HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Criminal Contempt Petition No. 3/2019

In Re, Bhilwara (Raj.)

----Petitioner

Versus

[redacted]

----Respondent

For Petitioner(s) : Mr. Sajjan Singh Rathore, AAG
For Respondent(s) : None Present
Present-in-Person : Mr. Dilip Kumar Saini, Additional S.P.
Mr. Bhura Ram Khillery, CO, Bhopalgarh, Jodhpur
Mr. Megha Ram FC 276 PS Bigod, Bhilwara
Ms. Saroj Jakhar, FC 1656, CO Mandalgarh
Mr. Nathu Singh, Head Constable, Bhilwara

HON'BLE MR. JUSTICE FARJAND ALI
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order

REPORTABLE

DATE OF CONCLUSION OF ARGUMENTS : 24/01/2026
DATE ON WHICH ORDER IS RESERVED : 24/01/2026
FULL ORDER OR OPERATIVE PART : Full Order
DATE OF PRONOUNCEMENT : 17/03/2026

BY THE COURT:- (Per Hon'ble Mr. Farjand Ali,J)

Lord Denning in R. v. Metropolitan Police Commisioner, Ex parte Blackburn (No.2) observed that:-

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

INTRODUCTION

1. This Court has received the present matter through an official communication transmitted by the Registry of the Rajasthan High Court, Jodhpur, in the form of a U.O. Note. The said U.O. Note encloses a letter dated 14.08.2019 forwarded by the learned District & Sessions Judge, Bhilwara, along with an application dated 08.08.2019 addressed by the Presiding Officer, Senior Civil Judge and Additional Chief Judicial Magistrate, Mandalgarh, District Bhilwara (hereinafter to be referred as "Presiding Officer"), accompanied by relevant documents and enclosures.

2. As per the contents of the aforesaid communications, it is stated that during the course of hearing of Criminal Case arising out of FIR No. 130/2019 registered at Police Station Mandalgarh for offences under Sections 376, 420, 389, 120-B, 166-A and 509 of the Indian Penal Code (hereinafter to be referred as "IPC"), the Presiding Officer noticed certain acts which allegedly constituting an act of contempt of court. Consequently, a reference seeking initiation of proceedings under the Contempt of Courts Act, 1971 (hereinafter to be referred as "the Act of 1971") against the non-applicants named therein was made and transmitted through the proper administrative channel. The original reference along with supporting material has thus been placed before this Court for information and for taking further action, as deemed appropriate in accordance with law.

2.1 The matter has been taken up. Notices were issued and the same stand served. Learned counsel for the parties have been heard.

BACKGROUND AND GENESIS OF THE PRESENT PROCEEDINGS

3. The present proceedings arose out of allegations that certain police officials (present contemnors) have committed criminal contempt of court on account of statements made by them during an inquiry conducted by an Additional Superintendent of Police.

3.1 The factual matrix, in brief, is that in the principal case allegations were levelled against the accused, namely Mahaveer Prasad Acharya, that he had established relationship with the complainant on the basis of a promise to marry. There are further allegations in the FIR No. 130/2019 against the then SHO, Shri Bhura Ram Khillery, to the effect that victim "M" went to the Police Station to lodge the FIR but the needful was not done instead she was behaved unruly and subjected to abuse. Whereupon, she sent a report to SP Bhilwara on 15.04.2019, the copies of which were sent to DIG, DG, CM, Home Minister and Women Commission, still the FIR was not lodged. Upon receiving the complaint, the learned Magistrate sought a report from Police Station and wherefrom it was informed that no such report got lodged at the instance of the victim in this fact situation.

3.2 The learned Magistrate, upon due consideration of the material placed on record, has proceeded to pass an order under Section 156(3) Cr.P.C., whereby it has been observed that, prima facie, the allegations levelled disclose commission of cognizable offences. It has been specifically noted that offences punishable under Sections 376, 420, 389 and 120-B of the IPC are made out against Mahaveer Prasad Acharya. Furthermore, the learned Magistrate has also recorded a prima facie satisfaction that the

role of the concerned SHO is not beyond scrutiny, and that offences under Sections 166-A, 509 and 120-B IPC are also disclosed against him. Consequently, in exercise of powers under Section 156(3) Cr.P.C., a direction has been issued to the SHO concerned to register the FIR and undertake investigation in accordance with law. It has further been directed that, upon completion of investigation, a report to that effect shall be forwarded.

3.3 It is revealed from the record that the FIR came to be lodged on 16.05.2019 and the investigation pursuant thereto commenced. During the course of investigation, the victim "M" moved an application before the learned Presiding Ofiicer on 27.06.2019, inter alia praying that the investigation had not been concluded in correct perspective and that a progress report of the investigation be called for. She further averred in the application that the SHO and the accused are acting in connivance with each other, and, in furtherance thereof, are exerting undue pressure upon her to arrive at a compromise in respect of the dispute in question. Upon which, the learned Presiding Officer, by order dated 01.07.2019, directed the Investigating Officer to produce the case diary along with a progress report regarding the status of investigation to be presented before the Court on 08.07.2019. In compliance thereof, on 05.07.2019, a report was submitted before the Court stating that investigation had substantially been carried out and, on the basis of the material collected thus far, the offences alleged against the accused person namely Mahaveer Prasad Acharya appeared to be prima facie established, though certain formal aspects of investigation were yet to be completed.

The record further indicates that the investigation was, at the relevant time, being conducted under the supervision of the Additional Superintendent of Police and was still underway. Thereafter, the learned Magistrate passed a detailed order on 08.07.2019 observing, inter alia, that the involvement of accused Mahaveer Prasad Acharya appeared to have been accepted in the course of investigation, but the investigation with regard to the second accused, Bhura Ram Khillery, in respect of his incalcitrant behaviour and abdication from the duties had not been carried out in a fair and proper manner. The matter was again forwarded to the Additional Superintendent of Police with a direction to investigate the matter properly in respect of the second accused, SHO, in accordance with law and to ensure his presence on 22.07.2019. In pursuance of the direction passed vide order dated 08.07.2019, the Additional Superintendent of Police initiated an inquiry and on 16.07.2019 and 19.07.2019 recorded the statements of the concerned police officials during the course of investigation. He sought explanations from the concerned police officials regarding the allegations of improper investigation and the circumstances that led to the passing of the order directing further investigation. It is during the course of this inquiry that the concerned police officials narrated their version of events and expressed certain grievances relating to the alleged behaviour of an individual. The question that arises for consideration before this Court is whether these statements passed during an inquiry amount to criminal contempt of court.

3.4 Thereafter, a report dated 20.07.2019 was submitted before the Court stating that statements of various persons had been

recorded in relation to the second accused and that inquiries had also been conducted with respect to the alleged offences under Sections 166-A and 509 IPC. It was further stated that the investigation in the matter was still in progress and the case diary was accordingly produced before the Court. Upon consideration thereof, the learned Presiding Officer, by order dated 22.07.2019, reiterated that a proper investigation was required to be conducted against the second accused, SHO, and directed that a further progress report be submitted before the Court on 13.08.2019. It is pertinent to note that in the meanwhile, on 08.08.2019, the learned Presiding Officer proceeded to file an application seeking initiation of contempt proceedings under Sections 2, 6 and 12 of the Act of 1971 which forms the basis of the present petition before this Bench.

ALLEGATIONS RAISED BY THE APPLICANT

4. The complaint of the Presiding Officer states that the SHO himself reiterated earlier vigilance allegations and accused him of habitually insulting police personnel, passing false and unwarranted orders, and regarding the behaviour of the Presiding Officer. He further submitted that judicial orders passed by this Court can only be assailed through an appeal, revision or inherent jurisdiction and cannot be branded as false or malicious through police officers statements during an inquiry. The conduct of the SHO, his subordinates, and the Investigating Officer in recording and propagating such irrelevant, defamatory and intimidating statements amounts to criminal contempt, as it scandalizes the court, lowers the authority of the judiciary, interferes with the due

course of judicial proceedings, and is calculated to pressurize a sitting judicial officer.

4.1 It is further alleged that the Investigating Officer deliberately diverted the investigation to shield the accused SHO under Section 166-A IPC while orchestrating a narrative against the Presiding Officer, thereby subverting the justice delivery system. On these grounds, the applicant prays that proceedings under Sections 2 and 12 of the Act of 1971 be initiated against the Investigating Officer Dilip Kumar Saini, SHO Bhuraram, and the police officials Gopal Lal, Nathusingh, Ramsingh, Saroj and Megharam, to uphold the dignity of the judiciary, deter future conspiracies against the Presiding officers, and preserve public confidence in the rule of law.

REPLY BY THE CONTEMNERS

5. Respondent No.1, Additional Superintendent of Police (Investigating Officer) has submitted that he never intended to commit contempt or influence judicial proceedings. He further submits that while investigating the complaint filed by victim "M" pursuant to the order of the learned Presiding Officer, he merely recorded statements of witnesses as stated by them and submitted investigation reports before the Court in due compliance of judicial directions. It is asserted that no statement was made with the intention to tarnish the image of the Court or to create a fearful atmosphere. The respondent further states that the complainant later retracted her allegations and the matter ultimately culminated in acceptance of the negative final report in the National Lok Adalat. Hence, it is prayed that the contempt

proceedings against him be dismissed and the notice be discharged.

5.1 Respondent No.2 to Respondent No.7 contends that the statements made by them were only in the course of investigation and were based on factual circumstances, including alleged instances of misbehavior by the Presiding Officer, which were also raised before appropriate authorities. It is further submitted that the statements were never intended to tarnish the image of the Court or create a fearful atmosphere. The respondents emphasizes that they have always obeyed court orders and that the complainant later withdrew her allegations, leading to the filing and acceptance of a negative final report. Hence, dismissal of the contempt proceedings against them have been prayed for.

5.2 At the very threshold, the respondents have raised a preliminary objection touching upon the maintainability of the present reference, contending, inter alia, that the alleged utterances were made strictly within the confines of an official inquiry, there has been no publication, circulation, or dissemination of the said statements in the public domain and no judicial proceeding has been shown to have been prejudiced, impeded, or subverted on account thereof.

OBSERVATION OF THE COURT

6. We have heard the respondents present-in-person and learned Additional Advocate General.

7. The instant contempt reference has been placed before this Court alleging commission of criminal contempt within the meaning and contemplation of the Act of 1971. The substratum of the accusation emanates from certain statements alleged to have

been made by the respondents during the course of an inquiry conducted by the Additional Superintendent of Police, which inquiry itself was undertaken pursuant to directions issued by the learned Presiding Officer. It is the case of the reference that such statements, purportedly directed against the Court and/or the concerned Presiding Officer, tend to scandalise the authority of the judiciary and erode the institutional dignity and majesty of this Court.

7.1 It is pertinent to note that the contemnors did not, at any point of time, make any disclosure or statement regarding the learned Presiding Officer. In fact, the learned Court, vide order dated 08.07.2019, had directed the Investigating Officer to conduct an inquiry with regard to the role of Bhura Ram Khillery and other concerned persons in relation to the alleged offences under Section 166-A IPC and allied provisions. Pursuant to the said directions, the Investigating Officer, namely the Additional Superintendent of Police, proceeded to undertake the inquiry/investigation in compliance with the order of the Court. During the course of such investigation, the contemnors were interrogated in connection with the allegations levelled against Bhura Ram Khillery and others. It is submitted that during the course of such interrogation, the contemnors merely stated, in response to the queries put to them, as to why the learned Presiding Officer appeared to be dissatisfied with their conduct. The said statement was thus made only in the course of the investigation being carried out pursuant to the order dated 08.07.2019 and was not voluntarily conveyed by the contemnors to any person or authority outside the scope of the investigation.

8. At the outset and before proceeding further, it is deemed appropriate to advert to the contents of the statements placed on record and to briefly delineate the import that can be gathered therefrom by this Court. It is to be noted that the aforesaid assertions emanate from the case diary, which is not a document in the public domain and is intended for the limited use of the Court under Section 172 of the Code of Criminal Procedure, 1973; hence, the contents thereof are being referred to only in a summarised and circumspect manner.

8.1 A perusal of the material placed on record reveals that the contemnors, in substance, seek to convey certain grievances arising out of their interactions with the Presiding Officer concerned during the course of judicial proceedings. Without reproducing the contents in extenso, it appears that the tenor of the assertions is to the effect that the contemnors perceived instances of discourteous conduct and strained exchanges within the courtroom and in ancillary proceedings. It is further indicated that certain directions or observations were, according to them, conveyed in a manner which was perceived to be improper or disproportionate to the situation at hand. The contemnors further appear to allege, in substance, that they were at times unnecessarily summoned or made to wait, and were subjected, according to their perception, to undesirable treatment, including use of inappropriate language, misbehaviour and handling which they consider to be improper in the course of official interactions. References have also been made to situations where subordinate staff and police officials allegedly felt aggrieved by the manner of their treatment while attending court proceedings.

8.2 In this regard, an instance has also been indicated, where a constable, who had brought and produced an accused under a warrant of arrest, was ordered to be detained in court perhaps on the pretext of late compliance of the order and was directed to be released on furnishing bail bonds on short notice, despite no prior summons or warrant being issued to him. When a police officials went to the court and made request to accept his surety for the release of the constable, the presiding officer declined and told that he wont accept surety of a policeman expressing concern that the surer police personnel might not be traceable later. As a result, bail had to arrange through a private individual with the help of an advocate. It was told that the constable was subjected to misbehave worst than the warrantee. As a result, bail had to be arranged through a private individual. This incident has been cited by the contemnors to illustrate their perception of differential or skeptical treatment meted out to them in the course of judicial dealings.

8.3 Additionally, there is an underlying assertion that certain steps taken in proceedings were perceived by the contemnors as unduly harsh or precipitate, particularly in the context of taking cognizance or passing coercive directions, without, as alleged, adequate opportunity being afforded. It further transpires that the applicants have attempted to portray a broader pattern of conduct, suggesting that their prior actions, including making complaints before higher forums, may have had a bearing, according to their perception, on subsequent interactions and proceedings before the court concerned.

9. Upon a careful reading and holistic appreciation of the statements made by the police officers and witnesses, as reproduced hereinabove, this Court observes that the allegations levelled against the Presiding Officer, in substance and in essence, may broadly be culled out under the following heads. These are a concise heads of what the contemnors allege:-

(a) The police officers have alleged that the Presiding Officer was personally aggrieved and harboured resentment against them, particularly on account of a complaint made against him before administrative authority of this Court. It has been stated that such alleged resentment manifested in the form of taking cognizance against police officers with an intent to harass and pressurise them rather than for bona fide judicial reasons.

(b) It has further been alleged that he frequently misbehaved with police personnel and court staff, used harsh, humiliating, and allegedly abusive language in open court, and adopted an intimidating tone while dealing with matters relating to police investigation, remand, and filing of charge-sheets and final reports.

(c) Another allegation raised is that he deliberately refused to accept charge-sheets, final reports, and other police papers, allegedly threw files in court, and intentionally created procedural hurdles, resulting in pendency of cases at the police station level. The officers have also alleged that police officials were made to wait for long durations, sometimes allegedly in humiliating circumstances, including outside the court or residence of the Presiding Officer, and that legitimate requests for police custody

remand were declined despite, according to them, sufficient grounds being available.

(d) It is further mentioned by them that cognizance under penal provisions such as Sections 166, 167, and 219 IPC was taken mechanically and without affording adequate opportunity of hearing, and that such judicial orders were allegedly passed with a pre-determined mindset to demoralise the police machinery. Certain allegations also touch upon alleged improper expectations, or extraneous considerations including allegations relating to court infrastructure or personal errands, which, according to the contemnors, led to strained relations between the Presiding Officer and the police officers.

(e) Lastly, it has been alleged that the overall conduct of the Presiding Officer created an atmosphere of fear among police officers, adversely affected coordination between the court and the investigating agency, and resulted in erosion of mutual institutional respect.

9.1 The Court records that the above are the allegations/assertions/narration as perceived and articulated by the police officers themselves, forming the foundation of their grievance with the judicial officer but not with the Court. Whether these allegations are true, exaggerated, misconceived, motivated, or legally sustainable is a matter requiring strict scrutiny in accordance with law and cannot be presumed merely on the basis of such assertions.

9.2 It is significant to note that these statements were not made in a public forum, not in any publication, and not with any intention to scandalise the institution of the judiciary, but rather in

response to questions posed by a superior officer during the course of an official inquiry ordered by the Presiding Officer. These statements were made in response to the queries raised by the inquiry officer. The inquiry also had reference to the alleged non-compliance of statutory duties under Section 166-A IPC, which obligates public servants to perform certain duties in accordance with law. In this context, the officials were questioned whether they had lawfully discharged their duties and why the learned Presiding Officer had deemed it necessary to order further investigation. The police officials, in response thereto, explained the circumstances and narrated the sequence of events as perceived by them. It appears that the contemners sought to convey before the Inquiry Officer that no illegality or offence had been committed by them and that the displeasure expressed by the Presiding Officer was purportedly on account of the complaint lodged by Bhura Ram Khillery (SHO). It is also borne out from the record that prior to the said inquiry, two complaints had already been addressed to the Registrar (Vigilance) of this Court concerning the alleged conduct of the learned Presiding Officer. The statements made during the inquiry, therefore, appear to be consistent with the grievances earlier raised before the appropriate administrative authority. On the basis of the aforesaid statements, the issue has arisen as to whether the same amount to criminal contempt of court.

LINGUISTIC MEANING OF CONTEMPT

10. Moving on to the understanding of the word "contempt", this Court deems it appropriate to first examine its ordinary connotation before adverting to its statutory application under the

Act of 1971. The word contempt has its linguistic roots in common law jurisprudence and conveys a sense of disregard towards authority.

Oxford Dictionary defines contempt as:-

"The feeling that somebody or something is without value and deserves no respect at all."

Cambridge Dictionary defines contempt as:-

"A strong feeling of disliking and having no respect for someone or something."

In common parlance, therefore, the word contempt denotes disrespect, disdain or disregard, particularly towards a person or an institution vested with authority.

APPLICATION OF LAW

Contempt of Court: Civil and Criminal Contempt

11. Coming to the expression "contempt of court" and its statutory recognition. The expression finds statutory recognition under the Act of 1971. Section 2(a) of the Act defines the term and classifies it into two distinct categories. For ready reference, Section 2(a) is reproduced hereinbelow:-

> "**2(a) "contempt of court"** means civil contempt or criminal contempt."

A bare reading of Section 2(a) makes it evident that the Act recognises two species of contempt, namely, civil contempt and criminal contempt.

11.1 Civil Contempt, for clarity, Section 2(b) of the Act is reproduced hereinbelow:-

> "**2(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."

From a plain and literal reading of Section 2(b), it is clear that civil contempt is attracted where there is wilful disobedience of a judicial command; or wilful breach of an undertaking given to the Court. Thus, civil contempt primarily concerns enforcement of orders and compliance with judicial directions, rather than the dignity or authority of the Court itself.

11.2 The present matter pertains to criminal contempt, it is necessary to reproduce Section 2(c) of the Act, which reads as under:-

> "**2(c) 'criminal contempt'** means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-
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> (i)scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
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> (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."

A bare perusal of Section 2(c) reveals that criminal contempt is not confined to disobedience of orders, but extends to acts which strike at the very foundation of the judicial system. Criminal contempt, therefore, is concerned with preservation of the authority and dignity of courts; protection of the due course of judicial proceedings; and safeguarding the administration of justice from obstruction, interference or erosion of public

confidence. The definition is deliberately broad and encompasses not only written or spoken words, but also conduct, representations, signs or any other acts, which have the tendency to undermine the authority of the Court; cast unwarranted aspersions on judicial functioning; or create an impression that justice is not administered in a fair and impartial manner. At the same time, it is equally well-settled that the jurisdiction relating to criminal contempt is exceptional in nature and is to be exercised with utmost circumspection, bearing in mind the competing values of judicial dignity and freedom of expression.

12. Before discussing the merits of the present matter, it is pertinent to notice Section 2(c) of the Act of 1971, which defines criminal contempt as the publication of any matter or the doing of any act 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 obstructs or tends to obstruct the administration of justice in any other manner. In the present case, the allegations under consideration are required to be examined in the light of the statutory contours of criminal contempt as delineated under Section 2(c) of the Act of 1971, keeping in view the nature of the statements, the context in which they were made, and their potential impact on the authority of the Court and the administration of justice. The analysis is confined to assessing whether the allegations, as made and recorded, satisfy the essential ingredients of criminal contempt, keeping in view the settled principles governing the exercise of contempt jurisdiction.

12.1 The pivotal question that arises for consideration is whether the narration of grievances by a subordinate police officer before a superior officer, during the course of an official inquiry, can by itself constitute criminal contempt of court.

12.2 It is well settled that criminal contempt must involve acts which:-

(a) scandalise or tend to scandalise the authority of the court;

(b) prejudice or interfere with judicial proceedings; or

(c) obstruct the administration of justice.

12.3 In the present case, the statements by the subordinate officers during the process of inquiry under Section 166A IPC to their senior official reveals that they merely narrated the circumstances as perceived by them and expressed grievances regarding the behaviour of an individual. The statements do not appear to contain any criticism of a judicial order, nor do they cast aspersions upon the majesty of the court or the judicial institution. A person who has faced humiliation or perceives that he has been subjected to improper behaviour cannot be expected to remain silent. The law does not impose a gag order upon truthfully narrating facts, particularly when such narration is made before a competent authority conducting an inquiry. If a subordinate officer, when questioned by his superior, explains the circumstances leading to the dispute and narrates his version of events, such conduct cannot automatically be elevated to the level of criminal contempt.

12.4 An inquiry officer, while conducting an investigation or departmental inquiry, is duty-bound to ascertain the truth by

seeking explanations from the concerned individuals. The process of inquiry necessarily involves asking questions such as:-

(a) What transpired?

(b) Whether any lapse occurred?

(c) What explanation can be offered by the purported accused?

12.5 In response to such queries, the concerned police officers narrated their version of events. The purpose of these statements was to explain why the learned Presiding Officer might have passed an order directing further investigation. It is evident that the explanation furnished by them was directed towards clarifying the circumstances in which inquiry was ordered against them and the allegations made against them by the learned Presiding Officer. At no point do these statements appear to challenge the authority of the court or question the validity of any judicial order.

12.6 Another important aspect that cannot be overlooked is that several individuals who were examined during the course of the inquiry appear to have stated substantially similar facts regarding the behaviour of the concerned Presiding Officer. At this preliminary stage, it would be wholly inappropriate to assume that all such statements are false or concocted. The question whether such allegations are true or otherwise can only be determined after a proper inquiry. Where multiple individuals independently state similar facts regarding a particular behavioural pattern, the Court cannot summarily discard their statements as false merely on presumption.

12.7 It has also been brought to the notice of this Court that two complaints regarding the conduct of the concerned judicial officer had already been submitted before the Registrar (Vigilance) of this

Court. The administrative mechanism of the judiciary includes institutional safeguards for addressing grievances regarding the conduct of judicial officers. The office of the Registrar (Vigilance) exists precisely to ensure that allegations regarding misconduct or improper behaviour are examined in a structured and impartial manner. If the mere act of submitting a complaint regarding the conduct of a Presiding Officer were to be treated as criminal contempt, the entire vigilance mechanism would become redundant and ineffective. Such an interpretation would have the chilling effect of discouraging individuals from raising genuine grievances and would ultimately undermine the principles of fairness, transparency, and institutional accountability.

Provisions of the Act of 1971

12.8 Moving on to the provisions of the Act of 1971, it is stated that the present things to lead to criminal contempt of court and for which Section 12 of the Act of 1971 gets attracted which defines punishment for contempt of Court. For quick reference, Section 12 of the Act of 1971 id reproduced herein below:-

> "12. **Punishment for contempt of court.**—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:
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> Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.
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> Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.
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> (2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in

excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to 7 be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purpose of sub-sections (4) and (5),—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

A bare perusal of Section 12 of the Act of 1971 makes it evident that it provides for punishment for contempt, which may extend to simple imprisonment up to six months, or fine, or both.

At the same time, the provision reflects a lenient and reformative approach, as the Court may discharge the contemnor upon a bona fide apology if found genuine. Thus, the section strikes a balance between maintaining the dignity of the Court and allowing scope for repentance, ensuring that contempt jurisdiction is exercised with restraint.

12.9 While going through the statements on record, Section 6 of the Act of 1971 comes to the fore, which clearly postulates that a complaint made against the Presiding Officer of a subordinate court shall not amount to contempt of court, provided that the statements contained therein are made in good faith. For perusal, the same id reproduced herein below:-

> "**6. Complaint against presiding officers of subordinate courts when not contempt.—**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.
>
> Explanation.—In this section, "subordinate court" means any court subordinate to a High Court."

From bare perusal of Section 6 of the Act of 1971 would reveal that the legislature has consciously carved out a protective exception in respect of statements made against subordinate courts. The provision makes it explicit that a person shall not be held guilty of contempt merely for making a statement by way of complaint against a presiding officer of a subordinate court, provided such statement is made in good faith to a superior authority. It is, thus, manifest that the object of the provision is to facilitate bona fide grievances against judicial officers being

brought to the notice of appropriate forums without the looming threat of contempt proceedings. The law, in its wisdom, recognizes that accountability within the judicial system must coexist with its dignity, and therefore, fair and honest complaints, made without malice and through proper channels, do not amount to contempt. However, the protection is not unbridled. The *sine qua non* for invoking the benefit of this provision is the element of good faith. Any complaint which is actuated by malice, contains reckless allegations, or is intended to scandalize the court under the guise of a complaint, would fall outside the protective ambit of Section 6 of the Act of 1971. Thus, the provision strikes a delicate balance between safeguarding the dignity of subordinate courts and preserving the right of an aggrieved person to ventilate legitimate grievances, ensuring that the contempt jurisdiction is not invoked to stifle genuine criticism made in good faith.

12.10 In the present matter, statements of the police officials would reveal that the gravamen of their assertion is merely that the Presiding Officer appeared to be aggrieved by a complaint submitted before the Registrar (Vigilance) of this Court and, on that account, allegedly bore displeasure against Bhura Ram Khillery, leading to the invocation of Section 166-A IPC. Such a line of reasoning, if accepted, would lead to a wholly untenable position in law. It would, in effect, convey that a litigant or citizen cannot ventilate a bona fide grievance against the Presiding Officer for fear of attracting proceedings for contempt of court. This Court is unable to countenance such a proposition. The legal position, as adumbrated under Section 6 of the Act of 1971, clearly protects complaints made in good faith against Presiding

Officers, and the same cannot be construed as contempt merely on account of the fact that such complaint may have caused displeasure. Acceptance of such a proposition would not only run contrary to the settled principles of law but would also send a deeply disquieting and erroneous message to society, thereby stifling legitimate grievances and eroding the very foundation of accountability within the judicial system. The majesty of law does not demand silence in the face of perceived injustice; rather, it accommodates fair and bona fide criticism made through lawful channels.

Contours of Criminal Contempt: Protection of the Court and Not of the Presiding Officer

13. There exists a fundamental distinction between an individual and a Court. An individual possesses a personal identity and reputation, which may be protected under ordinary law. A Court, however, does not function as a mere individual; it represents the majesty of justice and the institutional authority of the judicial system. In the context of criminal contempt, the concern of law is not the personal feelings or reputation of the individual officer who happens to be presiding over the Bench. Rather, the law is intended to safeguard the dignity, authority, and orderly functioning of the Court as an institution. The jurisdiction relating to criminal contempt is invoked only when an act tends to scandalise the Court, lower the authority of the Court, prejudice or interfere with judicial proceedings, or obstruct the administration of justice. An officer, when occupying the Bench, does not act in personal capacity but as an embodiment of the Court itself. Consequently, any remark, conduct, or allegation must be

examined from the perspective of whether it undermines the authority of the Court as an institution or it relates to some aspersions on the individual Presiding Officer. The law of criminal contempt is not meant to protect the personal prestige or ego of Presiding Officer as an individual. Personal criticism or allegations directed against an individual Presiding Officer, without any tendency to interfere with the administration of justice or to scandalise the institution of the Court, would not ordinarily fall within the ambit of criminal contempt. Thus, the essential distinction lies in the object of protection. While an individual's reputation may be vindicated through ordinary remedies available in law, the law of contempt is concerned solely with preserving the dignity, authority, and effective functioning of the Court as an institution. For an act to constitute criminal contempt, it must be directed against the Court and must have the tendency to undermine public confidence in the judicial system, rather than merely affecting the personal sensibilities of the individual presiding over the Bench.

13.1 It is to be observed that there exists a fine and well-recognized distinction between a comment directed against a judicial order and one aimed at the behaviour of Presiding Officer. The two, though seemingly overlapping, operate in entirely different spheres and must be carefully discerned. A judicial order, once passed, attains finality and binds the field unless set aside or modified by a competent forum in accordance with law. Any grievance, therefore, lies against the order itself and is to be ventilated through appropriate legal remedies. However, where the comment transgresses into allegations touching upon the

behaviour and conduct of the Presiding Officer, the same stands on an altogether different footing. Thus, what emerges is a delicate and nuanced distinction, whether the criticism is directed towards the behaviour and conduct of the Presiding Officer, or is confined to the judicial order passed by him. In the present context, the police officials, during the course of inquiry, have deposed with regard to the alleged behaviour of the Presiding Officer, and not in relation to any judicial order passed by him.

13.2 At this juncture, it would be necessary to advert to the celebrated observations of *Lord Denning*, with which the present order had commenced, and which succinctly encapsulate the issue at hand. The essence of the observations made by *Lord Denning* in ***R. v. Metropolitan Police Commisioner, Ex parte Blackburn (No.2)*** is that the judiciary, as an institution, is neither fragile nor hypersensitive to criticism. Courts are expected to withstand fair, even outspoken, comments without perceiving them as an affront. The underlying principle is that freedom of speech occupies a higher pedestal in a democratic framework, and therefore, criticism of judicial functioning, so long as it remains fair and does not impede the administration of justice, must be tolerated. In essence, the observations draw a clear line between criticism of judicial decisions after it attains finality is permissible as long as it upholds the freedom of speech and criticizing the behavior of a Presiding Officer is also permissible if it does not hamper the administration of justice but when it affects the integrity, majesty, power and honour of the Court, it stands on a different footing. Thus, the quote reinforces that the strength of the judiciary lies

not in silencing criticism, but in enduring it while preserving the sanctity of justice.

SETTLED POSITION OF LAW

14. The contempt jurisdiction, it bears reiteration, is extraordinary, punitive, and sui generis. Its exercise is hedged with the requirement of judicial restraint, for it is not intended to serve as a forum for personal vindication, but as a constitutional mechanism to preserve the purity, dignity, and effective functioning of the administration of justice. This Court deems it appropriate to advert, in some detail, to the judicial principles governing the exercise of contempt jurisdiction, particularly criminal contempt, as crystallised through authoritative pronouncements of the Hon'ble Supreme Court.

14.1 In **Brahma Prakash Sharma and Ors. vs. The State of Uttar Pradesh** reported in AIR 1954 SC 10, the Constitution Bench laid the foundational principle that the law of contempt is not intended to protect the dignity of an individual Judge, but to safeguard the administration of justice itself. The Court categorically held that mere defamatory or disparaging allegations against a Judge, howsoever improper or ill-advised, do not *ipso facto* amount to contempt unless such allegations are of such a nature as to create a real and substantial interference with the due course of justice or undermine public confidence in the judicial institution. The emphasis, thus, is not on the personal hurt of a judicial officer, but on the institutional impact of the act complained of. For ready reference, the relevant paragraphs of the judgment are reproduced hereinbelow:-

"15. 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 is 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 [Ambard v. Attorney-General for Trinidad and Tobago, 1936 A.C. 335, "is a public way. The wrong headed are permitted to err therein; provided that members of the public abstain from imputing motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice, or attempt to impair the administration of justice, they are immune."

16. 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 [In the matter of a special reference from the Bahama Islands 1893 A.C. 138. A man in the Bahama Islands, in a letter published in a colonial newspaper criticised the Chief Justice of the Colony in an extremely ill-chosen language which was sarcastic and pungent. There was a veiled 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 Devi Prashad v. King Emperor 70 I.A. 216, referred to above. It was followed and approved of by the High Court of Australia in King v. Nicholls 12 Bom. L.R. 280, and has been accepted as sound by this Court in Reddy v. The State of Madras [1952] S.C.R. 452. 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 libellor 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."

14.2 The decision in **In Re: S. Mulgaokar** reported in AIR 1978 SC 727, marks a watershed in the jurisprudence of contempt. The Supreme Court cautioned against overzealous invocation of contempt powers and underscored that courts must not react with hypersensitivity to criticism. The judgment exhorts judicial self-restraint and reminds that the power of contempt is to be exercised sparingly, only when the attack is such that it shakes the very foundations of the judicial process. The Court observed that judges must possess the fortitude to ignore trivial or ill-considered remarks, for *judicis est jus dicere*, *non dare,* the function of the judiciary is to declare the law, not to assert authority through punitive measures.

14.3 In **P.N. Dua Vs. P. Shiv Shanker and Ors.** reported in AIR 1988 SC 1208, the Supreme Court further refined the contours of criminal contempt by holding that fair criticism of judicial functioning or bona fide expression of grievance cannot be brought within the net of contempt. The Court recognised that in a constitutional democracy, the judiciary is open to scrutiny and

reasoned criticism, and that silencing such criticism under the guise of contempt would be antithetical to democratic values. Only when criticism crosses the line and becomes a calculated attack aimed at eroding public confidence in the judiciary does it attract penal consequences.

14.4 The principle of *mens rea* was emphatically reiterated in **Bal Thackrey v. Harish Pimpalkhute**, AIR 2005 SC 396, wherein the Supreme Court held that for criminal contempt to be made out, there must exist a clear intention or a manifest tendency to interfere with the administration of justice. The Court clarified that intemperate language or harsh expression, by itself, is insufficient unless it has the propensity to obstruct justice or prejudice judicial proceedings. The doctrine of *actus non facit reum nisi mens sit rea* was held to be equally applicable to contempt jurisprudence.

14.5 In **Indirect Tax Practitioners Association v. R.K. Jain** reported in (2010) 8 SCC 281, the Supreme Court emphasized that freedom of speech and expression includes the right to fairly criticize the judiciary and its functioning. Courts have consistently shown tolerance towards even strong or misguided criticism, so long as it is made in good faith and without attributing improper motives. The judgment reiterates that contempt jurisdiction should be exercised sparingly, only when criticism undermines the administration of justice or lowers public confidence in courts. Fair, objective, and constructive criticism is seen as essential for reform and accountability in judicial institutions. However, malicious, scandalous, or motive-attributing remarks against judges cross the permissible limit and may amount to contempt. For the ease

of reference, the relevant paragepahs of the judgment are reproduced hereinbelow:-

> "14. Before adverting to the second and more important issue, we deem it necessary to remind ourselves that freedom of speech and expression has always been considered as the most cherished right of every human being. Justice Brennan of U.S. Supreme Court, while dealing with a case of libel - New York Times Company v. L.B. Sullivan observed that "it is a prized privilege to speak one's mind, although not always with perfect good taste, on all public institutions and this opportunity should be afforded for vigorous advocacy no less than abstract discussion." In all civilized societies, the Courts have exhibited high degree of tolerance and accepted adverse comments and criticism of their orders/judgments even though, at times, such criticism is totally off the mark and the language used is inappropriate. The right of a member of the public to criticize the functioning of a judicial institution has been beautifully described by the Privy Council in Andre Paul Terence Ambard v. Attorney General of Trinidad and Tobago AIR 1936 PC 141 in the following words:
>
> > No wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrongheaded are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.
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> In Debi Prasad Sharma v. The King Emperor AIR 1943 PC 202, Lord Atkin speaking on behalf of the Judicial Committee observed:
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> > In 1899 this Board pronounced proceedings for this species of contempt (scandalization) to be obsolete in this country, though surviving in other parts of the Empire, but they added that it is a weapon to be used sparingly and always with reference to the administration of Justice: McLeod v. St. Auhyn. In re a Special Reference from the Bahama Islands the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere

> with the course of justice and the due administration of the law. In Queen v. Gray it was shown that the offence of scandalizing the court itself was not obsolete in this country. A very scandalous attack had been made on a Judge for his judicial utterances while sitting in a criminal case on circuit, and it was with the foregoing opinions on record that Lord Russell of Killowen, C.J., adopting the expression of Wilmot, C.J., in his opinion in Rex v. Almon which is the source of much of the present law on the subject, spoke of the article complained of as calculated to lower the authority of the Judge.

In Regina v. Commissioner of Police of the Metropolis (1968) 2 All ER 319, Lord Denning observed:

> Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.
>
> It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.
>
> Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.'

"15. In the land of Gautam Buddha, Mahavir and Mahatma Gandhi, the freedom of speech and expression and freedom to speak one's mind have always been respected. After independence, the Courts have zealously guarded this most precious freedom of every human being. Fair criticism of the system of administration of justice or functioning of institutions or authorities entrusted with the task of deciding

rights of the parties gives an opportunity to the operators of the system/institution to remedy the wrong and also bring about improvements. Such criticism cannot be castigated as an attempt to scandalize or lower the authority of the Court or other judicial institutions or as an attempt to interfere with the administration of justice except when such criticism is ill motivated or is construed as a deliberate attempt to run down the institution or an individual Judge is targeted for extraneous reasons. Ordinarily, the Court would not use the power to punish for contempt for curbing the right of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution. Only when the criticism of judicial institutions transgresses all limits of decency and fairness or there is total lack of objectivity or there is deliberate attempt to denigrate the institution then the Court would use this power."

The judgments of this Court in Re S. Mulgaokar (1978) 3 SCC 339 and P.N. Duda v. P. Shiv Shanker (1988) 3 SCC 167 are outstanding examples of this attitude and approach. In the first case, a three-Judge Bench considered the question of contempt by newspaper article published in Indian Express dated 13.12.1977 criticising the Judges of this Court. The article noted that the High Courts had strongly reacted to the proposal of introducing a code of judicial ethics and propriety. In its issue dated December 21, 1977 an article entitled "behaving like a Judge" was published which inter alia stated that the Supreme Court of India was "packed" by Mrs Indira Gandhi "with pliant and submissive judges except for a few". It was further stated that the suggestion that a code of ethics should be formulated by judges themselves was "so utterly inimical to the independence of the judiciary, violative of the constitutional safeguards in that respect and offensive to the self-respect of the judges as to make one wonder how it was conceived in the first place". A notice had been issued to the Editor-in-Chief of the newspaper to show cause why proceedings for contempt under Article 129 of the Constitution should not be initiated against him in respect of the above two news items. After examining the submissions made at the Bar, the Court dropped the contempt proceedings. Beg, C.J., expressed his views in the following words:

> Some people perhaps believe that attempts to hold trials of everything and everybody by publications in newspapers must include those directed against the highest Court of Justice in this country and its pronouncements. If this is done in a reasonable manner, which pre-supposes accuracy of information about a matter on which any criticism is offered, and arguments are directed fairly against any reasoning

adopted, I would, speaking for myself, be the last person to consider it objectionable even if some criticism offered is erroneous. In Bennett Coleman & Co. v. Union of India, I had said (at p. 828) (SCC pp. 827-28):

> John Stuart Mill, in his essay on `Liberty', pointed out the need for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what may be called the `dialectical' process of a struggle with wrong ones which exposes errors. Milton, in his `Areopagitica' (1644) said:
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> Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; whoever knew Truth put to the worse, in a free and open encounter?... Who knows not that Truth is strong, next to the Almighty; she needs no policies, no stratagems, no licensings to make her victorious; those are the shifts and defences that error makes against her power ....

Political philosophers and historians have taught us that intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. At any rate, political democracy is based on the assumption that such freedom must be jealously guarded. Voltaire expressed a democrat's faith when he told, an adversary in arguments: "I do not agree with a word you say, but I will defend to the death your right to say it". Champions of human freedom of thought and expression throughout the ages, have realised that intellectual paralysis creeps over a society which denies, in however subtle a form, due freedom of thought and expression to its members. "Although, our Constitution does not contain a separate guarantee of Freedom of the Press, apart from the freedom of expression and opinion contained in Article 19(l)(a) of the Constitution, yet, it is well-recognised that the Press provides the principal vehicle of expression of their views to citizens. It has been said:

Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions. Never has criticism been more necessary than today, when the weapons of propaganda are so strong and so subtle. But, like other liberties, this also must be limited." Krishna Iyer, J. agreed with C.J. Beg and observed:

> Poise and peace and inner harmony are so quintessential to the judicial temper that huff, "haywire" or even humiliation shall not besiege; nor, unveracious provocation, frivolous persiflage nor terminological inexactitude throw into palpitating tantrums the balanced cerebration of the judicial mind. The integral yoga of shanti and neeti is so much the cornerstone of the judicial process that criticism, wild or valid, authentic or anathematic, shall have little purchase over the mentation of the Court. I quite realise how hard it is to resist, with sage silence, the shafts of acid speech; and, how alluring it is to succumb to the temptation of argumentation where the thorn, not the rose, triumphs. Truth's taciturn strategy, the testimony of history says, has a higher power than a hundred thousand tongues or pens. In contempt jurisdiction, silence is a sign of strength since our power is wide and we are prosecutor and judge.

In the second case, this Court was called upon to initiate contempt proceedings against Shri P. Shiv Shanker who, in his capacity as Minister for Law, Justice and Company Affairs, delivered a speech in the meeting of Bar Council of Hyderabad on November 28, 1987 criticising the Supreme Court. Sabyasachi Mukharji, J. (as he then was) referred to large number of precedents and made the following observation:

> 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. 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 been said in the famous speech of Abraham Lincoln in 1965: "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. 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.

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 Baradakanta Mishra v. Registrar of Orissa High Court. 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 remediless 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 searchlight 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 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 judge had a predisposition 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 prejudging of the issues which would bring administration of justice into ridicule. Criticism of the judges would attract greater attention than others and such criticism sometimes interferes with the administration of justice and that must be judged by the yardstick whether it brings the

> administration of justice into ridicule or hampers administration of justice. After all it cannot be denied that predisposition or subtle prejudice or unconscious prejudice or what in Indian language is called "sanskar" are inarticulate major premises in decision making process. That element in the decision making process cannot be denied, it should be taken note of.

In Baradakanta Mishra v. Registrar of Orissa High Court MANU/SC/0071/1973MANU/SC/0071/1973 : (1974) 1 SCC 374, Krishna Iyer, J. speaking for himself and P.N. Bhagwati, J., as he then was emphasized the necessity of maintaining constitutional balance between two great but occasionally conflicting principles i.e. freedom of expression which is guaranteed under Article 19(1)(a) and fair and fearless justice, referred to "republican justification" suggested in the American system and observed:

> Maybe, we are nearer the republican justification suggested in the American system:
>
> > In this country, all courts derive their authority from the people, and hold it in trust for their security and benefit. In this state, all judges are elected by the people, and hold their authority, in a double sense, directly from them; the power they exercise is but the authority of the people themselves, exercised through courts as their agents. It is the authority and laws emanating from the people, which the judges sit to exercise and enforce. Contempt against these courts, the administration of their laws, are insults offered to the authority of the people themselves, and not to the humble agents of the law, whom they employ in the conduct of their Government.

This shift in legal philosophy will broaden the base of the citizen's right to criticise and render the judicial power more socially valid. We are not subjects of a king but citizens of a republic and a blanket ban through the contempt power, stifling criticism of a strategic institution, namely, administration of Justice, thus forbidding the right to argue for reform of the judicial process and to comment on the performance of the judicial personnel through outspoken or marginally excessive criticism of the instrumentalities of law and justice, may be a tall order. For, change through free speech is basic to our democracy, and to prevent change through criticism is to petrify the organs of democratic Government. The judicial instrument is no exception. To cite vintage rulings of English Courts and to bow to decisions of British Indian days as absolutes is to ignore the law of all laws that the rule of law must keep pace with the Rule of

life. To make our point, we cannot resist quoting Mc Whinney, who wrote:

> The dominant theme in American philosophy of law today must be the concept of change -- or revolution -- in law. In Mr Justice Oliver Wendell Holmes' own aphorism, it is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. prestige argument, from age alone, that because a claimed legal rule has lasted a certain length of time it must automatically be valid and binding at the present day, regardless of changes in basic societal conditions and expectations, is no longer very persuasive. According to the basic teachings of the Legal Realist and policy schools of law, society itself is in continuing state of flux at the present day; and the positive law, therefore, if it is to continue to be useful in the resolution of contemporary major social conflicts and social problems, must change in measure with the society. What we have, therefore, concomitantly with our conception of society in revolution is a conception of law itself, as being in a condition of flux, of movement. On this view, law is not a frozen, static body of rules but rules in a continuous process of change and adaptation; and the judge, at the final appellate level anyway, is a part -- a determinant part -- of this dynamic process of legal evolution.

This approach must inform Indian law, including contempt law.

It is very necessary to remember the legal transformation in our value system on the inauguration of the Constitution, and the dogmas of the quiet past must change with the challenges of the stormy present. The great words of Justice Holmes uttered in a different context bear repetition in this context:

> But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant

> against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.
> (emphasis supplied)"

14.6 Viewed cumulatively, these precedents lay down a consistent and unambiguous legal position that criminal contempt is not attracted by every allegation, criticism, expression of grievance, or even strong language directed against a judicial officer or the judicial system. On the contrary, fair, bona fide, and reasonable criticism of judicial functioning and decisions is permissible, and indeed forms an integral part of the freedom of speech in a democratic polity. The law thus draws a clear distinction between fair criticism, which is made in good faith and in public interest without attributing improper motives, and those acts which transgress the bounds of decency, objectivity, and restraint. Criminal contempt is attracted only where the act complained of is deliberate, public in nature, and of such gravity that it poses a real, substantial, and imminent threat to the administration of justice, or is calculated to undermine the authority of courts and erode public confidence in the judicial system. Mere expressions of dissatisfaction, harsh or exaggerated criticism, or even erroneous statements would not constitute criminal contempt so long as they remain within the limits of fair comment. However, when such criticism is malicious, scandalous, or imputes motives to judges, or is designed to bring the institution into disrepute, the protective shield of fair criticism is lost. The essence of the offence, therefore, lies not merely in the words used, but in their tendency

and effect, whether they are intended to or are likely to interfere with the due course of justice, obstruct judicial proceedings, or scandalize the court in a manner that lowers its dignity in the eyes of the public at large. It is only upon crossing this threshold that the extraordinary jurisdiction of contempt ought to be invoked.

SCOPE AND APPLICABILITY OF SECTION 166-A IPC

15. Coming on to the scope and applicability of Section 166-A of the IPC. Reference has also been made to Section 166-A of the IPC, which imposes criminal liability upon public servants who knowingly disobey legal directions in certain situations. For ease of reference, Section 166-A of IPC is reproduced hereinbelow:-

> **166A. Public servant disobeying direction under law**.—Whoever, being a public servant,-
> (*a*) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
> (*b*) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
> (*c*) fails to record any information given to him under sub-section (*1*) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, [section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

15.1 Upon a plain reading of Section 166-A of the IPC, it is manifest that the said provision contemplates liability of a public servant who knowingly disobeys any direction of law regulating the manner in which he is required to perform his official duties,

and such disobedience must be with the intention of causing injury to any person. The provision primarily addresses situations where a public servant, despite being under a statutory obligation, fails to record information relating to specified offences, fails to investigate such offences in the manner prescribed by law, neglects to provide necessary medical treatment to the victim, or omits to record the statement of the victim in accordance with the procedure mandated by law. Thus, the gravamen of the offence lies not in a mere irregularity or lapse in the discharge of official duties, but in a deliberate and conscious disobedience of a legal mandate by a public servant, coupled with the intention to cause injury. The provision accordingly prescribes punishment of rigorous imprisonment for a term not less than six months which may extend to two years, along with fine.

15.2 The provision was inserted to ensure that public servants, particularly police officials, discharge their statutory duties with diligence and do not deliberately abstain from performing their legal obligations. Thus, when allegations are made that a police officer has not conducted a fair investigation or has failed to perform a duty mandated by law, the matter may legitimately become the subject of inquiry. In such circumstances, the superior officer conducting the inquiry is duty-bound to ascertain whether any violation falling within the scope of Section 166-A IPC has occurred. During such inquiry, the concerned police officials are naturally required to explain their actions and the circumstances surrounding the investigation. The explanations furnished by them in response to such queries cannot, by any stretch of imagination, be construed as acts amounting to criminal contempt of court.

OPINION OF THE COURT

16. In view of the above discussion, it is apparent that none of the alleged contemnors has, in any manner whatsoever, criticised or denigrated the judicial order passed by the Court. The statements attributed to them merely pertain to the personal conduct and behaviour of the Presiding Officer, as has already been discussed hereinabove. Significantly, not a single sentence in the alleged statements can be construed as scandalising the authority of the Court, prejudicing or interfering with the due course of any judicial proceedings, or lowering the dignity and majesty of the Court. Equally, there is nothing on record to suggest that the administration of justice has been obstructed or hindered in any manner.

16.1 A plain reading of the statements would reveal that no allegation or insinuation has been directed against the institution of the Court. It is also noteworthy that the statements in question were made in the course of an inquiry conducted by the Investigating Officer, which itself had been initiated at the instance of the Presiding officer concerned. The alleged contemnors, while responding to the inquiry, merely asserted that no offence had been committed by them and further sought to explain that the officer appeared to be displeased with them. In that context alone, they attempted to place before the Investigating Officer the circumstances which, according to them, might have led to such displeasure, with a view to satisfy the inquiry being undertaken.

16.2 Such statements, made in the course of explaining one's position before an inquiry officer, cannot by any stretch of imagination be brought within any of the recognised heads of

criminal contempt. They neither scandalise the Court nor tend to interfere with the administration of justice. It is also borne out from the record that the police officers had already submitted their report. Thereafter, upon a specific direction being issued to the Additional Superintendent of Police to initiate proceedings under Section 166-A IPC, the inquiry inevitably required them to explain the circumstances surrounding the investigation.

16.3 They further explained the sequence of events which led to the direction requiring action against the Station House Officer. The explanation tendered by the officers, therefore, was nothing more than an attempt to clarify why, in their perception, the Presiding Officer was aggrieved with them.

16.4 The distinction between criticism directed towards the personal conduct of an individual and an attack upon the authority of the Court as an institution is both real and significant. Merely alleging that a person has acted improperly does not amount to imputing impropriety to the Court or its judicial functioning. An individual may be criticised for his conduct, but that cannot automatically be equated with criticism of the Court or its judgments. The judiciary derives its strength from public confidence. Such confidence is strengthened not by suppressing grievances but by ensuring that genuine complaints are examined in a fair and transparent manner. If allegations regarding misconduct or improper behaviour are raised, the appropriate course is to inquire into such allegations, rather than prematurely branding them as contemptuous. The law does not grant impunity to any individual to act arbitrarily. Equally, the law does not

penalise individuals merely for narrating their grievances before competent authorities.

16.5 Criminal contempt, by its very nature, contemplates acts of a grave and proximate character, ordinarily committed within the close precincts of the Court, in the face of the Court, or directly in the presence of the Presiding Officer, which have an immediate tendency to obstruct the administration of justice or lower the authority of the Court. Illustratively, criminal contempt may arise where a person, in open Court or before the judicial officer, denounces the Court, hurls filthy or abusive language, behaves in a disorderly or insolent manner, refuses to comply with or openly defies a judicial order, or otherwise conducts himself in a manner that strikes at the dignity and functioning of the Court itself. Such conduct, when deliberate and direct, may invite the punitive consequences contemplated under Section 12 of the Act of 1971. Every act perceived as discourteous, harsh, or unpleasant does not fall within the statutory definition of criminal contempt.

16.6 The allegations and statements attributed by the alleged contemners, such as they were being made to wait for some time, being asked to stand outside in the sun, or a judicial order whereby judicial custody was granted instead of police custody, may, at the highest, be perceived as expressions reflecting dissatisfaction or grievance regarding the conduct of an individual. Such statements during inquiry, though capable of being described as harsh or uncharitable towards the personal behaviour of a judicial officer, do not, by any stretch of legal reasoning, amount to an act of criminal contempt of court. It is a settled principle that a judicial officer is expected to function within the bounds of

judicial restraint and institutional dignity. The majesty of the institution is not so fragile that it stands diminished by personal remarks or grievances expressed regarding the conduct of an individual officer. Criticism, even if couched in strong or disagreeable language, so long as it pertains to the personal behaviour of an individual and does not scandalize the institution of the Court or obstruct the administration of justice, cannot be brought within the sweep of criminal contempt.

16.7 We are of the considered view, that the statements in question appear to be no more than expressions of grievance by police officials regarding the manner in which they were treated. They neither interfere with the due course of judicial proceedings nor tend to lower the authority of the Court as an institution. A Presiding Officer, by virtue of the high office he occupies, is expected to remain unaffected by such personal remarks and must not allow them to influence the exercise of judicial power. However, in the present matter, the initiation of criminal contempt proceedings appears to convey an impression that the personal comments or grievances expressed by the police officials were taken to heart by the learned Presiding Officer concerned, leading to the invocation of contempt jurisdiction. Such an approach, with utmost respect, does not align with the settled contours of criminal contempt jurisprudence, which is meant to protect the administration of justice and the authority of the institution of the Court, and not to vindicate the perceived personal affront of an individual judicial officer. The essence of criminal contempt lies not in subjective grievance, but in objective interference with the administration of justice. Unless the conduct complained of

demonstrates a clear, deliberate, and proximate tendency to scandalise the Court, obstruct judicial functioning, or erode public confidence in the justice delivery system, it cannot be elevated to the status of criminal contempt. In the present context, the statements passed by the police officials during an inquiry, even if assumed to be true for the sake of argument, do not fall within the statutory contours of criminal contempt as defined under Section 2(c) of the Act of 1971, nor do they attract the penal consequences envisaged under Section 12 of the Act of 1971 thereof. The contempt jurisdiction, being extraordinary and punitive, is not intended to adjudicate perceived discourtesy or dissatisfaction with judicial orders, but to preserve the institutional integrity of the justice delivery system. Courts must, therefore, exercise circumspection and restraint, lest this exceptional jurisdiction be invoked in matters which properly belong to the domain of appellate or supervisory remedies.

16.8 In view of the foregoing discussion, it becomes evident that the statements made by the police officials were made during the course of an inquiry conducted by a superior officer and were intended to explain the circumstances leading to the dispute. Such narration of grievances cannot, in the absence of any scandalising remarks against the court or interference with the administration of justice, be treated as criminal contempt. The statements appear to be explanations offered in response to questions posed during an official inquiry and do not, prima facie, undermine the majesty of the court or the authority of the judicial institution so as to attract the rigours of criminal contempt.

CONCLUSION AND VERDICT

17. The law draws a clear distinction between criticism of judicial conduct or orders, and acts which scandalise the court or substantially interfere with the administration of justice. For criminal contempt to be made out, the act complained of must have a real and substantial tendency to lower the authority of the Court in the eyes of the public at large; or interfere with the due course of judicial proceedings; or obstruct the administration of justice in a manner that goes beyond individual dissatisfaction. The reproduced statements, though containing allegations against the Presiding Officer, were made in the context of the behaviour of an individual and were recorded as part of an investigation or grievance mechanism. They do not appear to be publications calculated to scandalise the judiciary, nor do they demonstrate an attempt to undermine the institution of the Court as such. At best, they reflect individual perceptions, grievances, or dissatisfaction with judicial conduct or orders. Further, criminal contempt jurisdiction is not intended to silence grievances or shield judicial officers from criticism, unless such criticism transgresses into deliberate vilification or an attack on the institution of justice itself. The threshold for invoking criminal contempt is therefore high, and the power is to be exercised sparingly and with circumspection. We are of the considered view that the statements reproduced hereinabove, even if taken at their face value, do not satisfy the statutory requirements of criminal contempt as envisaged under Section 2(c) of the Act of 1971 and does not deserves punishment under Section 12 of the Act of 1971 as they neither disclose an act intended to scandalise the Court as an institution, nor demonstrate interference with the due course of

judicial proceedings or obstruction of the administration of justice in the manner contemplated by law.

18. This Court, upon a careful consideration of the material on record and the settled principles governing criminal contempt, is of the view that the ingredients of Section 2(c) of the Contempt of Courts Act, 1971 are not attracted. The contempt jurisdiction being extraordinary and punitive in nature, this Court declines to invoke the same in the facts of the present case.

19. Accordingly, the contempt reference fails and is accordingly dismissed.

20. The rule is discharged.

(YOGENDRA KUMAR PUROHIT),J **(FARJAND ALI),J**

20-Mamta/-