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HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

D.B. HON. C.K. PRASAD & HON. MISS USHA SHUKLA, JJ

Criminal Contempt Petition No. 11/98

Madhya Pradesh High Court Bar Asso. Jabalpur

Vs.

Rajendra Sail & 5 Others

Criminal Contempt Petition No. 12/98

For the Petitioner : M/s. Rajendra Tiwari, P.S.Nair
in C.P.No.11/99 Sr.Advs., M/s.R.K. Gupta, R.
Menon with Sri R.Shrivastava,
Advs.

For Rajendra Sail : Mrs. J.Choudhary, Adv. in both
the petitions.

For rest of the : Sri S.C. Dutt, Sr.Adv. with
contemnors Sri M.Awasthy, Adv.

For the State : Sri A.Mishra, Dy.Adv.General.

Date of Order : 19/3/2001

O R D E R

Prasad, J.-

We wish to commence this Judgment with this
prefatory note. Lord Denning in the case of Regina v.
Commissioner of Police of the Metropolis, ex parte

Blackburn (1968) 2 All ER 319 (CA), spoke as follows:-

"Let me say at once that we will never use
this jurisdiction as a means to uphold our own
dignity. That must rest on surer foundations.
Nor will we use it to suppress those who speak
against us. We do not fear criticism, nor do
we resent it. For the

important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.

The Supreme Court in the case of Special Reference No.1 of

1964 (1965) 1 SCR 413, observed as follows:-

"We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with

circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct.

H.R. Khanna, Retired Judge of the Supreme Court, whom many scholars and jurists described to be a living legend once spoke as follows:-

"Judges should not silence criticism with threat of Contempt of Court but should remove the weakness and drawbacks that have crept into the judicial system.

Further, in the case of M/s. Chetak Construction Ltd., Vs. Om Prakash and Others, JT 1998(3) S.C., the Supreme Court sounded a note of caution in the following words:-

"The corner-stone of the contempt law is the accommodation of two constitutional values - the right of free speech and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not

fair comment or trivial reflections on the judicial personnel," (See 1974(1) SCC 374). Long long ago in Queen Vs. Grey (1900 2 Q.B.36 at 40) it was said that 'judges and courts are alike open to criticism and if reasonable argument is offered against any judicial act as contrary to law or to the public good, no court could or would treat it as contempt of court.' Therefore, contempt jurisdiction has to be exercised with scrupulous care and caution, restraint and circumspection. Recourse to this jurisdiction, must be had whenever it is found that something has been done which tends to affect the administration of justice or which tends to impede its course or tends to shake public confidence in the majesty of law and to preserve and maintain the dignity of the court and the like situations. 'The respect for judiciary must rest on a more sure foundation than recourse to contempt jurisdiction.

2. The Madhya Pradesh High Court Bar Association filed application for initiating action against the non-applicants namely Rajendra Sail, Vijay Phansikar, Editor Hitavada and Rajendra Purohit, Printer and Publisher of the aforesaid newspaper for contempt of this Court with the consent in writing of the Advocate General. Reference was also made for initiating action against the

non-applicants referred to above, by the Court on its own motion. By order dated 13/7/1998, the application of the M.P. High Court Bar Association and reference for initiating suo-motu contempt ~~were~~ directed to be linked together and notices were issued to the non-applicants to show-cause as to why they be not punished for scandalising this Court by making a speech and publishing the same in the news paper Hitavada. After the show-causes were filed by the aforesaid contemnors and on perusal of their pleas, this Court by order dated 24.11.1999 directed issuance of notice to George Kurian, the Bhilai Bureau Chief of Hitavada, Virag Pachpore, Chief Sub-Editor and Desk Incharge of Madhya Pradesh, and Ravi Pandey, Correspondent of the newspaper at Bhilai. After the service of notice, all these persons have also appeared and filed their show-cause.

3. Bereft of unnecessary details, facts which have led to the initiation of the contempt proceeding are that one Shankar Guha Niyogi, who happened to be a labour leader, was murdered and for his murder, several persons

were put on trial. The trial Court held a number of accused persons guilty of the offence of murder and sentenced all of them to rigorous imprisonment for life, excepting Paltan Mullah, who was sentenced to death. Matter travelled to this Court in appeal as also reference for confirmation of the death sentence, and a Division Bench of this Court allowed the appeal and set aside the judgment of conviction and sentence. The news paper Hitavada published the news of acquittal of the accused persons in the Niyogi murder case in its issue dated 3rd July 1998, with the head-line - "CMM Condemns Acquittal of Accused in Niyogi Murder Case." The news item was based on the speeches made by the leaders of Chhattisgarh Mukti Morcha as also contemnor Rajendra Sail, who happens to be the Secretary of the Peoples Union of Civil Liberties. The news paper Hitavada again published a news item in its 4th July, 1998 edition with the heading "Sail terms High Court decision on Niyogi murder case as 'rubbish'". The aforesaid news item was published in the name of Bhilai Bureau. The news item besides other information, contains the following offending passages:-


"(i) In his speech, Mr. Sail vehemently condemned the High Court's decision of honourable acquittal of all the accused in Shanker Guha Niyogi murder case, at the same time he did not leave the then BJP government and police department from his pointed tirade. The present Digvijay Singh government was also not recluse from his verbal onslaught.

(ii) In a private conversation with this scribe Mr. Sail said we will knock the doors of the Supreme Court to get the culprits of Niyogi murder case punished." He termed the decision of the High Court as rubbish. Referring to Mr. S.K. Dubey, one of the two Judges of High Court Bench which pronounced decision on Niyogi murder case, Mr. Sail said that the judge who was on the verge of retirement should not have been entrusted with the responsibility of dealing with such crucial case.

(iii) He alleged that High Court bench comprising judges S.K. Dubey and Ms. Usha Shukla had belittled the respect for judiciary by pronouncing what he said a biased and rubbish judgment in Niyogi murder case.

(iv) Asked as to what made the case weaker on part of prosecution despite K.G. Kannavaran, PUCL National President and well known criminal lawyer, being the CBI counsel, Mr. Sail replied that no body could have made much difference when already the judges were prejudiced in this case.

(v) Mr. Sail added that he had substantial evidences to prove that judge S.K. Dubey was bribed in this case and that he possessed properties disproportionate to his income.



4. After the issuance of the show-cause notice, show-cause has been filed on behalf of contemnors Vijay Phansikar, Editor and Rajendra Purohit, General Manager, Printer and Publisher of the Hitavada, stating therein "that the aforesaid news item was published on account of oversight of the management. In other words, both the non-applicants No.2 and 3 were absolutely unaware of the article which was published in the news paper edition on 4.7.1998." In the show-cause, they have further stated that they had tendered a public apology in the front page of the newspaper "The Hitavada Edition dated 6th August, 1998." In the show-cause also they have tendered unqualified apology.

5. Contemnor Rajendra Sail in his show-cause has denied having given any interview to the scribe of the Hitavada newspaper, but has not denied having given the speech. In paragraph 22 of his show-cause, he has stated as follows:-

"22. This non-applicant never made these specific statements in his speech which have been falsely attributed to him and as reported in The Hitavada daily dated 4th July, 1998. This non-applicant never stated that "he had substantial evidence to prove that Judge S.K. Dubey was bribed in this case and that he possessed properties disproportionate to his income." This non-applicant also did not say that "nobody could have made much difference when already Judges were prejudiced in this case." This non-applicant also did not say that "...High Court bench comprising Justice S.K. Dubey and Ms. Usha Shukla had belittled the respect for judiciary by bringing what he said, a biased rubbish judgment in Niyogi murder case." This non-applicant also did not state that "..... the Judge who was on the verge of retirement should not have been entrusted with the responsibility of dealing with such crucial case."

6. From what has been stated by contemnor Rajendra Sail in his show-cause, it is evident that he has not denied that he termed the decision of High Court as rubbish but all other allegations made in the news paper and attributed to him have been denied. It is relevant here to state that in the show-cause, this contemnor had made allegation against Bhilai Bureau Chief George Kurian, but we are not inclined to dialate on that because in our opinion, that has no bearing on this contempt application. It is relevant here to state that in the show-cause this contemnor has stated that he had made complaint against The Hitavada, Nagpur for spreading falsehoods against the People's Union of Civil Liberties and for carrying on a vilification campaign. In the said letter dated 8th July, 1998 as regard the High Court's decision, he has stated as follows:-

July 4, 1998:

"SAIL TERMS HIGH COURT DECISION ON NIYOGI
MURDER CASE AS 'RUBBISH'

HEADING: *The heading of this news-report/*

article is false, misleading and mischievous.

The entire reporting is fictitious, as I never gave any interview to any press persons on that day leave aside what the Bhilai Bureau refers to in fourth para of this news-report as "a private conversation".

All the statements with or without quote are false and baseless.

These are deliberately attributed to me, while the fact remains that I never spoke "privately" or "publicly" to the press.

As a human rights activist, I have never denigrated the judiciary. On the contrary, for several public grievances, I have personally gone to the courts for redress in the capacity of the Organizing Secretary of the PUCL. I have not been disrespectful to the judiciary.

Seen from the point of view of a systematic campaign being carried out against

the PUCL and me, such a story filed by the Bhilai Bureau and THE HITAVADA is nothing but vilification and falsehoods."

7. Contemnor Vijay Pachpore, Sub-Editor of the news paper of M.P. Desk has stated in his show-cause that "report in connection with the rally and public meeting that was held by Chhattisgarh Mukti Morcha in July, 1998 at Khursipar, Bhilai and speech delivered by Rajendra Saini was received from Trainee Correspondent Ravi Pandey through modem on computer at Nagpur." He has further stated in his show-cause that - "the said page was shown to me but as it was close to the printing dead-line of the M.P. line of that day, I had not applied my mind seriously and permitted the page to be printed and published." He has also tendered unqualified apology.

8. Contemnor George Kurian, the then Bhilai Bureau Chief of the newspaper has stated in his show-cause that the report of the speech and the conversation that

Rajendra Sail had with Ravi Pandey, the Trainee Correspondent was not shown to him by Ravi Pandey and he was not aware of it till it was published.

9. Contemnor Ravi Pandey in his show-cause has stated that he was working as Trainee Correspondent with the Hitavada in Bilai Bureau from 1st July, 1998 and after completing the training, he is working as Correspondent at Bilai Bureau. He has stated in his show-cause that on 1st July, 1998 a rally of the Chhattisgarh Mukti Morcha was organised and same culminated into a public meeting at Khursipar and he was present at the meeting from 4.30 p.m. till about 6.30-7.00 p.m. He has further stated in his show-cause that contemnor Rajendra Sail also made a speech in the public meeting and when he came down from the rostrum, he had conversation with him. He has categorically stated that contemnor Rajendra Sail in the conversation with him broadly reiterated the substance of the speech that he had delivered and made personal feelings, accusation and attributed motive to the Hon'ble Judges. He has further

taken the plea that he being a Trainee Correspondent, was unaware of the legal implications of printing and publishing against the Judiciary and Hon'ble Judges and had categorically stated that the report was based on the speech delivered by contemnor Rajendra Sail as also subsequent conversation.

10. We have heard Sri Rajendra Tiwari and Sri P.S. Nair, Senior Advocates for the M.P. High. Court Bar Association, Mr. S.C. Dutt for contemnors Vijay Phansikar, Rajendra Purohit, George Kurian and Ravi Pandey and Mrs. June Choudhary for Rajendra Sail.

11. In sum and substance, from the pleadings of the contemnors, what vividly emerges is that none of them ^{excepting Rajendra S} ~~has~~ taken the plea that the news item does not scandalise or lower the authority of the Court. Although contemnor Rajendra Sail, had not denied having delivered the public speech but except calling the High Court judgment as "rubbish", he had not stated anything which was published treating him as the source. The Editor, Printer and

Publisher of the newspaper had taken quirk stand and had stated that the offending news item was published on account of oversight of the management. However, their specific stand is that contemnor Rajendra Sail had given a public speech and had also a conversation with Correspondent Ravi Pandey. Contemnor Vijay Pachpore, the Sub-Editor of the M.P. Desk of the newspaper pleads non-application of mind in permitting the publication because of the printing dead-line. Contemnor George Kurian, the Bhilai Bureau Chief had pleaded no concern at all with the publication. Contemnor Ravi Pandey has although stuck to his gun that the report is based on the public speech of contemnor Rajendra Sail and his private conversation but has pleaded for mercy on account of his inexperience in the field of journalism.

12. From what has been stated above, it is evident that contemnor Rajendra Sail on one side and contemnors Vijay Panshikar, Rajendra Purohit and Ravi Pandey on other side have joined issue as to whether the former had any conversation with Ravi Pandey after the speech. As stated

earlier, Rajendra Sail in his show-cause has denied to have any conversation with Ravi Pandey whereas the latter's stand is that he had the conversation ~~XXXXXXXXXXXX~~ ~~XXXXXX~~ in which he made offending statements scandalising the Court. It is relevant here to state that copy of audio and the video cassettes of the speech delivered by Rajendra Sail in the public meeting have been placed on record as also its transcription, **by the State as also the Editor & Printer of the newspaper** / It is further relevant here to state that contemnor Rajendra Sail had taken an oscillating stand as to whether transcription placed on record is the true transcription of the audio/video cassettes of his speech. Instead of saying as to whether the transcription is true or untrue he had taken uncalled for stand and filed an evasive reply on this question. We have seen and heard the video and audio cassettes and we are of the opinion that the transcription of the speech of Rajendra Sail is true and correct.

13. Mrs. Choudhary is right when she contends that in a criminal contempt statements alleged to have been made by the contemnor must be proved beyond reasonable

doubt. In this connection, she has drawn our attention to the decision of the Supreme Court in the case of M.R. Parashar and others Vs. Dr. Farooq Abdullah and ors., A.I.R. 1984 SC 615. Rajendra Sail denied to have made utterances as stoutly as the Editor and the scribe assert that the news item has been published on the basis of what this contemnor spoke publicly and in interview with contemnor Ravi Pandey. Thus, there is oath against oath. But preponderant circumstance objectively compels us to hold that Rajendra Sail gave interview to the scribe Ravi Pandey and the news item is based on his speech and the interview. It is relevant here to state that Rajendra Sail in his public speech besides other things in sum and substance has spoken as hereinafter mentioned and ~~he~~ reproduce the same in Hindi, as the speech delivered by him is in the said language.

(a) "Judgment of the murderers of Niyogi was rendered within a year and have been acquitted because they were moneyed and wealthy people."

"नियोगी के हत्यारों का फटाफट फैला हो गया ।
एक तान के अंदर हाईकोर्ट से वो लोग छूट गये ।
क्यों कि वो पैसे वाले थे, दौलत वाले थे ।"

(b) "Judgment rendered by Judges S.K. Dubey and
Ms. Usha Shukla has been read by him, which is
rubbish and which is fit to be thrown in
dust-bin"

"ये जज एन. के. दुबे और मिस्त्र उषा शुक्ला
का जो जजमेंट है वो तबरे भेजे पढ़ा 'ब्यारा'
बूझे-दान में डालने लायक ।"


(c) In the operating part of the judgment, it has
been stated that "counsel of the murderers had
stated so with which he agrees. He would get an
enquiry held as regard to his conduct as he is to
retire within a month"

"आज तबरे में जजपुर से आया, कि ब्याव पक्ष
के हत्यारे के वकील ने ऐसा बोला और मैं उससे
तहम्मा हूँ, हत्यारे के वकील ने ऐसा कहा और मैं
उन्से तहम्मा हूँ खुद ही बोल रहा है, सिद्ध रहा है

Operating Part में, मैंने सुना है वो एत. के. दुबे जी के बारे में दो बातें उनके खिलाफ हम जाँच करायेगे। उनके आचरण के बारे में जाँच करायेगे, सुना है कि वो एक माह के अन्दर Retire होने वाले हैं।"

(d) "In a case a Judge of High Court or Supreme Court is to retire, he be not assigned any important case since two years before his retirement as a Judge who is to retire is for sale."

"हाईकोर्ट और सुप्रीम कोर्ट का अगर कोई Judge Retire होने वाला हो तो दो साल पहले से उसको इस तरह के बड़े C.A.E. न दिये जायें। छोटा-मोटा काम दे दो मई वो कर लेगा। मैं जानता हूँ, हमने पढ़ा है सुप्रीम कोर्ट के वकीलों ने भी इस प्रकार का अभियान चलाया है कि ये देखा गया है कि Retire होने वाला जज बिकाऊ होता है।"



(e) "Judiciary had no guts, no honesty and is not powerful enough to punish wealthy people."

"हमारे देश की न्यायपालिका में इतना हिम्मत नहीं, इतनी ईमानदारी नहीं, इतना सक्ल नहीं है कि वो ऐसे वालों को त्याग तुना सके ।"

14. As stated earlier, contemnors Rajendra Sail or for that matter, other contemnors have not been proceeded against for what was stated by Rajendra Sail in his speech but what has been published in the newspaper. We have referred to the speech of Rajendra Sail only to ascertain his bent of mind as to whether infact he had spoken to the scribe Ravi Pandey, what has been published in the newspaper. The content of the speech is a door to enter his mind and adjudicate his stand as to whether he uttered statements scandalising the Court. The contents of the speech clearly indicates that contemnor Rajendra Sail believed that murderers of Niyogi were acquitted within no time because they were moneyed and wealthy people. // He failed to understand that in case of imposition of death sentence, the proceeding is required to be sent to the High Court for confirmation of death sentence and such matters are heard out of turn. A condemned prisoner dies every day whereas others die only once. Contemnor Rajendra Sail had burdened the people with his conclusion that the judgment rendered by the Division Bench was rubbish but has not

assigned any reason which in his opinion renders the judgment illegal excepting that Mr. Justice S.K. Dubey was to retire within a month of the delivery of judgment and that important cases be not given to a Judge who is to retire within two years, as the retiring Judge is for sale. Contemnor has conveniently forgotten that the privilege of assignment of the case lies with the Chief Justice and nobody else excepting the Parliament can enquire into the conduct of a Judge and that too in an impeachment proceeding. From what has been stated above, we find an inkling in his speech about his thoughts regarding judgment and Judges. Contemnor Rajendra Sail had this worm in his mind, and it found its way in the conversation. This attending circumstance goes to show that he had a conversation with Ravi Pandey and what has been written by scribe Ravi Pandey and later on published in the newspaper, was uttered by contemnor Rajendra Sail.

15. There is yet another reason to come to the aforesaid conclusion. In the news item, the newspaper has clearly indicated the source of news to be the speech of

Rajendra Sail and his conversation with the scribe. It is not the stand of contemnor Rajendra Sail that he had not read the news item. In our opinion, had he not made those statements to the Correspondent which the news paper had attributed to him, he would have definitely issued a denial and sent the same to the newspaper for publication. This course is well known, and Rajendra Sail, who happens to be the organising Secretary of the People's Union of Civil Liberties and claims to be in public life would have known it well. He has not resorted to this course, and faced with the contempt action, he had taken an absolutely false stand that he had no conversation with the scribe. The complaint to the Press Council of India against Hitavada is in context of spreading falsehood and villification campaign against him as in various news items published on different dates it had squarely blamed Rajendra Sail for involvement in the conspiracy for murder of Shankar Guha Niyogi. He knew his rights well. But conveniently forgot to issue denial to the Press. He is not only a liar but a coward, whose defence is founded on falsehood.

16. What further persuades us to the aforesaid conclusion is that contemnor Rajendra Sail admits that he had termed the judgment of the High Court to be "rubbish". According to news item, this expression was used by him in the interview with the scribe. Had he not given any interview, the question of terming the judgment as rubbish would not have found its way in the news item, and he would have disowned this also, which he has not done.

17. It is pertinent to note that contemnor Rajendra Sail has termed the judgment as rubbish but has not assigned any reason or logic for the same. When you are not happy with the creation and unable to decipher any reason to attack it, you condemn the creator. This person had condemned the judgment as rubbish but has not assigned any reason and as such we can safely assume that the easiest course open to him was to malign the creator. Taking into consideration the stand of the contemnor Rajendra Sail on the one side, and contemnors Vijay Phansikar, Rajendra Purohit and Ravi Pandey on the other side, and the

circumstances stated above, we are of the opinion that they prove beyond reasonable doubt that the news item is based on the speech of Rajendra Sail and his interview with the scribe Ravi Pandey.

18. Having held so, we revert to what has been stated by the contemnor and published in the newspaper. Rajendra Sail has termed the decision of the High Court as rubbish. He had further stated that the Judge who was on the verge of retirement should not have been entrusted with the responsibility of dealing with such a crucial case. Judges S.K. Dubey and Ms. Usha Shukla had belittled the respect for judiciary by pronouncing what he said - "a biased and rubbish judgment in Niyogi murder case." Nobody could have made much difference when already the Judges were prejudiced in this case. He had substantial evidence to prove that Judge S.K. Dubey was bribed in this case and that he possessed properties disproportionate to his income.

19. Mrs. Choudhary submits that it is nothing but criticising the judgment. We do not have the slightest hesitation in rejecting this submission in the face of what has been published and quoted above. Every one is entitled to criticise the judgment of the Court but no one can be permitted to attack the Judge who delivered the judgment or attribute motives for the same as that denigrates the judicial institution and in the long term impairs the democratic process. We have been reminded by Mrs. Choudhary, and infact, we are not unmindful that fair and reasonable criticism of a judgment, which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. Infact, such fair and reasonable criticism must be encouraged because, after all no one, much less, Judges, can claim infallibility. A fair and reasonable comment, as the Supreme Court had observed in the case of Rama Dayal Markarha .v. State of M.P., (1978) 2 SCC 630, would even be helpful to the Judge concerned because he will be able to see his own shortcomings, limitations or imperfections in his work. The society at large is interested in the


administration of public justice because, in the words of Benjamin N. Cardozo, - "*The great tides and currents which engulf the rest men do not turn aside in their course and pass the judges by.*"

20. We are conscious and mindful of the famous words of Lord Atkin spoken about three decades ago in the case of Ambard .v. Attorney-General for Trinidad and Tobago (1936) 1 All ER 704 - "*Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.*" Judgments can be criticised, but then the criticism has to be fair and reasonable and in the garb of freedom of speech and expression, no party can be permitted to scandalise the Court. What we have stated above finds its footage in the judgment of the Supreme Court in the case of Narmada Bachao Andolan .v. Union of India & Ors., JT 1999 (8) SC 354, in which it has been observed as follows:-

"We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the Court and

deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the Court and bring it into disrepute or ridicule. The right of criticising, in good faith in private or public, a judgment of the Court cannot be exercised, with malice or by attempting to impair the administration of justice. Indeed, freedom of speech and expression is "life blood of democracy" but this freedom is subject to certain qualifications. An offence of scandalising the Court per se is one such qualification, since that offence exists to protect the administration of justice and is reasonably justified and necessary in a democratic society. It is not only an offence under the contempt of Courts act but is *nul generis*. Courts are not unduly sensitive to fair comment or even outspoken comments being made regarding their judgments and orders made objectively, fairly and without any malice, but no one can be permitted to distort orders of the Courts and deliberately give a slant to its proceedings, which have the tendency to scandalise the Court or bring it to ridicule, in the larger interest of protecting administration of justice."

21. To bring the action of the contemnors out of the net of criminal contempt, the criticism has to be fair and reasonable. We confess that even after giving extreme leverage and rope to the contemnors, we have not been able to persuade ourselves to hold that what has been stated by contemnor Rajendra Sail and published in the newspaper can by any stretch of imagination be termed as fair and reasonable criticism. In the present case, not only the contemnors have termed the judgment of acquittal of this Court as rubbish, but had attributed motive and bias to the Judges. They have gone to the extent of saying that Judges were prejudiced and one of the Judges was bribed, and possessed properties disproportionate to his known sources of income. There cannot be a more grave insinuation to a Judge than to say that he took bribe to deliver the judgment. He is prejudiced and biased, and had belittled the respect for judiciary. No candid man can deny that the news item in question ~~was~~ is calculated to impress upon the public mind that the Court was influenced by money in its judicial functions. The object and tendency of publication was to produce an effect of



ridicule and scandalisation of the Court. We are of the firm opinion that it tends to bring administration of justice into ridicule and scandalise the Court.

22. Generally speaking, we are reluctant to resort to the provisions of the Contempt of Courts Act as we are committed to the Rule of Law. In matters involving allegation of criminal contempt, the Court acts both as a prosecutor and a Judge and it acts in order to uphold the authority of law and not in defence of a particular Judge. Order punishing a person for such contempt is likely to create an impression in the mind of lay observers that the Judges have acted in defence of themselves. We would not have liked to create such an impression but the oath of office which we have taken reminds us not to deter from that, and uphold the law. Our Dharma Shastras and Smritis with one voice laid down that dispensation of Justice is the highest Dharma of Judges. Manu Smriti cautions the Judge as follows:-

“धर्मो विदुस्तत्पर्येष तर्मां यत्रोपतिष्ठते ।

शत्रुं यास्य न कुन्तन्ति विदास्तत्र तर्मात्तदः ॥

यत्र धर्मो हापर्येष सत्यं यत्रान्तेन च ।

हन्यते पेषमापानां हतास्तत्र सभासदः ॥

In a case where Dharma (Justice) has been injured or made to suffer at the hands of Adharma and still the Judges fail to remove the injustice, such Judges are sure to suffer for their act or omission which is Adharma.

23. On objective assessment of what has been spoken and printed in the newspaper, we are firmly of the opinion that the same has scandalised this Court and brought this institution into disrepute and denigrated the judicial process. Hence, this constitutes contempt of Court.

24. Now, we proceed to determine who have committed the contempt. As held earlier, Rajendra Sail had spoken those words which had been published in the newspaper Hitavada of which Vijay Phansikar is the Editor and Rajendra Purohit is the Printer and Publisher. Virag Pachpore is the Sub-Editor of M.P. Desk and had permitted the offending news item for publication. Editor of newspaper has filed affidavit that he had no knowledge of

the article as it was sent for publication by the Sub-Editor. Sub-Editor had admitted this position. In our opinion the Editor of the paper, even though he might not be responsible directly for scandalous statement, but Section 7 of the Press and Registration of Books Act makes him responsible. This Section raises a presumption that the Editor is responsible for every portion of the issue of the newspaper. Reference in this connection can be made to a Full Bench decision of the Lahore High Court in the case of The Crown .v. Amin-ud-Din Sabrahi and Another, A.I.R. (36) 1949 Lahore 266, relevant portion of which reads as follows:-

"It may be that he was not aware of this article but he admittedly was at Lahore both on 22nd and 23rd February and if he left the publication of the paper in irresponsible hands with the result that a scandalous article of this kind appeared in his paper he is still liable. The case is very similar to the case in Crown .v. Syed Habib (6 Lah. 528:A.I.R. (13) 1926 Lah. 1:26 Cr.L.J. 1409 SB) in which the

editor of a paper was convicted of contempt though on the date of the publication he was absent from Lahore where the newspaper was published."

Section 7 of the Press and Registration of Books Act further raises a presumption that Printer and Publisher is aware of whatever is printed and published in the newspaper. Sub-Editor has admitted that he permitted the publication of the offending statement. Ravi Pandey has admitted sending the report. We have found Rajendra Sail to have uttered the offending statement. Hence, we hold Vijay Phansikar, Editor, Rajendra Purohit, Printer, and Publisher, Vijay Pachpore, Sub-Editor and Ravi Pandey, Correspondent of the daily newspaper Hitavada and Rajendra Sail for committing criminal contempt. George Kurian had no role in publication of the news item in question hence, he cannot be held guilty for committing contempt of Court.

25. Having found the aforesaid persons guilty of committing contempt of Court, we proceed to consider as to whether apology tendered by them is fit to be accepted. It

is relevant to state that all the contemnors who have been found guilty, excepting Rajendra Sail, have tendered unqualified apology. Contemnor Rajendra Sail, has however, stated that - "in addition to the above submissions, this non-applicant is ready to tender apology to this Hon'ble Court if the above does not satisfy this Hon'ble Court." To put the record straight, it is worthwhile mentioning here that Mrs. June Choudhary, his counsel, had repeated this during the hearing of the contempt petition. It is further relevant here to state that the Editor of the newspaper had published unconditional apology in its issue dated 6.8.1998. This Court took cognizance of the publication on 13.7.1998 and directed issuance of notice. The Editor has not claimed, nor could he claim that he did not know about the news item in question soon after its publication on 4.7.1998. Had he really been regretful and genuinely contrite, he would have published the apology immediately. But he chose to do the same on 6.8.1998, after this Court had taken cognizance on 13.7.1998. We are of the opinion that the apology has been

tendered by the Editor as a device to escape punishment. For the same reason, we are not inclined to accept the apology tendered by the Printer and Publisher.

26. Apology has been tendered by the Sub-Editor who on his own showing although responsible for publication failed to perform its duty. Accepting apology of such a person would give wrong signal and amount to giving premium for non-performance. Scribe Ravi Pandey had tendered apology taking shelter behind his inexperience. He is a qualified journalist, and being so, he ought to have known his limitations. He has crossed the ~~line~~ ^{Laxman Rekha} with impunity and as such we are unable to persuade ourselves to accept the apology. Apology of Rajendra Sail is conditional and although law may permit acceptance of such an apology but to accept it ~~is wrong~~ would be virtually issuing a licence to scandalise the Courts and to commit contempt of Court with impunity. Everybody has to be told that however high you may be, law is above you all. Courts shall not permit anybody to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. The gravity of the

offence bars us to accept the apology tendered by the contemnors. We are firmly of the opinion that considerations regarding maintenance of the independence of the judiciary and the morale of the Judges demand that we do not allow the appellant to escape with impunity on the mere tendering of an apology which in any case does not wipe out the mischief.

27. Now what remains to be decided is the punishment which should be awarded to the contemnors. Contemnors have made most flagrant and offensive allegations against the Judges. An allegation of dishonesty and bribery is the most serious stigma on the conduct of a Judge and it tarnishes the image of the entire judiciary and shakes its foundation which is so vital for survival of the democracy. Their conduct is so reprehensible that it would be a travesty of justice if the Courts were to allow gross contempt of Court to go un-punished without adequate sentence. Hence, having given our most anxious consideration, we are of the opinion that each of the contemnors deserves deterrent punishment for the maximum term of six months.

28. In the result, rules issued against contemnors Vijay Phansikar, Rajendra Purohit, Vijay Pachpore, Ravi Pandey and Rajendra Sail are made absolute and they are sentenced to suffer simple imprisonment for six months each. However, rule issued against contemnor George Kurian stands discharged.

J U D G E

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19/3/2001

AD/-