REPORTABLE

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

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

IN RE:
PRASHANT BHUSHAN & ANR. …. ALLEGED CONTEMNOR(S)

JUDGMENT

1. A petition came to be filed in this Court by one Mahek Maheshwari bringing to the notice of this Court, a tweet made by Mr. Prashant Bhushan, Advocate, alleged contemnor No.1 praying therein to initiate contempt proceedings against the alleged contemnors for wilfully and deliberately using hate/scandalous speech against this Court and entire judicial system. The Registry placed the said petition on the Administrative side of this Court seeking direction as to whether it should be listed for hearing or not, as consent of the learned Attorney General for India had not been obtained by the said Shri Maheshwari to file the said petition. After

examining the matter on the Administrative side, this court on the administrative side directed the matter to be listed on the Judicial side to pass appropriate orders. Accordingly, the petition was placed before us on 22.7.2020. On the said date, we passed the following order:

> "This petition was placed before us on the administrative side whether it should be listed for hearing or not as permission of the Attorney General for India has not been obtained by the petitioner to file this petition. After examining the matter on administrative side, we have directed the matter to be listed before the Court to pass appropriate orders. We have gone through the petition. We find that the tweet in question, made against the CJI, is to the following effect :-
>
> > "CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access justice!"
>
> Apart from that, another tweet has been published today in the Times of India which was made by Shri Prashant Bhushan on June 27, 2020, when he tweeted, "When historians in future look back at the last 6 years to see how

democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."

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

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

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

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

List on 05.08.2020."

2. In response to the notice issued by this Court, both the alleged contemnors have filed their respective affidavit-in-reply. Mr. Prashant Bhushan, the alleged contemnor No.1, has filed a detailed affidavit running into 134 pages, which along with the Annexures runs into 463 pages.

3. The main contention of the alleged contemnor No.1 is, that insofar as the first tweet is concerned, it was made primarily to underline his anguish at the non-physical functioning of the Supreme Court for the last more than three months, as a result of which fundamental rights of citizens, such as those in detention, those destitute and poor, and others facing serious and urgent grievances were not being addressed or taken up for redressal. It is contended, that it was made to highlight the incongruity of the situation where the CJI on one hand keeps the court virtually in lockdown due to COVID fears, with hardly any cases being heard and those heard, also by an unsatisfactory process through video conferencing and on the other hand is seen in a public place with several people around him without a mask. It is his

submission, that expressing his anguish by highlighting the said incongruity and the attendant facts, the first tweet cannot be said to constitute contempt of court. It is submitted, that if it is regarded as a contempt, it would stifle free speech and would constitute an unreasonable restriction on the right of a citizen under Article l9(1)(a) of the Constitution.

4. Insofar as the second tweet dated 27.6.2020 is concerned, it is his submission, that the said tweet has three distinct elements, each of which is his bona fide opinion about the state of affairs in the country in the past six years and the role of the Supreme Court and in particular the role of the last 4 CJIs. It is submitted, that the first part of the tweet contains his considered opinion, that democracy has been substantially destroyed in India during the last six years. The second part is his opinion, that the Supreme Court has played a substantial role in allowing the destruction of the democracy and the third part is his opinion regarding the role of the last 4 Chief Justices in particular in allowing it. It is his submission, that such an expression of opinion, however outspoken, disagreeable or

however unpalatable to some, cannot constitute contempt of court. It is his contention, that it is the essence of a democracy that all institutions, including the judiciary, function for the citizens and the people of this country and they have every right to freely and fairly discuss the state of affairs of an institution and build public opinion in order to reform the institution.

5. It is further contended, that the Chief Justice is not the Supreme Court and that raising issues of concern regarding the manner in which a CJI conducts himself during court vacations, or raising issues of grave concern regarding the manner in which four CJIs have used, or failed to use, their powers as “Master of the Roster" to allow the spread of authoritarianism, majoritarianism, stifling of dissent, widespread political incarceration and so on, cannot and does not amount to "scandalising or lowering the authority of the court”. It is submitted, that the Court cannot be equated with a Chief Justice, or even a succession of four CJIs. It is submitted, that to bona fide critique the actions of a CJI, or a

succession of CJIs, cannot and does not scandalise the court, nor does it lower the authority of the Court. It is his submission, that to assume or suggest that the CJI is the Supreme Court and the Supreme Court is the CJI is to undermine the institution of the Supreme Court of India.

6. Insofar as alleged contemnor No.2, Twitter Inc. is concerned, in the affidavit-in-reply filed on its behalf it is stated, that it is a global website providing micro-blogging platform for self-expression of its users and to communicate. It is further stated, that the alleged contemnor No.2 has not authored or published the tweets in question and the same have been authored and published by alleged contemnor No.1. It is also submitted, that it is merely an 'intermediary' within the meaning as provided under the Information Technology Act, 2000 and thus is not the author or originator of the tweets posted on its platform. In this background it has been submitted, that the alleged contemnor No.2 has no editorial control on the tweets and merely acts as a display board. It is also submitted, that under section 79 of the Information

Technology Act, 2000 the alleged contemnor no.2 has been provided safe harbour as an intermediary for any objectional posts on its platform posted by its users. It is lastly submitted, that to show its bonafides, the alleged contemnor No.2 after the order dated 22.07.2020 of this court, taking cognizance of the impugned tweets, blocked the access to the said tweets and disabled the same. In this premise it has been submitted, that alleged contemnor No.2 be discharged from the present proceedings.

7. We have extensively heard Shri Dushyant Dave, learned Senior Counsel appearing on behalf of the alleged Contemnor No.1 and Shri Sajan Poovayya, learned Senior Counsel appearing on behalf of the alleged contemnor No.2.

8. Shri Dave, learned Senior Counsel appearing on behalf of the alleged contemnor No.1 raised a preliminary objection. He submitted, that since the present proceedings are initiated on the basis of the petition filed by Mr. Maheshwari, the same cannot be treated as a suo motu contempt petition. He submitted, that unless there was a consent of the learned

Attorney General for India, the proceedings could not have been initiated on the basis of complaint of Mr. Maheshwari.

9. Relying on the definition of 'criminal contempt' as is found in the Contempt of Courts Act, 1971, Shri Dushyant Dave, learned Senior Counsel, submits, that the order issuing notice does not state that any act of the alleged contemnor No.1 scandalizes or tends to scandalize or lowers or tends to lower the authority of any Court. Neither does it mention, that any of his act prejudices or interferes or tends to interfere with, due course of any judicial proceeding or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any manner. He therefore submits, that, as such, the proceedings initiated by this Court cannot continue.

10. Relying on the judgment of the Constitution Bench of this Court in ***Brahma Prakash Sharma and Others*** vs. ***The State of Uttar Pradesh***[1], Shri Dave submits, that what should weigh with the Court is that, whether the reflection on

[1] 1953 SCR 1169

the conduct or character of a judge is within the limits of fair and reasonable criticism and whether it is mere libel or defamation of the Judge. It is submitted, that if it is a mere defamatory attack on the judge and is not calculated to interfere with the due course of justice or the proper administration of the law by such court, it is not proper to proceed by way of contempt. He would submit, that in the present case, at the most, it can be said that the allegations in the tweets are only against the present CJI and the past three CJIs and that too, in their individual capacity and as such, in no way they can be said to be calculated to interfere with the due course of justice or the proper administration of the law by Court and therefore, it is not proper to continue with the present contempt proceedings.

11. He submits, that in such a situation, the question is not to be determined solely with reference to the language or contents of the statement made. All the surrounding facts and circumstances under which the statement was made and the degree of publicity which was given to it would be relevant

circumstances. He submits, that insofar as the first tweet is concerned, the said was an expression of anguish by the alleged contemnor No.1 on account of non-functioning of the physical courts for the last more than three months and thereby, denying the right to justice to the litigants. Insofar as the second tweet is concerned, in the submission of Shri Dave, that the said was an expression of his opinion that on account of the action or inaction of the Four CJIs that contributed to the destruction of democracy in the country, without a formal emergency.

12. Relying on the Constitution Bench judgment of this Court in the case of ***Baradakanta Mishra*** vs ***The Registrar Of Orissa High Court & another***[2], learned Senior Counsel submits, that when proceedings in contempt are taken for vilification of the judge, the question which the court has to ask is whether the vilification is of the judge as a judge or it is the vilification of the judge as an individual. He submits, that if the vilification of the judge is as an individual, then he is left

[2] (1974) 1 SCC 374

to his private remedies and the Court has no power to punish for contempt. It is submitted, that however, in the former case, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. It is submitted, in the present case, the vilification, if any, is against the CJI as an individual and not as a CJI of the Supreme Court and as such, the proceedings of the Court would not be tenable.

13. Relying on the observations made by Justice Krishna Iyer in ***Re: S. Mulgaokar***[3], learned Senior Counsel submits, that the court should be willing to ignore, by a majestic liberalism, trifling and venial offences. It is submitted, that the Court will not be prompted to act as a result of an easy irritability. Rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt. He submits, that this Court had held, that to criticize the judge fairly, albeit

[3] (1978) 3 SCC 339

fiercely, is no crime but a necessary right, twice blessed in a democracy. He submits, that where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it.

14. Shri Dave, learned Senior Counsel, submits, that in the case of ***P.N. Duda*** vs. ***P. Shiv Shanker & Others***[4], the then Minister of Law, Justice and Company Affairs P. Shiv Shankar had made a speech making fierce allegations to the effect, that the Supreme Court was composed of elements from the elite class, that because they had their 'unconcealed sympathy for the haves' they interpreted the expression 'compensation' in the manner they did. He submits, that the Supreme Court held, that the said was an expression of opinion about an institutional pattern. It is submitted, that even in spite of such serious allegations made, the Court found that the case of proceeding for contempt was not made out.

15. Lastly, Shri Dave submits, that taking into consideration the fact, that the alleged contemnor No.1 in his

[4] (1988) 3 SCC 167

practice at the Supreme Court and the Delhi High Court had consistently taken up many issues of public interest concerning the health of democracy and its institutions and in particular the functioning of the judiciary and especially its accountability, this Court should not proceed against him.

16. The legal position is no more *res integra*.

17. Insofar as the contention of the learned Senior Counsel appearing for the alleged contemnor No.1, that in the present case, the Court could not have initiated suo motu proceedings and could have proceeded on the petition filed by Mr. Mahek Maheshwari only after the consent was obtained from the learned Attorney General for India is concerned, very recently, a Bench of this Court has considered identical submissions in the case of ***Re: Vijay Kurle & Ors.***[5]**.** The Bench has considered various judgments of this Court on the issue, in detail. Therefore, it will be apposite to refer to the following paragraphs of the judgment wherein the earlier law has been discussed in extenso:

[5] 2020 SCC Online SC 407 (Suo Motu Contempt Petition (Criminal) No.2 of 2019

“Powers of the Supreme Court

7. Before we deal with the objections individually, we need to understand what are the powers of the Supreme Court of India in relation to dealing with contempt of the Supreme Court in the light of Articles 129 and 142 of the Constitution of India when read in conjunction with the Contempt of Courts Act, 1971. According to the alleged contemnors, the Contempt of Courts Act is the final word in the matter and if the procedure prescribed under the Contempt of Courts Act has not been followed then the proceedings have to be dropped. On the other hand, Shri Sidharth Luthra, learned amicus curiae while making reference to a large number of decisions contends that the Supreme Court being a Court of Record is not bound by the provisions of the Contempt of Courts Act. The only requirement is that the procedure followed is just and fair and in accordance with the principles of natural justice.

Article 129 of the Constitution of India reads as follows:

> **“129. Supreme Court to be a court of record**.- The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”

A bare reading of Article 129 clearly shows that this Court being a Court of Record shall have all the powers of such a Court of Record including the power to punish for contempt of itself. This is a constitutional power which cannot be taken away or in any manner abridged by statute.

Article 142 of the Constitution of India reads as follows:

> **"142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc**.- (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
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> (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

Article 142 also provides that this Court can punish any person for contempt of itself but this power is subject to the provisions of any law made by parliament. A comparison of the provisions of Article 129 and clause (2) of Article 142 clearly shows that whereas the founding fathers felt that the powers under clause 92) of Article 142 could be subject to any law made by parliament, there is no such restriction as far as Article 129 is concerned. The power under clause (2) of Article 142 is not the primary source of power of Court of

Record which is Article 129 and there is no such restriction in Article 129. Samaraditya Pal in the Law of Contempt has very succinctly stated the legal position as follows:

> "Although the law of contempt is largely governed by the 1971 Act, it is now settled law in India that the High Courts and the Supreme Court derive their jurisdiction and power from Articles 215 and 129 of the Constitution. This situation results in giving scope for "judicial self-dealing".

The High Courts also enjoy similar powers like the Supreme Court under Article 215 of the Constitution. The main argument of the alleged contemnors is that notice should have been issued in terms of the provisions of the Contempt of Courts Act and any violation of the Contempt of Courts Act would vitiate the entire proceedings. We do not accept this argument. In view of the fact that the power to punish for contempt of itself is a constitutional power vested in this Court, such power cannot be abridged or taken away even by legislative enactment.

8. To appreciate the rival contention, we shall have to make reference to a number of decisions relied upon by both the parties. The first judgment on the point is *Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court*. It would be pertinent to mention that the said judgment was given in the context of the Contempt of Courts Act, 1952. The issue before this Court in the said case was whether contempt proceedings could said to be the proceedings under the Criminal Procedure Code, 1973 (Cr.PC) and the Supreme Court had the

power to transfer the proceedings from one court to another under the Cr.PC. Rejecting the prayer for transfer, this Court held as follows:—

> "....We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council in *In re Pollard* (L.R. 2 P.C. 106 at 120) and was followed in India and in Burma in *In re Vallabhdas* (I.L.R. 27 Bom. 394 at 390) and *Ebrahim Mamoojee Parekh* v. *King Emperor* (I.L.R. 4 Rang. 257 at 259-261). In our view that is still the law."

9. A Constitution Bench of this Court in *Shri C. K. Daphtary* v. *Shri O.P. Gupta* was dealing with a case where the contemnor had published a pamphlet casting scurrilous aspersions on 2 Judges of this Court. During the course of argument, the contemnor raised a plea that all the evidence has not been furnished to him and made a request that the petitioner be asked to furnish the "pamphlet" or "book" annexed to the petition. The Court rejected this argument holding that the booklet/pamphlet had been annexed to the petition in original and the Court had directed that the matter be decided on affidavits.

10. In respect of the absence of a specific charge being framed, the Court held that a specific charge was not required to be framed and the only requirement was that a fair procedure should be followed. Dealing with the Contempt of Courts Act, 1952 this Court held as follows:—

> "**58**. We are here also not concerned with any law made by Parliament. Article 129 shows that the Supreme Court has all the powers of a Court of Record, including the power to punish for contempt of itself; and Article 142(2) goes further and enables us to investigate any contempt of this Court."

11. Thereafter, this Court approved the observations in *Sukhdev Singh Sodhi's case* (supra) and held as follows:—

> "**78**. In our view that is still the law. It is in accordance with the practice of this Court that a notice was issued to the respondents and opportunity given to them to file affidavits stating facts and their contentions. At one stage, after arguments had begun Respondent No. 1 asked for postponement of the case to engage some lawyers who were engaged in fighting elections. We refused adjournment because we were of the view that the request was not reasonable and was made with a view to delay matters. We may mention that the first respondent fully argued his case for a number of days. The procedure adopted by us is the usual procedure followed in all cases."

12. According to the alleged contemnors, both the aforesaid judgments are *per*

incuriam after coming into force of the Contempt of Courts Act, 1971. They are definitely not *per incuriam* because they have been decided on the basis of the law which admittedly existed, but for the purposes of this case, we shall treat the argument of the alleged contemnors to be that the judgments are no longer good law and do not bind this Court. It has been contended by the alleged contemnors that both the aforesaid cases are overruled by later judgments. We shall now refer to some of the decisions cited by the parties.

13. In *P.N. Duda* v. *P. Shiv Shanker* the respondent, Shri P. Shiv Shiv Shanker, who was a former judge of the High Court and was the Minister for Law, Justice and Company Affairs delivered a speech which was said to be contemptuous. A petition was filed by the petitioner P. N. Duda who was an advocate of this Court but this Court declined to initiate contempt proceedings. At the outset, we may note that while giving the reasons for not initiating contempt, though this Court held that the contempt petition was not maintainable, it went into the merits of the speech delivered by Shri P. Shiv Shanker and held that there was no imminent danger of interference with the administration of the justice and bringing administration into disrepute. It was held that Shri P. Shiv Shanker was not guilty of contempt of this Court. Having held so, the Court went on to decide whether the petition could have been entertained on behalf of Shri Duda. In the said petition, Shri Duda had written a letter to the Attorney General seeking consent for initiating contempt proceedings against Shri

P. Shiv Shanker. A copy of the said letter was also sent to the Solicitor General of India. While seeking consent, the petitioner had also stated that the Attorney General may be embarrassed to give consent for prosecution of the Law Minister and in view of the said allegations, the Attorney General felt that the credibility and authority of the office of the Attorney General was undermined and therefore did not deny or grant sanction for prosecution. The Court held that the petitioner could not move the Court for initiating contempt proceedings against the respondent without consent of the Attorney General and the Solicitor General. The relevant portion of the judgment reads as follows:—

> "39. The question of contempt of court came up for consideration in the case of *C.K. Daphtary* v. *O.P. Gupta.* In that case a petition under Article 129 of the Constitution was filed by Shri C.K. Daphtary and three other advocates bringing to the notice of this Court alleged contempt committed by the respondents. There this court held that under Article 129 of the Constitution this Court had the power to punish for contempt of itself and under Article 143(2) it could investigate any such contempt. This Court reiterated that the Constitution made this Court the guardian of fundamental rights. This Court further held that under the existing law of contempt of court any publication which was calculated to interfere with the due course of justice or proper administration of law would amount to contempt of court. A scurrilous attack on

a Judge, in respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary ; and if confidence in Judiciary goes administration of justice definitely suffers. In that case a pamphlet was alleged to have contained statements amounting to contempt of the court. As the Attorney General did not move in the matter, the President of the Supreme Court bar and the other petitioners chose to bring the matter to the notice of the court. It was alleged that the said President and the other members of the bar have no locus standi. This Court held that the court could issue a notice suo motu. The President of the Supreme Court bar and other petitioners were perfectly entitled to bring to the notice of the court any contempt of the court. The first respondent referred to Lord Shawcross Committee's recommendation in U.K. that "proceedings should be instituted only if the Attorney General in his discretion considers them necessary". This was only a recommendation made in the light of circumstances prevailing in England. But that is not the law in India, this Court reiterated. It has to be borne that decision was rendered on March 19, 1971 and the present Act in India was passed on December 24, 1971. Therefore that decision cannot be of any assistance. We have noticed Sanyal Committee's recommendations in India as to why the Attorney General should be associated with it, and thereafter in U.K. there was report of Phillimore Committee in 1974. In

India the reason for having the consent of the Attorney General was examined and explained by Sanyal Committee Report as noticed before."

14. The alleged contemnors contended that the last portion of the aforesaid paragraph shows that the judgment in *C.K. Daphtary's case* (supra) having been delivered prior to the enactment of Contempt of Courts Act, 1971 is no longer applicable. We may however point out that in the very next paragraph in the same judgment, it was held as follows:—

> **"40.** Our attention was drawn by Shri Ganguly to a decision of the Allahabad High Court in *G.N. Verma* v. *Hargovind Dayal* (AIR 1975 All 52) where the Division Bench reiterated that Rules which provide for the manner in which proceedings for contempt of court should be taken continue to apply even after the enactment of the Contempt of Courts Act, 1971. Therefore cognizance could be taken suo motu and information contained in the application by a private individual could be utilised. As we have mentioned hereinbefore indubitably cognizance could be taken suo motu by the court but members of the public have also the right to move the court. That right of bringing to the notice of the court is dependent upon consent being given either by the Attorney General or the Solicitor General and if that consent is withheld without reasons or without consideration of that right granted to any other person under Section 15 of the Act that could be investigated in an application made to the court."

15. The alleged contemnors rely on certain observations in the concurring judgment of Justice Ranganathan in the same judgment wherein he has approved the following passage from a judgment of the Delhi High Court in *Anil Kumar Gupta* v. *K. Subba Rao*.:—

> "The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it."

Thereafter Justice Ranganathan made the following observation:—

> "**54**....I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts...."

16. Relying upon the aforesaid observations in the judgment delivered by Justice Ranganathan it is submitted that the petition could not have been placed for

admission on the judicial side but should have been placed before the Chief Justice and not before any other Bench. We are not at all in agreement with the submission. What Justice Ranganathan observed is an obiter and not the finding of the Bench and this is not the procedure prescribed under the Rules of this Court.

17. This Court has framed rules in this regard known as The Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975 (for short 'the Rules') and relevant portion of Rule 3 of the Rules reads as follows:—

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

18. A bare perusal of Rule 3 shows that there are 3 ways for initiating contempt proceedings. The first is *suo motu*, the second is on a petition made by the Attorney General or the Solicitor General, and the third is on the basis of a petition made by any person and where criminal contempt is involved then the consent of the Attorney General or the Solicitor General is necessary. Rules 4 and 5 prescribe for the manner of filing of a petition under Rules 3(b) and 3(c). Rule 4 lays

down the requirements of a petition to be filed under Rules 3(b) and 3(c) and Rule 5 requires that every petition under Rule 3(b) or Rule 3(c) shall be placed before the Court for preliminary hearing. Rule 6 requires notice to the person charged to be in terms of Form I. Rule 6 reads as follows:—

> **"6.** (1) Notice to the person charged shall be in Form I. The person charged shall, unless otherwise ordered, appear in person before the Court as directed on the date fixed for hearing of the proceeding, and shall continue to remain present during hearing till the proceeding is finally disposed of by order of the Court.
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> (2) When action is instituted on petition, a copy of the petition along with the annexure and affidavits shall be served upon the person charged."

19. These Rules have been framed by the Supreme Court in exercise of the powers vested in it under Section 23 of the Contempt of Courts Act, 1971 and they have been notified with the approval of Hon'ble the President of India.

20. In *Pritam Pal* v. *High Court of Madhya Pradesh, Jabalpur Through Registrar*, a 2 Judge Bench of this Court held as follows:—

> **"15**. Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the

> procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate Legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act of 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be 'Courts of Record' under Articles 129 and 215 of the Constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to Contempt of Courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971…"

21. In *Delhi Judicial Service Association, Tis Hazari Court, Delhi* v. *State of Gujarat*. a three-Judge Bench of this Court relied upon the judgment in the case of *Sukhdev Singh Sodhi* (supra) and held that the Supreme Court had inherent jurisdiction or power to punish for contempt of inferior courts under Article 129 of the Constitution of India.

22. A three-Judge Bench of this Court *In Re: Vinay Chandra Mishra* discussed the law

on this point in detail. The Court while holding the respondent guilty for contempt had not only sentenced him to simple imprisonment for a period of 6 weeks which was suspended but also suspended his advocacy for a period of 3 years, relying upon the powers vested in this Court under Article 129 and 142 of the Constitution of India.

23. We may now refer to certain other provisions of Constitution, Entry 77, Union List (List I) of VII Schedule reads as follows:

> "**77**. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court."

Entry 14, Concurrent List (List III of VII Schedule) reads as follows:

> **"14**. Contempt of court, but not including contempt of the Supreme Court."

In exercise of the aforesaid powers the Contempt of Courts Act, 1971 was enacted by Parliament. Section 15 deals with cognizance of criminal contempt and the opening portion of Section 15 clearly provides that the Supreme Court or the High Courts may take action (i) *suo motu* (ii) on a motion moved by the Advocate General in case of High Court or Attorney General/Solicitor General in the case of Supreme Court and (iii) on a petition by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General as the case may be. Section 17 lays down the

procedure to be followed when action is taken on a motion moved by the Advocate General/Attorney General/Solicitor General or on the basis of their consent and Section 17(2) does not deal with *suo motu* contempt petitions. Section 17(2)(a) of the Contempt of Courts Act will not apply to *suo motu* petitions because that deals with the proceedings moved on a motion and not *suo motu* proceedings. Section 17(2)(b) deals with contempt initiated on a reference made by the subordinate court. It is only in these cases that the notice is required to be issued along with a copy of the motion. As far as *suo motu* petitions are concerned, in these cases the only requirement of Form-I which has been framed in pursuance of Rule 6 of the Rules of this Court is that the brief nature of the contempt has to be stated therein.

24. The correctness of the judgment in *Vinay Chandra Mishra's case* (supra) was considered by a Constitution Bench of this Court in *Supreme Court Bar Association* v. *Union of India*. We shall be referring to certain portions of that judgment in detail. That being a Constitution Bench judgment, is binding and all other judgments which may have taken a view to the contrary cannot be said to be correct. Before we deal with the judgment itself, it would be appropriate to refer to certain provisions of the Contempt of Courts Act, 1971. Section 2 is the definition clause defining "*contempt of court*", "*civil contempt*', "*criminal contempt*' and "*High Court*'. Sections 3 to 5 deal with innocent publication, fair and accurate reporting of judicial proceedings and fair criticism of judicial act, which do not amount

to contempt. Sections 10 and 11 deal with the powers of the High Court to punish for contempt. Section 12(2) provides that no court shall impose a sentence in excess of that specified in sub-section (1) of Section 12. Section 13 provides that no court should impose a sentence under the Act for contempt unless it is satisfied that the contempt is of such a nature that it substantially interferes or tends to substantially interfere with the due course of justice. It also provides that truth can be permitted to be raised as a valid defence if the court is satisfied that the defence has been raised in the public interest and is a *bona fide* defence. Section 14 deals with the powers of the Supreme Court or the High Courts to deal with contempt in the face of the Court. We have already dealt with Section 15 which deals with cognizance of the criminal contempt other than contempt in the face of the Court. Section 17 lays down the procedure after cognizance. It is in the background of this Act that we have to read and analyse the judgment of the Constitution Bench.

25. The Constitution Bench referred to the provisions of Article 129 of the Constitution of India and also Entry 77 of List I of Seventh Schedule and Entry 14 of List III of the Seventh Schedule and, thereafter, held as follows:—

> **"18**. The language of Entry 77 of List I and Entry 14 of List III of the Seventh Schedule demonstrates that the legislative power of Parliament and of the State Legislature extends to legislate with respect to matters connected with

contempt of court by the Supreme Court or the High Court, subject however, to the qualification that such legislation cannot denude, abrogate or nullify, the power of the Supreme Court to punish for contempt under Article 129 or vest that power in some other court."

(emphasis supplied)

26. This Court referring to Article 142 of the Constitution held as follows:—

"21. It is, thus, seen that the power of this Court in respect of *investigation* or *punishment* of any contempt including contempt of itself, is expressly made "subject to the provisions of any law made in this behalf by Parliament" by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that *inherent* jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself, (we shall refer to Section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore, exercises the

power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India."

27. This Court then made reference to the provision of the Contempt of Courts Act, 1926, the Contempt of Courts Act, 1952 and the Contempt of Courts Act, 1971 and thereafter held as follows:—

> **"29**. Section 10 of the 1971 Act like Section 2 of the 1926 Act and Section 4 of the 1952 Act recognises the power which a High Court already possesses as a court of record for punishing for contempt of itself, which jurisdiction has now the sanction of the Constitution also by virtue of Article 215. The Act, however, does not deal with the powers of the Supreme Court to try or punish a contemner for committing contempt of the Supreme Court or the courts subordinate to it and the constitutional provision contained in Articles 142(2) and 129 of the Constitution alone deal with the subject."

28. It would also be pertinent to refer to the following observations of the Constitution Bench:—

> "**38**. As already noticed, Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2). Since, no such law has been enacted by Parliament, the *nature of*

punishment prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes *procedural mode* for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh case* (AIR 1954 SC 186 : 1954 SCR 454) as regards the *extent* of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned Solicitor General that the *extent of punishment* which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971. We, however, do not express any final opinion on that question since that issue, strictly speaking, does not arise for our decision in this case. The question regarding the restriction or limitation on the *extent* of punishment, which *this* Court may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised."

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"40...Article 129 cannot take over the jurisdiction of the Disciplinary Committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of "professional misconduct" is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder."

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"43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court."

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"57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two

> jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts."

29. A careful analysis of the Constitution Bench decision leaves no manner of doubt that Section 15 of the Act is not a substantive provision conferring contempt jurisdiction. The Constitution Bench finally left the question as to whether the maximum sentence prescribed by the Act binds the Supreme Court open. The observations made in Para 38 referred to above clearly indicate that the Constitution Bench was of the view that the punishment prescribed in the Act could only be a guideline and nothing more. Certain observations made in this judgment that the Court exceeded its jurisdiction in *Vinay Chandra Mishra's case* (supra) by taking away the right of practice for a period of 3 years have to be read in the context that the Apex Court held that Article 129 cannot take over the jurisdiction of the Bar Council of the State or the Bar Council of India to punish an advocate. These observations, in our opinion have to be read with the other observations quoted hereinabove which clearly show that the Constitution Bench held that ***"Parliament has not enacted any law dealing with the powers of the***

Supreme Court with regard to investigation and punishment of contempt of itself'. The Court also held that Section 15 is not a substantive provision conferring contempt jurisdiction and, therefore, is only a procedural section especially in so far as *suo moto* contempts are concerned. It is thus clear that the powers of the Supreme Court to punish for contempt committed of itself is a power not subject to the provisions of the Act. Therefore, the only requirement is to follow a procedure which is just, fair and in accordance with the rules framed by this Court.

30. As far as the observations made in the case of *Pallav Sheth* v. *Custodian*[10] are concerned, this Court in that case was only dealing with the question whether contempt can be initiated after the limitation prescribed in the Contempt of Courts Act has expired and the observations made therein have to be read in that context only. Relevant portion of Para 30 of the *Pallav Seth's case* (supra) reads as follows:

> **"30**. There can be no doubt that both this Court and High Courts are Courts of Records 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 be 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 should not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment ow 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."

The aforesaid finding clearly indicates that the Court held that any law which stultifies or abrogates the power of the Supreme Court under Article 129 of the Constitution or of the High Courts under Article 215 of the Constitution, could not be said to be validly enacted. It however, went on to hold that providing the quantum of punishment or a period of limitation would not mean that the powers of the Court under Article 129 have been stultified or abrogated. We are not going into the correctness or otherwise of this judgment but it is clear that this judgment only dealt with the issue whether the Parliament could fix a period of limitation to initiate the proceedings under the Act. Without commenting one way or the other on *Pallav Seth's case* (supra) it is clear that the same has not dealt with the powers of this Court to issue *suo motu* notice of contempt.

31. In view of the above discussion we are clearly of the view that the powers of the Supreme Court to initiate contempt are not in any manner limited by the provisions of the Act. This Court is vested with the

> constitutional powers to deal with the contempt. Section 15 is not the source of the power to issue notice for contempt. It only provides the procedure in which such contempt is to be initiated and this procedure provides that there are three ways of initiating a contempt - (i) *suo motu* (ii) on the motion by the Advocate General/Attorney General/Solicitor General and (iii) on the basis of a petition filed by any other person with the consent in writing of the Advocate General/Attorney General/Solicitor General. As far as *suo motu* petitions are concerned, there is no requirement for taking consent of anybody because the Court is exercising its inherent powers to issue notice for contempt. This is not only clear from the provisions of the Act but also clear from the Rules laid down by this Court."

18. From the perusal of various judgments of this Court, including those of the Constitution Benches, it could be seen, that the source of power of this Court for proceeding for an action of contempt is under Article 129. It has further been held, that power of this Court to initiate contempt is not in any manner limited by the provisions of the Contempt of Courts Act, 1971. It has been held, that the Court is vested with the constitutional powers to deal with the contempt and Section 15 is not the source of the power to issue notice for contempt.

It only provides the procedure in which such contempt is to be initiated. It has been held, that insofar as suo motu petitions are concerned, the Court can very well initiate the proceedings suo motu on the basis of information received by it. The only requirement is that the procedure as prescribed in the judgment of ***P.N. Duda*** (supra) has to be followed. In the present case, the same has undoubtedly been followed. It is also equally settled, that as far as the suo motu petitions are concerned, there is no requirement for taking consent of anybody, including the learned Attorney General because the Court is exercising its inherent powers to issue notice for contempt. It is equally well settled, that once the Court takes cognizance, the matter is purely between the Court and the contemnor. The only requirement is that, the procedure followed is required to be just and fair and in accordance with the principles of natural justice. In the present case, the notice issued to the alleged contemnors clearly mentions the tweets on the basis of which the Court is proceeding suo motu. The alleged contemnor No.1 has also clearly understood the basis

on which the Court is proceeding against him as is evident from the elaborate affidavit-in-reply filed by him.

19. Before we advert to the facts of the present case, let us examine the legal position as is enunciated in the various judgments of this Court.

20. In the case of ***Brahma Prakash Sharma*** (supra), the Constitution Bench observed thus:

> "It admits of no dispute that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts. It would be only repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened.

21. It could thus be seen, that the Constitution Bench has held, that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts; that the object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals. It has been held, that it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened. The Constitution Bench further observed:

> "There are indeed innumerable ways by which attempts can be made to hinder or obstruct the due administration of justice in courts. One type of such interference is found in cases where there is an act or publication which "amounts to scandalising the court itself" an expression which is familiar to English lawyers since the days of Lord Hardwicke

> [Vide *In re Read and Huggonson*, (1742) 2 Atk. 469, 471] . This scandalising might manifest itself in various ways but, in substance, it is an attack on individual Judges or the court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions upon the character or ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair confidence of people in the courts which are of prime importance to the litigants in the protection of their rights and liberties."

22. The Constitution Bench thus holds, that a publication which attacks on individual judges or the court as a whole with or without reference to particular case, casting unwarranted and defamatory aspersions upon the character or ability of the judges, would come within the term of scandalizing the Court. It is held, that such a conduct tends to create distrust in the popular mind and impair the confidence of the people in the courts, which are of prime importance to the litigants in the protection of their rights and liberties. It has been held, that it is not necessary to prove affirmatively, that there has been

an actual interference with the administration of justice by reason of such defamatory statement and it is enough if it is likely, or tends in any way, to interfere with the proper administration of justice.

23. In the case of ***In re Hira Lal Dixit and two others***[6]**,** the Constitution Bench was considering a leaflet distributed in the court premises printed and published by the said Hira Lal Dixit. He was the applicant in one of the writ petitions which had been filed in the Supreme Court challenging the validity of U.P. Road Transport Act, 1951. The leaflet though contained a graphic account of the harassment and indignity said to have been meted out to the writer by the State Officers and the then State Minister of Transport in connection with the cancellation and eventual restoration of his license in respect of a passenger bus, also contained the following passage:

> "The public has full and firm faith in the Supreme Court, but sources that are in the know say that the Government acts with partiality in the matter of appointment of those Hon'ble Judges as Ambassadors, Governors, High

[6] (1955) 1 SCR 677

> Commissioners, etc., who give judgments against Government but this has so far not made any difference in the firmness and justice of the Hon'ble Judges".

It will be relevant to refer to the following observation of the Constitution Bench in the said case:

> "Learned counsel for the respondent, Hira Lal Dixit, maintained that the passage in question was perfectly innocuous and only expressed a laudatory sentiment towards the Court and that such flattery could not possibly have the slightest effect on the minds of the Judges of this august tribunal. We do not think flattery was the sole or even the main object with which this passage was written or with which it was published at the time when the hearing of the appeals was in progress. It no doubt begins with a declaration of public faith in this Court but this is immediately followed by other words connected with the earlier words by the significant conjunction "but". The words that follow are to the effect that sources that are in the know say that the Government acts with partiality in the matter of appointment of those Judges as Ambassadors, Governors, High Commissioners, etc., who give judgments against the Government. The plain meaning of these words is that the Judges who decide against the Government do not get these high appointments. The necessary implication of these words is

that the Judges who decide in favour of the Government are rewarded by the Government with these appointments. The attitude of the Government is thus depicted surely with a purpose and that purpose cannot but be to raise in the minds of the reader a feeling that the Government, by holding out high hopes of future employment, encourages the Judges to give decisions in its favour. This insinuation is made manifest by the words that follow, namely, “this has so far not made any difference in the firmness and justice of the Hon'ble Judges”. The linking up of these words with the preceding words by the conjunction “but” brings into relief the real significance and true meaning of the earlier words. The passage read as a whole clearly amounts to this: “Government disfavours Judges who give decisions against it but favours those Judges with high appointments who decide in its favour: that although this is calculated to tempt Judges to give judgments in favour of the Government it has so far not made any difference in the firmness and justice of the Judges”. The words “so far” are significant. What, we ask, was the purpose of writing this passage and what was the object of the distribution of the leaflet in the Court premises at a time when the Court was in the midst of hearing the appeals? Surely, there was hidden in the offending passage a warning that although the Judges have “so far” remained firm and resisted the temptation of deciding cases in favour of Government in expectation of getting high

> appointments, nevertheless, if they decide in favour of the Government on this occasion knowledgeable people will know that they had succumbed to the temptation and had given judgment in favour of the Government in expectation of future reward in the shape of high appointments of the kind mentioned in the passage. The object of writing this paragraph and particularly of publishing it at the time it was actually done was quite clearly to affect the minds of the Judges and to deflect them from the strict performance of their duties. The offending passage and the time and place of its publication certainly tended to hinder or obstruct the due administration of justice and is a contempt of Court."

A perusal of the aforesaid observation of the Constitution Bench would reveal, that though the said passage/paragraph begins with a statement, that 'the public has full and firm faith in the Supreme Court…' and ends with, 'but this has so far not made any difference in the firmness and justice of the Hon'ble Judges', the Court found, that if the statement in the said passage/paragraph was read in entirety and the timing and the manner in which it was published, it was clear, that it was done to affect the minds of the judges and to deflect them from the strict performance of their duties.

The Court came to the conclusion, that the offending passage and the time and place of its publication certainly tended to hinder or obstruct the due administration of justice and was a contempt of Court.

While holding him guilty and rejecting his qualified apology, the Constitution Bench observed thus:

> "It is well established, as was said by this Court in *Brahma Prakash Sharma and Others v. The State of Uttar Pradesh (supra),* that it is not necessary that there should in fact be an actual interference with the course of administration of justice but that it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. Such insinuations as are implicit in the passage in question are derogatory to the dignity of the Court and are calculated to undermine the confidence of the people in the integrity of the Judges. Whether the passage is read as fulsome flattery of the Judges of this Court or is read as containing the insinuations mentioned above or the rest of the leaflet which contains an attack on a party to the pending proceedings is taken separately it is equally contemptuous of the Court in that the object of writing it and the time and place

> of its publication were, or were calculated, to deflect the Court from performing its strict duty, either by flattery or by a veiled threat or warning or by creating prejudice in its mind against the State. We are, therefore, clearly of opinion and we hold that the respondent Hira Lal Dixit by writing the leaflet and in particular the passage in question and by publishing it at the time and place he did has committed a gross contempt of this Court and the qualified apology contained in his affidavit and repeated by him through his counsel cannot be taken as sufficient amends for his misconduct."

A perusal of the aforesaid paragraph would show, that this Court reiterating the law as laid down in ***Brahma Prakash Sharma*** (supra) held, that it is not necessary that there should in fact be an actual interference with the course of administration of justice but that it is enough if the offending publication is likely or if it tends in any way to interfere with the proper administration of law. Such insinuations as are implicit in the passage in question are derogatory to the dignity of the Court and are calculated to undermine the confidence of the people in the integrity of the Judges. It is further held, that

whether the passage is read as fulsome flattery of the Judges of this Court or is read as containing the insinuations or the rest of the leaflet which contains an attack on a party to the pending proceedings is taken separately, it is equally contemptuous of the Court inasmuch as, the object of writing it and the time and place of its publication were calculated to deflect the Court from performing its strict duty, either by flattery or by a veiled threat or warning or by creating prejudice in its mind against the State.

24. This Court in ***E.M. Sankaran Namboodripad*** vs. ***T. Narayanan Nambiar***[7] was considering the appeal by the appellant therein, who was a former Chief Minister, against his conviction and sentence by the Kerala High Court for contempt of court. The said appellant had said in the press conference that the judges are guided and dominated by class hatred, class interests and class prejudices and where the evidence is balanced between a well dressed pot-bellied rich man and a poor-ill-dressed and illiterate person, the judge instinctively

[7] (1970) 2 SCC 325

favours the former. He had further stated that the election of judges would be a better arrangement. There were certain other statements made by him in the press conference. Chief Justice Hidayatullah observed thus:

> **"6.** The law of contempt stems from the right of the courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in facie curaie and by the superior courts on their own behalf or on behalf of courts subordinate to them even if committed outside the courts. Formerly, it was regarded as inherent in the powers of a court of record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempts. The chief forms of contempt are insult to Judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court and scandalising the Judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which

> bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a Single Judge or a single court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system. The question is whether in the circumstances of this case the offence was committed."

25. C.J. Hidayatullah observed that, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard, the same would amount to scandalising the Court. This conduct includes all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Upholding the conviction, this Court observed thus:

> **"34.** ……. On the other hand, we cannot ignore the occasion (a press conference), the belief of the people in his word as a Chief Minister and the ready ear which many in his party and outside would give to him. The mischief that his words would cause need not be assessed to find him guilty. The law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular

> result. Judged from the angle of courts and administration of justice, there is not a semblance of doubt in our minds that the appellants his guilty of contempt of court……"

26. In the case of ***C. K. Daphtary & Ors.*** vs. ***O. P. Gupta & Ors.***[8] this Court was considering a motion made under Article 129 of the Constitution by the President of the Bar Association and some other Advocates. By the said motion, the petitioners therein had brought to the notice of this Court the pamphlet printed and published by the respondent No.1 therein, wherein scurrilous aspersions were made against the judges of this Court. It will be relevant to refer to the following observations of this Court:

> "We are unable to agree with him that a scurrilous attack on a Judge in respect of a judgment or past conduct has no adverse effect on the due administration of justice. This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the Judiciary. If confidence in the Judiciary goes, the due administration of justice definitely suffers."

[8] (1971) 1 SCC 626

27. It could thus be seen, that it has been clearly held by the Constitution Bench, that a scurrilous attack on a judge in respect of a judgment or past conduct has an adverse effect on the due administration of justice. The Constitution Bench has unambiguously held, that this sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the Judiciary and if the confidence in the Judiciary goes, the due administration of justice definitely suffers. In the said case, after holding the contemnor O.P. Gupta guilty for contempt, this Court refused to accept the apology tendered by him finding that the apology coupled with fresh abuses can hardly be taken note of. However, taking a lenient view, this Court sentenced him to suffer simple imprisonment for two months.

28. In the case of ***Baradakanta Mishra*** (supra), a disgruntled judicial officer aggrieved by the adverse orders of the High Court on the administrative side made vilificatory allegations in a purported appeal to the Governor. Considering the contention of the appellant, that the allegations made

against the judges pertained to the acts of the judge in administrative capacity and not acting in judicial capacity, the Constitution Bench observed thus:

> **"43.** We have not been referred to any comprehensive definition of the expression "administration of justice". But historically, and in the minds of the people, administration of justice is exclusively associated with the Courts of justice constitutionally established. Such Courts have been established throughout the land by several statutes. The Presiding Judge of a Court embodies in himself the Court, and when engaged in the task of administering justice is assisted by a complement of clerks and ministerial officers whose duty it is to protect and maintain the records, prepare the writs, serve the processes etc. The acts in which they are engaged are acts in aid of administration of justice by the Presiding Judge. The power of appointment of clerks and ministerial officers involves administrative control by the Presiding Judge over them and though such control is described as administrative to distinguish it from the duties of a judge sitting in the seat of justice, such control is exercised by the Judge as a judge in the course of judicial administration. Judicial administration is an integrated function of the Judge and cannot suffer any

dissection so far as maintenance of high standards of rectitude in judicial administration is concerned. The whole set up of a court is for the purpose of administration of justice, and the control which the Judge exercises over his assistants has also the object of maintaining the purity of administration of justice. These observations apply to all courts of justice in the land whether they are regarded as superior or inferior courts of justice.

44. Courts of justice have, in accordance with their constitution, to perform multifarious functions for due administration of Justice. Any lapse from the strict standards of rectitude in performing these functions is bound to affect administration of justice which is a term of wider import than mere adjudication of causes from the seat of justice.

45. In a country which has a hierarchy of Courts one above the other, it is usual to find that the one which is above is entrusted with disciplinary control over the one below it. Such control is devised with a view to ensure that the lower Court functions properly in its judicial administration. A Judge can foul judicial administration by misdemeanours while engaged in the exercise of the functions of a judge. It is therefore, as important for the

superior Court, to be vigilant about the conduct and behaviour of the Subordinate Judge as a judge, as it is to administer the law, because both functions are essential for administration of justice. The Judge of the superior Court in whom this disciplinary control is vested functions as much as a judge in such matters as when he hears and disposes of cases before him. The procedures may be different. The place where he sits may be different. But the powers are exercised in both instances in due course of judicial administration. If superior Courts neglect to discipline subordinate Courts, they will fail in an essential function of judicial administration and bring the whole administration of justice into contempt and disrepute. The mere function of adjudication between parties is not the whole of administration of justice for any court. It is important to remember that disciplinary control is vested in the Court and not in a judge as a private individual. Control, therefore, is a function as conducive to proper administration of justice as laying down the law or doing justice between the parties.

46. What is commonly described as an administrative function has been, when vested in the High Court, consistently regarded by the statutes as a function in the administration of justice. Take for example the Letters Patent for the High

Court of Calcutta, Bombay and Madras. Clause 8 thereof authorises and empowers the Chief Justice from time to time as occasion may require "to appoint so many and such clerks and other ministerial officers it shall be found necessary *for the administration of justice* and the due execution of all the powers and authorities granted and committed to the said High Court by these Letters Patent". It is obvious that this authority of the Chief Justice to appoint clerks and ministerial officers for the administration of justice implies an authority to control them in the interest of administration of justice. This controlling function which is commonly described as an administrative function is designed with the primary object of securing administration of justice. Therefore, when the Chief Justice appoints ministerial officers and assumes disciplinary control over them, that is a function which though described as administrative is really in the course of administration of justice. Similarly Section 9 of the High Courts Act, 1861 while conferring on the High Courts several types of jurisdictions and powers says that all such jurisdictions and powers are "for and in relation to the *administration of justice* in the Presidency for which it is established". Section 106 of the Government of India Act, 1915 similarly shows that the several jurisdictions of the High Court and all their powers and

authority are "in relation to *the administration of justice including power to appoint clerks and other ministerial officers of the Court".* Section 223 of the Government of India Act, 1935 preserves the jurisdictions of the existing High Courts and the respective powers of the Judges thereof in relation *to the administration of justice* in the Court. Section 224 of that Act declares that the High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction and this superintendence, it is now settled, extends both to administrative and judicial functions of the subordinate Courts. When we come to our Constitution we find that whereas Articles 225 and 227 preserve and to some extent extend these powers in relation to administration of justice, Article 235 vests in the High Court the control over District Courts and courts subordinate thereto. In the *State of West Bengal* v. *Nripendra Nath Bagchi* [AIR 1966 SC 447 : (1966) 1 SCR 771 : (1968) 1 Lab LJ 270] this Court has pointed out that control under Article 235 is control over the conduct and discipline of the Judges. That is a function which, as we have already seen, is undoubtedly connected with administration of justice. The disciplinary control over the misdemeanours of the subordinate judiciary in their judicial administration is a function which the High Court must

> exercise in the interest of administration of justice. It is a function which is essential for the administration of justice in the wide connotation it has received and, therefore, when the High Court functions in a disciplinary capacity, it only does so in furtherance of administration of justice.
>
> **47.** We thus reach the conclusion that the courts of justice in a State from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all those who have or are likely to have business therein that the courts perform all their functions on a high level of rectitude without fear or favour, affection or ill-will."

29. It could thus be seen, that the Constitution Bench holds, that the judges apart from adjudication of causes from the seat of justice are also required to discharge various functions including the disciplinary control. It has been held, that the judge of the superior Court in whom the disciplinary control is vested functions as much as a Judge in such matters, as when he hears and disposes of cases before him, though the procedures may be different or the place where he

sits may be different. It has been held, that in both the cases, the powers are exercised in due course of judicial administration. It has been held, that if superior Courts neglect to discipline subordinate courts, they will fail in an essential function of judicial administration and bring the whole administration of justice into contempt and disrepute. It has been held, that mere function of adjudication between parties is not the whole of administration of justice for any court.

30. Quoting the opinion of Wilmot C.J. in the case of ***Rex*** v. ***Almon***[9], the Constitution Bench observed thus:

> "Further explaining what he meant by the words "authority of the Court", he observed "the word 'authority' is frequently used to express both the right of declaring the law, which is properly called jurisdiction, and of enforcing obedience to it, in which sense it is equivalent to the word power: but by the word ' authority', I do not mean that coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity".

[9] 1765 Wilmot's Notes of Opinions, 243: 97 ER 94

31. The Constitution Bench therefore approves the opinion of Wilmot C.J., that by the word 'authority', it is not meant as coercive power of the Judges, but the deference and respect which is paid to them and their acts, from an opinion of their justice and integrity.

32. It may also be relevant to refer the following observations of the Constitution Bench in the case of ***Baradakanta Mishra*** (supra):

> **"49.** Scandalization of the Court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the Court has to ask is whether the vilification is of the Judge as a judge. (See *Queen* v. *Gray*), [(1900) 2 QB 36, 40] or it is the vilification of the Judge as an individual. If the latter the Judge is left to his private remedies and the Court has no power to commit for contempt. If the former, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. Secondly, the Court will have also to consider the degree of harm caused as affecting administration of justice and, if it is slight and beneath notice, Courts will not punish for

> contempt. This salutary practice is adopted by Section 13 of the Contempt of Courts Act, 1971. The jurisdiction is not intended to uphold the personal dignity of the Judges. That must rest on surer foundations. Judges rely on their conduct itself to be its own vindication.
>
> **50.** But if the attack on the Judge functioning as a judge substantially affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a judge is alleged to have done in the exercise of his administrative responsibilities. A judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function."

33. As rightly pointed out by Shri Dave, the Constitution Bench holds, that when proceedings in contempt are taken for vilification of a judge, the question that the Court will ask itself is, whether the vilification is of the judge as a Judge or it is the vilification of the judge as an individual. In the latter case, the judge is left to his private remedies and the Court will have no

power to commit for contempt. However, in the former case, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. It has been held, that the jurisdiction is not intended to uphold the personal dignity of the Judges. However, if the attack on the Judge functioning as a Judge substantially affects administration of justice, it becomes a public mischief punishable for contempt and it does not matter whether such an attack is based on what a judge is alleged to have done in the exercise of his administrative responsibilities. It has been held, a Judge's functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. It has been held, an unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function.

34. The Constitution Bench came to the conclusion, that a vilificatory criticism of a Judge functioning as a Judge even in purely administrative or non- adjudicatory matters amounts to ‘criminal contempt’.

35. Upholding the conviction as recorded by the High Court, taking into consideration the peculiar facts, the Constitution Bench modified the sentence by directing him to pay a fine of Rs.1,000/- or in default to suffer simple imprisonment for three months.

36. Shri Dave has strongly relied on the concurring opinion of Krishna Iyer, J. in ***Baradakanta Mishra*** (supra) in the following paragraph

> **"88.** Even so, if Judges have frailities — after all they are human — they need to be corrected by independent criticism. If the judicature has serious shortcomings which demand systemic correction through socially-oriented reform initiated through constructive criticism, the contempt power should not be an interdict. All this, far from undermining the confidence of the public in Courts, enhances it and, in the last analysis, cannot be repressed by indiscriminate resort to contempt power. Even bodies like the Law Commission or the Law Institute and researchers, legal and sociological, may run "contempt" risks because their professional work sometimes involves unpleasant criticism of judges, judicial processes and the system itself and thus hover perilously around the periphery of the law if widely construed. Creative legal journalism and activist statesmanship for judicial reform

> cannot be jeopardised by an undefined apprehension of contempt action."

37. Relying on the above paragraph, it is his submission, that the judges also have frailities. According to him, what the alleged contemnor has done is to bring to the notice of this Court the serious shortcomings, which demand systemic correction. According to him, what he has done is far from undermining the confidence of the public in Court but enhances it and therefore, cannot be repressed by indiscriminate resort to contempt power. We will deal with this submission in the later part of our judgment.

38. Shri Dave has strongly relied on the judgment of this Court in ***Re: S. Mulgaokar*** (supra). It will be relevant to refer to the following observations in the judgment of Beg, C.J.

> **"16.** The judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. I am not one of those who think that an action for contempt of court, which is discretionary, should be frequently or lightly taken. But, at the same time, I do not think that we

should abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. But, when there appears some scheme and design to bring about results which must damage confidence in our judicial system and demoralize Judges of the highest Court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial, and unbending justice will feel perturbed. I sincerely hope that my own undisguised perturbation at what has been taking place recently is unnecessary. One may be able to live in a world of yogic detachment when unjustified abuses are hurled at one's self personally, but, when the question is of injury to an institution, such as the highest Court of justice in the land, one cannot overlook its effects upon national honour and prestige in the comity of nations. Indeed, it becomes a matter deserving consideration of all serious-minded people who are interested in seeing that democracy does not flounder or fail in our country. If fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them. However, as we have not proceeded further in this case, I do not think that it would be fair to

> characterize anything written or said in the Indian Express as really malicious or ill-intentioned and I do not do so. We have recorded no decision on that although the possible constructions on what was written there have been indicated above."

39. Learned Chief Justice states, that the judiciary cannot be immune from criticism. However, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. He opines, that an action for contempt of Court should not be frequently or lightly taken. But, at the same time, the Court should not abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. The learned C.J. further observed, that it may be better in many cases for the judiciary to adopt a magnanimously charitable attitude, even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. However, when there appears some scheme and design to bring about

results which must damage confidence in our judicial system and demoralize Judges of the highest court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial and unbending justice will feel perturbed. He opines, that when the question is of injury to an institution, such as the highest Court of justice in the land, one cannot overlook its effects upon national honour and prestige in the comity of nations. He opined, that if fearless and impartial courts of justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them.

40. The aforesaid observations are important though the Court, for different reasons, did not decide to proceed against the alleged contemnor.

41. It will be relevant to refer to the following observations of Krishna Iyer, J. in ***Re: S. Mulgaokar*** (supra):

> **"26.** What then are the complex of considerations dissuasive of punitive action? To be exhaustive is a baffling project; to be pontifical is to be impractical; to be flexible is to be realistic. What, then, are these broad guidelines —

not a complete inventory, but precedentially validated judicial norms?

27. The *first* rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offences — the dogs may bark, the caravan will pass. The Court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt.

28. The *second* principle must be to harmonise the constitutional values of free criticism, the Fourth Estate included, and the need for a fearless curial process and its presiding functionary, the Judge. A happy balance has to be struck, the benefit of the doubt being given generously against the Judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant contemners, be they the powerful press,

gang-up of vested interests, veteran columnists of Olympian establishmentarians. Not because the Judge, the human symbol of a high value, is personally armoured by a regal privilege but because “be you — the contemner — ever so high, the law — the People's expression of justice — is above you”. Curial courage overpowers arrogant might even as judicial benignity forgives errant or exaggerated critics. Indeed, to criticise the Judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy For, it blesseth him that gives and him that takes. Where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it, constitutionally speaking A free people are the ultimate guarantors of fearless justice. Such is the cornerstone of our Constitution; such is the touchstone of our Contempt Power, oriented on the confluence of free speech and fair justice which is the scriptural essence of our Fundamental Law. Speaking of the social philosophy and philosophy of law in an integrated manner as applicable to contempt of court, there is no conceptual polarity but a delicate balance, and judicial “sapience” draws the line. As it happens, our Constitution-makers foresaw the need for balancing all these competing interests. Section 2(1)(*c*) of the Contempt of Courts Act, 1971 provides:

> " 'Criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—
>
> (*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court"

This is an extremely wide definition But, it cannot be read apart from the conspectus of the constitutional provisions within which the Founding Fathers of the Constitution intended all past and future statutes to have meaning. All laws relating to contempt of court had, according to the provisions of Article 19(2), to be "reasonable restrictions" on the exercise of the right of free speech. The courts were given the power—and, indeed, the responsibility— to harmonise conflicting aims, interests and values. This is in sharp contrast to the *Phillimore Committee Report on Contempt of Court in the United Kingdom* [(1974) bund. S. 794. paras 143-5, pp. 61-2] which did not recommend the defence of public interest in contempt cases.

29. The *third* principle is to avoid confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is *not* contempt, the

latter is, although overlapping spaces abound.

30. Because the law of contempt exists to protect public confidence in the administration of justice, the offence will not be committed by attacks upon the personal reputation of individual Judges as such. As Professor Goodhart has put it [See Newspapers on Contempt of Court, (1935) 48 Harv LR 885, 898]:

> "Scandalising the court means any hostile criticism of the Judge as Judge; any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel"

Similarly, Griffith, C.J. has said in the *Australian case* of *Nicholls* [(1911) 12 CLR 280, 285] that:

> "In one sense, no doubt, every defamatory publication concerning a Judge may be said to bring him into contempt as that term is used in the law of libel, but it does not follow that everything said of a Judge calculated to bring him into contempt in that sense amounts to contempt of court".

Thus in *In the matter of a Special Reference from the Bahama Islands* [1893 AC 138] the Privy Council advised that a contempt had not been committed through a publication in the Nassau Guardian concerning the resident Chief Justice, who

had himself previously criticised local sanitary conditions. Though couched in highly sarcastic terms the publication did not refer to the Chief Justice in his official, as opposed to personal, capacity. Thus while it might have been a libel it was not a contempt.

31. The *fourth* functional canon which channels discretionary exercise of the contempt power is that the fourth estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest Court.

32. The *fifth* normative guideline for the Judges to observe in this jurisdiction is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, con-descending indifference and repudiation by judicial rectitude.

33. The *sixth* consideration is that, after evaluating the totality of factors, if the Court considers the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the

> law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream."

42. It could thus be seen, that Justice Krishna Iyer, in his inimitable style, has observed, that a wise economy of use of the contempt power by the Court is the first rule. The Court should act with seriousness and severity, where justice is jeopardized by a gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process. Otherwise, the Court should ignore, by a majestic liberalism, trifling and venial offences. He says the dogs may bark, the caravan will pass. He further opines, that the constitutional values of free criticism, including the fourth estate and the need for a fearless curial process and its presiding functionary, the judge must be harmonised and a happy balance has to be struck between the two. He opined, that confusion between personal protection of a libeled judge and prevention of obstruction of public justice and the community's confidence in that great process is to be avoided. It must be clearly kept in mind because the former is not

contempt, the latter is. He further observed, that the Fourth Estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest Court. He opined, that the judges should not be hypersensitive even where distortions and criticisms overstep the limits, but they should deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude.

43. He opined, that if the court considers, after evaluating the totality of factors, the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

44. Though in the case of ***P.N. Duda*** (supra), this Court, in the facts of the said case, held, that if the speech of the Minister is read in entirety, it cannot be said that by some portions, which were selectively taken from different parts of the speech it could be held that the faith in the administration of justice was shaken due to the criticism made by the Minister; it will be relevant to refer to the following observations of this Court.

> "Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of judges and brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised; the motives of the judges need not be attributed, it brings the administration of justice into deep disrepute. Faith in the administration of justice is one of the pillars through which democratic institution functions and sustains. In the free market place of ideas criticisms about the judicial system or judges should be welcomed, so long as such criticisms do not impair or hamper the administration of justice. This is how courts should approach the powers vested in them as judges to punish a person for an alleged contempt, be it by taking notice

> of the matter suo motu or at the behest of the litigant or a lawyer.

45. In the case of ***Pritam Pal*** vs. ***High Court of Madhya Pradesh, Jabalpur through Registrar***[10]**,** this Court was considering an appeal filed by an Advocate, who after failing to get a favourable judgment in his own writ petition had moved a contempt petition against the judges of the High Court, who had dismissed his petition, therein casting scurrilous aspersions against their conduct in the discharge of their judicial function which bore reflections on their integrity, honesty and judicial impartiality. The High Court invoking the jurisdiction under Article 215 of the Constitution had initiated suo motu proceedings against him and had convicted him for having committed criminal contempt. While dismissing the appeal, this Court observed thus:

> **"60.** The maxim "*salus populi suprema lex*", that is "the welfare of the people is the supreme law" adequately enunciates the idea of law. This can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted,

[10] 1993 Supp (1) SCC 529

> and this cannot be effective unless respect for it is fostered and maintained.
>
> **61.** To punish an advocate for contempt of court, no doubt, must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the Court, though painful, to punish the contemnor in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt, if his act or conduct in relation to court or court proceedings interferes with or is calculated to obstruct the due course of justice."

46. This court held, that the welfare of the people is the supreme law and this can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted and this cannot be effective unless respect for it is fostered and maintained. It has been held, that to punish an Advocate for Contempt of court must be regarded as an extreme measure, but to preserve the proceedings of the Courts from being deflected or interfered with, and to keep the streams of justice pure, serene and

undefiled, it becomes the duty of the Court to punish the contemnor in order to preserve its dignity.

47. In the case of ***In re: Vinay Chandra Mishra***[11], this Court had taken suo motu cognizance on the basis of the letter addressed by one of the judges of the Allahabad High Court to the Acting Chief Justice of the said Court, which was in turn forwarded to the Chief Justice of India. It was noticed, that the contemnor had gone to the extent of abusing the learned judge beyond all limits. This Court observed thus:

> **"39.** The rule of law is the foundation of a democratic society. The Judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the

[11] (1995) 2 SCC 584

> society. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded."

48. This Court holds, that the judiciary is the guardian of the rule of law and is the central pillar of the democratic State. It holds, that in our country, the written Constitution is above

all individuals and institutions and the judiciary has a special and additional duty to perform i.e. to oversee that all individuals and institutions including the executive and the legislature, act within the framework of not only the law but also the fundamental law of the land. It further holds, that this duty is apart from the function of adjudicating the disputes between the parties, which is essential to peaceful and orderly development of the society. It holds, that if the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. It has been held, that otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It has been held, for this purpose that the courts are entrusted with the extra-ordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and

obstructing them from discharging their duties without fear or favour. It has been held, that when the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. It has been held, the foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

49. In the case of ***Dr. D.C. Saxena*** vs. ***Hon'ble the Chief Justice of India***[12], a writ petition was filed under Article 32 by way of a PIL making scurrilous imputations against the CJI. This Court observed thus:

> **"33.** A citizen is entitled to bring to the notice of the public at large the infirmities from which any institution including the judiciary suffers from. Indeed, the right to offer healthy and constructive criticism which is fair in spirit must be left unimpaired in the interest of the

[12] (1996) 5 SCC 216

> institution itself. Critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. Bona fide criticism of any system or institution including the judiciary is aimed at inducing the administration of the system or institution to look inward and improve its public image. Courts, the instrumentalities of the State are subject to the Constitution and the laws and are not above criticism. Healthy and constructive criticism are tools to augment its forensic tools for improving its functions. A harmonious blend and balanced existence of free speech and fearless justice counsel that law ought to be astute to criticism. Constructive public criticism even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public institutions. Section 5 of the Act accords protection to such fair criticism and saves from contempt of court. The best way to sustain the dignity and respect for the office of judge is to deserve respect from the public at large by fearlessness and objectivity of the approach to the issues arising for decision, quality of the judgment, restraint, dignity and decorum a judge observes in judicial conduct off and on the bench and rectitude."

50. It has been held, that a citizen is entitled to bring to the notice of the public at large the infirmities from which any institution including judiciary suffers from. It has been

further held, that the right to offer healthy and constructive criticism, which is fair in spirit must be left unimpaired in the interest of the institution itself. It has been held, that critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. It has also been held, that constructive public criticism even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public institutions.

51. This Court further observed thus:

> **"40.** Scandalising the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of

lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt. Section 2(*c*) of the Act, therefore, defines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to scandalise the court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring

> the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court."

52. It could thus be seen, that it has been held by this Court, that hostile criticism of judges as judges or judiciary would amount to scandalizing the Court. It has been held, that any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. This Court further observed, that any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It has been held, that imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. It has been held, that the gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. This Court held, that Section 2(c) of the Act defines

'criminal contempt' in wider articulation. It has been held, that a tendency to scandalise the Court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt.

53. The Constitution Bench of this Court in the case of ***Supreme Court Bar Association*** vs. ***Union of India and another***[13]**,** held thus:

> **"42.** The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an

[13] (1998) 4 SCC 409

> individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."

54. The observations of the Constitution Bench reiterate the legal position that the contempt jurisdiction, which is a special jurisdiction has to be exercised sparingly and with caution, whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised, when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. This jurisdiction is not to be exercised to

protect the dignity of an individual judge, but to protect the administration of justice from being maligned. It is reiterated, that in the general interest of the community, it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It has been reiterated, that no such act can be permitted, which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

55. In the case of ***Arundhati Roy, in Re***[14], this Court observed thus:

> **"28.** As already held, fair criticism of the conduct of a Judge, the institution of the judiciary and its functioning may not amount to contempt if it is made in good faith and in public interest. To ascertain the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the courts in the name of fair

[14] (2002) 3 SCC 343

> criticism which, if not checked, would destroy the institution itself.....”

56. This Court reiterated the position, that fair criticism of the conduct of a judge, the institution of the judiciary and its functioning may not amount to contempt, if it is made in good faith and in public interest. For ascertaining the good faith and the public interest, the courts have to see all the surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved.

57. It could thus be seen, that it is well settled that a citizen while exercising right under Article 19(1) is entitled to make a fair criticism of a judge, judiciary and its functioning. However, the right under Article 19(1) is subject to restriction under clause (2) of Article 19. An attempt has to be made to properly balance the right under Article 19(1) and the reasonable restriction under clause (2) of Article 19. If a citizen while exercising his right under Article 19(1) exceeds the limits and makes a statement, which tends to scandalize

the judges and institution of administration of justice, such an action would come in the ambit of contempt of court. If a citizen makes a statement which tends to undermine the dignity and authority of this Court, the same would come in the ambit of 'criminal contempt'. When such a statement tends to shake the public confidence in the judicial institutions, the same would also come within the ambit of 'criminal contempt'.

58. No doubt, that when a statement is made against a judge as an individual, the contempt jurisdiction would not be available. However, when the statement is made against a judge as a judge and which has an adverse effect in the administration of justice, the Court would certainly be entitled to invoke the contempt jurisdiction. No doubt, that while exercising the right of fair criticism under Article 19(1), if a citizen bonafidely exceeds the right in the public interest, this Court would be slow in exercising the contempt jurisdiction and show magnanimity. However, when such a statement is calculated in order to malign the image of judiciary, the Court

would not remain a silent spectator. When the authority of this Court is itself under attack, the Court would not be a onlooker. The word 'authority' as explained by *Wilmot, C.J.* and approved by the Constitution Bench of this Court in ***Baradakanta Mishra*** (supra) does not mean the coercive power of the judges, but a deference and respect which is paid to them and their acts, from an opinion of their justice and integrity

59. As submitted by Shri Dave, relying on the observation made by Krishna Iyer, J, in the case of ***Baradakanta Mishra*** (supra), if a constructive criticism is made in order to enable systemic correction in the system, the Court would not invoke the contempt jurisdiction. However, as observed by the same learned judge in Re: **S. Mulgaokar,** the Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the judges and where the attack is calculated to obstruct or destroy the judicial process. Justice Krishna Iyer further observed, that after evaluating the totality of factors, if the Court considers the

attack on the Judge or Judges to be scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him, who challenges the supremacy of the rule of law by fouling its source and stream.

60. In the light of these guiding principles, let us analyze the tweets, admittedly, made by the alleged contemnor No.1 which have given rise to this proceeding.

61. After analysing the tweets, the questions that we will have to pose is, as to whether the said tweets are entitled to protection under Article 19(1) of the Constitution as a fair criticism of the system, made in good faith in the larger public interest or not.

62. We have reproduced both the tweets in the order dated 22.7.2020, which is reproduced in the beginning**.** The first part of the first tweet states, that 'CJI rides a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur without a mask or helmet'. This part of the tweet could be said to be a criticism made against the CJI as an individual and not

against the CJI as CJI. However, the second part of the tweet states, 'at a time when he keeps the SC in lockdown mode denying citizens their fundamental rights to access justice'. Undisputedly, the said part of the statement criticizes the CJI in his capacity as the Chief Justice of India i.e. the Administrative Head of the judiciary of the country. The impression that the said part of the tweet attempts to give to a layman is, that the CJI is riding a 50 lakh motorcycle belonging to a BJP leader at Raj Bhavan, Nagpur without a mask or helmet, at a time when he has kept the SC in lockdown mode denying citizens their fundamental right to access justice. The said tweet is capable of giving an impression to a layman, that the CJI is enjoying his ride on a motorbike worth Rs.50 lakh belonging to a BJP leader, at a time when he has kept the Supreme Court in lockdown mode denying citizens their fundamental right to access justice.

63. Firstly, it would be noted, that the date on which the CJI is alleged to have taken a ride on a motorbike is during the period when the Supreme Court was on a summer vacation.

In any case, even during the said period, the vacation Benches of the Court were regularly functioning. The impression that the said tweet intends to give is that the CJI as the head of the Indian judiciary has kept the Supreme Court in lockdown mode, thereby denying citizens their fundamental right to access justice. In any case, the statement, that the Supreme Court is in lockdown is factually incorrect even to the knowledge of the alleged contemnor No.1. It is a common knowledge, that on account of COVID-19 pandemic the physical functioning of the Court was required to be suspended. This was in order to avoid mass gathering in the Supreme Court and to prevent outbreak of pandemic. However, immediately after suspension of physical hearing, the Court started functioning through video conferencing. From 23.3.2020 till 4.8.2020, various benches of the Court have been sitting regularly and discharging their duties through video conferencing. The total number of sittings that the various benches had from 23.3.2020 till 4.8.2020 is 879. During this period, the Court has heard 12748 matters. In the

said period, this Court has dealt with 686 writ petitions filed under Article 32 of the Constitution of India.

64. It can thus be clearly seen, that the statement, that the CJI has kept the SC in lockdown mode denying citizens their fundamental rights to access justice is patently false. It may not be out of place to mention, that the alleged contemnor No.1 has himself appeared on various occasions in number of matters through video conferencing. Not only that, but even in his personal capacity the alleged contemnor No.1 has taken recourse to the access of justice by approaching this Court in a petition under Article 32 of the Constitution being Writ Petition (Criminal) No.131 of 2020, challenging the First Information Report lodged against him at Bhaktinagar Police Station, Rajkot, Gujarat, wherein this Court had passed the following order on 1.5.2020:

> "The Court is convened through video conferencing.
>
> Issue notice.
>
> In the meantime, no coercive action be taken against the petitioner in First Information Report No.11209052200180

> lodged on 12th April, 2020 under Sections 295A/505(1)(b), 34 and 120B of the IPC registered at the Police Station Bhaktinagar, Rajkot, Gujarat."

In this premise, making such wild allegation thereby giving an impression, that the CJI is enjoying riding an expensive bike, while he keeps the SC in lockdown mode and thereby denying citizens their fundamental right to access justice, is undoubtedly false, malicious and scandalous. It has the tendency to shake the confidence of the public at large in the institution of judiciary and the institution of the CJI and undermining the dignity and authority of the administration of justice. We are unable to accept the contention of the alleged contemnor No.1, that the said statement was a bona fide criticism made by him on account of his anguish of non functioning of the courts physically. His contention, that on account of non-physical functioning of the Supreme Court for the last more than three months, the fundamental rights of citizens, such as those in detention, those destitute and poor, and others facing serious and urgent grievances were not being addressed or taken up for redressal, as stated herein above, is

false to his own knowledge. He has made such a scandalous and malicious statement having himself availed the right of an access to justice during the said period, not only as a lawyer but also as a litigant.

65. Insofar as the second tweet is concerned, even according to the alleged contemnor No.1, the tweet is in three distinct parts. According to him, the first part of the tweet contains his considered opinion, that democracy has been substantially destroyed in India during the last six years. The second part is his opinion, that the Supreme Court has played a substantial role in allowing the destruction of the democracy and the third part is his opinion regarding the role of the last 4 Chief Justice's in particular in allowing it.

66. We are not concerned with the first part of the tweet since it is not concerned with this Court. However, even on his own admission, he has expressed his opinion, that the Supreme Court has played a substantial role in allowing the destruction of democracy and further admitted, that the third

part is regarding the role of last four Chief Justices in particular, in allowing it.

67. It is common knowledge, that the emergency era has been considered as the blackest era in the history of Indian democracy. The impression which the said tweet tends to give to an ordinary citizen is, that when the historians in future look back, the impression they will get is, that in the last six years the democracy has been destroyed in India without even a formal emergency and that the Supreme Court had a particular role in the said destruction and the last four Chief Justices of India had more particular role in the said destruction.

68. There cannot be any manner of doubt, that the said tweet is directed against the Supreme Court, tending to give an impression, that the Supreme Court has a particular role in the destruction of democracy in the last six years and the last four CJIs had a more particular role in the same. It is clear, that the criticism is against the entire Supreme Court and the last four CJIs. The criticism is not against a particular judge

but the institution of the Supreme Court and the institution of the Chief Justice of India. The impression that the said tweet tends to convey is that the judges who have presided in the Supreme Court in the period of last six years have particular role in the destruction of Indian democracy and the last four CJIs had a more particular role in it.

69. As discussed herein above, while considering as to whether the said criticism was made in a good faith or not the attending circumstances are also required to be taken into consideration. One of the attending circumstances is the extent of publication. The publication by tweet reaches millions of people and as such, such a huge extent of publication would also be one of the factors that requires to be taken into consideration while considering the question of good faith.

70. Another circumstance is, the person who makes such a statement. In the own admission, the alleged contemnor No.1 has been practicing for last 30 years in the Supreme Court and the Delhi High Court and has consistently taken up

many issues of public interest concerning the health of our democracy and its institutions and in particular the functioning of our judiciary and especially its accountability. The alleged contemnor being part of the institution of administration of justice, instead of protecting the majesty of law has indulged into an act, which tends to bring disrepute to the institution of administration of justice. The alleged contemnor No.1 is expected to act as a responsible officer of this Court. The scurrilous allegations, which are malicious in nature and have the tendency to scandalize the Court are not expected from a person, who is a lawyer of 30 years standing. In our considered view, it cannot be said that the above tweets can be said to be a fair criticism of the functioning of the judiciary, made bona fide in the public interest.

71. As held by this Court in earlier judgments, to which we have referred herein above, the Indian judiciary is not only one of pillars on which the Indian democracy stands but is the central pillar. The Indian Constitutional democracy stands on the bedrock of rule of law. The trust, faith and confidence of

the citizens of the country in the judicial system is *sine qua non* for existence of rule of law. An attempt to shake the very foundation of constitutional democracy has to be dealt with an iron hand. The tweet has the effect of destabilising the very foundation of this important pillar of the Indian democracy. The tweet clearly tends to give an impression, that the Supreme Court, which is a highest constitutional court in the country, has in the last six years played a vital role in destruction of the Indian democracy. There is no manner of doubt, that the tweet tends to shake the public confidence in the institution of judiciary. We do not want to go into the truthfulness or otherwise of the first part of the tweet, inasmuch as we do not want to convert this proceeding into a platform for political debate. We are only concerned with the damage that is sought to be done to the institution of administration of justice. In our considered view, the said tweet undermines the dignity and authority of the institution of the Supreme Court of India and the CJI and directly affronts the majesty of law.

72. Indian judiciary is considered by the citizens in the country with the highest esteem. The judiciary is considered as a last hope when a citizen fails to get justice anywhere. The Supreme Court is the epitome of the Indian judiciary. An attack on the Supreme Court does not only have the effect of tending an ordinary litigant of losing the confidence in the Supreme Court but also may tend to lose the confidence in the mind of other judges in the country in its highest court. A possibility of the other judges getting an impression that they may not stand protected from malicious attacks, when the Supreme Court has failed to protect itself from malicious insinuations, cannot be ruled out. As such, in order to protect the larger public interest, such attempts of attack on the highest judiciary of the country should be dealt with firmly. No doubt, that the Court is required to be magnanimous, when criticism is made of the judges or of the institution of administration of justice. However, such magnanimity cannot be stretched to such an extent, which may amount to weakness in dealing with a malicious, scurrilous, calculated

attack on the very foundation of the institution of the judiciary and thereby damaging the very foundation of the democracy.

73. The Indian Constitution has given a special role to the constitutional courts of this country. The Supreme Court is a protector of the fundamental rights of the citizens, as also is endowed with a duty to keep the other pillars of democracy i.e. the Executive and the Legislature, within the constitutional bounds. If an attack is made to shake the confidence that the public at large has in the institution of judiciary, such an attack has to be dealt with firmly. No doubt, that it may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. However, when there appears some scheme and design to bring about results which have the tendency of damaging the confidence in our judicial system and demoralize the Judges of the highest court by making malicious attacks, those interested in maintaining high standards of fearless, impartial and unbending justice

will have to stand firmly. If such an attack is not dealt with, with requisite degree of firmness, it may affect the national honour and prestige in the comity of nations. Fearless and impartial courts of justice are the bulwark of a healthy democracy and the confidence in them cannot be permitted to be impaired by malicious attacks upon them. As observed by Justice Krishna Iyer in the case of ***Re: S. Mulgaokar*** (supra), on which judgment, Shri Dave has strongly relied on, if the Court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

74. The summary jurisdiction of this Court is required to be exercised not to vindicate the dignity and honour of the individual judge, who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and

impartial justice. When the foundation itself is sought to be shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded. The scurrilous/malicious attacks by the alleged contemnor No.1 are not only against one or two judges but the entire Supreme Court in its functioning of the last six years. Such an attack which tends to create disaffection and disrespect for the authority of this Court cannot be ignored. Recently, the Supreme Court in the cases of ***National Lawyers Campaign for Judical Transparency and Reforms and others*** vs. ***Union of India and others***[15] *and* ***Re: Vijay Kurle & Ors*** (supra) has suo motu taken action against Advocates who had made scandalous allegations against the individual judge/judges. Here the alleged contemnor has attempted to scandalise the entire institution of the Supreme Court. We may gainfully refer to the observations of Justice Wilmot in ***R***. v. ***Almon***[16] made as early as in 1765:

[15] 2019 SCC Online SC 411
[16] 1765 Wilmot's Notes 243 : 97 ER 94

> "…. And whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people."

75. The tweets which are based on the distorted facts, in our considered view, amount to committing of 'criminal contempt'.

76. Insofar as the alleged contemnor No.2 is concerned, we accept the explanation given by it, that it is only an intermediary and that it does not have any control on what the users post on the platform. It has also showed bona fides immediately after the cognizance was taken by this Court as it has suspended both the tweets. We, therefore, discharge the notice issued to the alleged contemnor No.2.

77. In the result, we hold alleged contemnor No.1 – Mr. Prashant Bhushan guilty of having committed criminal contempt of this Court.

.....J.
[ARUN MISHRA]

.....J.
[B.R. GAVAI]

.....J.
[KRISHNA MURARI]

NEW DELHI;
AUGUST 14, 2020