(1973) 11 AP CK 0003

Andhra Pradesh High Court

Case No: Contempt Case No''s. 23 and 24 of 1973

N. Rajagopala Rao		APPELLANT
	Vs	
Murtuza Mujtahdi Editor, Anti - Corruption Weekly and another		RESPONDENT

Date of Decision: Nov. 13, 1973

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 92
- Constitution of India, 1950 - Article 19, 227, 233, 235
- Contempt of Courts Act, 1971 - Section 11, 12, 15, 2(c), 2(c)(i)

Hon'ble Judges: Sriramulu, J; Alladi Kuppuswami, J

Bench: Division Bench

Advocate: T.H.B. Chalapathy and M.R.K. Chowdary, for the Appellant; N.K. Acharya, for the Respondent

Judgement

Sriramulu, J.

Six posts of Direct and Sessions Judges, to be filled by direct recruitment from the members of the bar, were advertised by the Government of Andhra Pradesh. Since those appointments are to be made by the Governor of Andhra Pradesh under Art. 233 of the Constitution of India, in consultation with the High Court of A.P., the applications received by the Government were forwarded to the High Court for the purposes of selecting and recommending suitable candidates for appointment. The High Court Appointed a Selection Committee, consisting of five of its Senior Judges, to interview the applicants and to report to it their assessment of the ability of the applicants for appointment as District and Sessions Judges. On the basis of the report of the Selection Committee, regarding the ability of the applicants, assessed on the basis of the interview, the High Court recommended to the Government six candidates for appointment as Direct and Sessions Judges. An applicant who was interviewed but not recommended by the High Court to the Governor for appointment as District Judges, filed a Writ Petition in the High Court, questioning

the validly of the recommendations made by the High Court. During the pendency of that writ petition, the respondents herein, who are the Publisher and Editor published on the front page of their English Weekly, named "Anti-Corruption", Vol 10, No. 29, dt. 72-7-1973 an Article under the caption "selection of six Session''s Judges Damn Disgrace to the entire Judiciary".

2. Two practising advocates have filed two separate petitions under the Contempt of Courts Act (No. 70) of 1971 (herein-after called ''the Act'' alleging that the respondents committed contempt of court by publishing the said Article in their English Weakly. The petitioners submitted that the contents of the Article are false that, the respondents, in their Article attributed unfairness and sectional prejudices to the Judges who interviewed the applicants, cast aspersions in regard to the integrity of the judges, with a view to scandalise them and bring down the reputation of the Judges. The Article was calculated to shake the confidence of the public in the administration of law and justice by the High Court, and to lower the dignity of the High Court. The Article was published at a time when the W. P. challenging the validity of the recommendations made by the High Court, was pending and with a view to interfere with the administration of justice and to influence the mind of the High Court. The comments made by the Respondents, in their Article, exceeded the limits of fair, reasonable and legitimate comments. In fact it was an irresponsible interference with the administration of Justice. The Article even suggested that the High Court has already lost its reputation. In publishing the said Article the respondents committed criminal contempt of Court, and they should be punished according to law.

3. The Respondents, in their separate counters, submitted that on the date on which they published the article, they did not know about the pendency of the W.P in the High Court. The A. P. High Court Advocate''s Association had passed a resolution on the same subject on 19-7-1973. The Advocates of the City Civil Court submitted a Memorandum to the Government of A. P. and to several public authorities and sent copies to several Associations, and that was prior to 22-7-1973. That material constituted the source of information to the respondents for publishing the said article. The W.P. was dismissed on 24-7-1973 even at the stage of admission. Unless rule nisi was issued, the W.P. could not be said to be pending and the matter sub-judice Neither the petitioners pleaded, nor proved, that the respondents had published the said Article with the knowledge of the pendency of the W.P. The article is a pale and insignificant reflection of what was stated in the W.P., in which open and unbounded allegations were made against identifiable Judges of the High Court. Their explanation should be accepted and if however, this court came to the conclusion that what was published, amounted to contempt of court, they beg leave of the court to tender apology on the terms which the High Court, in its discretion, prescribed.

4. The leaned Counsel Sri T.H.B. Chalapathi and Sri M.R.K. Chowdary, for the petitioners, submitted that, by publishing the article, in question, the respondents lowered the dignity of the High Court and by attributing unfairness and sectional prejudicies to the Judges of the High Court and by casting aspersions about their integrity, have scandalised the Judges. The contents of the article not only scandalise the Judges, but are also canculated to shake the confidence of the public in the administration of law and justice by the High Court, and lower the dignity of the High Court, and particularly at a time when the W.P. was pending. Their object was to obstruct and interfere with the judicial administration. In making those comments, the respondents exceeded the right to make a fair, reasonable and legitimate critic in of the acts of the High Court. The respondents, in their impugned Article, commented up in the conduct of the Judges, in discharging the obligations imposed upon the in by the Constitution, in such violent terms which, undoubtedly amounted to criminal contempt of Court and they should be severely punished.

5. The learned Counsel, Sri N.K. Acharya, for the respondents, on the other hand, contended that (i) the contempt petitions have not been validly filed, because they did not disclose that the Advocate-General had given his consoled in writing to the petitioners to file the contempt petitions; (ii) the consent given by the Advocate-General is bad in law, because no notice was served on the respondents and no enquiry was made; (iii) the respondents herein were not parties to the W.P. and were not aware of the pendency of the W.P. in the High Court; (iv) since rule nisi was not issued in the W.P. but it was dismissed on the ground that it was premature, it cannot be said that the W.P. was pending at the time when the impugned Article was published; (v) in the absence of pleading and proof, to the effect that the respondents herein were aware of the pendency of the W. P., they cannot be held guilty of contempt of court either for interfering with or for obstructing the judicial administration; (vi) the comments made by the respondents are not in respect of any judicial act performed by the Judges, but in respect of their administrative act, and the criticism of an administrative act would not amount to contempt of Court; and (vii) they did not make any comment about any particular judge and, therefore, they cannot be said to have exceeded the limits of a fair, reasonable and legitimate criticism.

6. The preliminary objections raised by the learned counsel for the respondents was that the contempt petitions filed by the petitioners are not maintainable in view of the fact that the petitioners did not plead or aver in their petitions that they had obtained the consent in writing of the Advocate General for filing those contempt petitions, In the absence of such a pleading and proof, the respondents submitted that the petitions are not maintainable and they have not been validly filed.

7. What facts have to be stated in a plaint, in a civil suit, are found in rules A to 8 of Or, VI of the CPC No such rules of pleadings have been pointed out to us which enjoin upon a petitioner to plead in the contempt petition that he had obtained the

consent of the Advocate General in writing for filing such contempt petition and that, non-mention of that fact in the petition is fatal. As a matter of fact, we find that the petitioners in these cases, before filing the contempt petitions, obtained the consent in writing of the Advocate General for filing the contempt petitions. This fact has not been disputed by the learned Counsel for the Respondents. When in fact, the petitioners as required by Section 15 of the Contempt of Courts Act, obtained the consent in writing of the Advocate General for filing these contempt petitions, they cannot be rejected merely on the ground of non-mention of that fact in the body of the contempt petitions. We, the before, over-rule the preliminary objection regarding the maintainability of the petitions. We hold that the contempt petitions have been validly filed and are maintainable.

8. The next contention raised by the respondents'' counsel was that the Advocate General, before giving his written consent to the petitioners to file the contempt petitions against them, should have served notices on and heard the respondents and judicially determined the question whether the petitioners bad a good and a proper case for tilling the contempt petitions against the respondents. Since no such notice was given, or the respondents (sic) the consent in writing given by the Advocate General was bad in law.

9. No decided case under the Contempt of Courts Act has been brought to our notice which has considered the natures of the act performed by the Advocate General in giving his consent in writing under the Act.

10. Similar consent in writing has to be obtained from the Advocate General before the institution of a scheme suit u/s 92 of the Civil Procedure Code. The nature of the act performed by the Advocate-General, in giving his consent in writing for the institution of a scheme suit under Sec. 92 C.P.C., came up for consideration before different High Courts. The Allahabad High Court in Swami Shantanand Sarswati Vs. Advocate-General, U.P., Allahabad and Others, the Madras High Court in Lakshmi Ammal and Another Vs. Allauddin Sahib, and the Rajasthan High Court in Srimalilal v. Advocate General (AIR 1955 Raj 166) have held that the act of the Advocate General in giving his consent in writing to the institution of the scheme suit under Sec. 92 of the C.P.C., is only an administrative or an executive Act, and not a judicial or a quasi-judicial act. The decision of the Advocate General to give consent to the institution of a scheme suit under Sec. 92 C.P.C. neither involves nor affects the rights of one party or the interests of the other.

11. The Travancore-Cochin High Court, however, in Abubakar v. Advocate General (AIR 1954 T Co 331) had taken a different view. A Division Bench of the Travancore-Cochin High Court in that case, held that the Advocate General in giving his consent under Sec. 92 of the Civil Procedure code, was performing a quasi judicial act and he was bound to deride the matter judicially after giving notice to and hearing the parties. That decision was however, over-ruled by a later Full Bench decision of the Kerala High Court in A.K. Bhaskar Vs. Advocate General, . Thus,

almost all the High Courts have taken the view that the act of the Advocate General in giving his consent in writing to a party for instituting a scheme suit under Sec. 92 C.P.C. is an administrative or an executive act, and not judicial or a quasi judicial act and that, the Advocate General is not bound to give notice to or hear the parties before giving his consent. The consent given by him does not affect rights of one party, or the interests of the other.

12. Whether an authority, acting under a statute, where it is silent, has the duty to act judicially, will depend upon the express provisions of the statute, read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected, and other indicia afforded by the statute; See Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others,

13. In regard to the function of the Advocate-General in giving his consent under Sec. 92 of the C.P.C., the Madras High Court in Sayyed Shah Abdul Latif Mohideen Khadiri Sujjatha Shibathullahi Sahib Vs. Mohammad Labbai and Others, observed that:--

It is not the function of the Advocate-General, under Sec. 92, to give a decision on the issues that might arises in the course of a suit under Sec. 92 and the Court is free to come to its own conclusions of fact and law. Ail that he has to be satisfied about, before granting a sanction is that there is a prima facie case and that, it is worthwhile that the suit should be tried by a court in the interests of a public charitable trust. Neither the Collector nor the Advocate General granting sanction under Sec. 92 acts as a court, or as a court subordinate to High Court ...

14. What has been held regarding the nature of the act of the Advocate General in giving his consent under Sec. 92, C.P.C., holds good to the act of the Advocate General in giving his consent under Sec. 15 of the Contempt of Courts Act, 1971.

15. Sec. 15 of the Contempt of Courts Act (Nov. 70) of 1971, which requires the Advocate General to give his consent in writing is silent in regard to the question as to whether be is required to act judicially. There are no provisions under the Contempt of Courts Act, 1971 which require the Advocate General to Act judically in giving his consent. Nor are any objective criteria laid down in any of the provisions of the Act, for giving guidance to the Advocate General in giving his consent. The Act of the Advocate General in giving his consent under the Act, neither involves a decision on the rights of the petitioners, nor affects the interests of the respondents. The decision of the Advocate General to give his consent in writing, to file a contempt petition, neither precludes the court from giving its decision on the question whether the objectionable utterances or writings constituted contempt of court, nor precludes the respondents from raising a plea that their utterances or writings did not constitute contempt of court. On a petition filed before him seeking his consent in writing, u/s 15 of the Contempt of Courts Act, the Advocate General

must be prima facie satisfied that it is worthwhile for the High Court to enquire into the matter as to whether the respondents therein committed contempt of court in printing and publishing the impugned Article. The Act of the Advocate General, in giving his consent in writing under the Contempt of Courts Act, is therefore, an administrative act, and not a judicial or a quasi judicial act. He is, therefore not bound to give notice to or hear the persons against whom the contempt petitions are sought to be filed. The consent of the Advocate General given in these cases is, therefore, not bad in law on the ground that no notice was served on the respondents and that, they were not heard before the consent was given. This contention is, therefore, rejected.

16. There are two kinds of contempt under the Contempt of Courts Act--Civil and Criminal. Wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court, constitute ''civil contempt'' [See Section 5 (b) of the Act]. "Criminal Contempt" for which these petitions have been filed, has been defined by Sec. 2 (c) of the Act, which reads thus:-

Sec. 2 (c): -- ''Criminal Contempt'' means the publication (whether by words, spoken of written or by signs or by visible representation or other wise) of any matter or 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 proceedings ; or

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

17. If the words spoken or written prejudice, or interfere or tend to interfere with the due course of a judicial proceeding, they constitute contempt of court, as defined in Sec. 2 (c) (ii) of the Act. The impugned Article in these cases was published in the English Weekly ''Anti-Corruption'' date 22-7-73. A.W.P. by that time was already filed in the court, by one of the applicants for the post of the District Judge, whose name was not recommended by this Court to the Governor for appointment as District Judge, and that petition was dismissed by this court on 24-7-1973, at the admission stage itself, on the ground that it was premature.

18. Two objections are raised by the respondents'' counsel in this behalf. The first objection was that, unless and until the W.P. was admitted and rule nisi issued by the court, it could not be said to be pending in the High Court. The second objection raised by the respondents was that they were not parties to the W. P. Neither the petitioners pleaded in their contempt petitions, nor proved that the respondents knew about the pendency of the W.P. on the date on which they had published the impugned article in the absence of such pleading, the petitioners cannot be

permitted to prove that the respondents had published the impugned article knowing that a W.P. was pending in the High Court. They cannot, therefore, be said to have committed contempt of court under Sec. 2 (c) (ii) of the Act. There is good deal of force in these latter contentions raised by the learned counsel for the respondents.

19. Under the Explanation (A) to Sec. 3 of the Act a Civil Proceeding is said to be instituted by the filing of a plaint. A W.P. is a civil proceeding and will be said to have been instituted when such petition is filed into court. There is no warrant to hold that a W.P. cannot be said to be filed or pending in the court unless rule nisi is issued by the Court. A contemptuous publication may even influence the mind of the Court at the time of the admission of the W.P. The objection raised by the learned Counsel for the respondent is, therefore, untenable and is accordingly, rejected.

20. Under Sec. 2 (c) (iii) of the Act, a person cannot be said to be guilty of contempt of court on the ground that he had published the impugned article which interfered or tended to interfere with, or obstructed or tended to obstruct the course of justice in connection with any civil proceeding pending at the time of the publication, if at that time, he had no reasonable ground for believing that a civil proceeding was pending in a Court.

21. In Ramaswami vs Jawaharlal (AIR 1958 Mad. 558) a Division Bench of the Madras High Court held that knowledge of the pendency of the proceedings in court, is an essential pre-requisite for holding that a person is guilty of contempt. No man can be presumed to be aware of the pendency of the proceedings in court, to which he is not a party.

22. The respondents in these contempt petitions were not parties to the said W.P. In contempt case No. 24/1973, the petitioner did not even plead that the respondents herein knew that a W.P. was pending in this court on 22-7-73 on which date the impugned Article was published. Although it was so pleaded in contempt case No. 23 of 1973 the petitioner in that case did not set out, either in the petition or in the ''affidavit, the basis on which he had made the statement that the respondents on 22-7-73 knew about the pendency of the W.P. in the High Court. The respondents have clearly averred in their counters that they were not aware of the pendency of the W.P. in this court and that, their source of information for publishing the impugned Article was the resolution passed by the Advocates'' Association, which was published in the News Papers earlier to 22-7-73 and the Memorandum submitted to the Government by the City Civil Court Advocates. On the material on record, it is, therefore, not possible for us to hold that the petitioners have established that the respondents were aware of the pendency of the said W.P in the High Court on 22-7-73, on which date the impugned article was published We, therefore, hold that the respondents are not guilty of contempt of court, under Sec. 2 (c) (ii) of the Act.

23. The next question that arises for consideration, is whether the impugned article comes under sec. 2 (c) (i) and or (c) (ii) of the Act.

24. Before we consider this question, it is necessary to know the contents of the Article in question. The relevant portions of the Article which according to the petitioners, are objectionable, are given below :--

Selection of Six Sessions Judges Damn disgrace to entire Judiciary

. .The manner and method in which six candidates from the bar were recommended to the posts of District & Sessions Judges in A.P recently will bring no credit to the team of five eminent judges of the State High Court.

On the other hand, it is a damn disgrace to the entire judiciary itself and rightly the Bar Associations in the City have come out in strong condemnation of the manner of recommendations.

Thus for the first time the selection of Judges to the superior cadre has become a matter of public controversy and unless the Government sets aside the High Court recommendations immediately, the reputation of the judiciary in public estimate will further go down.

The Five member selection team of High Court Judges have set aside all norms of selection and have gone by anything but merit while recommending the six names of appointment as District Judges to the State Government.

Further, certain minimum requirements are laid down for the appointment of the District Judges. But none of the selected candidates fulfil even one of the five requirements laid down.

It is nor known, therefore, on what criteria the candidates were recommended by the Selection Committee.

...But what has the Selection Committee of the High Court Judges done? A perusal of the qualifications of the six candidates who have been recommended by the Selection Commit tee will prove to the public how far the High Court Judges have done justice to their job.

It is time that somebody sits in Judgment over the fudges and undo the incalculable harm done by them to the entire system of judiciary,

25. It will he useful, at this stage, to notice briefly the content, ambit and amplitude of the expression "contempt of Court". An ulterance, either oral or written which scandalises or lowers the authority of the court, or has the tendency to do so, or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice, has always been held to be contempt of Court. Such utterances have been given a statutory shape in Sec. 2 (c) (i) and (ii) of the Act. The High Court has got jurisdiction to punish such contempt, under Sec. 11 of the Act.

26. In Rustom Cowasiee Cooper v. Union of India (1970)2 S C (298) Hidayatullah, C.J., observed that the court like any other institution does not enjoy immunity from fair criticism, They do not think themselves in possession of all truth, or hold that wherever others differ from them, it is so far error. His Lordship further observed that :--

While fair and temperate criticism of this Court or any other court even if strong may not be actionable, attributing improper motives or tending to bring judge or Courts into (sic) and contempt or obstructing directly or indirectly with the functioning of Courts, is serious contempt of which notice must and will be taken Respect is expected not only from those to whom the judgment of Court is acceptable but also from those to whom it is repugnant. Those who err in their criticism by indulging in vilification of the institution of courts, administration of justice and the Instruments through which the administration acts should take heed, for they will act at their own peril....

27. In E.M.S. Namboodripad v. T. N. Nambiar (1970(2) S C. 325) the Supreme Court at pages 331 and 332 of the report, pointed out the various forms of contempt thus:--

.....The chief forms of contempt are insult to judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial obstruction to officers of courts, witnesses or the parties abusing the process of the court, breach of duty by officers connected with the court and scandalising the judges or the courts. The last form occurs, generally speaking when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrespect or disrepute, or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a single judge or a single court but may in certain circumstances, be committed in respect of the whole of the judiciary or judicial system..

28. His Lordship Hidayatullah, C.J., further pointed out, in a paragraph 3 (a) at page 338 of the report, that:--

. .the good faith of the judges is the firm bed - rock on which any system of administration, securely rests and an attempt to shake the people''s confidence in the courts, is to strike at the very root of our system of democracy.

29. Considering the freedom of speech of a citizen, granted by Art. 19 of our Constitution, His lordship Hidayatullah, C. J. in paragraph (12) at page 333 of the report agreed with the observations made in various American decisions, and observed that:--

....We can only say that freedom of speech and expression will always prevail except where contempt is manifest, mischievous or substantial. The question always is on which side of the line the case falls. Freedom of speech goes far but not far enough

to condone a case of real contempt of Court.

30. It was further pointed out by His Lordship, in paragraph 34 at page 339 of the report, that the Law punishes not only acts which do, in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say are likely to produce a particular result.

31. In Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra, after discussing a very large number of cases, his Lordship Grover, J. stated the result of his discussion of the cases, at page 230 of the report, thus:--

. . .(1) It will not be right to say that committals for contempt scandalising 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 judge in his judicial capacity or even to make a proper and fair comment on an any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken comments of ordinary men".

(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 his 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 Mukerjee, J. has he then was) (Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh, , 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.. ..

32. The learned Judge further observed that it may be that truthfulness or factual correctness is a good defence in an action for libel, but in the law of contempt there are hardly any English or Indian cases in which such defence has been recognised.

33. In Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, the Supreme Court held that even if a Judgement contains errors that could be no excuse for

imputing dishonesty to the Judge. A scurrilous attack on a Judge in respect of a judgement or past conduct affects adversely the due administration of justice.

34. In Legal Remembrancer v. B. B. Das Gupta (AIR 1954 Pat 203 at page 210) S.K. Das, J., referring to the arguments of Mr. Ghosh, observed thus:--

... I think that the answer to the arguments of Mr. Ghosh is to be found in the words of Lord Atkin "Justice is not a cloistered virtue". Any and every criticism is not contempt. One of the tests is, to use the words of Mukherjee, J., in Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh, whether the criticism is calculated to interfere with the due course of justice or proper administration of of law; whether it tends to create distrust in the popular mind and impair confidence of people in the courts of law. These tests have been part of the meaning of the expression contempt of court from before the Constitution and are still a part of its meaning a meaning which the framers of the Constitution must have known when they used the expression. We are giving no wider connotation to it, and it is idle to contend that such a connotation imports any unreasonable restriction on freedom of speech and expression.

35. After referring 10 the above observations, his Lordship, Sikri, C.J. who delivered the judgment on behalf of the Supreme Court in Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, observed at page 1143 of the report, that the restrictions imposed by the Contempt of Courts Act upon the freedom of speech guaranteed under Art. 19 of the Constitution are reasonable.

36. In Brahma Prakash Sharma & Another v. The State of Uttar Pradesh (1953) SCJ 521) the Supreme Court observed that there are two primary considerations which should weigh with the court when it is called upon to exercise the summary powers in cases of contempt committed by "scandalising" the court itself. In the first place, the reflection on the conduct or or character of a Judge in reference to the discharge of his judicial duties, would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of the public acts done in the seat of justice It is not by stifling criticism that confidence in courts can be created. In the second place, when attacks or comments are made on a Judge or Judges, disparaging in character and derogatory to their dignity, case should be taken to distinguish between what is a libel on the Judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the Judge is concerned, does not necessarily mike it a contempt.

37. As to when a libel against a Judge becomes contempt of court, has been pointed out by the Privy Council as early as in 1892. In the matter of a special reference from the Bahama Islands (L.R. 1893 A C 138) thus :--

..A libel upon a Judge, holding him upto contempt and ridicule in his character as Judge, so as to lower him in the estimation of the public amongst whom he exercised his office, is a contempt of court. The reason is that the Judge represents

the majesty of the law.

38. To the same effect is the law laid down by Lord Atkin in AIR 1943 202 (Privy Council) Lord Atkin observed that :--

The test to he applied is whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law..

No doubt it is galling for any judicial personage to be criticised publicly as having done something outside his judicial proceedings which was ill-advised or indirect. But judicial personages can afford not to be too sensitive. In a Judge is defamed in such a way as not to affect the administration of justice he has the ordinary remedies for defamation if he should feel impelled to use them.....

39. The same principles have been reiterated by this Court in the following two decisions. In Advocate General, Andhra Pradesh Vs. D. Seshagiri Rao, a Division Bench of this Court consisting of Jaganmohan Reddi, J (as he then was) and Venkatesam, J., held that :--

..An attack on the competence and integrity of a Judicial Officer amounts to contempt of Court. The consequence of such attacks on their character is to destroy the confidence of the people in courts; seriously impair the judicial administration and bring the administration of justice itself into disrepute. It makes GO difference that the attacks were made not during the pendency of a proceeding but after its dismissal..

40. After discussing a very large number of cases on the subject, Gopalakrishna Nair, J., sneaking for this Court in Advocate-General, Andhra Pradesh, Hyderabad Vs. V. Ramana Rao, stated the principles that govern the exercise of the power and the jurisdiction of the High Court to punish summarily contempts of themselves, and observed that : --

An attack on individual judges or the court as a whole, with or without reference to particular cases, casting unwarranted and defamatory aspersions upon the character or ability of the Judges, amounts to contempt of court. If the court are brought into ridicule and disrespect and if the public cease to have confidence in them, the very foundation of the State and the Society will be shaken and therefore, the restrictions placed on freedom of speech of a citizen, and punishing him for contempt, cannot be said to be unreasonable.

41. It was also held that justification by truth is not a defence in contempt proceedings.

42. In the matter of an Advocate of Allahabad In Re: An Advocate of Allahabad, he Allahabad High Court held that :--

Proceedings for contempt can lie even where the aspersion on the court is not against a particular judge or Bench and in connection with a particular case.

..To scandalise the court is a contempt and hence any publication which scandalises the Court or lowers its prestige is clearly a contempt, even though there is no record that similar publications have been held by the courts in the past to constitute contempt..

The inherent power of the court to punish for contempt of court is a power which is essential in the interests of the administration of justice and that power is not restricted in any degree by the provisions in the Criminal Procedure Code relating to proceedings which may be instituted with the sanction of the Government where the Courts or His Majesty''s Judges have been defamed.

43. It is also interesting to know the facts of the above case. An article headed as "A scandalous situation. The Bar Council Election" was published in a newspaper of which the persons proceeded against were the author, the editor and publisher respectively The passage referred to in the notices was as follows:

.. In this connection it is amusing to note that when a comparatively undeserving lawyer is raised to the Bench, which is a fairly frequenta occurrence in our judicial history, it is generally claimed, etc...

44. On those facts, the High Court held that :--

The words in the passage convey unwarranted and defamatory aspersion on the character and ability of a number of Judges of the High Court who have recently been elevated to the Bench. The remarks of the writer of the article could not in any sense be regarded as legitimate criticism of the High Court or of any of the judges of the High Court in the discharge of their duties. It was nothing more or less than an insulting reference to the character and capacity of His Majesty''s Judges in an article in which any reference to the High Court was entirely out of place. The passage in respect of which notice to the opposite parties had been issued constituted a contempt of court of which the High Court in the interests of the administration was bound to take cognizance.

45. The learned Judges further held that

.. Proceedings for contempt are not brought to vindicate the character of any particular Judge or judges who have been assailed, but to protect the administration of justice. The question of sensitiveness does not arise. The only question which the court has to decide is whether the published article lowers or tends to lower the dignity and prestige of the High Court..

46. In the State v. Vikar Ahamad & Another (AIR 1954, Hyd 175) a Division bench of the Hyderabad High Court, consisting of M.A. Ansari & Jaganmohan Reddy, JJ (as they then were) held that:--

Editorial comments by newspapers relating to the judicial acts of the High Court, which exceed the bounds of fair criticism, are conceived by irresponsible appreciation of the action, dictated or calculated to lower the sense of confidence in the administration of justice by attributing sectional prejudices to the judges, and holding them out as issuing directions in matter of judicial proceeding on considerations other than judicial and attributing to the court, entrusted with enforcing fundamental rights, unconstitutional practice and discrimination, amount to contempt....

Thus where the main object of an article was found to be to scandalise the Chief Justice and the judges of the High Court with whose consultations, approval and full support, certain notifications were issued and clearly to suggest that justice cannot be had where justice is being administered, thereby shaking the confidence in the public mind about the administration of justice and creating an impression that the Judges in the Highest Court in the State act on extraneous considerations :

the Court held that :--

the article amounted to contempt of the High Court.

47. The learned Judges further observed that :--

In such case, the Court has to scrutinise carefully the article it find out whether it is of such a nature as would exceed the limits of fair inference, legitimate comment and criticism or has been conceived in haste with irresponsible application of the action of the High Court with a tendency to affect the (sic) and prestige of the High Court thereby constituting a corrupt.

The freedom of press under our Constitution is not higher than that of a citizen, and there is no privilege attaching to the profession of the press distinguished from the numbers of the public. To whatever height the subject in general may go, so also may the journalist, and if an ordinary citizen may not transgress the law, so must not the press. That the exercise of expression is subject to the reasonable restriction of the law of contempt, is borne out by Cl. (2) of Art. 19 of the Constitution...

48. In the matter of In Re: Basudeva Prasad, Advocate and Others, a Full Bench of the Patna High Court ''considered the question to what amounts to contempt of court''. Sri Basudeva Prasad, an Advocate of the Patna High Court, made a statement which was published in the "Search-light", a Patna daily. As the Secretary of the Indian Council of Public Affairs, Sri Basudeva Prasad gave that statement. The relevant passage runs thus :--

Suffice it to say that some lawyers, who did not make any mark in their profession, nor had any visible practice, have found their way to the Bench. The Government themselves realised that the judiciary was deteriorating and that is one of the reasons why the Law Commission was set up....

49. Considering the question whether the statement so made constituted "contempt of Court" the Full Bench observed that:--

A High Court can never be too sensitive where a scientific analysis of any matter of public interest is taken up by any member of the public, even if it had got an indirect reference to the judiciary including the High Court and having a bearing on any matter of practice and procedure of the Court. A line, however, has to be drawn between well balanced discussion and sneering remark casting reflection upon the High Court Bench, or for the matter of that on the judiciary. The former can by no means have a tendency to lead to loss of confidence in the minds of the people regarding the administration of justice. The views advanced, if wrong, may be suitably countered or shown to be wrong ; and if well-founded, might be accepted. If the same views are expressed clothing them in language in a sneering pattern or containing innuendoes on the judges, it is bound to affect the dignity of the court and bring it into disrepute...

The position would be still worse, and the situation might be irreparable, where the views expressed concerning the manner of appointment of Judges are ill-founded, proceeding from personal bias or unripe judgment in the light of suppositions.

50. Considering the statement made by the said advocate, the High Court held that: "the suggestion was palpable that some members of the Bench had managed to secure appointment, not by dint of their merit but by using some kind of influence, a view which might be difficult to controvert and is bound work mischief in the public mind, The passage, in question, has therefore the effect of bringing into disrepute the Patna High Court and lowering its dignity and amounts to contempt of Court". This finding was arrived at by the Patna High Court after rejecting the argument that the remark was a general one and that, no High Court was specifically mentioned and therefore the Patna High Court could have no jurisdiction to issue a notice of contempt.

51. In Dr. Mrs. Sarojini Pradhan Vs. Khirode Chandra Pradhan, the learned Chief Justice, Sri G. K. Misra, speaking for the Full Bench of the Orissa High Court, in his elaborate and well discussed judgement, held that when allegations amounted to contempt, evidence to justify them is not permissible. The learned Chief Justice further observed in his judgment thus :--

.. as the allegations contained in the petition of appeal attributed malafides, bias and prejudice to the High Court Judges, ridiculed their efficiency and were meant to scandalise the Court and to shake the confidence of the litigating people at large in the efficiency, impartiality and integrity of the judges of the High Court they clearly amount to criminal contempt in terms of Sec. 2 (c) (i) of the Act (para 64)

Official capacity cannot be differentiated into judicial and administrative capacities. They are inter linked. Any aspersion on the administrative capacity of the judges or the Court which undermines, lowers, or tends to undermine or lower its authority

and dignity by imputing motives so as to create a distrust in the public mind as to the capacity of Judges to mete out even handed justice, is, scandalising the court. (para 71).

52. In making the above observations, the Orissa High Court dissented from the judgment of the Allahabad High Court in State of Uttar Pradesh Vs. Shyam Sundar Lal Jain, and observed that : -

.. The High Court is entrusted with administration of justice, and in that connection to exercise control over the subordinate judiciary under Art. 235, and power of superintendence over all courts and Tribunals under Art. 227 of the Constitution.

53. At page 7 of the daily ''THE HINDU'' dated 20th November, 1973, it is reported that the above decision of the Orissa High Court has been upheld by a Constitution Bench of Supreme Court.

54. What emerges from the aforesaid discussion is that Art. 19 of our Constitution guarantees freedom of speech and expression to its citizens No less or no more is the freedom of the press than what is guaranteed to a citizen by the Constitution. The freedom of speech and expression, so guaranteed by the Constitution, is not absolute, but it is subjected to certain limitations and restrictions. Those limitations are found in clauses (2) to (6) of the Art. 19. One of such restrictions placed on freedom of speech and expression is that the State has got power to make law relating to libel, defamation and contempt of court. Every citizen has got a right to make a fair and reasonable comment, in a temperate language on the acts of others, provided such comments do not amount to contempt. The freedom of speech and expression will go thus far, and no further. The freedom of speech and expression prevails, except where the contempt is manifest and mischievous.

55. Those who err in their criticism by indulging in vilification of the institution of courts, administration of justice and the instruments through which the administration acts, should take heed, for they will act at their own peril.

56. Courts, like other institutions, do not enjoy immunity from criticism. Justice is not a ''cicistered virtue''. It must be allowed to suffer the scrutiny outspoken but respected comments of ordinary citizens and the press. Courts are neither affair of criticism, nor do they resent it While fair, reasonable end temperate criticism of the High court and other courts, even if strong, is not actionable We, attributing improper motives, attacking the competency fairness and integrity of the Judges, which bring the Judges and Courts into hatred, contempt, disrepute and disrespect amongst the people who are expected to respect the Judges and Courts, or obstruct directly or indirectly the functioning of the courts and impair the confidence of the people in the courts, would certainty, amount to serious contempt of Court. The good faith of the Judges is the firm bed-rock on which the system of administration of justice rests Any attempt to shake the confidence of the people, ever whom the court has got jurisdiction is to strike at the very root of democracy for the people in

whose favour a decision of the court 15, and also those against whom the decision is, are both alike and equally expected to respect the Court.

57. All acts which bring the court into disrespect or disrepute, or which offered its dignity affront its majesty or challenge its authority, certainly amount to contempt of court Such contempt may be committed in respect of a single Judge or a single court but may in certain circumstances be committed in respect of the whole of the judiciary or judicial system.

58. Distinction must, however be drawn between a libel and a contempt of court. Defamatory comments made against a Judge in respect of his individual and personal acts, would amount to a libel against the judge, and if he is so mindful, it is always open to him to take action against such erring person, in a criminal court. But, if the comments exceed the limits of fair and reasonable comments and are calculated to interfere with the due course of justice, or the proper administration of law by the High Court or courts subordinate thereto, they would amount to contempt of court. In the former case, the wrong is done to the Judge as a ''Person'' and in the latter, the wrong is done to the public. A disparaging statement made against a Judge would aggravate itself into a wrong done to the public, if it tends to create an apprehension in the minds of the people regarding the integrity, ability and fairness of the judges and deter the prospective litigants from placing complete reliance upon the courts and administration of justice, or is likely to cause embarrassment in the mind of the Judge himself in the discharge of his duties, Expressed differently, if the criticism is directed against a Judge which is calculated to interfere with the due course of justice or proper administration of law or tend to create distrust in the popular mind and impair the confidence of the people in the courts of law, then it cases to be a personal wrong against a Judge and is aggravated to a wrong against the public.

59. Attributing malafides, bias or prejudice, rediculing the efficiency of the judges, are always considered to mean scandal is auction of the courts. Official capacity cannot, in this regard, be differentiated into judicial and administrative capacities. They are inter-linked with each other. Vilificatory criticism of a Judge functioning as a Judge, even in purely administrative or non-adjudicatory matters, amounts to contempt of court if such a criticism substantially affects the ''Administration of Justice'' and lowers the authority or dignity of the court or creates a distrust in the public mind as to the capacity of the Judges to mete out even banded justice.

60. Truth and justification of the allegations, although may be good defence in a case for libel against a Judge, would not be a defence in a case where the allegations amount to contempt of court.

61. Although the High Court has got power to and jurisdiction to punish for contempt, such power and jurisdiction will he used by them with great care and caution, and very sparingly, unless its exercise is absolutely necessary for the proper

administration of law and justice.

62. We have dwelt, at some length, with the nature and scope, and the principles that govern the exercise of summary jurisdiction by the High Court in punishing for contempt. It is in this back-ground that we now propose to consider the contention of the respondents'' counsel that the comments made by the respondents in the impugned article in their English Weekly dated 22-7-1973, did not amount to ''contempt or court''.

63. Under Art. 233 of the Constitution of India, it is the Governor of the State that appoints persons to be District Judges, and those appointment are made in consolation with the High Court which exercises jurisdiction in relation to that State. Thus the consultation by the Governor is with the High court and not with Judges in their individual capacity. In pursuance of this Article of the Constitution, the applications received by His Excellency the Governor of Andhra Pradesh, from persons who sought appointment as District Judges were forwarded to the High Court for consideration and for making necessary recommendations. The Judges of the High Court appointed five of us senior judges, including the Hon''ble Chief Justice, to sit in a Select Committee to interview all the applicants, to assess the ability of the applicants on the basis of the interview and to report the same to all the Judges Accordingly, a Committee of 5 Judges, including the Hon''ble Chief Justice, interviewed the applicants, assessed the ability of those applicants on the basis of the interview, and reported the matter to ail the Judges. It is on the basis of that report of the Selection Committee that the High Court recommended the names of six of the candidates to the Governor for appointment as District Judges.

64. It is therefore, abundantly clear that the act of selecting and recommending the names of six candidates to the Governor, for appointment as District Judges, was an act of the High Court as a High Court, and not an act of the individual Judges. The applicants were interviewed by the Judges in their capacity as Judges, and not in their capacity as private individuals The recommendation of suitable candidates for appointment a members of the subordinate judiciary, is a part of the duties of the High Court Judges and is intimately linked and connected with the administration of justice by the High Court. Even if it is considered to be an administrative act of the High Court and not its judicial act, still that difference and distinction is not so very relevant for the purpose, of contempt of Court, Criticism of the act of Judges, and sheeting remarks about Judges in the matter of selection of the members of the Subordinate Judiciary is, undoubtedly, contempt of court The Full Bench decision of the Orissa High Court, referred to above, which has been affirmed by the Supreme Court, is an authority for the proposition that there is no difference between the administrative act and judicial act of a Judge, in so far as the question of contempt of court is concerned, if such a criticism substantially affects the administration of justice. Therefore, anything said or done about the acts of the five interviewing Judges, would constitute contempt of court, if such words or utterances are

disparaging and are in the nature of an attack upon the integrity, fairness, competency and ability of the Judges, which have the effect of bringing the court into disrepute and disregard and shake the confidence of the people who are expected to respect the court and Judges.

65. The Heading under which the impugned article has been written and published by the respondents herein, in their English Weekly ''Anti-Corruption'' dated 22-7-1973 reads: "Selection of Six Sessions Judges Damu Disgrace to Entire judiciary''. It obviously means that the recommendation of the names of six applicants, made to the Governor by the High Court, for appointment as District and Sessions Judges, brought disgrace not only to the High Court but also to the entire judiciary. It was further written in the said article that the manner and method in which the six candidates from the bar were recommended to the posts of District & Sessions Judges in the State of Andhra Pradesh recently, will bring no credit to the team of five eminent Judges of the High Court. Obviously, the writer (sic) that the High Court has done an act which brought discredit to the team of five eminent Judges of this Court. In other words, those words meant that the said five eminent Judges did something which brought discredit to the High Court. It was further stated in the said article that, unless the Government sets aside the High Court''s recommendations immediately the reputation of the judiciary in public estimate will further go down. Thereby the respondents, obviously, meant that the reputation of the judiciary has already gone down in the State and unless the recommendation made by the High Court are set aside by the Government its reputation will further go down. The respondents next state in their impugned article that "the five-member Selection Team of the High Court Judges have set aside all norms of selection and have gone by anything but merit while recommending the six names for appointment as District Judges to the State Government and that "none of the selected candidates fulfil even one of the five requirement laid down." This statement clearly suggests extraneous considerations and imputes motive to those Judges who interviewed the applicants, and attacks the fairness and integrity of the Judges. When the respondents say in the impugned article that in making the recommendations to the Government, the Judges of this Court "have gone by any thing but merit", it means that the said Judges have gone by irrelevant and extraneous considerations in recommending the names of those candidates. Since the title of the said weekly itself is "Anti-Corruption", it is obvious to our mind that the respondents herein hinted that it was on account of a corrupt motive that the High Court had recommended the names of those six candidates. It is travesty of truth when the respondents say that none of those selected candidates fulfil even one of the five requirements laid down It was further submitted in the said article that "A persual of the qualifications of the six candidates who have been recommended by the Selection Committee will prove to the public how far the High Court Judges have cone justice to their job." This imputation, to our mind, clearly means that the five judges who are expected to do justice amongst the litigants who

appear before them, have not done justice to their job of interviewing the candidates. Such a statement either throws doubt on the fairness or integrity in the Judges, or attacks their competence in selecting and recommending the names of those candidates to the Governor. In the end, it was stated by the respondents, in the impugned article that ''some body should sit in judgement over the Judges and undo the incalculable harm done by them to the entire system of judiciary''. Such a statement, obviously means that the said five judges of this Court have done incalculable harm to the entire system of judiciary and that, somebody should sit in judgement over them and undo the said harm The language used by the respondents in their article, apart from being strong, is also disparaging and makes a direct (sic) attack on the fairness, integrity and competency of those five judges while interviewing the candidates, in their capacity as Judges of this Court. We have, therefore, no doubt whatsoever in our minds that such statements do scandalise or lower, or tend to lower, the authority of the court and bring the administration of justice and the instruments through which the administration acts, into disrepute and disregard by the said writings, the confidence of the litigant public in the High Court is shaken and impaired, and they tend to damn the administration of justice. Undoubtedly, in making such comments, the respondents have transgressed all limits of lair and reasonable criticism against the Judges of this court, while acting in their judicial capacity, and have thus committed contempt of court, which amount to contempt by scandalising the court and the system of administration of justice In writing the impugned article and publishing the same in their English Weekly, the respondents have exhibited gross it responsibility because the impugned article is not in the interests of either the public or the society.

66. We, therefore, hold that the respondents herein, by printing and publishing the impugned article in their English Weekly named "Anti-Corruption", dated 22-7-1973, have committed gross and serious contempt of the Highest Court in the State and, therefore they come within the provisions of the Contempt of Courts Act. We accordingly, find the respondents guilty of Contempt of Court.

67. Then remains the question of punishment.

68. Under Sec. 12 of the Act, contempt of courts is punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to two-thousand rupees, or with both.

69. In their counters the respondents had stated that, if this Court were to hold that they had committed contempt of Court, they should be permitted to tender apology. When the arguments were nearing completion, we were of the view that the respondents, had not, with much thought, published the impugned article in their weekly and that, they might have printed and published the impugned article innocently. We therefore, suggested to the respondents that if they were prepared to tender apology, we would accept the same and we, accordingly, gave them some time to think over the matter. The respondents, however, adhered to their stand

and represented to us that that they were not prepared to apologies and would rather prefer a judgment. This conduct of theirs cannot be ignored while awarding the punishment. The language that has been used in criticising the Judges and the administration of law and justice by this court is very vilifying, and this fact also has to be taken into account while awarding punishment.

70. As lord Denning has observed in REX v. METROPOLTAN POLICE COMMISSIONER(1968) 2, All 319 all that we would ask is, that those who criticise us will remember that from the nature of our office, we cannot reply to their criticism. We cannot enter into public controversy. We mist rely upon 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, and nothing which is written by this person or that, will deter us from doing what we believe is right; nor I would add from saying what the occasion requires, provided it is pertinent to the matter at hand. Silence is not an option when things are ill done...

71. As stated by him, we will never use this jurisdiction as a means to uphold our dignity They must rent 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. But, however, what we want is that those who criticise us must make a fair, legitimate and faithful comment. They can say that we are mistaken and that, our decisions are erroneous. But, far from giving out their view point, the respondents in these cases have passed such scurrilous remarks against the Judges of this Court, which have the effect of damning the administration of justice and which tend to lower the dignity of the court, and shake the confidence of the people which they repose in this highest Court.

72. We do not want to adopt a vindictive attitude against the persons who criticise us we do not want to lower the nobility of the judiciary by taking a vindictive attitude. We consider a punishment of a fine of Rs. 500/- and, in default, simple imprisonment for eight days, is sufficient in the circumstances of the case. We accordingly, find both the respondents, guilty of contempt of court and sentence them to pay of fire of Rupees Five Hundred each, within one week from the date hereof; in default, the respondents shall undergo simple imprisonment for term of eight days. The respondents are, however, directed to pay costs of these contempt petitions to the petitioners in both the cases. Advocates fee Rs. 100/- in each case.