



2025:KER:97826

W.P.(C)No. 14564 of 2016

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 18<sup>TH</sup> DAY OF DECEMBER 2025 / 27TH AGRAHAYANA,

1947

WP(C) NO. 14564 OF 2016

PETITIONER:

MATHEWS J. NEDUMPARA  
AGED 57 YEARS  
ADULT, INDIAN INHABITANT,  
RESIDING AT 907/210, PRASANNA VIHAR APARTMENTS,  
NEAR HIGH COURT, COCHIN, KERALA 682 031.  
AND  
MATHEWS J. NEDUMPARA,  
ADULT, INDIAN INHABITANT,  
RESIDING AT HARBOUR HEIGHTS,  
W WING, 12-F, 12TH FLOOR,  
SASSOON DOCKS, COLABA,  
MUMBAI 400 005.

BY ADV MATHEWS J. NEDUMPARA (PARTY-IN-PERSON)

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF LEGAL AFFAIRS,



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**GOVERNMENT OF INDIA, SASTRI BHAVAN,  
NEW DELHI 110 001.**

- 2 UNION OF INDIA  
REPRESENTED BY ITS SECRETARY,  
DEPARTMENT OF JUSTICE,  
JAISELMER HOUSE,  
NEW DELHI 110 001.**
- 3 STATE OF KERALA  
REPRESENTED BY ITS CHIEF SECRETARY,  
TRIVANDRUM 695 036.**
- 4 THE LAW COMMISSION OF INDIA  
REPRESENTED BY ITS SECRETARY,  
NEW DELHI 110 001.**
- 5 THE PRESS COUNSEL OF INDIA  
REPRESENTED BY ITS SECRETARY,  
NEW DELHI 110 003.**
- 6 THE KERALA HC ADVOCATES' ASSOCIATION  
REPRESENTED BY ITS SECRETARY,  
ERNAKULAM, KERALA 682 301.**
- 7 THE BAR COUNCIL OF INDIA  
REPRESENTED BY ITS SECRETARY,  
NEW DELHI 110 002.**

**BY ADVS.  
DR.K.P.PRADEEP  
SHRI.S.BIJU, SENIOR PANEL COUNSEL  
SRI. RAJIT, SC**

**OTHER PRESENT:**

**SMT.VINITHA B. - SR.GP**



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**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 29.10.2025, THE COURT ON 18.12.2025 DELIVERED THE  
FOLLOWING:**



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“C.R.”

**JUDGMENT**Dated this the 18<sup>th</sup> day of December, 2025**Nitin Jamdar, C.J.**

By this petition, the Petitioner seeks a declaration that Sections 2(c) (i), 14, 16 and 17(5) of the Contempt of Courts Act, 1971 (Act of 1971) are unconstitutional and void. The Petitioner also seeks a declaration that Section 16 of the Act of 1971 is applicable to the judges of the superior courts, and that Section 17(5) of the Act of 1971 has to be read along with the constitutional guarantee enshrined under Article 20(3) of the Constitution of India.

2. We have heard Mr. Mathews J. Nedumpara, learned Advocate, appearing in person, Mr. S. Biju, learned Senior Panel Counsel for the Union of India, Dr. K.P. Pradeep, learned counsel for Respondent No. 6 – Bar Association, Ms. B. Vinitha, learned Senior Government Pleader, and Mr. Rajit, learned Standing Counsel for the Bar Council of India.

3. The first challenge of the Petitioner to Section 2(c)(i) and other provisions of the Act of 1971 is that these provisions violate the fundamental right to freedom of expression enshrined under Article 19(1) (a) of the Constitution of India. Section 2 of the Act of 1971 deals with the definitions. ‘Civil contempt’ is defined under Section 2(b) as willful disobedience to any judgment, decree, direction, order, writ or other



process of a court or willful breach of an undertaking given to a court. 'Criminal contempt' is defined under Section 2(c), which reads thus:

*"(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."*

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Section 2(c)(i) makes the publication, as specified therein, which scandalises or lowers the authority of any court, an act of criminal contempt.

4. The Petitioner advanced contentions referring to the works of various authors and commenting on the historical roots of contempt under Roman law. He submitted that the underlying foundations of the Act of 1971 are based on an archaic cathartic jurisprudence, akin to the concept of confessions by torture, and such archaic law is contrary to the modern principles of justice and fair play. The provision that punishes a person for the words and actions which "*scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court*" [Section 2(c)(i) of



the Act of 1971] is void because it abrogates the freedom of speech guaranteed under Article 19 of the Constitution of India. The learned Senior Panel Counsel for the Union of India submitted that there is no merit in the challenge and the impugned provisions do not violate any fundamental rights as contended. He submitted that the right under Article 19(1)(a) of the Constitution of India is not absolute and is subject to reasonable restrictions, and that the Act of 1971, as held in various decisions, does not violate the right to freedom of speech and expression.

5. Article 19 of the Constitution of India protects certain fundamental rights regarding freedom of speech and others. It lays down under Article 19(1)(a) that all citizens shall have the right, *inter alia*, to freedom of speech and expression. However, Article 19(2) makes it clear that nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, or in relation to contempt of court, defamation or incitement to an offence. Thus, the right to freedom of speech and expression under Article 19(1) (a) of the Constitution of India is subject to reasonable restrictions in relation to the contempt of court.

6. The above constitutional position is recognised in a series of judicial pronouncements which have reiterated that the law of contempt



constitutes a reasonable restriction on the fundamental right of speech and expression under Article 19(1)(a) of the Constitution of India. In the case of *E.M. Sankaran Namboodiripad v. T. Narayanan Nambiar*<sup>1</sup>, it was contended on behalf of the contemners before the Supreme Court that the law of contempt must be read without encroaching upon the guaranteed freedom of speech and expression in Article 19 of the Constitution of India. The Supreme Court negatived the contention, holding that the spirit underlying Article 19(1)(a) must have due play, but the provisions of the second clause of Article 19 cannot be overlooked, as while it is intended that there should be freedom of speech and expression, it is also intended that in the exercise of the right, contempt of court shall not be committed. The Hon'ble Supreme Court in the case of *Arundhati Roy, In Re*<sup>2</sup>, following the decision in the case of *E.M. Sankaran Namboodiripad*, while rejecting the argument based on Article 19(1)(a) observed that the constitutional validity of the Act of 1971 was tested earlier and long since concluded that the same was intra vires and validity of contempt law has withstood the test on the touchstone of constitutionality in the light of the fundamental rights, and that it is too late to argue that no contempt proceeding can be initiated against a person on the ground that it affects the fundamental rights. In the said decision, the Hon'ble Supreme Court also observed that no person can flout the law enacted to respect the courts for the restoration of the rule of law under the guise of freedoms of

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1 (1970) 2 SCC 325

2 (2002) 3 SCC 343



speech and expression guaranteed by the Constitution, and this freedom is subject to reasonable restrictions imposed by any law.

7. The Act of 1971 provides for contingencies where certain acts are not to be treated as contempt. Sections 3 to 8 state that a person shall not be guilty of contempt of court in various contingencies, such as when he has published a fair and accurate report of any judicial proceeding. Also, Section 8 states that nothing contained in the Act of 1971 shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt of court has ceased to be available. Therefore, these are the various provisions where the Act of 1971 declares that certain acts do not amount to contempt.

8. In view of this position, and in light of the dictum of the Hon'ble Supreme Court as noted above and followed in various other decisions, the challenge of the Petitioner that the impugned provisions of the Act of 1971 are unconstitutional on the ground that they offend the freedom of expression enshrined under Article 19(1)(a) of the Constitution of India, cannot be accepted.

9. The Petitioner submitted that he is not challenging the substantive provisions of the Act of 1971, which provide for punishment for both civil and criminal contempt, but only the procedural aspects. He submitted that it is correct that the courts and tribunals are sacrosanct and their majesty, dignity, and authority should not be allowed to be



undermined, which is the very concept of the rule of law, but the provisions of the Act of 1971 must conform with the constitutional guarantee, more particularly enshrined under Article 20(3) of the Constitution of India. He submitted that Section 17(5) of the Act of 1971 forces the contemner to give evidence against himself, thereby making him a witness against himself, and offends the constitutional guarantee under Article 20(3) of the Constitution of India, and is thus void.

10. The Petitioner submitted that to save this provision from the vice of unconstitutionality, the guarantee under Article 20(3) has to be read into Section 17(5). It was submitted that the Act of 1971 has to pass the test of Article 13 of the Constitution of India and the above procedural aspects, which violate the fundamental rights enshrined under the Constitution of India, have to be declared as unconstitutional. The learned Senior Panel Counsel for the Union of India submitted that the Act of 1971 itself provides for various defences and, therefore, an opportunity is given under Section 17(5) to the contemner, and it is not a provision which makes a contemner a witness against himself. The constitutional guarantee under Article 20(3) operates in an entirely different sphere, in criminal jurisprudence, and the Act of 1971 cannot be called as purely criminal proceedings. The learned Senior Government Pleader adopted the same reasoning that the proceedings under the Act of 1971 are not criminal proceedings for Article 20(3) to apply, and that the Act of 1971 is *sui generis*.



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11. Sections 17 and 18 of the Act of 1971 deal with the procedural aspects after the court takes cognizance of criminal contempt under Section 15. The Petitioner's emphasis is more on Section 17(5), which deals with the procedure following cognizance. Section 17 reads thus:

*"17. Procedure after cognizance.—(1) Notice of every proceeding under section 15 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.*

(2) xxxxx                       xxxxx

(3) xxxxx                       xxxxx

(4) xxxxx                       xxxxx

*(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires."*

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The Petitioner contends that the guarantee under Article 20(3) of the Constitution of India is violated by the mandatory stipulation in Section 17(5) of the Act of 1971, as no person accused of an offence can be compelled to be a witness against himself and that the proceedings under the Act of 1971 will result in punishment, and it is not necessary that these proceedings be criminal in nature for Article 20(3) of the Constitution of India to be attracted.



12. The contention of the Petitioner that Section 17(5) of the Act of 1971 offends the constitutional guarantee under Article 20(3) cannot be accepted for various reasons. Sub-section (5) of Section 17 enables the person charged to file an affidavit in support of his defence, and the court may determine the matter of charge either on the affidavits filed or after taking such further evidence as may be necessary. Under Section 17(5), any person charged with contempt under Section 15 has a choice to file an affidavit in support of his defence. The language used in the provision is not mandatory but it gives an opportunity to the contemner. This opportunity has to be read in the context of Sections 3 to 8 of the Act of 1971, which provide for various defences to the allegation of contempt of court. Section 3 of the Act of 1971 declares that innocent publication and distribution of a matter is not contempt. Sections 4 and 5 provide that a fair and accurate report of a judicial proceeding and a fair criticism of a judicial act are not contempt. Section 6 stipulates that, in certain circumstances, a complaint against presiding officers of subordinate courts is not contempt. Section 7 provides that publication of information relating to proceedings in chambers or in camera does not constitute contempt except in certain cases. Section 8 states that nothing contained in the Act of 1971 shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt of court has ceased to become available merely by reason of the provisions of Act of 1971 and neither the Act is to imply enlargement of scope of



contempt as provided under Section 9. Therefore, Section 17(5) is not a mandate resulting in self-incrimination but provides an opportunity to the person alleged of contempt. The Hon'ble Supreme Court in the case of *J.R. Parashar, Advocate v. Prashant Bhushan, Advocate*,<sup>3</sup> held that the proceedings for contempt are quasi-criminal and summary in nature. Considering the nature of the proceedings, the consequences that may ensue, and the fact that a person is not compelled to be a witness but is given an opportunity under Section 17(5) to demonstrate that his actions fall within the exceptions, it cannot be said that he is accused of an offence and compelled to be a witness against himself.

13. The above view is fortified in the decision of the Full Bench of the Allahabad High Court in the case of *State v. Padma Kant Malviya and Another*<sup>4</sup>. In this case, proceedings were started on an application filed before the City Magistrate, Allahabad, that during the pendency of the court proceedings, a party published a pamphlet which was alleged to interfere with the fair trial of the case. Notice was issued, and the party appeared, filed an affidavit stating that he was not concerned with the publication of the pamphlet and also tendered an unqualified apology. The government advocate informed the Court that he had decided to cross-examine the opposite party, who had filed an affidavit. The alleged contemner contested the application for cross-examination, and the issue was referred to the Full Bench. One issue was whether the alleged

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<sup>3</sup> (2001) 6 SCC 735

<sup>4</sup> AIR 1954 All 523



contemner is a person accused of an offence within the meaning of Article 20(3) of the Constitution of India. A subset of the question was whether he could file an affidavit and be cross-examined. The Full Bench observed that a contemner is not “accused of an offence” and cannot claim immunity from being sworn as a witness. It was also observed that the privilege against self-incrimination is merely an option of refusal, not a prohibition of enquiry. When an ordinary witness is on the stand, it is for him then to say whether he would exercise the option given him by the law and it cannot be known beforehand whether he would refuse. To prevent the question would be to convert the option into a prohibition. The Full Bench specifically addressed the question referred to it as to whether an alleged contemner is “a person accused” within the meaning of Article 20(3) of the Constitution of India. After an elaborate discussion, the Full Bench held that a contemner cannot be a person “accused of an offence” within the meaning of Article 20(3) of the Constitution of India. Therefore, even this argument raised by the Petitioner cannot be accepted.

14. The Petitioner then invoked the principle *Nemo debet esse judex in propria causa* – no person can be a judge of his own cause, to contend that while exercising the contempt power, this principle is breached, thus the impugned provisions are void also because they are contrary to the basic legal doctrine *Nemo debet esse judex in propria causa* – no one can be a judge of his own cause. This contention overlooks the nature and purpose of the contempt jurisdiction. The Act of 1971 was not primarily enacted



to protect judges from permissible criticism, but to safeguard the justice system and maintain public confidence. Contempt jurisdiction is a special jurisdiction exercised when an action affects the administration of justice. The purpose of the contempt proceedings is to safeguard the dignity of the court and the administration of justice, and is, in that sense, "*Sui Generis*." In the case of *Dulal Chandra Bhar v. Sukumar Banerjee*<sup>5</sup>, the Hon'ble Supreme Court held that contempt jurisdiction is a special jurisdiction, necessary for the superior court to have and exercise it whenever there is an act that tends to affect the administration of justice, impede its course, or undermine public confidence in the ability of the courts to enforce their orders. The power to punish for contempt is conferred upon the High Court to ensure the rule of law and an orderly administration of justice. In the case of *Arundhati Roy, In Re.*, the Supreme Court cited Frankfurter, J.'s observations in *Pennekamp v. Florida*,<sup>6</sup> that the power to punish for contempt is a means of safeguarding judges' impartial decision-making on behalf of the community and this power is not a privilege granted to judges personally but is a safeguard for the function they perform.

15. The next argument of the Petitioner was regarding the applicability of Section 16 of the Act of 1971 to the judges of the superior courts. Section 16 reads thus:

"16. Contempt by Judge, Magistrate or other person

5 1958 SCC OnLine Cal 176

6 90 L Ed 1295 at p. 1314



*acting judicially.—(1) Subject to the provisions of any law for the time being in force, a Judge, Magistrate or other person acting judicially shall also be liable for contempt of his own Court or of any other Court in the same manner as any other individual is liable and the provisions of this Act shall, so far as may be, apply accordingly.*

*(2) Nothing in this section shall apply to any observations or remarks made by a Judge, Magistrate or other person acting judicially, regarding a subordinate Court in an appeal or revision pending before such Judge, Magistrate or other person against the order or judgment of the subordinate Court.”*

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According to the Petitioner, there is nothing in Section 16, which shows that the phrase “Judge” excludes judges of the superior courts and it equally applies to the judges of the superior court, and, therefore, they can be held liable if they commit contempt of their own court. He submitted that Section 16 of the Act of 1971 does not contemplate any distinction between the judges of the subordinate court and the superior court, namely, the Supreme Court and the High Court judges, and, therefore, Section 16, when it makes a judge liable for contempt of his own court, is also applicable to the judges of the superior court. The learned Senior Panel Counsel for the Union of India submitted that Section 16 of the Act of 1971 does not apply to judges of the superior court, as is clear from the language of the statute and the judicial precedents.

16. Section 16 cannot be read in isolation but must be interpreted in



the context of the constitutional scheme that provides immunity to the judges of the superior courts and recognises their distinct status. This facet is delineated by the Special Bench of the Patna High Court in the case of *Shri Harish Chandra Mishra and Others v. The Hon'ble Mr. Justice S. Ali Ahmed*<sup>7</sup>, whose reasoning we are in respectful agreement with. The Special Bench addressed the issue of whether Section 16 of the Act of 1971 can be made applicable to the judges of the superior courts. After analysing the scheme of the legislation, it was held that, in respect of Supreme Court or High Court, there is no question of any judge being liable for contempt of his own court, that is, the courtroom in which such judge is presiding, and only a judge of subordinate court can be said to have committed contempt of his own court, that is, the court in which such judge is presiding. The Special Bench held that if the Supreme Court and High Court Judges were to be included under Section 16, then it would have been specifically mentioned to that effect. That is so because, in order to maintain the independence of the high judiciary, they are kept immune from criticism in respect of their conduct even in the Parliament and Legislature of the State under Articles 131 and 211 of the Constitution of India and a special procedure is prescribed for their removal under Articles 124(4) and 217(1)(b). Having provided such a high degree of immunity and protection to judges of the superior courts under the Constitution, it cannot simpliciter be presumed that by merely using the expression 'Judge' in Section 16, it was intended to include even



the judges of the Supreme Court and High Courts as par with other judges and magistrates, so that they may be answerable in that very Court in respect of their conduct while discharging judicial duties. The Special Bench concluded that Section 16 of the Act of 1971 completely excludes a judge of the superior court. This aspect is further settled by a Bench of three learned Judges of the Hon'ble Supreme Court in the case of *State of Rajasthan v. Prakash Chand and Others*<sup>8</sup>, wherein it was observed thus:

*"35. Even under the Judges (Protection) Act, 1985 immunity has been given to judicial officers in relation to judicial work done by them as well as for the judicial orders made by them. The Statement of Objects and Reasons for introducing the Bill in relation to the 1985 Act which reads thus is instructive:*

*"Judiciary is one of the main pillars of parliamentary democracy as envisaged by the Constitution. It is essential to provide for all immunities necessary to enable Judges to act fearlessly and impartially in the discharge of their judicial duties. It will be difficult for the Judges to function if their actions in court are made subject to legal proceedings, either civil or criminal."*

*Section 16(1) of the Contempt of Courts Act, 1971 does not apply to the Judges of the Court of Record but only to the subordinate judiciary.*

(emphasis supplied)

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The above dictum is clear. Except for advancing oral arguments, the Petitioner has not shown any position contrary to the law settled as above.



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Further, even assuming that the issue can still be debated, it cannot be decided in the abstract, as it would depend on the facts and circumstances of the case as to whether a particular act would amount to contempt.

17. In view of the above discussion the grounds of challenge raised by the Petitioner cannot be upheld.

18. The Writ Petition is dismissed.

Sd/-  
**Nitin Jamdar,**  
**Chief Justice**

Sd/-  
**S. Manu,**  
**Judge**

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