

In Re: the Court on Its Own Motion

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Court : Kolkata

Decided On : Mar-02-2007

Reported in : (2007)2CALLT370(HC)

Judge : Bhaskar Bhattacharya, A.C.J. and ;Kishore Kumar Prasad, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 2, 9, 16, 19 and 22; ;Indian Penal Code (IPC) - Sections 34, 114, 141, 143 and 340; ;Code of Criminal Procedure (CrPC) - Section 151; ;[Constitution of India](#) - Articles 20(3) and 22(2); ;Suo Motu Rules - Rule 29

Appeal No. : C.R.L.C.P. No. 1 of 2007 and C.R.R. No. 187 of 2007

Appellant : In Re: the Court on Its Own Motion

Advocate for Def. : Milan Bhattacharyya, ;Goutam Banerjee and ;Daisy Basu, Advs. for the Respondent Nos. 1, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, ;Nisith Nandan Adhikari, Adv. for ;Jiten Das and ;Pabitra Bhattachary

Advocate for Pet/Ap. : Balai Chandra Roy, leaned Advocate-General, ;Sovanlal Hazra, learned Government Pleader, ;Sandip Srimani, learned Additional Government Pleader and ;Samiran Giri, Adv. for Director-General of Police

Judgement :

Bhaskar Bhattacharya, A.C.J.

1. These two Suo Motu Rules alleging Criminal Contempt of Court were heard together as facts giving rise to issue of those two Rules are mostly interlinked.

2. On January 15, 2007, this Bench issued the aforesaid two Rules on the basis of information given by the learned Register-General of this Court that due to the agitation started by the 'Circuit Bench O Sarbik Unnayan Dabi Adyay Samannya Committee, Jalpaiguri', (hereinafter referred to as the Committee), the learned District Judge and other Judges of the Judgeship at Jalpaiguri were unable to enter the Court building, as a result, the District Judges' Courts at the Headquarter of the District Jalpaiguri were not functioning at all for the last one month, this Court issued two Suo Motu Rules, one against the 16 persons actively associated with the aforesaid Committee and the other against (1) the Director-General of Police, West Bengal, (2) the District Magistrate, Jalpaiguri, (3) the District Superintendent of Police, Jalpaiguri and (4) the Inspector-in-Charge, Kotwali Police Station, Jalpaiguri.

3. For avoiding unnecessary repetition of the facts leading to the issue of the previously mentioned Rules, we quote hereunder, our entire order dated January 15, 2007, which will speak for itself:

The learned Registrar General of this Court has drawn attention of this Court to the fact that due to agitation started by the 'Circuit Bench 'O' Sarbik Unnyayan Dabi Adyay Samannaya Committee, Jalpaiguri,' the Judicial Officers in the District of Jalpaiguri including the learned District Judge, Jalpaiguri, are unable to enter into the Court premises from December 15, 2006.

Office of the learned District Judge immediately drew attention of such fact to the Inspector-in-charge, Kotwali Police Station, Jalpaiguri Sadar, but no action was taken. Subsequently, the learned District Judge brought the matter to the notice of the learned Registrar General of this Court, who in terms of the order by the then Hon'ble Chief Justice of this Court, instructed the learned District Judge to ask the Superintendent of Police, Jalpaiguri to take immediate action, so that the Judicial Officers can enter into the Court premises for doing their duties.

Although the learned District Judge, Jalpaiguri conveyed the decision of this Court to the Superintendent of Police, Jalpaiguri, so that the Judicial Officers can enter into the Court building and function, the Superintendent of Police, Jalpaiguri paid deaf ears to the request of the learned District Judge. Subsequently, the learned District Judge was directed to approach the District Magistrate of the District, so that the judiciary in the District can function. In spite of such communication, no action was taken from the end of the District Magistrate, Jalpaiguri.

It appears from the note given by the learned Registrar General of this Court that on January 05, 2007, the then Hon'ble Chief Justice of this Court directed the Director General of Police, West Bengal over phone to ensure proper functioning of the Jalpaiguri Court by taking effective steps without further delay and as a follow up action, the learned Registrar General also talked to the Director General of Police, West Bengal and enquired as to what effective steps had been taken for bringing back the normal situation, so that the learned District Judge's Court could function properly.

The Director General of Police, however, informed the learned Registrar General of this Court that he would take up the matter with the Home Secretary, Government of West Bengal and in the meantime, the learned District Judge, Jalpaiguri should be asked to write to the District Magistrate, Jalpaiguri requesting him to take steps for ensuring proper functioning of the Courts in Jalpaiguri with a copy to the Superintendent of Police, Jalpaiguri.

As pointed out earlier, in spite of written communication given by the learned District Judge to the District Magistrate, Jalpaiguri, till today the Judges in the District Judge's Court at Jalpaiguri are unable to enter into the Court building.

It appears from the various papers submitted by the learned District Judge through Fax message to the learned Registrar General of this Court that the 'Circuit Bench 'O' Sarbik Unnyayan Dabi Adyay Samannaya Committee, Jalpaiguri' took a resolution of obstructing the ingress and egress to the Court building by various resolutions taken from time to time. From the resolution allegedly taken on December 23, 2006 which has been sent to the learned Registrar General of this Court by the learned District Judge concerned, it appears that in a meeting held at

Nababbari premises the following persons participated and unanimously took a resolution to continue with the agitation:

- (1) Sri Mukulesh Sanyal, President;
- (2) Sri Sri Jiten Das. Ex. M.P. (C.P.M.);
- (3) Sri Sri Debaprasad Roy, M.L.A. (Congress);
- (4) Smt. Pratima Bagchi (R.S.P.);
- (5) Sri Prabal Saha (Forward Block)
- (6) Sri Pabitra Bhattacharyya (C.P.L);
- (7) Sri Somenath Pal (T.M.C.);
- (8) Sri Amal Roy (C.P.I.M.L.);
- (9) Sri Subhas Kumar Dutta, C.P.I.M.L (Liberation);
- (10) Sri Rabindra Lal Chakraborty, (B.J.P.);
- (11) Sri Chitta De (Convenor, Co-ordination Committee of Plantation Works);
- (12) Sri Sadhan Bose, (Merchant Association);
- (13) Sri Samarendra Prasad Biswas (North Bengal Chamber of Commerce);
- (14) Sri Biswajit Das, (Federation of Chamber of Commerce, Siliguri);
- (15) Sri Sanjoy Chakraborty, (Jalpaiguri Welfare Organisation).

It further appears from the resolution of the meeting dated December 18, 2006 of the said 'Jalpaiguri 'O' Sarbik Unnyayan Dabi Adyay Samannaya Committee' that one Sri Benoy Kanta Bhowmick, presided over as President supported the said illegal act of the committee.

In our view, the aforesaid act on the part of those persons abovenamed, acting on behalf of the said committee, has resulted in Constitutional breakdown in the District of Jalpaiguri, as a result, the citizens of Jalpaiguri District are immensely prejudiced and such act interferes with and obstructs administration of justice in the said District.

We are also prima facie convinced that inaction on the part of the Director General of Police, West Bengal, District Magistrate, Jalpaiguri, the Superintendent of Police, Jalpaiguri and I.C., Kotwali Police Station, Jalpaiguri Sadar amounts to aiding and abetting the members of the said committee, as a result of which, the judiciary is unable to function in that District for the last one month and all those persons are prima facie guilty of criminal contempt of a serious nature.

Accordingly, let a Rule of Contempt be issued calling upon all those 15 persons and Sri Benoy Kanta Bhomick, abovenamed, to show cause why they should not be penalised or otherwise dealt with for committing criminal contempt as defined in Section 2(c) of the [Contempt of Courts Act, 1971](#) by creating impediment in functioning the judiciary in the District of Jalpaiguri for the last one month by restraining the Judicial Officers from entering into the Court building.

Similarly, a Rule be also issued upon the Director General of Police, West Bengal, District Magistrate, Jalpaiguri, Superintendent of Police, Jalpaiguri, Inspector-in-charge, Kotwali Police Station, Jalpaiguri Sadar to show cause why they should not be penalised or otherwise dealt with for aiding and abetting the aforesaid criminal contempt by remaining as silent spectators in spite of repeated directions not only even by the learned District Judge of the District, but also by the learned Registrar General and the Former Hon'ble Chief Justice of this Court.

Let these Rules be immediately served upon all the concerns through the Chief Secretary, Government of West Bengal by tomorrow.

The Chief Secretary, Government of West Bengal, is directed to communicate to this Court what action the District Administration or the State Administration has taken for removing the impediments creating by those persons.

Having regard to the serious nature of a criminal contempt prima facie found by this Court, we direct the Chief Secretary, Government of West Bengal to see that in course of this day proper step is taken, so that the learned District Judge and all the Judicial Officers including the staff of the District Court may enter into the building and function normally.

The Chief Secretary will further ensure that no obstruction takes place in the matter of proper functioning of the Court in any part of the said District.

Office is directed to see that this order is communicated to the Chief Secretary, Government of West Bengal by 2 p. m. of this day.

Let Rules be also issued by the office in course of this day. The Rules are returnable on January 19, 2007 at 10.30 a.m.

On the returnable date, the alleged contemnors abovenamed are directed to be present in Court at 10.30 a.m.

4. There were mistakes in two of the names of the respondents of the Rule, which, however, were, subsequently corrected. All the respondents entered appearance through their learned advocates and they filed separate affidavits answering the allegations contained in our order dated January 15, 2007 on the basis of which the Rules were issued.

5. After going through the affidavits filed by (1) the Director-General of Police, West Bengal, (2) the District Magistrate, Jalpaiguri, (3) the Superintendent of Police, Jalpaiguri and (4) the Inspector-in-charge, Kotwali Police station, we found that some of their statements were inconsistent with the materials on record and for the above reason, we passed an order on February 5, 2007 for examining the aforementioned four persons in Court on February 9, 2007. Accordingly, those persons were examined by this Court and the copy of their depositions including various documents admitted by the District Magistrate to have been sent by the learned District Judge, Jalpaiguri to the learned Registrar-General of this Court through the office of the District Magistrate, Jalpaiguri by way of fax-messages, which were marked as Exhibits, were served upon the learned advocates

appearing on behalf of the respondents in these matters and this Court fixed the cases for further hearing on February 16, 2007.

6. On February 16, 2007, when the matters came up for hearing of the argument by the learned Counsel for the respondents, Mr. Roy, the learned Advocate-General appearing on behalf of the four respondents who were earlier examined in Court pressed two applications, one on behalf of Sri R. Ranjit, the District Magistrate, Jalpaiguri and the other, on behalf of Sri P. Chanda, the Inspector-in-charge of the Kotwali Police Station. In the application filed by the District Magistrate, he prayed for allowing his learned Counsel to ask a few questions to him for the purpose of clarification of some of his statements made earlier on February 9, 2007. In the body of the said application, no indication was given as to the nature of the questions. The learned Advocate-General, however, submitted before the Court that the District Magistrate wanted to clarify his earlier statements to this effect that the fax machine through which the learned District Judge, Jalpaiguri sent the various fax-messages to the Registrar-General of this Court, was not situated within his 'view' and that he had no knowledge that those fax-messages were sent through his office. In view of such submission of Mr. Roy, instead of examining him further for the purpose of explaining his earlier statement, we recorded an order that the aforesaid explanation of the District Magistrate that the fax-machine was not within his 'view' and that he did not know the fact that those fax-messages were sent through his office he should be kept with the records as the statements true to his knowledge as he was present in Court. Regarding the other application, filed by Sri P. Chanda, Mr. Roy submitted that Sri Chanda wanted to clarify that as no General Diary or information was received by him as regards commission of any cognizable-offence, he did not feel the necessity of starting any case. We, similarly, recorded such submission of the learned Advocate General as the statements of Sri Chanda as an explanation to his earlier statements.

7. Mr. Roy, the learned Advocate-General, appearing on behalf of the respondents in one of the Rules, at the very outset, has raised a pure question of law as regards the maintainability of the Rule against his clients. Mr. Roy submits that even if all the allegations contained in our order dated January 15, 2007 are taken

to be true, those facts do not constitute any Criminal Contempt within the meaning of Section 2(c) of the Contempt of Court Act, 1971 (hereinafter referred to as the Act). According to Mr. Roy, in order to constitute Criminal Contempt within the meaning of the Act, there must be some positive 'act' on the part of the contemner. Mr. Roy contends that mere inaction on the part of his clients in not taking step facilitating the entry of the Judges in the Court building cannot be described, by itself, as an act of Criminal Contempt within the meaning of the Act. Mr. Roy submits that even if it is assumed for the sake of argument that his clients remained as 'silent spectators' and did not take any action against the agitators, such fact cannot be a ground for issuing a Rule for Criminal Contempt against his clients although if those allegations are correct, those can justify other penal actions against his clients in accordance with the law of the land. Mr. Roy further submits that 'aiding or abetting' the acts of the other respondents cannot amount to Criminal Contempt within the meaning of the Act. Mr. Roy in this connection strongly relies upon the definition of Criminal Contempt provided in Section 2(c) of the Act and submits that the said definition not being an inclusive one but having been started with the word 'means', the meaning of the definition cannot be extended by addition of any words or idea. In support of such contention, Mr. Roy relies upon the following decisions:

- a) Feroze N. Dotivala v. P.M. Wadhawani and Ors. reported in : (2003)1SCC433 ;
- b) P.S. Kushilingam v. P.S. College of Technology and Ors. reported in : AIR 1995 SC1395 ;

8. Mr. Roy further contends that the proceedings for Criminal Contempt being one in the nature of Criminal proceedings as provided in the Code of Criminal Procedure, this Court was not justified in asking his clients to take oath before examining in Court.

9. Before entering into the merit of the Rule, we propose to deal with the preliminary objection raised by Mr. Roy as regards the maintainability of the Rule against his clients.

10. As pointed out earlier, the sum and substance of the allegations made against the clients of Mr. Roy is that the agitators prevented the Judges from entering into the Court building from December 15, 2006 and that obstacle continued till January 15, 2007 when the present Rule was issued. It is specifically stated that the learned District Judge requested the District Magistrate to see that no obstruction took place in performing the duties of the Judges but in spite of such request, the District Administration gave no assistance. It was pointed out that on the instruction of the learned District Judge, a G.D. was lodged in the local Police Station complaining prevention of ingress of the employees to the Court building. The District Magistrate in his affidavit, however, stated that until January 10, 2007, the learned District Judge never sought for any assistance from him although on January 2, 2007 and January 5, 2007 he had met the learned District Judge on 'different functions'. In view of such statements made on oath by way of affidavit, we decided to examine the District Magistrate in Court. We had handed over to him various fax-messages sent by the learned District Judge to the learned Registrar-General of this Court from December 19, 2006 till January 12, 2007 wherein the learned District Judge or the two different Judges-in-charge of the District had complained that the agitators were not permitting the Judicial Officers to enter the building. Those fax-messages were, however, sent through the office of the District Magistrate itself as the learned District Judge was unable to use his own fax-machine situated in the Court building and the District Magistrate admitted before us that those fax-messages were actually sent from his office. We, accordingly, marked those fax-messages as Exhibits in these proceedings. On the date fixed for argument, however, the District Magistrate came up with an application for further explaining his earlier statement by saying that he was not aware of the fact that the learned District Judge sent those fax-messages from his office as the fax-machine was not within his 'view'. We have already indicated that we have kept such explanation on record. While considering the merit, we shall consider the veracity of such supplementary statement. The further allegation made in the order dated January 15, 2007 was that on January 5, 2007, the then Chief Justice of this Court over telephone directed the Director-General of Police, West Bengal to see that the Judicial Officers could enter the Court building but in spite of such direction, the Director-General took no step. In the said order,

complaint made to the local Police Station alleging obstruction to the entry of the employees of the Court and the inaction on the part of the Police had also been mentioned.

11. In the affidavit affirmed by the Director-General of Police, he has merely stated that the then Chief Justice asked him to 'monitor' the situation and he did it. In answer to our question put to him before this Court he, however, stated that he conveyed the message of the Hon'ble Chief Justice to the Home Secretary orally and the Home Secretary told him that he would get in touch with the District Magistrate. The District Magistrate in his deposition, however, admitted that he did not get any instruction from the Secretariat for handling the situation and he also did not seek for any instruction. The Director-General of Police admitted in his deposition that he could not recollect whether any case was registered on the basis of the allegation of obstruction or whether any arrest was made although according to him he 'monitored' the situation every day. The District Magistrate and the Superintendent of Police admitted that no case was registered based on the allegation of the learned District Judge or the G.D. made on December 18, 2007. The Inspector-in-charge of the local Police Station has by way of clarification even gone to the extent that as no cognizable offence was committed, he did not feel the necessity of starting any case. It is needless to mention that there has been no arrest in connection with obstruction and only on January 15, 2007, after we issued these Rules, a few persons were detained under Section 151 of the Code of Criminal Procedure. We put specific question to the District Magistrate whether he was aware of the fact that due to the agitation, the provisions contained in Article 22(2) of the [Constitution of India](#) were not complied with in the said District for the last one month and whether he informed the Secretariat in Kolkata about the incident and in answer to such questions, he simply said that he did not know.

12. For the purpose of dealing with the preliminary objection raised by the learned Advocate-General, we shall presume all the allegations made in our order dated January 15, 2007 to be true and we shall decide whether such allegation, if found to be true, constitutes commission of Criminal Contempt on the part of Mr. Roy's clients.

13. It is true that the definition of Criminal Contempt given in Section 2(c) of the Act starts with the word 'means' and the general rule of interpretation in such a case as pointed out by the Supreme Court in the cases referred to by Mr. Roy is that ordinarily, the word or phrase used or defined in a Statute must be taken to have been used in its ordinary sense and only in case of vagueness or ambiguity, occasion would arise for interpreting such definition so as to add something to the statutory language. However, the Supreme Court had the occasion to consider the effect of the word 'Criminal Contempt' as used in Section 2(c) of the Act in the case of Delhi Judicial Service Association v. State of Gujarat reported in : 1991 CriLJ3086 where the Apex Court in paragraph 42 of the Judgement made the following observations:

What constitutes Contempt of Court? The Common Law definition of Contempt of Court is: 'An act or omission calculated to interfere with the due Administration of Justice'. (Bowen LJ in *Helmore v. Smith* (1886)35 Ch D 449 at 455). The Contempt of Court as defined by them [Contempt of Courts Act, 1971](#) includes Civil and Criminal Contempt. Criminal Contempt as defined by the Act: Means the publication whether by words spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of any Court, or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes, or tends to interfere with, or obstructs or tends to obstruct, the Administration of Justice in any other manner. The definition of Criminal Contempt is wide enough to include any act by a person which would tend to interfere with the Administration of Justice or which would lower the authority of Court. The public have a vital stake in effective and orderly Administration of Justice. The Court has the duty of protecting the interest of the community in the due Administration of Justice and, so, it is entrusted with the power to commit for Contempt of Court, not to protect the dignity of the Court against insult or injury, but to protect and vindicate the right of the public so that the Administration of Justice is not perverted, prejudiced, obstructed or interfered with. 'It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage'. (Frank Furter, J. in *Offutt v. I.J.S.* (1954)348 US 11). The object and purpose of punishing Contempt for interference with the

Administration of Justice is not to safeguard or protect the dignity of the Judge or the Magistrate, but the purpose is to preserve the authority of the Courts to ensure an ordered life in society. In *Attorney-General v. Times Newspapers (1974)* AC 273 at p 302, the necessity for the law of Contempt was summarised by Lord Morris as;

In an ordered community Courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the General interests of the community it is imperative that the authority of the Courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of Administering Justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised Courts of the land are so flouted and their authority wanes and is supplanted.

14. In view of the aforesaid observations of the Supreme Court regarding the scope of Criminal Contempt as provided in Section 2(c) of the Act, we have no hesitation in concluding that if the allegations contained in the order dated January 15, 2007 are found to be true, the inaction on the part of the District Administration in paying deaf ear to the G.D. as well as the request of the learned District Judge for facilitating entry of the Judicial Officers in the Court building definitely comes within the purview of the aforesaid section. We are unable to accept the contention of Mr. Roy, the learned Advocate-General that in order to constitute Criminal Contempt there must be some 'positive act' on the part of the contemner. In the case before us, the three Officers of the District Administration in spite of request by the learned District Judge and in spite of lodging of a G.D. disclosing commission of a cognizable offence provided under the Indian Penal Code, refused to even start any case for investigation. The Inspector-in-charge of the local Police Station has asserted before this Court that as there was no information of commission of any cognizable offence, he did not feel the necessity of starting any case for investigation by intentionally overlooking the provisions at least contained in Sections 340 and 141 of the Indian Penal Code and the consequent sections providing punishment thereof which are quoted below:

Section- 340: Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said 'wrongfully to confine' that person.

Section 341 of the Code provides punishment for such offence and according to the provisions contained in the Code of Criminal Procedure, the same is a cognizable offence.

Section- 141- An assembly of five or more persons is designated an 'unlawful assembly', if the common object of the persons composing that assembly is:

First.- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.- To resist the execution of any law, or of any legal process or

Third.- To commit any mischief or criminal trespass, or other offence; or

Fourth.- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.- An assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.

15. Similarly, Section 143 of the Code providing punishment makes the offence cognizable under the Code of Criminal Procedure.

16. Therefore, by disobeying the mandate of law in spite of specific request of the learned District Judge, the three Officers of the District Administration, namely, the

District Magistrate, the District Superintendent of Police and the Inspector-in-Charge of the local Police Station, obstructed the Administration of Justice in Jalpaiguri for a month knowing fully well that for such wilful disobedience, the fundamental right of the citizens mentioned in Article 22(2) of the [Constitution of India](#) in the said District was violated resulting in interference in due Administration of Justice of a grave nature. The effect of the wilful inaction of those officers was more than that of any 'positive act' on their part in disrupting the due administration of justice.

17. As regards the Director-General of Police, West Bengal, he disobeyed the order of the then Chief Justice of this Court by not taking step for resuming the functioning of the Judiciary in the said District. Once he got information from the then Chief Justice that for the inaction on the part of the Police, the judicial machinery in the District of Jalpaiguri was unable to function, it was his duty to see that investigation of such allegation of a cognizable offence started immediately by registering a case. We have already indicated that he allegedly orally informed the District Administration merely to see that no breach of peace took place. He calculatedly ignored the fact that the allegation was that of break down of the constitutional machinery in the District at the instance of some persons and that there was no occasion for any violent resistance at the instance of Judiciary against those persons to cause breach of peace. Therefore, by not taking any step to enforce due Administration of Justice in accordance with law in spite of the order of the then Chief Justice, he committed Criminal Contempt if the allegations are found to be correct. We, therefore, find no substance in the preliminary objection raised by the learned Advocate General.

18. The other objection raised by the learned Advocate-General that we should not have examined the respondents after administering oath in this Contempt proceeding is in our opinion, equally devoid of any substance. As pointed out by the Supreme Court in the aforementioned case of Delhi Judicial Service Association, the position of the contemnors in the Contempt proceeding is not like that of the accused in Criminal Proceedings and thus, there is no bar in examining the contemner in the open Court. Even according to the Rule 29 framed by this Court for dealing with contempt matters, the respondents should file affidavit in

support of their defence and at the same time, the Court is entitled to even take evidence: We, thus, find no substance in the aforesaid submission of Mr. Roy. At this stage, it will be profitable to refer to the following observations of the Supreme Court in the case of Delhi Judicial Service Association (supra):

The power to take proceedings for the Contempt of Court is an inherent power of a Court of record, the Criminal Procedure Code does not apply to such proceedings. Since, the Contempt proceedings are not in the nature of Criminal proceedings for an offence, the pendency of Contempt proceedings cannot be regarded as Criminal proceedings merely because it may end in imposing punishment on the contemner. A contemner is not in the position of an accused, it is open to the Court to cross-examine the contemner and even if the contemner is found to be guilty of Contempt, the Court may accept apology and discharge the notice of Contempt, whereas tendering of apology is no defence to the trial of a Criminal offence. This peculiar feature distinguishes Contempt proceedings from Criminal proceedings. In a Criminal trial where a person is accused of an offence there is a public prosecutor who prosecutes the case on behalf of the prosecution against the accused but in Contempt proceedings the Court is both the accuser as well as the Judge of the accusation as observed by Hidayatullah, C.J. in Debabrata Bandopadhyaya's case AIR 1969 SC 189. Contempt proceeding is sui generis, it has peculiar features which are not found in Criminal proceedings. In this view the contemnors do not stand in the position of a person accused of an offence' merely on account of issue of notice of Contempt by this Court and the Commission which was acting on behalf of this Court had full authority to record the testimony of the contemnors. Commission issued notice and directed Sharma, Police Inspector and other Police Officials to place their version of the incident before it and there was no element of compulsion. In this view there has been no violation of Article 20(3) of the Constitution and Commission's findings are not vitiated.

19. Mr. Roy, as a last resort, by referring to Section 9 of the Act and relying upon the Full Bench decision of the Patna High Court in the case of Harish Chandra Misra and Ors. v. The Hon'ble Mr. Justice S. Ali Ahmed reported in : AIR1986 Pat65 and the decision of a learned single Judge of the Bombay High Court in the case of Shamkant v. Dayanabai reported in 1989 Cr LJ 2431 tried to impress upon

us that the simple inaction of his four clients did not amount to Criminal Contempt. We fail to appreciate how Section 9 of the Act or the said Full Bench decision can be of any assistance to his clients. In the case of Harish Chandra Misra (supra), the question was whether the word 'Judge' appearing in Section 16 of the Act included the Judges of the High Court. In that context, N.P. Singh J. (as His Lordship then was) speaking for the majority made the following observations about the scope of Section 9 of the Act as reflected in paragraph 11 of the Judgment:

In the Statements of the Object and Reasons of the Act there is no indication that the scope of the Act was being enlarged. On the other hand, in the preamble it has been stated that it is an Act:to define and limit the powers of certain Courts in punishing contempts of Courts and to regulate their procedure in relation thereto.

Section 9 of the Act is as follows:

Nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of Court which would not be so punishable apart from this Act.

Section 22 of the Act also clearly states that the provisions of the Act 'shall be in addition to, and not in derogation of, the provisions of any other law relating to contempt of Court'. In view of Section 9, nothing contained in the Act shall be construed as implying to make an act punishable as contempt of Court which would not have been so punishable apart from the Act. In other words, an act or action which was not contempt of Court before the Act came in force shall not be punishable as contempt of Court under the Act. The provisions incorporated in the Act are supplemental to already existing law of contempt as interpreted by the Supreme Court and different High Courts.'

20. Therefore, either Section 9 of the Act or the decision of the Full Bench of the Patna High Court mentioned above is of no assistance to Mr. Roy's clients.

21. In the case of Shamkant v. Dayanabai (supra), after suffering a decree for eviction, the respondent No. 1 gave undertaking to vacate the premises within a

specified period and on such undertaking, the Court granted stay of the execution case. Subsequently, the son of the respondent No. 1 filed a suit for declaration that the tenancy originally belonged to his father and on his death, he inherited the tenancy along with the respondent No. 1 and consequently, the decree against the respondent No. 1 alone was not binding upon him. The property not having been vacated pursuant to the undertaking, the landlord filed an application for contempt not only against the respondent No. 1 but also her son and the daughter. The respondent No. 1 took the plea that she was ready to handover possession but her son and the daughter were not agreeable to vacate. The plea of the landlord was that the respondent Nos. 2 and 2A had knowledge of the undertaking of their mother and thus, were guilty of breach of undertaking. Alternative case made out was that they being guilty of aiding and abetting of the undertaking were equally guilty of Contempt. In such a case, the learned single Judge made the following observations:

In my view Section 9 makes it abundantly clear that it is only such disobedience that is made punishable as contempt of Court which is made specifically punishable under the Act. There is no provision in the Contempt of Courts Act like Section 34 or Section 114 of the Penal Code with the aid of which respondents 2 and 2-A can be punished for aiding or abetting respondent 1. These are quasi-criminal proceedings and unless there is a specific provision which penalises an act of vicarious liability, it would not be permissible to punish such a contempt. However, having regard to the fact that in a number of cases contempts are committed by parties other than the ones against whom Judgment, decree or directions or orders of the Court are passed or other than the ones who have given an undertaking to the Court which has the effect of bringing the Courts into disrepute, it would, in my view, be appropriate for the concerned authorities to consider appropriate amendments to the Act so as to bring within the compass of the Act contempts with the aid of provisions of Sections 34 and 114 of the Penal Code.

22. In our view, the said decision cannot have any application to the facts of the present case, first, for the reason that in the said case, the learned Judge was dealing with the civil contempt as defined in Section 2(b) of the Act and

accordingly, had no occasion to consider the effect of the definition of the Criminal Contempt within the meaning of the Section 2(c) of the Act; secondly, in the case before us, the four government officials wilfully and deliberately, refused to take any action for preventing interference with administration of justice in spite of full knowledge of the commission of cognizable offences with the object of helping the agitators to accomplish their unlawful object and thirdly, after the decision of the Supreme Court in the case of Delhi Judicial Service Association (supra), wilful refusal to perform the duty cast upon a government officer by the Statutes thereby indulging in impediment in the process of due administration of justice definitely comes within scope of Criminal Contempt particularly when specific complaint had been made either by the District Judge or the Chief Justice. In this connection, it will be appropriate to refer to the following observation of the Supreme Court in the case of Delhi Judicial Service Association (supra), where the Supreme Court specifically held that if a person without participating abated commission of an act of contempt the same would amount to contempt itself. The circumstances unequivocally show that Sharma was acting under the protective cover of Dhagal as he did not take any immediate action in the matter instead he created an alibi for himself by interpolating the entries in the register at the Government Rest House, Balasinor. In his report submitted to the Addl. Chief Secretary (Home) on September 27, 1989, Dhagal did not even remotely mention the handcuffing and roping of the CJM. It is unfortunate that Dhagal as the District Superintendent of Police did not discharge his duty like a responsible police officer instead he identified himself with Sharma, Police Inspector and actively abetted the commission of onslaught on the CJM. We, accordingly, hold D.K. Dhagal, the then DSP, Kheda guilty of contempt of Court.

(Emphasis supplied by us)

23. We, therefore, find no substance in the aforesaid contention of Mr. Roy.

24. We now propose to consider the merit of the allegations contained in our order dated January 15, 2007 after considering the affidavits, depositions, the various documents exhibited in this case, and above all, the submissions of the learned Counsel for the parties.

25. First, we proceed to examine the version of the District Administration as regards the nature of agitation demonstrated by the members of the Committee. In the affidavits, it has been admitted that a rostrum was erected at the entrance gate of the District Judges' Court, as a result, the Judges' cars could not enter through the main gate. It appears from the various resolutions taken by the Committee on different dates that by the diverse programmes as a mark of agitation, they wanted to obstruct even the railway's track and there was specific programme of staging continuous agitation and 'Abasthan Satyagraha' at the gate of the Court building. The long and short of the assertion of the District Administration is that although a rostrum was installed at the main entrance and the people assembled at the gate of the building to demonstrate their protest, yet, the Judges could, if they wished, enter the building, may not by their car, but on foot through a backdoor and if, they sought the assistance of the Administration, it could help the Judges to enter through the said backdoor. According to the Administration, when the Judges came by their cars and tried to enter the building, the agitators with folded hands requested them not to enter the building and the Judges did not disoblige them and without seeking assistance of the Police went back. If the District Judge sought for assistance, the affidavits continued, the District Administration would have surely applied force upon the agitators for giving entry of the Judges in the Court building. In other words, it was the Judges, who although every day came to Court, never wanted that force should be applied. The District Magistrate, however, was constrained to admit that on January 10, 2005, the learned District Judge-in-Charge in writing sought for assistance for entering the Court building. According to the District Administration, so long the learned District Judge did not seek Police assistance for entering the building, it was no part of their duty to see that the rostrum installed at the main gate preventing entry of cars in the Court building was removed; similarly, even if the agitators did not permit anybody to enter the building by peacefully sitting at the gate of the Court, it had no duty to remove the obstruction and the Judges, the employees as well as the litigants in general should endeavour to enter the Court building through a backdoor. Such actions on the part of the agitators, according to the local Police, did not give rise to any cognizable offence for registering a case and starting investigation in accordance with the provisions contained in the Code of Criminal Procedure

notwithstanding the fact that a G.D. was lodged complaining obstruction of the employees of the Court.

26. We now propose to deal with the affidavits affirmed by the respondent Nos. 1 to 16.

27. Sri Mukulesh Sanyal, the respondent No. 1 is a senior citizen aged 80 years and according to him, he was unable to move freely due to various ailments. According to him, the people decided to hold 'Satyagraha' in and around the Jalpaiguri Court premises in the peaceful manner. He stated that there could not be any obstruction to the entry of the Judicial Officers, but the people gathered at the place of the 'Satyagraha' urged upon the learned Judicial Officers to have a sympathetic view over the issue in question for which the people were fighting, According to him, the learned Judicial Officers shared the view of the agitators and on consideration of the issue, the Police Authority found that there had been no law and order problem and there had not been any obstruction to the entry of the Judicial Officers to the Court nor was there 'any block of judiciary'. He submitted that there was no constitutional breakdown in the District of Jalpaiguri. He has further stated that he never committed any impediment in the functioning of the Judiciary nor had he ever restrained the Judicial Officers from entering into the Court building.

28. Sri Binay Kanta Bhowmick, the respondent No. 16 is aged 78 years and has stated in his affidavit that the people decided to hold 'Satyagraha' in and around the Jalpaiguri Court premises in a peaceful manner. There was no occasion for obstructing the Judicial Officers but the people requested the Judicial Officers to have a sympathetic view and the Judicial Officers also shared the view of the agitators and consequently, the Police Authority found that there was no law and order problem. He has admitted that he presided over the meeting of the Committee on December 18, 2006 as the permanent President was in the deathbed. According to him, he never supported any illegal act and there was no resolution for obstruction of the judicial function was taken in the said meeting.

29. Sri Probal Raha, the respondent No. 5 has also affirmed an affidavit and his version is in conformity with the ones of the others that the agitation was peaceful,

that there was no obstruction in the entry of the Judicial Officers and that the Judicial Officers being requested by the agitators, went back having their full sympathy on the issue.

30. Sri Subhas Dutta, Sri Sanjay Chakraborty, Sri Samarendra Prosad Biswas, Sri Amal Kumar Roy, Sm. Pratima Bagchi, Sri Sadhan Kumar Basu, Sri Chitta Dey, Sri Somnath Pal, Sri Rabindra Narayan Chowdhury, all figuring as the respondents have affirmed separate affidavits in tune with the ones affirmed by Sri Probal Raha, mentioned above.

31. Sri Debaprosad Roy, the respondent No. 3, in his affidavit has expressed his moral support to the Committee on the issue in question. He, however, has stated that due to his predicaments and preoccupation, he had neither any scope to participate in the said movement nor had he any control or command over the said movement and performance thereof or with the day-today affairs, mode and conduct thereof. According to him, he never expected or apprehended any Constitutional breakdown or law and order problem out of the said movement nor had he extended any support to any activity detrimental to the public right or that might have caused uncalled for interference with due Administration of Justice affecting the public-interest in any manner. In other words, he has denied any active participation in the said movement apart from his moral support although he did not dispute the fact that he was present in the meetings of the Committee.

32. Sri Biswajit Das, the respondent No. 14 in his affidavit has stated that he is a resident of Siliguri and that he merely joined the convention of the Committee on December 23, 2006 and expressed his view that the Circuit Bench of High Court should be opened in Jalpaiguri without delay. He, however, maintained that before conclusion of the convention, he left for Siliguri and thereafter, he had never come to Jalpaiguri.

33. Sri Pabitra Bhattacharya, the respondent No. 6 in his affidavit stated that he was invited in the meeting of the Committee on December 18, 2006 and December 23, 2006 but he expressed his view that there should not be any picketing before the Court. According to him, he was not present till the conclusion of the meeting dated December 23, 2006. According to him, he was away from

Jalpaiguri on all other days than the aforementioned two days and had no occasion to participate in the movement.

34. Sri Jitendra Nath Das, the respondent No. 2 in his affidavit has stated that he is not a member of the Committee although as a senior citizen of the District Jalpaiguri, he was invited at the meeting on December 12, 2006. According to him, he was not present till the conclusion of the meeting but subsequently, it appeared that the resolution was taken to make a demonstration and 'Satyagraha' in front of the main gate of the District Court but no resolution was taken for preventing the entry of the Judges. He further stated that in the meeting held on December 23, 2006, he was not present till its conclusion but he came to know from the resolution that there was no decision taken for preventing ingress to the Court building. According to him, apart from those two days, he had no occasion to visit the Court premises. He has further stated that on December 15, 2006, he was on the main road in front of the gate of the Court premises where a large number of people assembled but no one obstructed nor was any force used for obstructing ingress of the Hon'ble Judges. He has further stated that one of the gates was opened for entry of the Hon'ble Judges and he found that some of the cars of the Hon'ble Judges came and although, they were never obstructed from entering, they acceded to the request and did not enter the Court premises. The respondent No. 2, therefore, admitted that he was party to the resolution and that at least on December 15, 2006 he had the occasion to see the incident occurred in front of the Court premises.

35. From the materials on record we find that at the relevant time, Mr. Ghosh was the District Judge of the District Jalpaiguri. As he had fallen ill, during a part of the period, Mr. Prasad and Mr. Bhattacharya also acted as the District, Judge-in-charge of the District. We find from various exhibited documents that from 19th December 2006 till January 15, 2007, the date of issue of these Rules, almost on all working days, the learned District Judge or the learned Judge-in-charge sent fax-message to the learned Registrar-General of this Court complaining that due to agitation, the Judges were unable to enter the Court building. We have already pointed out that those fax-messages were sent through the Office of the District Magistrate. It is preposterous to suggest that the learned District Judge or the

learned District Judge-in-Charge, although on almost every day sent fax-message to the High Court complaining their helpless condition, would not ask for help from the Administration or that they in fact did not seek the assistance of the Administration. We have already pointed out that a G.D. was lodged before the local Police Station on December 18, 2006 complaining refusal of entry but according to the Inspector -in-charge of the local Police Station, such complaint did not disclose any cognizable offence so as to initiate any case or start investigation under the provision of the Code of Criminal Procedure. In our view, such irresponsible defence is not expected from the District Magistrate, the District Superintendent of Police and the Inspector-in-charge of the local Police Station. We have already pointed out that at least the offence under Sections 340 and 141 of the Indian Penal Code was prima facie established from the complaint at the instance of the office of the learned District Judge and those were cognizable offences. The District Administration was fully conscious that due to the unlawful assembly of the agitators around the Court premises, the Judiciary, a limb of the Constitution, was unable to function in the said District as a result not only the mandatory provisions contained in Article 22(2) of the [Constitution of India](#) were not complied with but the entire judicial system collapsed. The District Magistrate in his evidence before this Court answered that he could not say whether the rights of the citizens of the District as guaranteed under the aforesaid Article was infringed or not. The three Officers of the District who had been examined by us admitted that no arrest was made over the incident for the last one month. It further appears that construction of a rostrum in front of the gate of the Court building was admitted and even after this Court issued the Rule on January 15, 2007, the Administration did not remove the same but the organisers themselves removed the same. Once a G.D. was lodged on December 18, 2006, complaining that the employees of the Court were unable to enter the Court premises it necessarily follows that the said information was lodged for removal of the obstruction and no further specific request for police help was necessary. We have already pointed out that the very first G.D. dated December 18, 2006 disclosed commission of cognizable offence warranting immediate action on the part of the Police in terms of the Code of Criminal Procedure.

36. We are not at all impressed by the explanation given by the respondent Nos. 1 to 5, 7 to 13, 15 and 16 in their affidavit that they were merely parties to the resolutions taken in the meetings of the Committee, had full moral support to the resolutions taken and had occasion to be present in the gathering in front of the Court building but never obstructed the learned Judges from entering. The copy of the resolutions taken by the Committee are all marked Exhibits and those resolutions in clear terms indicate that the Committee even went to the extent of obstructing the Railway-Service in the District. There is clear indication in the resolution itself that the Committee had taken decision to paralyse the entire District if their demands were not met. The fact that no judicial case in the District of Jalpaiguri in the said Headquarter was taken up for the last one month itself indicates that there was constitutional breakdown for one month in the said District for the irresponsible act and disobedience shown to the Administration of Justice on the part of those respondents before us.

37. The Director-General of Police, when directed by the then Chief Justice of this Court to see that the Judiciary could function normally in the said District, took no step in the matter. In his affidavit, he had not asserted that the Chief Justice did not ask him to take step for restoration of function of the Judiciary: in a designed way, he stated that the then Chief Justice simply asked him to 'monitor' the situation. We have found from his deposition, that in spite of having knowledge of such a grave allegation from no less a person than the Chief Justice of the State, he did not care to even 'monitor' the situation by ascertaining from the Superintendent of the Police of the District whether any case has at all been registered or investigation started on the basis of such allegation and if not, to immediately start investigation after registering a case. From his evidence, it is apparent that he did nothing for the reason best known to him. We cannot dream of a situation that in spite of the seriousness of the matter, he did not even direct the concerned Police Officer to register a case based on the allegation of the Chief Justice communicated to him over telephone. In his affidavit, he has claimed that he got information that the agitation was absolutely peaceful and no law and order problem had ever occurred. It is not expected from a Director-General of the Police to assert that if due to any agitation, the Judiciary in the District collapses, such fact did not constitute 'law and order problem'.

38. We, therefore, unhesitantly come to the conclusion that the Director-General of the Police, the District Magistrate of the District, the District Superintendent of the Police and the Inspector-in-charge of the local Police Station have committed not only the Criminal Contempt of the Judges' Court in the District of Jalpaiguri by deliberately taking no action against the agitators resulting in interference with due Administration of Justice in the said District and at the same time, the Director-General of Police has in addition to that also committed further contempt of this Court by disobeying the order of the then Chief Justice to take immediate step for restoration of the function of Judiciary in the said District.

39. We disbelieve the statements of the three Officers of the District Administration that the learned District Judge never sought for Police assistance and on the other hand, supported the agitators. In his affidavit, the District Magistrate was constrained to admit that at least on January 10, 2007 the learned District Judge-in-Charge in writing asked for his assistance but in spite of such fact, he did not find any time to, take appropriate step till January 15, 2007, the day on which we issued the Rules and directed the Chief Secretary to take appropriate step for restoration of the functions of Judiciary in the District. Moreover, the fact that a G.D. was lodged complaining obstruction to the entry of the employees of the Court was sufficient for taking action to see the Judiciary could function in the District in accordance with the [Constitution of India](#) and further request for Police help at the instance of the learned District Judge was unnecessary. The justification sought to be given that the agitation was peaceful was insignificant in the fact of the present case in view of the fact that the question of 'breach of peace' arises if there is a resistance at the instance of an opposition group. The Judges are not expected to wrestle with those agitators by taking the law in their own hands for the purpose of entering the Court premises. They complied with the law of the land by drawing attention of the local Police by lodging a G.D. through an employee of the Court and at the same time, it has been well established from the materials on record that the local administration was quite alive to the situation that due to the purported 'Satyagraha' by staging agitation and raising a rostrum at the main entrance gate of the Court premises, there was interference with due Administration of Justice and in such circumstances, it was the duty of the local administration to take step of their own once they found commission of a

cognizable offence.

40. The members of the Committee upon whom the Rules were issued have also taken to mendacity for avoiding the responsibility of the mischief committed. Their version was that they merely took a resolution for doing 'Abasthan Satyagraha' and that they did not intend to obstruct the Judges. Their assertion has been falsified from the fact that they erected a rostrum in front of the gate of the Court premises preventing entry of the cars of the Judges. From the aforesaid fact their intention to prevent the Judges and the employees to enter the building was apparent and no reasonable person will believe their case that the Judges everyday went to Court, took step for lodging G.D. before the Police, complained to the Registrar-General of this Court by fax messages from the Office of the District Magistrate alleging resistance and nevertheless, by supporting the cause of the Committee went back home for the purpose of earning holidays. We are shocked to find that the persons who claimed to have belief in 'Satyagraha' did not hesitate to tell a monumental lie like an unconscionable liar that they did not resist the Judges from entering the Court premises and that the Judges of their own did not enter the building and that too, by affirming affidavit before this Court.

41. Of the 16 respondents, who are the members of the Committee, we find that two of them, namely, Pabitra Bhattacharya and Biswajit Das have asserted that although they were present in the meeting held on two different days, 'they never participated in the agitation in Jalpaiguri and they were away from the District' Sri Bhattacharya stated in the affidavit that in the meeting he expressed his view that there should not be any picketing in the Court building. Sri Das stated that he was present in Jalpaiguri only on December 23, 2006. In such a situation, in the absence of any materials to the contrary, in our opinion, benefit of doubt should go in their favour and we are not in a position to decisively conclude that they actually participated in the act of interference to the due Administration of Justice.

42. In our opinion, the rest 14 persons, apart from those two, are guilty of Criminal Contempt for deliberately interfering with due process of law by paralysing the constitutional machinery in the District of Jalpaiguri for a continuous period of one month by taking active role in the agitation leading to interference with due

Administration of Justice.

43. Although all the respondents in their respective affidavits have tendered unconditional apology, having regard to the defence taken by them in their affidavits, we are of the view that those are simulated one with the object of avoiding punishment. We have already pointed out that they have tried to screen their offence by putting the blame upon the innocent Judicial Officers of the stations with mala fide intention. No compunction or repentance appeared from their version and on the other hand, they have unsuccessfully tried to take a false defence that they never took the decision of obstructing the Judges nor did they create any impediment in their functioning and that the Judges could enter the building through a backdoor. They have not spent a single word expressing their regrets for the Constitutional impasse for a long period of one month that is unprecedented in the history of post-independent India. Nobody in this country ever dared to paralyse the Judiciary in this way after the promulgation of our Constitution and that became possible only due to active support of the District Administration led by the District Magistrate and the District Superintendent of Police with the notorious assistance of the Inspector-in-Charge of the local Police Station. The Director-General of Police had, instead of taking appropriate action and guiding the erring Police, shown the temerity of ignoring the complaint of the then Chief Justice of this Court thereby assisting the District Administration and the members of the Committee to accomplish the heinous crime upon the Constitution. All the respondents conjointly butchered the [Constitution of India](#) in open daylight. The [Constitution of India](#) has suffered the most grievous hurt it ever experienced in the last fifty-seven years and the abovementioned 18 persons are proved guilty beyond reasonable doubt. The injury caused is irreparable and the contempt is of such nature that it has substantially interfered with due course of justice.

44. The enormity of the monstrous act of the guilty respondents is so pervading that unless those guilty respondents are given the highest punishment provided under the law there will be every possibility of repetition of the same or similar kind of contempt in future.

45. We, therefore, impose simple imprisonment for a term of six months and a fine of rupees two thousand on each of the following 18 respondents except Sri Biswajit Das and Sri Pabitra Bhattacharya:

- 1) Sri Mukulesh Sanyal 1A) Sri Jiten Das
- 2) Sri Debaprosad Roy
- 3) Sri Benoy Kanta Bhowmick
- 4) Sm. Pratima Bagchi
- 5) Sri Probal Raha
- 6) Sri Somnath Pal
- 7) Sri Amal Roy
- 8) Sri Subhas Kumar Dutta
- 9) Sri Rabindra Narayan Chowdhury
- 10) Sri Chitta Dey
- 11) Sri Sadhan Bose
- 12) Sri Samarendra Prosad Biswas
- 13) Sri Sanjoy Chakraborty
- 14) Sri Anup Bhusan Vohra (D.G) 15)- Sri R. Ranjit (D.M)
- 16) Sri Tripurari (S.P)
- 17) Sri Prasanta Chanda (Inspector-in-Charge).

46. In default of payment of the fine within a period of one month, they will undergo simple imprisonment for further one month.

47. Of the previously mentioned 18 persons, as Sri Mukulesh Sanyal, the respondent No. 1 is 80 years of age, Sri Benoy Kanta Bhowmick is aged 78 years and Smt. Pratima Bagchi is aged 70 years and are suffering from various ailments, we decide to suspend the sentence for the time being for the purpose of giving them opportunity of pondering over their shameful act. They were born in foreign-ruled India; it was expected that they had not forgotten the ignominious days of their childhood and youth during the foreign rule and would, consequently, honour the principles and the tenets of our Constitution; we give them a chance to think over their disgraceful act and hope that within a short period of time, they will express their sincere regret to us. With that hope, after taking into consideration their old age and ailments, we suspend their sentence for a period of three months from today. If they genuinely feel repentant, they are free to come up with a prayer for condonation.

48. We cannot conceive of any mercy for the rest 15 persons who took leading role in the process of the attack on the one of the limbs of our Constitution and were successful in stalling the functions of Judiciary for a month and unless we take drastic step at this stage, just the beginning of a new trend to destruct one of the pillars of our Constitution with the active support of the Administration, we will be answerable to our posterity for not protecting our Constitution against the unholy venture to disrupt the same by nipping them in the bud.

49. However, to enable the guilty respondents to avail of their statutory right of appeal as provided in Section 19 of the Act, we stay the operation of this order for a period of three weeks from today.

50. Let the xerox certified copy of this order be given to all the guilty respondents by tomorrow.

51. These Rules, are therefore, made absolute against all except Sri Biswajit Das and Sri Pabitra Bhattacharya to the extent indicated above.

Kishore Kumar Prasad, J.

52. I agree.

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