IN THE SUPREME COURT OF INDIA INHERENT JURISDICTION

SUO MOTU CONTEMPT PETITION (CRL.) NO.1 OF 2020

IN RE:
PRASHANT BHUSHAN AND ANR.

JUDGMENT

1. Heard Shri K.K. Venugopal, learned Attorney General for India, Dr. Rajeev Dhavan, Shri Dushyant Dave, Shri C.U. Singh, learned senior counsel, and the contemnorShri Prashant Bhushan.

2. After having adjudged Shri Prashant Bhushan, Advocate, guilty of contempt vide judgment dated 14.08.2020, Dr. Rajeev Dhavan and Shri Dushyant Dave, learned senior counsel appearing for the contemnorShri Prashant Bhushan raised the following arguments:

(i) That the copy of the petition on the basis of which the suo motu cognizance was taken by this Court with respect to first tweet, filed by Shri Mahek Maheshwari, was not furnished, in spite of the application having been filed by the contemnor. Thus, it could not be ascertained whether the complaint was mala fide or even personally or politically motivated.

REPORTABLE

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(ii) The factors relevant for sentencing are the offender, the offence, the convicting judgment, statutory or other defences relating to a substantial interference with justice, truth, bona fides, and public interest in disclosure.

(iii) The contemnor is a lawyer of 35 years of standing, who has pursued public interest litigation successfully at some personal and professional cost. He got appreciation from the Court. He is a founding member of Campaign for Judicial Accountability, which includes several senior counsel of repute. He has brought certain corruption cases and causes to the Court such as V. Ramaswamy case, Coal Mining case, Goa Mining case, Orissa Mining case, an issue relating to the appointment of CVC, CBI Director's case, Lok Pal case etc. In the public interest, he has filed several petitions like Narmada case, Bofors case, Police Reform case, Passive Euthanasia case, HPCL Privatization case, Street Vendors case, Rickshaw Pullers case, Singur Land Acquisition case, Draught Management, Gram Nyayalaya, and Electoral Bond cases.

(iv) The nature of offences is another ingredient to be taken into consideration while imposing sentence; (i) Offence must be clear without ambiguity. (ii) The

potential offender must know/understand whether he/she is guilty of the offence. The offence of scandalizing the Court is

notoriously vague. It has not been defined by the Statute. It is called

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"vague and wandering" jurisdiction. Reliance has been placed on **Shreya Singhal v. Union of India, 2015 (5) SCC 1.** Such an offence has to be handled with care and used sparingly, as observed **in**

Baradakanta Mishra v. Registrar of Orissa High Court & another, (1974) 1 SCC 374. There is inconsistency in various decisions relating to the conviction and sentence due to vagueness.

(v) The very jurisdiction of contempt is scandalizing and is vague and colonial. Several decisions have been relied upon where the Court has not even initiated contempt in such matters. In some of the countries, the contempt law being an archaic law has already been done away with. There cannot be any compromise with the Right to Free Speech and Opinions.

(vi) In the convicting judgment, reliance was placed on the decisions in

P.N. Duda v. P. Shiv Shanker & Others, (1988) 3 SCC 167), Brahma

Prakash Sharma and Others v. The State of Uttar Pradesh, 1953 SCR

1169, and **In Re: Hira Lal Dixit and two others, (1955) 1 SCR 677**.

The decision in **E.M. Sankaran Namboodripad v. T. Narayanan**

Nambiar, (1970) 2 SCC 325, has been superseded by **P.N. Duda** (supra).

In so far as the decision in **E.M. Sankaran Namboodripad (supra)** is concerned, the same would not be relevant inasmuch as the same stands

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overruled by P.N. Duda (supra). Similarly, reliance on the judgment in **C. K. Daphtary & Ors. v. O. P. Gupta & Ors**., (1971) 1 SCC 626, is also

not relevant inasmuch as the said judgment is delivered prior to amendment of Contempt of Courts Act, 1971 (for short 'the Act'), vide which Section 13(b) was brought on statute book, so as to allow truth as a defence. The Court has to exercise jurisdiction with great care and

caution and only in cases that are clear beyond reasonable doubt. **In**

Re: S. Mulgaokar, (1978) 3 SCC 339, various guidelines have been laid down by this Court. They are, free market of ideas, fair criticism in good faith when it is in the public interest, the surrounding circumstances, the person who is making the comments, his knowledge in the field regarding which the comments are made and the intended purpose. After considering all these guidelines, an advocate should be punished by exercising extreme caution only in the case where the tendency is to create disaffection and disrepute to erode the judicial system. Though the convicting judgment, on the one hand cites various decision on balance, on the contrary holds the contemnor guilty for the fair criticism made by him.

(vii) There is no conflict between the constitutional jurisdiction under Articles 129, 215 of the Constitution of India, and the Contempt of

Courts Act. In **Pallav Sheth v. Custodian & Ors.**, **(2001) 7 SCC 549,** it 4

was laid down that the powers of punishment for contempt under Article 129 of the Constitution of India have to be exercised in consonance with the Contempt of Courts Act, 1971.

(viii) Besides that, provisions in Sections 8 and 9 and newly amended Section 13(a) of the Act requires that the Court cannot impose a sentence unless it is satisfied that contempt is of such a nature that substantially interferes or tends substantially to interfere with the due course of justice. Thus, special responsibility is cast on the Court to examine the extent of interference. The provisions of newly amended Section 13(a) amply make it clear that the Court is required to assess the situation itself. However, in the convicting judgment no such inquiry has taken place and as such an order of sentence cannot be passed. Truth should ordinarily be allowed as a defence unless the Court finds, that it is only a camouflage to escape the consequences of the deliberate attempt of scandalizing the Court. Section 13 of the Act enables the Court to permit justification by truth as a valid defence in any contempt proceedings if it satisfied that such a defence is in the public interest and the request for

invoking the defence is bona fide. Reliance is placed on **Subramanian**

Swamy v. Arun Shourie, (2014) 12 SCC 344. In so far as the first tweet is concerned, the tweet is an expression of opinion by Shri Prashant Bhushan that due to the Courts not functioning physically the 5

litigants are deprived of real access to justice. It is submitted that this opinion also finds support from the observations made by this court **In**

Re: Financial aid for members of Bar affected by a pandemic (In Suo Moto Writ Petition No.8/2020) that due to the suspension of physical functioning of the Courts, the lawyers have been deprived of sources of earning their livelihood.

(ix) With respect to the second tweet, this is again an expression of opinion by Shri Prashant Bhushan. It was submitted that this opinion has been shared by many others including the retired judges of this Court. Reference was also made to the Press Conference held on 12.01.2018 by the Sitting Judges of this Court. The role of the Supreme Court and the last four Chief Justices is detailed in the reply affidavit. The reply is backed up by details and materials and how and why Shri Bhushan came to form opinion reflected in the tweet. The defence of truth was not examined at all in the convicting judgment and the same needs to be examined at the stage of sentencing in compliance with Section 13(b) of the Act.

(x) Article 19(1)(a) guarantees Freedom of Speech and Expression. Provisions in Articles 129 and 142(2) of the Constitution of India, cannot override Article 19(1)(a) and 19(2) of the Constitution of India. Free

Speech is a highly valued right and is essential for democracy. In a

democracy, there is a right to dissent. There is the freedom to build an opinion. Publication in good faith is suggested for the Press, as defined in General Clauses Act in Section 3(22), it is a valid defence, if done honestly, whether it is done negligently or not.

(xi) It was submitted that while applying the Principle of Proportionality the balance will have to tilt in favour of the rights as against restrictions, inasmuch as the rights are fundamental in nature. The opinions of the contemnor were bona fide and devoid of malice. Thus, the decision with respect to the conviction is required to be recalled, and in such an event, no sentence can be imposed. It was submitted that the judgments are open to scrutiny and this Court should welcome outspoken comments including criticism by ordinary citizen.

(xii) Debarring an advocate from appearing is to be done only in rare cases, as a last resort, only after giving requisite notice for the same, as

held in **R.K. Anand v. Registrar, Delhi High Court, (2009) 8 SCC 106.** (xiii) There should not be an attempt to coerce the contemnor into

making an apology on the basis that nothing else would be acceptable.

3. At the beginning of the proceedings itself, we had called upon Shri K.K. Venugopal, learned Attorney General for India, to address us. In the morning session, we have heard him at great length. Learned Attorney

General stated that this Court, by showing magnanimity, should not impose any sentence on Shri Prashant Bhushan. He submitted that the tweets made by Shri Prashant Bhushan could be considered as bona fide criticism in order to seek improvement in the functioning of the institution. He further stated, that taking into consideration the causes represented by Shri Prashant Bhushan in various public interest litigation and the service rendered by him to different classes of society by bringing their issues to the notice of this Court, the Court should consider not imposing any sentence on him.

4. When controverted with various statements made by the contemnor in the affidavit in reply, the learned Attorney General fairly conceded that such statements were not warranted.

5. He suggested that such statements be either withdrawn by the contemnor or should be taken off from the pleadings. When further confronted with the Contempt Petition filed by the learned Attorney General in one of the proceedings against the very same contemnor, the learned Attorney General submitted that since Shri Prashant Bhushan, on a piece of paper, had expressed his regret, he expressed desire not to pursue the said contempt proceedings. The learned Attorney General attempted to read out the statement made by Shri Prashant Bhushan in

the contempt proceedings, which was initiated in the year 2009, wherein

Shri Prashant Bhushan had expressed his regret. However, when it was pointed out to the learned Attorney General that the said statement was not pertaining to the present proceedings but earlier proceedings, the learned Attorney General stated that when Shri Prashant Bhushan had expressed regret in the other proceedings, there is no reason as to why he should not express regret in the present proceedings also. He stated that the same could be considered as regret in the present proceedings also. We had also pointed out to the learned Attorney General that the contemnor was pressing the statement made in the affidavit and was raising a plea of truth as a defence. In such circumstances, whether it would be appropriate on the part of this Court to take off the said statements from the pleadings. The learned Attorney General, faced with this situation, stated that unless the contemnor withdraws the said statements, in view of the provisions of Section 13(b) of the Act, the statements cannot be taken off.

6. After hearing the learned Attorney General, we heard Dr. Rajeev Dhavan, learned senior counsel appearing for the contemnor, at length. The submissions made on behalf of Dr. Dhavan, learned senior counsel, have already been stated hereinabove.

7. After Dr. Dhavan, learned senior counsel completed his arguments,

we again called upon learned Attorney General, to address us by taking

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into consideration the submissions made on behalf of contemnor by Dr. Dhavan, learned senior counsel. Learned Attorney General was fair enough to state that insistence on the part of the contemnor to press into service various objectionable statements made in the pleading was not warranted and also not justifiable. He fairly stated that in the interest of the administration of justice, the contemnor ought not to have made such statements. He further stated that such statements, which were also concerning various sitting and retired judges of this Court, including the past and present Chief Justices, were totally unjustifiable, specifically so when the retired or sitting judges were not in a position to defend themselves. He further submitted that no verdict could be passed without hearing such Judges, and as such, the process would be endless. He submitted that such a defence cannot be looked into. From the tenor of the submission made by the learned Attorney General, it was apparent that the learned Attorney General was at pains due to the statements made by the contemnor in the affidavit.

8. However, learned Attorney General appealed to the magnanimity of this Court and submitted that instead of sentencing the contemnor with any sentence this Court should magnanimously warn him, to be careful while making any statement with regard to the judges or the institution of administration of justice and he should be further warned not to

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repeat any such act hereafter. He stated that apart from sending a right message to the contemnor, it will also send an appropriate message to all the members of the Bar as well as all citizens throughout the country that one should be careful and cautious while making any statement with regard to the judges or the institution of administration of justice. The learned Attorney General reiterated on several occasions that magnanimity is required to be shown by this Court. He further submitted that this Court by showing magnanimity, should give a quietus to this matter by giving warning to him instead of sentencing him.

9. During the course of the arguments, it was also brought to the notice of Shri Dhavan, learned senior counsel, the fact that prior to the supplementary statement of the contemnor dated 24.08.2020, before it being filed in the Court, it was widely published in media on 24/25.08.2020. It was also brought to the notice of Dr. Dhavan, learned senior counsel, that the contemnor had made various statements with regard to the present proceedings either in the press interviews or in the webinars, which have the effect of influencing the present proceedings and as to whether such an act at the behest of a litigant was permissible in law.

10. Dr. Dhavan, learned senior counsel, fairly stated that publication of

the supplementary statement of the contemnor in various print as well

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as other media in advance was not proper, and he also stated that no lawyer or litigant should either give an interview, talk to the press or make any statement with regard to pending litigation before any Court. He submitted that though a fair criticism of judgment after the judgment was pronounced was permissible in law, making any statement or giving press interviews during the pendency of the litigation was not permissible.

11. When Dr. Dhavan, learned senior counsel was confronted with the situation as to how the sitting, as well as retired judges who are not supposed to speak to anyone or to give interviews can defend the allegations made against them, Dr. Dhavan responded that though this Court should not reprimand the contemnor for the tweets made by him, this Court should lay down guidelines for the precautions to be observed by the lawyers and litigants while making any statements with respect to the judges and the institution of administration of justice. He submitted that this, apart from giving a right signal to the contemnor, would also give a signal to all the members of the Bar in the country.

12. Dr. Dhavan, learned senior counsel, also submitted that we should consider the criticism made by the various persons in the media, and in case any punishment is inflicted, the Court will have to face further criticism.

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In Re: Defence

13. It is urged by Dr. Dhavan, learned senior counsel, that defence of the contemnor had not been taken into consideration while convicting him for criminal contempt. He pressed the defence in service to be examined before imposing any sentence. We propose to examine the defence. However, before we do so, to put the record straight, it is necessary to mention that Shri Dave, learned senior counsel appearing for Shri Prashant Bhushan, while arguing on 05.08.2020, after reading few lines from the affidavit in reply upto paragraph 38 stated that he would not go to the defence taken as reading of that would further malign the reputation of this Court. Since he did not press the defence into service, there was no occasion to take the same into consideration, specifically, in view of the aforesaid statement made by the learned senior counsel.

14. It will be relevant to refer to the statement made by the contemnor which was made and read out before this Court by the contemnor on 20.08.2020, which reads as under:

"I have gone through the judgment of this Hon'ble Court. I am pained that I have been held guilty of committing contempt of the Court whose majesty I have tried to uphold — not as a courtier or cheerleader but as a humble guard — for over three decades, at some personal and professional cost. I am pained, not because I may be punished, but because I have been grossly misunderstood.

I am shocked that the court holds me guilty of "malicious, scurrilous, calculated attack" on the institution of administration of justice. I am dismayed that the Court has arrived at this conclusion without providing any evidence of my motives to launch such an attack. I must confess that I am disappointed that the court did not find it necessary to serve me with a copy of the complaint on the basis of which the suo motu notice was issued, nor found it necessary to respond to the specific averments made by me in my reply affidavit or the many submissions of my counsel.

I find it hard to believe that the Court finds my tweet "has the effect of destabilizing the very foundation of this important pillar of Indian democracy". I can only reiterate that these two tweets represented my bonafide beliefs, the expression of which must be permissible in any democracy. Indeed, public scrutiny is desirable for healthy functioning of judiciary itself. I believe that open criticism of any institution is necessary in a democracy, to safeguard the constitutional order. We are living through that moment in our history when higher principles must trump routine obligations, when saving the constitutional order must come before personal and professional niceties, when considerations of the present must not come in the way of discharging our responsibility towards the future. Failing to speak up would have been a dereliction of duty, especially for an officer of the court like myself.

My tweets were nothing but a small attempt to discharge what I considered to be my highest duty at this juncture in the history of our republic. I did not tweet in a fit of absence mindedness. It would be insincere and contemptuous on my part to offer an apology for the tweets that expressed what was and continues to be my bonafide belief. Therefore, I can only humbly paraphrase what the father of the nation Mahatma Gandhi had said in his trial: I do not ask for mercy. I do not appeal to magnanimity. I am here, therefore, to cheerfully submit to any penalty that can lawfully be inflicted upon me for what the Court has determined to be an offence, and what appears to me to be the highest duty of a citizen."

15. The contemnor, in the statement made in this Court on

20.08.2020, stated that the Court did not consider it necessary to

respond to the specific averments made by him in the reply affidavit. The

contemnor was present along with his counsel, and what was urged was taken into consideration. When we had heard Shri Dave, learned senior counsel appearing on behalf of the contemnor, on 05.08.2020, the contemnor was very much present there and we had taken into consideration the submissions which were made in the presence of the contemnor.

16. After the judgment of conviction, when this Court had granted time to the contemnor to submit unconditional apology, if he so desired, the supplementary statement has been made by Shri Prashant Bhushan on 24.08.2020 to the following effect:

"It is with deep regret that I read the order of this Hon'ble Court dated 20th of August. At the hearing the court asked me to take 23 days to reconsider the statement I made in the court. However, the order subsequently states: "We have given time to the contemnor to submit unconditional apology, if he so desires."

I have never stood on ceremony when it comes to offering an apology for any mistake or wrongdoing on my part. It has been a privilege for me to have served this institution and bring several important public interest causes before it. I live with the realisation that I have received from this institution much more than I have had the opportunity to give it. I cannot but have the highest regard for the institution of the Supreme Court.

I believe that the Supreme Court is the last bastion of hope for the protection of fundamental rights, the watchdog institutions and indeed for constitutional democracy itself. It has rightly been called the most powerful court in the democratic world, and often an exemplar for courts across the globe. Today in these troubling times, the hopes of the people of India vest in this Court to ensure the rule of law and the Constitution and not an untrammelled rule of the executive.

This casts a duty, especially for an officer of this Court like myself, to speak up, when I believe there is a deviation from its sterling record. Therefore, I express myself in good faith, not to malign the Supreme Court or any particular Chief Justice, but to offer constructive criticism so that the court can arrest any drift away from its long-standing role as a guardian of the Constitution and custodian of people's rights.

My tweets represented this bonafide belief that I continue to hold. Public expression of these beliefs was I believe, in line with my higher obligations as a citizen and a loyal officer of this court. Therefore, an apology for expression of these beliefs, conditional or unconditional, would be insincere. An apology cannot be mere incantation and any apology has to, as the court has itself put it, be sincerely made. This is specially so when I have made the statements bonafide and pleaded truths with full details, which have not been dealt with by the Court. If I retract a statement before this court that I otherwise believe to be true or offer an insincere apology, that in my eyes would amount to the contempt of my conscience and of an institution that I hold in highest esteem."

17. In both the statements he has reiterated that "I have made statements bona fide and pleaded truths with full details which have not been dealt with by the Court".

18. Without going into the scope of the aspects to be examined while sentencing, we propose to consider the defence taken by the contemnor in his reply affidavit.

19. For appreciating the submission made by the contemnor it will be relevant to refer to Section 13 of the Amended Act of 1971, as amended in 2006, which reads thus:

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"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."

20. The aforesaid provision would show that for considering the truth as valid defence there is a twin requirement. That such a defence is in public interest and that the request for invoking the said defence is bona fide.

21. The sine qua non for considering the truth as a valid defence are that the Court should be satisfied that defence is in the public interest and the request for invoking the said defence is bona fide. Be that as it may, since the contemnor is insisting that at this stage also the Court is required to take truth as a defence into consideration, we would be required to consider the same, lest the contemnor feels that we have avoided its consideration.

22. In **Indirect Tax Practitioners' Association v. R.K. Jain, (2010) 8 SCC 281**, it was held thus:

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"**39.** The matter deserves to be examined from another angle. 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 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.

42. In our view, a person like the respondent can appropriately be described as a whistleblower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such a person by invoking Articles 129 or 215 of the Constitution or the provisions of the Act."

23. In **Subramanian Swamy** (supra), this Court approved the decision rendered in Indirect Tax Practitioners' Association v. R.K. Jain (supra) and observed:

"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:

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"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 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 852003 and the same was referred to the Departmentrelated Parliamentary Standing Committee on Home Affairs for examination. The Hon'ble Committee considered the said Bill in its meeting held on 292003. 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."

15. A twoJudge Bench of this Court in R.K. Jain [(2010) 8 SCC 281] 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

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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 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 twoJudge 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 twoJudge Bench in R.K. Jain [(2010) 8 SCC 281]. Nothing further needs to be considered with regard to second question since the amendment in contempt law has effectively rendered this question redundant."

24. It was submitted by Dr. Dhavan, learned senior counsel, that the second tweet was an expression of opinion by Mr. Prashant Bhushan that the democracy has been substantially destroyed in the country in the past six years and the Court has also played its role in the same. However, the Court did not go into the said defence. It was submitted that the said opinion was carved out on the basis of material which was placed on record along with the affidavit in reply. However, the said material was also not taken into consideration by this Court.

25. Learned Attorney General, after being taken through the defence

taken by the contemnor in the reply, fairly stated that contemnor should

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be asked to withdraw such defences and it should be taken off the records.

26. With regard to the averments made in the affidavit in reply of Shri Prashant Bhushan, the learned Attorney General submitted that the affidavit contains various allegations against several retired Chief Justices as well as the sitting and retired Judges of this Court. He submitted that such a defence cannot be examined without hearing the Judges against whom such allegations are made and therefore such a defence cannot be considered unless the persons against whom allegations are made are heard. He, therefore, stated that the contemnor should express regret for taking such a defence and withdraw the same. On the examination of the defence of the contemnor, we concur with the submission made by the learned Attorney General that the defence cannot be said to be either in the public interest or a bona fide one. In this respect it will also be pertinent to note that when Mr. Dave, learned senior counsel, was heard in the presence of the contemnor, on 05.08.2020, he fairly stated that he would not read further averments in the affidavit in reply of the contemnor because it will further malign the reputation of this Court. Thus, we endorse the view of learned Attorney General that the defence should be taken off the record and, in our

opinion, it is neither bona fide nor in the public interest and as such it fails to clear the twin test, which we are examining.

27. One of the reasons why we hold so is that though the tweet is of two lines, the affidavit in reply refers to series of allegations made by the contemnor with regard to the functioning of a large number of retired as well as sitting Judges including the Chief Justices as to their role on the judicial as well as on administrative side. If the averments are considered for taking truth as a defence, it would amount nothing else but the aggravation of the contempt.

28. We are of the view that, in the circumstances, the defence taken cannot be said to be either in the public interest or bona fide one. On the contrary, it is more derogatory to the reputation of this Court and would amount to further scandalizing and bringing administration of justice in disrepute, in which the common citizen of this country has faith and approaches this Court as a last resort for getting justice.

29. He averred that this Court had surrendered to the majoritarian executive and that when majoritarian executive was acting in tyranny, the Supreme Court has not been able to stand to correct the executive.

30. The averment in the affidavit also referred to formation of the Benches by the Chief Justice. There is reference to various cases dealt

with by 9Judges and 5Judges of this Court and has casted aspersions on the entire justice delivery system and on a large number of Judges.

31. He has further averred with respect to the withdrawal of the case which was filed questioning the decision of rejection of impeachment motion moved against the then Chief Justice. He has also referred to various matters pending adjudication before this Court and also adversely commented on the functioning of this Court. He has raised eyebrows on the Ayodhya verdict and blamed this Court.

32. After going through the various averments made in the affidavit in reply for supporting truth as defence, we are of the considered view that the defence taken is neither in the public interest nor bona fide one, but the contemnor has indulged in making reckless allegations against the institution of administration of justice. As referred by the learned Attorney General the averments are based on political consideration, and therefore in our view cannot be considered to support the case of the contemnor of truth as a defence.

33. The allegations made are scandalous and are capable of shaking the very edifice of the judicial administration and also shaking the faith of common man in the administration of justice.

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34. Though there is a Freedom of Speech, freedom is never absolute because the makers of the Constitution have imposed certain restrictions upon it. Particularly when such Freedom of Speech is sought to be abused and it has the effect of scandalising the institution as a whole and the persons who are part of the said institution and cannot defend themselves publicly, the same cannot be permitted in law. Though a fair criticism of judgment is permissible in law, a person cannot exceed the right under Article 19(1)(a) of the Constitution to scandalize the institution.

35. It is apparent that the contemnor is involved in making allegations against the retired and sitting Judges. On one hand, our attention was attracted by Shri Dushyant Dave, learned senior counsel, towards the norms of judicial conduct which also provide that Judges cannot express an opinion in the public. The Judges have to express their opinion by their judgments, and they cannot enter into public debate or go to press. It is very easy to make any allegation against the Judges in the newspaper and media. Judges have to be the silent sufferer of such allegations, and they cannot counter such allegations publicly by going on public platforms, newspapers or media. Nor can they write anything about the correctness of the various wild allegations made, except when they are dealing with the matter. Retired Judges do have the prestige 24

that they have earned by dint of hard work and dedication to this institution. They are also not supposed to be answering each and every allegation made

and enter into public debate. Thus, it is necessary that when they cannot speak out, they cannot be made to suffer the loss of their reputation and prestige, which is essential part of the right to live with dignity. The Bar is supposed to be the spokesperson for the protection of the judicial system. They are an integral part of the system. The Bar and Bench are part of the same system i.e. the judicial system, and enjoy equal reputation. If a scathing attack is made on the judges, it would become difficult for them to work fearlessly and with the objectivity of approach to the issues. The judgment can be criticized. However, motives to the Judges need not be attributed, as it brings the

administration of justice into disrepute. In **Halsbury's Laws of England,**

Fourth Edition, Volume 9, in para 27, it is observed that the punishment is inflicted, not for the purpose of protecting either the Court as a whole or the individual Judges of the Court from repetition of the attack but for protecting the public and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the Tribunal is undermined or impaired. Hostile criticism of the judges or judiciary is

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definitely an act of scandalizing the Court. Defamatory publication concerning the Judge or institution brings impediment to justice.

36. In **C. Ravichandran Iyer v. Justice A.M. Bhattacharjee and**

Others, (1995) 5 SCC 457, this Court dealt with a matter with respect to allegation against the conduct of a Judge. A Resolution was passed by the Bar Council against Judge/Chief Justice of the High Court alleging misconduct. This Court held that Bar Council cannot make scurrilous criticism of conduct of the Judge/Chief Justice and pressurise or coerce him to demit the office. Such action would constitute contempt of court and affect independence of judiciary which is an essential attribute of rule of law and also affect judicial individualism. This Court further observed that, however, where the Bar honestly doubts the conduct of the Judge/Chief Justice and such doubt is based on authentic and acceptable material, the proper course for officerbearers of the Bar Association would be to meet the Judge in camera and apprise him or approach the Chief Justice of that High Court to deal with the matter appropriately. When the allegation is against the Chief Justice of the High Court, Bar Association should directly approach the Chief Justice of India. Thereafter, the Chief Justice has to take a decision. Until such decision is taken, the Bar should suspend all further action and await response for a reasonable period. It was held that independence of the 26

judiciary is an essential attribute of rule of law, which is the basic feature of the Constitution and that judiciary must be free from not only executive pressure

but also from other pressures. Individual Judge has to feel secure in view of social demand for active judicial role which he is required to fulfil. This Court also considered that criticism of the judiciary is not protected under Article 19(1)(a) of the Constitution. It was also observed that fair criticism is based on the authentic and acceptable material permissible but when criticism tends to create apprehension in the minds of the people regarding integrity, ability and fairness of the Judge, it amounts to contempt. Such criticism is not protected under Article 19(1)(a) of the Constitution. It was also observed that the Judge should maintain high standard of conduct based on high tradition. It was held thus :

"**10.** The diverse contentions give rise to the question whether any Bar Council or Bar Association has the right to pass resolution against the conduct of a Judge perceived to have committed misbehaviour and, if so, what is its effect on independence of the judiciary. With a view to appreciate the contentions in their proper perspective, it is necessary to have at the back of our mind the importance of the independence of the judiciary. In a democracy governed by rule of law under a written constitution, judiciary is sentinel on the *qui vive* to protect the fundamental rights and to poise even scales of justice between the citizens and the State or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. In *S.P. Gupta* v. *Union of India* [1981 Supp SCC 87] (SCC p. 221, para 27) this Court held that if there is one principle which runs through the

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entire fabric of the Constitution it is the principle of the rule of law, and under the Constitution it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. Judicial review is one of the most potent weapons in the armoury of law. The judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive. It is, therefore, absolutely essential that the judiciary must be free from executive pressure or influence which has been secured by making elaborate provisions in the Constitution with details. The independence of judiciary is not limited only to the independence from the executive pressure or influence; it is a wider concept which takes within its sweep independence from any other pressure and prejudices. It has many dimensions, viz., fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.

Judicial individualism — Whether needs protection?

11. Independent judiciary is, therefore, most essential when liberty of citizen is in danger. It then becomes the duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived) undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who

work primarily on their own. Judicial individualism, in the language of Justice Powell of the Supreme Court of United States in his address to the American Bar Association, Labour Law Section on 1181976, is "perhaps one of the last citadels of jealously preserved individualism ...". Justice Douglas in his dissenting opinion in *Stephen S. Chandler* v. *Judicial Council of the Tenth Circuit of the United States* [398 US 74] stated:

"No matter how strong an individual judge's spine, the threat of punishment — the greatest peril to judicial independence — would project as dark a shadow whether cast by political strangers or by judicial colleagues. A federal judge must be

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independent of every other judge.... Neither one alone nor any number banded together can act as censor and place sanctions on him. It is vital to preserve the opportunities for judicial individualism."

27. The Advocates Act, 1961 gave autonomy to a Bar Council of a State or Bar Council of India and Section 6(1) empowers them to make such action deemed necessary to set their house in order, to prevent fall in professional conduct and to punish the incorrigible as not befitting the noble profession apart from admission of the advocates on its roll. Section 6(1)(*c*) and rules made in that behalf, Sections 9, 35, 36, 36B and 37 enjoin it to entertain and determine cases of misconduct against advocates on its roll. The members of the judiciary are drawn primarily and invariably from the Bar at different levels. The high moral, ethical and professional standards among the members of the Bar are preconditions even for high ethical standards of the Bench. Degeneration thereof inevitably has its eruption and tends to reflect the other side of the coin. The Bar Council, therefore, is enjoined by the Advocates Act to maintain high moral, ethical and professional standards which of late is far from satisfactory. Their power under the Act ends *thereat* and extends no further. Article 121 of the Constitution prohibits discussion by the members of Parliament of the conduct of any Judge of the Supreme Court or of High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as provided under Article 124(4) and (5) and in the manner laid down under the Act, the Rules and the rules of business of Parliament consistent therewith. By necessary implication, no other forum or fora or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a Judge of the Supreme Court or the High Court, much less a Bar Council or group of practising advocates. They are prohibited to discuss the conduct of a Judge in the discharge of his duties or to pass any resolution in that behalf.

29. In *Halsbury's Laws of England* (4th Edn.) Vol. 9, para 27, at p. 21, it is stated that scandalising the court would mean any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or

the lawful process of the court. Scurrilous abuse of a Judge

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or court, or attacks on the personal character of a Judge, are punishable contempts. Punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual Judges of the court from repetition of the attack, but for protecting the public, and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of a Judge or a court. Criticism of a Judge's conduct or of the conduct of a court even if strongly worded, is, however, not contempt, provided that the criticism is fair, temperate and made in good faith and is not directed to the personal character of a Judge or to the impartiality of a Judge or court.

30. In *Oswald's Contempt of Court* (3rd Edn.), 1993, at p. 50 it is stated that libel upon courts is made contempt

"to keep a blaze of glory around them, and to deter people from attempting to render them contemptible in the eyes of the public.... A libel upon a court is a reflection upon the King, and telling the people that the administration of justice is in weak or corrupt hands, that the fountain of justice itself is tainted, and consequently that judgments which stream out of that fountain must be impure and contaminated."

A libel upon a Judge in his judicial capacity is a contempt, whether it concerns what he did in court, or what he did judicially out of it. At p. 91, it is stated that all publications which offend against the dignity of the court, or are calculated to prejudice the course of justice, will constitute contempt. One of the natures of offences is scandalising the courts. In *Contempt of Court* (2nd Edn.) by C.J. Miller at p. 366, Lord Diplock is quoted from *Chokolingo* v. *Attorney General of Trinidad and* Tobago [(1981) 1 All ER 244, 248] who spoke for the Judicial Committee summarising the position thus:

" 'Scandalising the court' is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the courts and public confidence in the administration of justice."

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In Borrie and Lowe's *Law of Contempt* (2nd Edn.) at p. 226 it is stated that the necessity for this branch of contempt lies in the idea that without wellregulated laws a civilised community cannot survive. It is therefore thought important to maintain the respect and dignity of the court and its officers, whose task it is to uphold and enforce the law, because without such respect, public faith in the administration of justice would be undermined and the law itself would fall into disrepute. Even in the latest Report on Contempt of Court by Phillimore Committee to revise the penal enforcement of contempt, adverting to Lord Atkin's dictum that courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them, in paragraph 162, the Committee had stated that at one stage

"we considered whether such conduct should be subject to penal sanctions at all. It was argued that any Judge who was attacked would have the protection of the law of defamation, and that no further protection is necessary. We have concluded, however, that some restraints are still required, for two reasons. First, this branch of the law of contempt is concerned with the protection of the administration of justice, and especially the preservation of public confidence in its honesty and impartiality; it is only incidentally, if at all, concerned with the personal reputations of Judges. Moreover, some damaging attacks, for example upon an unspecified group of Judges, may not be capable of being made the subject of libel proceedings at all. Secondly, Judges commonly feel constrained by their position not to take action in reply to criticism, and they have no proper forum in which to do so such as other public figures may have. These considerations lead us to the conclusion that there is need for an effective remedy ... against imputations of improper or corrupt judicial conduct."

The Contempt of Courts Act, 1971 engrafted suitable amendments accordingly.

Freedom of expression and duty of Advocate

31. It is true that freedom of speech and expression guaranteed by Article 19(1)(*a*) of the Constitution is one of the most precious liberties in any democracy. But equally important is the maintenance of respect for judicial

independence which alone would protect the life, liberty and

reputation of the citizen. So the nation's interest requires that criticism of the judiciary must be measured, strictly rational, sober and proceed from the highest motives without being coloured by partisan spirit or pressure tactics or intimidatory attitude. The Court must, therefore, harmonise constitutional values of free criticism and the need for a fearless curial process and its presiding functionary, the Judge. If freedom of expression subserves public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary.

34. The threat of action on vague grounds of dissatisfaction would create a dragnet that would inevitably sweep into its grasp the maverick, the dissenter, the innovator, the reformer — in one word the unpopular. Insidious attempts pave way for removing the inconvenient. Therefore, proper care should be taken by the Bar Association concerned. First, it should gather specific, authentic and acceptable material which would show or tend to show that conduct on the part of a Judge creating a feeling in the mind of a reasonable person doubting the honesty, integrity, impartiality or act which lowers the dignity of the office but necessarily, is not impeachable misbehaviour. In all fairness to the Judge, the responsible officebearers should meet him in camera after securing interview and apprise the Judge of the information they had with them. If there is truth in it, there is every possibility that the Judge would

mend himself. Or to avoid embarrassment to the Judge, the office bearers can approach the Chief Justice of that High Court and apprise him of the situation with material they have in their possession and impress upon the Chief Justice to deal with the matter appropriately."

37. It was argued by Shri Dhavan, learned senior counsel, that question of purging arises mainly in civil contempt. The question of

purging in criminal contempt was considered by this Court in **Pravin C. Shah v. K.A. Mohd Ali and Another,** (2001) 8 SCC 650. The Bar Council took the view that the purging of contempt can be only by regretting or apologising in the case of criminal contempt and in civil contempt, by subsequent compliance with the order or directions the contempt can be purged. The following question arose:

"23. Now we have to consider the crucial question — how can a contemnor purge himself of the contempt? According to the Disciplinary Committee of the Bar Council of India, purging oneself of contempt can be done by apologising to the court. The said opinion of the Bar Council of India can be seen from the following portion of the impugned order:

"Purging oneself of contempt can be only by regretting or apologising in the case of a completed action of criminal contempt. If it is a case of civil contempt, by subsequent compliance with the orders or directions the contempt can be purged of. There is no procedural provision in law to get purged of contempt by an order of an appropriate court."

(i) Meaning of purging was considered by this Court thus:

"24. Purging is a process by which an undesirable element is expelled either from one's own self or from a society. It is a cleaning process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word "purge", which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and rendered fit to enter into heaven where nothing defiled enters (vide Words and Phrases, Permanent Edn., Vol. 35A, p.307). In Black's Law Dictionary the word "purge" is given the following meaning: "To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a

contempt." It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed."

(ii) This Court considered how purging can take place thus:

"25. We are told that a learned Single Judge of the Allahabad High Court has expressed a view that purging process would be completed when the contemnor undergoes the penalty [vide Madan Gopal Gupta (Dr) v. Agra University [AIR 1974 All. 39]]. This is what the learned Single Judge said about it: (AIR p. 43, para 13)

"In my opinion a party in contempt purged its contempt by obeying the orders of the court or by undergoing the penalty imposed by the court."

26. Obeying the orders of the court would be a mode by which one can make the purging process in a substantial manner when it is a civil contempt. Even for such a civil contempt the purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong. If that is the position in regard to civil contempt the position regarding criminal contempt must be stronger. Section 2 of the Contempt of Courts Act categorises contempt of court into two categories. The first category is "civil contempt" which is the wilful disobedience of the order of the court including breach of an undertaking given to the court. But "criminal contempt" includes doing any act whatsoever, which tends to scandalise or lowers the authority of any court, or tends to interfere with the due course of a judicial proceeding or interferes with, or obstructs the administration of justice in any other manner."

38. This Court did not approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself for the contempt. In case of sentence of fine, the

contemnor can pay the fine and continue to persist with contemptuous

conduct again and again. Something more is required to purge the criminal contempt. Even a statement of apology is not enough to purge the contempt. The Court has to be satisfied as to the genuineness of the apology to make an order that contemnor has purged himself of the contempt. Before contempt is purged, the advocate could suffer the consequences of Rule 11 of the Rules which postulates that in case the advocate has been found guilty of contempt of court, his authority to act or plead in any court stands snapped.

39. In **Pravin C. Shah** (supra), this Court held thus:

"22. We have already pointed out that Rule 11 of the Rules is a selfoperating provision. When the first postulate of it is completed (that the advocate has been found guilty of contempt of court) his authority to act or plead in any court stands snapped, though perhaps for the time being. If he does such things without the express permission of the court he would again be guilty of contempt of court besides such act being a misconduct falling within the purview of Section 34 of the Advocates Act. The interdict as against him from appearing in court as a counsel would continue until such time as he purges himself of the contempt.

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned Single Judge in the aforecited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

28. The Disciplinary Committee of the Bar Council of India highlighted the absence of any mode of purging oneself of the guilt

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in any of the Rules as a reason for not following the interdict contained in Rule 11. Merely because the Rules did not prescribe the mode of purging oneself of the guilt it does not mean that one cannot purge the guilt at all. The first thing to be done in that direction when a contemnor is found guilty of a criminal contempt is to implant or infuse in his own mind real remorse about his conduct which the court found to have amounted to contempt of court. Next step is to seek pardon from the court concerned for what he did on the ground that he really and genuinely repented and that he has resolved not to commit any such act in future. It is not enough that he tenders an apology. The apology tendered should impress the court to be genuine and sincere. If the court, on being impressed of his genuineness, accepts the apology then it could be said that the contemnor has purged himself of the guilt.

29. This Court has held in M.Y. Shareef v. Hon'ble Judges of the Nagpur High Court [AIR 1955 SC 19] that

"an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness". (AIR p. 23, para 10)

Ahmadi, J. (as the learned Chief Justice then was) in M.B. Sanghi, Advocate v. High Court of Punjab and Haryana [(1991) 3 SCC 600] while considering an apology tendered by an advocate in a contempt proceeding has stated thus: (SCC p. 603, para 2)

"And here is a member of the profession who has repeated his performance presumably because he was let off lightly on the first occasion. Soft justice is not the answer — not that the High Court has been harsh with him — what I mean is he cannot be let off on an apology which is far from sincere. His apology was hollow, there was no remorse — no regret — it was only a device to escape the rigour of the law. What he said in his affidavit was that he had not uttered the words attributed to him by the learned Judge; in other words the learned Judge was lying — adding insult to injury — and yet if the court finds him guilty (he contested the matter tooth and nail) his unqualified apology may be accepted. This is no apology, it is merely a device to escape."

30. A fourJudge Bench of this Court in Mulk Raj v. State of Punjab [(1972) 3 SCC 839] made the following observations which

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would throw considerable light on the question before us: (SCC p. 840, para 9)

"9. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shorn of penitence. If apology is offered at a time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and it becomes an act of a cringing coward. The High Court was right in not taking any notice of the appellant's expression of apology 'without any further word'. The High Court correctly said that acceptance of apology in the case would amount to allow the offender to go away with impunity after having committed gross contempt."

40. This Court further held that till contempt is purged, the advocate has to suffer the consequences of Rule 11. This Court held:

"34. The respondent Advocate continued to appear in all the courts where he was earlier appearing even after he was convicted by the High Court for criminal contempt without being objected by any court. This is obviously on account of the fact that presiding officers of the court were not informed of what happened. We, therefore, direct that in future, whenever an advocate is convicted by the High Court for contempt of court, the Registrar of that High Court shall intimate the fact to all the courts within the jurisdiction of that High Court so that presiding officers of all courts would get the information that the particular advocate is under the spell of the interdict contained in Rule 11 of the Rules until he purges himself of the contempt.

35. It is still open to the respondent Advocate to purge himself of the contempt in the manner indicated above. But until that process is completed the respondent Advocate cannot act or plead in any court situated within the domain of the Kerala High Court, including the subordinate courts thereunder. The Registrar of the High Court of Kerala shall intimate all the courts about this interdict as against the respondent Advocate."

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41. In **Bar Council of India v. High Court of Kerala,** (2004) 6 SCC 311, the ratio in Pravin C. Shah (supra) was affirmed by this Court. It was held that the Court has the power to punish under Article 129 of the Constitution of India and can punish advocate. The Court relied the

decision in **Supreme Court Bar Association v. Union of India,** (1998) 4 SCC 409. It was held thus:

"34. Although in a case of professional misconduct, this Court cannot punish an advocate in exercise of its jurisdiction under Article 129 of the Constitution of India which can be imposed on a finding of professional misconduct recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder but as has been

noticed in Supreme Court Bar Assn. [(1998) 4 SCC 409] professional misconduct of the advocate concerned is not a matter directly in issue in the matter of contempt case."

42. Roshan Lal Ahuja, In Re:, (1993) Supp. 4 SCC 446, it was held that pleadings made had the effect on scandalizing and lowering the authority of the Court in relation to the judicial matters but also had the effect of substantial interference with obstructing the administration of justice. Unfounded and unwarranted aspersions had the tendency to undermine the authority of the Court and would create distrust in the mind of the public and on the capacity to impart fearless justice.

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43. It will be relevant refer to the following clauses of the **'Restatement of Values of Judicial Life' adopted in the Chief Justices' Conference**

at New Delhi on September 1819, 1992:

"..(8) A Judge shall not enter into a public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(9) A Judge is expected to let his judgment speak for themselves. He shall not give interview to the media."

44. The contemnor has tried to justify the averments made on the basis of the Press Conference dated 12.01.2018 of the four seniormost Judges of this Court. Concept of equality before law, what is permissible not as to what is impermissible. It is settled that negative equality cannot be claimed as there is no concept of negative equality. We hope it was the first and the last occasion that the Judges have gone to press, and God gives wisdom to protect its dignity by internal mechanism, particularly, when allegations made, if any, publicly cannot be met by sufferer Judges. It would cause suffering to them till eternity. Truth can be the defence to the Judges also, but they are bound by their judicial norms, ethics, and code of conduct. Similarly, the code of conduct for advocates is equally applicable to the lawyers also, being part of the system. The Rules of Professional Ethics formed by the Bar Council, though couched under statutory power, are themselves not enough to prescribe or

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proscribe the nobility of profession in entirety. The nobility of profession encompasses, over and above, the Rules of Ethics. Lawyers, as a class,

are looked by the public as intelligentsia, as observed in **R.**

Muthukrishnan v. The Registrar General of The High Court of

Judicature at Madras, (2019) 16 SCC 407. The relevant portion of the judgment is extracted hereunder:

"**25.** The role of a lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court, to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice is delivered to his cause.

26. The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of the legal profession requires an advocate to remember that he is not over attached to any case as advocate does not win or lose a case, real recipient of justice is behind the curtain, who is at the receiving end. As a matter of fact, we do not give to a litigant anything except recognising his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A lawyer should not expect any favour from the Judge and should not involve by any means in influencing the fair

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decisionmaking process. It is his duty to master the facts and the law and submit the same precisely in the court, his duty is not to waste the courts' time."

72. The decision in *Mohit Chaudhary, In re* [*Mohit Chaudhary, In re*, (2017) 16 SCC 78] has also been relied upon in which this Court considered Rule 10 and debarred an advocate to practice as AdvocateonRecord for a period of one month from the date of order. At the same time, this Court has observed that a lawyer is under obligation to do nothing that shall detract from the dignity of the Court. Contempt jurisdiction is for the purpose of upholding honour or dignity of the court, to avoid sharp or unfair practices. An advocate shall not to be immersed in a blind quest of relief for his client. "Law is not trade, briefs no merchandise". His duty is to legitimately present his side of the case to assist in the administration of justice. The Judges are selected from the Bar and purity of the Bench depends on the purity of the Bar. Degraded Bar results in degraded Bench. The Court has referred to articles and standard of processional conduct and etiquettes thus: (SCC pp. 88 92, paras 2028, 30 & 32)

"*20. Warvelle's Legal Ethics*, 2nd Edn. at p. 182 sets out the obligation of a lawyer as:

'A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.'

21. The contempt jurisdiction is not only to protect the reputation of the Judge concerned so that he can administer justice fearlessly and fairly, but also to protect "the fair name of the judiciary". The protection in a manner of speaking, extends even to the Registry in the performance of its task and false and unfair allegations which seek to impede the working of the Registry and thus the administration of justice, made with oblique motives cannot be tolerated. In such a situation in order to uphold the honour and dignity of the institution, the Court has to perform the painful duties which we are faced with in the present proceedings. Not to do so in the words of P.B. Sawant, J. in *Ministry of Information &*

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Broadcasting, In re [*Ministry of Information & Broadcasting, In re*, (1995) 3 SCC 619] would: (SCC p. 635, para 20)

'*20.* ... The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.'

22. Now turning to the "Standards of Professional Conduct and Etiquette" of the Bar Council of India Rules contained in Section I of Chapter II, Part VI, the duties of an advocate towards the court have been specified. We extract the 4th duty set out as under:

'**4.** An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel or parties which the advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.'

23. In the aforesaid context the aforesaid principle in different words was set out by Crampton, J. in *R.* v. *O' Connell* [*R.* v. *O' Connell*, (1844) 7 Irish Law Reports 313] as under:

'The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not wilfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable

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services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other licence which in any case or for any party or purpose can discharge him from that primary and paramount retainer.'

24. The fundamentals of the profession thus require an advocate not to be immersed in a blind quest of relief for his client. The dignity of the institution cannot be violated in this quest as "law is no trade, briefs no merchandise" as per Krishna Iyer, J. in *Bar Council of Maharashtra* v. *M.V. Dabholkar* [*Bar Council of Maharashtra* v. *M.V. Dabholkar*, (1976) 2 SCC 291] (SCC p. 301, para 23).

25. It is also pertinent to note at this point, the illuminating words of Vivian Bose, J. in *'G', a Senior Advocate of the Supreme Court, In re* [*'G', a Senior Advocate of the Supreme Court, In re*, AIR 1954 SC 557 : 1954 Cri LJ 1410] , who elucidated: (AIR p. 558, para 10)

'*10.* ... To use the language of the army, an advocate of this Court is expected at all times to comport himself in a manner befitting his status as an "officer and a gentleman".'

26. It is as far back as in 1925 that an article titled "The Lawyer as an Officer of the Court" [*Virginia Law Review*, Vol. 11, No. 4 (Feb 1925) pp. 26377.] published in the *Virginia Law Review*, lucidly set down what is expected from the lawyer which is best set out in its own words:

'The duties of the lawyer to the court spring directly from the relation that he sustains to the court as an officer in the administration of justice. The law is not a mere private calling, but is a profession which has the distinction of being an integral part of the State's judicial system. As an officer of the court the lawyer is, therefore, bound to uphold the dignity and integrity of the court; to exercise at all times respect for the court in both words and actions; to present all matters relating to his client's case openly, being careful to avoid any attempt

to exert private influence upon either the Judge or the jury; and to be frank and candid in all dealings with the court, "using no deceit, imposition or evasion", as by misreciting witnesses or misquoting precedents. "It must always be understood", says Mr Christian Doerfler, in an address before the Milwaukee County Bar Association, in December 1911, "that the profession of law is instituted among men for the purpose of aiding the administration of justice. A proper administration of justice does not mean that a lawyer should succeed in winning a lawsuit. It means that he should properly bring to the attention of the court everything by way of fact and law that is available and legitimate for the purpose of properly presenting his client's case.

His duty as far as his client is concerned is simply to legitimately present his side of the case. His duty as far as the public is concerned and as far as he is an officer of the Court is to aid and assist in the administration of justice."'

In this connection, the timely words of Mr Warvelle may also well be remembered:

'But the lawyer is not alone a gentleman; he is a sworn minister of justice. His office imposes high moral duties and grave responsibilities, and he is held to a strict fulfilment of all that these matters imply. Interests of vast magnitude are entrusted to him; confidence is imposed in him; life, liberty and property are committed to his

care. He must be equal to the responsibilities which they create, and if he betrays his trust, neglects his duties, practices deceit, or panders to vice, then the most severe penalty should be inflicted and his name stricken from the roll.'

That the lawyer owes a high duty to his profession and to his fellow members of the Bar is an obvious truth. His profession should be his pride, and to preserve its honour pure and unsullied should be among his chief concerns. "Nothing should be higher in the estimation of

the advocate", declares Mr Alexander H. Robbins, "next after those sacred relations of home and country than his profession. She should be to him the "fairest of ten thousand" among the institutions of the earth. He must stand for her in all places and resent any attack on her honour — as he would if the same attack were to be made against his own fair name and reputation. He should enthrone her in the sacred places of his heart, and to her, he should offer the incense of constant devotion. For she is a jealous mistress.

Again, it is to be borne in mind that the Judges are selected from the ranks of lawyers. The purity of the Bench depends upon the purity of the Bar.

'The very fact, then, that one of the coordinate departments of the Government is administered by men selected only from one profession gives to that profession a certain preeminence which calls for a high standard of morals as well as intellectual attainments. The integrity of the judiciary is the safeguard of the nation, but the character of the Judges is practically but the character of the lawyers. Like begets like. A degraded Bar will inevitably produce a degraded Bench, and just as certainly may we expect to find the highest excellence in a judiciary drawn from the ranks of an enlightened, learned and moral Bar.'

27. He ends his article in the following words:

'No client, corporate or individual, however powerful, nor any cause civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the

honour of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But, above all, a lawyer will find his highest honour in a deserved reputation for

fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.'

*28.*On examination of the legal principles an important issue emerges: what should be the end of what the contemnor had started but has culminated in an impassioned plea of Mr K.K. Venugopal, learned Senior Advocate supported by the representatives of the Bar present in court, marking their appearance for the contemnor. We are inclined to give due consideration to such a plea but are unable to persuade ourselves to let the contemnor go scotfree, without any consequences. We are thus not inclined to proceed further in the contempt jurisdiction except to caution the contemnor that this should be the first and the last time of such a misadventure. But the matter cannot rest only at that.

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30. We are of the view that the privilege of being an AdvocateonRecord under the rules has clearly been abused by the contemnor. The conduct was not becoming of an advocate much less an Advocateon Record in the Supreme Court.

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32. The aforesaid rule makes it clear that whether on the complaint of any person or otherwise, in case of misconduct or a conduct unbecoming of an AdvocateonRecord, the court may make an order removing his name from the register of Advocateon Record permanently, or for a specified period. We are not referring to the right to practice as an advocate,

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and the name entered on the rolls of any State Bar Council, which is a necessary requirement, before a person takes the examination of Advocateon Record. The present case is clearly one where this Court is of the opinion that the conduct of the contemnor is unbecoming of an AdvocateonRecord. The prerequisites of the proviso are met by the reason of the Bench being constituted itself by the Chief Justice, and the contemnor being aware of the far more serious consequences, which could have flowed to him. The learned Senior Counsel representing the petitioner has thrown him at the mercy of the court. We have substantively accepted the request but lesser consequences have been imposed on the contemnor."

45. With respect to test on judicial system and what constitutes Contempt of Court attributing political colours to the judgments, in Muthu Krishnan (supra) it was held :

"82. It has been seen from time to time that various attacks have been made on the judicial system. It has become very common to the members of the Bar to go to the press/media to criticise the Judges in person and to commit sheer contempt by attributing political colours to the judgments. It is nothing less than an act of contempt of gravest form. Whenever any political matter comes to the Court and is decided, either way, political insinuations are attributed by unscrupulous persons/advocates. Such acts are nothing, but an act of denigrating the judiciary itself and destroys the

faith of the common man which he reposes in the judicial system. In case of genuine grievance against any Judge, the appropriate process is to lodge a complaint to the higher authorities concerned who can take care of the situation and it is impermissible to malign the system itself by attributing political motives and by making false allegations against the judicial system and its functionaries. Judges who are attacked are not supposed to go to press or media to ventilate their point of view.

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83. Contempt of court is a weapon which has to be used sparingly as more is power, same requires more responsibility but it does not mean that the court has fear of taking action and its repercussions. The hallmark of the court is to provide equal and evenhanded justice and to give an opportunity to each of the system to ensure that it improves upon. Unfortunately, some advocates feel that they are above the Bar Council due to its inaction and they are the only champion of the causes. The hunger for cheap publicity is increasing which is not permitted by the noble ideals cherished by the great doyens of the Bar, they have set by their conduct what should be in fact the professional etiquettes and ethics which are not capable of being defined in a narrow compass. The statutory rules prohibit advocates from advertising and in fact to cater to the press/media, distorted versions of the court proceedings is sheer misconduct and contempt of court which has become very common. It is making it more difficult to render justice in a fair, impartial and fearless manner though the situation is demoralising that something has to be done by all concerned to revamp the image of the Bar. It is not open to wash dirty linen in public and enter in accusation/debates, which tactics are being adopted by unscrupulous elements to influence the judgments and even to deny justice with ulterior motives. It is for the Bar Council and the senior members of the Bar who have never forgotten their responsibility to rise to the occasion to maintain the independence of the Bar which is so supreme and is absolutely necessary for the welfare of this country and the vibrant democracy."

46. In **Tehseen Poonawalla v. Union of India & Another,** (2018) 6 SCC 72, esteemed brother Dr. Justice Chandrachud, who delivered the judgment, has noted the misuse of public interest litigation and found that it was a serious matter of concern for the judicial process. He further found that the Court is flooded with misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are

found to promote a personal, business or political agenda. It was further

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observed that such petitions pose a grave danger to the credibility of the judicial process. It was further observed that this has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. The Court cautioned that the agency of the Court is being utilized to settle extra judicial scores. This Court held thus:

“96. Public interest litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in Bandhua Mukti Morcha v. Union of India [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389] . Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and undertrials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable

instrument and jurisdictional tool to promote structural due process.

97.Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this Court in State of Uttaranchal v. Balwant Singh Chaufal [State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807] . Underlining these concerns, this Court held thus: (SCC p. 453, para 143)

“143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and nonmonetary directions by the courts.”

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the

public interest detract from the time and attention which courts must devote to genuine causes. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against

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orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extrajudicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

47. Further attack was made on the formation of the Bench, and recusal was sought of the certain Judges who were part of the Bench, as they were originally from Bombay High Court. It was observed that the conduct of the petitioner and the intervenor is scandalizing the process of the Court and would prima facie constitute criminal contempt. However, on a dispassionate view of the matter, the Court did not initiate proceedings by way of criminal contempt as that would amount to unequal battle. While considering the submissions made by Shri

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Prashant Bhushan seeking recusal and casting aspersions upon the judicial officers, it was observed thus:

"101. ... If this were to be the test, it is rather ironical that the petitioners had instituted proceedings before the Bombay High Court each of whose Judges were expected to be faced with the same situation. We informed Mr Bhushan that a decision as to whether a Judge should hear a case is a matter of conscience for the Judge. There is absolutely no ground or basis to recuse. Judges of the High Court hear intracourt appeals against orders of their own colleagues. References are made to larger Benches when there are differences of view. Judges of the Supreme Court hear appeals arising from judgments rendered by Judges of the High Courts in which they served, either as Judges or on appointments as Chief Justices. Maintaining institutional civilities between or towards Judges is distinct from the fiercely independent role of the Judge as adjudicator. We emphatically clarify that on the wellsettled parameters which hold

the field, there is no reason for any member of the present Bench to recuse from the hearing. While it is simple for a Judge faced with these kinds of wanton attacks to withdraw from a case, doing so would amount to an abdication of duty. There are higher values which guide our conduct. Though Mr Bhushan ultimately made it clear that he is not filing an application for recusal — and none has been filed — we have recorded what transpired to express our sense of anguish at the manner in which these proceedings have been conducted. Serious attacks have been made on the credibility of two Judges of the Bombay High Court. The conduct of the petitioners and the intervenors scandalises the process of the court and prima facie constitutes criminal contempt. However, on a dispassionate view of the matter, we have chosen not to initiate proceedings by way of criminal contempt if only not to give an impression that the litigants and the lawyers appearing for them have been subjected to an unequal battle with the authority of law. We rest in the hope that the Bar of the nation is resilient to withstand such attempts on the judiciary. The judiciary must continue to perform its duty even if it is not to be palatable to some. The strength of the judicial process lies not in the fear of a coercive law of contempt. The

credibility of the judicial process is based on its moral authority. It is with that firm belief that we have not invoked the jurisdiction in contempt."

48. In **Kamini Jaiswal v. Union of India & Anr. (2018) 1 SCC 156**, the authority of the Chief Justice to constitute the Benches, was questioned. Again, in reply, averments have been made with respect to the constitution of the Benches by the Chief Justice. The question was dealt with in Kamini Jaiswal (supra), in which Shri Prashant Bhushan

himself appeared. Reliance was placed on **D.C. Saxena v. Chief Justice of India, (1996) 5 SCC 216,** in which it was observed thus:

"**81**. It is the duty of the Chief Justice of a court to assign judicial work to his brother Judges. It was, therefore, the duty of the respondent to assign the second writ petition to a Bench to hear it. By doing so he did not, as is alleged, become a Judge in his own cause. It is contempt to imply, as the alleged contemnor does, that the respondent would assign it to a Bench which would not pass an order adverse to him. It is also contempt to imply that Judges would be so amenable. To plead that the Bench that heard the second writ petition could not have heard it and, therefore, could not have dismissed it and that it is deemed to be still pending is to add to the contempt. These allegations are also aimed at bringing the administration of justice into disrepute."

49. It was also observed in **Kamini Jaiswal** (supra) thus:

"30. Though it is true, that none of us is above law; no person in the higher echelons is above the law but, at the same time, it is the duty of both the Bar and the Bench, to protect the dignity of the entire judicial system. We find that filing of such petitions and the zest, with which it is pursued, has brought the entire system in the last few days to unrest. An effort was made to create ripples

in this Court; serious and unwanted shadow of doubt has been created for no good reason whatsoever by way of filing the petition which was wholly scandalous and ought not to have been filed in such a method and manner. It is against the settled proposition of law. Ultimately after arguing at length, at the end, it was submitted by the petitioner and her counsel that they were not aiming at any individual. If that was not so, unfounded allegations ought not to have been made against the system and that too against the Hon'ble Chief Justice of this country. In case majesty of our judicial system has to survive, such kind of petitions should not have been preferred that too against the settled proposition of law laid down by this Court in the aforesaid decisions of this Court in D.C. Saxena [D.C. Saxena v. Chief Justice of India, (1996) 5 SCC 216] and K. Veeraswami [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734]."

50. In view of the settled legal position, as stated hereinabove, we are of the considered opinion that the defence taken in the affidavit cannot be said to be either bona fide or in the public interest. Both the tweets coupled with averments in the reply affidavit are capable of shaking the confidence of the public in the institution as a whole. The second tweet is capable of creating an impression that the entire Supreme Court in the last six years has played a vital role in the destruction of democracy.

51. As already discussed hereinabove, one of the attending circumstances which is required to be taken into consideration is the person who makes the statement. It is not expected of a person who is a part of the system of administration of justice and who owes a duty to the said system, to make such tweets which are capable of shaking the

confidence of general public and further making wild allegations in the affidavit thereby further attempting to malign the said institution. Such an act by responsible person who is part of this system cannot be ignored or overlooked.

52. We find no justification to make such a remark/tweet, particularly when it is made by a lawyer with 35 years standing like Shri Prashant Bhushan, who is an officer of the Court and advocates enjoy equal dignity in the system. In spite of learned Attorney General's insistence that the averments made in the defence should be withdrawn and regret should be submitted, Dr. Dhavan, learned senior counsel, stated that the contemnor is not ready to withdraw the defence taken in the reply. That further makes it clear that while insisting with the unjustifiable defence and insistence to go with it makes the entire episode the one which cannot be ignored.

53. The tweet has been made by the lawyer who has the standing of 35 years and who is involved in several public interest litigations. However, merely because a lawyer is involved in the filing of the public interest litigation for the public good it does not arm him to harm the very system of which he is a part.

Though expectation from an ordinary citizen may be different, the duties and expectations that are expected from a lawyer

of long standing are on higher side. An advocate cannot forget his ethical

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duty and responsibility and cannot denigrate the very system of which he/she is an integral part. Fair criticism is not to be silenced, but an advocate has to remind himself/herself, where he/she crosses the zone of propriety, and the Court cannot continuously ignore it, and the system cannot be made to suffer. When the criticism turns into malicious and scandalous allegations thereby tending to undermine the confidence of the public and the institution as a whole, such a criticism cannot be ignored.

In Ref: Statement in Press/Media

54. Dr. Dhavan, learned senior counsel, next argued that we should consider the various statements made by some of the retired Judges, journalists, and others. We are not referring to the names as we do not deem it appropriate to refer those names. The argument is founded on the fact that the Court should be influenced by the opinion expressed in the newspapers and other media, when the Court is hearing a matter. There are two facets of the argument. Firstly, whether the Court should be moved by the statement published in the newspaper and secondly, whether, in a sub judice matters, such statements are permissible to be made. We put a question to ourselves, as to whether the Court can be guided by such opinions expressed on the public platform and as to

whether the Court while exercising its judicial duties render its decision

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on the basis of the trial made by the media and public opinion. Answer to both the questions are found firmly in the negative. The Court cannot abdicate its duty and has to be uninfluenced by the statements published in various articles published in the media and opinions expressed therein. It has to decide the case uninfluenced by such opinions.

55. C.J. Miller in Contempt of Court, Third Edition, dealt with the similar issue referring to the decision in **AttorneyGeneral v. Times Newspaper Ltd.**, (1973) 3 All ER 54, discussed the aspect thus:

"7.106 This view was followed in the Australian case of Ex p. AttorneyGeneral: Re Truth and Sportsman Ltd. [1958 61 SR (NSW) 484] Here a newspaper described a driver who had been convicted after his car had knocked over and killed two young children as a 'monster', adding that 'it was one of the most inhumane road killings on record in New South Wales'. The Supreme Court of New South Wales justified the imposition of a fine for contempt on the ground, inter alia, that:

If comment and criticism of the nature dealt with in these proceedings were permitted while an appeal is pending, prejudice would undoubtedly be likely to be created, and in any event the court could be seriously embarrassed

The decision in the DelbertEvans case was cited with evident approval in Attorney-General v. Crisp and 'Truth' (NZ) Ltd. [1952 NZLR 84 (NZ Sup. Ct.). The defendants had described one Horry as 'an unspeakable monster' and a 'suave black-hearted fiend' when the time for appealing against a conviction for murder had not expired. In holding that a contempt had been committed, Fair J said that such comment tended 'seriously to embarrass the fair and impartial administration of justice'."

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56. It was further observed that there is a substantial risk of serious prejudice through an effect upon the mind of an appellate judge by such publication. It was also emphasized that an act of making comments which are intended or even likely to influence a judge necessarily amount to a contempt.

57. Dr. Dhavan, learned senior counsel, has submitted that this Court will be criticized, in case it inflicts any punishment upon Shri Prashant Bhushan. We are unmoved by this submission. While exercising our judicial functions, we cannot take into consideration whether we will be praised or criticized for the judgment which we render. We are required to decide the cases on the basis of the law as it correctly stands, in our perception and understanding. We are not expected to decide the matter on the basis as to whether there will be criticism of the judgment or not. We have to be always ready for its fair criticism.

58. C.J. Miller, in **Contempt of Court, Third Edition**, has referred Lord Parker CJ thus:

"7.118 An alternative way of justifying the imposition of liability in such cases as AttorneyGeneral v. Tonks [1939 NZLR 533] is to categorize the publication as an attempt to 'dictate' a decision to an appellate court. As such, it may be viewed as a contempt on the basis of an argument that a person who acts with the intention of interfering with the administration of justice will commit the offence, even though there is absolutely no likelihood of his achieving this objective. The point is discussed in more detail elsewhere. Here, it is sufficient to note that Lord Parker CJ agreed in Duffy, ex p. Nash that a

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contempt may be committed where 'the article in question formed part of a deliberate campaign to influence the decision of the appellate tribunal'. [1960 2 QB 188] Hence, there is common law authority suggesting that such a campaign is unlawful in this country."

59. This Court has also considered the effect on the cases by pressure created by the media in **R.K. Anand v. Registrar, Delhi High Court (2009) 8 SCC**

106 and **Reliance Petrochemicals Ltd. v. Proprietors of Indian Express NewsPapers Bombay Pvt. Ltd., and others, (1988) 4 SCC 592.**

60. In the case of **R.K. Anand (supra),** the Court considered the concept of trial by media in a case which was sub judice. While considering the same, it was held thus:

"**Reporting of pending trial**

289. We are also unable to agree with the submission made by Mr P.P. Rao that the TV channel should have carried out the stings only after obtaining the permission of the trial court or the Chief Justice of the Delhi High Court and should have submitted the sting materials to the court before its telecast. Such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the court. On little consideration the idea appears to be quite repugnant both from the points of view of the court and the media.

290. It would be a sad day for the court to employ the media for setting its own house in order; and media too would certainly not relish the role of being the snoopers for the court. Moreover, to insist that a report concerning a pending trial may be published or a sting operation concerning a trial may be done only subject to the prior consent and permission of the court would tantamount to

precensorship of reporting of court proceedings. And this

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would be plainly an infraction of the media's right of freedom of speech and expression guaranteed under Article 19(1) of the Constitution.

291. This is, however, not to say that media is free to publish any kind of report concerning a sub judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameter within which a report or comment on a sub judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting operation is an incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment."

61. In **State of Maharashtra v. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386**, the concept of trial by press, electronic media and public

agitation was considered and the Court held thus:

"37. We agree with the High Court that a great harm had been caused to the girl by unnecessary publicity and taking out of morcha by the public. Even the case had to be transferred from Kolhapur to Satara under the orders of this Court. There is procedure established by law governing the conduct of trial of a person accused of an offence. A

trial by press, electronic media or public agitation is the very antithesis of rule of law. It can well lead to miscarriage of justice. ...”

62. In Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, question of public opinion in capital

sentencing was considered. It was observed that perception of public is

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extraneous to conviction as also sentencing. Relevant paragraphs are as under:

“**2(F) Public opinion in capital sentencing**

80. It is also to be pointed out that public opinion is difficult to fit in the rarest of rare matrix. People's perception of crime is neither an objective circumstance relating to crime nor to the criminal. Perception of public is extraneous to conviction as also sentencing, at least in capital sentencing according to the mandate of Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] .

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87. Public opinion may also run counter to the rule of law and constitutionalism. Bhagalpur Blinding case [Ed.: The reference seems to be to Khatri (II) v. State of Bihar, (1981) 1 SCC 627 : 1981 SCC (Cri) 228] or the recent spate of attacks on right to trial of the accused in Bombay Bomb Blast case [Ed.: The reference seems to be to Sanjay Dutt v. State (II), (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] are recent examples. We are also not oblivious to the danger of capital sentencing becoming a spectacle in media. If media trial is a possibility, sentencing by media cannot be ruled out.

88. Andrew Ashworth, a leading academic in the field of sentencing, who has been at the centre of sentencing reforms in the UK, educates us of the problems in factoring in public opinion in the sentencing. He (with Michael Hough), observes in an article, “Sentencing and the Climate of Opinion” (1996 Crim. L.Rev.):

“The views of sentencing held by people outside the criminal justice system—‘the general public’—will always be important even if they should not be determinative in court. Unfortunately, the concept of public opinion in relation to sentencing practices is often employed in a superficial or simplistic way. In this short article we have identified two major difficulties with the use of the concept. First, members of the public have insufficient knowledge of actual sentencing practices. Second, there is a significant but much neglected distinction between people's sweeping impressions of sentencing and their views in relation to particular cases of which

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they know the facts. When it is proclaimed that the public think the courts are too lenient, both these difficulties are usually suppressed.
To construct sentencing policy on this flawed and partial notion of public opinion is

irresponsible. Certainly, the argument is hard to resist that public confidence in the law must be maintained. It is also hard to resist the proposition that public confidence in sentencing is low and probably falling. However, since the causes of this lie not in sentencing practice but in misinformation and misunderstanding, and (arguably) in factors only distantly related to criminal justice, ratcheting up the sentencing tariff is hardly a rational way of regaining public confidence.

This is not to deny that there is political capital to be made, at least in the short term, by espousing sentencing policies which have the trappings of tough, decisive action. However, the underlying source of public cynicism will not have been addressed; and once politicians embark on this route, they may be committing themselves long term to a treadmill of toughness, 'decisiveness', and high public expenditure. The political costs of withdrawing from tough policies, once embarked on, may be too high for politicians of any hue to contemplate. The United States serves as an example.

If the source of falling public confidence in sentencing lies in lack of knowledge and understanding, the obvious corrective policy is to explain and to educate, rather than to adapt sentencing policy to fit a flawed conception of public opinion. But who should be the target of such explanation and education? We have serious doubts whether attempts to reach the ordinary citizen directly will have any impact at all. On the other hand, we think it feasible, within limits, to educate those who shape public opinion. Newspaper and television journalists, for example, responded well to the initiatives in the 1980s intended to curb the reporting of crime in ways that needlessly fuelled fear of crime. A similar initiative should now be mounted in relation to sentencing.""

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63. In **Reliance Petrochemicals Ltd.** (supra), it was observed that process of due course of administration of justice must remain unimpaired. Public interest demands that there should be no interference with the judicial process, and the effect of the judicial decision should not be preempted or circumvented by public agitation or publications.

64. The Judges have to be impartial towards the crime of voice, as observed in Dharmkosh43 (Narad 3645) thus:

65. Meaning thereby, Judges have to be well versed in the laws and impartial towards friends and foes. It emphasizes that the Judges should be impartial towards friends and foes. In our opinion, the judicial decision cannot be influenced by the opinions expressed in the media.

66. The lawyers and litigants going to press or media in a sub judice matter is another question that is at the fore in this matter. While hearing the matter, Shri Prashant Bhushan talked to the press and media. The statement which was made by Shri Prashant Bhushan, pursuant to the order dated 20.08.2020, was also published well in

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advance in extenso, word to word, in the newspaper and media. In a sub judice matter, releasing such statement to the press in advance is an act of impropriety and has the effect of interfering with the judicial process and the fair decision making and is clearly an attempt to coerce the decision of the Court by the influence of newspaper and media, which cannot be said to be conducive for the fair administration of justice and would further tantamount to undue interference in the independent judicial making process which is the very foundation of institution of administration of justice. If such kind of action is resorted to in a sub judice matter, that too by an advocate who is facing a criminal contempt, it virtually tantamount to using a forum or platform which is not supposed to be used ethically and legally. More so, in a serious case of criminal contempt and particularly after the conviction has been recorded by this Court, it indicates that the tolerance of the Court is being tested for no good reasons by resorting to unscrupulous methods.

67. Dr. Dhavan, learned senior counsel, fairly stated that in a sub judice matter, it is not open to the lawyer or litigant to go to press or media and make the statement. However, it appears that this good sense and counsel by a senior lawyer of long standing has not prevailed upon the contemnor. Dr. Dhavan, also stated that statement should not have been released by Shri Prashant Bhushan to press or media. It was

impermissible for him to do so. We put on record our appreciation for the fairness of Dr. Dhavan, learned senior counsel. He has asked us to lay down guidelines for future guidance to the members of the Bar and the litigants on such aspects.

In Ref: Factors for Sentencing

68. Dr. Dhavan, learned senior counsel, submitted that relevant factors required to be taken into consideration for sentencing are the offender, the offence and statutory or other defences. He has also referred to the

guidelines issued in the case **in Re: S. Mulgaokar** (supra).

69. With respect to the offender, as stated by Shri Prashant Bhushan in his affidavit that he is a lawyer having of 35 years of standing and has also pursued various public interest litigations. No doubt that this would be a relevant factor while balancing the decision to be taken by the Court. However, at the same time, the uncalled statements made in the affidavit for pursuing truth as a defence can also not be ignored. Since, in 2009 contempt petition various questions have been framed by this Court which will have to be answered, the pendency of the said contempt petition cannot be considered to be a factor in reflecting on the question of sentence in the present matter. Even the present

Attorney General had filed a contempt case i.e. Contempt Petition (Crl) No.1/2019 (titled

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The Attorney General of India v. Prashant Bhushan), which is pending before this Court.

70. Dr. Dhavan, learned senior counsel, argued that offence is also a factor that is to be taken into consideration while imposing the punishment. He argued that offence must be clear without ambiguity, and the potential offender must understand where and when he is guilty of the offence. He submitted that scandalising the Court is notoriously

vague, as observed in **Shreya Singhal (supra)** and that the Court has to be careful in exercising the jurisdiction, as held in **Baradakanta Mishra (supra)**.

71. In respect to the submission made by Dr. Dhavan, learned senior counsel, with regard to the inconsistency between the judgments of this Court in **E.M. Sankaran Namboodripad (supra)** and **P.N. Duda** (supra)

is concerned, we are not concerned with the final outcome of the decision in these two cases. However, it could be seen that the legal position enunciated in both the judgments is one and the same. May be in one case by applying the same law the court found the statements made were contemptuous and in other case the Court found that the statement made was not contemptuous. With regard to the reference made by Dr.

Dhavan, learned senior counsel, regarding the judgment **in Re: Times of** 66

India and Hindu, (2013) Cr.L.J. 932, to which one of us (Mishra, J.) was a party is concerned, the reliance on the said judgment, in our view, is misplaced. Firstly, applying the test as to who is the person who makes the statement, it could be seen that in the said case the statement was made by a politician, however, in the present case, the statement is made by a lawyer who has a standing of more than 35 years. Secondly, in the said case the statement was not made specifically against anyone but was a general statement, in the present case the statement is made against the past four Chief Justices and the Judges, who have occupied the office of this Court for last six years.

72. Dr. Dhavan, learned senior counsel, also argued that contempt jurisdiction is vague and colonial. For this, he has relied upon Justice Wilmot's judgment in **R. v. Almon, (1965) Wilm 243, Mcleod v. St. Aubyn, (1899) AC 549 (PC), R. v. Gary, (1900) 2 QB 36 DC, R. v. Colsely, 9 May 1931 DC, Dhoorika v. Director of Public Prosecutions (Commonwealth Lawyers' Association Intervening), (2015) AC 875.** He urged that in the last century, this

jurisdiction has been used only for 31 years and never after that in England since 1931.

73. He has also referred **R. v. Blackburn**, (1968) 1 ALL ER 763, wherein Lord Denning refused to convict or sentence for contempt. He

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also referred that in the Spycatcher affair, the Daily Mirror had a banner heading stating in bold "YOU FOOLS" and put the picture of the Law Lords upside down, and no contempt was initiated. Further, in 2019, in the Parliament suspension case, the English Supreme Court Judges were called 'enemies of democracy,' but no action was taken.

74. The submissions that are sought to be made in effect amount to reviewing the view taken by us in the convicting judgment. We need not again consider the submissions made by Dr. Dhavan, learned senior counsel, inasmuch as all his submissions have been elaborately considered in the convicting judgment. Taking into consideration the view taken by us in the convicting judgment we cannot accede to the request of Dr. Dhavan, learned senior counsel that the decision dated 14.08.2020 should be withdrawn or recalled.

75. We find no force in the submission raised to recall the judgment, suo motu otherwise. We have exercised the jurisdiction with full circumspection, care, and precautions. We find no merits in the submission. While sentencing, we have to act with objectivity in relation

to the person and the actual effect, as held **in Murray & Co. v. Ashok Kumar Newatia and Another,** (2000) 2 SCC 367.

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76. Dr. Dhavan, learned senior counsel, also argued that there is no conflict between the constitutional jurisdiction under Articles 129 and 215 of the Constitution and the provisions of the Contempt of Courts

Act, 1971. For this purpose, he has relied upon **Pallav Sheth (supra),** in which it was observed:

"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."

77. The case of **Maheshwari Peri & others v. High Court of Judicature at Allahabad, (2016) 14 SCC 251**, was also referred. The

relevant paragraph is as under:

"10. ..... Be it an action initiated for contempt under Article 129 of the Constitution of India by the Supreme Court or under Article 215 of the Constitution of India by the High Court, it is now settled law that the prosecution procedure should be in consonance with the Act, as held by this Court in Pallav Seth."

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78. We find that this question has been dealt with in the convicting

judgment and what is the procedure under Articles 129 and 215 of the

Constitution has been considered **In Re: Vijay Kurle and Ors**., 2020

SCC Online SC 407. We will not repeat them again as they are referred to in the convicting judgment.

79. Dr. Dhavan, learned senior counsel, urged that a copy of the complaint/petition filed by Shri Mahek Maheshwari, was not made available to the contemnor. He has submitted that said Shri Mahek Maheshwari was associated for some time with some political party. He further submitted that as such the person who filed a petition was a relevant question required to be considered by this Court. He has also relied upon Rule 6(2) of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 read with Article 145 of the Constitution, which provided that a copy of the complaint must be supplied to the contemnor.

80. No doubt that though initially the said Mr. Mahek Maheshwari had filed a petition in this Court which was placed on the administrative side of this Court, this Court had decided to initiate suo motu proceedings. Only that part of the petition i.e. the first tweet made by the contemnor was one of the basis for taking action against the contemnor. The

relevant tweet has specifically been mentioned in our order dated

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22.07.2020. No other part of the petition was taken into consideration for proceeding against the contemnor. Insofar as the second tweet is concerned, which was on the basis of the report published in the Time of India dated

22.07.2020, we had decided to take suo motu cognizance of the same. Thus, it will not be of any relevance as to whether a copy of the petition filed by Shri Mahek Maheshwari was supplied or not. The suo motu cognizance was taken only on the basis of the said two tweets, which were specifically quoted in our order dated 22.07.2020. As held in catena of cases, the only requirement is that the Court must follow principles of natural justice. The Court specifically made aware the contemnor about the basis on which the Court took suo motu cognizance. Not only that but the contemnor understood the basis on which the Court was proceedings, as is evident from the bulky affidavit in reply filed by him. Contention in this respect, in our view is without substance.

81. Argument raised by Dr. Dhavan that Free Speech is part of Article 19(1)(a) of the Constitution cannot be disputed. However, we are not convinced that while exercising power under Article 129 of the Constitution, we are interfering with the rights under Article 19(1)(a) of the Constitution. Supreme Court being a court of record can punish for contempt. He also argued about the Freedom of Press, which is beyond

doubt an important aspect of democracy. Free Speech is essential to democracy can also not be disputed, but it cannot denigrate one of the

institutions of the democracy. As observed in **Maneka Gandhi v. Union**

of India and Another, (1978) 1 SCC 248, democracy is based on free debate and open discussion, however, cannot go to the extent of the scurrilous attack and shaking the faith of the general public in such institution. Freedom of speech and expression includes the right to impart and receive information, which includes freedom to hold an

opinion as was held in **Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of**

Bengal & Ors., (1995) 2 SCC 161. No doubt, one is free to form an opinion and make fair criticism but if such an opinion is scandalous and malicious, the public expression of the same would also be at the risk of the contempt jurisdiction. No doubt that the contention raised by Dr. Dhavan, learned senior counsel, that free speech, as envisaged under Article 19(1)(a) of the Constitution is a fundamental right. However, it cannot be forgotten that rights under Article 19(1) of the Constitution are subject to reasonable restrictions under Article 19(2) of the Constitution and rights of others cannot be infringed in the process. The same have to be balanced. While exercising the powers under Article 129 of the Constitution, the Court will have to strike a balance between the right

under Article 19(1)(a) and the restrictions under Article 19(2) of the Constitution. No doubt that, as urged by Dr. Dhavan, freedom of press is also an important aspect in a democracy. We cannot control the thinking process and words operating in the mind of one individual, but when it comes to expression, it has to be within the constitutional limits. Lawyers' noble profession will lose all its significance and charm and dignity if the lawyers are permitted to make any malicious, scandalous and scurrilous allegations against the institution of which they are part. The lawyers are supposed to be fearlessly independent and robust but at the same time respectful to the institution.

82. Dr. Dhavan, learned senior counsel, also argued that as per Section 3(22) of the General Clauses Act, things shall be considered to be done in good faith, in fact, if done honestly, whether it is done negligently or not. Dr. Dhavan, submitted that if defence of good faith, as provided in Section 3(22) of the General Clauses Act is taken into consideration, it will have to be held that the act done by the contemnor was done in good faith if it was done honestly, may be done negligently. The perusal of the comments can neither be said to be done honestly or in good faith.

Reliance has been placed on **Reynolds v. Times Newspapers Ltd. and Others**, (1999)4 All ER 609, it has been observed that the true test is

whether the opinion, however exaggerated, obstinate or prejudiced, was

honestly held by the person expressing it. It cannot be said that a person who is the lawyer having 35 years standing, who has made malicious and scandalous comments in the tweets and amplified them by the averments made in the affidavit in reply which have the effect of denigrating the very institution to which he belongs, can be made honestly or in good faith.

83. Dr. Dhavan, learned senior counsel, submitted that applying the doctrine of proportionality the balance will have to tilt in favour of the fundamental rights as against restrictions. He argued that reasonableness means substantive and procedural reasonableness and

imports proportionality, and he has placed reliance on **State of Madras & Ors. v. V.G. Row,** (1952) SCR 597, **Chintaman Rao & Ors. v. State of Madhya Pradesh,** (1950) SCR 759, **Papnasam Labour Union v. Madura Coats Ltd. and Ors.,** (1995) 1 SCC 501, **State of Andhra Pradesh & Ors. v. McDowell and Co. & Ors.,** (1996) 3 SCC 709, **Union of India (UOI) & Ors. v. G. Ganayutham (Dead) by Lrs.,** (1997) 7 SCC 463, **Teri Oat Estates (P) Ltd. v. U.T. Chandigarh & Ors.,** (2004) 2 SCC 130**, Om Kumar & Ors. v. Union of India (UOI),** (2001) 2 SCC 386, **Anuj Garg & Ors. v. Hotel Association of India & Ors.,** (2008) 3 SCC 1 **and Chairman, All India Railway Rec. Board & Ors. v. K. Shyam**

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Kumar & Ors., (2010) 6 SCC 614. Thus, he has submitted that the conviction be recalled, and no sentence be imposed. We have weighed the pros and cons, rights, and limitations and thereafter rendered a considered decision regarding conviction, and as discussed in this order, on consideration of proportionality we find no room to entertain this submission. The same is repelled. Shri Dhavan, learned senior

counsel, also relied upon the following statement in **Andre Paul Terence**

Ambard v. The Attorney General of Trinidad and Tobago, (1936) All ER 704, the following passage has been relied upon:

"... no wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrongheaded 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."

(Emphasis supplied)

84. There can be no doubt about the principle that any member of the public has a right to criticize in good faith in private or public, the public act done in the seat of justice. However, the members of the public are required to abstain from imputing improper motives to those taking part

in the administration of justice. Right to fair criticism is contrasted

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against acting in malice or attempting to bring down the reputation of the institution of administration of justice. We find that even after recording the judgment of conviction, no remorse has been expressed by the contemnor, nor apology has been submitted. It was argued that apology is being coerced from the contemnor. In the supplementary statement dated 24.08.2020, Shri Prashant Bhushan has stated that "At the hearing the court asked me to take 23 days to reconsider the statement I made in the court." However, the order specifically states, "We have given time to the contemnor to submit unconditional apology, if he so desires." We find that by now it is a settled position of law that the Court speaks through its judgments and orders. Virtual exchange during the course of the proceedings is not what is the order of the Court but it could be a tentative expression of that exchange during the course of hearing. However, ultimately what is final is the order of the Court, which has the seal of it. It would have been better if the aforesaid part was not mentioned in the

supplementary statement, but we cannot stop anybody from making any statement, but we consider it not to be a proper statement as to what should have been the words in the order of the Court. We have not coerced the contemnor to submit the apology and have clearly mentioned that time was given to submit unconditional apology, "if he so desires". It was his decision to submit it or not.

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However, he has chosen to submit a supplementary statement. Thus, the submission raised by Dr. Dhavan, learned senior counsel, as to coercion is without substance. The desire of learned Attorney General that he/contemnor should withdraw the allegation and express regret has also gone unheeded.

85. Dr. Dhavan, has also referred to the observation of Krishna Iyer, J.,

in **Re: S. Mulgaokar** (supra). We have considered the same in the convicting judgment and followed the principle laid down therein. No doubt that while exercising the right of freedom of speech the fair criticism of the system is welcome and the Judges cannot be hyper sensitive even when distortions and criticism overstep the limit. However, the same cannot be stretched to permit to make malicious and scandalous statement. The Court has to act only in the case where the attack is beyond a permissible limit, the strong arm of the law strikes a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

86. We have applied the aforesaid guidelines and standards.

87. Learned Attorney General submitted that the Court should exhibit

magnanimity. Dr. Dhavan, learned senior counsel, invoked the statesmanship from this Court. Learned Attorney General stated that if

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there is an expression of regret and if the affidavit is withdrawn, perhaps a quietus can be given to the proceeding. However, the contemnor declined to do so. Learned Attorney General also submitted that in Arundhati Roy's case, it was held that "our shoulders are broad enough to shrug off comments against it." No doubt about it, our approach has to be like one stated by the learned Attorney General. In spite of learned Attorney General appealing that it was not too late for the contemnor to express regret as he did in the other case regarding contempt filed by learned Attorney General and one more chance be given, but that was virtually declined flatly by Dr. Dhavan, learned senior counsel, in the presence of the contemnor. It is apparent that in both the statements made by the contemnor, he is sticking to his ground, and he is not at all realizing that any wrong was done by him to the institution. At the same time, he has expressed the faith in the institution and he has submitted that an

apology cannot be a mere incantation and an apology has to be as the Court itself put be sincerely made. He has further stated that he made the statement bona fide and with truthful details which had not been dealt with by the Court. He is insistent and has no remorse about what he has stated in the defence. He has not gone by the advice of the learned Attorney General to withdraw the same and to take if off the record. Shri Prashant Bhushan being a person well versed with law

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ought to have given due weightage to the advice rendered by the learned Attorney General who has pleaded not to sentence him, at the same time maintained that the statements made in the affidavit in reply could not be taken into consideration for considering the case of Mr. Prashant Bhushan of truth as a defence. When seniormost functionary in the legal profession of the stature of the learned Attorney General was giving an advice to express regret and withdraw the wild allegations a lawyer of such a long standing was expected to give due respect to it. Even our request made to him has gone in vain. Thus, we feel that the simple issuance of warning is not going to suffice in the instant case.

88. It was argued by Dr. Dhavan, learned senior counsel, that in case the contemnor is sent to the imprisonment, he will attain martyrdom, and he also should not be debarred from the practice. He further stated that the Court could not pass an order debarring the contemnor from practicing unless a prior notice was issued to him and an opportunity of hearing was given in that regard.

89. Pursuant to the conviction in a criminal case, the Bar Council of India can suspend the enrolment, if it so desires. It is also open to this Court to debar from practicing in a Court, as held in Supreme Court Bar Association (supra). We are not afraid of sentencing the contemnor either with imprisonment or from debarring him from the practice. His

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conduct reflects adamance and ego, which has no place to exist in the system of administration of justice and in noble profession, and no remorse is shown for the harm done to the institution to which he belongs. At the same time, we cannot retaliate merely because the contemnor has made a statement that he is neither invoking the magnanimity or the mercy of this Court and he is ready to submit to the penalty that can be lawfully be inflicted upon him for what the Court has determined to be an offence. He has even invoked the Father of the Nation, Mahatma Gandhi's statement, which was made by Mahatma Gandhi at the conclusion of the trial against him.

90. The Court, from the very beginning, was desirous of giving quietus to this matter. Directly or indirectly, the contemnor was persuaded to end this matter

by tendering an apology and save the grace of the institution as well as the individual, who is an officer of the Court. However, for the reasons best known to him he has neither shown regret in spite of our persuasion or the advice of the learned Attorney General. Thus, we have to consider imposing an appropriate sentence upon him.

91. Duly balancing the factors urged by Dr. Dhavan as to the offender, offence, the convicting judgment and the defence taken we have to decide the question of sentence. In our considered view, the act committed by the contemnor is a very serious one. He has attempted to denigrate the 80

reputation of the institution of administration of justice of which he himself is a part. At the cost of repetition, we have to state that the faith of the citizens of the country in the institution of justice is the foundation for rule of law which is an essential factor in the democratic set up.

92. We have given deep thought as to what sentence should be imposed on the contemnor. The conduct of the present contemnor also needs to be taken into consideration. This Court in Tehseen Poonawala (supra) has observed that the said matter was a fit matter wherein criminal contempt proceedings were required to be initiated. However, the court stopped at doing so observing that it would have been an unequal fight. The learned Attorney General had also initiated contempt proceedings against the present contemnor, however, on the contemnor submitting regret, the learned Attorney General sought withdrawal of the said proceedings. However, the said proceedings are still pending. In the present matter also not on one occasion but on several occasions, we not only gave opportunity but also directly or indirectly pursuaded the contemnor to express regret. Not only that the learned Attorney General had also suggested that it was in the fitness of things that a contemnor expresses regret and withdraws the allegation made in the affidavit in reply, which request was not heeded to by the contemnor. The contemnor not only gave wide publicity to the second statement

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submitted before this Court on 24.08.2020 prior to the same being tendered to the Court, but also gave various interviews with regard to sub judice matter, thereby further attempting to bring down the reputation of this Court. If we do not take cognizance of such conduct it will give a wrong message to the lawyers and litigants throughout the country. However, by showing magnanimity, instead of imposing any severe puishment, we are sentencing the contemnor with a nominal fine of Re.1/ (Rupee one).

93. We, therefore, sentence the contemnor with a fine or Re.1/ (Rupee one) to be deposited with the Registry of this Court by 15.09.2020, failing which he shall undergo a simple imprisonment for a period of three months and further be debarred from practising in this Court for a period of three years.

94. Accordingly, the present proceedings including all pending applications, if any, shall stand disposed of.

New Delhi; August 31, 2020.

.....J. (Arun Mishra)

.....J. (B.R. Gavai)

.....J. (Krishna Murari)