Reserved

Contempt Application (Crl.) No. 13 of 2008

IN RE

Rajvir Singh Tyagi Advocate Civil Courts, Meerut.....Contemnor.

Hon. Imtiyaz Murtaza J.
Hon. S.S.Tiwari, J.

(Delivered by Hon. Imtiyaz Murtaza J.)

Impugned herein is the notice of contempt issued against the contemnor vide order dated 1.9.2008 passed by Division Bench of this Court.

The contempt proceeding has its genesis in the complaint addressed to Hon. Chief Justice and copies addressed to Administrative Judge, D.I.G. (Police) Meerut, District Judge Meerut, District Magistrate Meerut, S.S.P. Meerut, and S.O P.S. Lalkurti Meerut. The complaint inter-alia centres round the fact that in Criminal case No. 61 of 96 the accused a police constable was involved in offences under section 323/342/392 IP C and section 7/13 (1) of the Prevention of Corruption Act P.S. Goverdhan District Mathura in which the Special Judge had rejected the application for bail. Subsequently, the High Court admitted the accused to bail for the aforesaid offences. It is imputed in the complaint that on 27.9.2006, bail bonds were accepted by the court concerned and release order was issued but the release order was returned by the Jail authorities alongwith custody warrant stating that in the release order section 161 IPC was not mentioned while section 161 IPC was enumerated in the custody warrant. On 28.9.2006, the matter was placed before Sri V.P.Srivastava who was link officer of that court to rectify the mistake but the officer refused to do the needful on the ground that the same cannot be deleted and let the accused be continued in custody in the aforesaid section. It is further alleged that the courts thereafter were closed between 29.9.2006 to 2.10.2006 and on 3.10.2006 the matter was placed before the presiding officer who

rectified the mistake. The question was posed in the complaint as to why the link officer did not rectify the mistake while it was well known that section 161 IPC stood deleted from the IPC. Subsequently, it was lamented in the complaint that several complaints were made by several advocates to the Hon. Court regarding the unbecoming conduct and behaviour of the officer towards senior Advocates and the contemnor was one of the complainant and that the officer deliberately did not rectify the mistake as a result of which the accused remained in incarceration without any valid reason between 28.9.2006 to 3.10.2006 for which the officer was to be blamed. It is further stated that the officer has committed offence under section 342 IPC and therefore besides initiating departmental action against him, F.I.R be also lodged against him under section 342 IPC. It is further alleged in the complaint that it would transpire from the above facts that the officer had fragmentary knowledge of law and as a seasoned judicial officer, he must be aware that section 161 IPC had already been deleted from the penal code.

In the second complaint dated 24.5.2006 in which it would appear that the contemnor was seemingly aggrieved by the criticism of the court about the delay in passing the order, the allegations are that in S.T. No. 912 of 2004, State v. Asif pending in the court of Fast Track Court no.3 Meerut presided over by Sri V.P.Srivastava, on an application moved on behalf of accused Asif claiming to be juvenile , the aforesaid court proceeded leisurely and for 13 months, the accused who was a juvenile remained incarcerated in jail instead of Juvenile jail and was treated as one of the hardened criminal. It is further alleged that the office of the said court took more than a month to submit the report that there was juvenile court functioning in Meerut. It is further stated that on 15.2.2006, the court passed the order that it was necessary to refer the matter to Medical Board for ascertaining the correct age of the accused and in consequence, the matter was referred to C.M.O. Meerut who took two months to submit the report dated 20.4.2006. It is also stated that the court in the meantime did not take any tangible steps upon the report and the juvenile continued to be treated as an ordinary prisoner in jail. In the complaint, the contemnor also refers to Juvenile Act which according to him postulated that the enquiry as to age has to be taken to completion within four months and that such juvenile accused could not

be kept alongwith hardened criminal. It is also stated that subsequently, the report of the Medical Board was discountenanced. He also refers to transfer application made in this regard seeking appropriate order to transfer the matter to juvenile court upon which the District Judge directed the concerned court to complete the enquiry within 20 days. It is stated that annoyed by the transfer application, the presiding officer passed the order criticizing the conduct of the contemnor. In the end, the contemnor posed the question that when the F.T.C works at such a snail's pace, what fate awaits such Judges. It is also prayed that this Court should initiate appropriate action against such Judges posted in Meerut.

The third complaint which has been taken note of for contempt purposes is dated 15.9.2006 addressed to District Judge in which the contemnor has cited instances of misbehaviour of the officer towards senior Advocates particularly the instance of misbehaviour with Brahma Singh Senior Advocate when the said Advocate expressed his displeasure over resuming court work after 4.30 p.m. It is stated that after the officer had misbehaved with Sri Brahma Dutta, he left the court but since contemnor was present he could not brook the insult and disrespect shown to Sri Brahma Singh, and took up cudgel on his behalf for the affront done to Sri Brahma Singh. It is also alleged that he made a written complaint against the behaviour of the officer to the Bar Association. Citing another instance, he referred to occurrence that one day when he was passing through the corridor he saw a group of lawyers. This aroused curiosity in him and he went to the lawyers and enquired about what actually happened upon which the lawyers informed him that the misbehaviour of Sri V.P.Srivastava towards the lawyers had become intolerable. It is stated that at the time Secretary of the Bar Association was present and when he called upon him to take decisive action against misbehaviour of the officer. The contemnor further mentions that when he left, the Secretary Bar Association called him but he did not stop. He further states that he was a Brahimin by caste and a Brahim could not be compelled to compromise the matter either under duress or otherwise and a true Brahmin was always ready for facing battle. He also made a menacing comments to the effect “Please make today i.e. 13th Sept 2006 a marker because it is this district from where the disciplinary proceeding has to be commenced.” On page 4, in

connection with the case of Sulkh Chand Tomar alias Titu who had engaged the contemnor, it is stated that in the N.D.P.S.Act, hearing was virtually complete and the case was likely to be decided when Sri S.C.Batra, Special Judge N.D.P.S Act stood transferred and till posting of some officer, the charge of that court was entrusted to the referring officer. It is alleged that the accused moved an application for transfer from the court of Sri V.P.Srivastava on the ground that he did not expect justice from the court of Sri V.P. Srivastava. When aforesaid accused came to know that there was hostility between Sri V.P.Srivastava and the contemnor, the accused took away his brief from the chamber of contemner and engaged Dinesh Kumar Tyagi. Sri Dinesh Kumar Tyagi it is further alleged, had about 10 to 15 cases under the N.D.P.S Act pending in the said court and when Sri Dinesh Kumar Tyagi was engaged, the court started fixing day to day dates in the case. On 13th September it is alleged, the said court summoned the accused and at about 6 p.m, when the court was dictating application and affidavit to the accused against the contemnor, he (contemnor) brought this fact to the notice of the Secretary Bar Association namely Ravikant Bhardwarj and 10 to 15 other Advocates reached the court and asked the officer why he was holding the court at 6.15 p.m. Upon which Sri Srivastava replied that he was doing some urgent official work. Upon which Sri Bhardwaj conveyed to the officer that here in Meerut, the lawyers become boisterous after 4 p.m and if any untoward happening takes place with the officer, the Bar would not be held responsible for the same. In the last para i.e. at page 6, it is stated that Sir (addressed to the District Judge), my humble request is this that he is permanent resident of Meerut and his parental village has a population of about 10 thousand people and each person of the village would be ready to lay down his life for his cause and at least 150 juniors always keep company with him. He further states that he means to say that he has a large army of people to abide by his call while Sri Srivastava (referring officer is all alone).

Upon the complaint being put up before Administrative Judge, namely Hon. V.M.Sahai, the order 9.10.2006 was passed directing District Judge to enquire and report at the earliest.

The District Judge by means of letter dated 24th Nov 2006 after

delving into the entire matter, reported that Sri V.P. Srivastava, Addl. District Judge on that particular date, was the link officer; that section 161 IPC was erroneously mentioned in custody warrant and not in release order and hence the link officer it is mentioned, could not correct the mistake and next day when Presiding officer resumed the duties, he rectified the mistake. The District Judge also reported that the contemnor had used a phraseology in his complaint which was contemptuous to the officer attended with expression that he had no legal knowledge and that the F.I.R be lodged against the officer under section 342 IPC. The District Judge also reported that the contemnor conceded before the Link Officer that the accused had not been admitted to bail under section 13 (2) of the Prevention of Corruption Act and section 161 IPC and by this reckoning he inveigled the court in order to make out a ground for making complaint against him attended with further facts that in the complaint made against the officer on 15.9.2006, he extended veiled threat stating that he was a native of a village which is populated by 10 thousand people and each and every persons of that village would rally behind him to shed his blood in case situation so warrants while the officer would find none to come to his rescue.

Pursuant to the report of District Judge, the then Administrative Meerut on 7.12.2007 expressed the opinion in the following words.

> "The letters of Sri Rajveer Singh Tyagi Advocate dated 24.5.2006 and 15.9.2006 are not only threatening but also contemptuous and amount to obstructing and scandalizing the administration of justice. Let the file be placed before Hon. The Chief Justice to draw contempt proceeding (Crl.) against him."

On 7.8.2008, the Chief Justice appended approval for placing the matter before appropriate Bench.

Sri K.K.Srivastava learned counsel appeared for the contemnor and pleaded for merciful view in the matter. On being called upon to argue the case on merit of the case, he referred to unqualified apology stating that the contemnor has already tendered the unqualified apology and prayed for discharge taking a lenient view further urging that that

the contemnor was fairly senior and had been practising for the last 30 years attended with further submission that he can not be said to be addicted to using contemptuous language and making scurrilous attacks nor was there any previous instance of his showing disrespect to any of the court and whatever had happened in Court was in a spontaneity. Ultimately, he stated that he should be given a chance to expiate his conduct if adjudged to be unbecoming of an Advocate.

We are pained that we have to deal with a case involving a lawyer again under the Contempt of Court Act. We however indicate to ourselves the piece of advice that the Court while dealing with contempt matter should not be over or hypersensitive and should not exercise this jurisdiction on any exaggerated notion of the dignity of the Judges and must act taking a dispassionate view of the entire matter. It is the settled principles that the rule of contempt is not to be lightly invoked and is not to be used as a cloak to cow down somebody into submission on the basis of fancied claim. It is intended to offer protection to the court itself or to a party in judicial proceeding whose interest may be affected or the authority of the court is lowered and the confidence of the people in the administration of justice is weakened. At the same time, it should be borne in mind that the Court is the protector of public justice and it has a stake in the dignity and protection of those who man the court.

We would also not flinch from saying that the apology is not to be used as a weapon of defence forged always to be used as a shield to protect the contemnor as a last resort. It is intended to be evidence of real contriteness. The apology, in order to dilute the gravity of the offence, it has repeatedly been ruled in catena of decisions, should be voluntary, unconditional and indicative of remorse and real contrition and it should be tendered at the earliest opportunity. We have to administer caution to ourselves that we should not be inveigled into accepting apology from those who are addicted to using contemptuous language and making scurrilous attacks and have to their discredit, earlier instance of misfeasance. It is well enunciated by catena of decisions that if the veiled object is disgrace, humiliate or cause harassment to the officers the Court must put an end to the mischief.

In the affidavit filed by the contemnor alongwith application which is titled as unconditional apology, the contemnor in para 2 has stated that he has been practising for the last 30 years in the civil courts at Meerut. In para 3, it is averred that he is one of the most respectable member of Meerut Bar Association and has always been active participation in all its function. In para 4, it is averred that no complaint was ever made by any of the presiding officer against the conduct of the applicant nor he was ever proceeded against and that he has got absolutely clean and unblemished record all through. He has also annexed a certified issued by secretary Meerut Bar Association as Annexure no.1. In para 5, it is averred that it is for the first time in the last three decades of his legal career that he has been proceeded against for criminal contempt for which he sincerely regrets and tenders his "mis-conditional apology" (Perhaps he means unconditional apology.). In para 6 it is averred that the applicant assures that he would never repeat the action nor indulge any such activity which tends to bring the judicial authority to contempt in any manner.

The vexed question now is whether the complaint made to Chief Justice constitutes criminal contempt under the provisions of Contempt of Courts Act or not. The first question that requires consideration is whether in making the allegations which the contemnor did against the judicial officer, the contemnor exceeded the limits of fair and legitimate criticism and whether the attack as contained in the complaints is couched in indecent, wild and intemperate language. As stated supra, there were three complaints as referred to above made against the officer two to the Chief Justice and the third one to the District Judge. The relevant remarks made against the judicial officer in the complaint dated 4.10.2006 may be excerpted below.

> "Uprokta Samasta Ghatnakram Se Yeh Bhi Pratham Dristiya Pratit Hai Ki Sri V.P. Srivastava, Upper Zila Judge Meerut Ko Kanoon Ki Bhi Jankari Nahin Hai Kyonki Yadi Unhe Kanoon Ki Jankari Hoti To Unhe Yeh Maloom Hona Chahiye Tha Ki Dhara 161 I>P.C. Delete Ki JaChuki Hai Parantu Unke Dinank 28.9.2006 Ko Parit Adesh Se Ispashtya Pratit Hai Ki Unhe Vakai 161 IPC Ke Samapta Ho Jane Ki Kanoon Gyan

Nahin Tha Jo Ki Unhe Hona Chahiya.

In the last paragraph of the said complaint, the remarks made are as under:

> " Ateh Shrimanji Se Prarthana Hai Ki Sri V.P.Srivastava Upper Zila Judge Court no. 6 Meerut Ke Virudh Dhara 342 IPC Ka Mukadma Sambandhit Thane Me Darj Karne Ke Adesh Parit Kar Unke Virudh Alag Se Niyayik Istar Par Prashashinik Evam Anushashinatmak Karyavahi Kiye Jane Ke Adesh Parit Karne Ki Kripa Ki Jaye."

In the complaint made to District Judge on15.9.2006, the contemnor made the following remarks.

> "Kyonki Vakeelo Ke Hit Me Kisi Niyaik Adhkari Se Faisala Ya Samjhota Karne Ka Prashna Us Vakil Ke Liye Utpanna Hi Nahin Hota Hai Jo Zara Sa Bhi Swabhimani Ho Aur Me To Vaise Bhi Jati Se Brahman Hoon. Ateh Dabkar Ya Lalchvash Athva Vivash Hokar Brahmin Kabhi Kisi Se Samjhota Ya Faisla Nahi Karta Veh Yudh Ke Liye Hamesha Tayyar Rahta Hai. Dinank 13th Sept 2006 Kripya Ise Lal Kalam Se Rekhankit Karne Ka Kashta Karen Kyonki Yahan Se Ukta Adhikari Ke Virudh Apke Dwara Anushasnatmak Karyawahi Shuru Honi Hai. Yadi Meri Bat Satya Hai To."

At page 4 of the complaint, the portion marked is abstracted below.

> "Shri Narottam Garg Ke Soochna Pakar Ravi Kant Bhardwaj Sahit 10-15 Adhivakta Turant Sri V.P.Srivastava Ke Niyayaley Mai Pahunche Vaha Ki Sawa Chhey Baje Tak Sri V.P.Srivastava Apni Niyayik Kursi Par Vidyaman The. Is Par Ravikant Bhardwaj Ne Niyayale Kaksha Me Hi Ukta Niyayaley Sri V.P.Srivastava Se Kaha Ki Aap Chhey Baje Tak Niyayale Kaksha Main Kyo Virajman Hai To Is Par Sri Srivastava Ne Javab Diya Ki Mai Kuchcha Sarkari Karya Kar Raha Hoon. Is Par Sri Ravikant Bhardwaj Ne Kaha Ki Aap Sawa Chhey Baje

> Tak Sarkari Karya Kar Rahi Hain Yaha Kutchery Me Sade 4 Baje Sham Ke Baad Vakil Lok Hurdangi Ho Jate Hai Ateh Ese Me Yadi Kisi Vakeel Ne Aapke Saath Kisi Prakar Ki Koi Badtamazi Athawa Galat Harkat Kar Di To Meerut Bar Association Iske Liye Zimmedar Nahin Hogi.....”

At page 5, the remarks made in the complaint read as under:

> 'Mene Dinak 15.9.2006 Ko Subeh Hi Ukta Dhanesh Babu Ke Acharan Ke Sambandh Mai Unki Union Ke Adhyaksha Se Baat Ki Aur Kaha Ki Jhagrah Mere va V.P.Srivastava Ke Beech Hai Dhanesh Babu Anavashyak Roop Se Kyo Pakshakar Ban Raha Hai . Use Bulakar Samjhao Kahin Esa Na Ho Ki Mera Dakrao Dhanesh Babu Se Ho Jaye Aur Karamchariyon Mai Yeh Sandesh Jaye Ki Sri Rajveer Singh Tyagi Ki Jaji Ke Karamchariyon Ke Prati Amariyadit Byavhar Karne Lage Hai.....”

At page 6 of the complaint, the contemnor made following remarks.

> “Manyavar, Mera Nivedan Apse Yeh Hai Ki Me Isthaniye Zila Meerut Ka Niwasi Hoon Mere Apne Patrik Gaon Me 10 Hazar Ki Abadi Hai Mere Gaon Ka Bacha Bacha Mere Liye Mar Mitne Ke Liye Tayyar Hamesha Raha Hai. Kam Se Kam 150 junior Mere Saath Se Anubhav Grahan Karke Isi Kutcheri Mai Vakalat Kar Rahe Hai. Tatparya Yeh Hai Ki Isthaniye Hone Ke Nate Mere Paas Ek Fauj Hai Evam Sri V.P.Srivastava Ekmatra Akele hai. Chunki Niyayik Adhikari Hai Niyayik Adhikari Ka Samman Amjan Ko Karne Chahiye. Isi Bhavna Ke Tahat 13th Sept 2006 Vali Ghatna Se Abhi Tak Me Sri V.P.Srivastava Ke Prati Uttejit Nahin Hua Yadi Aapne Is Mamle Me Swayam Dakhal Nahi Diya To Anartha Ho Jaye Ga.”

As observed by the Apex Court in Brahma Prakash Sharma and others v. state of U.P 1954 AIR p. 10, i**n regards to matters of contempt, the members of a Bar Association do not occupy any**

privileged or higher position than ordinary citizens. It brooks no dispute that the complaint dated 15.9.2006 made by the contemnor was addressed to the District Judge, while the complaints dated 4.10.2006 and 24.5.2006 were addressed to Chief Justice and copies thereof were endorsed to Administrative Judge, D.I.G. Police Meerut, District Judge Meerut, District Magistrate Meerut, Sr. Supdt of Police Meerut and Station officer P.S.Lal Kurti Meerut. The Chief Justice and the District Judge Meerut, indubitably, were the official superiors of the officer concerned but copies thereof were also endorsed to other executive authorities as stated supra and therefore, it would transpire that the allegations made against the officer were widely publicized by the contemnor beyond those who were the official superiors of the officer bringing disgrace to the officer. The question now is whether such action of the contemnor would be counted as a defamatory attack on the judicial officer occasioning injury to the public and tending to create an apprehension in the minds of the people regarding the ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice and it was likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties and whether the conduct of the contemnor brought them within the purview of the law of contempt.

At the risk of repetition, the summary of what has been remarked by the contemnors in the two complaints may be reproduced here. It is imputed in the complaint dated 4.10.2006 that on 27.9.2006, bail bonds were accepted by the court concerned and release order was issued but the release order was returned by the Jail authorities alongwith custody warrant stating that in the release order section 161 IPC was not mentioned while section 161 IPC was enumerated in the custody warrant. On 28.9.2006, the matter was placed before Sri V.P.Srivastava who was link officer of that court to rectify the mistake but the officer refused to do the needful on the ground that the same cannot be deleted and let the accused be continued in custody in the aforesaid section. It is further alleged that the courts thereafter were closed between 29.9.2006 to 2.10.2006 and on 3.10.2006 the matter was placed before the presiding officer who rectified the mistake. The question was posed in the complaint as to why the link officer did not rectify the mistake while

it was well known that section 161 IPC stood deleted from the IPC. Subsequently, it was lamented in the complaint that several complaints were made by several advocates to the Hon. Court regarding the unbecoming conduct and behaviour of the officer towards senior Advocates and the contemnor was one of the complainant and that the officer deliberately did not rectify the mistake as a result of which the accused remained in incarceration without any valid reason between 28.9.2006 to 3.10.2006 for which the officer was to be blamed. It is further stated that the officer has committed offence under section 342 IPC and therefore besides initiating departmental action against him, F.I.R be also lodged against him under section 342 IPC. It is further alleged in the complaint that it would transpire from the above facts that the officer had fragmentary or no knowledge of law and as a seasoned judicial officer, he must be aware that section 161 IPC had already been deleted from the penal code. There is also reference to second complaint dated 15.9.2006 addressed to District Judge in which he has cited instances of misbehaviour of the officer towards senior Advocates particularly the instance of misbehaviour with Brahma Singh Senior Advocate when the said Advocate expressed his displeasure over resuming court work after 4.30 p.m. It is stated that after the officer had misbehaved with Sri Brahma Dutta, he left the court but since contemnor was present he could not brook the insult and disrespect shown to Sri Brahma Singh, and took up cudgel on his behalf for the affront done to Sri Brahma Singh. It is also alleged that he made a written complaint against the behaviour of the officer to the Bar Association. Citing another instance, he referred to occurrence without mentioning the date that one day when he was passing through the corridor he saw a group of lawyers. This aroused curiosity in him and he went to the lawyers and enquired about what actually happened upon which the lawyers informed him that the misbehaviour of Sri V.P.Srivastava towards the lawyers had become intolerable. It is stated that at the time Secretary of the Bar Association was present and when he called upon him to take decisive action against misbehaviour of the officer. The contemnor further mentions that when he left, the Secretary Bar Association called him but he did not stop. He further states that he was a Brahimin by caste and a Brahmin could not be compelled to compromise the matter either under duress or otherwise and a true Brahmin was always ready for facing

battle. He also made a menacing comments to the effect "Please make today i.e. 13th Sept 2006 a marker because it is this district from where the disciplinary proceeding has to be commenced." On page 4, in connection with the case of Sulkh Chand Tomar alias Titu who had engaged the contemnor, it is stated that in the N.D.P.S.Act, hearing was virtually complete and the case was likely to be decided when Sri S.C.Batra, Special Judge N.D.P.S Act stood transferred and till posting of some officer, the charge of that court was entrusted to the referring officer. It is alleged that the accused moved an application for transfer from the court of Sri V.P.Srivastava on the ground that he did not expect justice from the court of Sri V.P. Srivastava. When aforesaid accused came to know that there was hostility between Sri V.P.Srivastava and the contemnor, the accused took away his brief from the chamber of contemner and engaged Dinesh Kumar Tyagi. Sri Dinesh Kumar Tyagi it is further alleged, had about 10 to 15 cases under the N.D.P.S Act pending in the said court and when Sri Dinesh Kumar Tyagi was engaged, the court started fixing day to day dates in the case. On 13th September it is alleged, the said court summoned the accused and at about 6 p.m, when the court was dictating application and affidavit to the accused against the contemnor, he (contemnor) brought this fact to the notice of the Secretary Bar Association namely Ravikant Bhardwarj and 10 to 15 other Advocates reached the court and asked the officer why he was holding the court at 6.15 p.m. Upon which Sri Srivastava replied that he was doing some urgent official work. Upon which Sri Bhardwaj conveyed to the officer that here in Meerut, the lawyers become boisterous after 4 p.m and if any untoward happening takes place with the officer, the Bar would not be held responsible for the same. In the last para i.e. at page 6, it is stated that Sir (addressed to the District Judge), "my humble request is this that he is permanent resident of Meerut and his parental village has a population of about 10 thousand people and each person of the village would be ready to lay down his life for his cause and at least 150 juniors always keep company with him. He further states that he means to say that he has a large army of people to abide by his call while Sri Srivastava is alone".

As observed by the Apex Court in Brahma Prakash Sharma and another (supra), there are indeed innumerable ways by which attempts

can be made to hinder 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 scandalizing the court itself. It is further observed that this scandalizing 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 the confidence of the people in the courts which are of prime importance to the litigants in the protection of their rights and liberties.

In the light of the above principles, now we proceed to scrutinize the allegations contained in the three complaints made by the contemnor. Having delved into the allegations the excerpts of which have been cited above, we find that excepting certain remarks contained in the two complaints, the allegations made by the contemnors may be taken to be in general terms. The allegations are to the effect that the officer has been discourteous to the lawyers etc and he has been biased towards him; that the officer caused delay and subsequently annoyed by transfer application, he passed orders criticising his conduct. But in so far as other allegations as referred to above which carried threats and demanded action against the officer failing which it would spell disaster for the particular officer and that the officer was thoroughly incompetent in law and that he had fragmentary knowledge of law and that in case no action was initiated against him he could collect a mob and each and every person of his village besides 150 junior lawyers would rally behind him and would lay down their lives for his cause and that the officer concerned is all alone, and further that the officer has committed offence under section 342 IPC and therefore besides initiating departmental action against him, F.I.R be also lodged against him under section 342 IPC that the officer had fragmentary knowledge of law and as a seasoned judicial officer he must be aware that section 161 IPC had already been deleted from the penal code and further remarks that He was a Brahmin by caste and a Brahmin could not be compelled to compromise the matter either under duress or otherwise and a true Brahmin was always ready for facing battle, are certainly such as would tend to obstruct or

interfere with the course of justice or the due administration of law and further tend to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the officer or to deter actual and prospective litigants from placing complete reliance upon the court's administrative of justice besides causing embarrassment in the mind of the officer himself in the discharge of his judicial duties. The allegations are no doubt sweeping nature and can scarcely be justified. Regard being had to the nature of allegations and veiled threat as embodied therein, and considering all the surrounding facts and circumstances under which the allegations were made and also taking into consideration the publicity given to the matter by endorsing copies to those authorities other than the official superiors of the officer, we have no hesitation to hold that the remarks against the officer were not only disrespectful, threatening and overawing, but contained veiled insinuation and the language used was ill chosen, sarcastic and pungent and by this reckoning, they were calculated to undermine the confidence of the public in the capacity or integrity of the officer and the same is likely to deflect the court itself from a strict and unhesitant performance of its duties.

Before we proceed further, we would like to quip here that if the judiciary has to perform its function in a fair and free manner, the dignity and authority of the court and those manning the courts have to be respected by all concerned failing which the very constitutional scheme and public faith in the judiciary would run the risk of being eroded. Since the contemnor is an Advocate, the matter requires to be considered with a little more seriousness. An Advocate, we feel called to say, is not exempt from ordinary disability which the law imposes and his position is not inviolable and his privileges cannot extend to interfere with the administration of justice. On the other hand he is expected to help in sub-serving the course of justice and not impede it in any manner. A legal practitioner has no doubt his duties towards his client but at the same time he has equally important duty and obligation upon him to cooperate with the court in the orderly and pure administration of justice. Any departure would be construed to be violative and neglecting his duties and obligations. A lawyer is a person educated and trained in law. The use of language has to be balanced and in fitness of things within the framework of the law of the land. He cannot and should not be

reckless in the use of language. There are barriers which must be known to a lawyer and it should not be crossed. He should not overstep the limits of decency and ethics in the matter of his behavior towards the court.

In Delhi Judicial Service Association v. State of Gujrat, (1991) 4 SCC 406, the Apex Court held as under.

> " The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice . The Court has the duty of protecting the interest of the community in the due administration of justice and so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with."

In N.B.Sanghvi v. High Court of Punjab and Haryana (1991) 3 SCC 600 the Apex Court observed as under:

> "The tendency of maligning the reputation of Judicial Officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalize which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned Judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding Judicial Officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this

> concept from the British, it would not be out of place to mention the struggle strong-willed judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence."

The foundation of judicial system which is founded on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding judicial officers with impurity, the much cherished judicial independence which is of vital significance to any free society has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. The tendency of browbeating the judicial officers into submission is on the increase and when there is deliberate attempt to scandalise, it not only shakes the confidence of the litigating public in the system but causes damages to the reputation of the presiding judge and brings disgrace to the fair name of the judiciary.

In Dr. D.C.Saxen's case (1996) AIR SCW 3082, the Apex Court has alreadylaid down that if a Judge, on account of the proceedings conducted by him in his Court, is threatened that he would be prosecuted in a Court of law for the judicial act done by him, it amounts to criminal contempt as it lowers and tends to lower the dignity of the Court.

In re: Ajay Kumar Pandey reported in AIR 1997 SC 260, the Apex Court in para 42, observed that ***"We may observe that any threat of filing a complaint against the Judge in respect of the judicial proceedings conducted by him in his own court is a positive attempt to interfere with the due course of administration of justice. In order that the Judges may fearlessly and independently act in the discharge of their judicial functions, it is necessary that they should have full liberty to act within the sphere of their activity. If, however, litigants and their counsel start threatening the Judge or launch prosecution against him for***

what he has honestly and bona fide done in his Court, the judicial independence would vanish eroding the very edifice on which the institution of justice stands. It would also be in violation of the statutory protection available to the Judges and Magistrates under the Judicial Officers (Protection) Act as also the Judges (Protection) Act".

A Judge or Magistrate has a duty to discharge his judicial functions and he passes order in the manner as he likes fit to the best of his capability in the facts and circumstances of the case. The courts cannot be intimidated to seek favourable orders or to make the court run on his dictate. In the present case, the conduct of the contemnor amounts to intimidating the court and lowering the authority and it clearly amounts to interference with due course of judicial proceedings which were being conducted by the Presiding officer. The power of the High Court of superintendence and control over the subordinate judiciary under Article 235 of the Constitution includes within its ambit the duty protect members of the subordinate courts. In the above conspectus, the charge related to criminal contempt framed against the contemnor is fully established.

In the above conspectus, we have no hesitation to say that the charges of criminal contempt established against a practising lawyer cannot be taken lightly who carries the trapping of an officer of the Court whose duty is to assist the Court and uphold the majesty of law and dignity of the person manning the court. No judicial system can tolerate such ignoble act and conduct of a practising Advocate. The crucial question that remains is what would be the appropriate punishment to the contemnor.

In connection with whether the apology commends itself for acceptance or not, we may refer to the decision of the Apex Court in Preetam Pal v. High Court M.P. 1993 (1) SCC 529 in which the Apex Court observed as under:

> "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 is calculated to obstruct the due course of justice."

As held above, it leaves no manner of doubt in our mind that the remarks made against the officer were calculated to undermine the confidence of the public in the capacity or integrity of the Judge and were likely to deflect the court itself from a strict and unhesitant performance of its duties. It is in this conspectus, we feel compelled to say that the apology submitted by him does not seem to inspire a real contriteness on his part but is used as a device to screen himself from the rigours of law. The Apex in the aforesaid judgment in M.S.Singhvi has rightly observed that the incidence of contempt is ever on the increase. There is a felt need to curb such incidence. To cap it all, the majesty and dignity of the court has to be preserved. It should not be forgotten that frequent attacks on the dignity of the courts would shake the very foundation of the judiciary. The courts have to perform judicial functions in responsible yet disagreeable ambiance and they require utmost protection. The attack made on presiding officers disparaging in character and derogatory to his/her dignity would vitally shake the confidence of the public in him/her. The vitriolic attacks made on the officer were much more than mere insult and in effect they scandalized the court in such a way as to create distrust in the popular mind and impair confidence of the people in court. The administration of justice must remain independent, clean, fearless and impartial. If an Advocate uses the vile of browbeating the Presiding officer by his toxic vitriolic attack, it is indeed disquieting and should not be viewed with equanimity.

In L.D. Jaikwal v. State of U.P., [1984] Cr.L.J 993, the Apex Court in para 6 observed as under:

> "We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him and later on tender a formal empty apology

> which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a 'licence' to scandalize Courts and commit contempt of Court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalized and persecuted by an Advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were, to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe, in maintaining the decorum of Courts."

Like wise, the Apex Court in para 7 describing the apology as a 'paper apology refused to accept it in the following words:

> "7. We have yet to come across a Judge who can take a decision which does not displease one side or the other. By the very nature of his work he has to decide matters against one or other of the parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. A line has therefore to be drawn somewhere, some day, by some one. That is why the Court is impelled to act (rather than merely sermonize) much as the Court dislikes imposing punishment whilst exercising the contempt jurisdiction, which no doubt has to be exercised very sparingly and with circumspection. We do not think that we can adopt an attitude of unmerited leniency at the cost of principle and at the expense of the Judge who has been scandalized. We are fully aware that it is not very difficult to show magnanimity when some one else is the victim rather than when oneself is the victim. To pursue a populist line of showing indulgence is not very difficult in fact it is more difficult to resist the temptation, to do so rather than to adhere to the nail-studded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. We, therefore, cannot take a lenient or indulgent view of this matter. We dread the day when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disgrace on him with impunity, if any of his orders, or the decision rendered by him, displeases any of the Advocates appearing in the matter."

In the above conspectus, the apology offered does not commend

to us for acceptance and it is turned down.

As a result of foregoing discussion, the reference made to this Court is allowed and the contemnor is held guilty of criminal contempt.

We accordingly convict him for contempt of court and sentence him to undergo simple imprisonment for three months and to pay a fine of Rs.20,000/-. In default, it may be prescribed, contemnor shall undergo further simple imprisonment for two weeks. However, the punishment so imposed shall be kept in abeyance for a period of sixty days so as to enable the contemnor to approach the Apex Court if so advised. It needs hardly be said that immediately after expiry of sixty days in case no stay order is furnished by the contemnor, he would be taken into custody forthwith to serve out the sentence immediately.

The matter shall be listed before this Court in the second week of May 2010 for ensuring compliance.

MH

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