble gesture shown by this Bench towards Mr. Karuppan. As such, the statements made by Mr. Karuppan would amount to criticising the functioning of the Judges of this Court which is quite unwarranted. Further, the Advocate General was appointed as Amicus Curiae to assist this Bench in order to ascertain the question of maintainability in the light of the objection raised by the respondent's counsel over the maintainability. The Advocate General cited number of decisions only in favour of the petitioner. Therefore, there is nothing wrong in the appointment of Amicus Curiae.

Thirdly, it is said that the judgment of this Bench was hit by the doctrine of bias as the Presiding Judge of this Court had participated in the function arranged by the Daily Thanthi and the Presiding Judge praised Sivanthi Adityan and his son who were sitting on the dais. Firstly, it is to be stated that this is a literary function arranged by C.P. Adhithanar Trust on behalf of the Daily Thanthi. The purpose of the function was to distribute awards to Justice M.M. Ismail, former Chief Justice of the Madras High Court and to one Kavingnar Vairamuthu who is considered to be a great poet of Tamil Nadu. It is stated that the Presiding Judge has praised Sivanthi Adityan and his son in his speech. This is factually incorrect. The Presiding Judge has never made a speech in that meeting praising Sivanthi Adityan or his son. On the other hand, he gave encomiums only to former Chief Justice M.M. Ismail and Pon. Vairamuthu, who were conferred with the award on that occasion. He also exhorted the literary personalities to motivate the people to

take a vow to eradicate corruption at all levels in the light of the Gandhian concept. Therefore, to contend that the Presiding Judge was biased and he was invited for the function since he was friend to Sivanthi Adityan's family, is without basis. It is quite unfortunate to contend that the Presiding Judge praised Sivanthi Adityar and his son in his speech when the speech published in the Daily Thanthi would show that speech was made praising only former Chief Justice and the poet Vairamuthu and no praising reference has been made about Sivanthi Adityan or his son. Further, it is to be stated that the Daily Thanthi used to invite every year the Judges of this Court and request them to give award to the literary personalities. In that way, the Presiding Judge of this Court also participated in that function in which he was given opportunity to give the award to the former Chief Justice of Madras High Court. The Presiding Judge would assert that he never maintained relationship with Sivanthi Adityan either before the said function or after the function which was held in the year 1999.

The last allegation is that the Presiding Judge has read out the portion in the open Court while pronouncing the judgment praising Sivanthi Adityan and his son and the same has been corrected and ultimately, that portion is not found in the judgment. This is atrocious untruth. This Court never made any observation praising Sivanthi Adityan and his son and that was not the issue raised in the matter. This Court dealt with the question with reference to maintainability. This Court never gave a finding with reference to the alleged mis-deeds committed by Sivanthi Adityan and others. This Court only said that no materials have been placed by Mr. Karuppan to prove his allegation against the respondent.

As such, there is no necessity for this Court to praise Sivanthi Adityan and his son. The allegation regarding the alleged alteration is nothing but mud-slinging.

It is to be pointed out that on 5-12-2003, the Presiding Judge of this Court pronounced the judgment by reading the entire portion of the judgment and the same took about 45 minutes. On that day, Mr. Karuppan was not present. But, his junior was present. As requested by his junior, on that day, Mr. Karuppan's presence was dispensed with. In such a situation, there is no reason as to why Mr. Karuppan had to say that the judgment was taken to the residence of the

Presiding Judge and alteration was made removing the portion praising Sivanthi Adityan and his son. This, in our view, shows that Mr. Karuppan wanted to make out something or the other to attribute motive and to throw mud on the Bench.'

51. On the basis of these reasonings, the Division Bench was constrained to issue show cause notice. By way of reply, as indicated above, the contemner has filed two affidavits dated 19-3-2003 and 26-3-2003. In these affidavits, he again made several allegations against the Judges of the Full Bench, particularly Justice M. Karpagavinayagam and Justice F.M. Ibrahim Kalifullah.

52. As indicated above, though he stressed the point of jurisdiction and invited an interim order on the jurisdiction, it is to be pointed out that on 19-3-2003, he submitted that he has not committed any contempt and is pleading not guilty and has no regret for his conduct. This has been clearly recorded by the Court in the order dated 19-3-2004.

53. Even in the affidavits dated 19-3-2004 and 26-3-2004, he has not expressed regret or apology before this Court. On the other hand, the oral submission and the contents of the affidavit dated 19-3-2004 would show that he wanted to justify his acts. Further, he pleaded good faith in making some of the allegations.

54. Let us now look into his plea in his own words as contained in para 13 of the affidavit filed by him dated 19-3-2004 :

'I submit that the orders dismissing all my cases were pronounced on 5-12-2003 but was issued on 8-12-2003. I therefore, felt that the judgment had suffered corrections and that the same cannot be done once the orders are pronounced and issue of the order copy cannot be delayed. There was reasonable apprehension that certain remarks praising Sivanthi Adityan had been deleted in the course of correction. My absence at the time of hearing does not preclude my hearing about the happenings from the members of the Bar. I said in good faith obviously my endeavour was only to say that Justice was not seemingly done in the case warranting of the recalling of the order and posting before some other Bench.'

55. The expression 'good faith' in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. Good faith is defined in Section 52 of I.P.C. thus :

'Nothing is said to be done or believed in 'good faith' which is done or believed without the due care and attention.'

56. Therefore, the meaning of the expression 'good faith' is what is done with 'due care and attention'. Due care denotes the degree of reasonableness in the care sought to be exercised. So, before a person proposes to make an imputation, he must first make an enquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make-believe show for an enquiry. The enquiry expected of him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real truth of the imputation. If he does not do so he cannot claim that what he did was bona fide i.e. done in good faith. Thus, a contemner, if he is to establish 'good faith' has to say that he conducted a reasonable and proper enquiry before making an imputation. This is the meaning and interpretation given for the expression 'good faith' by the Apex Court in AIR 2001 SC 2374.

57. In his affidavit, Mr. Karuppan did not mention that he took care to enquire about what happened in the Court when the final order was pronounced and he has not given clear details in the affidavit whether he has made such an enquiry and from whom, he got the information, and whether such information is authentic or not. So, the plea of good faith is to be rejected as the same smacks of utter lack of bona fides.

58. Under those circumstances, this Court has no other alternative except to conclude that the contemner has not offered acceptable explanation with reference to the charge made in the show cause notice.

59. While noting that it is highly painful to convict Mr. Karuppan, who is a lawyer for about 25 years practising in this Court, for contempt, as it pleases none, this Full Bench is conscious of the fact that this is a special Full Bench which has been

constituted by the Hon'ble Chief Justice for this purpose. As a matter of fact, on some occasions on the hearing dates, we expressed our reluctance to convict him and to impose consequent punishment. Without understanding our reluctance in the right spirit, Mr. Karuppan had emboldened to say that this Bench need not treat him differently merely because he is an advocate and this Court in the event of coming to conclusion that he committed contempt could straightway send him to jail. The statement made by him in the open Court challenging this Bench to send him to jail would disclose his unrepentant attitude in the matter. He has no regrets for his utterances. When that being the attitude, it becomes the duty of this Bench to start the cause of taking action for contempt mainly for preserving its dignity.

60. No one including an advocate who himself is an officer of the Court can claim immunity from the operation of the law of contempt, if his conduct in relation to the Court interferes with or is calculated to obstruct the due course of justice.

61. Whoever the person may be, however high he may be, no one is above the law notwithstanding how powerful and how rich he may be. For achieving the establishment of the rule of law, the Constitution has assigned the special task to the judiciary in the country. It is only through the Courts that the rule of law unfolds its contents and establishes its concept. For the judiciary to perform its duties and functions effectively and true to the spirit with which it is sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs.

62. Scandalising the Court would mean hostile criticism of Judges or judiciary. Any personal attack upon a Judge in connection with the office he holds is dealt with under law of libel slander. Yet defamatory publication concerning the Judge as a Judge brings the Court or Judges into contempt serious impediment to justice and an inroad on the majesty of justice. Any caricature of a Judge calculated to lower the dignity of the Court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore be scandalising the Judge as a Judge. In other words, imputing partiality, bias, improper motives to a Judge is scandalisatlon of the Court and would be contempt of the Court. Even imputation of lack of impartiality or fairness to a Judge in the discharge of his official duties amounts to contempt. The gravamen of the

offence is that of lowering his dignity or authority or an affront to majesty of justice.

63. When the contemner challenges the authority of the Court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or generation or production of tendency bringing the Judge or judiciary into contempt.

64. The strains of litigation cannot be allowed to lead litigations to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. It is not that Judges need be protected; Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected.

65. As observed by the Supreme Court, the tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase. It is high time it is nipped in the bud. When a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned Judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned Judge but the entire institution. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislative but also from those who are an integral part of the system.

66. The stand taken by the contemner is that he was performing his duty as an outspoken and fearless member of the Bar. He seems to be labouring under a grave misunderstanding. Braveness is not outspokenness. Arrogance is not fearlessness.

67. Humility and courtesy are the basic qualities of a lawyer. Humility is not servility and courtesy is not lack of dignity. Self-restraint and respectful attitude towards the Court are the requisites of good advocacy. A lawyer has to be gentleman first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the Court. These are all the golden words observed by the Supreme Court in In Re : Vinay Chandra Mishra, .

68. Justice Ahmadi in M.B. Singh v. High Court of Punjab and Haryana, : 1991 CriLJ2648a observed thus :

'When a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned Judge but also to the fair name of the judiciary..... ..... . It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislative but also from those who are an integral part of the system.'

69. Justice Krishna Iyer in Re : S. Mulgaokar, AIR 1978 SC 727 stated thus :

'If the Court considers the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.'

70. Patanjali Sastri, the Chief Justice of the Supreme Court, heading the Constitution Bench, in Brahma Prakash Sharma v. State of U.P., : 1954 CriLJ238 would observe as follows :

'If the publication of disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such Court, it can be punished summarily as contempt. One is a wrong done to the judge personally while the other is a wrong done to the public. It would be an injury to the public if it tends to create an apprehension in the mind of the public regarding the integrity, ability or

fairness of the Judge or to deter actual and prospective litigant from placing complete reliance upon the Court's administration of Justice.'

71. From the above judicial pronouncement of the Apex Court, it is manifestly clear that the strong arm of the law, in the name of public interest and public justice, has to necessarily strike a blow on the contemner, in order to preserve dignity of the Court and no one including an advocate can claim immunity from the operation of the law of contempt, if his act or conduct is calculated to obstruct the due course of justice.

72. As discussed in the above paragraphs, we conclude that the contemner has, made scurrilous, offensive allegations against the Judges of this Court. Therefore, we find the contemner guilty of the criminal contempt of Court under Section 2(c) and convict him of the said offence.

73. While awarding punishment, this Court has to necessarily keep in view the gravity of the act of contempt, committed by the contemner. Further, the past conduct also has to be taken into account while imposing punishment.

74. As mentioned in the earlier order, Mr. Karuppan while arguing the matter before the Second Bench presided by V.S. Sirpurkar, he criticized the order of the Supreme Court and the Second Bench and instead of taking contempt action, the Second Bench imposed costs of Rs. 2,000/-. The said order was challenged before the Supreme Court and the same was dismissed. When he sought for deletion of costs of Rs. 2,000/-, the Supreme Court directed him to approach the same Bench for modification of the same. However, the contemner has not chosen either to approach the said Bench for modification or to pay the amount.

75. In the last suo motu contempt initiated by the Division Bench, we did not incline to impose severe punishment. In that case, Mr. Karuppan was found guilty under Section 2(c) of the Contempt of Courts Act and sentenced to pay a fine of Re. 1/- to be paid in one month. This order was passed on 5-12-2003. Four months have elapsed. It is noticed that that one rupee has not been paid till date.

76. It is also relevant to note that several contempt proceedings have been initiated against Mr. Karuppan on various occasions by several Benches of this Court and the same are pending disposal. On verification with the Registry, Justice S. Subramani (as he then was) initiated contempt proceedings in Suo Motu Contempt Petition No. 33 of 1998 on 6-1-1998 and a Full Bench was constituted to be presided by N. Dhinakar, J. on 3-8-2001 and the same is pending. In another Suo Motu Contempt No. 301 of 2001, the second Bench presided by K. Narayana Kurup, J. (as he then was) initiated contempt proceedings on 15-6-2001. Similarly, another suo motu contempt was initiated in No. 310 of 2001 and both the matters have been posted before the Full Bench presided by V.S. Sirpurkar, J. and they are still pending. Thus, it is clear that it has become a routine practice to misbehave before the Court with the false prestige that nobody could touch him. This is unfortunate situation. In such circumstances, we are to impose a sentence directing him to undergo simple imprisonment for a period of three months and with a fine of Rs. 1,000/-, in default to undergo simple imprisonment for three months.

77. Before parting with this case, this Bench would constrain to exercise one more duty. The Supreme Court while dealing with a similar situation, as reported in : [1998]2SCR795 (Constitution Bench) would stress the necessity for not only convicting the lawyer for contempt of Court but also to refer the misconduct of the advocate to the Bar Council to take appropriate action.

78. The following are the guidelines and observations given to the High Courts and the Bar Council of India and Bar Councils of States :

(1) An Advocate, who is found guilty of contempt of Court, may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India, to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case.

(2) We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the

occasion, and take appropriate action against such an advocate. Therefore, the Bar Council must, whenever facts warrant, rise to the occasion and discharge its duties, uninfluenced by the position of the contemner advocate.

(3) The High Courts also have to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the Courts and the majesty of law and prevent any interference in the administration of justice.

(4) Whenever a Court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of Court and desires or refers the matter to be considered by the Bar Council concerned in accordance with law with a view to maintain the dignity of the Courts and to uphold the majesty of law and professional standards and etiquette.

79. In the light of the above mandates, this Full Bench feels that this is a fit case where there shall be a reference of the matter to be considered by the State Bar Council to take appropriate action against the contemner in accordance with law. as, in our view, he had abused his professional privileges while practising as an advocate and the conduct of the contemner is highly contumacious and unpardonable and accordingly, ordered. The Registry is directed to send a copy of this order forthwith to the State Bar Council for taking appropriate action by following the required procedure.

80. While concluding, this Full Bench has to place on record its full appreciation for the services rendered by the Advocate General, and the President of the Bar Association.

81. With these observations, the suo motu contempt petition is disposed of.

SUO MOTU CONTEMPT PETITION NO. 1134 of 2003

F.M. Ibrahim Kalifulla, J.

82. I had the privilege to go through the orders of my learned Brother Justice M. Karpagavinayagam and I fully concur with the views expressed therein, as well as, the conclusions in all respects. However, I wish to add that in the course of hearing of the above contempt petition, we made earnest efforts to make Mr. Karuppan understand his folly in his attempts of tarnishing the image of this great institution by throwing unfounded and baseless allegations against the Presiding Judges. In fact, we were never interested in punishing Mr. Karuppan, rather we only thought that senior counsel would prevail upon him and he would mend his ways. But unfortunately, all our efforts did not yield the desired results. But we only found in Mr. Karuppan his uncontrolled desire to further tarnish the image of this esteemed institution. In such circumstances, since in spite of several opportunities extended to him, he refused to mend his ways and persistently attempted to justify his contumacious conduct, we had no other option except to pass these orders convicting him for the contempt found proved against him. I hereby fully endorse the views and conclusions expressed in the orders pronounced by us.

SUO MOTU CONTEMPT PETITION NO. 1134 OF 2003

S. Ashok Kumar, J.

83. I fully agree with the views and decisions expressed by my learned Brothers M. Karpagavinayagam, J. and F.M. Ibrahim Kalifulla, J., Mr. Karuppan, former President of the Madras High Court, Advocates' Association should have been a role model for others, especially juniors, but, has voluntarily invited such contempt proceedings by his adamant behaviour. This Bench wanted to give him several opportunities to repent. But, all the attempts of this Bench to make him feel sorry of his earlier behaviours became futile.

84. In : 1954 CriLJ238 (Brahma Prakash v. State of U.P.), a Five-Judges Bench of the Hon'ble Supreme Court held as follows (Para 12) :--

'A defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libeller in a proper action if he

so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such Court, it can be punished summarily as contempt. One is a wrong done to the Judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties.'

85. In : 1996 CriLJ3274 (Dr. D.C. Saxena v. Hon'ble the Chief Justice of India), a three-Judge Bench of the Hon'ble Supreme Court held as follows :--

'If maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. Liberty of speech and expression guaranteed by Article 19(1)(a) brings within its ambit, the corresponding duty and responsibility and puts limitations on the exercise of that liberty. The State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation. Therefore, freedom of speech and expression is to be tolerated so long as it is not malicious or libellous, not that all attempts to foster and ensure orderly and peaceful public discussion or public good should result from free speech in the market place. If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right. Freedom of speech and expression, therefore, would be subject to Articles 19(2), 129 and 215 of the Constitution, in relation to contempt of Court, defamation or incitement to an offence etc. it may, therefore, be subject to certain restrictions but these shall only be such as are provided by law and are necessary for the respect of life and reputations of others for the protection of national security or public order or of public health or morale. Thus liberty of speech and expression guaranteed by Article 19(1)(a) carries within its ambit a corresponding duty and responsibility

which puts limitations on the exercise of that liberty.'

'Advocate touches and asserts the primary value of freedom, of expression. It is a practical manifestation of the principle of freedom of speech. Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice, it plays its part in helping to secure the protection of other fundamental human rights. Freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. But they equally owe countervailing duty to maintain dignity, decorum and order in the Court proceedings or judicial process. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary.'

'The punishment for contempt, therefore, is not for the purpose of protecting or vindicating either the dignity of the Court as a whole or an individual Judge of the Court from attack on his personal reputation but it is intended to protect the public who are subject to the jurisdiction of the Court and to prevent undue interference with the administration of justice. If the authority of the Court remains undermined or impeded the fountain of justice gets sullied creating distrust and disbelief in the mind of the litigant public or the right thinking public at large for the benefit of the people. Independence of the judiciary for the due course of administration of justice must be protected and remain unimpaired. Scandalising the Court, therefore, is a convenient expression, of scurrilous attack on the majesty of justice calculated to undermine its authority and public confidence in the administration of justice.'

86. The petitioner continues to commit contempt after contempt in spite of several opportunities granted to him to change his attitude. The majesty of law and supremacy of Judiciary cannot be undermined by anybody, howsoever high, he may be. Therefore, though it is painful, we are left with no other option but to

convict the petitioner for the offence of contempt of Court.

Suo Motu Contempt Petition No.....of 2004.

M. Karpagavinayagam, F.M. Ibrahim Kalifullah and S. Ashok Kumar, JJ.

87. Today, we have disposed of Suo Motu Contempt Petition No. 1134 of 2004. In the contempt petition, after receipt of the show cause notice, the contemner has filed two affidavits dated 19-3-2002 and 26-3-2004. In the said affidavits, he further made allegations against the Judges of this Full Bench which are as follows :

(1) The Division Bench comprising Justice M. Karpagavinayagam had committed contempt of the Supreme Court order in piecemeal hearing on a weekly basis for months despite the direction of the Supreme Court for expeditious disposal of the same in S.L.P. Civil Nos. 4501 and 4502 of 2003 dated 6-3-2003.

(2) The composition of the Bench to hear the fresh contempt are Judges who have convicted him all with regard to the same subject-matter as between the same parties.

(3) Justice F.M. Ibrahim Kalifullah who had convicted him for 2000/- rupees costs almost four times the fine imposed for criminal contempt has been directed to hear this case also is not in accordance with the basic tenet of jurisprudence namely justice should be seemingly done. It is incumbent on the learned Judge to recuse himself. While so, Justice F.M. Ibrahim Kalifullah observing that this contempt case should be proceeded with immediately in the last hearing, even in the absence of counter-affidavit does not infuse confidence.

(4) Justice M. Karpagavinayagam had imposed costs of Rs. 10,000/- on one lawyer Deivasigamani and Mr. O. Venkatachalam and in another case, he imposed astronomical costs of Rs. 2,00,000. In the said case also, he had imposed a fine of Rs. 2,000/- by convicting under Section 2(b) sitting singly. Recently, he has awarded costs on another lawyer viz. Felix. Similarly, he initiated proceedings against the then City Public Prosecutor and the learned District Judge who is a sitting Judge of the Madras High Court now. Above all, sitting as single Judge, he has convicted a person for criminal contempt, whereas the power to

initiate action for criminal contempt is only vested with the Chief Justice Bench or at his instance another Division Bench.

(5) He is of the opinion that the learned Judge has passed several orders which have created a sensation in the legal world and that they were wholly without jurisdiction.

(6) He has already had a grouse against Justice M. Karpagavinayagam's Bench inasmuch as they had failed to consider and dealt with his submissions and did not refer to almost 100 authorities cited by him. He also has a grouse that bald findings have been rendered without any basis. The other grouse is that they were not referring to the additional affidavit filed in support of the recalling of the order. The order dismissing all the writ petitions was pronounced on 5-12-2003 but was issued on 8-12-2003. He therefore felt that the judgment suffered corrections and the same cannot be done once the orders are pronounced. There was reasonable apprehension that certain remarks praising Sivanthi Adityan had been deleted in the course of corrections.

88. The above allegations would amount to criticising the method of functioning and attributing motive against the Judges while passing the earlier orders.

89. Mr. Karuppan virtually has made an allegation against Justice F. M. Ibrahim Kalifullah that he wanted to hurry up the matter and he was the Judge who already convicted Karuppan in other case and imposed a fine of Rs. 2,000/-. Factually, it is wrong. As already referred to, when the matter came up before the Second Bench consisting of V.S. Sirpurkar and F.M. Ibrahim Kalifullah, JJ., Mr. Karuppan criticised the order, of the Supreme Court and in that situation, costs of Rs. 2,000/- was imposed upon him. This is not a conviction. There is a difference between conviction and sentencing fine and imposition of costs. Karuppan has mentioned in para 4 of the affidavit that Justice F.M. Ibrahim Kalifullah had convicted him for Rs. 2000/- almost four times the fine imposed for criminal contempt. This is factually wrong. Moreover, the maximum fine amount is not Rs. 500/- as he stated, but Rs. 2,000/-.

90. Similarly, Justice M. Karpagavinayagam has been criticized stating that the earlier order passed in which he appeared was not a correct order. He has also criticised about the other orders passed by Justice M. Karpagavinayagam in other matters stating that those orders have created a sensation in the legal world and that they are without jurisdiction. This is highly unwarranted allegation against the sitting Judge. Similarly, he cannot criticise the Judge for disposing of the other contempt matters and imposing costs on the parties.

91. In view of the above, this Court is again constrained to issue fresh contempt notice against the contemner. Therefore, office is directed to issue contempt notice to Mr. Karuppan. In this case also, it would be proper to issue notice to the Advocate General, the President of the Advocates Association and the President of the Bar Association to give assistance to the Court. Place the matter before the Hon'ble the Chief Justice for posting the same before an appropriate Bench to deal with the contempt.

92. Today, after the pronouncement of the order, Mr. Karuppan would submit that he would pay the fine amount of Rs. 1,000/-on or before 19-4-2004 and requested this Court to suspend the sentence of imprisonment for 8 weeks to enable him to file an appeal before the Supreme Court. In view of the said undertaking, Mr. Karuppan is directed to pay the fine of Rs. 1,000/- on 19-4-2004 to the Registrar General, High Court, Madras. Hence, sentence of imprisonment alone is suspended for eight weeks subject to the condition that he pays the fine amount of Rs. 1,000/- by 19-4-2004.