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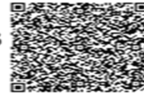

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CROCP-12-2023
RESERVED ON:03.04.2024
PRONOUNCED ON:01.07.2024

COURT ON ITS OWN MOTION … Petitioner (s)

Versus

SURJEET SINGH ... Contemnor/Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Tanu Bedi, Advocate as *Amicus Curiae* appointed by Litigation Cell, Punjab and Haryana High Court assisted by Mr. Pushp Jain, Advocate and Mr. Akhil Dadwal, Advocate.

Mr. Tushar Tanwar, Advocate and
Mr. Sanjeev Kumar, Advocate for the respondent –contemnor.

ANUPINDER SINGH GREWAL, J.

This criminal original contempt petition has been listed after *suo motu* notice had been taken by the Single Bench with regard to the averments of the respondent in a petition filed under Section 482 Cr.P.C.

2. The respondent, while preferring the petition under Section 482 Cr.P.C., had stated that the Judicial Magistrate is not inclined to pass an order but is only inclined to give adjournments and the respondent is being harassed by the action of the Judicial Magistrate. The Single Bench had referred to the zimni orders passed by the Court of JMIC which indicated that the matter had been adjourned at the request of the counsel for the respondent and, therefore, it took *suo motu* notice for initiation of criminal contempt proceedings. The order of the Single Bench dated 12.10.2023 is reproduced hereunder:-

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"The present petition has been filed under Section 482 Cr.P.C. seeking issuance of direction to the learned Sub-Divisional Judicial Magistrate. Dera Bassi to expedite the hearing of CRM-481/2022 filed by the petitioner on 12.12.2022 and with a further prayer seeking direction to learned Sub-Divisional Judicial Magistrate, Dera Bassi to decide the above mentioned case on the next date of hearing i.e. 18.11.2023 or on any earlier date.

A perusal of the contents of the petition would show that in para No. 2, the petitioner has apparently alleged allegations against the learned Sub- Divisional Judicial Magistrate, Dera Bassi, wherein it has been so stated that the learned Sub-Divisional Judicial Magistrate, Dera Bassi is not inclined to pass an order but is only inclined to give adjournment. Thereafter, in para No.4 it is stated that the petitioner is being harassed by the actions of the learned Sub- Divisional Judicial Magistrate, Dera Bassi.

However, a perusal of the orders passed by the learned Sub-Divisional Judicial Magistrate, Dera Bassi, which have been annexed with the present petition would show that on 15.07.2023, which is about three months ago only, the report of the Station House Officer was received on an application under Section 156 Cr.P.C. and on the request of learned counsel for the complainant/applicant i.e. petitioner herein, the matter was adjourned to 22.08.2023 for consideration. Thereafter on 22.08.2023, on the request of learned counsel for the complainant-petitioner, the matter was again adjourned to 16.09.2023 for consideration. Thereafter on 16.09.2023 again, the matter was adjourned to 07.10.2023 for consideration on the request of learned counsel for the complainant-petitioner and now the said matter is posted for hearing on 18.11.2023. During the course of arguments, learned counsel for the petitioner has submitted that on 07.10.2023, the file was not available with the learned Sub-Divisional Judicial Magistrate, Dera Bassi and the matter was heard but instead of passing an order the same was adjourned to 18.11.2023.

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This Court after perusing the contents of the petition, the orders passed by the learned Sub-Divisional Judicial Magistrate, Dera Bassi and hearing the submissions made by learned counsel for the petitioner is of prima facie view at this stage to consider as to why not appropriate proceedings be initiated against the petitioner in accordance with law. Therefore, notice is issued to the petitioner to show cause as to why criminal contempt proceedings be not initiated against him for making such allegations against the learned Sub- Divisional Judicial Magistrate, Dera Bassi, which is not supported by the record.

The petitioner is directed to be present in Court on the next date of hearing.

Adjourned to 14.11.2023."

3. On 14.11.2023 as the explanation of the respondent was not found proper, the Single Bench directed the initiation of proceedings of criminal contempt and thereafter, CROCP was listed before the Division Bench.

4. Learned counsel for the respondent submitted that the respondent had legitimately sought recourse to judicial remedy under Section 482 Cr.P.C. and his pleadings would not amount to criminal contempt. He also submitted that the respondent has filed his affidavit offering unconditional apology for any lapse on his part and, therefore, the contempt proceedings be dropped.

5. Learned counsel for *Amicus Curiae* submitted that the conduct of the respondent in the light of the law pertaining to contempt of Court would not constitute criminal contempt and in support of her submission has referred to the judgements of the Supreme Court in the cases of **Andre Paul Terence Ambard vs. The Attorney General of Trinidad and Tobago, (1936) 1 All ER 704, Brahma Parkash Sharma and others vs. State of UP (1953) 1 SCC 813, Shri Baradakanta Mishra vs. The Registrar of Orissa High Court and another,**

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(1974) 1 SCC 374, RE S. Mulgaokar (1978) 3 SCC 339, P. N. Duda vs. P. Shiv Shanker and others (1988) 3 SCC 167, RE Harijai Singh and another RE Vijay Kumar (1996) 6 SCC 466, Hari Singh Nagra and others vs. Kapil Sibal and others (2010) 7 SCC 502, Sanjoy Narayan, Editor-in-Chief, Hindustan Times and others vs. High Court of Allahabad (2011) 13 SCC 155, Chairman, West Bengal Administrative Tribunal and another vs. S. K. Monobbor Hossain and another (2012) 11 SCC 761 and T. C. Gupta and another vs. Hari Om Parkash and others (2013) 10 SCC 658.

6. Section 2 of the Contempt of Courts Act, 1971 defines contempt of Court, Civil contempt, criminal contempt and High Court. The relevant extract of Section 2 is reproduced hereunder:

> 2(a) "**contempt of Court**" means civil contempt or criminal contempt;
>
> (b) '**civil contempt**" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;
>
> (c) "**criminal contempt**" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which – (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;
>
> (d) "**High Court**" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory."

7. It would be apposite to refer to Section 6 of the Contempt of Courts Act which is reproduced hereunder:

> **"6. Complaint against presiding officers of subordinate courts when not contempt**. –

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> A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court to –
>
> (a) Any other subordinate court, or
> (b) The High Court to which it is subordinate."

8. From a bare reference to Section 2 (c) of the Contempt of Courts Act, it is apparent that publication would be necessary to constitute an act of criminal contempt. The publication could be by words, spoken or written signs or any other representation or otherwise. The publication should amount to scandalizing or tend to scandalizing or to lowering the authority of the Court or it interferes or tends to interfere with the due course of judicial proceedings or in the administration of justice.

9. The dictionary meaning of the word 'publication' is 'the act of making something known to public'. In Section 6 of the Contempt of Courts Act, it is stipulated that a statement made in good faith concerning the presiding officer of a Court shall not hold the person to be guilty of contempt.

10. We may now refer to the judgments cited by the learned Amicus Curiae. In **Andre Paul Terence Ambard's case (supra)**, wherein an article had been published under the title 'Human Element' discussing judgments in two cases of attempt to murder. In one case, where there was no injury, a sentence of 08 years had been awarded while in the second case involving a murderous attack on a woman with a razor which had seriously mutilated her, a sentence of 07 years had been imposed. It was stated in the article that one judge was habitually severe and another habitually lenient. The privy council, however, did not punish the contemnor for contempt of Court and held that the path of criticism is a public way where the wrong-headed are permitted to err provided the members of public abstain from imputing improper motives to those taking

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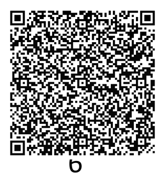

part in the administration of justice and are genuinely exercising the powers of criticism. It was also held that justice is not a cloistered virtue. She must be allowed to suffer scrutiny and outspoken comments of ordinary men. The relevant extract is reproduced hereunder:

> “xxxxx
>
> Any act done or writing published calculated to bring a Court or a judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke L. C. characterised as 'scandalising a Court or a judge'. In re Read and Huggonson (1). That description of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. xxxxxxxx But whether the authority and position of an individual Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way : the wrong headed are permitted to err therein : provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue : she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

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In the present case, the writer had taken for his theme the perennial topic of inequality of sentences under the text " The Human Element" using as the occasion for his article the two sentences that were passed by two Judges of a particular Court, and pointed out that sentences did vary in apparently similar circumstances with the habit of mind of the particular Judge and that the human element entered into the awarding of punishment, and the writer had expressly disclaimed the suggestion that one of the said Judges was habitually severe or the other habitually lenient.

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The writer is, however, perfectly justified in pointing out what was obvious and inevitable, namely, the part which the human element in a particular Judge plays in the award of sentences by him and that the writer therefore was not guilty of any contempt of Court in respect of what he wrote. Some very conscientious Judges have thought it their duty to visit particular crimes with exemplary sentences and others equally conscientious have thought it their duty to view the same crimes with leniency, and if to say that the human element enters into the awarding of sentences be contempt of Court, few in or put of the profession would escape."

11. In **Brahma Prakash Sharma's case (supra)**, the members of the District Bar Association were being proceeded for contempt as they had passed resolutions against two judicial officers and forwarded the copies to the District Magistrate. It was stated in the resolution that the officers were thoroughly incompetent in law, did not inspire confidence in judicial work, were stating wrong facts while passing orders, were over bearing and discourteous to the litigant public and the lawyers alike. It was also mentioned that one of the Judges allowed the Court Reader to record evidence, he was short tempered and frequently threatened lawyers to initiate proceedings for Court of contempt. The

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Supreme Court had held that the action of the petitioner therein did not amount to contempt of Court. Relevant paragraphs of the judgment are reproduced hereunder:

> "xxxx
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> 13. It seems, therefore, that there are two primary considerations which should weigh with the court when it is called upon to exercise the summary powers in cases of contempt committed by "scandalising" the court itself. In the first place, the reflection on the conduct or character of a Judge in reference to the discharge of his judicial duties, would not be contempt if such reflection if made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not by stifling criticism that confidence in courts can be created. "The path of criticism", said Lord Atkin –" is a public way. The wrong – headed are permitted to err therein; provided that members of the public abstain from imputing motives to exercising a right of criticism and not acting in malice, or attempt to impair the administration of justice, they are immune."
>
> 14. In the second place, when attacks or comments are made on a judge or judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the judge is concerned does not necessarily make it a contempt. The distinction between a libel and a contempt was pointed out by a Committee of the Privy Council, to which a reference was made by the Secretary of State in 1892. A man in the Bahama Islands, in a letter published in a colonial newspaper criticized the Chief Justice of the Colony in an extremely ill-chosen language which was sarcastic and pungent. There was a veiled

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insinuation that he was an incompetent judge and a shirker of work and the writer suggested in a way that it would be a providential thing if he were to die. A strong Board constituting of 11 members reported that the letter complained of. though it might have been made the subject of proceedings for libel, was not, in the circumstances. calculated to obstruct or interfere with the course of justice or the due administration of the law and therefore did not constitute a contempt of court. The same principle was reiterated by Lord Atkin in the case of Debi Prasad Sharma v. King Emperor referred to above. It was followed and approved of by the High Court of Australia in R. v. Nicholls, and has been accepted as sound by this Court in Bathina Ramakrishna reddy v. State of Madras. The position therefore is that a defamatory attack on a judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libeller in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. It is well established 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; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law."

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12. In the case of **Shri Baradakanta Mishra** (supra) a judicial officer, who was facing disciplinary proceedings, had made remarks against the Judges of the High Court and the Chief Justice in his petition to the Governor. In his defence, he had stated that remarks do not pertain to the judicial functions of a Judge and, therefore, would not constitute contempt. However, the Supreme Court had held that these remarks amount to vilification of the Judges and are *mala fide* and would constitute contempt of Court. However, a lenient view was taken and instead of sentence of imprisonment, fine was imposed. The relevant extract thereof is reproduced hereunder:-

> "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) 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."

13. We may also refer to the judgment of the Supreme Court in **RE S. Mulgaonkar's** case (supra) wherein an article was published in a newspaper mentioning incorrect facts while commenting on Supreme Court Judges. The Registrar of the Supreme Court wrote to the Editor pointing out the mistake but

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instead of publishing correction, the whole material in his possession was published which contained objectionable material. The Supreme Court, however, did not punish the contemnor for contempt. It also referred to the famous quote of Voltaire that *"I do not agree with the word you say, but I will defend to the death your right to say it."* It held that the judiciary should adopt a magnanimous charitable attitude even when utterly uncharitable and unfair criticism is made out of bona fide concern for its improvement. Relevant extract is reproduced hereunder:

> "Xxxx.
>
> 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 thinks 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 behavior 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 a 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,

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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."

14. In **P.N. Duda's** case (supra), the respondent, who was the Minister of Law and former Judge of the High Court, had made remarks in his speech implying partiality by the Supreme Court towards the economically affluent section of the Society. The Supreme Court held that the action does not amount to contempt of Court and that in a free market place of ideas, criticisms about the judicial system should be welcomed as long as it does not impair or hamper the administration of justice. The relevant extract is reproduced hereunder:-

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

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been said in the famous speech of Abraham Lincoln in 1865 "*With malice towards none, with charity for all, we must strive to do the right, in the light given to us to determine that right.*" 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. Judgment 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.

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17. Gajendragadkar, C.J. in Special Reference No. 1 of 1964, [1965] 1 SCR 413 observed as follows:

"We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct."

18. It has been well said that if judges decay, the contempt power will not save them and so the other side of the coin is that Judges, like Caesar's wife, must be above suspicion, per Krishna Iyer, J. in Shri Baradakanta Mishra v. The Registrar of Orissa

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High Court and another, [1974] 1 S.C.C. 374. It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalising remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy. Many today suffer from remedyless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a criticism which the Judges and lawyers must make about themselves. We must turn the search light inward. At the same time we cannot be oblivious of the attempts made to decry or denigrate the judicial process, if it is seriously done. This question was examined in Rama Dayal Markarha v. State of Madhya Pradesh, [1978] 3 S.C.R. 497 where it was held that fair and reasonable criticism of a judgment which is a public document or which is a public act of a Judge concerned with administration of justice would not constitute contempt. In fact such fair and reasonable criticism must be encouraged because after all no one, much less Judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts. But when it is said that the Judges had a pre-disposition to convict or deliberately took a turn in discussion of evidence because he had already made up his mind to convict the accused, or has a wayward bend of mind, is attributing motives, lack of dispassionate and objective approach and analysis and pre-judging of the issues which would bring administration of justice into ridicule. Criticism of the Judges would attract greater attention than others and such criticism sometime interferes with the administration of justice and that must be judged by the yardstick whether it brings the administration of justice into a ridicule or hampers administration of justice. After all it cannot be denied that pre-disposition or subtle prejudice or unconscious prejudice or what in Indian language is called "Sanskar" are inarticulate major premises in decision making

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process. That element in the decision making process cannot be denied, it should be taken note of.

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30. Bearing in mind the trend in the law of contempt as noticed before, as well as some of the decisions noticed by Krishna Iyer, J. S. Mulgaokar's case (supra) the speech of the Minister read in its proper perspective, did not bring the administration of justice into disrepute or impair administration of justice. In some portions of the speech the language used could have been avoided by the Minister having the background of being a former Judge of the High Court. The Minister perhaps could have achieved his purpose by making his language mild but his facts deadly. With these observations, it must be held that there was no imminent danger of interference with the administration of justice, nor of bringing a institution into disrepute. In that view it must be held that the Minister was not guilty of contempt of this Court."

15. In **RE Harijai Singh and RE Vijay Kumar's** case (supra), an article was published in the newspaper wherein it was stated that sons of the Chief Justice of India were beneficiaries of allotment of petrol pumps in discretionary quota. The information was found to be false. However, the Supreme Court accepted the apology of the journalist while observing that he had acted in a gross-carelessness to publish the article without confirming the contents thereof. It was observed that the Courts should not be hyper-sensitive in dealing with the contempt matters. Relevant extract of the judgment is reproduced hereunder:-

"12. But it may be pointed out that various judgments and pronouncements of this Court, bear testimony to the fact that this Court is not hypersensitive in matters relating to contempt of Courts and has always shown magnanimity in accepting the apology on being satisfied that the error made in the publication was without any malice or without any intention of dis-respect towards the Courts or towards any member of judiciary. This Court has always

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> entertained fair criticism of the judgments and orders or about the person of a Judge. Fair criticism within the parameters of law is always welcome in a democratic system." xxxxx

16. In the case of **Hari Singh Nagra and others versus Kapil Sibal and others** (supra), the respondent, who is a Senior Advocate, had written an article published in a newspaper, which was critical of the judiciary. The Supreme Court held that mere criticism of the judiciary would not constitute contempt unless it hampers the administration of justice or brings administration of justice into ridicule. The relevant extract of the judgment is reproduced hereunder:-

> "21. There is no manner of doubt that Judges are accountable to the society and their accountability must be judged by their conscience and oath of their office. Any criticism about the judicial system or the judges which hampers the administration of justice or brings administration of justice into ridicule must be prevented. The contempt of court proceedings arise out of that attempt. National interest requires that all criticisms of the judiciary must be strictly rational and sober and proceed from the highest motives without being coloured by any partisan spirit or tactics."

17. In the case of **Sanjay Narayan, Editor in Chief Hindustan Times and others versus High Court of Allahabad** (supra), the newspaper report had been published which sought to tarnish the image of the Chief Justice of the High Court based on conjectures and not on facts and figures. The unconditional apology was accepted by holding that the Courts should be magnanimous. It was also directed that the apology be published on the first page of the newspaper. The relevant extract is reproduced hereunder:-

> "11. The judiciary also must be magnanimous in accepting an apology when filed through an affidavit duly sworn, conveying remorse for such publication. This indicates that they have accepted

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their mistake and fault. This Court has also time and again reiterated that this Court is not hypersensitive in matter relating to Contempt of Courts Act and has always shown magnanimity in accepting the apology. Therefore, we accept the aforesaid unqualified apology submitted by them and drop the proceeding.

12. With the aforesaid observations, we order for closure of the proceedings initiated against the appellants herein under the Contempt of Courts Act by keeping the affidavit filed by the appellants on record with a direction to the appellants to publish the apology as stated in the affidavit in the first page of Lucknow edition of Hindustan Times to be published on 01.09.2011 and also at such other place, wherever there was any such publication, in a daily issue of the newspaper at some prominent place of the newspaper."

18. In the case of **Chairman, West Bengal, Administrative Tribunal and another versus S.K. Monobbor Hossain and another** (supra), the contemnors had passed remarks against members of the State Administrative Tribunal which led to the initiation of the contempt proceedings. The Supreme Court held that while exercising the powers of contempt, the Courts must not be hypersensitive or swung by emotions but must act judiciously. The relevant extract is reproduced hereunder:-

"9. The tenor of the dicta on this topic is crystal clear. This Court has, again and again, asserted that the contempt jurisdiction enjoyed by the courts is only for the purpose of upholding the majesty of the judicial system that exists. While exercising this power, the courts must not be hypersensitive or swung by emotions, but must act judiciously. Reference made to **Dinabandhu Sahu vs. Orissa** this Court very pertinently observed that:

2...... it is no part of the judicial function to be vindictive or allow any personal or other considerations to enter in the discharge of its functions....."

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19. In the case of **T.C.Gupta and another versus Hari Om Parkash and others** (supra), incorrect information was furnished to the High Court which led to initiation of criminal contempt proceedings. Instead of providing information with regard to those landowners whose land was released without filing objections as sought by the High Court, the details of the landowners, who had filed objections and their land had been released, were stated. The Supreme Court had held that the power to punish for contempt is a rare species of a judicial power to be exercised with due care and caution. The unqualified apology of the appellant was accepted. The relevant extract is reproduced hereunder:-

> "That the power to punish for contempt is a rare specie of judicial power which by the very nature calls for exercise with great care and caution had been reiterated by this Court in Perspective Publications (P) Ltd. & Anr. Vs. The State of Maharashtra whereas in In re: S. Mulgaokar, Justice V.R. Krishna Iyer while noticing the principles of the exercise of power of contempt had outlined the first of such principles to be "wise economy of the use of the contempt power by the court". Reiteration of the aforesaid principle has been made in several subsequent pronouncements of this Court, reference to which would not be necessary in view of the unanimity of opinion on the issue that the power to punish for contempt ought to be exercised only where "silence is no longer an option."

20. In the case of **State of U.P. versus Association of Retired Supreme Court and High Court Judges at Allahabad and others, 2024 (3) SCC(1),** the Supreme Court had set aside the order of the High Court which held that the action of the respondents in not complying with the order of the Court and filing an application for recalling of the order amounted to criminal contempt. The Supreme Court held that criminal contempt cannot be initiated

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against the party for availing legal remedies and raising a legal challenge to an order. The relevant extract is reproduced hereunder:-

> "33. In our considered opinion, however, even the standard for civil contempt was not met in the facts of the present case. In a consistent line of precedent, this Court has held that while initiating proceedings of contempt of court, the court must act with great circumspection. It is only when there is a clear case of contemptuous conduct that the alleged contemnor must be punished. The power of the High Courts to initiate contempt proceedings cannot be used to obstruct parties or their counsel from availing legal remedies.
>
> 34. In the present case, the State of Uttar Pradesh was availing its legitimate remedy of filing a recall application. From a perusal of the record, it appears that the application was filed in a bona fide manner. Not only had the Finance Department raised its concerns regarding the competence of the Chief Justice before the High Court but its previous conduct, including file notings of the department and letters to the Central Government, indicate that this objection had been raised by them in the past. The legal position taken by the Government in the recall application was evidently based on their desire to avail their legal remedy and not to willfully disobey the first impugned order.
>
> 35. The objections raised by the Government of Uttar Pradesh with regard to legal obstacles in complying with the First Impugned Order were never adjudicated by the High Court. Instead, the High Court regarded the objection as an attempt to obstruct justice, without even a cursory attempt to provide reasons. Applying the standards delineated above, it is clear that the actions of the government of Uttar Pradesh did not constitute even 'civil contempt' let alone 'criminal contempt'. The circumstances most definitely did not warrant the High Court acting in haste, by directing that the officials present before the court be taken into custody. This summary procedure although, permitted under

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Section 14 of the Contempt of Courts Act cannot be invoked as a matter of routine and is reserved for only extraordinary circumstances.

36. Such summary procedure, as has been held by this Court, in Leila David v. State of Maharashtra, 8 can only be invoked in exceptional cases, such as instances where:

> "36. ….after being given an opportunity to explain their conduct, not only have the contemnors shown no remorse for their unseemly behavior, but they have gone even further by filing a fresh writ petition in which apart from repeating the scandalous remarks made earlier, certain new dimensions in the use of unseemly and intemperate language have been resorted to further denigrate and scandalize and overawe the Court. This is one of such cases where no leniency can be shown as the contemnors have taken the liberal attitude shown to them by the Court as license for indulging in indecorous behavior and making scandalous allegations not only against the judiciary but those holding the highest positions in the country."

No such situation prevailed in the present case. Therefore, the invocation of criminal contempt and taking the government officials into custody was not warranted."

21. We now proceed to examine the case against the respondent in the light of the law laid down by the Supreme Court as to whether his action would constitute criminal contempt. The respondent had preferred a petition before the Judicial Magistrate and was aggrieved by the delay in its disposal. He thereafter sought the remedy which was available to him under Cr.P.C. and approached this Court by preferring a petition under Section 482 Cr.P.C. seeking a direction to the Judicial Magistrate for expeditious disposal of the case. He has stated that the Magistrate is not inclined to decide the case and inclined to adjourn the case

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and he has been harassed by the actions of the Magistrate. What appears to have led to the initiation of proceedings is that the perusal of the zimni orders manifested that the adjournments were being sought mostly by the counsel of the respondent. It is true that the respondent ought to have been more circumspect while approaching this Court and pleaded the factual matrix in consonance with the record. He ought not to have casually stated something which is not borne out from the record or is factually incorrect. However, we cannot lose sight of the fact that the respondent is one among many citizens who have approached the Court seeking redressal of their grievances. The dockets of the Courts are clogged and often cases are not decided speedily or as speedily as expected by the litigant. The respondent appears to be a hapless citizen who is awaiting justice at the portals of the District Court and in these circumstances he appears to have transgressed by not setting out the correct factual backdrop. However, we do not find that the action of the respondent would amount to contempt of Court.

22. It is significant to note that the averments made by the respondent concerning a judicial officer in his petition would not amount to contempt of Court as in terms of Section 6 of the Contempt of Courts Act, the statement pertaining to a presiding officer of a Court does not amount to Criminal contempt provided it is in good faith. Good faith has been defined in Section 3 (22) of the General Clauses Act, wherein it is stated that "the thing shall be deemed to be done in good faith where it is done honestly whether it is done negligently or not". The pleadings in the petition filed under Section 482 Cr.P.C. do not suggest that they are *malafide* or not in good faith. The pleadings could have been better worded but it is difficult to arrive at the conclusion that they were *malafide*. The respondent was only seeking expeditious disposal of his

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case. If we were to be oversensitive to the pleadings it would deter an ordinary citizen to approach the Court for redressal of his grievance. The increase in litigation in recent times indicates that not only people are more aware of their rights but they have enormous faith in the justice delivery system. If the litigant does not state the true facts of the case or tries to mislead the Court, then the relief sought can be declined or he/she be burdened with costs. The contempt jurisdiction should not be exercised lightly at the drop of a hat. It ought to be invoked only in rare or exceptional cases where there is interference with administration of justice or such action amounts to scandalizing or lowering the authority of the Court. The respondent appears to be a hapless citizen who is awaiting speedy justice at the portals of the District Court. The Courts ought to encourage the citizens to knock its doors to ventilate their grievances and seek justice which would be in consonance with its endeavour towards inclusive justice.

23. We may hasten to add that healthy and constructive criticism should always be welcome. The judgments of the Court are in public domain and open to discussions and critical analysis. Judges are not super humans and do commit mistakes. Dialogue and debate are the hallmark of a democracy governed by rule of law. Suggestions towards improvement in the administration of justice should always be taken with gratitude.

24. Furthermore, the respondent has furnished his unqualified and unconditional apology. In his affidavit, he has stated that he undertakes that he will not use any contemptuous words/language in future and would abide by all the conditions imposed by the Court.

25. In the aforenoted facts and circumstances of the case, we are of the considered view that the action of the respondent does not constitute criminal

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contempt of Court. Consequently, the criminal contempt proceedings stand dropped.

(ANUPINDER SINGH GREWAL)
JUDGE

(KIRTI SINGH)
JUDGE

PRONOUNCED ON:01.07.2024

SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No

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