THE HIGH COURT OF MEGHALAYA

CRL OP (C) No.2/2015

Registrar General,
High Court of Meghalaya,
Shillong. **::::** Petitioner

-Vs-

The Sordar,
Skhembor Khongjirem of Wahkhen village,
East Khasi Hills District **::::** Respondent

BEFORE
HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE
HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH

For the Petitioner	:	
For the Respondent	:	Mr. SP Mahanta, Sr. Adv Ms. NG Shylla, Adv
Date of hearing	:	***29.04.2015***
Date of Judgment & Order	:	***30.04.2015***

JUDGMENT AND ORDER

(Uma Nath Singh, CJ)

Heard Mr. SP Mahanta, learned senior counsel appearing for the respondent/contemnor.

2. ***Justice Frankfurter*** of the United States Supreme Court had observed "the power to punish for contempt of court is a safeguard not for Judges but for the function which they exercise. (Ref: ***Pennekamp v. Florida, 90 L Ed 1295, 1313: 328 US 331 (1946***). The object and purpose of punishing contempt is to preserve the authority of the courts so as to ensure an ordered live in society, not to safeguard or protect the dignity of the individual Judge. The Apex Court in ***Supreme Court Bar Assn. v. Union of India: (1998) 4 SCC 409*** held that: (SCC 429-30, para 42)

> "*The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining 'the jury, the judge and the hangman' and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice*."

The branch of criminal contempt which is dealt with under the rubric of "scandalising the court" in Section 2(c)(i) of the Contempt of Courts Act, 1971 is based on public interest and the Court has the duty of protecting the interest of the public in the due administration of justice and that is why, it is entrusted with power to punish the commission of contempt of court. (Ref: ***Asharam M. Jain v. A.T. Gupta: (1983) 4 SCC 125, 128: 1983 SCC (Cri) 771***). The criminal contempt involves defiance of the court revealed in conduct either by publication or otherwise which amounts to obstruction or interference with the administration of justice. Those obstruction and interference with administration of justice are (i) those which "scandalize" the court, (ii) those which interfere with parties in causes before the court, and (iii) those which prejudice with utterances and the like persons whose causes are to be heard. ***Justice V.R. Krishna Iyer*** laid down certain guidelines to courts in exercise of their contempt jurisdiction: that there must be a wise economy in the use of this branch of law by courts, who should ignore trifling offences with a "majestic liberalism" though "the dogs may bark, the caravan will pass". The urgent need to harmonise the constitutional value of free criticism with the need for a fearless curial system was stressed upon. It was also held that courts should avoid confusion between the personal protection of a libelled Judge and prevention or obstruction of public office. Courts should not be hypersensitive even when criticism oversteps the limit, but show a dignified bearing. [***S.Mulgaokar. In re. (1978) 3 SCC 339]***.

The Apex Court in ***Commr. V. Rohtas Singh: (1998) 1 SCC 349*** held that:

> "*The contempt jurisdiction enables the court to ensure proper administration of justice and maintenance of the rule of law. It is meant to ensure that the courts are able to discharge their functions properly, unhampered and unsullied by wanton attacks on the system of administration of justice or on officials who administer it, and to prevent willful defiance of orders of the court or undertakings given to the court*."

3. ***Lord Denning*** observed that "the press plays a vital part in the administration of justice. It is the watchdog to see that every trial is conducted fairly, openly and above board. ***Lord Reid*** in ***Attorney General v. Times Newspaper Ltd.: (1973) 3 ALL ER 54 (HL)*** observed that "if mass media are allowed to judge, unpopular people and unpopular causes will fare very badly. Thus, a trial by media has been held to be the very antithesis of the rule of law and is rightly discouraged." Section 2(c)(i) of the Contempt of Courts Act, 1971 makes any publication which "scandalises or tends to scandalise, or lowers or tends to lower the authority of, any courts" punishable. ***Chief Justice Hidayatullah*** (***as then he was***) in ***Rustom Cawasjee Cooper v. Union of India: (1970) 2 SCC 298*** observed that "respect is expected not only from those to whom the judgment of the court is acceptable but also from those to whom it is repugnant." The Apex Court in ***Sanjeev Datta: (1995) 3 SCC 619*** observed that "a Judge who has not committed a mistake is yet to be born". ***Halsbury's Laws of England, Vol. 30 (3rd Edn., Butterworths 1952-64) 707*** states that the object of judicial privilege is not to protect malicious or corrupt judges, but …. It is necessary that such persons should be permitted to administer the law not only independently and freely and without favour, but also without fear.

4. ***Factual background*:-** The anchor fact of the present criminal contempt is briefly recapitulated. Eight writ petitioners filed writ petition being WP(C)No.363/2014 against the State of Meghalaya, Headman of village Dorbar Pamrakmai, Secretary village and Secretary of village Dorbar Pamrakmai. The writ petitioners were born and brought up at Pamrakmai village, East Jaintia Hills District, Meghalaya and they were the permanent residents of Pamrakmai village. The writ petitioners on attaining their marriageable ages entered into marriage with non-tribal, who does not belong to their village and ever since their marriage with non-tribal, they have been constantly subjected to harassment and threat to their lives and finally without any notice ex-communicated by the Headman and Secretary of the Pamrakmai village and further prohibited them from visiting their village nor allow them to visit their family members and also that the respondents had even denied the residential certificates in order to deny the claim of the writ petitioners the benefits of the Govt. schemes nor could they get any rented houses and jobs in the absence of residential certificates. The villagers have to obtain No Objection Certificates (for short 'NOCs') from the Headman of the village for the purpose of obtaining death and birth certificates, registration of any documents as well as for obtaining the building permissions and obtaining loans. It is the further case of the writ petitioners that forcing the villagers to obtain NOCs from the Headman of the village for the said purposes is highly illegal and also that the District administration cannot force the villagers to obtain NOCs from the Headman. No rule of law has empowered the Headman of the village to issue NOCs for the purpose of obtaining loan, building permission, death and birth certificates and registration of any documents. In this factual background, the learned Single Judge passed the judgment and order dated 10.12.2014 in WP(C)No.363/2014. The operative portion of which reads as follows:-

"6. Therefore, I am of the considered view that, in a State 2(two) parallel Governments cannot run simultaneously. It is the Government, District Administration and the Police who are established by law to look after the matter in all respect and no assistant should be sought from any headman. Headmen should confine themselves for social development of their locality only and not to take the law in their own hands or to interfere with the administration. They have no power to issue any kind of certificate unless empowered by rule or laws.

7. The Chief Secretary, Government of Meghalaya, District Administration and Police are directed to look into the matter seriously and to put an end to all these types of parallel Government practices for the smooth functioning of the administration, peace and prosperity of the people and State.

8. Government, District Administration and Police are directed not to indulge or ask people to obtain NOC from Headmen but they should function their duties independently as per rules and laws. For example, if a person approach for a sale deed, his case to be considered under Registration Act. Birth/Death certificate should be regulated through Municipal Act. Building permission as per Bye Laws of MUDA. Loan as per Banking Act and permanent residential certificate or any other certificate also should be as per rule. Electric connection as per electricity Act."

Against the said judgment and order of the learned Single Judge dated 10.12.2014, writ appeal being WA No.2/2015 had been filed before the Division Bench and in that writ appeal, the Division Bench did not pass any order for staying the operation of the said judgment and order of the learned Single Judge dated 10.12.2014 and the said writ appeal i.e. WA No.2/2015 is pending before the Division Bench.

5. The Chief Executive Member (CEM) of the Khasi Hills Autonomous District Council (for short 'KHADC'), Adelbert Nongrum issued a press statement that he dared the High Court of Meghalaya to hold him in contempt and to punish him for defying the said judgment and order of the learned Single Judge dated 10.12.2014. The said statement of Adelbert Nongrum was published in the front page of widely circulated local daily "Meghalaya Times" dated 31.12.2014 under the caption "KHADC CEM dares

court to hold him in contempt". The said press statement of Adelbert Nongrum read as follows:-

"***KHADC CEM dares court to hold him in contempt***

Staff Reporter

***Shillong, Dec 30**: The Chief Executive Member (CEM) of the Khasi Hills Autonomous District Council, Adelbert Nongrum on Tuesday dared the Meghalaya High Court to hold him in contempt and to punish him for the same.*

The CEM was speaking at a function where he inaugurated the statute of the martyr U Kiang Nongbah at Civil Hospital junction in the city.

During his speech, the CEM had said, talked about the recent order of the Meghalaya High Court banning headmen from issuing No Objection Certificates (NOCs) and had said, "The tradition and customs does not depend on written laws but by practice and convention."

The CEM had said that the District Council has got its own powers while further questioning the order passed by the High Court Judge Justice S.R. Sen adding "I'll speak here and let it be a contempt of court …. let them punish me."

Nongrum also questioned which is supreme, the written laws or the customary practices of indigenous community.

On the issue of the indigenous Khasi language, he said, "While the State is busy shouting for the implementation of the Inner Line Permit (ILP), there is a sudden move to make Khasi (MIL) as a compulsory elective subject, which will no doubt dilute the indigenous language."

Nongrum however said that this is a blessing in disguise as it will wake the indigenous people up from their slumber.

Urging the Supreme Court to intervene in the matter, he said that the District Council will not sit on the issue but will file an appeal to the division bench of the High Court against the order.

On another note, Nongrum also hailed the ruling of the National Green Tribunal in the context of the ban imposed on the extraction and transportation of coal in Meghalaya.

"I hail the NGT ruling because it is the failure of the Meghalaya government to come up with a policy to protect and preserve the environment besides taking care of the livelihood activities of its people while taking up coal mining", he said.

With regard to the inauguration of the statute of U Kiang Nongbah, Nongrum said that erecting monuments of such freedom fighters is not enough even as he added that it is meaningless to just remember them if we don't have strong determination to fight for a cause till the end.

According to him, time has come for us to question whether we still have such martyrs.

"No doubt we have many nation lovers but very few freedom fighters today especially when our struggle is at its last stage", he added.

Reiterating that it is not enough to just speak about the history of such fighters, Nongrum said, "It is also time to question that what will our indigenous community do to ensure that its people do not become slaves or a minority in their own land.

Also speaking at the function, North East Students' Union (NESO) chairman Samuel B Jyrwa said the statue of the Kiang Nongbah will instill the spirit of fighting against the many forces that are threatening the indigenous community till today.

Stating that the state is yet to remove that mark of feeling threatened, he said, till today the issue of influx and illegal immigration by Bangladeshi and Nepal is still a big threat to our indigenous tribe.

"People from outside are getting an upper hand over the economic activities and this is another threat which all should be of concern," he added.

KSU president Daniel Khyriem said that the red flag on the statute signifies that the fight for the cause of the indigenous community will continue and it is a mark to show that the spirit of U Kiang Nongbah still lives.

It may be mentioned here, the statue was an initiative taken up by the Khasi Students' Union (KSU) and the chief artist of the monument Raphael Warjri took over two months to complete the statute."

6. Another statement of Adelbert Nongrum, CEM, KHADC was also published in the widely circulated local daily "The Shillong Times" dated 08.01.2015 under the caption "Council to challenge judgment against traditional bodies". His press statement read as follows:-

"Council to challenge judgment against traditional bodies

KHADC files appeal against HC ruling

By our Reporter

SHILLONG: The KHADC has filed an appeal before the Division Bench of the High Court of Meghalaya against the recent ruling of the court that had questioned the role of the traditional heads in the State.

"We filed an appeal before the Division Bench on Tuesday," KHADC CEM Adelbert Nongrum said here on Wednesday.

He said that the Council was against the judgment by the Single Bench of the high court since it was passed on the ground that the traditional bodies do not have their own written laws.

"The court has to respect the practice and convention which the traditional bodies have been following since times immemorial," the KHADC CEM said.
Nongrum said that the High Court judge SR Sen had passed the judgment by taking into account a single case in which the two parties had already arrived into a compromise.

"We cannot generalize the traditional institutions on the basis of an isolated case. I strongly suspect that there is a hidden agenda against the indigenous community behind this ruling," he said. Nongrum informed that he has convened an all-party meeting on Friday to discuss the recent ruling of the court. "I feel that all the political parties should jointly voice their concern against the ruling of the court," he said."

7. This High Court also initiated criminal contempt proceeding against Mr. Adelbert Nongrum, CEM, KHADC, for scandalising the High Court of Meghalaya and also for his open challenge to the contempt of court by registering a CRL. OP (C) No.1/2015 under the order of the High Court dated 27.01.2015. The said Adelbert Nongrum, CEM, KHADC in his said press statement clearly stated that "I strongly suspect that there is a hidden agenda against the indigenous community behind this ruling". When he appeared before this Court, he admitted that he issued the press statement "dared the Meghalaya High Court to hold him in contempt and to punish him for the same" which appeared in the Meghalaya Times dated 31.12.2014 and also did not deny that he made a statement that "I strongly suspect that there is a hidden agenda against the indigenous community behind passing the judgment and order dated 10.12.2014 by the High Court of Meghalaya in

WP(C)No.363/2014. Adelbert Nongrum respondent/contemnor in CRL. OP (C) No.1/2015 filed the SLP (Crl) No(s) 1716/2015 against the order of this Court dated 27.01.2015 for registering of criminal contempt being SLP (Crl) No(s) 1716/2015 in the Supreme Court. The said SLP (Crl) No(s) 1716/2015 had been disposed of vide order dated 13.03.2015 with the observations that "permission to file SLPs is granted. We have heard learned senior counsel appearing for the petitioner. All that we wish to state at this stage is that the Division Bench shall proceed with expedition to decide the contempt petition pending before it without being influenced, in any manner, whatsoever by any observations made in the order dated 27th January, 2015 passed by the learned Single Judge inasmuch as he has found that the proceedings should have been laid before the Division Bench. With these observations, the Special Leave Petitions are disposed of" and accordingly, the criminal contempt i.e. CRL.OP(C)No.1/2015 is pending before this Court.

8. The judgment and order of this Court dated 27.01.2015 passed in CRL.OP(C)No.1/2015 was published in almost all the leading local dailies. The initiation of criminal contempt proceeding i.e. CRL.OP(C)No.1/2015 against Adelbert Nongrum was also published in the local daily and also special security arrangements was made by the District Administration even to the extent of passing Section 144 Cr.P.C. in and around the campus of this High Court whenever the said criminal contempt i.e. CRL.OP(C)No.1/2015 and writ appeal i.e. WA No.2/2015 are taken up for hearing. While the said criminal contempt i.e. CRL.OP(C)No.1/2015 and said writ appeal i.e. WA No.2/2015 are pending, the respondent/contemnor of the present criminal contempt being CRL.OP(C)No.2/2015 again issued a press statement stating that he issued the NOCs to the villagers in clear violation of the said judgment and order of this Court dated 10.12.2014 to the newsmen. His statement was published as news item under the caption "Village Sordar

issues certificates in violation of High Court order" in the widely circulated local daily "The Shillong Times" dated 18.04.2015. His press statement read as follows:-

> "***Village Sordar issues certificates in violation of HC order***
>
> *By our Reporter*
>
> *SHILLONG: In a clear cut case of violation of the ruling of the High Court of Meghalaya, a village Sordar claimed that he has been issuing certificates to the residents of his village.*
>
> *"I have been issuing the certificates since many villagers come to me for issue of certificates either for opening of a bank account or for submission to the government departments to avail various schemes," Skhembor Khongjirem, Sordar of Wahkhen village in East Khasi Hills District, said while taking to newsmen here on Friday.*
>
> *He claimed that the certificates have greatly helped residents, especially farmers who are applying for loan and various government schemes.*
>
> *Meanwhile, the Sordar dismissed as baseless the allegation that the Wahkhen market was closed down by the police.*"

9. After, the registration of criminal contempt i.e. CRL.OP(C)No.2/2015, by an order of this Court, the charge of criminal contempt as contained therein was communicated to the contemnor in clear terms in writing while asking him to file his reply/defence. In reply thereto, he has submitted in detail by filing a show cause statement/defence. Moreover, during the course of hearing, there was no request to the Court for grant of any further opportunity to file additional reply to the charge etc. The respondent/contemnor in his show cause statement did not deny his statement published in The Shillong Times dated 18.04.2015 and when he appeared before this Court on 29.04.2015, he contended that since he is from a remote area, did not anticipate the consequence to follow. In his show cause statement, the respondent/contemnor did not even offer unconditional apology but simply stated that he apologized any act construed as contempt

as the same was not willfully or intentionally. This Court after full length hearing of the submission of Mr. SP Mahanta, learned senior counsel appearing for the respondent/contemnor, who also appeared in Court in person passed the order dated 29.04.2015, which read as follows:-

> "*<u>29.04.2015</u>*
>
> *Mr. SP Mahanta, learned senior counsel assisted by Mrs. NG Shylla, learned counsel, appears for contemnor.*
>
> *Heard and order reserved.*
>
> *List for order tomorrow (30.04.2015). Contemnor who is present in Court does not deny the statement published in Shillong Times dated 18.04.2015. It is submitted on his behalf by Mr. Mahanta, learned senior counsel, that the contemnor comes from a remote area and did not anticipate the consequence to follow. He has also tendered unconditional apology. We have perused the reply to show cause with unconditional apology filed on behalf of the contemnor. The apology does not seem to be wholly unconditional, and moreover looking to the background of the case in WA as well as another contempt referred to by learned Single Judge (Hon'ble Mr. S.R. Sen, J) which is also pending before the Division Bench and which inter alia, contains very serious allegations of open defiance and challenge to the impugned order passed by learned Single Judge and further that the Majesty of Law as well as the dignity of this Court, has suffered irreparable damage on that count, we reject the apology and take the contemnor in custody with directions to produce him for Medical Checkup, and then to lodge him in jail. He shall be produced in Court tomorrow at the time of pronouncement of order.*"

10. The Apex Court (Constitution Bench) in ***Brahma Prakash Sharma and Ors. v. State of U.P. AIR 1954 SC 10*** had considered the meaning of "Scandalizing the Court and in that case the Bar Association passed and published a resolution pointing out to superior authorities that certain judicial Officers are incompetent". The Apex Court in Brahma Prakash Sharma's case (Supra) observed that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts. The object of contempt

proceedings is not to afford protection to Judges personally form imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened. The relevant portion of para 12 read as follows:

> *"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".*

11. The Apex Court in ***E.M.Sankaran Namboodripad v. T.Narayanan Nambiar (1970) 2 SCC 325*** had upheld the conviction of the Chief Minister who made a press statement in a press conference held by him at Trivandrum on November 9, 1967, making derogatory remark against the Judge in contempt proceeding. Para No. 2, 3, 4, 6, 8 and 34 of ***E.M.Sankaran Namboodripad's*** case *(**Supra**)* read as follows:

> *"**2**. The conviction is based on certain utterances of the appellant, when he was Chief Minister, at a Press Conference held by him at Trivandrum, on November 9, 1967. The report of the Press Conference was published the following day in some Indian newspapers. The proceedings were commenced in the High Court on the sworn information of an Advocate of the High Court, based mainly on the report in the Indian Express. The appellant showed cause against the notice sent to him and in an elaborate affidavit stated that the report 'was substantially correct, though it was incomplete in some respects.'*
>
> ***3**. The offending parts of the Press Conference will be referred to in this judgment, but we may begin by reading it as a whole. This is what was reported:*

“Marx and Engels considered the judiciary as an instrument of oppression and even today when the State set up his (sic) not undergone any change it continues to be so. Mr. Nambudiripad told a news conference this morning. He further said that Judges are guided and dominated by class hatred, class interests and class prejudices and where the evidence is balanced between a well dressed pot-bellied rich man and a poor ill-dressed and illiterate person the judge instinctively favours the former, the Chief Minister alleged.

The Chief Minister said that election of Judges would be a better arrangement, but unless the basic state set up is changed, it could not solve the problem.

Referring to the Constitution the Chief Minister said the oath he had taken was limited only to see that the Constitutional provisions are practised. 'I have not taken any oath' the Chief Minister said "that every word and every clause in the Constitution is sacred".

Before that he had also taken an oath, Mr. Nambudiripad said, holding aloft a copy of the Marxist party's programme and read out extracts from it to say that the oath had always held that nothing much could be done under the limitations of the Constitution.

Raising this subject of Constitution and judiciary suo motu at the fag end of his news conference the Chief Minister said so many reports have appeared in the press that Marxists like himself, Mr. A.K. Gopalan, and Mr. Imbichi Baba (Transport Minister) were making statements critical of the judiciary "presumably with the idea that anything spoken about the court is contempt of court".

His party had always taken the view, the Chief Minister said that judiciary is part of the class rule of the ruling classes. And there are limits to the sanctity of the judiciary. The judiciary is weighted against workers, peasants and other sections of the working classes and the law and the system of judiciary essentially serve the exploiting classes. Even where the judiciary is separated from the executive it is still subject to the influence and pressure of the executive. To say this is not wrong. The judiciary he argued was only an institution like the President or Parliament or the Public Service Commission. Even the President is subject to impeachment. After all, sovereignty rested not with any one of them but with the people. Even with regard to Judges confidential records are being kept why? The judge is subject to his own idiosyncrasies and prejudices. We hold the view that they are guided by individual idiosyncrasies, guided and dominated by class interests, class hatred, and class prejudices. In these conditions we have not pledged ourselves not to criticise the judiciary or even individual judgments.

This did not mean, he explained that they could challenge the integrity of the individual judge or cast reflections on individual judgments, the Chief Minister contended.

He did not subscribe to the view that it was an aspersion on integrity when he said that judges are guided and dominated by class hatred and class prejudices. 'The High Court and the Supreme Court can haul me up, if they want' he said".

***4**. The affidavit which he filed later in the High Court explained his observations at the press conference, supplied some omissions and pleaded want of intention to show disrespect and justification on the ground that the offence charged could not be held to be committed, in view of guarantee of freedom of speech and expression under the Constitution. He stated that his observations at the press conference did no more than give expression to the Marxist philosophy and what was contained in Chapter 5 of the Programme of the Communist Party of India (Marxist) adopted in November 1964. His pleas in defence were accepted by Justice Mathew who found nothing objectionable which could be termed contempt of court. The other two learned Judges took the opposite view. Judgment was entered on the basis of the majority view.*

***6**. The law of contempt stems from the right of the courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in facie curaie and by the superior courts on their own behalf or on behalf of courts subordinate to them even if committed outside the courts. Formerly, it was regarded as inherent in the powers of a Court of Record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempts. The chief forms of contempt are insult to judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court and scandalising the judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a single judge or a single court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system. The question is whether in the circumstances of this case the offence was committed.*

***8**. It is no doubt true that Lord Morris in 1899 A.C. 549 at p. 561 observed that the contempt of court known from the days of the Star Chamber as Scandalum Justiciae Curiae or scandalising the judges, had fallen into disuse in England. But as pointed out by Lord Atkin in Andre Paul Terence Ambard v. The Attorney General of Trinidad and Tobago A.I.R. 1936 P.C. 141 at 143*

the observations of Lord Morris were disproved within a year in The Queen v. Gray (1900) 2 QB 36 at 40. Since then many convictions have taken place in which offence was held to be committed when the act constituted scandalising a judge.

***34**. Mr. V.K. Krishna Menon exhorted us to give consideration to the purpose for which the statement was made, the position of the appellant as the head of a State, his sacrifices, his background and his integrity. On the other hand, we cannot ignore the occasion (a press conference), the belief of the people in his word as a Chief Minister and the ready ear which many in his party and outside would give to him. The mischief that his words would cause need not be assessed to find him guilty. The law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. Judged from the angle of courts and administration of justice, there is not a semblance of doubt in our minds that the appellant was guilty of contempt of court. Whether he misunderstood the teachings to Marx and Engels or deliberately distorted them is not to much purpose. The likely effect of his words must be seen and they have clearly the effect of lowering the prestige of judges and courts in the eyes of the people. That he did not intend any such result may be a matter for consideration in the sentence to be imposed on him but cannot serve as a justification. We uphold the conviction".*

12. The Apex Court in ***R.K.Garg, Advocate v. State of Himachal Pradesh (1981) 3 SCC 166*** held the appellant (R.K.Garg) guilty of conduct which is highly unbecoming of a practicing lawyer. The unconditional written apology submitted by R.K.Garg was not accepted but the sentence of imprisonment passed in the criminal contempt was reduced. Para 8 of the SCC in ***R.K.Garg's*** case (***Supra***) read as follows:

*"**8**. We will be failing in our duty if before parting with the case we did not draw attention to what the appellant's counsel Shri Bhagirath Das said in the High Court during the course of his arguments. Shri Bhagirath Das told the learned Judges of the High Court :*

Better part of discretion is to ignore it instead of fanning it. It is a tussle between legal profession and judiciary (emphasis supplied since it must have been placed).

This part of the argument of the appellant's counsel in the High Court is as much to be regretted as the conduct of the appellant before the learned trial Judge. Discretion is undoubtedly the better part of valour but we did not know, until we read the argument advanced by the appellant's counsel in the High Court, that the better part of discretion is to ignore that a practising advocate had hurled a shoe at a Judge. We are also unable to understand how the High Court was "fanning" the incident by taking cognizance of it, which it was its clear duty to do. It makes sorry reading that "a tussle between legal profession and judiciary" should find its culmination in a member of that noble profession throwing a shoe at a Judge".

13. The Apex Court in ***R.K.Anand v. Registrar, Delhi High Court (2009) 8 SCC 106*** had considered the nature and extent of right of media to deal with the pending trials and also the nature and standard of proof required under. Para 289, 290 and 291 of the SCC in ***R.K.Anand's*** case (Supra) read as follows:

*"**Reporting of pending trial***

***289**. We are also unable to agree with the submission made by Mr. P. P. Rao that the TV channel should have carried out the stings only after obtaining the permission of the trial court or the Chief Justice of the Delhi High Court and should have submitted the sting materials to the court before its telecast. Such a course would not be an exercise in journalism but in that case the media would be acting as some sort of special vigilance agency for the court. On little consideration the idea appears to be quite repugnant both from the points of view of the court and the media.*

***290**. It would be a sad day for the court to employ the media for setting its own house in order; and media too would certainly not relish the role of being the snoopers for the court. Moreover, to insist that a report concerning a pending trial may be published or a sting operation concerning a trial may be done only subject to the prior consent and permission of the court would tantamount to pre- censorship of reporting of court proceedings. And this would be plainly an infraction of the media's right of freedom of speech and expression guaranteed under Article 19(1) of the Constitution.*

***291**. This is, however, not to say that media is free to publish any kind of report concerning a sub-judice matter or to do a sting on some matter concerning a pending trial in any manner they please. The legal parameter within which a report or comment on a sub-judice matter can be made is well defined and any action in breach of the legal bounds would invite consequences. Compared to normal reporting, a sting*

operation is an incalculably more risky and dangerous thing to do. A sting is based on deception and, therefore, it would attract the legal restrictions with far greater stringency and any infraction would invite more severe punishment".

14. The Apex Court in ***Sahara India Real Estate Corporation Ltd and ors v. Securities and Exchange Board of India and Anr: (2012) 10 SCC 603*** held that:

> ***"(II) Contempt of Courts Act, 1971***
>
> ***35****. Section 2 defines "contempt", "civil contempt" and "criminal contempt". In the context of contempt on account of publications which are not fair and accurate publication of court proceedings, the relevant provisions are contained in Sections 4 and 7 whereas Section 13 is a general provision which deals with defences. It will be noticed that Section 4 deals with "report of a judicial proceeding". A person is not to be treated as guilty of contempt if he has published such a report which is fair and accurate. Section 4 is subject to the provisions of Section 7 which, however, deals with publication of "information" relating to "proceedings in chambers". Here the emphasis is on "information" whereas in Section 4 emphasis is on "report of a judicial proceeding". This distinction between a "report of proceedings" and "information" is necessary because Section 7 deals with proceedings in camera where there is no access to the media. In this connection, the provisions of Section 13 have to be borne in mind. The inaccuracy of reporting of court proceedings will be contempt only if it can be said on the facts of a particular case, to amount to substantial interference with the administration of justice. The reason behind Section 4 is to grant a privilege in favour of the person who makes the publication provided it is fair and accurate. This is based on the presumption of "open justice" in courts. Open justice permits fair and accurate reports of court proceedings to be published. The media has a right to know what is happening in courts and to disseminate the information to the public which enhances the public confidence in the transparency of court proceedings. As stated above, sometimes, fair and accurate reporting of the trial (say a murder trial) would nonetheless give rise to substantial risk of prejudice not in the pending trial but in the later or connected trials. In such cases, there is no other practical means short of postponement orders that is capable of avoiding such risk of prejudice to the later or connected trials. Thus, postponement order not only safeguards fairness of the later or connected trials, it prevents possible contempt by the Media.*
>
> ***47****. One more aspect needs to be mentioned. Excessive prejudicial publicity leading to usurpation of functions of the Court not only interferes with administration of justice which is sought to be protected under Article 19(2) it also prejudices or interferes with a particular legal proceedings. In such case,*

Courts are duty bound under inherent jurisdiction, subject to above parameters, to protect the presumption of innocence which is now recognised by this Court as a human right under Article 21, subject to the applicant proving displacement of such a presumption in appropriate proceedings".

15. The Apex Court in ***L.D.Jaikwal v. State of U.P (1984) 3 SCC 405*** held that the apology tendered by the contemnor should be accepted as an exception not as a rule in every case. In that case written apology submitted by the contemnor have not been accepted after scandalizing the Judge. Para 1, 7 and 8 of the SCC in ***L.D.Jaikwal's*** case (***Supra***) read as follows:

*"**1**. We are sorry to say we cannot subscribe to the 'slap-say sorry-and forget' school of thought in administration of contempt jurisprudence, Saying 'sorry' does not make the slapper poorer. Nor does the cheek which has taken the slap smart less upon the said hypocritical word being uttered through the very lips which not long ago slandered a judicial officer without the slightest compunction.*

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

> ***8***. *We firmly believe that considerations regarding maintenance of the independence of the judiciary and the morale of the Judges demand that we do not allow the appellant to escape with impunity on the mere tendering of an apology which in any case does not wipe out the mischief. We are of the opinion that the High Court was therefore justified in imposing a substantive sentence. And the sentence imposed cannot be said to be excessive or out of proportion".*

16. The Apex Court in ***Bal Kishan Giri v. State of Uttar Pradesh (2014) 7 SCC 280*** held that the judicial process is based on probity, fairness and impartiality which is unimpeachable. Casting of bald, oblique, unsubstantiated aspersions against the Judges of the High Court not only causes agony and anguish to the Judge concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice. After such finding, the Apex Court upheld the order of the High Court by not accepting the appellant's apology since the same is not bonafide. Para 17, 18, 19, 20, 21, 22 and 26 of the SCC in ***Bal Kishan Giri's*** case (***Supra***) read as follows:

> *"**17**. In **L.D. Jaikwal v. State of U.P. (1984) 3 SC 405: 1984 SCC (Cri) 421**, this Court noted that it cannot subscribe to the 'slap-say sorry and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper poorer. [See also: **T.N. Godavarman Thirumulpad (102) v. Ashok Khot**: (2006) 5 SCC 1: AIR 2006 SC 2007]. So an apology should not be "paper apology" and expression of sorrow should come from the heart and not from the pen; for it is one thing to 'say' sorry, it is another to 'feel' sorry.*
>
> ***18**. An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the "contrition which is the essence of the purging of contempt". Of course, an apology must be offered and that too clearly and at the earliest opportunity. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the Court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (Vide: **Debabrata Bandopadhyay v. The State of West Bengal** AIR 1969 SC 189: 1969 Cri LJ 401, **Mulkh Raj v. The State of Punjab**: (1972) 3 SCC 839: 1973 SCC (Cri) 24, **Hailakandi Bar Association v. State of Assam** (1996) 9 SCC 74: 1996 SCC*

(Cri) 921, ***C. Elumalai v. A.G.L. Irudayaraj*** *(2009) 4 SCC 213 and* ***Ranveer Yadav v. State of Bihar*** *(2010) 11 SCC 493: 2011 1 SCC (Cri) 200.*

19*. This Court has clearly laid down that an apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language (sic and later on tendering apology) does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted. (Vide:* ***Shri Baradakanta Mishra v. Registrar of Orissa High Court (1974) 1 SCC 374: 1974 SCC (Cri) 128, The Bar Council of Maharashtra v. M.V. Dabholkar (1976) 2SCC 291 AIR 1976 SC 242, Asharam M. Jain v. A.T. Gupta (1983) 4 SCC 125 1983 SCC (Cri) 771, Mohd. Zahir Khan v. Vijai Singh (1992) Supp (2) SCC 72: 1992 SCC (Cri) 526, Ministry of Information & Broadcasting, In Re: (1995) 3 SCC 619; Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai: (2008) 14 SCC 561; and Vishram Singh Raghubanshi v. State of U.P. (2011) 7 SCC 776 : 2011 3 SCC (Cri) 298.***

20. *That the power to punish for contempt is a rare species of judicial power which is by the very nature calls for exercise with great care and caution. Such power ought to be exercised only where "silence is no longer an option****.***"

(See: ***S. Mulgaokar In re: (1978) 3 SCC 339: 1978 SCC (Cri) 402; H.G. Rangangoud v. State Trading Corporation of India Ltd.: (2012) 1 SCC 297: (2012) 1 SCC (Cri) 539; Maninderjit Singh Bitta v. Union of India: (2012) 1 SCC 273; (2012) 1 SCC (Civ) 88: (2012) 1 SCC (Cri) 528: (2012) 1 SCC (L&S) 83; T.C. Gupta v. Hari Om Prakash: (2013) 10 SCC 658; (2014) 1 SCC (Cri) 18 and Arun Kumar Yadav v. State of U.P.: (2013) 14 SCC 127: (2014) 2 SCC (Civ) 412: (2014) 4 SCC (Cri) 124****).Power of courts to punish for contempt is to secure public respect and confidence in judicial process. Thus, it is a necessary incident to every court of justice.*

21. *Being a member of the Bar, it was the appellant's duty not to demean and disgrace the majesty of justice dispensed by a court of law. It is a case where insinuation of bias and predetermined mind has been leveled by a practicing lawyer against three judges of the High Court. Such casting of bald, oblique, unsubstantiated aspersions against the judges of High Court not only causes agony and anguish to the judges concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice. The judicial process is based on probity, fairness and impartiality which is unimpeachable. Such an act especially by the members of the Bar who are another cog in the wheel of justice is highly*

reprehensible and deeply regretted. Absence of motivation is no excuse.

22. *In view of the above, we are of the considered opinion that the High Court has not committed any error in not accepting the Appellant's apology since the same is not bona fide. There might have been an inner impulse of outburst as the Appellant alleges that his nephew had been murdered, but that is no excuse for a practicing lawyer to raise fingers against the court.*

26. *In view of the judgment passed today in* ***Bal Kishan Giri v. State of UP****, this appeal is dismissed. However, the fine of Rs. 20,000/- imposed on the Appellant by the High Court by way of impugned judgment and order, is reduced to Rs. 2,000/- and is directed to deposit the said fine forthwith.*

17. For the foregoing reasons and discussions, we are of the considered view that there is complete lack of bonafide on the part of the contemnor in tendering his apology for the reasons that:

(i) He made an attempt to justify his press statement only on the ground that he being a villager from a remote village has no knowledge of the consequence of making statement and openly challenging the authority of the Court by disobeying the order of the Court and scandalizing the Highest Court of the State;

(ii) He boldly admitted his press statement before this Court;

(iii) And, he made a conditional apology that if any of his act is construed as contempt.

18. In the premises discussed hereinabove, we hold that the contemnor has willfully and deliberately scandalized the Court and openly defied the authority of the Court. Thus, he is held guilty of committing criminal contempt which is punishable under Section 12 of the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India.

19. Now upon holding the contemnor guilty of committing criminal contempt of the court, we proceed to hear him and learned counsel for the parties as to the quantum of sentence. We have heard the contemnor and learned senior counsel Mr. SP Mahanta, for him and Mr. ND Chullai, learned Sr. GA for the State.

20. Mr. SP Mahanta, learned senior counsel submitted that the contemnor is the only bread winner in the family and his youngest child is just six months old. However, Mr. SP Mahanta, learned senior counsel, admits the fact that the contemnor had called the press-conference and made the statement that he is issuing certificates in violation of Court's order apart from addressing the media persons on other issues. Mr. SP Mahanta also submitted that now the message has gone across clear and loud to all the concerned that the law will take its course in case of any attempt by any person to defy the orders' of the High Court or scandalize the Court. On being asked, the contemnor stated that his family has a holding of over 100 hectares of land. Thus, the submission of Mr. SP Mahanta that the contemnor is the only bread winner in the family and in his absence, his family may starve appears to be totally unfounded.

21. Mr. ND Chullai, learned Sr. GA, appearing on behalf of the State also pleaded to the Court for taking a lenient view on the question of sentence and suggested that looking to the background and circumstances of the case, one month's sentence would suffice to meet the ends of justice.

22. As discussed and mentioned hereinabove, we have held the contemnor guilty of committing criminal contempt under Section 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution. Now, on the question of sentence, having taken into consideration the totality of

circumstances of the case, we punish the contemnor with a sentence of 20 days simple imprisonment with a fine of Rs.1000/-, which shall be deposited within a period of two months. In case of default in payment of fine, the contemnor shall undergo further 10 days simple imprisonment. In view of the aforesaid consideration of materials and pronouncement on conviction and sentence, this criminal contempt stands disposed of.

JUDGE **CHIEF JUSTICE**

Lam/S. Rynjah