IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

N. RAM & ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

PAPERBOOK

(FOR INDEX KINDLY SEE INSIDE)

WITH

I.A. NO. _____ OF 2020

(APPLICATION FOR STAY)

COUNSEL FOR THE PETITIONERS: **KAMINI JAISWAL**

INDEX

Sr. No.	Particulars of Document	Page No. of part to which it belong		Remarks
		Part I (Contents of Paper Book)	**Part II (Contents of file alone)**	
(i)	(ii)	(iii)	(iv)	(v)
1.	Listing Proforma	A1-A2	A1-A2	
2.	Cover Page of Paper Book		A-3	
3.	Index of Report proceedings		A-4	
4.	Defect List		A-5	
5.	Note Sheet		NS1 to ...	
6.	Synopsis and List of Dates	B - I		
8.	Writ Petition with Affidavits	1 – 41		
9.	**ANNEXURE-P-1:** A copy of the news report dated 24.03.2005 published The Outlook India.	42 – 43		
10.	**ANNEXURE-P-2** A copy of the judgment dated 23.07.2014 passed in **Subramanian Swamy v. Arun Shourie**, reported as (2014) 12 SCC 344.	44 – 61		
11.	**ANNEXURE-P-3** A copy of the order dated	62 – 73		

	14.07.2010 passed by this Hon'ble Court in C.P. (Crl.) No. 10 of 2009.			
12.	**ANNEXURE-P-4** A copy of the order dated 24.07.2020 passed by this Hon'ble Court in C.P. (Crl.) No. 10 of 2009	74 – 75		
13.	**ANNEXURE-P-5** A copy of the order, dated 22.07.2020, passed by this Hon'ble Court in *SCM (Crl.) No. 1 of 2020*	76 – 77		
14.	**I.A. NO. _____ of 2020** Application for Stay along with affidavit.	78 – 84		
15.	**ANNEXURE A:** A copy of the order dated 24.07.2020 passed by this Hon'ble Court in Contempt Petition (Crl.) No. 10 of 2009	85 – 86		
16.	**ANNEXURE:B** A copy of the order dated 22.07.2020 passed by this Hon'ble Court in SCM (Crl.) No. 1 of 2020	87 – 88		
17.	Filing Memo	89		
18.	Vakalatnama	90 – 92		

SECTION: X (WRIT)

PROFORMA FOR FIRST LISTING

The case pertains to (Please tick/check the correct box):

☐	Central Act: (Title)	**CONSTITUTION OF INDIA**
☐	Section	**UNDER SECTION 21**
☐	Central Rule : (Title)	**-NA-**
☐	Rule No(s):	**- NA -**
☐	State Act: (Title)	**- NA -**
☐	Section :	**- NA -**
☐	State Rule : (Title)	**- NA -**
☐	Rule No(s):	**- NA -**
☐	Impugned Interim Order: (Date)	**- NA -**
☐	Impugned Final Order/Decree: (Date)	**-NA-**
☐	High Court : (Name)	**-NA-**
☐	Names of Judges:	**-NA-**
☐	Tribunal/Authority ; (Name)	**-NA -**

1. Nature of matter : Civil ☐ ☐ Criminal

2. (a) Petitioner/appellant No.1 : **N. RAM & ORS.**

   (b) e-mail ID: **N.A.**

   (c) Mobile Phone Number: **N.A.**

3. (a) Respondent No.1: **SECRETAY GENERAL SUPREME COURT OF INDIA**

   (b) e-mail ID: **- NA -**

   (c) Mobile Phone Number: **- NA -**

4. (a) Main category classification: **18 (1807)**

   (b) Sub classification: **ORDINARY CIVIL MATTER**

5. Not to be listed before:

6. (a) Similar disposed of matter with citation, if any & case details: **NO SIMILAR MATTER IS PENDING**

   (b) Similar Pending matter with case details: **NO DISPOSED MATTER IS PENDING**

7. **Criminal Matters:**

(a) Whether accused/convict has surrendered: Yes ☐ No ☐

(b) FIR No. **- NA -** Date: **- NA -**

(c) Police Station: **- NA -**

(d) Sentence Awarded: **- NA -**

(e) Period of sentence undergone including period of Detention/ Custody Undergone: **- NA -**

8. Land Acquisition Matters: **- NA -**

(a) Date of Section 4 notification: **- NA -**

(b) Date of Section 6 notification: **- NA -**

© Date of Section 17 notification: **- NA -**

9. Tax Matters: State the tax effect: **- NA -**

10. Special Category (first Petitioner/ appellant only): **- NA -**

☐ Senior citizen > 65 years ☐ SC/ST ☐ Woman/child

☐ Disabled ☐ Legal Aid case ☐ In custody **- NA -**

11. Vehicle Number (in case of Motor Accident Claim matters): **- NA -**

Jaiswal

(KAMINI JAISWAL)
COUNSEL FOR THE PETITIONER
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NEW DELHI
DATED: 31.07.2020

SYNOPSIS & LIST OF DATES

The instant writ petition has been filed under Article 32 of the Constitution of India challenging the constitutional validity of Section 2(c)(i) of the Contempt of Courts Act, 1971 as being violative of Articles 19 and 14 of the Constitution of India. The impugned sub-section is unconstitutional as it is incompatible with preambular values and basic features of the Constitution, it violates Article 19(1)(a), is unconstitutionally and incurably vague, and is manifestly arbitrary.

This Hon'ble Court in **D. C. Saxena v. Chief Justice of India, (1996) 5 SCC 216** has held that the definition contained in the impugned sub-section informs and guides not only prosecutions for contempt under the Contempt of Courts Act 1971 but also *suo motu* proceedings under Articles 129 and 215 of the Constitution in the following terms:

> "**28.** *...As this Court has taken suo motu action under Article 129 of the Constitution and the word 'contempt' has not been defined by making rules, it would be enough to fall back upon the definition of "criminal contempt" defined under Section 2(c) of the Act ...*"

Section 2 of the Contempt of Courts Act, 1971 provides:

> **2. Definitions**.—In this Act, unless the context otherwise requires,—
>
> (a) "contempt of court" means civil contempt or criminal contempt;
>
> (b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

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

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

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

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

(d) "High Court" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.

It is submitted that Section 2(c)(i) of the Contempt of Courts Act is unconstitutional as it:

a. violates Article 19(1)(a),
b. is unconstitutionally and incurably vague, and
c. is manifestly arbitrary.

A. VIOLATION OF ARTICLE 19(1)(a)

It is submitted, as explained in the Grounds of the Writ Petition in detail, that the impugned sub-section violates the right to free speech and expression guaranteed under Article 19(1)(a) and does not amount to a reasonable restriction under Article 19(2) on the following grounds:

First, the impugned sub-section fails the test of overbreadth.

Second, the impugned sub-section abridges the right to free speech and expression in the absence of tangible and proximate harm.

Third, the impugned sub-section creates a chilling effect on free speech and expression.

Fourth, the offence of "scandalizing the court" cannot be considered to be covered under the category of "contempt of court" under Article 19(2).

Fifth, even if the impugned sub-section were permissible under the ground of contempt in Article 19(2), it would be disproportionate and therefore unreasonable.

Finally, the offence of "scandalizing the court" is rooted in colonial assumptions and objects, which have no place in legal orders committed to democratic constitutionalism and the maintenance of an open robust public sphere.

B. VAGUENESS

The impugned sub-section, despite setting out penal consequences, is incurably vague. It uses vague terminology whose scope and limits are impossible to demarcate. In particular, the phrase "*scandalises or tends to scandalise*" invites subjective and greatly differing readings and application which is incapable of being certain and even-handed. Thus, the offence violates the Article 14 demands of equal treatment & non-arbitrariness.

C. MANIFEST ARBITRARINESS

The impugned sub-section fails the test of manifest arbitrariness laid down by the Hon'ble Supreme Court in **Shayara Bano v. Union of India (2017) 9 SCC 1** and followed in **Navtej Singh Johar v. Union of India (2018) 10 SCC 1** in which a widely and vaguely worded offence of colonial vintage criminalised otherwise lawful and constitutionally protected activity.

That this Hon'ble Court has affirmed that legislative exercise of defining contempt would not be barred by Articles 129 and 215 in **Pallav Sheth v. Custodian (2001) 7 SCC 549** in the following terms:

*"**30.** There can be no doubt that both this Court and High Courts are courts of record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute, can there by any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215, there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution.*

***31.** This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature, it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously."*

[Emphasis Supplied]

Hence the instant writ petition.

LIST OF DATES

DATES	PARTICULARS
24.12.1971	The Contempt of Courts Act, 1971 was enacted as *"An Act to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto."*
August 1990	In August 1990, a contempt petition was filed by Mr. Subramanian Swamy against the Petitioner No. 2 herein, the then editor of *The Indian Express*. At the same time, this Hon'ble Court also initiated a *suo motu* contempt proceeding under Section 2(c) of the Contempt of Courts Act, 1971 against Petitioner No. 2. The contempt proceedings arose from an editorial written by the Petitioner No. 2 about the functioning of a Commission of Enquiry headed by the then sitting Judge of this Court Justice Kuldeep Singh. The Commission of Enquiry was set up under the Commission of Enquiry Act, 1952 to probe into the alleged acts of omission and commission by Mr. Ramakrishna Hegde, the former Chief Minister of Karnataka. The charge against the Petitioner No. 2 herein was that he had written an editorial with the caption "If shame had survived", thereby criticising Justice Kuldip Singh, as the Commissioner, for conducting the enquiry in a improper manner and for ignoring important facts and evidence. This Hon'ble Court in its judgment dated 23.07.2014 reported as [(2014) 12 SCC 344] *inter alia* held that truth is a valid defence in contempt proceedings and that the court may permit truth as a defence if two conditions are satisfied *viz.* 1.) public interest and 2.) the

	request for invoking the said defence is *bona fide*. Thus, the truthful editorial written by the Petitioner No. 2 criticising the sitting Chairman of a Commission of Enquiry, (who was also a sitting Supreme Court judge) was held not to be contempt.
March 2005	In March 2005, the Hon'ble High Court of Kerala initiated contempt proceedings against two former Supreme Court judges, and 13 others including the Petitioner No. 1 herein for their statements condemning the way *Mathrubhumi* Editor K Gopalakrishanan was forced to appear in the court on a stretcher on November 9, 2001, following summons by the court in a contempt case, which was initiated against the Editor for publishing the proceedings of the Kollam Magistrate's Court in the Kalluvathukkal liquor tragedy case.
2006	*Vide Act 6 of 2006*, Section 13 of the Contempt of Courts Act, 1971 was amended and "*justification by truth*" was included as a valid defence in contempt proceedings if the Court is satisfied that it is in public interest and the request for invoking the said defence is *bona fide*. The new Section 13 is provided herein-below: *"13. Contempts not punishable in certain cases.— Notwithstanding anything contained in any law for the time being in force,—* *(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;* *(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.*

2009	In the year 2009, a contempt case [*C.P. (Crl.) No. 10 of 2009*] was initiated against the Petitioner No.3 herein on account of Petitioner No. 3's interview given to *Tehelka* magazine in which the Petitioner No.3 had make certain *bona fide* remarks regarding corruption prevalent in this Hon'ble Court. The said contempt case is still pending adjudication before this Hon'ble Court.
February 2019	In February 2019, this Hon'ble Court issued contempt notice against the Petitioner No. 3 on account Petitioner No. 3's *bona fide* comment on social media that the Centre had misled this Hon'ble Court into believing that a High Powered Committee had vetted the appointment of an interim CBI chief when it had not. The said criminal contempt case is still pending adjudication before this Hon'ble Court.
27.06.2020	On 27.06.2020, the Petitioner No. 3 herein made the following tweet: *"When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."*
29.06.2020	On 29.06.2020, the Petitioner No. 3 herein made the following tweet commenting on a photo of the incumbent Hon'ble CJI S.A. Bobde on a Harley-Davidson bike: *"CJI rides a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access Justice!"*

22.07.2020	On 22.07.2020, this Hon'ble Court issued contempt notice to the Petitioner No. 3 herein in *SCM (Crl.) No. 1 of 2020*, titled **In Re Prashant Bhushan & Anr.** after taking *suo motu* cognizance of the aforesaid two tweets dated 27.06.2020 and 29.06.2020.
24.07.2020	*C.P. (Crl.) No. 10 of 2009* was listed before this Hon'ble Court on 24.07.2020 after more than 8 years. The next date of hearing of the said case is 04.08.2020.
31.07.2020	The instant petition is filed before this Hon'ble Court.

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

1. **N. Ram**
   S/o Late Mr. G. Narasimhan
   R/o 26 (Old Number 43-B) Kasturi Ranga Road
   Chennai 600 018 ...Petitioner No.1

2. **Arun Shourie**
   S/o Late Mr. HD Shourie
   R/o House No. A-31, West End Colony
   Block A, New Delhi -110021 ...Petitioner No. 2

3. **Prashant Bhushan**
   S/o Mr. Shanti Bhushan
   R/o House No. B-16, Sector 14,
   Noida, Uttar Pradesh -201301 ...Petitioner No. 3

VERSUS

1. **Union of India**
   Through its Secretary,
   Ministry of Law and Justice
   4th Floor, A-Wing, Shastri Bhawan,
   New Delhi - 110001 ...Respondent No.1

WRIT PETITION IN UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA CHALLENGING THE CONSTITUTIONAL VALIDITY OF SECTION 2(c)(i) OF THE CONTEMPT OF COURTS ACT, 1971

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the instant writ petition has been filed under Article 32 of the Constitution of India challenging the constitutional validity of Section 2(c)(i) of the Contempt of Courts Act, 1971 as being violative of Articles 19 and 14 of the Constitution of India. The impugned sub-section is unconstitutional as it is incompatible with preambular values and basic features of the Constitution, it violates Article 19(1)(a), is unconstitutionally and incurably vague, and is manifestly arbitrary.

1A. Petitioner No. 1, Mr. N. Ram, is a journalist and former Editor-in-Chief, former Publisher, and former Chairman of The Hindu Group of Newspapers. He is presently a Director of The Hindu Group Publishing Private Limited and of Kasturi & Sons Ltd., the holding company for the Group. He has been the recipient of the Padma Bhushan (1990), the Asian Investigative Journalist of the Year (1990) Award from the Press Foundation of Asia, the JRD Tata Award for Business Ethics from XLRI, the Sri Lanka Ratna, Sri Lanka's highest civilian honour for non-nationals, and the Raja Ram Mohan Roy Award (2018) from the Press Council of India for outstanding contribution to journalism, among others.

Petitioner No. 2, Mr. Arun Shourie, is a former Union Minister of Communication and Information Technology. He has worked with the World Bank, the Planning Commission of India, et al. He is a former editor of *The Indian Express*. He was awarded the Padma Bhushan

in 1990 and the Ramon Magsaysay Award in the category of Journalism, Literature, and the Creative Communication Arts.

Petitioner No. 3, Mr. Prashant Bhushan, is a well-known advocate practicing before this Hon'ble Court for more than 35 years. He is also a social activist involved in public interest work. As a lawyer, he has filed several PILs before this Hon'ble Court and various High Courts and argued them *pro bono*. Many of these cases have resulted in landmark judgments and directions to authorities.

2. That the petitioners in the instant case are all highly respected individuals with outstanding track-records in their respective fields. As part of their work, whether journalism or practicing law, they occasionally opine about public institutions including the functioning of various courts in the country including this Hon'ble Court. As journalists, social activists and opinion makers, the petitioners are concerned about Section 2(c)(i) of the Contempt of the Court's Act, 1971, in particular, the chilling effect on the freedom of speech that it has.

3. Section 2 of the Contempt of Courts Act, 1971 provides:

> **2. Definitions**.—In this Act, unless the context otherwise requires,—
>
> (a) "contempt of court" means civil contempt or criminal contempt;
> (b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;
>
> (c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible

representations, or otherwise) of any matter or the doing of any other act whatsoever which—

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

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

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

(d) "High Court" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.

4. The petitioners have all had a tryst with contempt proceedings especially under the impugned Section 2(c)(i) of the Contempt of Courts Act, 1971. The following are the details about the said cases:

Contempt Case against Petitioner No. 1

5. That in March 2005, the Hon'ble High Court of Kerala initiated contempt proceedings against two former Supreme Court judges, and 13 others including the Petitioner No. 1 herein for for their statements condemning the way *Mathrubhumi* Editor K Gopalakrishanan was forced to appear in the court on a stretcher on November 9, 2001, following summons by the court in a contempt case, which was initiated against the Editor for publishing the proceedings of the Kollam Magistrate's Court in the Kalluvathukkal liquor tragedy case. The High Court however closed the contempt proceedings in 2005. A copy of the news report dated 24.03.2005 published The Outlook India describing the case is annexed herewith as **ANNEXURE P1** (pg **42 to 43**).

Contempt Case against Petitioner No. 2

6. That in August 1990, a contempt petition was filed by Mr. Subramanian Swamy against the Petitioner No. 2, the then editor of *The Indian Express*. At the same time, this Hon'ble Court also initiated a *suo motu* contempt proceeding under Section 2(c) of the Contempt of Courts Act, 1971 against Petitioner No. 2. The contempt proceedings arose from an editorial written by the Petitioner No. 2 about the functioning of a Commission of Enquiry headed by the then sitting Judge of this Court – Justice Kuldip Singh. The Commission of Enquiry was set up under the Commission of Enquiry Act, 1952 to probe into the alleged acts of omissions and commissions by Mr. Ramakrishna Hegde, the former Chief Minister of Karnataka. The charge against Petitioner No. 2 herein was that he had written an editorial with the caption "*If shame had survived*", thereby criticising Justice Kuldip Singh, as the Commissioner, for conducting the enquiry in a improper manner and for ignoring important facts and evidence. This Hon'ble Court in its judgment dated 23.07.2014 reported as [*(2014) 12 SCC 344*] *inter alia* held that truth is a valid defence in contempt proceedings and that the court may permit truth as a defence if two conditions are satisfied *viz.* 1.) public interest and 2.) the request for invoking the said defence is *bona fide*. Thus, the truthful editorial written by the Petitioner No. 2 criticising the sitting Chairman of a Commission of Enquiry, (who was also a sitting Supreme Court judge) was held not to be contempt. A copy of the judgment dated 23.07.2014 passed in **Subramanian Swamy v. Arun Shourie**, reported as (2014) 12 SCC 344] is annexed herewith and marked as **ANNEXURE P2** (Pg. **44 to 61**).

Contempt Case against Petitioner No. 3

7. That in the year 2009, a contempt case [*C.P. (Crl.) No. 10 of 2009*] was initiated against the Petitioner No. 3 herein on account of Petitioner No. 3's interview given to *Tehelka* magazine in which the Petitioner No. 3 had make certain *bona fide* remarks regarding corruption prevalent in the Judiciary. The said contempt case is still pending adjudication before this Hon'ble Court. The said case was listed before this Hon'ble Court on 24.07.2020 after more than 8 years. The next date of hearing of the said case is 04.08.2020. A copy of the order dated 14.07.2010 passed by this Hon'ble Court in C.P. (Crl.) No. 10 of 2009 is annexed herewith and marked as . **P3** (Pg. 62 to 73). A copy of the order dated 24.07.2020 passed by this Hon'ble Court in C.P. (Crl.) No. 10 of 2009 is annexed herewith and marked as **Annexure P4** (Pg 74 to 75).

8. On 22.07.2020, this Hon'ble Court issued a contempt notice to the Petitioner No. 3 herein in *SCM (Crl.) No. 1 of 2020*, titled **In Re Prashant Bhushan & Anr.** It appears that the said *suo motu* case was initiated against the Petitioner No.3 herein on the basis of a petition filed (on 09.07.2020) by one Mr. Mahek Maheshwari seeking to initiate criminal contempt proceedings against the Petitioner herein for his remarks on the Hon'ble CJI in the tweet dated 29.06.2020. In the said order, dated 22.07.2020, this Hon'ble Court quoted the tweet dated 29.06.2020, after observing that:

> *"This petition was placed before us on the administrative side whether it should be listed for hearing or not as permission of the Attorney General for India has not been obtained by the petitioner to file this petition. After examining the matter on administrative side, we have*

directed the matter to be listed before the Court to pass appropriate orders. We have gone through the petition."

Thereafter, in the said order, dated 22.07.2020, this Hon'ble Court took note of the Petitioner No. 3's tweet, dated 27.06.2020, published by the *Times of India* in its newspaper on 22.07.2020. A copy of the order, dated 22.07.2020, passed by this Hon'ble Court in *SCM (Crl.) No. 1 of 2020*, titled **In Re Prashant Bhushan & Anr.** is annexed hereto and marked as **ANNEXURE P5 (Pg. 76 to 77).**

9. That this Hon'ble took *suo motu* cognizance of the aforesaid two tweets dated 27.06.2020 and 29.06.2020 and issued notice to the Petitioner No. 3 herein after observing as follows in the order dated 22.07.2020"

"We are, prima facie, of the view that the aforesaid statements on Twitter have brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the Institution of Supreme Court in general and the office of the Chief Justice of India in particular, in the eyes of public at large.
We take suo motu cognizance of the aforesaid tweet also apart from the tweet quoted above and suo motu register the proceedings.
We issue notice to the Attorney General for India and to Mr. Prashant Bhushan, Advocate also."

10. That this Hon'ble Court in **D. C. Saxena v. Chief Justice of India, (1996) 5 SCC 216** has held that the definition contained in the impugned sub-section informs and guides not only prosecutions for contempt under the Contempt of Courts Act 1971 but also *suo motu* proceedings under Articles 129 and 215 of the Constitution in the following terms:

> "**28.** *...As this Court has taken suo motu action under Article 129 of the Constitution and the word 'contempt' has not been defined by making rules, it would be enough to fall back upon the definition of "criminal contempt" defined under Section 2(c) of the Act ..."*

11. That this Hon'ble Court has affirmed that legislative exercise of defining contempt would not be barred by Articles 129 and 215 in **Pallav Sheth v. Custodian (2001) 7 SCC 549** in the following terms:

> "***30.*** *There can be no doubt that both this Court and High Courts are courts of record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute, can there by any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215, there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution.*

31. This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature, it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously."

[Emphasis Supplied]

12. That Section 2(c)(i) of the Contempt of Courts Act is unconstitutional as it:

a. violates Article 19(1)(a),
b. is unconstitutionally and incurably vague, and
c. is manifestly arbitrary.

13. The petitioners have not filed any other similar petition before this Hon'ble Court or any High Court or any other court. The petitioners have no better remedy available.

GROUNDS

A. VIOLATION OF ARTICLE 19(1)(a)

A1 That the impugned sub-section violates the right to free speech and expression guaranteed under Article 19(1)(a) and does not amount to a reasonable restriction under Article 19(2) on the following grounds:

First, the impugned sub-section fails the test of overbreadth.

Second, the impugned sub-section abridges the right to free speech and expression in the absence of tangible and proximate harm.

Third, the impugned sub-section creates a chilling effect on free speech and expression.

Fourth, the offence of "scandalizing the court" cannot be considered to be covered under the category of "contempt of court" under Article 19(2).

Fifth, even if the impugned sub-section were permissible under the ground of contempt in Article 19(2), it would be disproportionate and therefore unreasonable.

Finally, the offence of "scandalizing the court" is rooted in colonial assumptions and objects, which have no place in legal orders committed to democratic constitutionalism and the maintenance of an open robust public sphere.

Section 2(c)(i) of the Contempt of Courts Act 1971 Fails the Test of Overbreadth

A2 That the impugned sub-section fails the test of overbreadth. It is settled law that any legislation having the effect of restricting the right to free speech and expression on any of the grounds enumerated in Article 19(2) must be couched in the narrowest possible terms and cannot cast a "wide net". It is liable to be struck down as overbroad if it does so (**Superintendent Central Prison v. Ram Manohar Lohiya (1960) 2 SCR 821**; **Kameshwar Prasad v. State of Bihar 1962 Supp (3) SCR 369**; **Shreya Singhal v. Union of India (2015) 5 SCC 1**;

Anuradha Bhasin v. Union of India W.P.(C) 1031 of 2019; **Chintaman Rao v. State of Madhya Pradesh, 1950 SCR 79**; **State of Madras v. V.G. Row, 1952 SCR 597**).

A3 That a Constitution Bench of this Hon'ble Court has held in **Kameshwar Prasad v. State of Bihar** that:

"5. ...The approach to the question regarding the constitutionality of the rule should be whether the ban that it imposes on demonstrations would be covered by the limitation of the guaranteed rights contained in Art. 19(2) and 19(3). In regard to both these clauses the only relevant criteria which has been suggested by the respondent-State is that the rule is framed -in the interest of public order". A demonstration may be defined as "an expression of one's feelings by outward signs". A demonstration such as is prohibited by, the rule may be of the most innocent type- peaceful orderly such as the mere wearing of a badge by a Government servant or even by a silent assembly say outside office hours-demonstrations which could in no sense be suggested to involve any breach of tranquillity, or of a type involving incitement to or capable of leading to disorder. If the rule had confined itself to demonstrations of type which would lead to disorder then the validity of that rule could have been sustained but what the rule does is the imposition of a blanket-ban on all demonstrations of whatever type-innocent as well as otherwise-and in consequence its validity cannot be upheld."

[Emphasis Supplied]

A4 That the impugned sub-section has an extremely wide import and is incapable of objective interpretation and even-handed application. For instance, a mere interrogation by a traffic constable about whether the red beacon on the hood of a judge's car was authorised was held to be contempt on the grounds of "scandalising the court". (See **Suo Motu Action by High Court of Allahabad v. State of U.P. AIR 1993 All 211**).

A5 That even though a Constitution Bench of the Supreme Court has distinguished between defamation of an individual judge and the offence of contempt of court in **Brahma Prakash Sharma v. State of U.P. 1954 SCR 1169**, the offence has been applied in instances where speech has been directed not against the court but against an individual judge (See **D.C. Saxena v. the Chief Justice of India (1996) 5 SCC 216**). Contempt proceedings have also been initiated on the basis of criticism of former judges of this Hon'ble Court and the High Courts, on the grounds that even though they have ceased to exercise judicial functions, criticism of them would nevertheless scandalise the court.

A6 That former judges do not continue to be considered as "the court" for contempt proceedings. This Hon'ble Court held in **Subramanian Swamy v. Arun Shourie (2014) 12 SCC 344** that even a retired Supreme Court judge heading a Commission of Inquiry would could have no recourse to the law of contempt, as the Commission would not amount to a "court" for the purposes of the impugned sub-section;

"**22.** *As is seen from above, the Commission has the powers of civil court for the limited purpose as set out in that section. It is also treated as a civil court for the purposes of Section 5(4). The proceedings before the Commission are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Penal Code. But the real issues are: whether the above provisions particularly and the 1952 Act generally would bring the Commission comprising of a sitting Supreme Court Judge within the meaning of "court" under Section 2(c)(i)? ...*

25. *Though the 1971 Act does not define the term "court" but in our opinion, the "court" under that Act means the authority which has the legal power to give a judgment which, if confirmed by some other authority, would be definitive. The court is an institution which has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions and if its procedure is judicial in character in such matters as the taking of evidence and the administration of oath, then it is a court. The Commission constituted under the 1952 Act does not meet these pre-eminent tests of a court."*

A7 That the Bombay High Court in **In Re: Reference by Judicial Magistrate First Class Kirkee 1987 Mh. L.J. 358** has held that a retired judge would not amount to "the court":

"4. *Mr. Irani says that the impugned statement does not scandalise or tend to scandalize, nor does it lower or tend to lower the authority of any court. In the instant case, the*

impugned statement does not refer to a particular court, but refers to a Magistrate who was holding the post at the relevant time. In a given case, even casting aspersions on a Magistrate, instead of on a court would amount to scandalizing or lowering the authority of that Court because he is presiding over a particular Court. In the instant case, the Magistrate against whom the allegations have been made had not only ceased to be a judicial officer but has in fact died. If this is so, says Mr. Irani, it cannot be said that the impugned statement amounts to contempt of court within the meaning of Section 2(c)(i) of the Contempt of Courts Act. In our opinion, this contention is well founded. The learned Magistrate, who convicted the Respondent in the year 1968 had , admittedly, ceased to be a member of the judiciary. As already mentioned above, in fact he has expired. He was therefore not sitting in any Court at the time when the impugned statement was made..."

[Emphasis Supplied]

A8 That the overbroad language of the impugned sub-section leaves open the possibility of it being used to punish speech which does not interfere with judicial proceedings or the administration of justice, merely because the speech may sway the sentiments of the public against the Court. In effect, the impugned sub-section grants courts at every level an absolute power to quell all criticism of the courts or judges.

Section 2(c)(i) of the Contempt of Courts Act 1971 criminalises speech in the absence of proximate and tangible harm

A9 That the right to free speech and expression cannot be abridged on the basis of a mere speculation of harm. Nor can the right to free speech be restricted in the absence of real and proximate harm. The impugned sub-section restricts speech on the basis of no more than its a "tendency" to scandalise or lower the authority of the courts. This is constitutionally impermissible in the absence of some evidence or connection which removes alters the harm from a purely speculative one to a real, proximate and likely one.

A10 That this Hon'ble Court has observed in **S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574** that:

> "45. ...Our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg"."
>
> [Emphasis Supplied]

A11 That the test of public confidence by which the applicability of the impugned offence to speech is determined is incapable of meeting the standard set out in **S. Rangarajan** (**Supra**). The

said test ignores the requirement for real damage and draws speech into the net of the offence prematurely and on the basis of the effect of the speech on public sentiment alone. Until an injury to sentiments crystallises into a likelihood of tangible and material harm, the speech remains protected by Article 19(1)(a) and criminalisation of such speech remains incapable of amounting to a reasonable restriction under Article 19(2).

A12 That the real test for constitutionally permissible restrictions of speech, even if it technically amounts to contempt has been laid down by the US Supreme Court as a "*clear and present danger to the administration of justice*". In **Bridges v. California 341 US 242 (1941)**, the US Supreme Court, while deciding a case in which contempt citations had been brought against a newspaper and a labour leader for statements made about pending judicial proceedings, Justice Black, for a five-to-four majority, began by applying the clear and present danger test, which he interpreted to require that "the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." It is this connection of harm which is inherent in Sections 2(c)(ii) and 2(c)(iii) of the Contempt of Courts Act, 1971. It is really such a test which must be satisfied for speech to be restricted on the ground of Contempt of Court under Article 19(2).

A13 That, by criminalising criticism of the court in sweeping and absolute terms, the impugned sub-section raises a prior restraint on speech on matters of public and political importance. This Hon'ble Court has observed in **R. Rajagopal v. State of T.N. (1994) 6 SCC 32** that restrictions on speech on

such matters bear a heavy presumption against constitutionality even if they are allegedly defamatory:

"We may now consider whether the State or its officials have the authority in law to impose a prior restraint upon publication of material defamatory of the State or of the officials, as the case may be? We think not. No law empowering them to do so is brought to our notice. As observed in New York Times v. United States 24 (1971) 403 US 713, popularly known as the Pentagon papers case, "any system of prior restraints of (freedom of) expression comes to this Court bearing a heavy presumption against its constitutional validity" and that in such cases, the Government "carries a heavy burden of showing justification for the imposition of such a restraint"."

A14 That this Hon'ble Court, relying on the Constitution Bench decisions in **Ram Manohar Lohia v. State of Bihar (1966) 1 SCR 709** and **Kameshwar Prasad (Supra)**, held in **Shreya Singhal v. Union of India (2015) 5 SCC 1** that:

"93. The Court further went on to hold that remote disturbances of public order by demonstration would fall outside Article 19(2). The connection with public order has to be intimate, real and rational and should arise directly from the demonstration that is sought to be prohibited."

A15 That the language of a "tendency" to scandalise or lower the authority of the Courts used in the impugned sub-section fails the test of proximate cause or "spark in a powder keg". Views which only *tend* to scandalise are even more removed from the

real harm requirement than those which amount to scandalising the court without having any effect on public order. Further, dissenting and critical views are almost always likely to have such a tendency, and the impugned sub-section has the effect of targeting speech of this kind as a result.

Section 2(c)(i) of the Contempt of Courts Act 1971 has a Constitutionally Impermissible Chilling Effect.

A16 That this Hon'ble Court has held in **P.N. Duda v. P. Shiv Shankar (1988) 3 SCC 168** that:

"9. "Justice is not a cloistered virtue. she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men." - said Lord Atkin in ***Ambard v. Attorney-General for Trinidad and Tobago, [1936] A.C. 322*** *at 335. Administration of justice and Judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by their conscience and oath of their office, that is, to defend and uphold the Constitution and the laws without fear and favour...*

11....The Court must harmonise the constitutional values of free criticism, and the need for a fearless curial process and its presiding functionary, the judge. To criticise a judge fairly albeit fiercely, is no crime but a necessary right. Where freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it. The Court must avoid confusion between personal protection of a libelled judge and prevention of

obstruction of public justice and the community's confidence in that great process. The former is not contempt but latter is, although overlapping spaces abound."

[Emphasis Supplied]

A17 That this Hon'ble Court has held that the judiciary as an institution must be open to public criticism. However, the overbreadth of the words of the provision and the resulting reality of its inconsistent application has the effect of threatening dissenters and critics into silence on pain of criminal penalty. This has a chilling effect on free speech and expression, and silences legitimate criticism and dissent to the detriment of the health of the democracy.

A18 That the Hon'ble Supreme Court in **Anuradha Bhasin v. Union of India Writ Petition (Civil) No. 1031 of 2019** has affirmed that the argument of the chilling effect may make up a substantive component of arguments in free speech cases:

"...We may note that the argument of chilling effect has been utilized in various contexts, from being purely an emotive argument to a substantive component under the free speech adjudication. The usage of the aforesaid principle is adopted for impugning an action of the State, which may be constitutional, but which imposes a great burden on the free speech..."

[Emphasis Supplied]

A19 That the need for protecting speakers from the chilling effect of the offence of "scandalising the court" may be put as follows:

"We cannot countenance a situation where citizen's live in fear of the Court's arbitrary power for words of criticism on the conduct of judges, in or out of court."

[Vinod A. Bobde, Scandals and Scandalising, (2003) 8 SCC Journal 32]

A20 That the test suggested for the existence chilling effect in **Anuradha Bhasin (Supra)** by this Hon'ble Court, over and above generalized and emotive claims, is satisfied by the offence of scandalising the court. This Hon'ble court set out the following test:

"...one possible test of chilling effect is comparative harm. In this framework, the Court is required to see whether the impugned restrictions, due to their broadbased nature, have had a restrictive effect on similarly placed individuals during the period."

The threat of criminal penalty associated with the offence of scandalising the court places a real and immediate burden on the exercise of the free speech right. It demonstrably deters the airing of critical viewpoints by members of the general public, creates serious disincentives to journalism about the judiciary and so impoverishes the public sphere.

A21 That the impugned sub-section is consequently liable to be struck down on account of having a chilling effect on free

speech and expression as it stifles legitimate criticism of the judiciary by the threat of criminal sanction.

The offence set up under Section 2(c)(i) of the Contempt of Courts Act 1971 does not control the meaning of "contempt of court" under Article 19(2).

A22 That the offences of "scandalizing" or "lowering or tending to lower the authority of the court" were not specifically or expressly contemplated as reasonable restrictions under the ground of "contempt of court" in Article 19(2). The category of "contempt of court" was added by means of an amendment to Draft Article 13(2) (final Article 19(2)) and was intended to:

"*...cover one category of what might be called lapses in the exercise of freedom of speech and expression, namely, a person might be speaking on a matter which is sub judice and thereby interfere with the administration of justice.*"

(**T.T. Krishnamachari on Draft Article 13, Constituent Assembly of India Debates (Proceedings) - Volume X, Monday the 17th October, 1949**).

A23 That the Constituent Assembly Debates on Draft Article 13(2) make clear that the ground of "contempt of court" had been introduced to cover a lacuna by permitting restrictions on persons speaking on matters which were *sub-judice*, and which could consequently lead to interference with the administration of justice. This intention was noted by Mr. Krishnamachari:

"We, therefore, felt, Sir, that we would restrict ourselves to merely remedying a lacuna rather than extending the

scope of the exceptions mentioned in clause (2) and that is why we have decided to drop the original amendment 415 and we have tabled amendment No. 449 in which contempt of court will figure on a par with libels, slander, defamation or any mater which offends against decency or morality, or which undermines the security of, or tends to overthrow, the State."

A24 That the impugned sub-section was introduced in 1971, a full forty years after the last prosecution for "scandalising the court" under common law in the UK (See **R v. Colsey, The Times 9 May 1931**). The offence had fallen into disuse under common law, and was not contemplated as a ground for restriction under Article 19(2) during the adoption of the Constitution, as Mr. Krishnamachari's explanation regarding the ground of "contempt of court" makes abundantly clear. The meaning of "contempt of court" under Article 19(2) cannot *post-facto* be extended by legislation to include "scandalising the court".

A25 That it would be wholly unconstitutional to allow legislation to expand the scope of restrictions at the cost of the breadth and vigour of the fundamental right that they curtail. Judges of this Hon'ble Court have recognised and affirmed as early as in 1951 and as recently as 2020 that it is the rights which are fundamental, and the not the restriction (See **Sushila Aggarwal and Others v. State (NCT of Delhi) and Another Special Leave Petition (Criminal) Nos. 7281-7282/2017, S. Ravindra Bhat, J. (Concurring); Ram Singh v. State of Delhi 1951 AIR 270, 1951 SCR 451 Vivian Bose, J. (Dissenting)**).

A26 That it is an established constitutional principle that no legislation that purports to occupy a particular field can go beyond the scope of that field such that it makes another field of legislation meaningless (see **In Re: Special Reference No. 1 of 2001 (2004) 4 SCC 489**; **Bimolangshu Roy v. State of Assam (2018) 14 SCC 408**; **Union of India v. Shah Goverdhan L. Kabra Teacher's College (2002) 8 SCC 228** and **Ahmedabad Municipal Corporation v. GTL Infrastructure Limited (2017) 3 SCC 545**). What is true of statutes would hold with greater force when such a legislation trenches upon the field of a constitutional provision. Consequently, the impugned sub-section is liable to be struck down as it purports to be a restriction under the category of "contempt of court" under Article 19(2), while clearly going beyond the meaning that was ascribed to the aforesaid category by the drafters of the Constitution.

Section 2(c)(i) of the Contempt of Courts Act 1971 Fails the Test of Proportionality.

A27 That this Hon'ble Court has held in **State of Madras v. V.G. Row 1952 SCR 597** that for any restriction under Article 19(2) must not be disproportionate in order to be reasonable:

> *"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to*

have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

A28 That the principle of proportionality has evolved into a four-pronged test, as set down in **Modern Dental College and Research Centre v. State of Madhya Pradesh (2016) 7 SCC 353** and affirmed in **K.S. Puttaswamy v. Union of India (2019) 1 SCC 1**. In substance, the proportionality test consists of the following prongs:

i. The existence of a legitimate state aim;
ii. The existence of a rational nexus between the aim and the infringement of the right ('the rationality prong');
iii. That the infringement is the least restrictive measure available for the fulfilment of the aim (i.e., alternatives must be unquestionably foreclosed) ('the necessity prong'); and
iv. That a balance is struck between the extent of the restriction and the benefit that the State hopes to achieve by its imposition ('balancing').

A29 That, in view of the colonial foundations of and justifications for the offence as well as its sweeping breadth, the aim of the impugned sub-section is to immunise courts from criticism and to maintain public confidence in the courts by this route (rather than leaving confidence to follow from the manner which courts' functions are discharged) does not satisfy the first prong.

A30 That, in addition to creating a chilling effect as outlined above, the impugned sub-section impacts dignity and liberty under Article 21. Not only does conviction under the impugned sub-section lead to imprisonment, but it also impacts the fundamental right to reputation of the speaker or dissident. The right to reputation has been held to be fundamental to the right to life and personal liberty under Article 21 (See **Om Prakash Chautala v. Kanwar Bhan (2014) 5 SCC 417**; **Subramanian Swamy v. Union of India (2016) 7 SCC 221**; **Umesh Kumar v. State of A.P. (2013) 10 SCC 591** and **Kishore Samrite v. State of U.P. (2013) 2 SCC 398**).

A31 That the impugned sub-section clearly breaches the rationality prong, as there is often only a tenuous nexus between the restriction on free speech and the end that is sought to be achieved. This has already been discussed in detail in above (See **Fails the test of Over-breadth**, **Absence of Proximate Harm** above).

A32 That the impugned sub-section also clearly breaches the necessity prong. This requires that the restriction impair the fundamental right to a minimal degree. In **Internet and Mobile Association of India v. Reserve Bank of India W.P.(C) No. 528 of 2018**, the Hon'ble Court described the exercise to be undertaken by it as follows:

> *"...we are obliged to see if there were less intrusive measures available and whether RBI has at least considered these alternatives."*

A33 Section 2(c)(ii) and (iii) of the Contempt of Courts Act 1971 already contain provisions defining contempt to include interference with ongoing judicial proceedings or the administration of justice. Thus, the existence of the impugned sub-section is unnecessary, and it serves as a catch-all provision to punish speech that may not interfere with either any judicial proceedings or the administration of justice. Sections 2(c)(ii) and 2(c)(iii) are less intrusive measures and under which all genuine offences of criminal contempt can be effectively dealt with and the capacity of the courts to function can be preserved.

A34 That that the offence of "scandalising the court" has been held unconstitutional in Canada in **R. v. Kopyto (1987) 62 O.R. (2d) 449 (C.A.)** on the grounds that it fails the test of proportionality, and casts an undue burden on free speech and expression guaranteed under the Canadian Charter of Rights and Freedoms. Cory, J. commented that the judiciary was not a "*frail flower*" and that the public in democracies must be trusted not to take scurrilous comments seriously.

A35 That the impugned sub-section is clearly disproportionate to the aim that the Contempt of Courts Act sought to achieve, namely, to balance the fundamental right to free speech and expression with the status and dignity of courts and interests of the administration of justice (See **Statement of Objects and Reasons, The Contempt of Courts Act, 1971**). These aims are amply served by Sections 2(c)(ii) and 2(c)(iii), with the impugned sub-section being wholly extraneous to the object of ensuring the dignity of court in genuine cases of criminal

contempt. Therefore, the impugned sub-section fails to meet the test of proportionality.

The offence of "scandalizing the court" is rooted in colonial assumptions and objects which have no regard to respecting fundamental rights in a democracy, including freedom of speech, equality and equal treatment.

A36 That the offence of "scandalising the court" is premised on the idea that the speech by ordinary citizens about the judicial process must be curtailed in order to protect the "dignity" and "majesty" of courts, and that the populations which courts serve would not proceed with respect or concern for public institutions unless their speech is restricted by the threat of criminal sanction.

A37 That the offence of "scandalizing the court" punishable by a summary procedure has its origins in the common law understanding that judges were an extension of the Crown, and consequently deserved decisive and convenient means by which to maintain their "honour" and "glory". In **R. v. Almon (1765) Wilmot 243, 270; 97 ER 94, 105**, the Court explained the rationale of the offence of scandalising as follows:

> *"But the principle upon which attachments issue for libels upon courts is of a more enlarged and important nature — it is to keep a blaze of glory around them, and to deter people from attempting to render them contemptible in the eyes of the public."*

A38 That the offence was obsolete in England by the end of the nineteenth century, and was only considered suitable to "coloured" people from the colonies, who were considered to not have the same rights as Englishmen, and were patronisingly viewed as unable to participate in institutions of a democratic society. This logic – based on the lack of rights as well as of competence or maturity of the colonised – is evident in the observations of the Privy Council in **McLeod v. St Aubyn [1899] AC 549**:

> "*Committals for contempt of court by scandalising the court itself have become obsolete in this country. Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them. But it must be considered that in small colonies, consisting principally of coloured populations, the enforcement in proper cases of committal for contempt of court for attacks on the court may be absolutely necessary to preserve in such a community the dignity of and respect for the court.*"

A39 That the Privy Council has itself acknowledged the underlying subtext of racism in **McLeod v. St Aubyn [1899] AC 549** in **Dhooharika v. Director of Public Prosecutions [2014] UKPC 11** and observed:

> "*The reference to "coloured populations" would be wholly inappropriate today.*"

A40 That the above makes it clear that the offence as invented in common law and received into Indian law is grounded on the

unacceptable and undemocratic infantilisation of citizens who receive information and views in the Indian public sphere. The offence seeks to shield citizens presumed - without foundation - to be an audience incapable of the discernment necessary to choose between good and bad arguments in the public sphere. This is based on the specious understanding that the people of India, despite having the competence (in constitutional law and in fact) to participate in public debate, to receive information about candidates and, on that basis and to choose their government by voting would be unable to discern and approach commentary concerning the courts with the same competence. It is both anachronistic and untenable that this offence should continue to exist alongside the constitutional guarantee of free expression and the basic feature of a democratic and republican government.

A41 That, the offence of "scandalising the court" has either been abolished or drastically circumscribed in many common law jurisdictions. Further, the UK Parliament has abolished the offence through the **Crime and Courts Act, 2013** (**Section 33**), acting on the recommendations of the UK Law Commission (**The Law Commission**, **Contempt of Court: Scandalising the Court, 18 December 2012**). The UK Law Commission recommended the abolition of the offence, despite that fact that it had fallen into disuse. This recommendation was founded on the following considerations, *inter alia*:

"(1) The offence of scandalising the court is in principle an infringement of freedom of expression that should not be retained without strong principled or practical justification.

...

(3) There are uncertainties about the conditions for the offence, which will need to be resolved if the offence is retained.

...

(6) The offence may be regarded as self-serving on the part of the judges; this risk would be reduced but not removed if the offence were restated in statute, as the offence would no longer be judge-made, though it would still be enforced by them.

(7) Prosecutions for this offence, or for any offence devised to replace it, are likely to have undesirable effects. These include re-publicising the allegations, giving a platform to the contemnor and leading to a trial of the conduct of the judge concerned.

...

(11) There are several statutory offences covering the more serious forms of behaviour covered by scandalising, and civil defamation proceedings are available in the case of false accusations of corruption or misconduct."

A42 That Supreme Court has observed that the modern offence of "scandalising the court" originates from the **Aubyn (Supra)** (**Delhi Judicial Service Association v. State of Gujarat (1991) 4 SCC 406, at paragraph 20**). In view of the colonial and unconstitutionally repressive character of the rationales that justify the offence and are applicable in drawing the

bounds of its subjective words, the impugned sub-section deserves to be struck down.

A43 The whole object of imposing reasonable restrictions on freedom of speech on the ground of contempt of court is to protect the administration of justice. "*Scandalising the Court*" has been used and is likely to be used to stifle criticism and freely discuss the acts of the judiciary. The whole object of the fundamental right to free speech is for citizens to be able to freely critique the functioning of public institutions as well as any individual manning those institutions without fear of criminal prosecution.

B. VAGUENESS

B1 That the impugned sub-section, despite setting out penal consequences, is incurably vague. It uses vague terminology whose scope and limits are impossible to demarcate. In particular, the phrase "*scandalises or tends to scandalise*" invites subjective and greatly differing readings and application which is incapable of being certain and even-handed. Thus, the offence violates the Article 14 demands of equal treatment & non-arbitrariness.

B2 That it is an established proposition of law that a statute using vague terms such that it is difficult to define or limit its scope is liable to be held to be invalid. (See **State of Bombay v. F.N.**

Balsara 1951 SCR 682; State of Madhya Pradesh v. Baldeo Prasad 1961 SCR (1) 970).

B3 That in **Kartar Singh v. State of Punjab (1994) 3 SCC 569**, this Hon'ble Court has held that:

"130. *It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning...*"

B4 That the impugned sub-section clearly fails the test outlined by the Constitution Bench in **Kartar Singh (Supra)**. The prohibitions in the impugned sub-section lack any clear definition, and do not provide persons with a reasonable opportunity or adequate warning regarding what is prohibited. The impugned sub-section is consequently liable to be struck down on account of vagueness.

B5 That the *whole* of the impugned sub-section is vague and incapable of redress. No possibility of carving out and saving a constitutionally valid portion of the provision exists. Where legislation creates an offences of this kind and there is no constitutionally fit part to be severed, this Court has held that the whole offence is liable to be struck down as unconstitutional. (See, for example, **Shreya Singhal (Supra)**).

C. MANIFEST ARBITRARINESS

C1 That the impugned sub-section fails the test of manifest arbitrariness laid down by the Hon'ble Supreme Court in **Shayara Bano v. Union of India (2017) 9 SCC 1** and followed in **Navtej Singh Johar v. Union of India (2018) 10 SCC 1** in which a widely and vaguely worded offence of colonial vintage criminalised otherwise lawful and constitutionally protected activity. The Hon'ble Supreme Court had observed in **Shayara Bano (Supra)** that:

"272. The thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the Rule of law, would violate Article 14. Further, there is an apparent contradiction in the three Judges' Bench decision in McDowell (supra) when it is said that a constitutional challenge can succeed on the ground that a law is "disproportionate, excessive or unreasonable", yet such challenge would fail on the very ground of the law being "unreasonable, unnecessary or unwarranted". The arbitrariness doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between state action in its various forms, all of which are interdicted if they fall foul of the fundamental rights guaranteed to individuals and citizens in Part III of the Constitution."

C2 That it is a settled position that a statute enacting an offence or imposing a penalty has to be strictly constructed. This Hon'ble Court has observed in **Sakshi v. Union of India (2004) 5 SCC 518** that:

> "19. ...*The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in it a meaning broader than they would ordinarily bear.*"

C3 That the broad and ambiguous wording of the impugned sub-section violates Article 14 by leaving the offence open to differing and inconsistent applications. This uncertainty in the manner in which the law applies renders it manifestly arbitrary and violates the right to equal treatment. Such a violation is evident in the cases relating to punishment for the offence of "scandalising the court". For instance, in **P. Shiv Shankar (Supra)**, the respondent was not held guilty of scandalising the court despite referring to Supreme Court judges at a public function as "*antisocial elements i.e. FERA violators, bride burners and a whole horde of reactionaries*" on account of the fact that he was Law Minister. However, in **D.C. Saxena (Supra)**, the respondent was held guilty of criminal contempt for alleging that a Chief Justice was corrupt and that an F.I.R. under the I.P.C. should be registered against him.

PRAYERS

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Issue an appropriate writ, order or direction declaring Section 2(c)(i) of the of the Contempt of Courts Act, 1971 as being violative of Articles 19 and 14 of the Constitution of India;

b. Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

PETITIONERS THROUGH:

Jaiswal

(KAMINI JAISWAL)
COUNSEL FOR THE PETITIONERS

Dated: 31.07.2020
New Delhi

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

N. RAM & ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

AFFIDAVIT

I, N. Ram, S/o the Late Mr. G. Narasimhan, R/o 26 (Old Number 43-B Kasturi Ranga Road, Chennai 600 018, do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner No. 1 in the instant writ petition and being familiar with the facts and circumstances of the case, I am fully competent and authorized to swear this Affidavit.
2. That I have read the contents of the accompanying Synopsis & List of dates, the writ petition, and the application for interim orders, and state that the same are true to the best of my knowledge, information, and belief. That the instant petition is based on information available in public domain. That the Annexures are true copies of their respective originals.
3. That I have done whatever inquiry/investigation that was in my power to do and collected all data/material which was available and which was relevant for this court to entertain the instant petition. I further

N Ram

confirm that I have not concealed in the present petition any data/material/information which may have enabled this Hon'ble Court to form an opinion whether to entertain the instant petition or not and/or whether to grant any relief or not.

N. Ram

DEPONENT

VERIFICATION

I, the above named Deponent, do hereby verify that the contents of the above Affidavit are true and correct to my knowledge, that no part of it is false, and that nothing material has been concealed therefrom.

Verified at Chennai on this 31st day of July 2020.

N. Ram

DEPONENT

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

N. RAM & ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

AFFIDAVIT

I, Arun Shourie, S/o Late Mr. H.D. Shourie, R/o House No. A-31, West End Colony, Block A, New Delhi -110021do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner No. 2 in the instant writ petition and being familiar with the facts and circumstances of the case, I am fully competent and authorized to swear this Affidavit.
2. That I have read the contents of the accompanying Synopsis & List of dates (Page B to I), the writ petition (Page 1 to 35) and state that the same are true to the best of my knowledge, information and belief. That the instant petition is based on information available in public domain. That the Annexures are true copies of their respective originals.
3. That I have done whatever inquiry/investigation that was in my power to do and collected all data/material which was available and which

was relevant for this court to entertain the instant petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Hon'ble Court to form an opinion whether to entertain the instant petition or not and/or whether to grant any relief.

DEPONENT

VERIFICATION

I, the above named Deponent, do hereby verify t hat the contents of the above Affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on this 31st day of July 2020.

DEPONENT

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

N. RAM & ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

AFFIDAVIT

I, Prashant Bhushan,S/o Mr. Shanti Bhushan, R/o House No. B-16, Sector 14, Noida, Uttar Pradesh -201301 do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner No. 3in the instant writ petition and being familiar with the facts and circumstances of the case, I am fully competent and authorized to swear this Affidavit.
2. That I have read the contents of the accompanying Synopsis & List of dates (Page B to I), the writ petition (Page 1 to 35) and state that the same are true to the best of my knowledge, information and belief.That the instant petition is based on information available in public domain. That the Annexures are true copies of their respective originals.
3. That I have done whatever inquiry/investigation that was in my power to do and collected all data/material which was available and which

was relevant for this court to entertain the instant petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Hon'ble Court to form an opinion whether to entertain the instant petition or not and/or whether to grant any relief.

Prashant Bhushan
DEPONENT

VERIFICATION

I, the above named Deponent, do hereby verify t hat the contents of the above Affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on this 31st day of July, 2020.

Prashant Bhushan
DEPONENT

HC closes contempt cases against two former judges, 13 others

24 March 2005 | NATIONAL| Outlook India

Kochi, Mar 24 (PTI) The Kerala High Court has decided to drop the contempt proceedings initiated against two former Supreme Court judges, and 13 others, including eminent journalist Kuldeep Nayar, for condemning the manner in which Mathrubhumi Editor K Gopalakrishanan was forced to appear before the court on a stretcher more than three years ago in a contempt case.

The other respondents in the case are N Ram, Editor 'The Hindu', M P Veerendra Kumar, Managing Director 'Mathrubhoomi', P V Chandran, Managing Editor 'Mathrubhommi', and Cho S Ramaswamy, Editor 'Tuglak', T J S George, Advisor 'New Indian Express', Dinanath Mishra, MP, and J P Mathur, BJP leader.

The two former judges are V R Krishna Iyer and V Balakrishna Eradi. Contempt action was initiated against them for their statements condemning the way Gopalakrishnan was forced to appear in the court on a stretcher on November 9, 2001, following summons by the court in a contempt case which was initiated against the Editor for publishing the proceedings of the Kollam Magistrate's Court in the Kalluvathukkal liqour tragedy case.

Condemning the incident, Justice Iyer wrote to the bench, which led the court taking up suo motu contempt proceedings against him.

The bench observed that though the respondents "did not show the maturity or restraint expected from persons of their age and experience, that did not warrant any action against them under the Contempt of Court Act".

The bench held that the judges should exercise "sufficient restraint" in taking action under the Act and should not be "too sensitive to the aberrations". Even if some dust was raised by the conduct of the respondents, it had now settled and people had forgotten the issue and it was "unwise" and unnecessary to revive it again.

Closing the contempt proceedings, the bench comprising former Acting Chief Justice, Cyriac Joseph (at present Uttranchal High Court Chief Justice) and Justice A K Basheer, in a recent judgement, held that statements were made by the respondents when their reaction and views were sought by the media. The persons named had no intention to lower the dignity and prestige of the judiciary.

https://www.outlookindia.com/newswire/story/hc-closes-contempt-cases-against-two-former-judges-13-others/288161

(2014) 12 Supreme Court Cases 344

(BEFORE R.M. LODHA, C.J. AND ANIL R. DAVE, SUDHANSU JYOTI MUKHOPADHAYA, DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.)

SUBRAMANIAN SWAMY .. Petitioner;

Versus

ARUN SHOURIE .. Respondent.

Contempt Petitions (Crl.) No. 11 of 1990 with No. 12 of 1990, decided on July 23, 2014

A. **Contempt of Court — "Court" — What is — Commission of Inquiry set up under 1952 Act with sitting Judge of Supreme Court as its Chairman, held, is not a "court", hence contempt of Commission/Commissioner cannot amount to contempt of court — Commission of Inquiry is not a court and making the inquiry or determination of facts by the Commission is not of judicial character — Commission constituted under the 1952 Act does not meet pre-eminent tests of a court**

— Merely because Commission of Inquiry is headed by a sitting Judge of the Supreme Court it does not become an extended arm of the Supreme Court — Inquiry Commission is a fact-finding body and is not required to adjudicate upon rights of the parties, it has no adjudicatory functions nor Government is bound to accept its recommendations or act upon its findings — Mere fact that the procedure adopted by the Commission is of a legal character and it has power to administer oath does not clothe it with the status of court — Inquiry Commission under 1952 Act is not a court for purposes of the Contempt of Courts Act, 1971 — Moreover, under S. 10-A of 1952 Act High Court has been conferred with the power to take cognizance of the complaint in respect of the acts calculated to bring the Commission or any member thereof into disrepute — Contempt petitions dismissed and contempt notices discharged — Commissions of Inquiry Act, 1952 — Ss. 415 and 10-A — Penal Code, 1860 — Ss. 19, 20, 193 and 228 — Contempt of Courts Act, 1971, Ss. 2(c) and 15

B. **Courts, Tribunals and Judiciary — Judicial Process — Judicial decision/Judicial function — What is — "Court" — What is — Held, means the authority which has the legal power to give a judgment which, if confirmed by some other authority, would be definitive — A court is an institution which has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions and if its procedure is judicial in character in such matters as the taking of evidence and the administration of oath, then it is a court — Words and Phrases — "Court" — Penal Code, 1860 — Ss. 19, 20, 193 and 228 — Contempt of Courts Act, 1971, Ss. 2(c) and 15**

C. **Constitution of India — Art. 129 — Supreme Court's jurisdiction to initiate suo motu contempt proceedings — Scope of — Limitation provided in S. 20 of Contempt of Courts Act, 1971 — Held, there are no implied or**

express limitations on the inherent powers of Supreme Court and, therefore, no limitations can be read into Art. 129 of the Constitution — Contempt of Courts Act, 1971 — S. 20 — Constitution of India — Arts. 124 and 131 to 142 — Administrative Law — Administrative and Regulatory Bodies — Administrative Tribunals — Inherent powers of Supreme Court — No limits **(Para 9)**

Justice Kuldip Singh, a sitting Judge of the Supreme Court at the time, was appointed as Chairman, Commission of Inquiry under the Commissions of Inquiry Act, 1952 to probe into alleged acts of omissions and commissions by Shri Ramakrishna Hegde, the former Chief Minister of Karnataka. The one-man Commission headed by Justice Kuldip Singh submitted its report on 22-6-1990. These two contempt matters, suo motu arise from the editorial published in the issue of *Indian Express* of 13-8-1990, bearing the caption "If shame had survived".

In a contempt petition filed by *S* under Section 15 of the Contempt of Courts Act, 1971 against *AS*, the then Editor of *Indian Express*, it is contended that the editorial is a scandalous statement in respect of a sitting Judge of the Supreme Court of India and the judiciary. It lowers the authority of the Supreme Court as well as shakes public confidence in it and amounts to criminal contempt of the Supreme Court. It was submitted that unless the Supreme Court acts promptly and if necessary, suo motu in the matter, sitting Judges would be helpless and unable to defend themselves, and in the process, public confidence in Judges and the courts would be eroded.

The suo motu contempt proceeding and so also the contempt petition filed by *S* came up for consideration before the three-Judge Bench of the Supreme Court headed by the Chief Justice. In the counter-affidavit, the respondent/ alleged contemnor *AS* prayed that in view of the sensitive nature of the facts, he would choose to refrain from setting out those facts in the affidavit but would prefer to put them in the form of a signed statement in a sealed cover for the perusal of the Court which may be treated as an integral part of the counter-affidavit. The Court rejected his prayer as it was inconsistent with any recognised form of pleadings. *AS* was given an opportunity to file an additional affidavit. The matters remained dormant for many years. Thereafter a three-Judge Bench directed that these matters be placed before a Constitution Bench.

Dismissing the contempt petitions, the Supreme Court

Held :

The question to be considered is whether a sitting Supreme Court Judge who is appointed as a Commissioner by the Central Government under the 1952 Act carries with him all the powers and jurisdiction of the Supreme Court. The 1952 Act provides for appointment of Commissions of Inquiry and for vesting such Commissions with certain powers. The Commission has the powers of civil court for the limited purpose as set out in Section 10-A of the 1952 Act. It is also treated as a civil court for the purposes of Section 5(4) of the 1952 Act. The proceedings before the Commission are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Penal Code. There is no doubt that the functions of the Commission appointed under the 1952 Act are not like a body discharging judicial functions or judicial power. The Commission appointed under the 1952 Act is not a court and making an inquiry or

determination of facts by the Commission is not of judicial character.

(Paras 16 and 17)

Sections 19 and 20 of the Penal Code define the words "Judge" and "court of justice". Though the Contempt of Courts Act, 1971 Act does not define the term "court" but the "court" under that Act means the authority which has the legal power to give a judgment which, if confirmed by some other authority, would be definitive. A court is an institution which has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions and if its procedure is judicial in character in such matters as the taking of evidence and the administration of oath, then it is a court. The Commission constituted under the 1952 Act does not meet these pre-eminent tests of a court.

(Paras 23 and 25)

A Commission appointed under the 1952 Act is in the nature of a statutory Commission and merely because a Commission of Inquiry is headed by a sitting Judge of the Supreme Court, it does not become an extended arm of the Supreme Court. The Commission constituted under the 1952 Act is a fact-finding body to enable the appropriate Government to decide as to the course of action to be followed. Such Commission is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by the Commission is of a legal character and it has the power to administer oath will not clothe it with the status of court. That being so the Commission appointed under the 1952 Act is not a court for the purposes of the Contempt of Courts Act even though it is headed by a sitting Supreme Court Judge. Moreover, Section 10-A of the 1952 Act leaves no manner of doubt that the High Court has been conferred with the power to take cognizance of the complaint in respect of the acts calculated to bring the Commission or any member thereof into disrepute. Section 10-A provides the power of constructive contempt to the Commission by making a reference to the High Court with a right of appeal to the Supreme Court. In view of the above reasons, the contempt petitions are dismissed and the contempt notices are discharged.

(Paras 34 and 35)

Ram Krishna Dalmia v. *S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279, *relied on*

Brajnandan Sinha v. *Jyoti Narain*, AIR 1956 SC 66 : 1956 Cri LJ 156 : (1955) 2 SCR 955; *Baliram Waman Hiray* v. *B. Lentin*, (1988) 4 SCC 419 : 1988 SCC (Cri) 941, *affirmed*

Hayles, Editor of The Mail, In re, AIR 1955 Mad 1; *P. Rajangam* v. *State of Madras*, AIR 1959 Mad 294, *approved*

M.V. Rajwade v. *S.M. Hassan*, AIR 1954 Nag 71, *held, approved*

Bharat Bank Ltd. v. *Employees*, AIR 1950 SC 188; *S.A. Venkataraman* v. *Union of India*, AIR 1954 SC 375 : 1954 Cri LJ 993; *Maqbool Hussain* v. *State of Bombay*, AIR 1953 SC 325 : 1953 Cri LJ 1432, *considered*

Subramanian Swamy v. *Arun Shourie*, Contempt Petition No. 11 of 1990, order dated 3-9-1990 (SC); *Subramanian Swamy* v. *Rama Krishna Hegde*, (2000) 10 SCC 331 : 2000 SCC (Cri) 97, *referred to*

Huddart, Parker & Co. (Pty) Ltd. v. *Moorehead*, (1909) 8 CLR 330 (Aust); *Shell Co. of Australia Ltd.* v. *Federal Taxation Commr.*, 1931 AC 275 : 1930 All ER Rep 671 (PC); *Rola Co. (Australia) (Pty) Ltd.* v. *Commonwealth*, (1944) 69 CLR 185 (Aust); *Madhava Singh* v. *Secy. of State for India in Council*, (1903-04) 31 IA 239, *cited*

Stephen's Commentaries on the Laws of England, 6th Edn., p. 383, *referred to*

D. **Contempt of Courts Act, 1971 — S. 13 (as substituted by Act 6 of 2006) — Truth as a valid defence in contempt proceedings — Court may now permit truth as a defence if two things are satisfied viz. (i) it is in public interest, and (ii) the request for invoking said defence is bona fide — Truthful editorial written in a newspaper criticising report of Chairman, Commission of Inquiry (who happened to be a sitting Judge of Supreme Court) — Held, is not contempt — Contempt of Court — Nature and Scope — Freedom of speech/expression and contempt of court — Constitution of India, Arts. 19(1)(a) and 129 (Paras 10, 11 and 13 to 15)**

Ambard v. *Attorney General for Trinidad and Tobago*, 1936 AC 322 : (1936) 1 All ER 704 (PC), *Nationwide News (Pty) Ltd.* v. *Wills*, (1992) 177 CLR 1 (Aust), *relied on*

Indirect Tax Practitioners' Assn. v. *R.K. Jain*, (2010) 8 SCC 281 : (2010) 3 SCC (Civ) 306 : (2010) 3 SCC (Cri) 841 : (2010) 2 SCC (L&S) 613, *affirmed*

B-D/53571/SR

Advocates who appeared in this case :

Mohan Parasaran, Solicitor General, Ashok H. Desai and Arvind Datar, Senior Advocates (Bharat Sangal, Ms Madhavi Divan, Ms Bina Gupta, Abhay A. Jena and Harsh Desai, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2010) 8 SCC 281 : (2010) 3 SCC (Civ) 306 : (2010) 3 SCC (Cri) 841 : (2010) 2 SCC (L&S) 613, *Indirect Tax Practitioners' Assn.* v. *R.K. Jain* 353*e-f*, 354*b-c*
2. (2000) 10 SCC 331 : 2000 SCC (Cri) 97, *Subramanian Swamy* v. *Rama Krishna Hegde* 351*a*
3. (1992) 177 CLR 1 (Aust), *Nationwide News (Pty) Ltd.* v. *Wills* 352*d-e*
4. Contempt Petition No. 11 of 1990, order dated 3-9-1990 (SC), *Subramanian Swamy* v. *Arun Shourie* 350*a-b*
5. (1988) 4 SCC 419 : 1988 SCC (Cri) 941, *Baliram Waman Hiray* v. *B. Lentin* 360*a-b*, 360*e-f*, 361*d*
6. AIR 1959 Mad 294, *P. Rajangam* v. *State of Madras* 359*f*
7. AIR 1958 SC 538 : 1959 SCR 279, *Ram Krishna Dalmia* v. *S.R. Tendolkar* 360*a*
8. AIR 1956 SC 66 : 1956 Cri LJ 156 : (1955) 2 SCR 955, *Brajnandan Sinha* v. *Jyoti Narain* 358*d-e*, 359*a*, 359*c*, 359*g-h*
9. AIR 1955 Mad 1, *Hayles, Editor of The Mail, In re* 359*c*
10. AIR 1954 SC 375 : 1954 Cri LJ 993, *S.A. Venkataraman* v. *Union of India* 358*f-g*
11. AIR 1954 Nag 71, *M.V. Rajwade* v. *S.M. Hasson* 360*e-f*, 361*d*
12. AIR 1953 SC 325 : 1953 Cri LJ 1432, *Maqbool Hussain* v. *State of Bombay* 358*f-g*, 358*g*
13. AIR 1950 SC 188, *Bharat Bank Ltd.* v. *Employees* 357*g-h*, 358*a*, 358*b*, 358*f-g*
14. (1944) 69 CLR 185 (Aust), *Rola Co. (Australia) (Pty) Ltd.* v. *Commonwealth* 358*b*
15. 1936 AC 322 : (1936) 1 All ER 704 (PC), *Ambard* v. *Attorney General for Trinidad and Tobago* 352*b-c*
16. 1931 AC 275 : 1930 All ER Rep 671 (PC), *Shell Co. of Australia Ltd.* v. *Federal Taxation Commr.* 358*b*
17. (1909) 8 CLR 330 (Aust), *Huddart, Parker & Co. (Pty) Ltd.* v. *Moorehead* 358*a*, 358*b*
18. (1903-04) 31 IA 239, *Madhava Singh* v. *Secy. of State for India in Council* 360*g*

The Judgment of the Court was delivered by

R.M. LODHA, C.J.— In the issue of *Indian Express* of 13-8-1990, an editorial was published bearing the caption "If shame had survived". The editorial reads as under:

"If shame had survived

The legal opinion that the former Chief Justice of India, Mr Y.V. Chandrachud, has given on the Kuldip Singh Commission's report is a stunning indictment. Succinct, understated to the point of being deferential, scrupulously adhering to facts and law, eschewing completely the slightest attribution of any motive to the Commission, the opinion is a model of rectitude. Nothing in the report survives it 'evidence' that it was agreed would not be pressed relied on as a fulcrum; evidence of the one witness who was the hub of the decisions wholly disregarded; indictments framed on 'probable possibility', theories invented to read meanings into documents and the manifest, straightforward explanation ignored; the Commission itself as well as the energetic prosecutor himself declaring one day that neither had a shred of evidence which cast a doubt on Hegde and the very next day declaring a conclusion; refusing to common witnesses for cross-examination on the pretext that the Commission did not have the power to call them—this in the face of clear judgments to the contrary; then invoking a section of the Evidence Act which applies to a person making a dying declaration; ignoring the fact that the man who is said to have been benefited has lost Rs 55 lakhs which he deposited; insinuating—and building an entire indictment on the insinuation—that the builder had fabricated a front, when the actual record shows that he was doing everything openly and with all the formalities which the law required; ignoring the fact that the land was to be given to the builder at three times the cost of acquisition and that on top of it development charges were to be levied from 4 to 6 times the cost of acquisition; ignoring entirely the fact that the land was never transferred and that it was not transferred solely because of the then Chief Minister's insistence that rules be framed under which all such cases would be dealt with. It is the longest possible list of *suppresso veri suggesto falsi*.

If there had been any sense of honour or shame, a Judge would never have done any of this. If there were any residual sense of honour or shame, the Judge having done any of it and having been found doing it, would have vacated his seat. But this is India. Of 1990, the Commissioner Kuldip Singh having perpetrated such perversities will continue to sit in judgment on the fortunes and reputations of countless citizens. He will continue to do so from nothing less than the Supreme Court of India itself.

Such is our condition. And so helpless are we that there is nothing we can do about such a 'Judge'. Save one thing. The only way to mitigate the injuries that such persons inflict on citizens is for all of us to thoroughly examine the indictments or certificates they hand out. Only that exercise will show up these indictments and certificates for the perversities which they are and only in that way can their effect be diluted. 'Who has the time to read voluminous reports, to sift evidence?' But if the issue is important enough for us to form an opinion on it, it is our duty to find the time to examine such reports, to examine as well the conduct of the Commissioners who perpetrate them."

2. It so happened that Justice Kuldip Singh, the then sitting Judge of the Supreme Court, was appointed as Chairman, Commission of Inquiry under the Commissions of Inquiry Act, 1952 (hereinafter referred to as "the 1952 Act") to probe into alleged acts of omissions and commissions by Shri Ramakrishna Hegde, the former Chief Minister of Karnataka. The one-man Commission headed by Justice Kuldip Singh submitted its report on 22-6-1990.

3. These two contempt matters, one by Dr Subramanian Swamy* and the other** suo motu arise from the editorial published in *Indian Express* as quoted above. In the contempt petition filed by Dr Subramanian Swamy on 23-8-1990 under Section 15 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the 1971 Act") against the then Editor of *Indian Express*, Mr Arun Shourie, it is contended that the editorial is a scandalous statement in respect of a sitting Judge of the Supreme Court of India and the judiciary. It lowers the authority of this Court as well as shakes public confidence in it and amounts to criminal contempt of this Court. It is submitted that unless this Court acts promptly and if necessary, suo motu in the matter, sitting Judges would be helpless and unable to defend themselves, and in the process, public confidence in Judges and the courts would be eroded.

4. It is pertinent to notice here that the then Chief Justice of India obtained opinion of the Attorney General for India in the matter. The then Attorney General, Shri Soli Sorabjee in his opinion dated 27-8-1990 noted that the editorial had, prima facie, overstepped the limits of permissible criticism and the law of contempt, as was existing in the country, did not provide for truth as defence and, therefore, he opined that an explanation was called for and a notice could be issued for that purpose. In his view, the question whether the contempt of a Commission or Commissioner appointed under the 1952 Act tantamounts to contempt of the High Court or Supreme Court of which the Commissioner is member needs to be authoritatively settled by the Supreme Court in view of the reoccurrence of the issue.

* *Subramanian Swamy* v. *Arun Shourie*, Contempt Petition (Cri) No. 11 of 1990

** *Arun Shourie, In re*, Contempt Petition (Cri) No. 12 of 1990

5. On 3-9-1990, the suo motu contempt matter and so also the contempt petition filed by Dr Subramanian Swamy came up for consideration before the three-Judge Bench of this Court headed by the Hon'ble the Chief Justice. The proceeding of 3-9-1990[1] reads as under:

"Arun Shourie and Anr., In re:

We have seen the editorial in *Indian Express* of 13-8-1990. We have obtained the opinion of the Attorney General of India in the matter. We consider that paragraphs 2 and 3 of the editorial tend to fall within the definition of 'criminal contempt' in Section 2(*c*) of the Contempt of Courts Act, 1971. We, therefore, direct that notice returnable on 8-10-1990 be issued to the alleged contemnors calling upon them to show cause why proceedings for contempt of this Court under Article 129 of the Constitution should not be initiated against them in respect of the offending editorial published by them. The contemnors shall be present in the Court in person on 8-10-1990. A copy of the opinion given by the Attorney General in the matter should accompany the notice to be issued to the contemnors. They may file their affidavits in support of their defence on or before 8-10-1990.

Issue notice to the Attorney General of India to appear and assist the Court in hearing the matter.

Contempt Petition No. of 1990:

The learned Attorney General for India has also drawn our attention to an issue of the 'Current' (25-8-1990 to 31-8-1990) which contains an Article by M.V. Kamath. We will consider that matter separately later on.

Dr Subramanian Swamy v. *Mr Arun Shourie:*

Issue notice returnable on 8-10-1990 stating therein why contempt proceedings should not be initiated."

6. Respondent Arun Shourie submitted his reply-affidavit on 13-10-1990. We shall refer to his defence and objections at an appropriate place a little later. Suffice, however, to note at this stage that in the counter-affidavit, the respondent prayed that, in view of the sensitive nature of the facts, he would choose to refrain from setting out those facts in the affidavit but would prefer to put them in the form of a signed statement in a sealed cover for the perusal of the Court which may be treated as an integral part of the counter-affidavit. The Court, however, on 4-3-1991 rejected his prayer and observed that the procedure suggested by the respondent was not an acceptable procedure and was inconsistent with recognised form of the pleadings. The respondent was granted liberty to withdraw the sealed cover from the Court. He was given an opportunity to file additional affidavit.

1 *Subramanian Swamy* v. *Arun Shourie*, Contempt Petition No. 11 of 1990, order dated 3-9-1990 (SC)

7. The matters remained dormant for many years. On 25-8-1998[2], a three-Judge Bench directed that these matters be placed before a Constitution Bench. This is how these matters have come up for consideration before the Constitution Bench.

8. We have heard Mr Mohan Parasaran, learned Solicitor General and Mr Ashok H. Desai, learned Senior Counsel for the respondent.

9. It may be observed immediately that the learned Solicitor General and the learned Senior Counsel for the respondent in the course of arguments agreed that for exercising the suo motu power for contempt under Article 129 of the Constitution of India, the limitation provided in Section 20 of the 1971 Act has no application. There is no challenge before us about the legal position that there are no implied or express limitations on the inherent powers of the Supreme Court of India and, therefore, no limitations can be read into Article 129 of the Constitution.

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2 *Subramanian Swamy* v. *Rama Krishna Hegde*, (2000) 10 SCC 331 : 2000 SCC (Cri) 97: (SCC pp. 332-33, paras 1-3)

"*1.* These contempt matters relate to comments made by the alleged contemnors against Shri Justice Kuldip Singh after he had submitted his report as Chairman of the Enquiry Commission set up by the Central Government. In Contempt Petition No. 9 of 1990 an objection has been raised by Shri D.D. Thakur, the learned Senior Counsel appearing for the alleged contemnor that the petition is not maintainable since consent of the Attorney General for India or the Solicitor General for India was not obtained as required by Section 15 of the Contempt of Courts Act, 1971. A question arises as to whether in the absence of the consent of the Attorney General or the Solicitor General suo motu proceedings can be initiated against the alleged contemnor. Shri D.D. Thakur has, however, submitted that since the alleged contempt arose more than one year back, Section 20 of the Contempt of Courts Act, 1971 would operate as a bar against the initiation of suo motu proceedings for contempt against the alleged contemnor.

2. In Contempt Petitions Nos. 11 and 12 of 1990 there is the opinion of the Attorney General expressing the view that when a Supreme Court Judge is appointed as a Commissioner in a commission of enquiry he does not carry with him all the powers and jurisdiction of the Supreme Court and the functions discharged by him are statutory functions independent of the jurisdiction vested in the Supreme Court and, therefore, the alleged contempt of a sitting Judge of the Supreme Court in relation to the statutory functions discharged by him as a Commissioner cannot in law be regarded as a contempt of the Supreme Court itself.

3. The learned counsel for the alleged contemnors have urged that truth can be pleaded as a defence in contempt proceedings and that the decision of this Court in *Perspective Publications (P) Ltd.* v. *State of Maharashtra*, AIR 1971 SC 221 : 1971 Cri LJ 268 : (1969) 2 SCR 779 needs reconsideration. In our opinion, the questions that arise for consideration in these matters are of general public importance which are required to be considered by a Constitution Bench. We, therefore, direct that the matters be placed before a Constitution Bench."

10. The two principal questions that arise for consideration and need our answer are as follows:

10.1. When a sitting Supreme Court Judge is appointed as a Commissioner by the Central Government under the 1952 Act, does he carry with him all the powers and jurisdiction of the Supreme Court? In other words, whether the functions which are discharged by the Supreme Court Judge as a Commissioner are purely statutory functions independent of the jurisdiction vested in the Supreme Court?

10.2. Whether truth can be pleaded as defence in contempt proceedings?

11. We shall take up the second question first. Some of the common law countries provide that truth could be a defence if the comment was also for the public benefit. Long back the Privy Council in *Ambard*[3] held that reasoned or legitimate criticism of Judges or courts is not contempt of court. The Privy Council held: (AC p. 335)

> "... The path of criticism is a public way: the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

12. In *Wills*[4] the High Court of Australia suggested that truth could be a defence if the comment was also for the public benefit. It said, "... The revelation of truth—at all events when its revelation is for the public benefit—and the making of a fair criticism based on fact do not amount to a contempt of court though the truth revealed or the criticism made is such as to deprive the court or Judge of public confidence...".

13. The legal position with regard to truth as a defence in contempt proceedings is now statutorily settled by Section 13 of the 1971 Act (as substituted by Act 6 of 2006). The Statement of Objects and Reasons for the amendment of Section 13 by Act 6 of 2006 read as follows:

> "**1.** The existing provisions of the Contempt of Courts Act, 1971 have been interpreted in various judicial decisions to the effect that truth cannot be pleaded as a defence to a charge of contempt of court.
>
> **2.** The National Commission to Review the Working of the Constitution [NCRWC] has also in its report, inter alia, recommended that in matters of contempt, it shall be open to the court to permit a defence of justification by truth.
>
> **3.** The Government has been advised that the amendments to the Contempt of Courts Act, 1971 to provide for the above provision would

3 *Ambard v. Attorney General for Trinidad and Tobago*, 1936 AC 322 : (1936) 1 All ER 704 (PC)

4 *Nationwide News (Pty) Ltd. v. Wills*, (1992) 177 CLR 1 (Aust)

introduce fairness in procedure and meet the requirements of Article 21 of the Constitution.

4. Section 13 of the Contempt of Courts Act, 1971 provides certain circumstances under which contempt is not punishable. It is, therefore, proposed to substitute the said section, by an amendment.

5. The Contempt of Courts (Amendment) Bill, 2003 was introduced in the Lok Sabha on 8-5-2003 and the same was referred to the Department-related Parliamentary Standing Committee on Home Affairs for examination. The Hon'ble Committee considered the said Bill in its meeting held on 2-9-2003. However, with the dissolution of the 13th Lok Sabha, the Contempt of Courts (Amendment) Bill, 2003 lapsed. It is proposed to reintroduce the said Bill with modifications of a drafting nature."

14. Section 13(*b*) now expressly provides that truth can be valid defence in contempt proceedings. Section 13, which has two clauses (*a*) and (*b*), now reads as follows:

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

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

(*b*) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide."

The Court may now permit truth as a defence if two things are satisfied viz. (*i*) it is in public interest, and (*ii*) the request for invoking said defence is bona fide.

15. A two-Judge Bench of this Court in *R.K. Jain*[5] had an occasion to consider Section 13 of the 1971 Act, as substituted by Act 6 of 2006. In para 39 the Court said: (SCC p. 311)

"39. ... The substituted Section 13 represents an important legislative recognition of one of the fundamentals of our value system i.e. truth. The amended section enables the court to permit justification by truth as a valid defence in any contempt proceeding if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. In our view, if a speech or article, editorial, etc. contains something which appears to be contemptuous and this Court or the High Court is called upon to initiate proceedings under the Act and Articles 129 and 215 of the Constitution, the truth should ordinarily be allowed as a defence unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court

5 *Indirect Tax Practitioners' Assn. v. R.K. Jain*, (2010) 8 SCC 281 : (2010) 3 SCC (Civ) 306 : (2010) 3 SCC (Cri) 841 : (2010) 2 SCC (L&S) 613

or is an interference with the administration of justice. Since, the petitioner has not even suggested that what has been mentioned in the editorial is incorrect or that the respondent has presented a distorted version of the facts, there is no warrant for discarding the respondent's assertion that whatever he has written is based on true facts and the sole object of writing the editorial was to enable the authorities concerned to take corrective/remedial measures."

Thus, the two-Judge Bench has held that the amended section enables the Court to permit justification by truth as a valid defence in any contempt proceedings if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide. We approve the view of the two-Judge Bench in *R.K. Jain*[5]. Nothing further needs to be considered with regard to second question since the amendment in contempt law has effectively rendered this question redundant.

16. It is now appropriate to consider the first question as to whether a sitting Supreme Court Judge who is appointed as a Commissioner by the Central Government under the 1952 Act carries with him all the powers and jurisdiction of the Supreme Court. In order to answer this question, it is appropriate to refer to relevant provisions of the two Acts, namely, the 1971 Act and the 1952 Act. The 1971 Act has been enacted by Parliament to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto. Section 2(*a*) defines "contempt of court" to mean "civil contempt" or "criminal contempt". Civil contempt is defined in Section 2(*b*) while Section 2(*c*) defines criminal contempt. Omitting the definition of civil contempt, we may reproduce the definition of criminal contempt in the 1971 Act, which reads:

> "**2.** (*c*) '**criminal contempt**' means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—
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> (*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or
>
> (*ii*) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or
>
> (*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

17. The three expressions, "court" in sub-clause (*i*), "judicial proceeding" in sub-clause (*ii*) and "administration of justice" in sub-clause (*iii*) of Section 2(*c*) are really important to answer the first question. Sections 12 and 15 of the 1971 Act are the other two sections which have some bearing. Section 12 prescribes punishment for contempt of court. Section 15 deals with cognizance of criminal contempt by the Supreme Court or the High Court on its own motion or on a motion made by the Advocate General or any other

5 *Indirect Tax Practitioners' Assn.* v. *R.K. Jain*, (2010) 8 SCC 281 : (2010) 3 SCC (Civ) 306 : (2010) 3 SCC (Cri) 841 : (2010) 2 SCC (L&S) 613

person with the consent in writing of the Advocate General. The expression "Advocate General" in clauses (*a*) and (*b*) of Section 15(1) in relation to the Supreme Court means Attorney General or the Solicitor General.

18. The 1952 Act provides for appointment of Commissions of Inquiry and for vesting such Commissions with certain powers. Section 2(*a*)(1) defines "appropriate Government" which means the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution and the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution. In relation to the State of Jammu and Kashmir, there is a different provision.

19. Sections 4 and 5 deal with the powers and additional powers of the Commission. Under Section 4, the Commission has powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the matters, namely, (*a*) summoning and enforcing the attendance of any person from any part of India and examining him on oath; (*b*) requiring the discovery and production of any document; (*c*) receiving evidence on affidavits; (*d*) requisitioning any public record or copy thereof from any court or office; (*e*) issuing commissions for the examination of witnesses or documents, etc. Under Section 5(4), the Commission is deemed to be a civil court and when any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Penal Code, 1860 is committed in the presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, forward the case to a Magistrate having jurisdiction to try the same. Under Section 5(5), any proceeding before the Commission is deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Penal Code.

20. Section 5-A empowers the Commission to utilise the services of certain officers and investigation agencies for conducting investigation pertaining to inquiry. Section 10 makes provision for every member of the Commission and every officer appointed or authorised by the Commission in exercise of functions under the Act is deemed to be a public servant within the meaning of Section 21 IPC.

21. Section 10-A provides for penalty for acts calculated to bring the Commission or any member thereof into disrepute. The provision clothes the High Court with power to take cognizance of an offence stated in sub-section (1) upon a complaint in writing made by a member of the Commission or an officer of the Commission authorised by it in this behalf. Under sub-section (5), the High Court taking cognizance of an offence under sub-section (1) is mandated to try the case in accordance with the procedure for the trial of

warrant cases instituted otherwise than on a police report before a court of a Magistrate. Section 10-A reads as under:

"**10-A.** ***Penalty for acts calculated to bring the Commission or any member thereof into disrepute.***—(1) If any person, by words either spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Commission or any member thereof into disrepute, he shall be punishable with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an offence under sub-section (1) is alleged to have been committed, the High Court may take cognizance of such offence, without the case being committed to it, upon a complaint in writing, made by a member of a Commission or an officer of the Commission authorised by it in this behalf.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No High Court shall take cognizance of an offence under sub-section (1) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(5) A High Court taking cognizance of an offence under sub-section (1) shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a court of a Magistrate:

Provided that the personal attendance of a member of a Commission as a complainant or otherwise is not required in such trial.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie as a matter of right from any judgment of the High Court to the Supreme Court, both on facts and on law.

(7) Every appeal to the Supreme Court under sub-section (6) shall be preferred within a period of thirty days from the date of the judgment appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

22. As is seen from above, the Commission has the powers of civil court for the limited purpose as set out in that section. It is also treated as a civil court for the purposes of Section 5(4). The proceedings before the Commission are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Penal Code. But the real issues are: whether the above provisions particularly and the 1952 Act generally would bring the Commission comprising of a sitting Supreme Court Judge within the meaning of "court" under Section 2(*c*)(*i*)? Whether the proceedings before the Commission are judicial proceedings for the purposes of Section 2(*c*)(*ii*)?

Whether the functioning of such Commission is part of the administration of justice within the meaning of Section 2(*c*)(*iii*)?

a **23.** We do not have any doubt that functions of the Commission appointed under the 1952 Act are not like a body discharging judicial functions or judicial power. The Commission appointed under the 1952 Act in our view is not a court and making the inquiry or determination of facts by the Commission is not of judicial character.

b **24.** Sections 19 and 20 of the Penal Code define the words "Judge" and the "court of justice" as under:

> "**19.** '***Judge***'.—The word 'Judge' denotes not only every person who is officially designated as a Judge, but also every person
>
> who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed
> c against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or
>
> who is one of a body of persons, which body of persons is empowered by law to give such a judgment.
>
> **20.** '***Court of Justice***'.—The words 'Court of Justice' denote a Judge
> d who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially."

25. Though the 1971 Act does not define the term "court" but in our opinion, the "court" under that Act means the authority which has the legal power to give a judgment which, if confirmed by some other authority, would
e be definitive. The court is an institution which has power to regulate legal rights by the delivery of definitive judgments, and to enforce its orders by legal sanctions and if its procedure is judicial in character in such matters as the taking of evidence and the administration of oath, then it is a court. The Commission constituted under the 1952 Act does not meet these pre-eminent tests of a court.

f **26.** According to Stephen (*Stephen's Commentaries on the Laws of England*, 6th Edn., p. 383) in every court, there must be at least three constituent parts—the "actor", "reus" and "judex": the "actor", who complains of an injury done; the "reus" or defendant, who is called upon to make satisfaction; and the "judex" or judicial power, which is to examine the truth of the fact and to determine the law arising upon the fact and if any
g injury appears to have been done, to ascertain, and by its officers to apply, the remedy.

27. In *Bharat Bank Ltd.*[6] the Constitution Bench was seized with the question whether the Industrial Tribunal is a court within the meaning of Article 136 of the Constitution of India. Mehr Chand Mahajan, J. (as he then

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6 *Bharat Bank Ltd.* v. *Employees*, AIR 1950 SC 188

was) referred to the statement of Griffith, C.J. in *Huddart Parker & Co.*[7] and observed: (*Bharat Bank Ltd. case*[6], AIR p. 201, para 37)

> "*37.* ... If a body which has power to give a binding and authoritative decision is able to take action so as to enforce that decision, then, but only then, according to the definition quoted, all the attributes of judicial power are plainly present."

Mukherjea, J. on consideration of *Shell Co.*[8], *Huddart Parker & Co.*[7] and *Rola Co.*[9] stated: (*Bharat Bank Ltd. case*[6], AIR p. 207, para 56)

> "*56.* The other fundamental test which distinguishes a judicial from a quasi-judicial or administrative body is that the former decides controversies according to law, while the latter is not bound strictly to follow the law for its decision. The investigation of facts on evidence adduced by the parties may be a common feature in both judicial and quasi-judicial tribunals, but the difference between the two lies in the fact that in a judicial proceeding the Judge has got to apply to the facts found, the law of the land which is fixed and uniform. The quasi-judicial tribunal, on the other hand gives its decision on the differences between the parties not in accordance with fixed rules of law but on principles of administrative policy or convenience or what appears to be just and proper in the circumstances of a particular case. In other words, the process employed by an Administrative Tribunal in coming to its decision is not what is known as 'judicial process'."

28. In *Brajnandan Sinha*[10] a three-Judge Bench of this Court had an occasion to consider the question whether the Commissioner appointed under the Public Servants (Inquiries) Act, 1850 (37 of 1850) is a court. In that case, *Coke on Littleton and Stroud* was referred to that says that "court" is the place where justice is judicially administered. The Court also considered Section 3 of the Evidence Act and Sections 19 and 20 of the Penal Code and then observed: (AIR p. 70, para 14)

> "*14.* The pronouncement of a definitive judgment is thus considered the essential sine qua non of a court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a court."

Bharat Bank Ltd.[6] was also referred and so also decisions of this Court in *Maqbool Hussain*[11] and *S.A. Venkataraman*[12] and it was noted that in *S.A. Venkataraman*[12] following *Maqbool Hussain*[11], the Constitution Bench laid down that both finality and authoritativeness were the essential tests of a

7 *Huddart, Parker & Co. (Pty) Ltd.* v. *Moorehead*, (1909) 8 CLR 330 (Aust)

6 *Bharat Bank Ltd.* v. *Employees*, AIR 1950 SC 188

8 *Shell Co. of Australia Ltd.* v. *Federal Taxation Comnr.*, 1931 AC 275 : 1930 All ER Rep 671 (PC)

9 *Rola Co. (Australia) (Pty) Ltd.* v. *Commonwealth*, (1944) 69 CLR 185 (Aust)

10 *Brajnandan Sinha* v. *Jyoti Narain*, AIR 1956 SC 66 : 1956 Cri LJ 156 : (1955) 2 SCR 955

11 *Maqbool Hussain* v. *State of Bombay*, AIR 1953 SC 325 : 1953 Cri LJ 1432

12 *S.A. Venkataraman* v. *Union of India*, AIR 1954 SC 375 : 1954 Cri LJ 993

judicial pronouncement. The Court said that: (*Brajnandan Sinha case*[10], AIR p. 70, para 18)

> "*18.* ... in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

With reference to the provisions of the Public Servants (Inquiries) Act vis-à-vis the Contempt of Courts Act, 1952, the three-Judge Bench held that the Commissioner appointed under the Public Servants (Inquiries) Act is not a court within the meaning of the Contempt of Courts Act, 1952.

29. We are in full agreement with the legal position exposited in *Brajnandan Sinha*[10] and approve the same.

30. The judgment of the Full Bench of the Madras High Court in *Hayles, Editor of The Mail, In re*[13] deserves consideration now. That was a case where a sitting Judge of the Madras High Court was appointed as a member of the Industrial Tribunal under Section 7 of the Industrial Disputes Act. The alleged contempt with which the contemnors were charged with contempt were both in relation to the proceedings for the Industrial Tribunal, though the Industrial Tribunal was presided over by the sitting Judge of the Madras High Court. The disputes between workers and management of Amalgamations Ltd. which owned the newspaper *The Mail* fell for adjudication before the Industrial Tribunal. The contempt notice was issued by the Tribunal to the counsel for Editor Govind Swaminathan and Editor Hayles to show cause as to why action for contempt may not be initiated for criticism of the Tribunal. The respondent challenged the show-cause notice on the ground that the Tribunal, though headed by a sitting Judge, did not have power to punish for contempt. While dealing with the above challenge, the Full Bench of the Madras High Court held that a Judge of the High Court when appointed as sole member of the Industrial Tribunal, did not have the powers of a Judge of that High Court to punish persons for contempt of the Tribunal even under Article 215 of the Constitution of India.

31. The Division Bench of the Madras High Court in *P. Rajangam*[14] had an occasion to consider the question whether a writ of certiorari could be issued to quash the inquiry made by the Magistrate under Section 176 of the Code of Criminal Procedure read with the Police Standing Order issued by the Government of Madras. While dealing with this question, the principal aspect that was under consideration before the Division Bench of the Madras High Court with regard to the nature of such inquiry was whether it was judicial or quasi-judicial or non-judicial. The Division Bench referred to the decision of this Court in *Brajnandan Sinha*[10] and ultimately held that the object of such inquiry was nothing more than to furnish materials on which action could be taken or not and the report by itself would purely be recommendatory and not one effective *proprio vigore*.

10 *Brajnandan Sinha* v. *Jyoti Narain*, AIR 1956 SC 66 : 1956 Cri LJ 156 : (1955) 2 SCR 955

13 AIR 1955 Mad 1

14 *P. Rajangam* v. *State of Madras*, AIR 1959 Mad 294

32. In *Ram Krishna Dalmia*[15] this Court held that the inquiry by the Commission under the 1952 Act was neither a judicial nor a quasi-judicial proceeding attracting the issue of appropriate writs under Article 226 of the Constitution of India.

33. The two-Judge Bench of this Court in *Baliram Waman Hiray*[16] was concerned with a question whether a Commission of Inquiry constituted under Section 3 of the 1952 Act is a court for the purposes of Section 195(1)(*b*) of the Code of Criminal Procedure, 1973:

33.1. The Court observed: (SCC pp. 446-47, para 32)

> "*32.* A Commission of Inquiry is not a court properly so called. A Commission is obviously appointed by the appropriate Government 'for the information of its mind' in order for it to decide as to the course of action to be followed. It is therefore a fact-finding body and is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by it is of a legal character and it has the power to administer an oath will not impart to it the status of a court."

33.2. The Court further observed: (SCC p. 451, para 36)

> "*36.* ... The least that is required of a court is the capacity to deliver a 'definitive judgment', and merely because the procedure adopted by it is of a legal character and it has power to administer an oath will not impart to it the status of a court. That being so, it must be held that a Commission of Inquiry appointed by the appropriate Government under Section 3(1) of the Commissions of Inquiry Act is not a court for the purposes of Section 195 of the Code."

33.3. The Court agreed with the following observations of the Nagpur High Court in *M.V. Rajwade*[17]: (*Baliram Waman Hiray case*[16], SCC p. 450, para 34)

> "*34.* ... 'The Commission in question was obviously appointed by the State Government "for the information of its own mind", in order that it should not act, in exercise of its executive power, "otherwise than in accordance with the dictates of justice and equity" in ordering a departmental enquiry against its officers. It was, therefore, a fact-finding body meant only to instruct the mind of the Government without producing any document of a judicial nature. The two cases are parallel, and the decision must be as in *Madhava Singh*[18], that the Commission was not a court.
>
> The term "court" has not been defined in the Contempt of Courts Act, 1952. Its definition in the Evidence Act, 1872, is not exhaustive and

15 *Ram Krishna Dalmia* v. *S.R. Tendolkar*, AIR 1958 SC 538 : 1959 SCR 279

16 *Baliram Waman Hiray* v. *B. Lentin*, (1988) 4 SCC 419 : 1988 SCC (Cri) 941

17 *M.V. Rajwade* v. *S.M. Hassan*, AIR 1954 Nag 71

18 *Madhava Singh* v. *Secy. of State for India in Council*, (1903-04) 31 IA 239

is intended only for purposes of the Act. The Contempt of Courts Act, 1952 however, does contemplate a "court of justice" which as defined in Section 20, Penal Code, 1860 denotes "a Judge who is empowered by law to act judicially". The word "Judge" is defined in Section 19 as denoting every person—

"Who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive...."

The minimum test of a "court of justice", in the above definition, is, therefore, the legal power to give a judgment which, if confirmed by some other authority, would be definitive. Such is the case with the Commission appointed under the Public Servants (Inquiries) Act, 1850, whose recommendations constitute a definitive judgment when confirmed by the Government. This, however, is not the case with a Commission appointed under the Commissions of Inquiry Act, 1952, whose findings are not contemplated by law as liable at any stage to confirmation by any authority so as to assume the character of a final decision.' "

34. We agree with the view in *Baliram Waman Hiray*[16] and approve the decision of the Nagpur High Court in *M.V. Rajwade*[17]. We are also in agreement with the submission of Shri Mohan Parasaran, learned Solicitor General that a Commission appointed under the 1952 Act is in the nature of a statutory Commission and merely because a Commission of Inquiry is headed by a sitting Judge of the Supreme Court, it does not become an extended arm of this Court. The Commission constituted under the 1952 Act is a fact-finding body to enable the appropriate Government to decide as to the course of action to be followed. Such Commission is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by the Commission is of a legal character and it has the power to administer oath will not clothe it with the status of court. That being so, in our view, the Commission appointed under the 1952 Act is not a "court" for the purposes of the Contempt of Courts Act even though it is headed by a sitting Supreme Court Judge. Moreover, Section 10-A of the 1952 Act leaves no matter of doubt that the High Court has been conferred with the power to take cognizance of the complaint in respect of the acts calculated to bring the Commission or any member thereof into disrepute. Section 10-A of the 1952 Act provides the power of constructive contempt to the Commission by making a reference to the High Court with a right of appeal to this Court. Our answer to the first question is, therefore, in the negative.

35. In view of the above reasons, the contempt petitions are dismissed and the contempt notices are discharged.

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16 *Baliram Waman Hiray v. B. Lentin*, (1988) 4 SCC 419 : 1988 SCC (Cri) 941

17 *M.V. Rajwade v. S.M. Hassan*, AIR 1954 Nag 71

ANNEXURE P-3

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REPORTABLE

IN THE SUPREME COURT OF INDIA

ORIGINAL APPELLATE JURISDICTION

CONTEMPT PETITION (CRL.) NO.10 OF 2009
IN
INTERLOCUTORY APPLICATION NOS.1324, 1474, 2134
OF 2007
IN
WRIT PETITION (C) NO.202 OF 1995

Amicus Curiae ..Petitioner

Vs.

Prashant Bhushan & Anr. ..Respondents

O R D E R

ALTAMAS KABIR, J.

1. During the course of hearing of certain Interlocutory Applications in Writ Petition (C) No.202 of 1995, an application was filed by the Amicus Curiae, Mr. Harish N. Salve, learned Senior Advocate, drawing the attention of this Court to certain statements made by Respondent No.1, Shri Prashant Bhushan, Senior Advocate, which was reported in Tehelka magazine, of which Shri Tarun J. Tejpal, the Respondent No.2, was the Editor-in-Chief. The learned Amicus Curiae drew the attention of the Court to certain statements which had been made by the Respondent No.1 in an interview given to Ms. Shoma Chaudhury, wherein various statements were made alleging corruption in the judiciary and, in particular, the higher judiciary, without any material in support thereof. In the interview he went on to say that although he

did not have any proof for his allegations, half of the last 16 Chief Justices were corrupt. He also made a serious imputation against the Hon'ble the Chief Justice of India, Justice S.H. Kapadia, as His Lordship then was, alleging misdemeanor with

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regard to the hearing of a matter involving a Company known as Sterlite, in which Justice Kapadia had certain shares, deliberately omitting to mention that the said fact had been made known to the Counsel appearing in the matter, who had categorically stated that they had no objection whatsoever to the matter being heard by His Lordship.

2. On 6th November, 2009, when the said facts were placed before the Bench presided over by Hon'ble the Chief Justice, K.G. Balakrishnan, as His Lordship then was, in which Justice Kapadia was also a member, directions were given to issue notice and to post the matter before a three Judge Bench of which Justice Kapadia was not a member. It should, however, be indicated that Justice Kapadia was not a party to the aforesaid order that was passed. The matter was thereafter placed before us on 19.01.2010 for consideration. On the

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said date, we requested Mr. Harish N. Salve, learned Senior Advocate, to continue to assist the Court as Amicus Curiae in the matter which was directed to be listed for further consideration as to whether on the basis of the prayers made in the application, this Court should take suo motu cognizance of the alleged contempt said to have

been committed by the respondents in the application which was numbered as Contempt Petition (Crl.) No.10 of 2009.

3. The matter was, thereafter, heard at length by us on the question of maintainability of the contempt proceedings and also on the question as to whether this Court should take suo motu cognizance and proceed accordingly.

4. Mr. Ram Jethmalani, learned Senior Advocate appearing for the Respondent No.1, Mr. Prashant Bhushan, Advocate, submitted that the contempt

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proceeding was not maintainable not only on account of the provisions of Section 15 of the Contempt of Courts Act, 1971, but also in view of the 1975 Supreme Court Rules regarding proceedings for Contempt. He submitted that the report published in Issue No.35 of Volume 6 of Tehelka magazine dated 5th September, 2009, which comprised the contents of the interview given by the Respondent No.1 to the Tehelka magazine, had been placed before the Court on 6th November, 2009 and upon hearing the counsel present, the Court directed the matter to be taken on board and directed notice to issue.

5. Mr. Jethmalani submitted that in relation to matters involving contempt of the Supreme Court, Rules have been framed by the Supreme Court itself under powers vested in it under Section 23 of the Contempt of Courts Act, 1971, read with Article 145 of the Constitution of India. The said Rules

described as the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, laid down the procedure to be followed in matters relating to taking of cognizance of criminal contempt of the Supreme Court under Section 15 of the Contempt of Courts Act, 1971. Mr. Jethmalani submitted that Rule 3 of the aforesaid Rules enables the Court to take action in a case of contempt other than the contempt committed in the face of the Court and provides as follows :

> "3. In case of contempt other than the contempt referred to in rule 2, the Court may take action: -
>
> (a) suo motu, or
> (b) on a petition made by Attorney General, or Solicitor General, or
> (c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney General or the Solicitor General."

6. Mr. Jethmalani submitted that the order

passed on 6th November, 2009 was not on suo motu cognizance taken by this Court, nor on a petition made by the Attorney General for India or Solicitor General of India and must, therefore, have been made under Rule 3(c) on a petition made by the Amicus Curiae, Mr. Harish N. Salve, Senior Advocate, in which case, the same ought not to have been entertained without the consent in writing of the Attorney General or Solicitor General. Mr. Jethmalani submitted that in that view of the matter, the contempt proceedings were without

jurisdiction and could not be proceeded with.

7. Mr. Jethmalani also urged that even Rule 6 of the aforesaid Rules had not been followed, as notices have not been issued to the respondents in Form 1, as prescribed and the proceedings were, therefore, liable to be discontinued on such ground as well.

8

8. In support of his aforesaid submissions, Mr. Jethmalani referred to and relied upon the decision of this Court in P.N. Duda vs. P. Shiv Shanker & Ors. [(1988) 3 SCC 167], in which the provisions of Section 15(1)(a) and (b) of the Contempt of Courts Act, 1971, read with Explanation (a) and Rule 3(a), (b) and (c) of the Contempt of Supreme Court Rules, 1975, had been considered in paragraphs 53 and 54 of the judgment. It was pointed out that a direction had been given by this Court that if any information was lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. On the other hand, such a petition was required to be placed before the Chief Justice for orders in Chambers and the Chief Justice could decide, either

9

by himself or in consultation with the other judges of the Court, whether to take any cognizance of the information. Mr. Jethmalani submitted that since, despite the aforesaid direction, the application

filed by the Amicus Curiae had been placed before the Court in its judicial side, the same was not maintainable on such score as well and the proceedings were liable to be discontinued on such ground also.

9. Mr. Jethmalani also referred to the decision of this Court in Bal Thackrey vs. Harish Pimpalkhute & Ors. [(2005) 1 SCC 254], wherein in the absence of the consent of the Advocate General in respect of a contempt petition filed by a private party under Section 15 of the Contempt of Courts Act, without a prayer for taking suo motu action of contempt, was held to be not maintainable.

10. Mr. Jethmalani urged that the power vested in the High Courts and the Supreme Court under the Contempt of Courts Act, 1971, was a regulatory measure imposing a fetter on a citizen's fundamental right to freedom of speech and would have to be invoked and exercised with utmost caution so as not to infringe upon such fundamental right. Any deviation from the prescribed Rules should not be accepted or condoned lightly and must be deemed to be fatal to the proceedings taken to initiate action for contempt.

11. Mr. Shanti Bhushan, learned Senior Advocate, who appeared for Respondent No.2, while reiterating the submissions made by Mr. Ram Jethmalani, laid special stress on the decision in Duda's case (supra) and reiterated the directions given in such case to the effect that the application made by the

Amicus Curiae could have been placed only before the Chief Justice in Chambers on the administrative

11

side and not on the judicial side. Mr. Shanti Bhushan submitted that in matters such as this, the reputation of the Court had to be considered and in view of the deviation from the normal procedure, which was meant to be strictly adhered to, the contempt proceedings and notice issued on the aforesaid application, were liable to be dropped.

12. We have given our careful consideration to the submissions made by Mr. Jethmalani and Mr. Shanti Bhushan, learned Senior Advocates, regarding the maintainability of the contempt proceeding, but we are not inclined to accept the same.

13. The learned Amicus Curiae, Mr. Harish Salve, filed an application in an ongoing proceeding to bring to the knowledge of the Hon'ble Chief Justice of India certain statements made by the Respondent No.2 in an interview given to the Tehelka magazine deliberately aimed at tarnishing the image of the

12

judiciary as a whole, and, in particular, a sitting Judge of the Supreme Court, in the eyes of the general public without any foundation or basis therefore. By publishing the said interview, the Respondent No.2 was also responsible for lowering the dignity of this Court in the eyes of all stake holders in the justice delivery system. Prima facie, a case for issuance of notice having been made out, the Hon'ble Chief Justice of India

directed issuance of notice to the Respondents to show cause in regard to the allegations contained in the application filed by the learned Amicus Curiae. The error committed by the Registry of the Supreme Court in placing the matter on the judicial side instead of placing the same before the Hon'ble Chief Justice of India on the administrative side, is an administrative lapse which does not reduce the gravity of the allegations. Even in Duda's case (supra) and more explicitly in Bal Thackrey's case, it has been indicated by this Court that it

13

could have taken suo motu cognizance, had the petitioners prayed for it, even without the consent of the Attorney General, but that such a recourse should be confined to rare occasions only.

14. The matter may require further consideration, but we are not inclined to hold that the contempt proceedings are not maintainable for the above-mentioned reasons. Primarily, certain information was brought to the notice of the Chief Justice of India on which action was taken. In other words, notwithstanding the prayer in the application made by the learned Amicus Curiae, the Chief Justice of India took cognizance and directed notice to issue thereupon. The issues involved in these proceedings have far greater ramifications and impact on the administration of justice and the justice delivery system and the credibility of the Supreme Court in the eyes of the general public than what was under consideration in either Duda's case or Bal

14

Thackrey's case (supra). In our view, even though

suo motu cognizance was taken in this case, this is one of those rare cases where, even if the cognizance is deemed to have been taken in terms of Rule 3 (c) of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, without the consent of the Attorney General or the Solicitor General, the proceedings must be held to be maintainable.

19. Thus, on prima facie satisfaction that there were sufficient grounds for taking action on its own motion, the Court initiated suo motu action by directing issue of notice to the Respondents. Hence, the present contempt proceeding was initiated by the Court on its own motion and it is not covered by clauses (a), (b) and (c) of sub-section (1) of Section 15 of the Contempt of courts Act, 1971 or clauses (b) and (c) of Rule 3 of the Rules to Regulate Proceedings for Contempt of the

15

Supreme Court, 1975. On the other hand, the present proceeding is covered by clause (a) of rule 3 of the said Rules. Merely because the information regarding the allegedly contemptuous statements made by Respondent No.1 and published by Respondent No.2 was furnished to the Court by the learned Amicus Curiae, the proceeding cannot lose its nature or character as a suo motu proceeding. The learned Amicus Curiae was entitled to place the information in his possession before the court and request the court to take action. The petition filed by him constituted nothing more than a mode of laying the relevant information before the court for such action as the court may deem fit. No

18

ITEM NO.301 COURT NO.2 SECTION PIL
[At 1.00 P.M.]

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CONTEMPT PETITION (CRL.) NO. 10 OF 2009 IN I.A.NOS.1324, 1494 & 2134 of 2007 IN W.P(C) 202/1995

AMICUS CURIAE Petitioner(s)

VERSUS

PRASHANT BHUSAN & ANR. Respondent(s)

(With office report)

[Along with paper books of I.A.NO.2740 IN W.P. (C)NO.202/1995]
(FOR ORDERS)

19

Date: 14/07/2010 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH
HON'BLE MR. JUSTICE H.L. DATTU

For Petitioner(s)
Mr. Harish N.Salve, Sr.Adv.(A.C.)
Mr. A.D.N. Rao, Adv.
Ms. Meenakshi Grover, Adv.

For Respondent(s)
R1
Mr. Ram Jethamalani, Sr. Adv.
Ms. Kamini Jaiswal,Adv.
Mr. Divyesh Pratap Singh, Adv.
Miss P.R. Mala, Adv.
Mr. Saurabh Ajay Gupta, Adv.
Mr. Pranav Diesh, Adv.
Miss Mazaq Andrabi, Adv.
Mr. Mayank Mishra, Adv.
Mr. Abhishek Sood, Adv.
Mr. Vivek Bishnoi, Adv.

R2
Mr. Shanti Bhushan, Sr. Adv.
Mr. Rohit Kumar Singh,Adv.
Mr. Divyesh Pratap Singh, Adv.
Miss P.R. Mala, Adv.
Mr. Saurabh Ajay Gupta, Adv.
Mr. Pranav Diesh, Adv.
Miss Mazaq Andrabi, Adv.
Mr. Mayank Mishra, Adv.
Mr. Abhishek Sood, Adv.
Mr. Vivek Bishnoi, Adv.

20

proceedings can commence until and unless the court considers the information before it and decides to initiate proceedings. If the court considers the information placed before it and initiates proceedings by directing notice to issue to the alleged contemnors the action taken comes within

16

the ambit of Rule 3(a) of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975.

16. Hence, the objections raised by the Respondents against the maintainability of the present proceedings are without any basis.

17. We, therefore, hold these proceedings to be maintainable and direct that the matter be placed for hearing on merits. The respondents will be entitled to file further affidavits in the matter within eight weeks from date. Thereafter, notwithstanding the provisions of Rule 9 of the 1975 Rules, let the matter be placed for hearing on merits on the available papers and affidavits on 10th November, 2010.

_____J.
(ALTAMAS KABIR)

_____J.

17

(CYRIAC JOSEPH)

_____J.
(H.L. DATTU)

New Delhi,
Dated: July 14, 2010.

UPON hearing counsel the Court made the following

O R D E R

In terms of the signed order, we, therefore, hold these proceedings to be maintainable and direct that the matter be placed for hearing on merits. The respondents will be entitled to file further affidavits in the matter within eight weeks from date. Thereafter, notwithstanding the provisions of Rule 9 of the 1975 Rules, let the matter be placed for hearing on merits on the available papers and affidavits on 10th November, 2010.

(Sheetal Dhingra)
Court Master

(Juginder Kaur)
Court Master

[Signed Reportable Order is placed on the file]

ANNEXURE P-4

ITEM NO.1 Court 3 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CONMT.PET.(Crl.) No. 10/2009 In W.P.(C) No. 202/1995

AMICUS CURIAE Petitioner(s)

VERSUS

PRASHANT BHUSAN AND ANR. & ANR. Respondent(s)

(PERMISSION TO APPEAR AND ARGUE IN PERSON IA No. 19790/2010 - CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT)

Date : 24-07-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE KRISHNA MURARI

Mr. Harish Salve, Sr. Adv. (AC)

For Petitioner(s) By Courts Motion, AOR

For Respondent(s) Mr. Mohit Chaudhary, Adv.
Ms. Puja Sharma, AOR
Mr. Kunal Sachdeva, Adv.
Mr. Shyam Singh Yadav, Adv.
Mr. Imran Ali, Adv.
Mr. Balwinder Singh Suri, Adv.
Mr. Parveen Kumar, Adv.
Ms. Garima Sharma, Adv.
Ms. Srishti Gupta, Adv.

Mr. Shanti Bhushan, Sr. Adv.
Applicant-in-person, AOR

Mr. Rajeev Dhavan, Sr. Adv.
Ms. Kamini Jaiswal, AOR
Mr. Prashant Bhusan-in-person.

Mr. Kapil sibal, Sr. Adv.
Mr. Rohit Kumar Singh, AOR
Mr. Tarun Tejpal, Petitioner-in-person

Mr. Jishnu M.L., Adv.

Ms. Pryanka Prakash, Adv.
Ms. Beena Prakash, Adv.
Mr. G. Prakash, Adv.

Mr. ADN Rao, Adv.

UPON hearing the counsel the Court made the following

O R D E R

List on 04.08.2020.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(R.S. NARAYANAN)
COURT MASTER

ITEM NO.16 Virtual Court 3 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SCM (CRL.) No. No(s). 1/2020

IN RE PRASHANT BHUSHAN & ANR. Petitioner(s)

VERSUS

Respondent(s)

Date : 22-07-2020 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) By Courts Motion, AOR

For Respondent(s) Mr. Sajan Poovayya, Sr. Adv.
Mr. Manu Kulkarni, Adv.
Mr. Priyadarshi Banerjee, Adv.

UPON hearing the counsel the Court made the following
O R D E R

This petition was placed before us on the administrative side whether it should be listed for hearing or not as permission of the Attorney General for India has not been obtained by the petitioner to file this petition. After examining the matter on administrative side, we have directed the matter to be listed before the Court to pass appropriate orders. We have gone through the petition. We find that the tweet in question, made against the CJI, is to the following effect :-

> "CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!"

Apart from that, another tweet has been published today in the

Times of India which was made by Shri Prashant Bhushan on June 27, 2020, when he tweeted, "When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."

We are, *prima facie*, of the view that the aforesaid statements on Twitter have brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the Institution of Supreme Court in general and the office of the Chief Justice of India in particular, in the eyes of public at large.

We take *suo motu* cognizance of the aforesaid tweet also apart from the tweet quoted above and *suo motu* register the proceedings.

We issue notice to the Attorney General for India and to Mr. Prashant Bhushan, Advocate also.

Shri Sajan Poovayya, learned senior counsel has appeared along with Mr. Priyadarshi Banerjee and Mr. Manu Kulkarni, learned counsel appearing on behalf of the Twitter, and submitted that the Twitter Inc., California , USA is the correct description on which the tweets were made by Mr. Prashant Bhushan. Let the reply be also filed by them.

List on 05.08.2020.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(R.S. NARAYANAN)
COURT MASTER

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

N. RAM & ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

APPLICATION FOR STAY

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION JUDGES
OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE
PETITIONERS ABOVE-NAMED

MOST RESPECTFULLY SHOWETH:

1. That the instant writ petition has been filed under Article 32 of the Constitution of India challenging the constitutional validity of Section 2(c)(i) of the Contempt of Courts Act, 1971, as being violative of Articles 19 and 14 of the Constitution of India. The impugned sub-section is unconstitutional as it is incompatible with preambular values and basic features of the Constitution, violates Article 19(1)(a), is unconstitutionally and incurably vague, and is manifestly arbitrary.

2. The contents of the instant writ petition are not being repeated herein in the instant application for the sake of brevity. The same be read as part of the instant application.

3. That vide the instant application, the petitioners are seeking a stay on all the proceedings in criminal contempt cases pending against the petitioner no. 3, that are either based on the definition of "*criminal contempt*" as defined under Section 2(c)(i) of the Contempt of Courts Act, 1971 or are intrinsically linked to the same, during the pendency of the instant writ petition.

4. That in the year 2009, a contempt case [*C.P. (Crl.) No. 10 of 2009*] was initiated against the petitioner no. 3 on account of his interview given to *Tehelka* magazine in which he had make certain *bona fide* remarks regarding corruption prevalent in the Judiciary. The said contempt case is still pending adjudication before this Hon'ble Court. The said case was listed before this Hon'ble Court recently on 24.07.2020 after more than 8 years. Next date of hearing of the said case is 04.08.2020. A copy of the order dated 24.07.2020 passed by this Hon'ble Court in *C.P. (Crl.) No. 10 of 2009* is annexed with the instant petition as **Annexure A** (page 85 to 86).

5. That 22.07.2020, this Hon'ble Court issued a contempt notice to Petitioner No. 3 in *SCM (Crl.) No. 1 of 2020*, titled "*In Re Prashant Bhushan &Anr.*" It appears that the said Suo Motu case was initiated against the Petitioner No.3 herein on the basis of a petition filed (on 09.07.2020) by one Mr. Mahek Maheshwari seeking to initiate criminal contempt proceedings against him for his remarks on the Hon'ble CJI. There after order dated 22.07.2020 was passed by this Hon'ble Court which states as under:

"This petition was placed before us on the administrative side whether it should be listed for hearing or not as permission of the Attorney General for India has not been obtained by the petitioner to file this petition. After examining the matter on administrative side, we have directed the matter to be listed before the Court to pass appropriate orders. We have gone through the petition.We find that the tweet in question, made against the CJI, is to the following effect:-

> *"CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!"*

Apart from that, another tweet has been published today in the Times of India which was made by Shri Prashant Bhushan on June 27, 2020, when he tweeted, "When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."

We are, prima facie, of the view that the aforesaid statements on Twitter have brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the Institution of Supreme Court in general and the office of the Chief Justice of India in particular, in the eyes of public at large.

We take suo motu cognizance of the aforesaid tweet also apart from the tweet quoted above and suo motu register the proceedings.

We issue notice to the Attorney General for India and to Mr. Prashant Bhushan, Advocate also."

A copy of the order, dated 22.07.2020, passed by this Hon'ble Court in *SCM (Crl.) No. 1 of 2020*, titled "*In Re Prashant Bhushan &Anr.*" is annexed with the instant petition as **Annexure B** (page 87 to 88).

6. That the outcome of the instant writ petition will, in all probability, have a direct impact on the adjudication of the criminal contempt cases pending against the Petitioner No. 3 herein. The said cases are either based on the definition of "*criminal contempt*" as defined under Section 2(c)(i) of the Contempt of Courts Act, 1971 or are intrinsically linked to the same.

7. That in view of the legal questions of constitutional significance being raised vide the instant writ petition and because of the fact that the freedom of speech & expression as well as personal liberty of the Petitioner No. 3 herein are at stake, it is respectfully prayed that this Hon'ble Court may be pleased to stay all the proceedings in criminal contempt cases pending against the Petitioner No.3 herein, that are either based on the definition of "*criminal contempt*" as defined under Section 2(c)(i) of the Contempt of Courts Act, 1971 or are intrinsically linked to the same, till the pendency of the instant writ petition.

PRAYERS

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. Stay all the ongoing proceedings in criminal contempt cases pending against the Petitioner No.3 herein, that are either based on the definition of "*criminal contempt*" as defined under Section 2(c)(i) of the Contempt of Courts Act, 1971 or are intrinsically linked to the same, during the pendency of the instant writ petition;

b. Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

PETITIONERS THROUGH:

Jaiswal

(KAMINI JAISWAL)
COUNSEL FOR THE PETITIONERS

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

N. RAM & ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

AFFIDAVIT

I, Prashant Bhushan, S/o Mr. Shanti Bhushan, R/o House No. B-16, Sector 14, Noida, Uttar Pradesh -201301 do hereby solemnly affirm and state on oath as under:

1. That I am the Petitioner No.3 in the instant writ petition and being familiar with the facts and circumstances of the case and being fully authorized by the other Petitioners to file the accompanying application, I am fully competent and authorized to swear this Affidavit.
2. That I have read the contents of the accompanying application and state that the same are true to the best of my knowledge, information and belief. That the accompanying application is based on information available in public domain. That the Annexures are true copies of their respective originals.
3. That I have done whatever inquiry/investigation that was in my power to do and collected all data/material which was available and which was relevant for this court to entertain the accompanying application. I further confirm that I have not concealed in the accompanying

application any data/material/information which may have enabled this Hon'ble Court to form an opinion whether to entertain the accompanying application or not and/or whether to grant any relief.

Prashant Bhushan
DEPONENT

VERIFICATION

I, the above named Deponent, do hereby verify t hat the contents of the above Affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

Verified at New Delhi on this 31st day of July 2020.

Prashant Bhushan
DEPONENT

ANNEXURE A

ITEM NO.1 Court 3 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CONMT.PET.(Crl.) No. 10/2009 In W.P.(C) No. 202/1995

AMICUS CURIAE Petitioner(s)

VERSUS

PRASHANT BHUSAN AND ANR. & ANR. Respondent(s)

(PERMISSION TO APPEAR AND ARGUE IN PERSON IA No. 19790/2010 - CONDONATION OF DELAY IN FILING COUNTER AFFIDAVIT)

Date : 24-07-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE KRISHNA MURARI

Mr. Harish Salve, Sr. Adv. (AC)

For Petitioner(s) By Courts Motion, AOR

For Respondent(s) Mr. Mohit Chaudhary, Adv.
Ms. Puja Sharma, AOR
Mr. Kunal Sachdeva, Adv.
Mr. Shyam Singh Yadav, Adv.
Mr. Imran Ali, Adv.
Mr. Balwinder Singh Suri, Adv.
Mr. Parveen Kumar, Adv.
Ms. Garima Sharma, Adv.
Ms. Srishti Gupta, Adv.

Mr. Shanti Bhushan, Sr. Adv.
Applicant-in-person, AOR

Mr. Rajeev Dhavan, Sr. Adv.
Ms. Kamini Jaiswal, AOR
Mr. Prashant Bhusan-in-person.

Mr. Kapil sibal, Sr. Adv.
Mr. Rohit Kumar Singh, AOR
Mr. Tarun Tejpal, Petitioner-in-person

Mr. Jishnu M.L., Adv.

Ms. Pryanka Prakash, Adv.
Ms. Beena Prakash, Adv.
Mr. G. Prakash, Adv.

Mr. ADN Rao, Adv.

UPON hearing the counsel the Court made the following

O R D E R

List on 04.08.2020.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(R.S. NARAYANAN)
COURT MASTER

ITEM NO.16 Virtual Court 3 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SCM (CRL.) No. No(s). 1/2020

IN RE PRASHANT BHUSHAN & ANR. Petitioner(s)

VERSUS

Respondent(s)

Date : 22-07-2020 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) By Courts Motion, AOR

For Respondent(s) Mr. Sajan Poovayya, Sr. Adv.
Mr. Manu Kulkarni, Adv.
Mr. Priyadarshi Banerjee, Adv.

UPON hearing the counsel the Court made the following

O R D E R

This petition was placed before us on the administrative side whether it should be listed for hearing or not as permission of the Attorney General for India has not been obtained by the petitioner to file this petition. After examining the matter on administrative side, we have directed the matter to be listed before the Court to pass appropriate orders. We have gone through the petition. We find that the tweet in question, made against the CJI, is to the following effect :-

> "CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!"

Apart from that, another tweet has been published today in the

Times of India which was made by Shri Prashant Bhushan on June 27, 2020, when he tweeted, "When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."

We are, *prima facie*, of the view that the aforesaid statements on Twitter have brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the Institution of Supreme Court in general and the office of the Chief Justice of India in particular, in the eyes of public at large.

We take *suo motu* cognizance of the aforesaid tweet also apart from the tweet quoted above and *suo motu* register the proceedings.

We issue notice to the Attorney General for India and to Mr. Prashant Bhushan, Advocate also.

Shri Sajan Poovayya, learned senior counsel has appeared along with Mr. Priyadarshi Banerjee and Mr. Manu Kulkarni, learned counsel appearing on behalf of the Twitter, and submitted that the Twitter Inc., California , USA is the correct description on which the tweets were made by Mr. Prashant Bhushan. Let the reply be also filed by them.

List on 05.08.2020.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(R.S. NARAYANAN)
COURT MASTER