

**In Re M.V. Jayarajan**

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**Court :** Kerala

**Decided On :** Jul-08-2011

**Judge :** V. Ramkumar & P.Q. Barkath Ali

**Appeal No. :** Contempt Case (Crl.) No.2 of 2010 (Suo Moto)

**Advocate for Def. :** Sri. M. K. Damodaran, Sri. M.K. Damodaran

**Judgement :**

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SYNOPSIS

On 23/06/2010 a Division Bench of the Kerala High Court comprising of Justice C. N. Ramachandran Nair and Justice P. S. Gopinathan while disposing of a Writ Petition filed in public interest, banned the holding of meetings and rallies on public roads and road margins thereby ensuring accident-free and uninterrupted traffic along such roads. On 26/06/2010 in a meeting organised in Kannur town in protest against the hike of fuel prices, the respondent M. V. Jayarajan, a non practicing Advocate ill-informed in law and a politician belonging to the C.P.I (Marxist) party, made a public speech. The speech was widely covered by the print and visual media. During the course of the speech he reacted vigorously against the High Court verdict and declared that the people throughout Kerala were openly disobeying the verdict by holding meetings and rallies on the roads and road

margins. He asked that when such Court verdicts have only the value of grass what worth do the Judges who pronounced the verdict have and why should those Judges sit in glass houses and pass verdicts any more. He remarked that if those Judges have any self respect they should resign and step down from their office. He spoke that the role of the Judges is to interpret the laws passed by the Legislature but unfortunately some "shumbhans" (idiots, fools) occupying the seats of justice were themselves making laws and issuing orders which is not conducive to a democratic country.

After the suo motu contempt proceedings were taken against him he not only stuck to his stand firmly both in Court and outside Court but also declared that his mission is to correct the judiciary. Even after the Division Bench dismissed the review petitions assailing the judgment dated 23/06/2010, the contemnor filed his reply adamantly justifying his speech and raising the very same grounds of attack which were put forward in the review petitions. He also made frequent public statements in the media reiterating his views. During the trial of the case also he again went to the Press and attributed political prejudice in this Court against him. The offending speech, in our view, amounts to belittling the Judges as incompetent and ignorant of law. The respondent was thereby sowing the seeds of hatred towards the Judges of the High Court as also the High Court in the minds of the public. After trial, for the discreditable and denigrating remarks made by him scandalising the Judges of the High Court, and thereby lowering the authority of the High Court he is found guilty of "criminal contempt". Since the contempt tends substantially to interfere with the due course of justice, the contemnor is sentenced to the maximum punishment of imprisonment for six months and a fine of Rs. 2000/-

## **JUDGMENT**

**V. Ramkumar, J.**

### **1. WHAT IS THIS CASE ABOUT?**

In this case initiated suo motu under Rule 7 of the Contempt of Court (High Court of Kerala) Rules 1988, (hereinafter referred to as "the Rules" for short) the

respondent, M.V. Jayarajan, Ex-M.L.A. and a member of the State Committee of the Communist Party of India (Marxist), is called upon to answer a charge that on 26/06/2010 he made a public speech at Kannur making discreditable and denigrating remarks against the Judges of the High Court who rendered Ext. C5 final judgment dated 23/06/2010 and the said speech was reported in the print and visual media and that the respondent thereby committed "criminal contempt" within the meaning of Section 2 (c ) of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act" for short) and punishable under Section 12 thereof.

## 2. POST INSTITUTIONAL IMBROGLIO

This case was originally instituted as a petition for contempt filed under Rule 3 (c ) of the Rules by one Advocate P. Rehim but without the consent in writing of the Advocate General as enjoined by Section 15 (1) (b) of the Act. Since the contempt petition was not one filed with the written consent of the Advocate General, it could only be treated as an "information" within the meaning of Rule 7 of the Rules and was liable to be placed before the Chief Justice or such other Judge as may be designated by him on the administrative side, to consider whether it was expedient or proper to take action under the Act as provided under Rule 7 of the Rules. That was the interpretation which had been placed on Rule 7 of the Rules by two Division Bench rulings of this Court in Kallara Sukumaran v. T. M. Jacob, 1986 KHC 13 : 1986 KLT 32 : 1985 KLN 806 and One Earth One Life v. Sindhu Joy, 2007 (1) KHC 982 : 2007 (1) KLT 897 : ILR 2007 (1) Ker. 680 : 2007 (1) KLD 495. However, another Division Bench of this Court in Suo Motu Contempt, 2009 (1) KHC 356 : 2009 (1) KLT 695 had taken the view that for initiating suo motu criminal contempt the Chief Justice is required to cause the matter placed before the Full Court of the High Court for decision as provided under Section 15 of the Act. In the light of the conflict of judicial opinion this case was referred to a Full Bench. Eventually, a Full Bench of this Court headed by Chief-Justice Jasti Chelameswar, in Rehim v. M.V. Jayarajan, 2010 (4) KHC 263 : 2010 (4) KLT 286 : 2011 (1) KLD 76 : ILR 2010 (4) Ker. 165 : AIR 2011 Ker. 12 overruled Suo Motu Contempt<sup>5</sup> and affirmed Kallara Sukumaran and One Earth One Life. In accordance with the verdict of the Full Bench, the petition was placed before the Hon'ble the Chief Justice for appropriate action on the administrative side. The

learned Chief Justice designated the Hon'ble Justice Pius C. Kuriakose, a senior Judge of this Court to consider the matter for preliminary hearing under Rule 7(ii) of the Rules. The matter was considered by the Hon'ble Judge who was of the view that it was expedient to take suo motu action under the Act. That is how this case came to be placed before the Division Bench for consideration on the judicial side.

### 3. CHRONOLOGICAL EVENTS TILL THE CONCLUSION OF TRIAL

The background facts leading to the conclusion of the trial of this case are as follows:

#### Table:#2

##### A. NEWS TELECAST IN THE LOCAL CITY NEWS CHANNEL

The speech made by the respondent in the public meeting at Kannur on 26/06/2010 was covered by the print and visual medial including a local television channel of Kannur by name City News. CW2 (Byju) was the cameraman of City News who had shot the speech. The news regarding the speech was telecast by City News in the same evening. Ext. X3 is the Compact Disc (CD) containing the news telecast by City News on 26/06/2010. The said CD was played in open Court during trial. Before showing the relevant portion of the speech by the respondent, the news reader (a lady) announced as follows: --

#### **Other Language**

##### TRANSLATION

When the Court verdicts go against the country and the people the public will not give those verdicts even the value of grass, said C.P.M. State Committee member M. V. Jayarajan. It was in the L.D.F. public meeting held in protest against the hike of fuel prices that M.V. Jayarajan reacted in strong language against the High Court verdict banning public meetings on road sides. M.V. Jayarajan accused that some Judges who are "Sumbhanmar" (fools) were not interpreting the laws but were making the laws.

## B. THE OFFENDING SPEECH IN CITY NEWS CHANNEL

The relevant speech made by M.V. Jayarajan is then shown on the screen. The text of the speech is as follows: --

### **Other Language**

#### ENGLISH TRANSLATION

"When the Court verdicts go against the country and the people, those verdicts have only the value of grass. From now on, what worth do the Judges who pronounced the verdict have? Today disregarding the verdict of those Judges and flouting their judgments, people throughout the length and breadth of Kerala are organizing public meetings and rallies. Why should those Judges sit in glass houses and pass verdicts any more? If they have any self respect they should resign and step down from their office. The judiciary can attain greatness only when judgments acceptable to the country and obeyed by the people are passed. Today even the judiciary is ashamed. If the Executive exceeds its limits the judiciary is there to save. Judges are to interpret the laws and interpret the intention of the Legislature which had made the laws and pass orders accordingly. Unfortunately, what some idiots (fools) occupying our seat of justice say is nothing else. Actually speaking they themselves make laws and they themselves issue orders. This is not conducive to a democratic country. This is what they should correct. Today is the day on which the verdict of two senior Judges of the Kerala High Court has been given only the value of grass."

Since the only news channel which had covered the speech of the respondent was the City News Channel, Kannur , they had given portions of the speech shot by them with telecasting rights to other news channels like Asianet Communications Limited, Indiavision etc. which had also telecast portions of the speech on 26-06-2010 itself. The true extract of the speech as given in the news (in vernacular Malayalam) telecast by the Asianet Communications Channel and which was replayed in open Court using Ext. X1 compact disc (CD) obtained from the said news channel is as follows: --

## C. IN ASIANET NEWS

### **Other Language**

#### ENGLISH TRANSLATION

"Today disregarding the verdict of those Judges and flouting their judgments, people throughout the length and breadth of Kerala are organizing public meetings and rallies. Why should those Judges sit in glass houses and pass verdicts any more If they have any self respect they should resign and step down from their office. The judiciary can attain greatness only when judgments acceptable to the country and obeyed by the people are passed. Today judiciary is the refuge. If the Legislature exceeds its limits there is the judiciary which comes to the rescue. But if the judiciary exceeds its limits who will tether the judiciary. In a democracy people are the supreme. Judges are to interpret the laws and interpret the intention of the Legislature which had made the laws and pass orders accordingly. Unfortunately, what some idiots (fools) occupying our seat of justice say is nothing else".

True extract of the speech in Malayalam as telecast by the Indiavision channel and as played in open Court using Ext.X2 CD obtained from the said news channel is as follows:

## D. IN INDIAVISION NEWS

### **Other Language**

#### ENGLISH TRANSLATION

"When the Court verdicts go against the country and the people, those verdicts have only the value of grass. Now on, what worth do the Judges who pronounced the verdict have Today disregarding the verdict of those Judges and flouting their judgments, people throughout the length and breadth of Kerala are organizing public meetings and rallies. Why should those Judges sit in glass houses and pass verdicts any more If they have any self respect they should resign and step down from their office. Unfortunately, what some idiots (fools) occupying our seat of

justice say is nothing else. Actually speaking they themselves make laws and they themselves issue orders. This is not conducive to a democratic country. This is what they should correct."

27/06/2010 Ext. C1 Mathrrubhumi Malayalam daily reported the above offending speech of the respondent under the caption "Other Language" (Harsh Criticism against Judges by M.V. Jayarajan).

27/06/2010 Ext.C2 Malayala Manorama daily reported the above offending speech of the respondent under the caption'Other Language(Those who banned roadside meetings are idiots: M.V. Jayarajan).

27/06/2010 Ext.C3 Deepika daily in malayalam reported the above speech under the caption "Other Language"(Verbal acrobatics by the C.P.M. leader by humiliating Judges).

27/06/2010 Ext.C4 Mangalam Daily in Malayalam also reported the speech under the caption "Other Language" "(M.V. Jayarajan called Judges Idiots"

Certain other persons and organizations addressed the Registrar General, High Court of Kerala providing "information" to the High Court and requesting to take suo motu action for contempt of Court against the respondent.

27/06/2010 Annexure - II (b) information was placed by Adv. Santhosh Mathew, Cochin - 682 018.

28/06/2010 Annexure - II (c) information was placed by Nattakam Suresh through Advocate Johnson Manayani

28/06/2010 Annexure - II (d) information was placed by N. Gopinathan, Ambadi, Vadasserykonam P.O., Thiruvananthapuram

28/06/2010 Annexure - II (e) information was placed by Varghese P. Cheriyan, State General Secretary of the Youth Wing of Kerala Janapaksham Party

30/06/2010 Annexure - II (a) information was placed by the President of the Kerala High Court Advocates' Association along with the unanimous resolution passed by

its Executive Committee .

30/06/2010 Advocate P. Rehim (who was examined in this case as CW1) filed the contempt petition . Thereafter the contempt petition underwent the vicissitudes narrated in paragraph 2 of this judgment . Based on the "information" furnished to the High Court, this suo motu contempt proceeding was taken against the respondent.

13/08/2010 The Division Bench which had banned meetings on roads and road margins, dismissed all the six review petitions as per Ext.C6 series of orders. Ext.C6 (b) is the detailed order (2010 (3) KLT 757) in the review petition filed by the State Government led by the LDF Ministry.

15/11/2010 The Division Bench before which this case came up for preliminary hearing ordered notice to the respondent

20/12/2010 The respondent filed a reply affidavit under rule 13 of the Rules, contending inter alia as follows: --

This respondent emphatically denies the averments and allegations in the contempt of Court petition as well as draft memo of charges filed by Advocate P. Rehim to the effect that this respondent has committed contempt of Court in the speech made by him at Kannur to a slender audience on 26/06/2010 and which was reported by the media. This respondent has been very active in the political and social life of the State of Kerala from his student days onwards . He has very long and active association with the Communist Party of India (Marxist), as a member and office bearer of the same for long years continuously. He has held various offices of the Students' Federation of India including that of its State Office bearer.

He has also been an office bearer of the Democratic Youth Federation of India of which he was the State Secretary during the period from 1995 to 2000. He has been a member of the Legislative Assembly of Kerala for two terms from 1996 to 2006 . At present, he is the State Committee member of CPI (M) . In his capacity as a social and political worker he has always considered it his bounden duty to



interact with people and to be of help and assistance to them as and when occasion demands. It is true that he made a speech referring to Annexure - V (this was subsequently marked as Ext.C5) judgment passed by this Hon'ble Court prohibiting the holding of meetings on public roads and road margins. It was not a prepared speech but one delivered extempore . The allegation that by making the said speech he has committed the contempt of this Hon'ble Court by using, during the course of the speech certain words (for which distorted meaning have been given in the petition ) is absolutely incorrect and without any basis. This respondent is a person who believes in the Rule of Law and the supremacy of the Constitution. He has firm faith and unquestionable loyalty to the constitution and the institutions including the Courts created under it. He has great respect for the judiciary and the Judges and has always obeyed the verdicts of Courts and has never defied their authority. The media has reported distorted versions of the speech he made referring to Annexure V judgment and have given wide publicity to the speech taking certain words used by him in the speech out of context and providing their own interpretation and meaning to those words with ulterior motives and designs. He had criticized the judgment as to its impracticability and difficulty of implementation. It was a public interest litigation filed by a transport operator seeking to prevent the conduct of public meetings on the P.W.D. road in front of Aluva Railway Station. This Court had rendered Annexure V judgment prohibiting the holding of meetings on public roads and road margins throughout the State.

As a social and political worker he felt that the above judgment was passed without considering the factual and legal aspects involved, that the judgment adversely affects the legal rights including the fundamental rights of freedom of speech and expression and to assemble peacefully guaranteed to the public under Art.19 of the Constitution. In his speech he has used the words commonly used by the villagers of North Malabar to convey his message to the audience and they understood the same in the sense those words usually carry with them . Those words do not have the meaning given and interpreted by the person who preferred the contempt petition before this Court. In Annexure - V judgment the Court did not consider the public interest involved or the contentions of the affected parties including the Government. The Court had gone beyond the issues before it. If there was any obstruction to the freedom of movement of the public the police and

statutory authorities including the Executive Magistrate could control the situation. It has been the practice in this country and in the State of Kerala even from the pre-independence period to hold meetings on road margins . The criticism made by this respondent against the judgment was with the honest intention and bona fide purpose of expressing his opinion to the public. When the judiciary had failed to consider properly the issue involved while rendering the above judgment, this respondent thought that as a public worker, it was his bounden duty to make such criticism. In doing so, he has not intended to demean any of the Judges of this Court or the authority of this Court . The speech was one made in protest against the hike of prices of essential commodities. The audience largely constituted were poor sections of the society. The words which are referred to as objectionable are those prevalent in the area and characteristic of the assemblage to which this respondent spoke.

Those words have been taken out of context and given a meaning to suit the intention of the contempt petitioner. The Division Bench of this Court was disposing of the Writ Petition at the admission stage itself prohibiting the respondents shown therein and other governmental agencies including P.W.D, Police, Revenue and local authorities from granting any permission to hold meetings on public roads and road margins in the entire States. Such a blanket order of prohibition was passed without hearing the affected parties . Under the Constitution, India has been constituted into a democratic republic. A well informed public and an enlightened public opinion is the sine a qua non for a successful democracy. In a vast country like India with its large multitudes of illiterate and semi- literate population one of the most effective methods for educating them is through speeches made by persons well versed in different subjects and topics, political, social, economic etc. Public discourses, demonstrations, exhibitions, processions etc. are some of the effective methods of teaching, propagating and inculcating ideas. Roads, roadsides and road margins are invariably such places where the common man in the country, the villager, the farmer and the peasant can assemble and flock together. Annexure V judgment was passed without taking into account many of the age old habits and practices. There is no existing law made by the State which imposes any restriction on the right conferred on the citizen under Art.19 (1) (b) of the Constitution which has been taken away by

Annexure V Judgment. Thus the judgment rendered by this Court was of far reaching consequences drastically affecting the rights of the people. This respondent through the speech in question was only making an honest criticism with intent to educate the people and make them aware of the legal infirmities in the judgment and the adverse consequences it will have on their political and social life . "Shumban" is a word used in malayalam without any specific or definite meaning. The said word is really a "usage" which is understood in different sense and connotations in different parts of the State. The word "Shumban" can never be understood as having the meaning "idiot or fool". This respondent hails from Kannur District which is in the northern part of the State of Kerala.

The impugned speech was made to a village population at Kannur. "Shumban" is a word widely used by the people in that area to refer to a person (howsoever intelligent or knowledgeable he may be) who says or expresses something or acts in a particular way without properly and intensely considering the various aspects of the matter in all respects. The word "Shumban" was used by this respondent only in the above sense. He has not cast any aspersions on the Judges who pronounced the above verdict. (The legal principles based on judicial pronouncements given in the reply affidavit are omitted).

14/02/2011 The Division Bench before which the suo motu contempt came up for consideration after the designated Judge (Justice Pius C. Kuriakose) had opined under Rule 7 of the Rules that it was expedient to take action under the Act, appointed Sr. Advocate Sri. K. Jayakumar as amicus curiae to assist the Court.

09/03/2011 Amicus curiae filed a petition seeking a direction to three of the television channels namely, Asianet Communications, Surya T. V. and Indiavision to produce the original and unabridged video clippings of the speech of the respondent as telecast by them .

23/03/2011 The Division Bench by order directed the Registry to issue notice to the Asianet Communications, Surya T. V. and Indiavision for the production of the original and unabridged videotapes of the speech made by the respondent as published in their news holding that the newspaper cuttings before the Court do not contain the entire text of the speech.

23/05/2011 The Division Bench was informed that Indiavision and Asianet had produced Videotapes in the form of CDs containing the speech made by the respondent. The CDs were kept under safe custody in a sealed cover.

30/05/2011 After hearing the amicus curiae and the Sr. Advocate for the respondent under Rule 14 of the Rules the Division Bench passed an order proposing to frame charge against the respondent.

Note: This order was challenged by the respondent by filing SLP (Crl) 4877 of 2011 before the Supreme Court. The said SLP was admittedly dismissed.

10/06/2011 The Division Bench framed charge against the respondent as provided under Rule 14 (b) of the Rules.

01/07/2011 Justice A. K. Basheer who was heading the Division Bench retired from service . Thereafter this case was heard by this Division Bench consisting of Justice V. Ramkumar and Justice P.Q. Barkath Ali.

20/07/2011 Since under Rule 15 of the Rules the contempt proceedings are to be conducted by the Advocate General or any other Advocate as may be designated by the Court, the willingness of the Advocate General was ascertained by the Court. Sri. K. P. Dandapani the Advocate General expressed some personal reservations in conducting the case and promised to submit a panel of advocates for the consideration of the Bench.

21/07/2011 The case came up before this Division Bench . From out of the panel of names suggested by the Advocate General Sr. Advocate Sri. S. Sreekumar whose name was first among the panel, was appointed to conduct the proceedings.

27/07/2011 Sr. Advocate S. Sreekumar brought to the notice of the Court that the charge framed by the Court was incomplete and defective. Sr. Advocate Sri. M. K. Damodaran appearing for the respondent submitted that he was not furnished with copies of the CDs received from the Asianet and Indiavision. The Registry was directed to make arrangements for furnishing copies of the CDS to the respondent. The case was posted to 01/08/2011.

01/08/2011 The Court altered the charge and framed a revised charge which was read over to the respondent who pleaded not guilty to the same and claimed to be tried. The case was then posted for evidence on 16-08-2011. The revised charge reads as following: --

## CHARGE

After having considered the reply affidavit dated 20/12/2010 filed by you and the arguments of the learned senior Advocate appearing on your behalf and after perusing the materials before this Court including copies of the news reports dated 27/06/2010 published by the Mathrubhoomi, Malayala Manorama, Mangalam and Deepika dailies and the video tapes produced by television channels namely, Asianet Communications Ltd. and Indiavision,

We, Justice V. Ramkumar and Justice P.Q. Barkath Ali, do hereby charge you --

M. V. Jayarajan, Advocate and Ex- MLA,

Son of Kumaran, "Manaveeyam",

Near Perlasseri High School,

Mundalloor P.O, Makrery,

Kannur - 670622

That you on 26/06/2010 at Kannur, made a public speech in the course of which referring to Annexure V Judgment dated 23/06/2010 rendered by a Division Bench of the High Court of Kerala in WP (C) No. 19253 of 2010 banning roadside meetings, you committed "criminal contempt" within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 by making discreditable and denigrating remarks against the Judges who rendered the above judgment, by publically saying that "unfortunately some ""ipw`m""(fools, idiots) are making laws sitting in the seat of Justice", that "such verdicts have only the value of grass" (tImSXn hn[nl ]pmbnamdplbmWv)that "disregarding the verdict of those Judges the people in Kerala are openly flouting the same today by holding meetings and processions on the sides of roads", that "what respect do those High Court Judges who

pronounced the verdict have" and that "if those Judges have any self respect, they should resign and quit their offices".

That by making such scathing and scurrilous remarks against the Judges of the High Court of Kerala and which were reported and published in the print and electronic media referred to above, you have thereby committed "contempt of Court" punishable under Section 12 read with Section 2 (c) of the Contempt of Courts Act, 1971, and within our cognizance.

AND we hereby direct that you be tried before this Court on the said charge.

16/08/2011 to Evidence in support of the charge was taken . CWs 1 to 11 were examined and

01/09/2011 Exts. C1 to C6 series were marked.

10/10/2011 and Defence witnesses RWs 1 and 2 examined and Exts. R1 to R15 marked

13/10/2011

#### 4. THE EVIDENCE

Witnesses in support of the charge

A. CW I (P. Rehim) is an Advocate practicing in the Courts at Thiruvananthapuram and occasionally in the High Court for the past 27 years. He is also the General Secretary of the Indian Lawyers Congress and also the officer-bearer of other organization as well. He deposed that he has been working in the field of social service for the past 37 years. He had heard the speech of respondent as telecast by the Asianet and Indiavision the CDs of which were marked as Exts. X1 and X2. He had also read the news about the offending speech as reported in Mathrubhumi, Malayala Manorama, Deepika and Mangalam dailies. Exts. C1 to C4 are copies of the said dailies and Exts. C1(a), C2(a), C3(a) and C4(a) are the news items pertaining to the offending speech in those dailies. Ext. C5 judgment dated 23/06/2010 against which respondent reacted in the offending speech made on 26/06/2010, was marked through CW 1. He also proved Ext. C6 series of

orders as per which the Division Bench which passed Ext. C5 judgment dismissed the review petitions. CW 1 deposed that the offending speech was made by respondent in a manner undermining the dignity and majesty of the High Court and that the Judges who rendered the verdict banning public meetings on road sides were attacked in person. Ext. X1 and X2 CDs were played in open Court and CW 1 stated that he had heard the news telecast by both Asianet and Indiavision. He stated that he had filed a petition before this Court requesting to take action against respondent for committing contempt of Court. In cross-examination CW 1 admitted that he did not hear respondent directly but only through the media. He further admitted that personally he fully endorses the view taken by the Judges in the verdict and that eventhough as a social worker he has some difference of opinion, his organisation did not discuss the verdict of the High Court in public. He stated that Mathrubhumi daily, Malayala Manorama daily, Asianet T. V. and Malayala Manorama T.V. were also respondents in his contempt petition but they were arrayed as such not for committing contempt of Court but for reporting the news regarding the offending speech and no releifs were sought against them. According to him the Advocate General was made a respondent since consent of the Advocate General was required to be obtained. He further deposed that the words "Shumbhanmar" and "Pulluvila" were not used in his speech by respondent in different context but in an inter-related manner. He denied the defence suggestion that the expression "Shumbhanmar" was used to denote erroneous judgments pronounced by Judges. He also denied the defence suggestion that he filed the contempt petition out of his political enmity towards respondent and stated that he has no political antagonism against respondent.

B. CW2 (Byju) is the cameraman attached to a local television channel at Kannur called City News Channel. He has been working as the cameraman in that channel from November 2002 onwards. 26/06/2010 was a hartal day at Kannur. He had shot all the events on that day to be telecast as news item. He had covered the speech made by M.V. Jayarajan on that day . Ext.X3 is the CD containing the news item pertaining to the speech of M.V. Jayarajan shot by him and which was telecast in City News Channel. He had truly and correctly shot the speech while Jayarajan was making the speech at Kannur . All the news items covered by him were shot in the D.V. cassette which was handed over to the

News Editor, N. P. Santhosh (CW 3) . In cross-examination he stated that every programme shot in the D.V. cassette will be captured in the computer in the office of the News Editor and the necessary portions will be saved in the computer and each news item will be transferred to the C.D. Ext. X3 C.D. which was played in Court does not contain the full speech of Jayarajan. But his D.V. cassette contained the complete speech. Whatever is recorded in the D.V. cassette will get erased when fresh matters are shot on the D.V. cassette on the next day. He had heard the entire speech of Jayarajan. The actual speech of Jayarajan might have lasted for 35 to 40 minutes. The duration of the programme in Ext. X3 C.D. is only two minutes. There were good things spoken about Courts in the speech . The overall speech did not have the effect of undermining the Court . He was born and brought up at Kannur. To a leading question put to him that the word Shumbhan in that part of the State means a knowledgeable person uttering some nonsense , the witness answered that the said word is used among friends when some nonsense is spoken. The venue for the speech was some distance away from the Kannur bus stand . Since it was a hartal day the main listeners were the protagonists of the hartal. In re-examination he clarified that the opinion which he gave regarding the word "Shumbhan" was his personal opinion and that it depends on the context in which it is used.

C. CW 3 (N. P. Santhosh) He is the news editor of City News channel, Kannur and has been working as such since 2002. News items are telecast through City News Channel under his responsibility. He makes arrangements for telecasting maximum news within the time allotted for telecasting the news. He will examine the D.V. Cassette submitted by CW2 and will finally select for telecast matters having sensational news value. The speech of Jayarajan was telecast since it was in response to the verdict of the High Court. The relevant portion of the speech which was telecast is contained in Ext. X3 C.D. The matter which was read by the News reader and the caption appearing below the speech of Jayarajan were both prepared by him. In cross-examination he stated that he is aware that publishing words which are tantamount to contempt of Court will also amount to contempt of Court. What was necessary for telecasting for the purpose of news was taken from the full speech of Jayarajan contained in the D.V. cassette after editing.



D. CW 4 Saseendran is the Bureau Chief of the Kannur Unit of the Mathrubhumi daily and is working in that capacity from the year 2000 onwards. Ext.C1 is the Mathrubhumi daily dated 27/06/2010. It contains Ext.C1 (a) news item titled ""PUvPnamsXnsc Fw. hn. PbcmPs cqhnaiw".The said news item was reported by one of the reporters of Mathrubhumi by name Biju (CW 8) . He thought it relevant to publish the news item since it was something against the Court . He forwarded the news item to the News Editor who gave the approval for publishing the news item. Ext.C1 (a) news item was published in all the editions of Mathrubhumi and bears the same text. In cross-examination he stated that eventhough Ext.C1 is the Cochin Edition of the Mathrubhumi daily, Ext. C1(a) news item was published in all the 14 editions of Mathrubhumi. To the question whether he was aware of the fact that publication of contemptuous news item will amount to contempt, the witness answered that it was published since it was the statement of somebody else and he thought that there was news value for the news item. He said that eventhough the news item will be generally published after editing, the speech as such will not be edited. He admitted that the irrelevant portions will be omitted from the speech. According to him the bureau chief, the news editor or the editor may decide as to what is relevant or what is irrelevant. He stated that he himself selected the caption which was prepared according to his understanding of the speech. He clarified that what was reported by the reporter was the original version of the speech.

E. CW 5 (Kesava Menon) - He is the Editor of Mathrubhumi daily and in-charge of all the 14 Editions of which four are outside Kerala. He is a B.A. LLb Degree holder. Prior to his service in the Mathrubhumi daily he was working with the Hindu for about 25 years. The total circulation of Mathrubhumi daily is 12 lakhs plus. He is responsible for the publication of news items in all the editions of Mathrubhumi daily. Ext.C1 is the Cochin Edition of the Mathrubhumi daily dated 27/06/2010. Ext.C1 (a) news item pertaining to the speech of M.V. Jayarajan was published in all the 14 editions of the daily and the text of the news item was the same. After the publication of Ext.C1 (a) news item there was no complaint from any quarters regarding the accuracy of the news. The news item was harshly critical of the Courts. In cross-examination, to the suggestion put to him that he will not publish the news item if it amounts to contempt of Court the witness replied in the negative

and said that if the news item has got news value and if it is to be put the public domain it would be published even if it amounts to contempt. The witness added that his first duty was towards the readers. He stated that he is not fully aware that reporting this news item which amount to contempt will be contempt. To the suggestion that he would not have published it if he was fully aware , the witness answered that if the matter was of great public importance he has a duty to publish it even at his risk. To the further question put to him that was he fully aware of the fact that he was committing contempt of Court for publishing the news item, the witness answered that he was only making a verbatim report of what someone else had said. He further deposed that he has the discretion to decide whether the news item should be avoided or not.

F. CW 6 (Sujith) was the Kannur Reporter of Mangalam daily . He proved Ext.C4 (a) news item in Ext.C4 copy of Mangalam daily dated 27/06/2010. The caption for the news was "**Other Language**".He reported the said news after personally hearing the speech of M.V. Jayarajan on 26/06/2010. It was a hartal day in connection with the hike of petrol prices. After hearing the news he typed it out and filed it in the news desk . He saw the local city channel videographing the speech of Jayarajan. What is contained in Ext. X3 C.D. played in open Court is the speech of M.V. Jayarajan. The report he made after reducing to writing the full text of the speech was submitted to the Sub Editor. In cross-examination he admitted that Ext.C4 (a) news does not contain the exact phraseology used by Jayarajan and that there is only a report of the speech which was covered by him. He denied the suggestion that he will not be able to catch up with the speed of the speech while taking down the speech in Malayalam long hand. The entire text of the speech taken down by him has not been reported. It occurred to him that the said speech has got news value. Eventhough he had followed the usual practice of preparing a report after hearing the speech, he had also taken down the speech while it was delivered. He clarified that whenever he covers a speech he takes down the same then and there and then prepare the report.

G. CW 7 (N.M. Unnikrishnan) is the News Editor of Calicut Edition of Mangalam daily from May 2010 onwards. Before that he was the Sub Editor of the said daily of Kottayam. The total circulation of the daily is 3.5 lakhs. Ext. C4 (a) news item

bearing the caption "**Other Language**" was published under his responsibility. The caption for the news item was prepared by reporter Sujith (CW 6). Ext.C4 (a) news item was published in all the editions of Mangalam daily. It was after ascertaining the genuineness of the speech that the true version of the news submitted by the reporter was published. There has been no complaint received to the effect that Ext.C4 (a) news item was not correctly published. In cross-examination he stated that he did not make any change to the text of the report submitted by CW 6. He had discussed with CW 6 with regard to the news item as is done in all cases. The reporters themselves cover such speeches without being deputed by the News Editor.

H. CW 8 (Biju Paravath) is the reporter of Kannur Bureau of Mathrubhumi daily. He has been working as such for the past two years. Prior to that he was news reporter in Asianet News. Ext. C1(a) news item in Ext.C1 Mathrubhumi daily dated 27/06/2010 was reported by him after covering the entire speech of the respondent on 26/06/2010. The programme held at Kannur had been announced earlier. The speech was in front of the Head Post Office in Kannur. The speech in Ext. X3 C.D. played in open Court was the speech of M.V. Jayarajan which he had heard at Kannur. The speech was taken down by him and given for reporting truly and correctly as part of his official duty. The words of the respondent have been given in quotation. He had submitted the report to the Bureau Chief who had prepared the caption "**Other Language**". In cross examination he answered in the negative the suggestion made whether it occurred to him while reporting the said news that it would amount to contempt. Likewise the witness denied the suggestion that from what he heard it did not occur to him that the criticism was against the judgment. The witness stated that it was against both the judgment as well as the Judges. He denied the suggestion that it is not possible for him to take down the speech in malayalam long hand catching with the speech since he has not done any re-construction of the sentences the suggestion whether such re-construction may alter the meaning of the words does not arise. The speech of the respondent contains the statement that if the legislature and executive cross their limits it is for the judiciary to come to their rescue. That is not there in the news report. But he had submitted the full text of the speech to the Bureau Chief. There are ten reporters at Kannur and it is possible to find out from the Mathrubhumi

Office the reporter who reported this particular news item. He cannot confirm or deny whether microphone was used for the speech which was made in a protest meeting. Ext. X3 C.D. does not show the audience. It is true that the people who had assembled there were less than 100. To the suggestion as to whether he does not know that publishing a matter amounting to contempt will also amount to contempt the witness stated that this did not amount to contempt . He denied the suggestion that he did not cover the speech from the meeting site and that he was obliging the Mathrubhumi management to say that he was the person who had covered the speech. He does not remember the turn of Jayarajan's speech.

I. CW 9 (Saneesh) is the Deputy News Editor in India Vision since 01/09/2010. Before that he was the Kannur Reporter of Asianet Communications Ltd., While so, he reported the speech of M.V. Jayarajan on 26/06/2010 . The speech contained in Ext. X1 C.D. played in open Court is the speech which was reported by him and which was telecast in Asianet news on 26/06/2010. Asianet had obtained the copy of the speech in a tape from City News Channel, Kannur. It was J. S. Sajan, the cameraman of Asianet who had obtained the matter from the City News channel. The contents of the tape were sent to the Central News Desk of Asianet at Puliyarakkonam, Thiruvananthapuram for the purpose of telecast. In cross-examination the witness stated that what the Asianet obtained from City News channel was a part of the speech and it was an unedited version. It is a practice among reporters to exchange news reports and it is not done for payment. They don't disclose the source from which they got the news while telecasting. He did not feel before telecast that the news item amounted to contempt of Court. He had heard from the speech that judiciary is the last refuge for the people. What he obtained from City Channel was only a copy .

J. C.W. 10 (Pradeesh .M.) He is presently working as a cameraman for Reported Channel at Kozhikode. Prior to that he was working as cameraman of Indiavision News channel. Indiavision had telecast the speech of M.V. Jayarajan on 26/06/2010 . Ext.X2 C.D. played in open Court contains the said speech which was telecast by Indiavision. He had obtained the material from Byju (CW 2) of City News channel by way of copying. He did not edit any portion of the matter so taken. In cross-examination the witness stated that he had taken some portion

from City News Channel after omitting some portion. He was asked to take that portion of the speech pertaining to the Court verdict. What was transferred to this camera was the portion which his reporter wanted. He does not remember to have heard that part of the speech which said that the judiciary is the ultimate refuge of the people. He does not know whether he omitted to transfer that part of the speech in which the respondent had made good statements about the Court. It is true to suggest that he transferred the matter to his camera knowing that it does not amount to contempt.

K. CW11 (Thomas Jacob) He is the editorial Director of Malayala Manorama daily which has altogether 10 editions inside Kerala and four editions in India but outside Kerala. They have two more editions outside the country. The present circulation of Malayala Manorama daily is two million. As editorial director he is responsible for the publication of news items in the daily. Ext. C2 (a) news item was published in all the editions of Malayala Manorama. It was K. Jayaprakash Babu, the Kannur reporter of Malayala Manorama who reported the news. He normally sees important news item. Since Ext. C1 (a) news item referred to him was an important news item containing criticism against the Court, it was referred to him. It was after ascertaining the correctness of the news item that it was reported. The news pertaining to the speech of M.V. Jayarajan was telecast in the Manorama News channel as well. By editing they only include the relevant part of the speech having a bearing on the subject. They only quote the speaker and do not add their own words. In cross-examination the witness confessed that he was not at Kannur when the speech was delivered and that he was in his office at Kottayam at that time. Their editors at Kannur had verified the correctness of the speech. The witness answered in the affirmative to the suggestion made to him that the speech was delivered to an audience of less than 100 persons but was circulated to two million people by his daily. He denied the suggestion that what has been reported in Ext.C2 (a) is not the verbatim reproduction of that part of the speech of Jayarajan and said that whatever has been quoted in the news is the verbatim speech of M.V. Jayarajan.

## 5. DEFENCE WITNESSES

RW1 (Dr. P. K. Dharmarajan) and RW2 (Dr. P. V. Narayanan) are working as Professor and Reader respectively in Sanskrit literature in the Sree Sankaracharya Sanskrit University at Kalady.

A. RW1 (Dr. Dharmarajan)

He secured first class and first rank in B.A. (Sanskrit) and first class and second rank in M.A (Sanskrit) and has taken doctorate (Ph.D) in Sanskrit literature. He has authored 27 books all of which have been published. He has 26 years of experience as a teacher in Sanskrit language. He has won awards for his published works. What he has understood is that the contempt proceedings initiated against respondent was for his usage of the words ("some shumbhanmar" in his speech. The source of the Malayalam word "shumbhanmar" is from sanskrit language. "Shumbhan" belongs to the "Thathsamam" category in which words are adopted without any change to the basic root in contrast to "Thathbhavam" category where the words are adopted after making some change in the form and nature of the basic root. "Dhathupatham" is a work written by a sanskrit scholar in grammar by name Panini who lived 4 centuries before Jesus Christ. Ext. R1 is a photostat copy of page 12 of the said book. Both "shubh" and "Shumbh" shown against entries 432 and 433 (Ext. R1(a) are having the same meaning, namely "to speak, to shine, to hurt". Ext. R1(a)(i) is the English translation of the word "Shumbh" (Ext. R1(a). Same is the meaning given to the word "Shumbh" in the book "Dhathuroopaprapancha" which was the sanskrit work of O. K. Munshi who was a Malayalee of North Malabar. Entry 1852 (Ext. R2 (1) at page 1292 (Ext. R2) and Entry 1855 (Ext. R2(a)(i) at page 1294 (Ext. R2 (a) of the above book give the meaning of the words "Shubh" and "Shumbh". Ext. R2(1)(a) is the English translation of Ext. R2(1) namely entry No.1852 which pertains to the root word "shubh" which means "to speak, shine, hurt". Ext.R3 is the photostat copy of page 559 of the Students' Sanskrit- English Dictionary (1965 Edition) which gives the meaning of the word "shubh" as "to shine, be splendid , look beautiful or handsome". The word "Shumbh" is shown there to mean - "to shine, to speak, to hurt and injure" and both "Shubh" and "Shumb" have the same meaning. Exhibit R4 is the photostat copy of Pages 933 and 934 of "Dhathu Nighandu " in Malayalam by K. V. Ravi Namboodiripad. As per Ext. R4(a) English translation,

both the words "Shubh" and "Shumb" mean "to shine". Ext.R5 is the photostat copy of page 119 of "Brihatdhathukusumakara" which is a Sankrit-Sankrit dictionary written by Pandit Harekanth Misra. For the words "Shubh" and "Shumbh" the English translation as evidenced by Ext. R5(b) is "to speak, to shine, to hurt." At page 525 the meaning given to the above basic roots, is "to shine". In understanding the real meaning of language, what is of paramount importance is the will of the speaker or the writer. It is on the basis of 8 factors that the listener or reader understands the will of the speaker or writer, as the case may be. Those aspects have been dealt with in the book called "Karyakavali" written by Acharya Lokamani Dahal. Ext. R7 is the photostat copy of page 6 of the said book and the 8 factors are mentioned at Ext. R7(a) the English translation of which is Ext. R7(b). It is the presence of other words in the speech which determine the meaning of the specific words used by the speaker. The listener cannot say or insist that the speaker used a particular word in a particular sense. From the words judiciary, legislature, legislation, interpretation of law, democracy etc. occurring in the speech of M.V. Jayarajan, what RW1 has understood is that Jayarajan was not using the word "shumbhan" to mean "to shine", to hurt or to injure." According to RW 1 the word "Shumbhan" was used by Jayarajan to denote an encroachment into forbidden areas i.e. Judges who have no power to legislate were transgressing into the field of the legislature. It is true to suggest (in chief-examination) that the word "Shumbhan" is used when a shining person commits a nonsense. It is true to suggest that "Shumbhan" is used when shining Judges pass a wrong verdict without adequate understanding. By that they are hurting the people . In cross-examination, the witness admitted that he has not written any dictionary. He also admitted that he was the 4th accused in Crime No. 462 of 2005 of Kalady Police Station in which he along with the other accused persons were convicted by the Court and each sentenced to a fine of Rs.100/- for unauthorisedly entering the office room of the Private Secretary of the Vice Chancellor of the Sanskrit University and for shouting slogans and for causing destruction in the said office. He stated that the above agitation was on account of suspending a teacher without any provocation or reason and the dharma was launched on behalf of the teachers' Association of which he was the General Secretary. He denied having any affiliation to any political party he also denied the suggestion that his

Association was a unit of the Marxist Party. He confessed that while he was a student he was a sympathizer of the SFI but emphatically denied the suggestion that the SFI is the students' wing of the Marxist Party. He admitted that he was one of the teachers who were appointed during the tenure of the first Vice Chancellor of the Sanskrit University, that there was an allegation that there was corruption behind those appointments and that pursuant to the judgment of the High Court he along with several other teachers were terminated from service. He again got selection in the year 1997. He admitted that in Mythology "Shumbhan" was the brother of a demon by name Nisumbhan. He admitted that the basic roots and words had gradually undergone change to their original meaning and that in due course the word "deva" has come to mean a person who is not "deva" and such person can also include the enemy of a "deva" . He admitted that the meaning given as shining, bright, beautiful and handsome in Ext. R3 is for the word "shubh" as an adjective and the meaning given in Ext. R3 for the word "shubh" as a noun is " a demon killed by Durga". He confessed that he has not read the judgment against which respondent reacted in the offending speech. He deposed that he had read Ext. C1(a) news item in the Mathrubhoomi daily under the caption "**Other Language**"

(Harsh criticism by M. V. Jayarajan against Judges). He normally does not retain news reports in his memory. But he specially noted the news report regarding the contempt case against M. V. Jayarajan. That was because the news report contained a sanskrit word. He has not written to any of the newspapers that the perspective in which the news was reported was not correct. He is not in the habit of responding to news reports. "Sabdatharavali" by Sreekanteswaram Padmanabha Pillai is an authoritative dictionary in Malayalam. He confessed that the meaning given for the word "Shumbhan" in that dictionary is "shining, a demon, idiot, fool" and that he had not referred this dictionary in connection with this case. According to him he was concentrating on the sanskrit meaning of the word. When asked whether he used to call his students or the students used to call him by the name "shumbhan" he answered that the said word is not one which figures in his parlance. He stated that he has come to Court to say that the word "shumbhan" does not deserve that much importance as to be elevated to the level of contempt of Court and that seriousness of such a magnitude need not be given



to the speech of M. V. Jayarajan. He admitted that to say that Court verdicts are becoming grass means that the people consider the verdicts as silly. When asked whether there was not an exhortation in the speech to openly flout the Court verdict, RW1 answered that he was concentrating on the word "shumbhan". In the cross-examination RW1 came out with a new version that the word "shumbhan" in this context means a verdict which hurts the people. But he maintained that the original meaning of a word will not undergo any change with the passage of time and new meanings will be added on additionally but the most accepted meaning of a word will be given first. He confessed that the offending speech of M. V. Jayarajan was not one appreciating the High Court verdict but was one criticizing the verdict.

B. RW2 (Dr. P. V. Narayanan) is for the past 17 years working as lecturer and thereafter Reader of Sanskrit in the Sree Sankaracharya Sanskrit University, Kalady. Apart from acquiring M.A., B.Ed he has also a Ph D in Sanskrit besides passing JRF examination conducted by the UGC. He has published books as well as research papers. This witness also substantially corroborated the testimony of RW1. With reference to Ext. R1, Exts. R8, R8(a)- pages 197 and 774 of Dhathuratnakara in Ashtadhyaya of Saint Lavanya Soori, Ext.R9 (Amarakosam - page 103) Ext. R10 Sanskrit-Malayalam dictionary (Page 921) published by Vidyarthimithram, Ext. R11 Rajasooyam - page 30, Ext. R12 Aythihamala - page 872, Ext. R13 Gundart Malayalam Dictionary, this witness also deposed that the Malayalam word "Shumbhan" is derived from Sanskrit and that it mainly means "to speak, to shine and in Ext. R10, "to hurt" and "to injure" also. He added that from the 15th to 19th century the word Shumbhan meant " a shining person" RW2 gave particular emphasis to the Malayalam dictionary (Ext. R13 - page 931) of Gundart to say that Herman Gundart had come down from Germany for spreading religion and had settled down at Thalassery in Kannur district and it was after interacting with the people of North Kerala that he prepared the said dictionary and even in the 1982. Edition of the said dictionary the meaning given to the word "shumban" is "shining". Referring to Ext. R15 English translation of page 127 (Ext. R14) of Vakyapadhiya by Bharthruhari, the witness deposed that the presence of another word was one of the indicia for determining the usage of a word. Through two leading questions this witness was made to say that over and above the scientific

meaning as given in the texts referred to above, the word "Shumbhan" has a different meaning familiar only to Kannur region. As a person born and brought up at Kannur RW2 would say that for those who belong to that area the word "shumbahn" is used to criticise a capable person who does a thing in an unsatisfactory manner. According to him the principal meaning given in the texts for the word "Shumbhan" is to shine, to hurt, to speak" is due to the wide prevalence of those meanings. Through a leading question the witness was asked whether a person from Kannur if used the word "Shumbhan" would it mean "fool" or "idiot" and the witness answered in the negative. During cross-examination RW2 was asked whether it was not the context in which a word is used which is relevant in understanding the word. He replied saying that besides the context, the will of the speaker, the place and the persons listening the speech were also relevant. He went to the extent of saying that the people of Kerala talk after understanding the concept in Ext. R14 (Vakyapadhiya). He had to confess that it was only after he started learning sanskrit that he became familiar with the meanings of the expressions in Vakyapadiya. According to him the contempt of Court proceedings were taken against respondent for using the words "Shumbhan" and "Pullayi marunnu" (verdict turns grass). He admitted that he has not seen the Court charge against respondent. He does not know whether it was as a nominee of the Marxist Party that RW1 (P. K. Dharmanjan) became a member of the Syndicate of the University in the year 2009. He too was an accused along with RW1 in the Kalady Police Station crime and he too was convicted by the Court. The meanings given as "to hurt", "to injure" in Exts. R1 and R8 are only according to some. He admitted that none of the materials produced in this case, shows that the word "Shumbhan" has a primary meaning and a meaning which is not primary. He also admitted that certain Malayalam words which had their origin in Sanskrit have other meanings after their adoption to Malayalam. He confessed that in Sabdatharavali the word "Sumbhan" has meanings such as "Moodan", Bhoshan". The meaning of the word Bhoshan is stupid or dunce who has no power of understanding. Sanskrit is not the mother tongue in Kerala. Dhatupatom of Panini is an authoritative work in Sanskrit at all times and even today. He has never heard the word "Shumbhan" used to denote a shining person. None of the books produced in this case shows that the word "Shumbhan" has a

different meaning in Kannur as stated by him. He has not looked up the meaning of the word "Shumbhan" in the Malayalam Lexicon published by the Kerala University. This Court asked the witness whether he is a known expert in Sanskrit language and to this his answer was in the affirmative. He told the Court that he has absolutely no politics. He said that he does not have any fear against political parties especially the Marxist party. He admitted that the word "Shumbhan" was used by respondent against the Judges and that he does not know whether the Judges who pronounced the verdict belong to Kannur. He admitted that if a public speech made by a politician was being covered by the mediapersons then such politician should naturally expect that his speech will receive wide coverage. He said that it was the news about the contempt proceedings against Jayarajan for using the word "Shumbhan" which evoked his curiosity and he got in touch with Jayarajan to convince him that there was no contempt in that word. That is how he happened to be a witness for Jayarajan.

#### 6. Arguments in support of the charge

Senior Advocate Sri. S. Sreekumar who conducted the case in support of the charge made the following submissions before us:

The Court charge framed against the respondent on 01/08/2011 has clearly stated that portion of his speech which was suggestive of contempt of Court. The charge was not confined to the words "Shumbhanmar" or "Court verdicts having only the value of grass" tlmSXnhn[nl ]pmbn amdplbmWv. But RWs. 1 and 2 cited by the respondent would depose that the contempt proceedings were taken against the respondent only and with regard to those words. The said assumption made by RWs.1 and 2 was wrong. Admittedly, they have not seen the Court charge. A perusal of Ext. C6(b) order dated 13/08/2010 by the same Division Bench which had passed Ext.C5 judgment will show that all the grounds put forward by the review petitioners and which were the same as those raised by the respondent in his reply affidavit filed before this Court on 20/12/2010, were considered and rejected. In spite of that the respondent was reiterating the same grounds in the reply affidavit in justification of the offending speech made by him. In paragraph 4 of the reply affidavit he would have it that the media has reported distorted

versions of his speech. According to him the contempt proceedings are to stifle his fundamental right of speech and expression against Ext.C5 judgment. In paragraph 5 of his reply affidavit he contends that the Court has gone beyond the issues in Ext.C5 judgment. In paragraph 6 of the reply affidavit he would say that his speech was a bona fide criticism. His contention in paragraph 7 of the reply affidavit is that Ext.C5 judgment was impractical and impossible to implement. In paragraph 11 of the affidavit he would have it that the judgment has far reaching consequences depriving the poor and illiterate masses of their right to information and therefore what he made at Kannur was an honest criticism with intent to educate the people and make them aware of the legal infirmities in the judgment. In paragraph 12 of the reply affidavit he is again assailing Ext.C5 judgment as one pronounced without hearing the affected parties. In paragraphs 13 and 14 he would say that the word "Shumbhanmar" can never be understood as having the meaning of idiot or fool and it is the word used in Kannur area to denote an intelligent and knowledgeable person who expresses something or acts in a manner without properly considering the various aspects of the matter. In Paragraph 15 he reiterates that he has not cast any aspersions on the Court or on the Judges in his speech. The respondent has thus admitted his speech made at Kannur, his criticism made against Ext.C5 judgment and that he called the Judges by the name "Shumbhanmar". Even after the Division Bench rejected the contentions raised in the review petitions in Ext. C6(b) order, the respondent is not only reiterating those contentions but is again attacking Ext.C5 judgment on the very same grounds. On 30.05.2011 this Court after hearing the amicus curie as well as the Senior Advocate for the respondent had passed an order deciding to frame charge against him. That order was challenged by him in the Supreme Court which, however, dismissed S.L.P (Crl) No. 4877/2011 in limine. Eventhough what the law contemplates is summary trial, this Court has been unduly indulgent in allowing the respondent to liberally cross-examine the witnesses examined in support of the charge as also in citing and examining his own witnesses. The relevant speech of the respondent was reported in Ext.C1 Mathrubhumi daily dated 27/06/2010 as Ext.C1(a) news item. CW4 who was the Bureau Chief, CW5 who was the editor and CW8 who was the reporter of the said daily have proved Ext.C1(a) news item. CW8, the reporter of Mathrubhumi has deposed that he was

personally present when the speech was made and he had taken down the speech. CW6 is the reporter of Mangalam daily and he was also present at the venue where respondent made the speech. Ext. C4(a) is the news report in Mangalam daily proved by him. CW11 who was the Editorial Director of Malayala Manorama daily has proved Ext. C2 copy of the daily and Ext. C2(a) news item. It was CW2 the cameraman of City News channel, Kannur who shot the speech and submitted to his news editor CW3 and CW3 in turn prepared the text and caption of the news and made arrangements for telecasting the news in the City News channel, Kannur. Ext. X3 is the news so telecast in that channel. It was from the City News channel that two other news channels by name "Asianet" and "Indiavision" got portions of the news which were telecast by these two channels. Ext. X1 is the C.D containing the news telecast by Asianet and Ext. X2 is the C.D containing the news telecast by Indiavision. Ext.C3(a) is the news item which was published in Ext. C3 Deepika daily and proved through CW1 who had read the news in Deepika daily. It is relevant to note that the respondent has absolutely no complaint against the correctness of any of the above news items. He admitted his speech in Ext. X3 CD both when examined under Section 313(1)(a) Cr.P.C as well as under Section 313(1)(b) Cr.P.C. In answer to question No.64 put to him during his examination he reiterated his objection to Ext.C5 judgment and stated that he was criticizing the judgment and not the Judges. He would say that there is no law to ban meetings and the High Court had no authority to do so. He stated that his aim is to correct the mistakes committed by the judiciary and that after his speech there is a general awareness among the people. He has admitted that the review petitions were dismissed by the High Court. After the judgment in the review petition it was not open to the respondent to say that his criticism was fair or one made in good faith. A scrutiny of the testimony of the media persons examined in this case will show that the respondent was through his suggestions made to them, virtually admitting that his speech amounted to contempt of Court. The suggestion which was put to CWs.2 to 10 during examination was whether would it not amount to contempt of Court to publish such a news item. The respondent has admitted that the news reporters were present when he made the speech and his only objection is that it was not humanly possible for them to take down the speech in longhand. Going by the testimony of CW11 the circulation of Malayala

Manorama is 2 million. The circulation of Mathrubhumi according to CW5 is 12 lakhs plus. RWs.1 and 2 who were examined as authorities in sanskrit language and literature were virtually turning out to be the mouth pieces of the respondent and they even went to the extent of deviating from the written texts of Exts. R1 to R6 and R8 to R13 to say that the word "Sumbhanmar" has a less objectionable meaning. Both of them had to confess that their initial employment in the Sanskrit University was through corruption and their services were terminated pursuant to a verdict of the High Court. It was subsequently that they were re-employed in that University. Both of them therefore nurture a hostile animus towards the High Court. They were thus coming to the rescue of the respondent and emerged more loyal than the King. Both of them really belong to the same political party as that of the respondent and were rendering lip service to the respondent. The respondent is an active worker of the Marxist party which does not tolerate a Court verdict going against its interest. The SFI is the students' wing and the DYFI is the youth wing of the Marxist party. There is the emergence of a new breed of cruelty namely atrocities against Judges. It is disconcerting to find that whenever a judicial verdict which is unpalatable to the ideologies of this political party is pronounced, then instead of having recourse to the procedure established by law, the issue is dragged to the streets and frontal and collateral attacks personally on the Judges are made with impunity crossing all frontiers of fair comment. This State has witnessed the unpleasant scenes of burning of effigies of Judges on the streets and the political impeachment and banishment of Chief Justice V. K. Bali by the S.F.I. and DYFI, the reason being that some of their judgments were unpalatable to the S.F.I. and the DYFI.

After the examination of RW 2, the respondent made a press statement objecting to the Court question put to RW2 and attributing political bias in this Court and stated in public that he was a victim of these proceedings only because he belongs to the Marxist party. The respondent was participating in a media trial conducted by a television channel by name "Reporter" in gross violation of law and journalistic ethics. Right from the commencement of these proceedings he was frequently going to the Press and justifying the offending speech. After Ext. C6(b) verdict in the review petition, it was not open to the respondent to plead any public interest or good faith so as to justify the reiteration of the very same grounds in the

reply affidavit filed by him. He has scandalized the Court and the Judges within the parameters laid down in the following verdicts: --

1. Brahma Prakash Sharma and Others v. The State of Uttar Pradesh, AIR 1954 SC 10
2. Pratap Singh and Another v. Surbaksh Singh, AIR 1962 SC 1172
3. In Re: P.C. Sen, AIR 1970 SC 1821
4. E.M. Sankaran Namboodiripad v. T. Narayanan Nambiar, AIR 1970 SC 2014
5. Mohd.Iqbal Khanday v. Abdul Majid Rather, 1994 (4) SCC 34
6. Chandra Shahi v. Anil Kumar Verma, 1995 (1) SCC 421
7. In Re: Vinay Chandra Mishra, 1995 (2) SCC 584
8. Ram Autar Shukla v. Arvind Shukla, 1995 Supp (2) SCC 130
9. Dr. D.C. Saxena v. Hon'ble the Chief Justice of India, 1996 (5) SCC 216
10. Supreme Court Bar Association Union of India and Another, 1998 (4) SCC 409
11. In Re. S.K. Sundaram, 2001 (1) KLT 585 SC and
12. In Re Arundhati Roy, 2002 (3) SCC 343

He cannot claim the protection under Art.19(1)(a) of the Constitution of India. He cannot say that his speech was bona fide or was one made in public interest. By calling the Judges "Shumbhanmar" he was calling them idiots or fools. His verbal assault was not against the judgment but against the Judges. His subsequent conduct of filing the reply affidavit and sticking to his stand when examined under Section 313 Cr PC and his going to the Press when the issue was sub judice before this Court are all actions actuated by malice. He shall not be let off with a "flee bite" sentence. He does not deserve any leniency. He shall be awarded the maximum punishment permissible in law.

7. Arguments for the contemnor Senior Advocate Sri. M.K. Damodaran appearing for the respondent made the following submissions before us opposing the contempt proceedings:

A Division Bench of this Court which had dealt with identical contentions raised in two contempt petitions earlier preferred in respect of the same speech, had dismissed the same. (Vide -- Baisil Attipetty v. Jayarajan, 2010

(3) KHC 431 : 2010

(3) KLT

466. Eventhough the dismissal of the two contempt petitions was for the reason that the consent of the Advocate General was not obtained by the petitioners therein, the Division Bench did not choose to initiate suo motu contempt against the respondent. This shows that the Division Bench was not even prima facie satisfied that the speech in question amounted to Contempt of Court. In Annexure-I contempt petition filed by Advocate Rehim he would even say that the respondent has committed both civil and criminal contempt. In Ground A(i) of the contempt petition he has stated that he has impleaded the Advocate General as a respondent to the petition for giving his consent . He would further say under clause (ii) that in case it is found that the consent of the Advocate General is necessary to maintain the petition, suo motu action may be initiated against the respondent or permission may be granted to the petitioner for moving the Advocate General for his consent. It was on 21/07/2010 that a Division Bench of this Court dismissed the other two petitions for contempt. That was at a time when this Contempt Petition filed by Advocate Rehim was pending. When the High Court has refused to take suo motu contempt on the two petitions filed by others, a different treatment in the case of the petition filed by Rehim was not called for. It will amount to issue estoppel. Under Rule 9 (i) of the Rules every "information " falling under Rule 7 has to be placed for preliminary hearing before the appropriate Bench and under Rule 9(ii) the Bench will issue notice to the respondent only if it is satisfied that a prima facie case has been made out. Justice Pius C. Kuriakose to whom the matter was made over by the Chief Justice under Rule 7(ii) had also directed that the matter be placed for preliminary hearing before the appropriate



Bench. But no preliminary hearing was conducted by the Bench which was straightaway ordering notice to the respondent. The Advocate General or the six or seven persons who had furnished "information" to the High Court could have been heard by the Bench. If that was done, probably the Bench would have either dismissed the petition or dropped the proceedings under Rule 9 (ii). After the appearance of the respondent also Rule 14 (b)(i) contemplates a satisfaction by the Court about the existence of a prima facie case before proceeding to frame charge. The said satisfaction is to be arrived at on the existing materials. On 23/03/2011 this Court after hearing the counsel for the contemnor and Advocate Sri. K. Jayakumar (*amicus curiae*) passed an order calling for the original and unabridged video tape of the speech made by the respondent from three television channels. In that order this Court observed that in the suo motu proceeding what is available before the Court is only photocopies of the newspaper cuttings from the Mathrubhoomi, Malayala Manorama and Mangalam dailies where the entire text of the speech is not given. Had there been a hearing under Rule 9 (ii) (a) on the existing materials, this Court would not have issued notice to the respondent for want of a prima facie case. There was no reliable documents before the Court so as to arrive at the requisite satisfaction enabling the Court to issue notice to the respondent. The law of contempt must be strictly interpreted in paragraph 6 of *Muthu Karuppan, Commissioner of Police, Chennai, v. Parithi Ilamvazhuthi and Another*, 2011 KHC 4386 : 2011

(5) SCC 496 : 2011

(2) KHC SN 21 : 2011

(4) SCALE 664 : 2011

(2) KLT SN 76 : AIR 2011 SC 1645 the Supreme Court has observed that the procedure prescribed by the Rules is to be strictly adhered to. To the same effect is the decision in *Anup Bhushan Vohra v. Registrar General*, 2011 KHC 4863 : 2011

(2) KLD 594 (SC) : 2011

(10) SCALE 561 : 2011

(4) KLT SN

67. In Sahdeo v. State of U.P., 2010 KHC 4122 : 2010

(3) SCC 705 : 2010

(1) KLD 674 : 2010

(2) SCALE 569 : 2010 Cri LJ 2034 also the procedure prescribed as per the Rules was directed to be strictly followed. It was further held that the standard of proof required in contempt proceedings is proof beyond reasonable doubt as is insisted in criminal trials. It was held in that case that the trial was vitiated due to non-compliance of the Rules. The notice in Form No. 1 issued in this case to the respondent was defective for want of a preliminary hearing and a finding to the effect that a prima facie case has been made out under Rule 9 (ii). The definition of "criminal contempt" under Section 2 (c ) has three separate limbs each of which are independent. In the charge framed by this Court on 01/08/2011 the respondent has not been told as to which of the three limbs of Section 2 (c ) is attracted by the offending speech. The draft memo of charges also mentions only Section 2 (c) read with Section 12 and 15 without indicating which of the three limbs of Section 2 (c) has been violated . Right to free speech under Art.19 and right to independent justice under Art.21 of the Constitution are valuable rights available to the respondent in a proceeding for contempt of Court for what he had spoken to the people. The contemnor has to be told specifically as to which is the exact provision of law that has been infringed by him. Publication is the most important aspect of criminal contempt. Mere speech alone cannot constitute contempt. The four mediapersons who were shown as respondents 2 to 5 in the contempt petition were responsible for publishing the speech allegedly amounting to contempt of Court. If so, those mediapersons had also committed contempt of Court. In other words, if the respondent has committed contempt, those media persons also have committed contempt. But this Court did not proceed against the publishers of the news item. None of the witnesses examined in this case has said that the word "shumbhan" is contemptuous. Apart from the fact that in spite of the direction by

this Court the full text of the speech of the respondent has not been produced by the Asianet and Indiavision television channels, the speech as contained in Exts. X1 and X2 CDs does not amount to contempt of Court. The respondent was making only a general criticism of the judgment and he had no malice or ulterior motive behind the same. In Ext. X2 C.D. he says that the judiciary is the last refuge. This is really an acknowledgment of the greatness of the judiciary. A speech should not be understood divorced from the intention of the speaker. According to the respondent, the Court while passing Ext. C5 judgment had usurped the power of the legislature by banning the holding of meetings and rallies on public roads and road margins. It was really a legislation by the Court and the public was put to untold hardship on account of the judgment. It was under these circumstances that the respondent made the speech with a view to enlighten the public about the impact of the judgment. Applying the standards laid down in *In Re. S. Mulgaokar*, 1978 KHC 587 : 1978 SCC (Cri) 402 : 1978

(3) SCC 339 : 1978 SCC (Cri) 402 : AIR 1978 SC 727 : 1978 MLJ (Cri) 593 *Rama Dayal Markarha v. State of Madhya Pradesh*, 1978 KHC 552 : 1978

(2) SCC 630 : 1978 SCC (Cri) 327 : AIR 1978 SC 921 : 1978 Cri LJ 917 *P. N. Duda v. Shiv Shanker*, 1988 KHC 986 : 1988

(3) SCC 167 : 1988 SCC (Cri) 589 : AIR 1988 SC 1208 *Conscientious Group v. Mohammed Yunus and Others*, 1987 KHC 993 : 1987

(3) SCC 89 : 1987 SCC (Cri) 465 : AIR 1987 SC 1451 : 1987 Cri LJ 1182 *Indirect Tax Practitioners' Association v. R.K. Jain*, 2010 KHC 4572 : 2010

(8) SCC 281 : 2010

(3) KLT SN 88 : AIR 2011 SC 2234 *Vincent Panikulangara v. V. R. Krishna Iyer*, 1983 KHC 183 : 1983 KLT 829 : ILR 1983

(2) Ker. 626 *Baradakatha Mishra v. Registrar of Orissa High Court*, 1974 KHC 403 : 1974

(1) SCC 374 : 1974 SCC (Cri) 128 : AIR 1974 SC 710 : 1974

(2) SCR 282 : 1974 Cri LJ 631 : 1974 Cri LR 124 T. Narayanan Nambiar v. M. Sankaran Namboodiripad, 1968 KHC 47 : 1968 KLT 299 : 1968 KLJ 197 : ILR 1968

(1) Ker. 384 Brahma Prakash Sharma and others v. The State of Uttar Pradesh, 1954 KHC 402 : AIR 1954 SC 10 : 1953 SCR 1169 : 1954 Cri LJ 238 Haridas Das v. Usha Rani, 2007

(3) KHC 378 : 2007

(3) KLT 587 (SC) : JT 2007

(9) SC 231 : AIR 2007 SC 2688 Narmada Bacho Andolan v. Union of India and Others, 1999 KHC 1408 : 1999

(8) SCC 308 : AIR 1999 SC 3345 In Re Suo Motu v. Ravi, 2009

(2) KHC 357 : 2009

(2) KLT 52 : ILR 2009

(2) Ker. 148 : 2009

(2) KLJ 166 and Leila David v. State of Maharashtra and Others, 2009

(2) SCC 530 it cannot be said that the statements made by the respondent constitute "criminal contempt". Except the dailies marked as Exts. C1 to C4 there is no original document before Court. Xerox copies of news reports cannot be relied on. The same tests which are applicable to the admissibility of tape recorded statements equally apply to CDs. All these matters have been discussed in All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi and Others, 2009 KHC 4599 : 2009

(5) SCC 417 : AIR 2009 SC 1314 : 2009

(2) SCC (Cri) 673 : 2009

(4) SCALE

547. The evidence in the case also is insufficient to maintain the contempt proceedings, much less, to find the respondent guilty of criminal contempt. It was out of his political differences with the respondent that CW1 (Adv. Rehim) filed the contempt petition and pursued the same by figuring as a witness. According to him the speech amounted to both civil and criminal contempt. CW2 who shot the speech of the respondent has admitted that the entirety of what was shot by him has not been telecast and that Ext. X3 C.D. also does not contain the full speech. The speech was erased from the D.V. cassette in which it was recorded after transferring the relevant portion of the speech into the computer. CW 2 who hails from Kannur has unmistakably stated that "shumbhan" is a word used between friends while uttering some nonsense. This is precisely the case of the respondent also. In spite of such an answer given by CW 2 in cross-examination he was not declared hostile. CW4 the bureau chief of Mathrubhumi daily has admitted that the irrelevant portions of the speech will be omitted and they decide what is relevant or what is irrelevant. CW6 , the reporter of Mangalam daily has admitted that Ext. C4(a) report does not contain the exact phraseology used by the respondent in his speech. It was impossible for him to take down the entire text of the speech in long hand eventhough he claimed otherwise. It is he who decides as to what is relevant or what is irrelevant for reporting. Eventhough CW8 claims to have reported the speech after directly hearing the same, the defence case is that he did not cover the speech. CW9 who proved Ext. X1 C.D. of Asianet has admitted that he obtained only a portion of what had been recorded by City News channel and that he had heard from the speech of the respondent that the judiciary was the last resort for the people. CW10 who also took some portions of the speech from City News channel for Indiavision does not know whether the respondent had spoken good things about the judiciary. He also confessed that he did not hear that part of the speech in which the respondent had said that the judiciary was the last resort. CW 11 does the editing for Malayala Manorama daily by sitting at Kottayam. Except CWs 2, 6 and 8 all the other witnesses have only hearsay knowledge about the speech of the respondent. Most of them have substituted their own words Hence, no contempt can be taken against the respondent for the words of somebody else. The entire text of the speech is not before Court. The context in which the speech was made is very relevant. The respondent might have been

appreciating and paying encomiums to the judiciary. Ext. C5 judgment according to him was an out of the way verdict. He, therefore, expressed his response to the same. He had no mens rea or malice . He never questioned the integrity of the Judges. There is no allegation of moral turpitude against the Judges in his speech. The evidence of RWs 1 and 2 is to the effect that the word "shumbhan" which is a derivative from Sanskrit language means "one who shines". Merely because the said word has other insignificant meaning such as "idiot or fool", it cannot be said that the respondent meant only the said meaning. We cannot brush aside the most important meaning given to the word in the authoritative texts. If the word "shumbhan" means something other than "fool or idiot", then that meaning cannot be eschewed from consideration, particularly when the principles governing the matter as contained in Exts. R7 and R14 suggest that it is not for the listener to conclude as to what was meant by the speaker when he used a particular expression. The speech delivered by Justice Markandey Katju under the head "Contempt of Court, the need for a fresh look" refers to an outraged response by the Daily Mirror of England against the injunction granted by the House of Lords by a 3-2 majority restraining the publication of a book titled "spy catcher" written by a former spy. The Daily Mirror carried the upside down photographs of the majority Judges with a caption "YOU FOOLS". Senior Advocate Fali S. Nariman who happened to be at England asked Lord Templeman (the senior Judge in the majority) why no contempt proceedings were initiated . The reply was that eventhough the Judge believed that he was not a fool, others were entitled to have their opinion and that Judges in England did not take notice of personal insults. Fali S. Nariman has also referred to the above incident in an article written by him. The word "shumbhan" has a lighter meaning in Kannur area as spoken to by CW 2 and RW2. The answers given by the respondent to question Nos. 17 to 19 of his examination under Section 313 (1)(b) Cr.P.C. will also indicate that the respondent never intended to call the Judges "fools or idiots". The unobjectionable meaning ascribed by him to the word "shumbhan" gains corroboration from the testimony of RWs 1 and 2 . He has also made his intention clear beyond doubt in his reply affidavit as well as in the answer given to Question No. 64 of his examination under Section 313 (1)(b) Cr.P.C. The respondent has not scandalised the Court or lowered the authority of the Court. Even if this Court holds that the respondent has

scandalised the Court, in the absence of an allegation in the notice and in the Court charge that the contempt of Court allegedly committed by the respondent is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice within the meaning of Section 13 (a) of the Act, no punishment can be imposed on him. (Vide Raju Bose v. Prithvi Nandy and Others, 1986 KHC 83 : 1986 KLT 303 : 1986 KLN SN

6. In paragraphs 46 and 47 of the above decision the Division Bench held that if the contemnor is to be punished, it is essential that the charge, the statement of allegations etc. should contain the ingredients of Section 13 with supporting allegations. In paragraph 45 it was observed that the proceedings of the Advocate General granting sanction also should refer to the ingredients of Section

13. The above requirement is conspicuously absent in the draft charge served on the respondent as also the subsequent Court charge framed against him on 1-8-2011. Hence no sentence can be imposed on the respondent even if this Court were to find him guilty of criminal contempt.

## 8. JUDICIAL RESOLUTION

We are afraid that we find ourselves unable to accept the defence submissions, even though beautifully presented by Senior Advocate, Sri. M.K. Damodaran. Nobody will disagree with Lord Atkin who said that Justice is not a cloistered virtue and she must be allowed to suffer the scrutiny though outspoken, but respectful, comments of ordinary men. (vide *Ambard v. Attorney General for Trinidad and Tobago*<sup>23</sup> quoted with approval in *P.N.Duda v. P. Shiv Shanker*<sup>24</sup>. There cannot be any objection to the above proposition. It is indeed unobjectionable that the administration of justice and the Judges should be open to public criticism and public scrutiny. Similarly, no exception can be taken to the classic observation of Lord Denning in *Regina v. Commissioner of the Metropolis, Ex parte Blackburn*, 1968 (2) All ER 319 that it is the right of everyman to make fair comment, though outspoken, on matters of public interest and that those who comment can certainly say that the Judges were mistaken and their decisions were erroneous. The great Judge rightly remarked that Judges will and should never use the contempt jurisdiction as a means to uphold their own dignity or to suppress those who speak

against them. On yet another occasion Lord Denning observed that insults are best treated with disdain save when they are gross and scandalous (Vide- Balogh v. St. Albans Crown Court (C.A.) - 1975 (1) QB 73). Let it be known that Judges do not fear criticism nor do they resent it since the freedom of speech and expression will otherwise be put in jeopardy. As Justice Krishna Iyer, J. observed "to criticise a Judge fairly though fiercely, is no crime but a necessary right. Judges need not be hypersensitive even when distortions and criticisms overstep the limits. They should be able to deflate vulgar denunciation by dignified bearing". But even in that context the learned Judge hastened to add that the disturbing trends of some men in the trade of traducement scandalising Judges with flippant or motivated statements wearing a pro bono publico veil and mood of provocative mock-challenge, are escalating. Justice Krishna Iyer unhesitatingly concluded that if the Court considers that the attack on the Judges was scurrilous, offensive, intimidatory or malicious and 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. (In Re S Mulgaokar, 1978 KHC 587 : 1978 (3) SCC 339 : 1978 SCC (Cri) 402 : AIR 1978 SC 727 : 1978 MLJ (Cri) 593. It is legitimate criticism and not illegitimate insinuation which is permissible. The Apex Court has cautioned that under the cover of speech and expression no party can be given a right to deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalize the Court and bring it into disrepute or ridicule. The Supreme Court further observed that the right to criticise a judgment cannot be exercised with malice (vide Narmada Bachao Andolan v. Union of India and Others, 1999 KHC 1408 : AIR 1999 SC 3345 : 1999 (8) SCC 308. But those who criticise should not forget that from the nature of their office, Judges cannot reply to their criticisms and cannot enter into public controversy, much less, political debates. Some critics selectively choose only Judges as their soft targets knowing fully well that their onslaught will not be countered, leave alone, retorted by their preys, who, under the Conduct Rules and Code of Conduct, are forbidden from responding to, if not repudiating such criticisms. Mounting scurrilous attacks on Judges merely for the reason that their verdict is unpalatable to a person or to his personal or political ideologies, is a pernicious tendency which will erode the public confidence in our



judicial system. What is more dangerous and ought to be avoided is the user of vulgar, profane, opprobrious, vituperative and indecent language, while criticizing judgments. The Apex Court has reiterated that the purpose of contempt jurisdiction is not to vindicate the personal grudge of individual Judges, but to uphold the majesty and dignity of the Courts of justice and their image in the minds of the public and to ensure that this is in no way whittled down. If by contumacious words or writings the common man is persuaded to lose his respect for the Judge acting in the discharge of his judicial duties, then the confidence reposed in the Courts of justice is rudely shaken and the offender needs to be punished. In essence, the law of contempt is more a protector of the seat of justice than the person of the Judge sitting in that seat. If public respect and confidence in the judicial process is shaken or broken, the confidence of the common man in the institution of judiciary and the democratic set up is likely to be eroded and this, if not checked, is sure to be disastrous to the society itself. (In re Arundhati Roy, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792.

9. Whether these proceedings are barred by the principles of issue estoppels.

In Baisel Attipetty v. Jayarajan, 2010 (3) KHC 431 : 2010 (3) KLT 466 the two petitions considered by the Division Bench presided over by the Chief Justice, were not contempt petitions as wrongly assumed by the defence. They were writ petitions filed by one Advocate K.P.Ramachandran and Advocate A. G. Baisil inter alia requesting the High Court to take contempt of Court proceedings against the respondent herein and to charge appropriate criminal case against the respondent herein after conducting an investigation. Both the writ petitions were dismissed in limine on the ground that the consent in writing of the Advocate General had not been obtained and the alleged contempt of Court was not a criminal offence to be investigated by the Police. This Court did not go into the merits of the case at all in those writ petitions filed under Art.226 of the Constitution. But in the case on hand the petition filed by Advocate Rehim was under the provisions of the Contempt of Courts Act although without the consent of the Advocate General. The petitioner had made the Advocate General a respondent and had sought a direction to grant consent. He had also prayed for initiating suo motu contempt of Court in case it was found that the consent of the Advocate General was a pre-requisite. This

makes all the difference. There is no case for the respondent that the Division Bench acted on extraneous considerations by keeping the petition filed by Advocate Rehim pending for eventually taking suo motu action. We, therefore, turn down the contention that the earlier dismissal of the 2 writ petitions filed by two other Advocates operates as a bar to the present proceedings on the principles of issue estoppel.

#### 10. Whether the Court charge is vague and it vitiates the trial?

We now proceed to consider the defence contention that this Court was bound to mention in the charge the particular clause among clauses (i) to (iii) mentioned in the definition of "criminal contempt" in Section 2(c) of the Act and the omission to mention the same has vitiated the trial. The charge framed in this case and given at paragraph 3 above against the date 01/08/2011 makes mention of all the offending words attributed to the respondent and says that he committed "criminal contempt" punishable under Section 12 read with Section 2(c) of the Act. Section 2(c) of the Act defines the expression "criminal contempt". Besides quoting the penal provision (i.e. Section 12 of the Act) and stating the date, place and particulars of the statements constituting the offence and specifically stating that what he committed was "criminal contempt" as defined in Section 2(c) of the Act, it was not necessary for the Court to incorporate the ingredients of the definition of "Criminal Contempt". Sub-section (2) of Section 211 Cr PC says that if the law which creates the offence gives it any specific name, it is enough to describe the offence in that name while framing charge. Sub-section (3) of Section 211 Cr PC clearly suggests that the contents of the definition need be stated only if the law does not give any specific name for the offence. Here the offence is "criminal contempt" which has been specifically mentioned in the charge in addition to Section 2(c) of the Act. The object of framing a charge is to give clear and unambiguous notice or intimation to the accused regarding the nature of accusation which he is called upon to meet in the course of trial. (V. C. Shukla v. CBI, 1980 KHC 457 : 1980 Supp SCC 92 : 1980 SCC (Cri) 695 : AIR 1980 SC 962 : 1980 Cri LJ 690 :

1980 MLJ (Cri) 664. The purpose of the charge is to warn the accused person of the case he is to answer. It cannot be treated as if it were part of a ceremonial (B. N. Srikantiah v. State of Mysore, 1958 KHC 468 : AIR 1958 SC 672 : 1959 SCR 496 : 1958 Cri LJ 1251. The importance of framing charge need not, however, be overemphasized. It should not be treated as a ritual. The substance and not the form is important while considering the provisions relating to the charge (William Stanley v. State of M.P., 1956 KHC 380 : AIR 1956 SC 116 : 1955 (2) SCR 1140 : 1956 Cri LJ 291 and V. C. Shukla (supra). The object of the charge is to give to the accused notice of the matter he charged with and it does not touch the jurisdiction of the Court. If the necessary information has been conveyed to the accused in other ways and there is no prejudice, the trial is not invalidated even by the mere fact that the charge was not formally reduced to writing. The essential part is not any technical formula of words but whether, in reality, the matter was explained to the accused and whether the accused understood what he was being tried for. (Bhoor Singh v. State of Punjab, 1974 KHC 716 : 1974 (4) SCC 754 : 1974 SCC (Cri) 664 : AIR 1974 SC 1256 : 1974 Cri LJ 929; Kahan Singh v. State of Haryana, 1971 KHC 641 : 1971 (3) SCC 226 : 1971 SCC (Cri) 426 : AIR 1971 SC 983 : 1971 Cri LJ 806. All that apart, Section 215 Cr PC read as follows:

"215. Effect of errors. -- No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has caused a failure of justice."

Here, the charge framed by this Court on 01/08/2011 does not suffer from any error or omission. That apart, at no stage of the trial did the respondent have a case that he was misled by any error or omission in the charge or that there has been any failure of justice on account of any such error or omission. It was with full knowledge of the case which the respondent was called upon to answer that he participated in the trial. There is nothing in the decisions relied on by the respondent obliging us to hold that the charge framed in this case is vague or incomplete or vitiates the trial. We, therefore, reject the said contention.

11. Whether cognizance of the contempt and issue of process was bad?

Rule 7 of the Rules provides for initiation of suo motu proceedings on "information" other than a petition under Rule 3. A petition under Rule 3 is the one envisaged by Section 15 of the Act. If the petition under Rule 3 is by a private person, then it has to be with the consent of the Advocate General. In the case on hand, since the petition for initiating action for contempt was filed by one Advocate Rehim (a private person) without the consent of the Advocate General, it was strictly not a petition under Rule 3. Hence, the "information" provided by the said petition alone could be made use of and indeed was made use of for initiation of contempt proceedings as detailed in paragraph 2 of this judgment. After the designated Judge (Justice Pious C Kuriakose) directed the information to be placed for preliminary hearing under Rule 7(ii) the matter came before the Division Bench. The preliminary hearing for which Rule 7(ii) directs the "information" to be placed, is the one envisaged by Rule 9(i). Rule 9(ii) then gives the Court the option either to issue of notice to the respondent or to dismiss the petition or to drop the proceedings depending upon the adequacy or otherwise of a prima facie case. Here the respondent was admittedly served with a notice dated 15/11/2010 referring to the "information" and employing the same words as are used in Form No.1 appended to the Rules. Similarly, he was also served with a draft memo of charges giving the gist of the allegations and informing him that he was liable to be proceeded against and punished for contempt of the High Court under Section 2(c) read with Sections 12 and 15 of the contempt of Courts Act, 1971. Before ordering issue of notice, the Judges of the Bench had evidently perused the petition for contempt and the Annexures therein including the news reports some of which had quoted the relevant portion of the speech of the respondent in his own words. It is true that Rule 9(ii)(a) envisages a preliminary hearing. But, when the Court had decided to take suo motu proceedings for contempt, the petitioner (Advocate Rehim) who had originally filed the contempt petition had faded into insignificance. Thereafter, there was nobody to be heard. It must be remembered that the respondent also was not before the Court. Hence the preliminary hearing and satisfaction of prima facie case etc. envisaged by Rule 9 are only a judicial consideration of the whole matter. When the Rules do not enjoin hearing the Advocate General or any other person who has furnished similar "information" a

duty to hear them cannot be readily inferred. The position is somewhat analogous to the consideration of a private complaint under Sections 203/204 Cr.P.C at which stage also the accused is not before the Court. It is also pertinent to note that the respondent had challenged the suo motu proceedings initiated against him by filing SLP (Crl) No. 4877/2011 before the Hon'ble Supreme Court and the same was dismissed. Hence, we are not inclined to accept the defence contention that the cognizance of the contempt and issue of process in this case was bad.

12. Whether this Court went wrong in calling for the video clippings before framing of charge?

Equally misconceived is the defence argument that this Court should have framed the charge only on the existing material before Court and that this Court went wrong in calling for the video clippings of the offending speech from the television channels. It is true that on 23/03/2011 the Division Bench observed that in this suo motu proceeding what is available before the Court is only photostat copies of the newspaper cuttings published by the Mathrubhumi, Malayala Manorama and Mangalam dailies and apparently those newspaper cuttings do not contain the entire text of the speech. Accordingly, as suggested by the Amicus Curiae (Sr. Advocate Sri. K. Jayakumar) the Division Bench called for the video clippings from the 3 television channels in the bona fide belief that these television channels were possessed of the original, unabridged video tape of the speech made by the respondent. This Court certainly had the power to summon those video clippings and it was done only to doubly ensure fair trial. Although the respondent had filed SLP (Crl) No. 4877/2011 before the Supreme Court challenging the order dated 30/05/2011 proposing to frame charge, the said SLP was dismissed. But it has been revealed by the evidence adduced during the subsequent trial of this case that even though CW 2 had shot the entire speech and had stored the same in the DV Cassette submitted by him to the News Editor, what was captured and retained in the computer was only that portion of the speech which pertained to the response by the respondent to Ext.C5 judgment. Since fresh matters are shot and stored by CW 2 in the same D.V. cassette, whatever was stored earlier would be erased. It is that portion of the speech of the respondent that was relevant for the context which was telecast by the City News Channel. Ext.X3 CD is the copy of

the very same news telecast by City News Channel. No suggestion whatsoever was put to CW 2 that Ext. X3 does not contain what was telecast in the news. Ext. X1 and X2 CDs obtained from Asianet and Indiavision are the portions of Ext.X3 CD and containing common portion of the speech made by the respondent. In the case of the news reports in the dailies, eventhough what was produced by Advocate Rehim in the petition filed by him was only Xerox copies of newspaper cuttings, at the stage of trial the original newspapers were produced and marked as Exts. C1 to C4 without any objection to their marking. We, therefore, do not find any merit in the contention raised that this Court went wrong in calling for the video clippings before framing charge.

### 13. Evidentiary value of CDs and news reports

CW 2 (Byju) who is the cameraman of the local television channel by name "City News" had shot the speech of the respondent on 26/06/2010 while the latter was making the speech at Kannur. The entire speech stored by him in the D. V cassette was submitted by him to the news editor who in turn would telecast the same or its relevant portion in the City News channel. His evidence shows that every programme shot in the D.V. cassette will be captured in the computer and the necessary portions alone will be saved in the computer. CW 2 would have it that whatever is recorded in the D.V. cassette every day will get erased when fresh matters are shot on the D.V. cassette. The testimony of CW 3 Santhosh who was the news editor of "City News" shows that the sensational portion in the D.V. cassette having news value alone will be stored in the computer and retained for the purpose of telecasting . Ext. X3 is the C.D. containing the news pertaining to the speech of the respondent as telecast by "City News" . It contains only that portion of the speech which was relevant to the context. A perusal of the programme in the C.D. shows that the relevant portion of the speech showing the response of the respondent to Ext. C5 judgment is a continuous and uninterrupted speech. Exts. X1 and X2 CDs are the news telecast by Asianet and Indiavision television channels and containing common portions of Ext. X3 C.D. All the viewers throughout the world had seen and heard the above news telecast by Asianet and Indiavision. There is no case for the respondent that he had protested against the accuracy of the news telecast by those television channels. What has

been reported on the next day by the four popular Malayalam dailies as contained in Exts. C1(a) , C2(a) , C3(a) and C4 (a) news reports is also not anything substantially different from what was shown by the news telecast . While what was produced by Advocate Rehim in the petition for contempt filed by him was only xerox copies of the newspaper reports, the full newspapers were produced during trial as Exts. C1 to C4. Exts. C1(a) to C4 (a) news items were marked without any objection whatsoever. The evidentiary value of Exts. X1 to X3 and Exts. C1 to C4 is not, therefore, open to challenge and those documents are genuine documents which can be safely relied upon.

#### 14. Testimonial disloyalty shown by RWs 1 and 2

The usage of every word is to be understood in the particular context in which the word is used. RWs 1 and 2 claim to be scholars in Sanskrit. Instead of confining themselves to the text of the authoritative works produced and relied on by them they deviated therefrom to come out with versions tailored to suit the respondent. Nobody has a case that through the offending speech the respondent was paying encomiums to the Judges of this Court to mean that by rendering Ext. C5 verdict the Judges were "shining". It was realizing this that RWs 1 and 2 changed their colour like chameleons to suit the requirement of the respondent. Both these academicians (RWs 1 and 2) came to Court as experts in Sanskrit to elucidate that the Malayalam word "Shumbhan" has its origin in Sanskrit and that the said word means "to shine". They maintained that the original meaning will not be lost by passage of time. It was to corroborate the said version that they produced before Court and heavily relied on Exts. R1 to R6 and R8 to R13. But during the course of their examination before Court they shed their mantle as experts and deteriorated to the level of partisan witnesses whose sole mission was to somehow or other salvage the respondent. The respondent, as admitted by him in paragraph 3 of his reply affidavit, is a confirmed Marxist Party worker who has been very active even from his student days. He has stated in the reply affidavit that he has held various posts in the Students' Federation of India (S.F.I.). But, RW 1 who admitted that while as a student he was a sympathizer of the organization called S.F.I., emphatically denied the suggestion that S.F.I. is the students' wing of the Marxist Party. RW 2 who had refused to take oath in the name of God and who eventually

exhibited his loyalty to the respondent was evidently not honest in his statement that he has absolutely no political affiliations or affinity. RWs 1 and 2 gradually attributed a new meaning to the word "Shumbhan" which is admittedly not found in any of the authoritative texts produced and relied on by them. According to RW 1 the listener is not entitled to say or persist in his stand that the speaker meant a particular meaning in a particular sense by using a particular word. If according to RWs 1 and 2 it is not open to the listener to say or insist on what the speaker meant by a particular word, then they are also incompetent to say as to what the respondent meant by calling the Judges "Shumbhanmar" in the context of the speech. Similarly, if the meaning of a particular word used by a speaker is to be determined by looking for other unobjectionable words used in the speech, it is easy for anyone to speak in praise of a person or institution and simultaneously defame and speak ill of such person or institution and get away with that. RW 1 during his cross-examination had to admit that the meaning given as "shining, bright, beautiful, handsome" given in Ext. R3 is for the word "shumbh" when used as an adjective and when used as a noun it means the name of a demon killed by Durga. Every word is to be understood in the context in which it is used. RW 2 who claims to have been born and brought up in Kannur (which is also the place of the respondent) went to the extent of saying that in Kannur the word "Shumbhan" has a secondary meaning to the effect that it is said of a person who is expected to shine in a field but does not shine. This witness who on his own admission had communicated with the respondent on this issue was adopting the same meaning given by the respondent in paragraph 14 of his reply affidavit, but expressed in different words. RW 2 would have it that since the respondent who belongs to Kannur was addressing a gathering of people at Kannur, the word "Shumbhan" need not be given a bad meaning. He was thus metamorphosing into a performer who was more loyal than the king himself either out of political considerations or out of some dormant fear. That was why, after the re-examination was over this Court intervened to ask him whether he has any political affiliations. He said he has none. He was then asked whether he is afraid of political parties, particularly, the Marxist party (which is the party of the respondent). This Court wanted to know whether the witness (who claimed to be politically neutral) was under any political influence or fear while deposing before Court. It is relevant in this context to



mention here that throughout the trial, the respondent was sitting in the 3rd row behind his senior counsel and closely watching the witnesses. Seeing this Courts' intervention, eventhough the respondent's counsel stood up to submit that it was not proper for the Court to ask such questions, he did not raise it as an objection nor did he pursue the same, evidently because he is fully aware of the power of the Court under Section 165 of the Evidence Act. To the aforesaid question by the Court RW 2 answered that he is not scared of political parties. This Court also asked other questions to the witness who answered the same. Advocate Sri. Sreekumar had inadvertently omitted to ask certain questions germane for the context in which RW 2 was showing pronounced symptoms of partisanship either due to the bond of comradeship or due to some latent fear . This Court was entitled to know whether the transformation made by RW 2 by deviating from the written authoritative texts was on account of any political influence or pressure. That is why this Court asked certain questions to RW 2. It cannot be forgotten that this is a suo motu proceedings. Even otherwise, the power of the Court to intervene and ask questions during trial is well recognised. The Court is not expected to be a mute spectator but is a dynamic functionary entitled to elicit relevant (or even irreverent) information in its quest for arriving at the truth. (See Section 165 of the Evidence Act).

"The adversary system of trial being what it is, there is an unfortunate tendency for a Judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth". *Ram Chander v. State of Haryana*, AIR 1981 SC 1036. The criticism that the Court is trying to fill up lacuna in prosecution evidence when it exercises the power under Section 165 of the Evidence Act is partly due to an obsolete thinking about the role of the Court in adversary system of trial. It was considered at least in some quarters that the function of a Court is merely to Judge the cause after silently observing or watching the performance by the rival sides in a case. Gone

are the days when Court was supposed to be only a silent umpire . In a criminal Court mainly three functionaries are involved in the endeavour to reach the final goal, namely, dispensation of criminal justice. Prosecution and the defence are two of them and the Court is the third important (if not the most important) functionary. The Court has to play a dynamic role in the endeavour to reach the final goal . Of course, it must be done by keeping within the bounds provided by law. *Sebastian v. Food Inspector* , 1987 (1) KLT 130. Questions can be put by the Court "in any form" about "any fact" at "any time" to "any witness". Ambit of the power of Court to put questions to witnesses on either side of a cause is further amplified by using the words "as he pleases" and "relevant or irrelevant". The object of conferring such wide and plenary powers on the trial Judge or magistrate to put questions to witnesses is to help the Court to discover or to obtain proper proof of relevant facts "....." From a practical angle it must be borne in mind that any question put by the Court would be to the chagrin of the party when the answer to such question is unfavourable to him. Merely because a party complains that a particular question put by the Court would create apprehension in his mind is hardly sufficient to whittle down the Court's power to put such questions. *Vincent v. State of Kerala*, 1993 (1) KLT 777. Section 165 of the Evidence Act confers vast and unrestricted powers on the trial Court to put any question he pleases in any form at any time, to any witness, or to the parties, about any fact, relevant or irrelevant, in order to discover relevant facts. The said section was framed by lavishly studding it with the word "any" which could only have been inspired by the legislative intent to confer unbridled power on the trial Court to use the power whenever he deems it necessary to elicit the truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of the powers of the Court. Neither of the parties has any right to raise objection to any such question. *State of Rajasthan v. Ani*, 1997 (6) SCC 162. Whenever all the facts necessary for a proper determination of the points in issue have not been elicited inadvertently or otherwise by the Public Prosecutor or the defence counsel, it behoves the Judge to exercise his power under Section 165 of the Evidence Act and get elucidated what is left obscure or unintelligible. *Damisetti Subbanna v. State of A.P.*, 1976 Cri LJ 1242 (AP)

Thus, the trial Judge is not a silent arbiter but a dynamic functionary who has over all control over the entire trial. The objection raised against the Court asking questions to ascertain whether the witness was giving evidence in a detached and dispassionate manner or was under some influence or threat, was wholly without any good faith, if not ill-motivated. It is pertinent to remember that RW 1 had confessed before this Court that there was allegation of corruption behind all appointments in the Sanskrit University during the tenure of the first Vice Chancellor and he also was one among those appointees and subsequently pursuant to the verdict of the High Court in a Writ Petition their services were terminated. RW 2 also stands on the same footing and it was only subsequently that they were re-appointed in the Sanskrit University. The fact that both of them have, therefore, an axe to grind against the High Court also cannot be overlooked. Both of them had been found guilty by the Criminal Court for indulging in a dharna involving shouting of slogans and destruction of properties in protest against the Vice Chancellor of the University. Much strain is not necessary to infer that both these witnesses were more interested in saving the respondent rather than enlightening the Court regarding the genesis of the word "Shumbhan". By going beyond the written text of the authoritative works RWs 1 and 2 were really exposing their mendacious disposition designed to salvage the respondent. We have no doubt in our mind that it was the common thread of crimson loyalty which impelled these two witnesses to appear as language experts and persuade this Court to accept a meaning for the word "shumbhan" contrary to the general understanding of the said word by all Malayalam speaking Keralites. It appears that after the Court proceedings were over, the respondent raised an unnecessary controversy outside the Court and indulged in a media hunt against the Court. Advocate Sreekumar submitted before us that the respondent had gone to the Press to politicise the whole issue and was accusing that the present proceedings were taken against him for the sole reason that he is a Marxist party worker. Well, we know that our conscience is clear and that we are far above such petty political considerations.

15. Probative value of the admission by CW 2

It is true that CW 2 (Byju) the cameraman of City News channel, Kannur who had shot the speech of the respondent had, during his cross-examination by the defence admitted that the word "Shumbhan" in Kannur area is an expression used among friends when some nonsense is spoken between them and the overall speech did not have the effect of undermining the Court. But CW 2 clarified in re-examination that the opinion which he gave about the above expression is his personal opinion. CW 2 is a person born and brought up at Kannur and we have no hesitation to observe that the above admission made by CW 2 to a suggestive question was more out of an instinct of survival at Kannur rather than any anxiety to reveal a parochial acceptance for the above word. Moreover, it is nobody's case that the word "Shumhan" is used to denote some nonsense spoken as between friends. It is true that CW 2 was not declared hostile by Advocate Sreekumar. But cross-examination is not the only method of discrediting a witness. When the evidence tendered by a witness on a particular aspect is inherently improbable and intrinsically infirm, if not false, that part of his evidence can be brushed aside as unworthy of credence notwithstanding the fact that he was not cross-examined on that aspect. (See -- Juwar Singh and Others v. The State of Madhya Pradesh, 1980 KHC 489 : AIR 1981 SC 373 : 1980 Supp SCC 417 : 1981 SCC (Cri) 357 : 1980 Cri LJ 1418 and N. P. Ramdas v. State of Kerala, 2011 (2) KLJ 375). Hence, we are not inclined to accept that part of the testimony of CW 2 which was relied on by the defence to buttress their version which itself is different from what was spoken by CW 2.

#### 16. Meaning of the word "Shumbhan"

The act of contempt committed here is not merely calling the Judges "shumbhans". The respondent was virtually characterising the Judges as ignorant of law and declaring that their verdict was being openly flouted by the people. But after the offending speech the respondent began to take up a stand that there was nothing objectionable in the word "shumbhan". This necessitated an investigation into the semantics of the said expression in Malayalam. Two witnesses examined as RWs 1 and 2 by the respondent claim to be Sanskrit scholars working in the Sree Sankaracharya Sanskrit University, Kalady. According to them the words "Shubh" and "Shumbh" are both Sanskrit words and the Malayalam word "Shumbhan" is a

derivative from Sanskrit. We will first examine the meaning of those words as per the texts produced and relied on by RWs 1 and 2.

1. Ext. R1 is page 12 of "Dhatupatha" of Panini in Sanskrit. The meaning given for "Shumbh" as per Ext. R1(a) translation is "to speak", "to shine" and in other opinion "to hurt".

2. Ext. R2 is pages 1292 and 1294 of Dhaturoopaprabancha in Sanskrit by O. K. Munshi. Entry 1852 is "shubh" and entry 1855 is "shumbh" and both these words mean "to speak, shine, hurt."

3. Ext. R3 is page 559 of the Students' Sanskrit-English Dictionary by Vaman Shivram Apte. The meaning given for the word "shubh" when used as an adjective is "to shine. to speak, to hurt , injure". Against the word "Shumbh" used as a noun what is stated is "name of a demon killed by Durga".

4. Ext. R4 is pages 933 and 934 of "Dhatunighandhu" ( a Malayalam dictionary of verb roots) by K. V. Ravi Namboodiripad. As per Ext. R4(a) English translation both "shubh" and shumbha" mean "to shine" and "Shumbha" also means "to hurt".

5. Ext. R5(a) are entries 432 and 433 "shubh" and "shumbh" at page 119 of "Brihatdhatukusumakara" by Pandit Harikanth Mishra. According to this both the above words mean " to speak, to hurt, to shine." Ext. R5(b) is the English translation.

6. Ext. R8 is page 197 of "Dhaturatnakara" by Muni Lavanya Vijaya Suri. As per Ext. R8(a)(i) English translation the word "Shumbh" means " to shine".

7. Ext. R9 is page 103 of "Amarakosam" by Vachaspathy T. C. Parameswaram Moosath. It says that the word "sobha" as also "shumbha" means "hnfpXv" (that which shines).

8. Ext. R10 is page 921 of Sanskrit -- Malayalam dictionary edited by V. Balakrishnan and R. Leela Devi and published by "Vidyarthimithram" as per which "shubh" and "shubha" mean "to shine" and "shumbh" means "to shine", to speak, to hurt." "Shumbh" : means a demon killed by Durga Devi.

9. Ext. R11 is page 30 of the Malayalam translation by Kachampilli Madathil Raman Nambiar of "Rajasooyam" in Sanskrit by Melpathoor Narayana Bhattathiri. There the word "Shumbha" is used to denote "shining".

10. Ext. R12 is pages 871 to 873 of "Aythiyamala" by Kottarathil Sankunni published by D.C. Books. At page 872 there is a reference to a prayer by Uddhanna Sasthrikal where the word "Shumbha" is used to mean "to shine".

11. Ext. R13 is page 931 of the Malayalam English Gundart Nikhandu where a line from "Krishnagadha" of Cherusseri is extracted ""ipw`mbvnptmcptlm" to mean "shining".

Nobody has a case that the respondent is a Sanskrit scholar or has even learnt the fundamentals of Sanskrit language. His speech was admittedly in Malayalam and not in Sanskrit. Even the respondent has no case that while making speeches his choice of words is with a Sanskrit perspective. Both in "Sabdatharavali" (most authoritative dictionary in Malayalam) by Sreekanteswaram Padmanabha Pillai and "Sabdasagaram" by Dr. B. C. Balakrishnan, the meaning in Malayalam given for the word "Shumbhan" is as follows:

"One who shines; a demon; brother of Nishumbhan; both the demons did penance and attained power, valour and godliness excelling the Devas and started persecuting the Devas. When their harassment became intolerable Durga killed both of them; idiot (aqV) ; fool (t`mj)."

[The first meaning given is for the Sanskrit word and the last meaning "idiot" (aqV) "fool" (t`mj) is for the Malayalam word "Shumbhan"]

In Malayalam Style Lexicon by T. Raman Pillai the meaning given for the word "shumbhan" is "fool" (t`mj), "good for nothing" (hlbvv slmmh). In D.C. Books Malayalam English Dictionary, by Prof. M.I. Warriar, Prof. E.P. Narayana Bhattathiri and K. Radhakrishna Warriar, the meaning given for "Shumbhan" is "an Asura killed by Goddess Durga (Hindu Mythology), idiot, fool (figurative)". In Malayalam-English-Malayalam Reverse Dictionary published by Pen Books (P) Ltd., the meaning given to "Shumbhan" is "an Asura or demon, brother of

Nisumbha, fool, idiot, dunce" . In Malayalam - English Dictionary by Madhavan Pillai published by N.B.S. "Shumbha" means "shining, lustre brilliance" and "Shumbhan" means "an asura or demon, brother of Nishumbha, a fool, an idiot, a dunce". The famous Malayalam poet and lyricist, late P. Bhaskaran also was using the word "Shumbhan" to mean "idiot or fool" in the popular malayalam song which begins with the line "Il knwlmkn lbdn Ccnph ipltm shdpw ipw`tm" (Is the one who has mounted the golden throne a male dog or an idiot ). The said song is in the Malayalam Movie by name "Acff apm l" (Half thief v. Three quarter thief) released in the early seventies. Every Malayalam speaking Keralite has also understood the meaning of the said word only as "fool or idiot" and never as "shining".

17. Our comments on the facts specific to the case on hand

The Judges (Justice C. N. Ramachandran Nair and Justice P. S. Gopinathan) who pronounced Ext. C5 final judgment dated 23/06/2010 - (2010 (3) KLT 86, Khalid Mundappilly v. Executive Engineer and Others, 2010 (3) KHC 1 : 2010 (2) KLD 110 : ILR 2010 (3) Ker. 84 : 2010 (2) KLJ 622) re-affirmed their verdict in Ext. C6(b) order dated 13/08/2010 in the review petition - (2010 (3) KLT 757, Chief Secretary to Government, Tvm. and Others v. Khalid Mundappilly and Others, 2010 (3) KHC 661 : 2010 (2) KLD 355 : ILR 2010 (3) Ker. 699 ). The special leave petition filed against Ext. C6(b) order was dismissed by the Supreme Court. Section 2(c) of the Act defines the expression "Criminal Contempt" as follows:

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

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

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

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

Criminal contempt is vivisected into two categories:

(a) The publication of any matter;

(b) The doing of any other act.

To constitute criminal contempt, the publication of the matter or the doing of the act should be of such nature as to fall under all or any of clauses (i) to (iii) of Section 2 (c). If the act is not criminal contempt for the reason that there was no publication, then such act would automatically fall within the purview of the other category which consists of "the doing of any other act whatsoever". This latter category is thus a residuary category which is so wide enough that no act of criminal contempt can possibly escape from it. Clauses (i) to (iii) of Section 2(c) constitute the common denominators for both the aforesaid categories. (Vide- In Re. S. K. Sundaram, 2001 KHC 149 : 2001 (2) SCC 171 : 2001 (1) KLT 585 : AIR 2001 SC 2374 : 2001 Cri LJ 2932). Although clauses (i) to (iii) of Section 2(c) describe three distinct species of "criminal contempt", they are not always mutually exclusive. (Vide para 14 of Rachapudi Subba Rao v. Advocate General, 1981 KHC 587 : 1981 (2) SCC 577 : 1981 SCC (Cri) 566 : AIR 1981 SC 755 : 1981 (2) SCR 320 : 1981 Cri LJ 315 : 1981 MLJ (Cri) 340). Rediculing the performance of a Judge amounts to scandalising the Court or lowering its authority by bringing the Judge and his office into disrespect and disrepute. (Vide para 17 of Rachapudi Subba Rao (supra).

The statements made by the respondent were to the effect that Ext. C5 verdict of the Judges of the Kerala High Court has only the value of grass and the people of Kerala are openly flouting the verdict by holding public meetings and rallies on road margins and the Judges who pronounced the verdict have no respect whatsoever and if they have any self respect left in them they should resign and step down from their office. The respondent added that instead of interpreting the laws made by the Legislature some fools (Shumbhanmar) occupying the seat of justice are themselves making laws and issuing orders. The direct impact which



the offending speech made on the general public was that it created an apprehension in the minds of the people regarding the ability of the Judges. It also had the tendency to deter the actual and prospective litigants from placing complete reliance upon the Court's administration of justice. The offending speech had also caused embarrassment in the minds of the Judges themselves in the discharge of their judicial duties. The speech thus amounted to an injury to the public as was held in *Brahma Prakash Sharma v. State of U.P.*, 1954 KHC 402 : AIR 1954 SC 10 : 1953 SCR 1169 : 1954 Cri LJ 238 and Para 17 of *Perspective Publications v. State of Maharashtra*, 1971 KHC 734 : 1971 Cri LJ 268 (SC) : AIR 1971 SC 221 : 1969 (2) SCR 779. The offending speech had the sure tendency of misleading the public into believing that they cannot rely upon the verdicts of the Judges of the High Court because of the gross ignorance of law of the Judges. (Vide para 23 of *Haridas Das v. Usha Rani*, 2007 (3) KHC 378 : 2007 (3) KLT 587 : JT 2007 (9) SC 231 : AIR 2007 SC 2688). The incalculable harm done to the institution as well as to the confidence reposed in this Court by the prospective seekers of justice is the real and immediate danger of a considerable section of the fickle minded public accepting the reckless statement of the contemnor and jumping to the illogical conclusion that it is not safe to approach the High Court or its Judges for justice. Calling the Judges "fools" and their verdicts having only the value of grass was not the only objectionable part of the statement. The message conveyed to the public was that the Judges who pronounced Ext. C5 verdict had no respect whatsoever and the respondent called upon those Judges to resign and step down from their office if they had any self respect left in them . He was also declaring that the people of Kerala were openly flouting the judgment by holding meetings and rallies on public roads and road margins. This was a challenge to the authority of the sovereign public itself.

Exts. X1, X2, X3 CDs played in open Court were viewed by us. Seeing the respondent tenaciously sending missiles of virulent attack on the Judges and their verdict in a strident voice full of hatred , arrogance and contempt, one is reminded of a deadly poisonous reptile hissing and spitting all the venom at its prey. The tone and tenor of his speech and his facial expressions have not betrayed his scoff and derision towards the Judges. He evinced no intention whatsoever to spare the Judges who pronounced Ext. C5 verdict. He was utilising the opportunity he got in

the heart of Kannur town only to give vent to his dislike for the Judiciary. He not only relished his own outrageous assault on the institution but also expressed, in unmistakable terms, on 16/08/2011 when examined before this Court under Section 313(1)(a) Cr PC that he firmly sticks to his stand. This is unpardonable insolence and audacious effrontery.

It has already been seen that the word "Shumbhan" in ordinary parlance means "fool", "idiot" "dunce" . The attempt made through CW 2, RW 1 and RW 2 (whose testimony has already been discussed) to dilute the severity of the said expression shows the present anxiety of the respondent. Anybody who has seen the speech of the respondent as contained in Exts. X1 to X3 CDs, or who has read Exts. C1(a) to C4(a) news reports, can say without any hesitation that the word "shumbhan" was used by the respondent jeeringly to denounce the Judges and not to admire them. This was not a case where the respondent was merely making a cryptic remark by calling the Judges "fools or idiots" . He said many more things in his frontal attack . Hence this case cannot be a parallel to the British experience of Senior Advocate Fali S. Nariman . The enlightened Englishmen and the tolerant English Judges make all the difference. The distinction lies in the Indian reaction through the Indian counsel towards the English Press. The very fact that Mr. Nariman felt that what the Daily Mirror did was an affront to the judiciary, is the distinguishing response. What may be contempt in India need not necessarily be contempt in England. Here in this case there are however factual differences in plenty. All that apart, as long as the Contempt of Courts Act is in the statute book in our country and the interpreted law of the Supreme Court is binding on all Courts in India by virtue of Art.141 of the Constitution, it is not permissible for anybody to say that the Court should ignore an act amounting to contempt which really is an offence committed against the sovereign public. Apart from the fact that the print and visual media had unanimously treated the aforesaid speech of the respondent as an outrageous onslaught on the Judiciary, certain persons and organizations including the High Court Bar Association, as shown against the dates 27/06/2010 to 30/06/2010 in paragraph 3 above, had requested the Registrar General of this Court to initiate contempt of Court proceedings against the respondent. The media persons who testified before this Court have deposed that none of them has so far received any protest from any quarters against the

news item in which the respondent was described as criticizing the High Court and the Judges in harsh language calling them "Shumbhans". The respondent was certainly not paying encomiums to the Judges nor was he appreciating their verdict. This was admitted by RW 1 also to a Court question. It is significant to notice in this context that even great jurists and other critics of law do not use any such undesirable expressions while engaged in fair comment. Likewise, even Justice Krishna Iyer who never misses any opportunity to criticise the Judges and their judgments, always maintains sobriety and moderation in his forensic bombardments. How come then that the respondent could claim to hold a license to openly condemn the Judges and their verdicts with caustic and derogatory outrage ?

Respondent, a politician ill-informed in law

There is an ocean of difference between well-informed and ill-informed criticism. What a well-informed person fully conversant with the working of the Judicial Institutions says should be viewed differently from a similar statement by an ill-informed or misinformed person. In the former case there is objectivity and in the latter there is none. Absence of objectivity will necessarily reflect upon the bona fides of the criticism. (Vide- Vincent v. Krishna Iyer, 1983 KHC 183 : 1983 KLT 829 : ILR 1983 (2) Ker. 626). Eventhough the respondent is said to be an Advocate, he has admitted that he is not practicing before the Courts. He gave his occupation as "social worker". We questioned him generally to test his knowledge about the working of Courts, the procedure followed in Courts and about certain topics of legal relevance. Our examination revealed that he is blissfully ignorant about the working of Courts and allied subjects. He committed egregious blunders to some of our questions. He confessed that he is not as informed as an Advocate and his level of understanding on matters of law is only that of an ordinary citizen. He is an ex-MLA and is a State Committee member of the CPI (Marxist) as admitted by him in his reply affidavit. He is thus an out and out politician and does not, therefore, possess any special knowledge regarding the working of the institution of the judiciary which is one of the indicia for evaluating whether the offending criticism was made in good faith or in public interest. (vide paras 28 and 29 of Arundhati Roy, In Re, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ

1792). Anybody itching to attack the Judges and their judgments without transgressing the limits of fair criticism should realise that he should first acquire the eligibility or locus standi to do so. If any Tom, Dick and Harry starts freely indulging in profane and indecent acts of scandalising the Judiciary, it is the credibility of the institution which will be at stake. Statements which have a tendency to poison the minds of the general public against the judicial institutions will certainly tantamount to interfering with the due course of justice, besides tending to scandalise and lower the authority of Courts.

When the reports regarding his speech as published by the print and visual media were put to the respondent while he was examined under Section 313(1) (a) Cr PC, on 16/08/2011 his explanation was that those reports did not contain his complete speech and that he had also spoken about the corruption of Justice Dinakaran and the need to liberate the judiciary from the grips of corruption but the media did not publish that part of his speech. This explanation was added by the respondent in vernacular Malayalam in his own hand. (Incidentally, the objection raised by Adv. Sri. Damodaran against the examination of the respondent without previously warning him after the evidence of CW 1 was over, is hereby overruled since Section 313(1)(a) Cr PC permits such a course). When examined under Section 313(1)(b) Cr PC on 06/09/2011 also, the respondent inter alia maintained that his mission is to correct the mistakes of the Judiciary. This is what he said "PpUojydnbpsS sXpl XncpplbmWv Fs Dtiw" . In the first place, Ext. C5 judgment was not one dealing with corruption in the judiciary. Secondly, the respondent is not a constitutional scourge experienced in the field of law and authorised to look into matters pertaining to corruption in the judiciary and chasten or chastise the erring Judges. He is not a Court of cassation either. Thirdly, with what authenticity and on what unimpeachable material was he discussing in public about the corruption alleged against Justice Dinakaran? Fourthly, under the guise of cleansing the judiciary the respondent had no business to drag the issue regarding corruption in the judiciary to the streets and thereby cause incalculable harm to the institution. It is pertinent to note that eventhough several political parties had their own reservations about the ban of public meetings on roads and road margins, nobody had made such vitriolic attack on the judiciary as was made by the respondent. Ext. C6 series show that various public minded people like MLAs,

Association of Human rights, Indian Association of Lawyers and Chief Secretary to the Government led by the LDF Ministry had preferred review petitions against Ext. C5 judgment. But the respondent who claims to espouse the cause of the public did not file any review petition. A perusal of Ext. C6(b) order (2010 (3) KLT 757, Chief Secretary to Government, Tvm. and Others v. Khalid Mundappilly and Others, 2010 (3) KHC 661 : 2010 (2) KLD 355 : ILR 2010 (3) Ker. 699) will show that the very same grounds put forward by the respondent were raised by the State Government in the review petition but were rejected on merits by the Division Bench on 13/08/2010. SLP (Civil) No. 35169 of 2010 preferred by the State Government before the Supreme Court against Ext. C6(b) order was dismissed on 06/01/2011. It was after the dismissal of the review petitions by the Division Bench rejecting identical contentions raised by the respondent that on 20/12/2010 he filed the reply affidavit before this Court reiterating the very same contentions. He stuck to those contentions while examined under Section 313(1)(b) Cr PC and also during his frequent media escapades. So, it is without any iota of good faith that he seeks to justify his speech by which he was actually inciting the public to revolt against Ext. C5 verdict. The remedy against an erroneous verdict is not castigation of the Judges in public but to seek a review or to attempt an appeal to the superior forum. If anybody has any specific allegation of corruption against any Judge (at whatever level he may be), streets are not the forum to ventilate his grievances or to initiate a public debate aimed at castigating such Judge. By doing so he is inflicting the irreparable damage of scandalising the Court and it is such a peril which is sought to be averted through the provisions of the Act. What respect will the common man have towards the judicial institutions if some individuals go about attributing corrupt motives to Judges and try to indulge in vilification of the judicial fraternity as a class Corruption, whether it be in the judiciary or in any other repository of public duty, is undoubtedly a matter of great concern to the nation. A public servant is paid by the State not for showing official favour for a price. The word "corruption" is understood in a much larger sense than mere bribe - taking. Any unlawful act tainted with vice, dishonesty, fraud, lack of integrity or rectitude, can fall within the ambit of corruption. No orderly society having respect for the rule of law can tolerate corruption in the servants of the State. There are, however, appropriate forums where corrupt or errant public

servants including Judges can be brought to justice. If it is felt that adequate machinery to deal with corrupt Judges is not yet in place, a fool-proof mechanism which will not impair the freedom of the Judges to discharge their function without fear or favour, should be evolved. No Judge worth his name can resist the installation of such a mechanism. Instead of resorting to the lawful means of proceeding against Judges alleged to be corrupt, if scurrilous attacks on them are freely made from the streets and other public platforms, such attacks can only pave the way for the gradual erosion in the values and respect of the public at large, particularly the litigant public, towards the judiciary which, even according to the respondent is the last resort of the justice seeker. The Apex Court observed in *Arundhati Roy, In Re*, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792 that the foundation of the judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice and when that foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the Court and distrust in its working, the entire edifice of the judicial system will fall to the ground.

Even if the Judges had committed gross errors in the Judgment, that would not justify an excoriating attack on the Judges. (See paras 81 and 84 of *K. Daphthary v. O. P. Gupta*, 1971 KHC 516 : AIR 1971 SC 1132 : 1971 (1) SCC 626 : 1971 SCC (Cri) 286 : 1971 Cri LJ 844 (Constitution Bench) . Likewise, if any person is aggrieved by the Judgment which in his opinion is wrong or against law or its implementation is neither practicable nor feasible (which is the specific stand taken by the respondent in his reply affidavit as also during his examination under Section 313(1)(b) Cr PC) his remedy is to approach either the Court which passed the judgment or invoke the jurisdiction of the appellate Court. (See-*State of Bihar v. Rajendra Singh, v*). The respondent did not resort to any of those remedies, but instead, on the 3rd day of the Judgment he was straightaway running riot with his scathing denunciation of the Judges and their verdict on an occasion when he was to speak in support of a totally different issue. Even thereafter, he tenaciously and persistently stuck to his views, both in Court and outside the Court giving wide media coverage to his obstinate stand.

18. a) Whether editing of CDs by jumbling done by the media?

The stand taken by the respondent that what was telecast by the visual media was only an edited version of his speech and that the speech read as a whole will not amount to contempt of Court to any extent, is also devoid of any substance. The contents of Exts X1 (Asianet) and X2 (Indiavision) CDs are portions of Ext. X3 CD (City News Channel) which contains more of the offending speech. But both Exts. X1 and X2 CDs contain common portions of the speech which are ex facie contempt. Admittedly, the occasion for the public speech made by him was the hike of fuel prices. It was only when the respondent suddenly started his flippant attack on the High Court verdict (Ext. C5 Judgment) and the Judges who passed the verdict that the attention of all concerned was riveted on the digression so made. That explains the focus by the media on that part of the respondents' speech. The only editing done by the media was to eliminate from his speech those portions which had no relevance to his criticism against Ext. C5 judgment. Moreover, no television channel can afford to telecast in their news slot of limited duration the entirety of the speech of the respondent lasting for 45 minutes or an hour. As admitted by CW 3, the endeavour of every news channel will be to include as many news items as possible in the limited time -slot allotted for news. The respondent has no case that what is shown in Ext. X3 CD is not the speech made by him or that the editing was done in such a way as to introduce interpolations or that somebody was impersonating or aping the respondent. It was CW 2 who shot the speech directly from Kannur. No suggestion was put to him that any portion of the speech in Ext. X3 C.D. was not made by the respondent but by somebody else through mimicry techniques. Similarly, no suggestion was put either to CW 2 or to CW 3 to the effect that certain words or sentences were culled out and jumbled during editing to present a different matter out of context. It was only when the respondent was examined under Section 313 (1) (b) Cr PC that he for the first time came out with a version that some of the words used by him were culled out and annexed to other statements made by him in a different context to produce a different result. This is really an accusation of dishonesty against the media persons. We do not have the slightest doubt that this belated version put forward by the respondent is absolutely false. Ext. X3 video clipping shows that the relevant part of his speech is continuous without any sign of splicing. Even the respondent had no such case when Ext. X3 C.D. was marked through CW 2. We

have no doubt that the media has not resorted to any sort of jumbling while telecasting or reporting his speech. All that apart, merely because some additional statements, if any, were also made generally in praise of the judiciary, that by itself cannot lessen or weaken the rigour of the contemptuous aspersions cast on the Judges and having the effect of belittling the institution in the eye of the public.

19. b) Whether the media was liable to be proceeded against for publishing the speech of the respondent?

Eventhough respondents 2 to 5 in the petition originally filed by Advocate Rehim, were the media persons who had published the offending speech, no reliefs were prayed for against them. The evidence of the media persons will also show that it was the news value of the offending speech which prompted them to put the news in public domain. When scathing criticism was made by the respondent ridiculing the Judges of the High Court, it was a blow to the democracy and the media had every right to carry the said news to the public. In a democracy, the people are supreme and all authorities including Judges, legislators, ministers, bureaucrats etc. are servants of the people. Hence, if a member of the public indulges in scandalizing the peoples' Court, the people have every right to know the nature and gravity of the offence. It is on behalf of the sovereign public that this Court is adjudicating the issue. The media was thus entitled to publish the factum of contempt committed by the respondent. By doing so they were not committing any contempt of Court especially when they were not justifying the conduct of the respondent. Hence they are not liable to be proceeded against for contempt.

20. c) Courts will not cow down to intimidatory politics

If the respondent is expecting the Courts to pass only such verdicts which are approved by the political party to which he owes his allegiance, he is thoroughly mistaken. Courts exist to adjudicate disputes in accordance with law and not to placate or appease or propitiate any political party. The body politic is not comprised of the respondents' partymen only and, therefore, his political party represents only his partymen and their sympathisers and not the public at large. There are, among the public innumerable well meaning individuals who do not owe allegiance to any political party, but instead, look down upon the political



parties and politicians as inevitable evils in the society. But, at the same time, it is heartening to note that as a silver line there are politicians (although a few in number) with clean image and who are venerated not only by their own partymen but by all alike including their political rivals. Let it be understood by every politician and every self proclaimed social worker that the Courts in this country are not established to protect the ideologies of a particular political pursuit or a particular caste or creed.

21. d) Whether addressing a thin assembly is not contempt

Whether it was a thin or packed audience, the fact remains that the derogatory statements made by the respondent was in the course of his speech in a public meeting held in the heart of Kannur Town. Hence, the question as to whether the meeting was attended by less than 100 people or more than one lakh persons, is of no consequence. Moreover, the function was covered by the Press. The respondent has admitted the presence of Biju Paravath (CW 8) reporter of Mathrubhoomy daily and the presence of Sujith (CW 6) the reporter of Mangalam daily at the meeting site. There is no dispute that the meeting was videographed by Byju (CW 2), the Cameraman of the local City News Channel. Hence, the respondent making a public speech undermining the judiciary in the estimation of the public should have anticipated wide coverage for his speech. RW 2 examined by him, has admitted that if a person making a public speech notices that his speech is covered by the media persons, then he should naturally know that his speech will have wide coverage. When the respondent has reiterated that he firmly sticks to the views aired by him, it is not known as to why he is taking up the defence that he was addressing only a micro segment of the population and not a mammoth rally.

22. e) Whether the criticism was only of the judgment?

Equally misconceived is the contention of the respondent that he was criticising only the judgment and not the Judges. He seems to be labouring under a wrong notion that if the criticism is against the Judgment then he can go to any extent by even crossing the limits of fair comment and get away with that. But the fact remains that he was not merely criticising the judgment but was also attacking the

Judges and exposing them to public ridicule by even calling them idiots or fools. Even RW 2 examined by him had no hesitation to concede that the word "Shumbhan" was used by the respondent against the Judges but RW 2 would attempt to show that the said word was not objectionable. The respondent, through the offending speech, was really sowing the seeds of hatred and distrust in the public mind against the Judges of the High Court.

### 23. f) Contempt of Court v. fundamental right of speech and expression

Freedom of speech and expression is indeed the "lifeblood" of democracy. But this freedom is subject to certain exceptions . An offence of scandalising the Court is one such exception and is necessary in a democratic society. Freedom of speech and expression does not mean freedom to distort orders of the Court and deliberately present an incomplete and one-sided picture of the Court verdict and that has the tendency to scandalise the Court. While hypersensitivity and peevishness have no place in judicial proceedings, vicious stultification and vulgar debunking cannot be permitted to pollute the stream of justice. (See paras 6 and 7 of *Narmada Bachao Andolan v. Union of India*, 1999 KHC 1408 : 1999 (8) SCC 308 : AIR 1999 SC 3345). It is true that free speech is a fundamental right and the contempt power is not to strangle the said right merely because Courts are allergic to what they regard as savage criticism. The contempt jurisdiction is neither to foster judicial tyranny. But it is a reasonable restriction on the exercise of the right of free speech constitutionally clamped to Article 19(1) (a) of the Constitution of India in order to meet contingencies of intemperate criticism. The purpose of such restriction is to harmonise the need for a fearless curial process and its presiding functionary, namely, the Judge. The liberty of free expression is not to be confused or confounded with the license to make unfounded allegations against any institution, much less the Judiciary. (Vide-*Ajay Kumar Pandey v. Virender Saran*, 1998 KHC 1176 : 1998 (7) SCC 248 : AIR 1998 SC 3299). Freedom of speech and expression is subject to Articles 19(2), 129 and 215 of the Constitution in relation to contempt of Court, defamation, incitement to an offence etc. So, freedom of speech and expression is tolerated only as long as it is not malicious or libellous. Any criticism about the judicial system or the Judges which hampers the administration of justice or which erodes the faith in the objective

approach of the Judges and brings the administration of justice to ridicule, must be prevented. (See paragraphs 29, 32 and 34 of *Dr. D. C. Saxena v. Chief Justice of India*, 1996 KHC 889 : 1996 (5) SCC 216 : AIR 1996 SC 2481). It is in this context that Justice Krishna Iyer observed that if the Court considers the attack on the Judge or Judges as scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of law by fouling its sources and stream. (Vide- *In Re Mulgaokar*, 1978 KHC 587 : 1978 (3) SCC 339 : 1978 SCC (Cri) 402 : AIR 1978 SC 727 : 1978 MLJ (Cri) 593 and referred to approvingly in *P. N. Dduda v. Shiv Shankar*, 1988 KHC 986 : 1988 (3) SCC 167 : 1988 SCC (Cri) 589 : AIR 1988 SC 1208).

#### 24. g) The impact of an act of contempt

The foundation of the judiciary is the trust and confidence of the people in its ability to deliver fearless and impartial justice and, therefore, no action can be permitted which may shake the very foundation itself. The quintessence of the contempt jurisdiction is the obstruction of or the interference with the administration of justice. The key to the Courts' authority is the peoples' confidence in that great institution and any act which shakes this faith is a blow to democracy. The Apex Court in *Bathina Ramakrishna Reddy v. State of Madras*, 1952 KHC 314 : AIR 1952 SC 149 : 1952 SCR 425 : 1952 Cri LJ 832 as affirmed in *Para 24 of Arundhati Roy, In Re*<sup>56</sup>, has made the pertinent observation that the offence of contempt of Court is really a wrong done to the public by weakening the authority and influence of the Court of law which exists for their good. In *E. M. Sankaran Namboodirippad v. T. Narayanan Nambiar*<sup>57</sup> a former Chief Minister of Kerala also belonging to the same political party as that of the respondent herein made certain statements in a press conference held on 09/11/1967. He charged the judiciary as an instrument of oppression and the Judges as guided and dominated by class hatred, class interests and class prejudices instinctively favouring the rich against the poor. Affirming the decision of a Full Bench of Kerala High Court the Apex Court held that the above statement was clearly an attack on the Judges calculated to raise a sense of disrespect and distrust of the judicial decisions and it had the tendency to weaken the authority of law and law Courts. The Supreme

Court further held that the claim of E.M.S. Namboodirippad that he, as a follower of Marx, Engels and Lenin was drawing sustenance from their teachings, was misconceived. A scurrilous attack on the Court or Judges aimed at denigrating the institution is a sad reflection upon the sovereign people themselves. Hence the contempt power is really for the protection of the public whose interests would be vitally affected if by the act or conduct of the contemnor the authority of the Court is lowered and the sense of confidence which people have in the administration of justice by the Court is weakened. (Vide- paragraph 38 of *Dr. D.C. Saxena v. Chief Justice of India*, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792 and paragraph 8 of *Brahma Prakash Sharma v. State of U.P.*, 1954 KHC 402 : AIR 1954 SC 10 : 1953 SCR 1169 : 1954 Cri LJ 238). This hermeneutic perspective makes contempt power a peoples' tower which is tall enough to command obedience when justice is at stake and authoritarian contumacy attacks judicial supremacy. In such situations the contempt power is a therapeutic liberticide and a salutary prophylactic in the curial pharmacopoeia. We are conscious of the fact that the contempt jurisdiction is an unusual type of jurisdiction combining "the jury, the Judge and the hangman" and it is so because the Court is not adjudicating upon any claim between two or more litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge, but to protect the administration of justice from being maligned. (Vide -- *Supreme Court Bar Association v. Union of India*, 1998 KHC 260 : 1998 (1) KLT SN 85 : 1998 (4) SCC 409 : JT 1988 (3) SC 184. By openly declaring that the High Court verdict was being flouted, the respondent was manifesting the defiant attitude in him and was throwing up a challenge to the rule of law. The following observation of the Apex Court is apposite in this context

"Rule of Law" is the basic rule of governance of any civilized democratic polity . Our constitutional scheme is based upon the concept of rule of law which we have adopted and given to ourselves . Everyone, whether individually or collectively is unquestionably under the supremacy of law. Whoever the person may be, however high, he or she is, no one is above the law notwithstanding how powerful and how rich he or she 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. After more than half a century of independence, the judiciary in the country is under a constant threat and is being endangered from within and without. The need of the time is of restoring confidence amongst the people for the independence of the judiciary. Its impartiality and the glory of law has to be maintained, protected and strengthened . The confidence in the Courts of justice, which the people possess, cannot, in any way, be allowed to be tarnished, diminished or wiped out by contumacious behaviour of any person. The only weapon of protecting itself from the onslaught on the institution is the long hand of contempt of Court left in the armoury of judicial repository which, when needed, can reach any neck howsoever high or far away it may be. (Vide paragraph 1 of Arudhathi Roy, In Re, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792; Para 39 of In Re Vinay Chandra Mishra, 1995 KHC 222 : 1995 (2) SCC 584 : 1995 (1) KLJ 504 : AIR 1995 SC 2348 : 1995 (1) GLH 690 :

1995 (2) Guj LR 992.

Justice Krishna Iyer was an eminent Judge who had adorned this Court as well as the Supreme Court . Likewise, Sri. P. Shiv Shanker was a Judge who later plunged into politics and later became a central Minister. It was recognising the knowledge of these eminent personalities regarding the working of the institution of Justice that their statements were held not to amount to contempt of Court. (Vide- Vincent Panikulangara v. V.R. Krishna Iyer, 1983 KHC 183 : 1983 KLT 829 : ILR 1983 (2) Ker. 626 and P. N. Duda v. Shiv Shanker, 1988 KHC 986 : 1988 (3) SCC 167 : 1988 SCC (Cri) 589 : AIR 1988 SC 1208). But the respondent herein is only a worm who does not come anywhere near those legal luminaries so as to start a campaign highlighting the pitfalls of the judiciary and to correct them.

25. Whether the ingredients of Section 13(a) to be stated in the charge etc. if the contemnor is to be punished?

Section 13(a) of the Act reads as follows:

"13. Contempts not punishable in certain cases. -- Notwithstanding anything contained in any law for the time being in force --

(a) no Court shall impose a sentence under this Act for a Contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice"

It is true that in paragraphs 45 to 48 and 53 of *Raju Bose v. Pritish Nandy and Others*, 1986 KHC 83 : 1986 KLT 303 : 1986 KLN SN 6 a Division Bench of this Court after finding the contemnors therein guilty of "criminal contempt", held that no sentence under Section 12 was imposable on them since the ingredients of Section 13 with supporting allegations were not incorporated either in the petition or in the statement of allegations or in the charge. It was further observed that the proceedings of the Advocate General granting consent should also reflect the ingredients of Section 13 of the Act, if ultimately the contemnor is to be punished. In that case the Division Bench, after finding the contemnors guilty of "criminal contempt" expressed its inability to impose a sentence on them for want of a charge incorporating the ingredients of Section 13 of the Act. What was Section 13 then, is presently Section 13(a) with effect from 17/03/2006. With due respect, we find it difficult to endorse the above view taken by the Division Bench, in *Raju Bose's* case. Section 13(a) is not an ingredient of the offence of contempt of Court. Hence there is no need to incorporate the ingredients of Section 13 either in the petition or statement of allegations or in the charge. The charge need only contain the necessary factual particulars which constitute the offence. The question of imposing a sentence on the contemnor will arise only if he is found guilty of contempt and not otherwise. The stage for consideration by the Court of the requirement of Section 13 will arise only after the contemnor is found guilty of contempt and not before. More over, at the stage of framing the charge , the Court cannot anticipate or predicate that the contemnor will be found guilty of contempt of Court and a sentence also would be imposed on him so as to oblige the Court to incorporate in the charge the ingredients of Section 13. Had it not been for the two verdicts of the Supreme Court to be adverted to hereafter , we would have referred *Raju Boze's* case to a Full Bench for an authoritative pronouncement on the question.

In paragraph 16 of *Rama Dayal v. State of M.P.*, 1978 KHC 552 : AIR 1978 SC 921 : 1978 (2) SCC 630 : 1978 SCC (Cri) 327 : 1978 Cri LJ 917 the Supreme Court treated Section 13 as a provision conferring a "benefit" to the contemnor who, in a given case, could avert a punishment notwithstanding that the Court has found him guilty of having committed contempt of Court. If so, Section 13 (a) is really in the nature of a "proviso" to Section 12 which prescribes the punishment for contempt of Court. There is absolutely no need to incorporate in the charge the ingredients of a provision which is to the "benefit" of the contemnor. In *Rachapudi Subba Rao v. Advocate General, Andhra Pradesh*, 1981 KHC 587 : 1981 (2) SCC 577 : 1981 SCC (Cri) 566 : AIR 1981 SC 755 : 1981 (2) SCR 320 -- the Supreme Court after analysing Section 2 (e) and Section 13 laid down the following propositions:

- i) Eventhough clauses (i) to (iii) of Section 2(c) describe three distinct species of "criminal contempt" they are not always mutually exclusive (para 14).
- ii) The phrase "administration of justice" in clause (iii) of Section 2 (c) is far wider in scope than the phrase "course of any judicial proceeding" in clause (ii) of Section 2(c) (Para 14).
- iii) The last words "in any other manner" occurring after the phrase "administration of justice" in clause (iii) of Section 2 further extend the ambit of "administration of justice" to give it a residuary character (para 14).
- iv) Ridiculing the performance of a Judge or casting aspersions on his integrity will amount to scandalising the Court and lowering the authority of his Court by bringing him and his office into disrespect and disrepute. (Para 17)
- v) Vilification of the Judge with respect to decided judicial matters or even with respect to administrative matters will amount to "criminal contempt" under clause (i) of Section 2(c ) as it lowers or tends to lower the authority or dignity of the Court by undermining public confidence in the capacity of the Judge to mete out even-handed and impartial justice (para 17).

vi) If the contempt committed though not in connection with any pending proceeding, is vilification of the Judge, it will then primarily and squarely fall under clause (i) of Section 2(c) and may also attract the aforesaid residuary phrase "administration of justice " in clause (iii) of Section 2(c ). (para 17).

vii) If the act complained of scandalises the Judge in regard to the discharge of his judicial functions, it thereby substantially interferes or tends to interfere with the "due course of justice" which is a facet of the broad concept of the "administration of justice" and as such is punishable under Section 13 (para 22).

Since the observations in Raju Boze's case run counter to the law laid down by the Apex Court in the aforesaid binding pronouncements, we do not find ourselves bound by those observations. Accordingly, we hold that for imposing a sentence on the contemnor under Section 12 of the Act it is not necessary to incorporate the ingredients of Section 13(a) of the Act either in the petition, or in the statement of allegations or in the charge wherever applicable. The ingredients of Section 13(a) need not be reflected in the proceedings of the Advocate General granting consent, either.

## 26. Certain legal propositions judicially settled

A) 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 libellor 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 injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from placing complete reliance upon the Court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement ; it is enough if it is likely , or tends in any way, to interfere with the proper administration of law .



(Brahma Prakash Sharma v. State of U.P., 1954 KHC 402 : AIR 1954 SC 10 : 1953 SCR 1169 : 1954 Cri LJ 238 referred with approval in paras 15 of Arundhati Roy, In Re, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792).

B) Even if a Judge is said to have committed gross errors in the judgment that will not justify a scurrilous attack on the Judge.

The Court trying contempt of Court cannot act as an appellate Court and decide whether there are errors in the judgment. (See- Paras 81 and 84 of K. Dabhtary v. O. P. Gupta, 1971 KHC 516 : AIR 1971 SC 1132 : 1971 (1) SCC 626 : 1971 SCC (Cri) 286 : 1971 Cri LJ 844 (Constitution Bench). Court dealing with the contempt matter cannot examine the correctness of the order or give additional direction or delete any direction. (Director of Education, Uttaranchal v. Ved Prakash Joshy, 2005 KHC 1180 : 2005 (6) SCC 98 : 2005 (3) KLT SN 87 : AIR 2005 SC 3200 : 2005 Cri LJ 3731).

C) Contempt proceeding is sui generis (of its own kind or class or unique) . It has peculiar features which are not found in criminal proceedings. The respondent does not stand in the position of a person accused of an offence.

Initiation of contempt proceedings against the respondent who is already accused in a criminal proceedings, does not amount to double jeopardy. (Delhi Judicial Service, Association, Tis Hazari Court v. State of Gujarat, 1991 KHC 1033 : AIR 1991 SC 2176 : 1991 (4) SCC 406 (Three Judges).

D) Contempt jurisdiction of the High Court is a special one not arising or derived from the Contempt of Courts Act, 1952, and therefore not within the purview of either the Indian Penal Code or the Code of Criminal Procedure (Mrs. V. G. Peterson v. O. V. Forbes and Another, 1963 KHC 540 : AIR 1963 SC 692 : 1963 Supp (1) SCR 40 : 1963 (1) Cri LJ 633 : 1963 (2) MLJ (SC) 69 - Three Judges).

E) No one can be permitted to distort orders of Court and deliberately give a slant to its proceedings, which have a tendency to scandalize the Court or bring it to ridicule. (Narmada Bachao Andolan v. Union of India, 1999 KHC 1408 : AIR 1999

SC 3345 : 1999 (8) SCC 308 (three Judges).

F) Fair criticism of the conduct of a Judge or of the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, Courts have to see all the surrounding circumstances including the person responsible for comments, his special knowledge in the field regarding which the comments are made, his knowledge regarding the working of the institution of judiciary and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the Courts in the name of fair criticism which, if not checked, would destroy the institution itself. (Paras 28 and 29 of Arundhati Roy, In Re, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792).

G) While enacting the Contempt of Courts Act, the legislature has kept in mind the need to bring the law in line with the modern trends of thinking in other countries and without ignoring the ground realities and the prevailing socio economic system in India that the vast majority of the people are poor ignorant, uneducated and easily liable to be misled. (Vide- para 19 of Arundhati Roy, In Re, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792).

H) When the act of defaming a Judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of Courts of law which exists for their good. (Bathina Ramakrishna Reddy v. State of Madras, 1952 KHC 314 : AIR 1952 SC 149 : 1952 SCR 425 : 1952 Cri LJ 832 and Para 24 of Arundhati Roy, In Re, 1994 KHC 807 : 1994 (4) SCC 34 : 1994 SCC (LandS) 849 : AIR 1994 SC 2252 : 1994 (1) CLR 894).

I) When the Court exercises the contempt jurisdiction it does not do so to vindicate the dignity and honour of the individual Judge who is personally attacked or scandalised, but to uphold the majesty of law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the

Court by creating distrust in its working, the edifice of the judicial system will fall to the ground. (Vide- para 1 of Arundhati Roy, In Re, 2007 KHC 3978 : 2007 (7) SCC 689 : JT 2007 (10) SC 609 : AIR 2007 SC 3100).

J) The law of contempt has been enacted to secure public respect and confidence in the judicial process. If such confidence is shaken or broken , the confidence of the common man in the institution of judiciary and democratic set-up is likely to be eroded which, if not checked, is sure to be disastrous for the society itself . (Vide-para 3 of Arundhati Roy, In Re, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792).

K) Judiciary is not only the guardian of the rule of law and the third pillar but in fact the central pillar of a democratic State. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. It is for this purpose that the Courts are entrusted with extraordinary powers of punishing those who indulge in acts, whether inside or outside the Courts, which tend to undermine the authority of law and bring it in disrepute and disrespect of scandalising it. (Vide para 1 of Arundhati Roy, In Re, 2002 KHC 1193 : 2002 (3) SCC 343 : AIR 2002 SC 1375 : 2002 Cri LJ 1792). (Mohammed Iqbal Khandey v. Abdul Majid Rather, 1994 KHC 807 : 1994 (4) SCC 34 : 1994 SCC (LandS) 849 : AIR 1994 SC 2252 : 1994 (1) CLR 894 and Commissioner, Karnataka Housing Board v. C. Muddaiah, 2007 KHC 3978 : 2007 (7) SCC 689 : JT 2007 (10) SC 609 : AIR 2007 SC 3100. Bineet Kumar Singh (in re), 2001 KHC 1564 : AIR 2001 SC 2018 : 2001 (5) SCC 501 : 2001 SCC (Cri) 908 : 2001 Cri LJ 2575.

L) The allegation against the Judge was that he had "thwarted justice" flouted law, denigrated the face of the Judiciary and ridiculed the sanctity of the mandatory provisions and established dictates of law.

It was held by the Court that the above statement attributed by implication, ulterior motive to Judge. It is beyond permissible limits of fair criticism. Further statement alleging by implication that Supreme Court has not dealt with his case impartially

and in accordance with law has the tendency to scandalize Court. Maker of such statement is guilty of contempt of Court; Padmahasini @ Padmapriya v. C. R. Srinivas, 1999 KHC 1461 : 1999 (8) SCC 711 : AIR 2000 SC 68 : 2000 Cri LJ 187.

M) If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt, the Court cannot transverse beyond the order. It cannot test the correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings . The same would be impermissible and indefensible; State of Bihar v. Rajendra Singh, 2005 KHC 183 : 2005 (1) KLT SN 14 : AIR 2004 SC 4419 : 2007 (15) SCC 688 : 2004 Cri LJ 4187.

N) While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take a view different from what was taken in the earlier decision; Union of India v. Subedar Devassy P. V., 2006 KHC 64 : 2006 (1) SCC 613 : AIR 2006 SC 909 : 2006 (2) KLJ 221 : 2006 Cri LJ 971 (SC).

O) It is true that whilst, prima facie, Court orders ordinarily bind only the parties to the action, individual third parties may be guilty of contempt if knowing of the order they aid and abet the defendant in breaking it or otherwise do an act that obstructs or frustrates the object of the order; Seaward v. Paterson, 1897 (1) Ch 545 : 1895-96 All ER Rep 1127 : 66 LJ Ch 267.

P) The liberty of free expression is not to be confounded or confused with license to make unfounded allegations against any institution, much less the judiciary. In other words, imputing partiality, corruption, bias, improper motives to a Judge is scandalisation 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 the majesty of justice. When the respondent 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; *Ajay Kumar Pandey v. Virendar Saran*, 1998 KHC 1176 : 1998 (7) SCC 248 : AIR 1998 SC 3299 : 1998 Cri LJ 4606.

Q) A scurrilous and insinuating attack on a Judge in respect of a judgment or past conduct affects adversely on the due administration of justice and amounts to contempt. Publication and circulation of a booklet in public containing allegations that a Judge had made up his mind about a decision of a case and would not hear the arguments and manipulated to get the erroneous judgment delivered from another Judge of the Bench and controlled the hearing and thus ascribing dishonesty to the Judge amounts to contempt; *Daphtary C. K v. O. P. Gupta*, 1971 KHC 516 : AIR 1971 SC 1132 : 1971 (1) SCC 626 : 1971 SCC (Cri) 286 : 1971 Cri LJ 844.

R) 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 large issues touching the independence of not only the concerned Judge but the entire institution. The foundation of judicial system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding Judicial Officers with impunity; *M. B. Sanghi Advocate v. High Court of Punjab and Haryana*, 1991 KHC 996 : 1991 (3) SCC 600 : 1991 SCC (Cri) 897 : AIR 1991 SC 1834 : 1991 Cri LJ 2648.

S) Supreme Court has laid down the following principles for testing the act of scandalizing the Court:

1. It will not be right to say that the committals for contempt for scandalizing the Court have become obsolete.
2. The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.
3. It is open to any one to express fair, reasonable and legitimate criticism of any act or conduct of a Judge in his judicial capacity or even to make a proper and fair comment on any decision given by him.
4. A distinction must be made between a mere libel or defamation of a Judge and what amounts to a contempt of the Court.

The test in each case would be whether the impugned publication is a mere defamatory attack on the Judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by this Court. It is only in the latter case that it will be punishable as contempt.

5. Alternatively the test will be whether the wrong is done to the Judge personally or it is done to the public. To borrow from the language of Mukherjea J, (as he then was) Brahma Prakash Sharma's case, 1954 KHC 402 : AIR 1954 SC 10 : 1953 SCR 1169 : 1954 Cri LJ 238" the publication of a disparaging statement 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." Perspective Publications (P) Ltd. v. State of Maharashtra, 1971 KHC 734 : 1969 (2) SCR 779 : AIR 1971 SC 221 : 1971 Cri LJ 268.

T. The amplitude of the words, "due course of justice" used in Section 13 is wider than the words "due course of any judicial proceeding" or "administration of justice" used in sub-clauses (ii) or (iii) of Section 2(c). If the act complained scandalizes the judicial officer in regard to the discharge of his judicial functions, it thereby

substantially interferes or tends to interfere with the "due course of justice" which is a facet of the broad concept of the "administration of justice" and as such, is punishable under Section 13; R. Subba Rao v. Advocate General, 1981 KHC 587 : AIR 1981 SC 755 : 1981 (2) SCC 577 : 1981 SCC (Cri) 566 : 1981 (2) SCR 320 : 1981 Cri LJ 315 : 1981 MLJ (Cri) 340.

U. Punishing a the respondent is not an act of retribution but is only an attempt to uphold the majesty of law by protecting the public interest. (Abraham v. Director of Telecommunications, 1983 KHC 115 : 1983 KLT 544).

V. Acts creating wrong impression in the mind of the people regarding the integrity and fairness of the judicial functionary, cannot be in the realm of freedom of speech and expression. It is of such a nature that it substantially interferes or tends substantially to interfere with the course of justice and consequently the respondent deserves to be punished. (B. M. Khodade v. Kumar Saptarshi, 2007 Cri LJ 571 (Bom.).

W. Mens rea is not necessary for committing contempt of Court. The main ingredient of the offence of contempt of Court is the result of one's contumacious act of offending the prestige and dignity of the judiciary so as to lower it in the estimation of the general public. Whether the contemnor intended it or not is of no consequence. (See page 319 of Contempt of Court by V.G. Ramachandran - Sixth Edition).

## 27. The conduct of the respondent

It has already been seen that far from educating the public, the respondent, by the offending speech, was poisoning their minds and creating in them a mindset hostile to the Judges of the High Court. His contention that there was no mens rea or malice in his speech is not only untenable but also cannot be put forward as a defence. If the offending speech is calculated or has the tendency to interfere with the course of justice, the contemnor cannot escape liability on the ground that his statement was made bona fide and without any mens rea. Factors such as good faith, absence of motive, intention, mens rea etc. are wholly alien to contempt proceedings. (Vide- Padmavathi Devi Bhargava v. R.K. Karanjia, AIR 1963 M.P.

61). Intention of the contemnor is not at all relevant. (See- In Re P. C. Sen, 1970 KHC 734 : AIR 1970 SC 1821 : 1969 (2) SCR 649 : 1970 Cri LJ 1525; Reliance Petro Chemicals Ltd. v. Proprietors of Indian Express Newspapers, 1988 KHC 1067 : 1988 (4) SCC 592 : AIR 1989 SC 190. Just as it is no defence for the person responsible for the publication of libel to plead that he did not know that the matter was defamatory and he had no intention to defame, the contemnor cannot contend that he did not intend that result if his act is otherwise calculated to interfere with the course of justice. As Advocate Sreekumar rightly submitted, the respondent, not content with the offending speech made by him, was making use of every opportunity thereafter to stick to his views on all public platforms where there was media coverage. Even after the Division Bench passed Ext. C6(b) Judgment rejecting all the contentions raised by the half a dozen review petitioners, the respondent raised the identical contentions in the reply affidavit filed before this Court. When the Division Bench after hearing the amicus curiae and the Senior Advocate appearing for the respondent, passed an order to frame charge against him, he assailed that order before the Supreme Court by filing an SLP. (SLP (Crl.) No. 4877 of 2011). But the Supreme Court dismissed his SLP in limine. Thereafter also, during the course of the trial he had gone to the Press justifying his stand including the usage of the work "Shumbhan" against the Judges. Most of the adjournments in this case were reluctantly granted either to suit his convenience or the convenience of his counsel. Eventhough what is contemplated by law is only a summary trial, we were over-indulgent to ensure that there is no occasion for him to complain that there was no fair trial. There were occasions when after seeking personal exemption from this Court under some pretext or other, he was live in the media making denigrating statements. During his examination under Section 313(1)(a) as well as under Section 313 (1) (b) Cr PC he firmly stuck to his stand and his grievance was that the media omitted to highlight that part of his speech in which he had alleged corruption in the judiciary including that of Justice Dinakaran. When one of the witnesses examined by him turned out to be more loyal than the respondent, this Court intervened to ask a few questions to the witness. One of the questions put was to find out whether the witness was voluntarily testifying before Court or whether the witness was under political influence or pressure. This was not relished by the



respondent who again went to the Press and made public statements to the effect that dramatic scenes were staged in Court and attributing political prejudice to this Court. As a matter of fact, nothing of the sort had taken place in Court. Even the witness concerned had not raised any objection to the questions put to him by this Court. Three days thereafter the respondent filed an affidavit through his counsel Advocate M. Saseendran raising his objections to the Court question. The petition (I.A. No. 630 of 2011) was filed for recording in the deposition of RW 2 his objection regarding the Court question. It was filed without giving a copy to Sr. Advocate Sreekumar. In fact, this Court had, as usual, faithfully recorded everything that transpired before Court in the proceedings for the day. No motion was made before us on IA No. 630 of 2011 the filing of which was concealed from us. We came to know of the petition only when it was brought to our notice by the Court Officer later. This is nothing but deceit. Thus, the respondent not only made the offending speech scandalising the High Court and its Judges lowering their authority in the mind of the public and prejudicing the due course of judicial proceedings tending to obstruct the administration of justice, but also persistently and tenaciously stuck to his stand throughout notwithstanding the Division Bench rejecting all the identical grounds put forward by the respondent in protest against Ext. C5 judgment. He was inciting the public to openly disobey Ext. C5 judgment of the High Court. This is not a case where even a timely apology by the respondent with a feeling of remorse or contrition would have persuaded this Court to ignore the ignominy on the ground that "dogs may bark, but the caravan will pass". We do not think that even an ex-cathedra admonition with a direction to apologise in public with sufficient media coverage would have purged the contempt. Well, it is unnecessary for us to enter the filed of imagination to visualize whether the respondent had evinced any qualms of conscience or self-condemnation. He has not exhibited anything of that sort at any stage of the proceedings. The statement in his reply affidavit that he has always held the institutions including the Courts, under the Constitution in high esteem and respect, is nothing but a hollow, insincere approbation and a feigned genuflection. Deprecating the practice of criticising the Judges and their verdict for cheap popularity and thereafter denying such criticism, Justice Jagannadha Rao , who was then the Chief Justice of the High Court of Kerala remarked thus:

"Often people try to speak of Judges and their Judgments in poor light and then when they face action for contempt , they hasten to add that they never meant any disrespect."

(Tharian Joseph v. Viswanathan, 1993 KHC 272 : 1993 (2) KLT 21)

Eighteen years thereafter, the very same strategy has been employed by the respondent in this case.

28. OUR CONCLUSION By the offending speech made by the respondent in the public meeting held in Kannur town on 26/06/2010 he was ridiculing in public the performance of the two Judges of the High Court with regard to the discharge of their judicial functions thereby scandalising and lowering the authority of their Court and bringing them and their office into disrespect and disrepute. Far from expressing any contrition or repentance for the vicious allegations made against the Judges, his reply affidavit, statements under Section 313 Cr PC and Press statements will show that he was exhibiting a dogged determination to pursue the matter at any cost and ventured into further bouts of allegations against the Judges and persisted his campaign of vilification, as was done by the contemnor in *Pritam Pal v. High Court of Madhya Pradesh*, 1993 KHC 620 : AIR 1992 SC 904 : 1993 Supp (1) SCC 529 : 1993 SCC (Cri) 356. He has seriously sullied the image, dignity and high esteem which the office of the Judges of the High Court carries with them. He was inciting the public to disobey the High Court verdict which according to him was rendered by two fools in ignorance of law. He publicly declared that those Judges have no respect whatsoever and demanded them to step down from their office if they had any self-respect left in them. By making the offending public speech without caring to study the legal principles behind Ext. C5 verdict, the respondent was attempting to impair the administration of justice by fouling its source and stream. We accordingly, find him guilty of having committed "criminal contempt" within the meaning of Section 2(c) of the Act. The respondent was escalatantly indulging in scandalisation by invectively making scurrilous, offensive, vicious and malicious onslaught on the higher judiciary and that too beyond condonable limits. This conduct of the respondent amounts to tending substantially to interfere with the due course of justice within the meaning of

Section 13 of the Act, as was held in Rachpudi Subba Rao's case (supra). Any act creating a wrong impression in the mind of the people regarding the fairness of the judicial functionary is of such a nature that it substantially interferes or tends substantially to interfere with the course of justice and consequently, the contemnor deserves to be punished. (Vide- B. M. Khodade v. Kumar Saptarshi, 2007 Cri LJ 571 (Bom.)). He does not deserve any leniency in the punishment. For the "criminal contempt" committed by the respondent and punishable under Section 12 of the Act, he is sentenced to simple imprisonment for six months and to pay a fine of Rs.2,000/- (Rupees two thousand only). On default to pay the fine he shall suffer simple imprisonment for one month. He shall be taken into custody and shall be committed to the Central Prison, Thiuruvananthapuram for serving the sentence imposed on him as above.

## 29. Kudos to the fourth estate

Before parting with this case we wish to place on record our appreciation as well as anguish over the role played by the media in this case. The testimony of some of the media persons examined in this case shows that it was rather the news value of the offending speech of the respondent than the possible action for contempt, which impelled them to publish the speech. They did the creditable job of hosting the offending speech to the realm of public domain. They deserve our appreciation. The existence of a free press is an inevitable necessity in maintaining parliamentary democracy. The Press occupies an unenviable position because the media are the eyes and ears of the general public. They act on behalf of the general public. Their right to know and their right to publish is neither more nor less than that of the general public for whom they are trustees. (See the words of Sir John Donaldson MR in A.G. v. Guardian Newspaper Ltd. (No. 2), 1988 (3) All ER 545 (600).

In the words of Justice Krishna Iyer, the fourth estate is, indeed an indispensable intermediary between the State and the people and, therefore, a necessary instrumentality in strengthening the forces of democracy. It should be given a free play within responsible limits when the focus of its attention is the insult on the unpolluted environment within which justice is administered.

### 30. But the media transgressed its limits

But, this is not to say that the media can penetrate into forbidden spheres and bring to public focus matters which are to remain private. We notice in this context the submission made by Sr. Advocate Sri. M.K. Damodaran that the media now-a-days has become highly aggressive transgressing all reasonable limits and even violating the privacy of individuals. We hasten to add that in any event they cannot trespass upon areas constitutionally earmarked for the Courts and hold media trials on a matter which is sub judice as was done by a television channel in this case. Pre-trial media publicity and attempts to indoctrinate the masses in favour of a particular view or against the rival view, is equally disastrous. After this contempt matter was in the seizin of this Court, the only role of the print and electronic media was to give a true and ungarbled report of the Court proceedings unless even the reporting was countermanded by the Court. Instead, what the television viewers across the world witnessed were scenes of an audio and video conferencing telecast by a news channel called "Reporter" in which the very same issue pending adjudication before this Court was being openly discussed. On being informed about the above telecast allegedly made on 13/10/2011, we called for the video clipping from the said news channel. The DVD produced by them was played in open Court on 21/10/2011. A lady newsreader (whose name as revealed by Adv. Sreekumar after consulting somebody, was "Smruthi") was seen holding a discussion regarding the subject matter pending before this Court. If inexperienced and legally challenged personnel are given a free hand to conduct such interviews, there is the sure danger of such programmes impinging upon and embarrassing the pending proceedings in Court. Besides the respondent, Dr. P. V. Narayanan who was examined before this Court as RW 2 was also giving his opinion regarding the user of the epithet "Shumbhan" by the respondent.

### 31. The blameworthy conduct of an officer of the Court

It was without actually watching the Court proceedings which lasted for several days and it was without having the proper grip of the case under trial before this Court that the Advocate participant in the above programme was airing his views on the propriety of the Court asking questions to a witness. This Advocate (who

according to Mr. Sreekumar is a CPI (M) co-passenger) was also seen defending the respondent. There is the unfortunate emergence of a trend among people to become more and more clannish when a member of their own fold commits a mistake. Instead of admitting the mistake and correcting him and imposing adequate punishment including expulsion from the association if the degree of delinquency is grave enough, other members with a trade-union zeal defend such erring persons tooth and nail. This is a pernicious trend. It is not known as to whether the Advocate was consulted as a political personality or a 'jurist'. Such opinionated critics with perfunctory grasp of pending proceedings pose real threat to the administration of justice. The Judges here do not require any unsolicited advice from such persons on the "dos and don'ts" in justicing. There are better stuff, both in the legal profession and in the larger fraternity of law to be consulted, if need be, for Judges who are in doubt or distress. If the media participation by the Advocate is a veiled threat to Courts trying cases involving persons belonging to a particular political party, let him and likeminded persons bear in mind that they have no business either to offer their comments on matters which are sub judice or professedly lay down any code of conduct for Judges while engaged in the solemn duty of dispensing justice. The laws, including the statute and interpreted laws, of this country are adequately vibrant to take care of such situations in Court. We Judges do concede that we are not infallible. But, if we Judges of the High Court go wrong there is the Supreme Court to correct us.

The conduct on the part of those who took part in the interview on the television channel was most reprehensible. They were really encroaching into the right to fair trial available to the parties in this contempt case.

More than displeasure, it is a feeling of pain for us to note that mischievous half-truths, brazen untruths and virulent publicity by partisan media, political organs and spokesmen for vested interests play havoc in inflicting incalculable harm to the course of Justice. While dissemination of news is the functional prerogative of the media, every care should be taken to ensure that an irresponsible print or a visual cast does not render the delicate task of administering justice unduly difficult for the Judges. However stalwarts they may be, Judges are also human beings.

## 32. Our accolades for the forensic skills

We will be failing in our duty if the professional skills displayed by Senior Advocate Sri. S. Sreekumar and Senior Advocate Sri. M. K. Damodaran, go unnoticed. The commitment and enthusiasm shown by Sri. Sreekumar in this case is worth emulation by the younger members of the Bar. It was by keeping aside all his other professional engagements that Sreekumar assisted this Court. He has our appreciation.

Senior Advocate Sri. M. K. Damodaran was at his best in defending this case. The dexterity with which he cut across the witnesses examined in support of the charge and mustered defence evidence and finally argued the case was a delightful forensic treat. We have no better expressions at our command to pay our encomiums to Sri. Damodaran. He was ably assisted by Advocate Sri. M. Saseendran, who, however, indulged in the uncharitable act of filing I.A. No. 630 of 2011 (made mention of in paragraph 27 above) presumably to appease the contemnor. Members of the noble profession of law should not stoop down to such levels forgetting the fact that they are also officers of the Court.

## **Table**

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