(1983) 03 AHC CK 0029

Allahabad High Court

Case No: Contempt Case No. 330 of 1983

State of U.P.		APPELLANT
	Vs	
Radhey Shyam Tripathi and Another		RESPONDENT

Date of Decision: March 7, 1983

Acts Referred:

- Constitution of India, 1950 - Article 215, 225
- Contempt of Courts Act, 1971 - Section 11, 15, 17(5), 2, 22
- Criminal Procedure Code, 1973 (CrPC) - Section 1(2), 5
- Evidence Act, 1872 - Section 1, 23
- General Clauses Act, 1897 - Section 25
- Government of India Act, 1915 - Section 106, 113
- Government of India Act, 1955 - Section 220(1), 223
- Penal Code, 1860 (IPC) - Section 307, 63, 64, 65, 66

Citation: (1983) 7 ACR 236

Hon'ble Judges: R.A. Misra, J; K.N. Seth, J

Bench: Division Bench

Advocate: S.C, for the Appellant; P.N. Tripathi, for the Respondent

Final Decision: Disposed Off

Judgement

K.N. Seth, J.

The present proceeding against Radhey Shyam Tripathi, Superintendent, and Surya Mani Chaube, Assistant Jailor, Central Jail, Naini, for contempt of this Court was taken suo motu on the statement made by Bhola Dutt Joshi when be appeared before the Court on October 20, 1982 in connection with the hearing of the habeas corpus petition filed by him. The circumstances in which the proceeding was initiated are as follows.

2. Bhola Dutt Joshi, in Sessions Trial No. A 448 of 1974, was convicted and sentenced to imprisonment for life on being found guilty of having committed the murder of his minor daughter and to seven years'' rigorous imprisonment u/s 307 IPC for the attempted murder of his wife. While he was lodged in the Central Jail, Bareilly, serious disturbance occurred which led to firing resulting in the death of some prisoners and injuries to some others. Joshi along with some others was transferred to the Central Jail, Naini, on January 20, 1982. On July 8, 1982, a habeas corpus petition by Bhola Dutt Joshi was presented in this Court. It was alleged that the Petitioner was being illegally kept in solitary confinement and in iron fetters. This petition did not come to this Court through Jail authorities. The Court took cognizance of the case and directed issue of notice to Radhey Shyam Tripathi, Superintendent, Central Jail, Nairn, who was impleaded as a Respondent to the petition. A counter affidavit on behalf of the Respondent sworn by Paras Nath Srivastava, Jailor, Central Jail Naini, was filed on August 30, 1982, a copy of which was served on Joshi who was granted time to file a rejoinder affidavit and the case was directed to be listed on September 16, 1982. On that date an application was made by Johsi alleging that he was asked to write out his reply in the office of the Superintendent, Central Jail, Naini, as directed by him which the Petitioner refused to accept. He was then warned and threatened with dire consequences after the writ petition was disposed of. It was further alleged that Charles Sobhraj, who had drafted his habeas corpus petition, was also subjected to torture. A grievance was also made that the Petitioner was not being supplied with pen and paper to write out his reply. A prayer was made for making suitable arrangement for his safety and that after the disposal of the petition he may be transferred to some other Central Jail. The Court on that very date directed that writing facility be made available to the Petitioner in Court. The Petitioner wrote out his reply. A prayer was also appended to the effect that since the jail authorities were threatening him with dire consequences, he may be transferred to some other jail and a direction be issued for his safety. A copy of the reply was served on the Government Advocate. The matter was listed in Court on September 30, 1982, but could not be taken up for hearing.

3. The habeas corpus petition came up for hearing before us on October 20, 1982. The record contained an application of Bhola Dutt Joshi dated October 9, 1982, which was forwarded to this Court through the jail authorities. It was stated in the application that the Petitioner had no grievance and the habeas corpus petition had been moved under a mistake and was wrong for which he wanted to be excused and that he did not want to press that petition as he was now suffering no inconvenience in the Central Jail, Naini. A prayer was made that the petition be allowed *o be withdrawn. The detenue was present in Court and when asked whether he had made the application for withdrawing the petition, he narrated the circumstance under which he was compelled to make the application. We directed Joshi to give his statement in writing. Writing material was made available to him.

4. The substance of that statement is that on October 1, 1982, at about 7.00 P.M. while he was engaged in Puja the lock of his cell was opened and seven-eight Pakkas along with the Head Warder Ram Nidh entered the cell. He was asked to come out as the Saheb was waiting for him. When he requested that he be permitted to complete his Puja, he was asked to hurry up and that his Puja would be done before the Superintendent. He was brought to the office of the Jailor where the Superintendent Sri Radhey Shyam Tripathi and the Assistant Jailor Sri Surya Mani Chaube and other officers, whose names he did not know, were present. There he was asked by the Superintendent whether he had filed a writ petition in the High Court and on his answering in the affirmative he was asked why it had been filed. The Petitioner replied that he had requested him on a couple of occasions that he may not be kept in solitary confinement and that his fetters be removed but no heed was paid to his request which compelled him to seek protection of Court. The Superintendent then retorted that you get relief from the Court and added that the function of the Court was to punish and it was their job to see how the sentence was carried out. The Petitioner replied that the Court punishes under the law and the sentence should also be carried out in accordance with law. This infuriated the Superintendent who burst out hurling abuses and then directed the Pakkas to throw him down who immediately did so and started hitting on the inner part of his feet. After 20-25 blows had been inflicted the Superintendent again enquired whether he had come to his senses and asked him to disclose the name of the person who had taken out the writ petition to which he replied that it was done by a warder. The Superintendent did not believe and again hurled abuses on him and directed the Pakkas to shoe beat him which direction was also carried out. He was again threatened to disclose the name. Since he remained silent, the Superintendent directed that his beard and moustach be plucked which was carried out by the Pakkas. On his refusal to disclose the name, the Superintendent directed that he be put in fetters and kept in the mental ward. Fetters were put on the Petitioner and he was lodged in cell No. 27 of the Pagalkhana. About ten minutes later Surya Mani Chaube came there and he was asked to put off his clothes. On the direction of the Jailor he was thrown on the ground, a Pakka sat on his back and another one on his knees and chilly water was injected in his anus which made him shriek and shout in pain. His mouth was closed and he felt suffocated. He was again asked the same question and he reiterated his answer which did not satisfy the Jailor. His hands were extended beyond the iron bars of the cell and handcuff was put. When he stated that he would put an end to his life, the Jailor replied that he would just cut a bar and only one Government cartridge would be spent and it would be given out that he was trying to escape. He was reminded that even the place from where he had been transferred five prisoners had been shot dead and nothing happened and the same Superintendent was still on duty in that jail. The Petitioner spent the night in that condition and could not get even a wink of sleep. Even water was denied to him by the man on duty. On October 2, 1982, the Superintendent again asked him if he had come to his senses. On the request of the Petitioner to set him free, the Jailor

agreed to remove the handcuff if be withdrew his writ petition. The Petitioner agreed to do so hoping that when he would appear in Court on October 20, 1982, he would tell the correct facts to the Court. The handcuffs were removed and the orderly was asked to bring papers which he did and the Petitioner appended his signatures on two sheets. He was again put behind bars. Before he could get sleep, a barber prisoner came there and asked him to get shaved as directed by the Jailor. The Petitioner stated that death anniversary of his father was in December and he would not get himself shaved before that date when he had remained unshaven for ten months. The barber went back but five minutes later the Jailor with his party appeared and asked the Petitioner to get himself shaved which he unwillingly did. He was, however, refused permission to have bath. On 9th October the Jailor visited him again and asked him to withdraw the writ petition promising that he would be given all facilities. When the Petitioner replied that his sign atures had already been taken on two papers, he was asked to write the application in his own hand which he unwillingly agreed to do and thereafter he was supplied with a set of clothes, soap, toothpaste etc. He was then taken to the office of the Jailor and he wrote out what the Jailor dictated.

5. After perusing the statement of Joshi the Court directed that he be medically examined which was done the same day by the Medical Officer on emergency duty in the Tej Bahadur Sapru Hospital. The Court also issued direction that the Petitioner be not sent back to the Central Jail Naini and suitable arrangement be made for his custody during the night of October 20, 1982. Next day on being prima facie satisfied that the acts attributed to Radhey Shyam Tripathi and Surya Mani Chaube amounted to criminal contempt the Court directed notices to be issued to the Respondents to show cause why they be not punished for contempt of court. The notices were served on them in Court. A copy of the statement of Joshi was also handed over to them.

6. The contemners filed almost identical counter affidavits. In the earlier part of their affidavits they have disclosed in detail the facts of the case leading up to the conviction of Joshi and his movements from one jail to another and his activities in the jails where he was lodged. It has been alleged that Bhola Dutt Joshi was one of the leaders who organised an union of the prisoners in the Central Jail, Bareilly, of which he was elected Secretary. He also organised revolt during the months of November and December 1981 creating serious disturbances and unrest in the jail. On 19th January 1982 Joshi with some of his close associates led a large number of convicts in an attempt to break open the jail and escape. In order to quell this attempt the jail staff had to resort to firing which resulted in the death of some prisoners and many others received injuries. He was then transferred in fetters to the Central Jail, Naini. His conduct remained indisciplined and unruly. Here he came in contact with Charles Sobhraj who too had been transferred to Naini Central Jail after having been confined in various jails in India. Charles Sobhraj is undergoing sentence of imprisonment for life having been convicted and sentenced for a

murder alleged to have been committed by him at Varanasi. Charles Sobhraj has his criminal history of distinction which has won him inter-national notoriety. Joshi and Charles Sobhraj happened to be confined in the same circle i.e. circle No. 1. One Shivpal Singh, who was also transferred from Bareilly jail with Joshi, was also confined in that circle. The contemners totally, denied the correctness of the statement of Joshi given in Court. It was asserted that they neither questioned him about the writ petition nor he was punished or tortured in any manner whatsoever. Fetters of Joshi were finally removed on August 23, 1982. Orders for his transfer to Central Jail Varanasi, had been received on August 31, 1982, but he could not be immediately transferred because of the pendency of the habeas corpus petition in this Court. It has been averred that the contemners have no reason to be annoyed with Joshi on account of the writ petition filed by him nor have any personal animus against him. It was alleged that Bhola Dutt Joshi in collusion with Charles Sobhraj hit upon a plan that an application for withdrawal of the writ petition be moved and on the date of hearing make wild and false allegations against the jail authorities in order to browbeat the administration and strike awe in them so that Bhola Dutt Joshi may have his own way in any jail where he may be confined. It was a pre-planned scheme concocted by Joshi very likely in collusion with Charles Sobhraj. Tripathi denied that he even visited circle No. 1 on October 1, 1982.

7. By our order dated October 22, 1982, we directed the District Judge, Allahabad, to enquire and submit a report in respect of the complaint made by Bhola Dutt Joshi, a copy of which was handed over to him. The District Judge visited the jail, made enquiries and submitted his report which was directed to be placed on record by our order dated November 25, 1982. We also directed that a copy of this report shall be supplied to the learned Counsel for the parties and the contemners were granted time to file replies. The contemners have filed supplementary counter affidavit.

8. The Distt. Judge in his report mentions that Joshi was admitted in Naini Central Jail on January 20, 1982 and was kept in the condemned cell. He continued to be under fetters till April 15, 1982. He was again kept in fetters on April 18, 1982, because of complaint of indiscipline and remained under fetters till July 21, 1982. He again showed some signs of indiscipline according to the jail authorities and was again kept under fetters which were, however, removed on August 23, 1982. The jail registers indicated that Bhola Dutt Joshi was found in league with Charles Sobhraj and both of them are said to have induced the other convicts for revolt. He was severely warned by way of punishment and was kept separate from Charles Sobhraj. The learned District Judge further reports that the writ petition of Bhola Dutt Joshi was prepared by Charles Sobhraj and was smuggled out of the jail. When the jail authorities became aware of the situation, they wanted to know as to which of the officials of the jail administration helped Bhola Dutt Joshi to send the writ petition to the High Court. He was shifted to circle No. 1 on October 1, 1982, which was meant for insane persons. There were sixteen convicts lodged in circle No. 1. They were all contacted separately. Most of them talked nonsense. Their expressions were

incoherent. Nothing could come out of their talks. When questions were put to them about Bhola Dutt Joshi, they related some other story unconnected with the matter. This showed that most of the persons who were kept in that circle were insane. Ten persons named in the report did not reveal any fact because of their insanity. Except for Sheo Pal six other persons who were interrogated, showed their ignorance about the incident. Sheo Pal was one of the persons who had been sent from Bareilly Jail to Naini Central Jail. He was also in circle No. 1. Sheo Pal stated that inhuman sufferings were inflicted in this Jail. He was locked in room No. 30 where as Bhola Dutt Joshi was in room No. 27. He heard hue and cries from the room which was occupied by Bhola Dutt Joshi. The reason why Bhola Dutt Joshi received bad treatment was that the authorities wanted that he should withdraw the writ petition. Aftab, Nanhey Khan and Lal Chand claimed that they had heard about the beating to Bhola Dutt Joshi, Radhey Shyam who was in this cell for about eight months, stated that attrocities were committed upon Bhola Dutt Joshi who filed the writ petition and he was being pressed to take back the writ. He was kept for twenty days in the mental asylum and was severly beaten. Food was not given to him. The learned District Judge met Charles Sobhraj also. He stated that Bhola Dutt Joshi was placed in fetters and in the beginning visitors were not allowed to meet him. He claimed that he prepared the writ petition which was smuggled out through his son from jail. Since then the jail authorities started harassing him and Bhola Dutt Joshi. According to Charles Sobhraj Bhola Dutt Joshi was beaten on September 30, 1982 for writing an affidavit in the High Court. On October 1, 1982 Bhola Dutt Joshi was taken out and was closed in barrack No. 1, which is called Pagalkhana. From time to time he was being produced before the Jailor in chains. The District Judge on the basis of the material available came a the conclusion that Bhola Dutt Joshi was beaten by the jail authorities but it difficult to pin point as to who were the assailants The extent of beating could also not be ascertained, but Bhola Dutt Joshi did meet some torture in the jail after the date when he sent the writ petition before this Court. The fact that he was kept in the pagalkhana also amounted to torture.

9. In their supplementary counter affidavit the contemners state that the report of the District Judge suffers from certain inaccuracies. It is admitted that Bhola Dutt Joshi was kept with other prisoners in the condemned cells on his arrival from Bareilly. He was shifted to circle No. 1, barrack No. 4, in May 1982 and was confined in barrack No. 7 of circle No. 1 from October 1, 1982. It has been pointed out that in the report of the District Judge circle No. 1 and barrack No. 7 have not been clearly marked. It is further admitted that Sheo Pal along with Bhola Dutt Joshi was in barrack No. 7 but it is asserted that this barrack is not meant exclusively for insane prisoners but for those who for various reasons cannot be allowed to mix with other prisoners. It has also been pointed out that there was discrepancy between the statements of Charles Sobhraj and Bhola Dutt Joshi regarding the date on which he was beaten. It has also been pointed out that Charles Sobhraj continued to be confined in barrack No. 4 while Bhola Dutt Joshi was shifted to barrack No. 7 to

prevent constant company of Charles Sobhraj upon a report that he was inciting other prisoners to mischief. It has been reiterated that there is no Pagalkhana in the jail.

10. Bhola Dutt Joshi has filed a rejoinder affidavit in which he has reiterated on oath the allegations made earlier in his statement. He has expressly referred to the role played by the contemners and asserted that his statement made earlier was correct. It is not necessary to set out in detail the contents of the rejoinder affidavit which runs into 37 pages.

11. Learned Counsel for Radhey Shyam Tripathi raised certain legal objections specially with regard to the procedure followed in the case. It was urged that contempt of court is an offence and the procedure prescribed under the Code of Criminal Procedure for trial ought to have been followed. It was also contended that since the proceeding for contempt was a judicial proceeding, provisions of the Evidence Act applied but the procedure adopted by this Court was not sanctioned by the Evidence Act. This argument was raised with regard to the admissibility of the report of the District Judge. Certain other objections with reference to the rules framed by this Court have also been put forward.

12. In dealing with these objections it would be necessary to consider the nature of contempt proceedings and the jurisdiction of the Court to deal with it. The law of contempt in India has stemmed from the English law. The superior courts of record in England have from early times exercised the power to commit for contempt persons who scandalised the court or the judges. It is a jurisdiction as old as the common law itself of which it forms part. In Surendra Nath Benerjee v. Chief Justice and Judges of the High Court of Bengal (1883) 10 IA 171 the Privy Council held that the Chartered High Courts in India had summary jurisdiction to commit for contempt for scandalising them or their judges. The Chartered High Courts of Calcutta, Bombay and Madras had been exercising the summary jurisdiction to punish for contempt. The High Court of Allahabad was established in 1866 under the High Court Act 1861 and was constituted a court of record. Section 106 of the Government of India Act, 1915 continued to all High Courts then in existence the same jurisdiction, powers and authority as they had at the commencement of that Act and Section 113 of the aforesaid Act empowered the establishment of new High Courts by Letters Patent and the conferment on them of the same jurisdiction, powers and authority was vested in or may be conferred on any High Court existing at the commencement of this Act. The Government of India Act, 1955 continued their power, authority and special summary jurisdiction. By Section 220(1) thereof, it was declared that every High Court shall be a court of record, and by Section 223 the summary jurisdiction and powers of the High Court existing from before were continued.

13. Historical background of the jurisdiction on the matter of contempt of court indicates that the superior courts of record have been exercising this jurisdiction

and it has been treated as inherent in them. Our Constitution, by Article 215 declares that "every High Court shall be a court of record, and shall have all the powers of such a court including the power to punish for contempt of itself". Article 225 has continued to the High Court the jurisdiction and powers which they possessed immediately before the commencement of the Constitution. Formerly this jurisdiction was regarded as inherent in the power of a court of record, but since the commencement of our Constitution, it is a part of the powers of the Supreme Court and the High Court. The Constitution has only preserved and continued the existing powers exercised by the courts of record, and the nature of the existing powers at the commencement of the Constitution had been inherent in the courts of record. As Blackstone remarked, "This power is an Inseparable attendent upon every superior tribunal." The jurisdiction in contempt is special jurisdiction which is necessary for a superior court to have and exercise 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 affect public confidence in the ability of the courts to enforce their order.

14. We may now examine the various Acts dealing with the subject. The Contempt of Court Act was first passed in 1926. It was an Act "to define and limit the powers of certain courts in punishing contempt of courts". Section 2 laid down:

Subject to the provisions of Sub-section (3), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves.

This provision recognised an existing jurisdiction in all Letters Patent High Courts to punish for contempts of themselves, and the only limitation placed on those powers was the amount of punishment which they could Improve.

15. The Contempt of Courts Act 1926, was repealed by Act 32 of 1952. Section 3 of that Act was similar to Section 2 of the 1926 Act. It also assumed the existence of a right to punish for contempt in every High Court and further assumed the existence of a special practice and procedure for it said that every High Court shall exercise the same jurisdiction, powers and authority "In accordance with the same procedure and practice." The new Contempt of Courts Act (10 of 1971) which repealed the earlier Act of 1952, has made no difference in this position. The new Contempt of Courts Act, as the preamble indicates, is an Act "to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto". The earlier Acts neither defined contempt of courts nor provided for any procedure in itself.

16. The argument that the Code of Criminal Procedure would apply to a proceeding under the Contempt of Courts Act is based on the fallacious reasoning that the

contempt of court is an offence. The question whether the contempt of courts is an offence within the meaning of the Code of Criminal Procedure and whether the procedure prescribed by the Code for investigation, enquiry and trial of the offence must be followed came up for consideration before a Full Bench of this Court in State Vs. Padma Kant Malviya and Another, . The question was answered in the negative In this connection reference may also be made to Section 5 of the Code which provides that "nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force.

17. The matter was considered by the Supreme Court in Sukhdev Singh v. Hon''ble C.J.S. Teja Singh and the Hon''ble Judges of the Pepsu High Court at Patiala AIR 1954 SC 186 . Dealing with the nature of the jurisdiction it was observed that the power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all courts of record and Section 1(2) of the Code (Section 5 of the present Code) expressly excludes special jurisdiction from its scope. Contempt of court is a special subject and the jurisdiction is conferred by a special set of laws peculiar to courts of record. It was further observed that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. "The Supreme Court specifically disapproved the view expressed by a Bench of this Court in Pandey Parshotam Prasad Vs. Balram Prasad Misra, where it was held that after the Act of 1926 the offence of contempt was punishable under an Indian Penal statute and so the Code of Criminal Procedure applied. The rule laid down in Sukhdev Singh''s case (supra has been approved by the Supreme Court in Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, . In R.L. Kapur Vs. State of Madras, the Supreme Court again had the occasion to consider the question whether the power of the High Court to punish for contempt of itself arises under the Contempt of Courts Act, 1952, so that u/s 25 of the General Clauses Act, 1897, Sections 63 to 70 of the Penal Code and the relevant provisions of the Code of Criminal Procedure would apply. The Supreme Court observed, "the answer to such a question in furnished by Article 215 of the Constitution and the provisions of the Contempt of Courts Act, 1952 themselves. Article 215 declares that every High Court shall be a court of record and shall have all powers of such a court including the powers to punish for contempt of itself. Whether Article 215 declares the power of the High Court already existing in it by reason of its being a court of record, or whether the Article confers the power as inherent in a court of record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of either the Penal Code or the Code of Criminal Procedure. Such a position is also clear from the provisions of the

Contempt of Courts Act, 1952. Section 3 of that Act provides that every High Court shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of contempt of courts subordinate to it as it has and exercises in respect of contempts of itself. The only limitation to the power is, as provided by Sub-section (2), that it shall not take cognizance of contempt committed in respect of court subordinate to it where such contempt is an offence punishable under the Penal Code". As explained in Sukhdev Singh''s case (supra) "Section 3 of the Act is similar to Section 2 of the 1926 Act and far from conferring a new jurisdiction, assumes, as did the old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction, powers and authority " in accordance with the same procedure and practice-." In any case, so far as contempt of the High Court itself is concerned, as distinguished from that of a court subordinate to it, the Constitution vests these rights in every High Court, and no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. No doubt, Section 5 of the Act states that a High Court shall have jurisdiction to inquire into and try a contempt of itself or of a court subordinate to it whether the alleged contempt is committed within or outside the local limits of its jurisdiction and whether the contemner is within or outside such limits. The effect of Section 5 is only to widen the scope of the existing jurisdiction of a special kind and not conferring a new jurisdiction." Section 11 of the present Contempt of Courts Act is identical with Section 5 of the 1952 Act and the principle set out above would still govern the law relating to contempt of court. Section 22 of the Act expressly declares that the provisions of the Act are to be taken in addition and not in derogation of the provisions of any other law relating to contempt of court.

18. Learned Counsel contended that the contempt of court may not be an offence and the alleged contemner may not be an accused but the proceeding for contempt is nonetheless a judicial proceeding to which the Evidence Act applies and since the Evidence Act is applicable, the procedure adopted by this Court in calling for the report of the District Judge was not sanctioned by law and the report of the District Judge would be inadmissible in evidence. We find no merit in the contention. As ruled by the Supreme Court in Sukhdev Singh''s case (supra) the High Court can deal with the matter summarily and adopt its own procedure. AH that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council in re-Pollard (1845) LR 2 PC 106 and followed in India in several cases. The 1926 and 1952 Acts did not provide for any procedure. The present Act apart from defining civil and criminal contempt has made certain provisions relating to the procedure to be adopted by the court. Sub-section (5) of Section 17 provides that any person charged with contempt u/s 15 may file an affidavit in support of his defence, and the court may determine the matter of the

charge either on the affidavit filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires. Unlike the Evidence Act this provision allows affidavit evidence. Section 23 of the Act empowers the Supreme court and the High Court to make rules not inconsistent with the provisions of the Act providing for any matter relating to its procedure. In exercise of this power the High Court has made certain rules relating to procedure in contempt matters which is incorporated in Chapter XXXV-E of the Rules of Court. These rules also permit evidence on affidavit. Apart from these rules, the practice and procedure adopted by the Court prior to the enforcement of the rules have also the sanctity of law. All that is necessary is that the procedure be fair and the contemner is given a fair and reasonable opportunity to defend himself. This Court in Sheoraj Vs. A.P. Batra and Another, .After referring to the decisions of the Supreme court in Sukhdev Singh''s case (supra) and the Full Bench decision of this Court in Padma Kant Malviya''s case (supra) observed that "law of evidence is a part of the law of procedure; if the contempt proceedings are not governed by any particular proceeding, it follows that they are not governed by any particular law of evidence. Even if contempt proceedings are judicial proceedings within the meaning of Section 1, Evidence Act, they are outside the scope of Section 1 and have always been treated as such". The Bench further observed "it is therefore not true to say that contempt must be proved in the manner laid down in the Evidence Act, the Court undoubtedly has to be satisfied that contempt has been committed, but is competent to adopt its own procedure for deriving satisfaction." A Full Bench of the Patna High Court in the matter of Basanta Chandra Ghosh AIR 1960 Patna 430 took the same view and observed that while it is true that the proceeding for contempt is a judicial proceeding but in view of the summary nature of the enquiry it would not be correct to apply the strict rules of evidence to this class of cases. No authority has been brought to our notice laying down any contrary principle.

19. It was during the course of hearing of the habeas corpus petition that the Court felt prima facie satisfied on the statement of the detenu that he was coerced and pressurised to make the application for withdrawing the habeas corpus petition. In order 60 find out the truth the Court directed the District Judge to make an enquiry on the allegations of the detenu and submit his report. The District Judge visited the jail, talked to a number of its inmates and submitted his report. A copy of the report was supplied to the contemners and they were afforded opportunity to file affidavits in reply. It was not necessary that the inmates of the jail should have been questioned by the District Judge in the presence of the contemners. If the jail authorities had been present on the scene, truth may not have come out. In this connection we may refer to the decision of the Supreme Court in Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, . In that case certain complaints were made by the inmates of the girls hostel against the male students about their indecent behaviour with them in the hostel compound. A committee of enquiry consisting of three respectable and independent members of

the 6taff was appointed to enquire into the complaint. Rejecting the stand taken by the male students that statements of the girl students should have been recorded in their presence and that they should be furnished with the report of the enquiry committee, the Supreme Court held that the principles of natural justice were not inflexible and may differ in different circumstances against them and were given an opportunity to state their case, the case did not require any thing more to be done. In our case the enquiry was held by the District Judge whose independence and integrity could not be challenged. His full report was made available to the contemners and they were given an opportunity to put forward their case. The procedure adopted by the Court was fair and in the interest of justice and cannot possibly be assailed keeping in view the summary nature of the proceeding.

20. It was next contended that the allegations made by Joshi were not supported by any affidavit and no action could be taken on it. This argument is again without any substance. The Court could take notice of the contemacious act without any extraneous aid. The information to the Court could come from any source and proceedings could be initiated by the Court suo motu without any affidavit. See in re P.C. Sen, Chief Minister of West Bengal AIR 1966 Calcutta 411.

21. We may also point out that Joshi has filed an affidavit to the counter affidavits filed by the contemners where the correctness of the allegations made by him have been reiterated. It was contended that after the contemners had filed their counter affidavits Bhola Dutta Joshi had no right to file any rejoinder affidavit and that affidavit deserves to be ignored. This argument is based on Rule 10 of the rules framed by the Court which provides that after giving information about the commission of contempt of court by any person or persons, the informant shall not have any right to appear or plead or argue before the Court unless he is called upon by the Court specially to do so. In our opinion this rule does not support the argument advanced. The informant may not nave any right to appear or plead or argue but it is within the power of the Court to permit him not only to file an affidavit in reply to the affidavit of the contemners but also appear and plead before the Court. The Court granted time to Bhola Dutt Joshi to file a rejoinder affidavit and no objection was taken by the contemners at that stage. It was within the powers of the Court to permit the informant to assist the Court in arriving at the truth and no exception can legitimately betaken to the procedure adopted by the Court in this case.

22. Another grievance raised by the learned Counsel was that no charge or charges were framed by the Court which was incumbent in view of Rule 5 of the Rules and that vitiated the entire proceeding. Rule 5 provides that such allegations contained in the petition as appear to the Court to make out a prima facie case of contempt of court against the person concerned, shall be reduced into charge or charges by the Court against such person, and notice shall be issued only with respect to those charges. Technically speaking this rule applies only when proceeding is initiated on

the basis of a petition. It does not apply to the case of a suo motu action. Morever, as observed earlier, the provisions of the Code of Criminal Procedure do not apply to proceedings under the Contempt of Courts Act and it was not necessary to frame charges. The practice of this Court has also been that no charges are framed as is done in proceedings under the Code of Criminal Procedure. If the proceeding is initiated on the basis of a petition, a copy of the petition is sent to the person concerned. If it is made on the basis of a reference by the subordinate court, a copy of the reference is supplied to the contemner while issuing notice to him. The real object is to make the person concerned aware of the case that he has to meet. In the present case a copy of the statement of Bbola Dutt Joshi was supplied to the contemners. The contemners fully understood the case that they had to meet. In their counter affidavits no grievance was put forward that they did not understand the case that they had to meet in the Court. Even during the course of argument learned Counsel could not point out any vagueness in the allegations made against the contemners which left them in any doubt about the charge levelled against them. It has also not been shown that any prejudice has been caused to the contemeners by non-framing of specific charge or charges. The allegations made again6t the contemners were that they tortured and put pressure on Bhola Dutt Joshi to withdraw the habeas corpus petition. The contemners clearly understood the allegations made against them and replied to them in their counter affidavits. Even if it is assumed that some irregularity was done, that would not vitiate the proceeding as no prejudice has been caused to the contemners.

23. In the written objection a plea has been raised that the application was not maintainable for non-compliance with Rules 3(c) and 4(c) of the Rules. The proceeding was not initiated on any application and the question of complying with these rules does not arise. The objection appears to be wholly irrelevant.

24. Sri P.C. Chaturvedi, learned Counsel for Radhey Shyam Tripathi, contended that the filing of the application for withdrawal of the habeas corpus petition was part of a well thought out plan hatched by Joshi in collusion with Charles Sobhraj with a view to put pressure on the jail authorities to have his own way in the jail. In support of this thesis it was pointed out that Charles Sobhraj was a schemer and criminal of international disrepute with whom Joshi had come in contact. Joshi himself had committed the murder of his daughter and attempted to murder his wife in accordance with a well thought of plan. While in Bareilly jail he was one of the organiser of an union of the convicts and created dissatisfaction and revolt. The scheme to make an application for withdrawal of the habeas corpus petition was a product of his scheming brain aided and abated by Charles Sobhraj. We find it difficult to accept this theory. The circumstances relied upon do not justify the inference that the application for withdrawal of the habeas corpus petition was made with a view to pressurise the jail authorities with the object of gaining certain reliefs. For the redress of his grievances Joshi had already moved this Court by filing a petition for habeas corpus. The petition had ripened for hearing. His object could

not be achieved by withdrawing that petition. The facts and circumstances of the case unmistakably indicate that the application for withdrawal of the petition could not have been the voluntary act of Joshi. As noted earlier, the habeas corpus petition was smuggled out of the jail. When this fact came to the knowledge of the jail authorities, their natural conduct would have been to try to find out how the petition was smuggled out. It also appears natural that the jail authorities would have questioned Joshi as to how the petition went out of jail without their knowledge. Joshi would not have liked to reveal the true facts as that would have stopped his future communication with the outside world. It also appears to be quite natural that on refusal of Joshi to disclose the manner in which the petition was smuggled out pressure would have been put on him to find out the truth and when that failed to yield the desired result pressure must have been put to withdraw the petition as that alone would ensure that this Court may have no opportunity to look into the grievances put forward by Joshi. The chain of events and the circumstances unmistakably indicate that the application for withdrawal of the petition was made under pressure and coercion and was not the result of any scheme batched by Joshi or Charles Sobhraj. In the course of argument it was conceded that the application for withdrawal must have been made either as a part of the scheme hatched by Joshi or it must have been obtained by exercising pressure on Joshi. No other alternative could be envisaged. We have already observed that making of the application for withdrawal was not the result of pre-planned scheme with a view to put pressure on the jail authorities to remove the grievances of Joshi and afford him suitable facilities in the jail. The only inference that is possible from the facts and circumstances of the case is that the application for withdrawal of the habeas corpus petition came into existence as a result of pressure put on Joshi so that the Court may not consider the habeas corpus petition on merit.

25. It is not necessary for us to find out the extent of pressure or torture to which Joshi was subjected. Even if he was threatened or given some beating that would render the Respondents guilty of contempt of court by interfering with and obstructing the administration of justice. It is true that the medical examination of Joshi on October 20, 1982, did not reveal any visible injury on the body but the Doctor did find some swelling in the right foot which according to the Doctor was about three weeks old. This may or may not have been due to the beating which Joshi is alleged to have received on October 1, 1982. Even if Joshi had been given a beating as alleged, after a lapse of three weeks very little trace of it could possibly be noticed on medical examination. The learned District Judge in his report, which is based on interrogation of the inmates of the jail, has recorded a finding that Joshi was beaten by the jail authorities but it was difficult to pin point as to who were the assailants and the extent of beating also could not be ascertained. According to the learned District Judge Bhola Dutt Josbi did meet some torture in the jail after the date when he had sent the writ petition to this Court.

26. Admittedly Bhola Dutt Joshi was shifted to circle No. 1 on October 1, 1982. It is significant that this was done after Bhola Dutt Joshi had filed an application in this Court on September 16, 1982, in which various allegations were made against the conduct of the jail authorities and a prayer was made to make suitable arrangement for his safety and that he may not be sent back to Naini Central Jail after the habeas corpus petition had been disposed of. A copy of this application was forwarded by the Government Advocate to the Respondent Radhey Shyam Tripathi. The habeas corpus petition was fixed for hearing on September 30, 1982 but it could not be taken up on that date and the case was adjourned to October 20, 1982. It is significant that it was at this stage that the process of pressurising was set in motion. The allegations made in the application must have annoyed the Superintendent. Transfer of Joshi to circle No. 1 following upon the application made by Joshi appears to be connected with it. The report of the learned District Judge clearly mentions that circle No. 1 is inhabited by persons of unsound mind. The Respondents tried to assert that circle No. 1 was not inhabited exclusively by insane persons and that the persons whom the learned District Judge met there were not confirmed lunatics but that makes no difference. The integrity and the independence of the learned District Judge cannot possibly be questioned. He could not possibly have any sympathy or soft corner for Joshi who was an utter stranger to him. The learned District Judge, in our opinion, has given an honest and dispassionate report based on his own observations during the course of enquiry.

27. It is established beyond doubt by the report of the learned District Judge that the inmates of that circle were not normal persons. They may have been afflicted with varying degree of insanity but one thing is certain that they were persons of unsound and abnormal minds. To keep a normal person in the midst of persons of unsound minds and abnormal behaviour would certainly amount to an act of torture. We have no doubt that this was done not in the normal course of inflicting any punishment for indiscipline or misbehaviour but directly with the object of terrorising Joshi and putting pressure on him. It is expressly stated in the counter affidavit of Surya Mani Chaube that Joshi was sent to circle No. 1 by way of punishment and it was done under the orders of proper authority. The Jail Manual confers power of punishment on the Superintendent. It must, therefore, be accepted that Joshi was transferred to circle No. 1 under the orders of the Superintendent.

28. Bhola Dutt Joshi in his statement has mentioned in detail the role played by the two contemners. We see no reason to doubt that the treatment meted out to Joshi was under the direction of the Jail Superintendent and it was carried out by Surya Mani Chaube. There appears to be no reason for falsely naming Chaube as the person who brought pressure on him and asked him to withdraw the petition. Joshi had no personal animus against Chaube to name him in place of some other officer who put pressure on him.

29. The contemners have tendered apology but we are not satisfied that the apology is bonafide. It is signficant that in their original counter affidavits the contemners totally denied the allegations made by Joshi. It was only after the report of the District Judge had come on record that the contemners felt the necessity of explaining certain accusations made against them. The conduct of the contemners did not indicate that they were really repentant for what they had done.

30. We are conscious of the principle governing punishment for contempt of court. The Respondents deliberately interfered in a judicial proceeding and obstructed the administration of justice. The actions that they took were brutal und inhuman. A sentence of mere fine would not meet the ends of justice.

31. The Respondents Radhey Shyam Tripathi and Surya Mani Chaube are held guilty of criminal contempt of this Court and sentenced to simple imprisonment for one week and a fine of Rs. 500/- each. The fine shall be paid within one week from today. In default to payment of fine they shall undergo further simple imprisonment for a period of one week.