

M.R. PARASHAR AND ORS.

v.

DR. FAROOQ ABDULLAH AND ORS.

January 31, 1984

[Y.V. CHANDRACHUD, C.J. AND A.P. SEN, J.]

*Contempt of Courts Act, 1971—Publication in a newspaper of allegation of Contempt of Court by Chief Minister—Requisite proof not furnished—No record of speech produced—Whether could be committed for contempt.*

A news item appeared in the newspaper of which respondent No. 2 was its editor, that while addressing a rally of Judicial Employees' Welfare Association, the Chief Minister of Jammu and Kashmir denounced and ridiculed the judiciary stating that "Justice is being bought in judicial Courts" and that he would never honour the Court's stay orders because justice could be bought with money. The news item also stated that the Chief Minister expressed his regret to the Chief Justice and other Judges who were present at the meeting, explaining that the strong words used by him were the voice of his conscience and that he had the greatest regard for the judiciary.

The petitioner filed the contempt petition against the Chief Minister.

Although a show cause notice was issued under the Contempt of Courts Act 1971 to the Chief Minister (respondent) on March 18, 1983 no counter-affidavit was filed till September 26, 1983. When the contempt petition was called out on that day his advocate accepted the notice on behalf of the respondent. Eventually on November 21, 1983 the affidavit of the Chief Minister dated November 9, 1983 was taken on record.

While the Chief Minister denied having made the statements attributed to him, the Editor asserted that the version published in the newspaper was true.

On the question whether the statements published in the newspaper amounted to contempt of court.

Dismissing the petition,

**Held :** What is involved in this case is criminal contempt and therefore it is necessary to apply the particular standard of proof required to be established in a criminal case. Respondent, No. 1, on the material placed on record, cannot be held to be guilty of the charge. [764F]

In matters involving allegations of criminal contempt, the Court has to act both as a prosecutor and as a Judge. It does so to uphold the authority of law and not in defence of a particular Judge. Secondly, the right of free speech is an important right of the citizen and *bona fide* criticism of any system or institution is aimed at inducing the administrators of that system or institution to look inwards and improve its public image. Courts do not like to assume the posture that they are above criticism. At the same time though law does not restrain the expression of disapprobation against what is done in or by Courts of law, the liberty of free expression is not to be confounded with a licence to make unfounded allegations of corruption against the judiciary. The abuse of the liberty of free speech and expression carries the case nearer the law of contempt. Those who criticise the judiciary must remember that they are attacking an institution which is indispensable for the survival of the rule of law but which has no means of defending itself. Therefore, Judges must receive the protection of law from unfounded attacks on their character.

[765H; 766A, B-E; F-G]

If the Chief Minister said what was alleged in the news item he was in contempt; if he had not, the Editor had committed a contempt by publishing a false report of a scurrilous speech that was never made. In the face of denial by one and an assertion by the other without more, it is difficult to decide who is right. On the one hand is the tendency to ridicule the system of justice and malign those who administer it, on the other is the propensity of the fourth estate for some little sensation and its political involvement. When political considerations pollute the stream of life, sifting truth from falsehood becomes a formidable and forbidding task. In these circumstances it is difficult to record a positive finding that the allegation that the Chief Minister made the particular statement is proved beyond a reasonable doubt. [764D-F]

Although the petitioners had asserted that the Judges of the High Court were present at one of the functions and that they walked out of the meeting on hearing the abusive language used by the Chief Minister no attempt was made to establish the truth of that assertion. A walkout by Judges of the High Court during the speech of the Chief Minister or soon thereafter would have lent considerable weight to the allegation that the statements made by the Chief Minister were open to grave objection.

[764G-H]

When a Chief Minister makes a formal speech an official record of the speech, if it were a prepared speech, or even if it were an extempore speech, should have been kept. No one taped or took down the speeches of a person as important as the Chief Minister. No written record kept contemporaneously or prepared soon after is cited to contradict the allegation that the Chief Minister scandalised the Courts and assailed the character of Judges. [765B-D]

ORIGINAL JURISDICTION : Contempt Petition No. 8118 of 1983.

Under Art. 129 of the Constitution read with Section 15 of the Contempt of Court's Act, 1971.

A        *Subhash Sharma, N. M. Popli and K. R. R. Pillai* for the petitioner.

*S. N. Kacker and Altaf Ahmad* for Respondent No. 1.

B        *M. C. Bhandare, E. C. Agarwala and Mrs. Indira Sawhney* for Respondent.

The Judgment of the Court was delivered by

C        CHANDRACHUD, C.J. This is a petition asking that the respondents be committed for contempt for certain statements allegedly made by Respondent 1, who is the Chief Minister of Jammu and Kashmir. Respondent 2 is the Editor of a newspaper called Daily Kashmir Times in which those statements were published, while Respondent 3 is its correspondent.

D        In the issue of the Daily Kashmir Times dated November 13, 1982, a news item appeared under the caption "CM asks engineers to forcibly occupy club building". According to the report, the Chief Minister, while addressing the annual general meeting of the Institute of Engineers, said that the engineers should occupy a certain building forcibly as it would not be possible for them to evict the Amar Singh Club through the normal legal process and that he would provide the necessary police assistance for that purpose. The report says that the Chief Minister advised the Institute of Engineers to move quickly in the matter before the management of the Club could obtain a stay order from the Court.

F        Another news item appeared in the same newspaper on November 23, 1982 under the caption "Chief Minister says he will never accept courts' stay orders". According to the report, the Chief Minister, while addressing a rally of Judicial Employees' Welfare Association, denounced and ridiculed the judiciary by saying that "justice is being bought in the judicial courts". Taking exception to the frequent stay orders issued by the Courts against the Government, the Chief Minister is alleged to have said : "I will never honour these stay orders even if I am hanged", that justice could be bought with money and that this task could be performed conveniently by any leading lawyer. The news item concludes by saying that later, the Chief Minister expressed his regret to the Chief Justice and other Judges of the High Court who were present at the meeting, explaining that the strong words used by him were the voice of his conscience but, otherwise, he had the greatest regard

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for the judiciary, and that he only wanted quick justice for the people. A

On March 18, 1983 a notice was issued by this Court to the respondents asking them to show cause why action under the Contempt of Courts Act, 1971 should not be taken against them. Since one of the respondents is a Chief Minister, we assumed that there would be no difficulty in serving the notice upon him and he would file his reply promptly, in view of the seriousness of the allegations made against him. But, until September 26, 1983 no counter-affidavit was filed in the matter. When the Contempt Petition was called out on that date, Mr. Altaf Ahmed, accepted the notice on behalf of the Chief Minister. On that date, the Court directed the Chief Minister to file his counter-affidavit within four weeks. On October 21, 1983 the Registry submitted a report to the Court that Mr. Altaf Ahmed had not yet filed his appearance for the Chief Minister. On November 21, 1983 an affidavit dated November 9, 1983 of the Chief Minister was taken on record. Since the Chief Minister denied by that affidavit that he had made the kind of statements attributed to him, we issued a specific direction that Respondent 2, the Editor of Daily Kashmir Times, should appear in person before the Court on November 28, 1983. That was with a view to obtaining his explanation as to how the newspaper came to publish the various statements which the Chief Minister denied he had ever made. B C D E

Respondent 2 appeared before us on November 28, 1983 and stuck to the version published in the newspaper. In the light of that, we reverted to the counter-affidavit filed by the Chief Minister when we found that it did not traverse the allegations of the petitioners satisfactorily. We therefore directed him to file a further affidavit dealing with the allegations against him clearly and specifically. In pursuance of that direction, Respondent 1 filed an affidavit dated December 14, 1983: F

By his affidavit dated January 9, 1984, Respondent 2 has adhered to his original stand that the report which appeared in the Daily Kashmir Times was true and correct. According to him, the Chief Minister did make the various statements complained of and that his denial is untrue. G

If we were satisfied that the Chief Minister had made the statements attributed to him, it would have been a serious matter. Then, we could not have dismissed the peroration as an ill-tempered H

A outburst of an uninformed person. Considering the high position which Chief Ministers occupy in the public life of our country, their words and deeds have to be presumed to be intended. The defence that what was said or done was not intended is not open to persons occupying high public offices. The formal expression of regard for the courts under the pressure of a contempt notice becomes a mere escape if speeches and writings betray defiance of judicial authority and constitute an exhortation to the public to disregard orders passed by courts. But, the Chief Minister denies to have made the utterances, as stoutly as the editor asserts that the reports of the speeches published in his newspaper are true. There is word against word, and no preponderating circumstance which, objectively, compels the acceptance of the word of one in preference to the word of the other. We have two responsible persons before us who pursue honourable professions : one is the Chief Minister of a State and the other is the editor of a newspaper. Both cannot be true in their contentions before us. One of them has clearly violated the law of contempt. If the Chief Minister said what is alleged, he is in contempt. If he has not, the editor has committed contempt by publishing a false report of a scurrilous speech that was never made. In face of denial by one and an assertion by the other without more, it is difficult to decide who is right. On one hand is the tendency to ridicule the system of justice and malign those who administer it. On the other is the propensity of the fourth estate for some little sensation and its political involvement. When political considerations pollute the stream of life, sifting truth from falsehood becomes a formidable and forbidding task. In these circumstances, we are unable to record a positive finding that the allegation that the Chief Minister made the particular statements is proved beyond a reasonable doubt. What is involved in this petition is criminal contempt and, therefore, it is necessary to apply that particular standard of proof.

There is one circumstance which puts us on our guard in accepting the contempt petition. That circumstance is that though, during the course of arguments, it was stated at the Bar on behalf of the petitioners that the learned Judges of the Jammu & Kashmir High Court were present at one of the functions and that they walked out of the meeting on hearing the 'abusive' language used by the Chief Minister, no attempt was made to establish the truth of that assertion. A walk-out by Judges of the High Court during the speech of the Chief Minister or soon after he ended it, would have lent considerable weight to the allegation that the statements made by the Chief Minister were open to grave objection.

But we record the finding of 'not guilty' with a caveat. It is not for us to advise a chosen representative of the people as to how he should conduct his public affairs and what precautions he should take in order to protect himself from similar allegations in future. But, it causes us some surprise that there is on official record whatsoever of the speeches made by the Chief Minister at the two functions. He was invited at those functions in his capacity as the Chief Minister. And, admittedly, he spoke at those functions. With the little knowledge that we have of these matters, we suppose that when a Chief Minister makes a formal speech, an official record of the speech is generally available. If he speaks from a prepared text, that forms the record of what he spoke. But, whether he speaks from a text or speaks extempore, it is unlikely, in the times in which we live, that a speech made by a Chief Minister on a formal occasion will not be taken down or tape-recorded. Tapes have become a part of our life, public and private, sometimes to the point of annoyance. In times when mechanical gadgets have become the order of the day and 'taping', aspecially, has become a common practice, it is surprising that no one taped or took down the speeches of a person as important as the Chief Minister. No written record, kept contemporaneously or prepared soon after, is cited to contradict the allegation that the Chief Minister scandalized the Courts and assailed the character of Judges. As we said, it is not for us to advise any one, least of all those who, in the discharge of their onerous responsibilities, have their own select group of advisers. But, we cannot restrain the observation that it is so much safer for persons who have to make frequent public appearances to have their utterances duly put on paper, before or soon after the event. For those who have nothing to conceal or fear, that is a prudent course of action. For the rest, a constant friction with the law of contempt is inevitable. The former will lay their cards on the table and be cleared. The latter have to live in the hope that the rigorous standard of 'proof beyond a reasonable doubt' will act as their saviour. The latter course of conduct leaves much to be desired from the point of view of men of honour. Courts are not astute to resort to their power to punish any one for criminal contempt. But that reluctance should not be overtaxed.

The reluctance of courts to resort to the provisions of the Contempt of Courts Act springs from their regard for the rule of law. The role of a prosecutor is incompatible with the role of a judge. In matters involving allegations of criminal contempt of Court, these roles are combined and the Court has to act both as a

A prosecutor and as a judge. True, that it acts in order to uphold the authority of law and not in defence of this or that particular judge. But an order punishing a person for such contempt is likely to create the impression, more so in the mind of lay observers, that the judges have acted in defence of themselves. Courts do not like to create such an impression even unwittingly. Secondly, the right of free speech is an important right of the citizen, in the exercise of which he is entitled to bring to the notice of the public at large the infirmities from which any institution suffers, including institutions which administer justice. Indeed, the right to offer healthy and constructive criticism which is fair in spirit must be left unimpaired in the interest of public institutions themselves. Critics are instruments of reforms, not those actuated by malice but those who are inspired by the spirit of public weal. Bona fide criticism of any system or institution is aimed at inducing the administrators of that system or institution to look inwards and improve its public image. Courts do not like to assume the posture that they are above criticism and that their functioning needs no improvement. But it is necessary to make it clear that though law does not restrain the expression of disapprobation against what is done in or by courts of law, the liberty of free expression is not to be confounded with a licence to make unfounded allegations of corruption against the judiciary. The abuse of the liberty of free speech and expression carries the case nearer the law of contempt.

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We would also like to remind those who criticise the judiciary that it has no forum from which to defend itself. The legislature can act in defence of itself from the floor of the House. It enjoys privileges which are beyond the reach of law. The executive is all powerful and has ample resources and media at its command to explain its actions and, if need be, to counter-attack. Those who attack the judiciary must remember that they are attacking an institution which is indispensable for the survival of the rule of law but which has no means of defending itself. In the very nature of things, it cannot engage itself in an open war, nor indulge in releasing contradictions. The sword of justice is in the hands of the Goddess of Justice, not in the hands of mortal judges. Therefore, Judges must receive the due protection of law from unfounded attacks on their character.

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The Chief Minister has stated in his affidavit that he spoke *extempore*. We are not on that. In the first place, *extempore* speeches confer no greater immunity on the speaker than the

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speeches made from prepared texts. Secondly, extempore speeches are not to be made without the application of a careful mind. That is not the definition of an extempore speech. Thirdly, more the extempore, greater the need to keep a written record of the spoken word. In the written record lies the safety of the public speaker, though not, perhaps, the benefit of posterity.

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In the result, we dismiss the contempt petition.

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P.B.R.

*Petition dismissed.*