IN RE: S.K. SUNDARAM

DECEMBER 15, 2000

[K.T. THOMAS AND R.P. SETHI, JJ.]

Contempt of Courts Act, 1971/Penal Code, 1860/Rules to Regulate Proceedings for Contempt of the Supreme Court of India, 1975—Section 2 (c)/Sections 52, 406, 420, 468 and 471 Rule 10—Telegram sent by the contemnor to the CJI calling upon him to step down from his office for having falsified his age—In case of non-compliance, threatened to file criminal complaint and a writ of Quo Warranto—Three days thereafter, a criminal complaint under Section 406, 420, 468 and 471 IPC filed against the CJI before Magistrate—Copy of telegram appended to the said complaint--Contempt of court (criminal) notices issued by Supreme Court to the contemnor on its own motion—Solicitor General of India appointed as Amicus to assist the Court—In reply, contemnor objected to the said notice on the ground that sending of telegraphic message did not amount to publication and consequently no contempt constituted—Held, Criminal contempt of court jurisdiction is not to protect an individual Judge but to protect the administration of justice from being maligned—Scandalising or tendency of scandalising the authority of any Court etc. constitutes criminal contempt—This scandalising can be either by publication of such a matter or by committing of such an act—Even if an act does not amount to publication still it can fall under the category of commission—The contents of the telegram certainly scandalised and lowered the authority of the courts as a whole and particularly that of the Supreme Court of India.

A telegraphic message constitutes publication—The telegraph office is manned by its staff—The destination office of the message is also manned by staff—At all such levels the message is open to be read by those engaged in the transmission process—Appending of a copy of the telegram with the criminal complaint also amounts to publication.

Expression good faith connotes doing of an act with due care and attention—Due care denotes degree of reasonableness in the care sought to be exercised—The question of age of CJI when he was a Judge of High Court had already been raked up by the contemnor himself in 1991—The said question had already been resolved by the President of India—Thus, the

A *telegram and the criminal contempt lacked* **bonafide.**

Power of the Court to appoint an Amicus for its assistance is plenary and beyond the objection by others—Rules Regulating Proceedings for Contempt of the Supreme Court nowhere fixes a stage for such appointments—
B *These can be made at any point of time.*

The Contemnor herein sent a telegraphic communication to Chief Justice of India, on 03-11-2000, calling upon him to step down from the office of Chief Justice of India forthwith, failing which he intimated that he would file a criminal complaint against him for offences under Sections 420, 406,
C **468 and 471 IPC for falsification of his age and writ of Quo Warranto and for a direction to deposit a sum of Rs. 3 crores for usurping the office of Chief Justice of India even after attaining the age of superannuation. Three days thereafter, the Contemnor filed a criminal complaint before the Chief Metropolitan Magistrate, Madras in which he arraigned the CJI as an accused in the case. He produced a copy of the above telegram as one of the documents**
D **appended with the complaint. In the complaint he recited the allegations as mentioned in the telegram and charges under Sections 420, 406, 468 and 471 IPC praying for issuance of notice to the CJI. On the said telegram a notice was issued to the Contemnor on 07-11-2000 on being *prima facie* satisfied that contents of the said telegram amounted to gross contempt of**
E **Court. By the said order, the Solicitor General of India was also directed to assist the Court in these proceedings.**

In his reply to the notice issued, the Contemnor admitted to sending the said telegram and filing the criminal complaint. He tried to justify his actions on the pretext of doing what he believed to be right and fair within the
F **bounds of his knowledge of law and language. In the reply he also mentioned that he had filed a writ petition earlier in this regard which was dismissed. The contemnor objected to the maintainability of the contempt proceedings on the ground of these not being initiated by a report of the witness to the contempt, which would be the basis for charging of the contemnor. The**
G **appointment of Solicitor General of India as *Amicus* to assist the court at the initial stage was also objected by the Contemnor on the ground that the rules governing contempt proceedings permit appointment of Solicitor General only on the court framing charge and intending to proceed with the case. On merits, the Contemnor contended that the telegraphic communication sent by him to the CJI in no way amounted to publication as a result of which no contempt**
H **action would lie against him and even if it amounted to publication, in no way**

it tends to undermine the administration of justice. The Contemnor also submitted that he *bonafide* believed the year of birth of the CJI to be 1934 and therefore, he was actuated by good faith in resorting to the acts done by him. A

Holding the Contemnor guilty of criminal contempt of court, the Court B

HELD : 1. According to Section 2(c) of the Contempt of Courts Act, 1971 criminal contempt is vivisected into two categories. One is publication of any matter which scandalises or tends to scandalise the authority of any court. Second is the doing of any act whatsoever which scandalise or tends to scandalise the authority of any court. If an act is not a criminal contempt merely because there was no publication such act would automatically fall within the purview of the other category because the latter consists of "the doing of any other act whatsoever". The latter category is thus a residuary category so wide enough from which no act of criminal contempt can possibly escape. The common denominator for both is that it scandalises or tends to scandalise any court. [685-H; 686-A, B] C D

Brahma Prakash Sharma & Ors. v. *State of U.P.*, [1953] SCR 1169; *Delhi Judicial Services Association, Tis Hazari Court, Delhi* v. *State of Gujarat*, [1991] 4 SCC 406; *Dr. D.C. Saxena* v. *Hon'ble the Chief Justice of India*, [1996] 5 SCC 216 and *In Re: Ajay Kumar Pandey*, [1996] 6 SCC 510, relied on. E

Halsbury's Laws of England, Para 28 Vol. 9, referred to.

2. The telegraphic communication sent by the Contemnor contains four biddings. The first is a command hurled at the CJI to step down forthwith from the constitutional office. The second is the threat administered to him that if the command is not obeyed forthwith, the CJI would be described as offender having committed offences of cheating and falsification of records and criminal breach of trust. The third is another intimidatory epithet that he would file writ petition for a direction that CJI should pay a sum of Rs. 3 crores. Fourth is an imputation that the CJI is usurper of the office. Any one of these postulates would certainly scandalise and at any rate would tend to scandalise and lower the authority of the courts as a whole, and particularly the Supreme Court of India. Chief Justice of India by virtue of his constitutional ranking is the head of the Indian judiciary. When threats of the above nature have been hurled at him they would unmistakably tend to undermine the position, majesty and dignity of the courts and the law. [689-B, C] F G H

A 3. A telegraphic message can be transmitted only after the sender gives the contents of the message to the telegraph office which would invariably be manned by staff of that office. The message after transmission reaches the destination office which also is manned by members of staff. From there only the message would be despatched to the sendee. At all those levels the message is open to be read by at least those who are engaged in the process of B transmission. It must be remembered that a telegraphic message is not like a letter handwritten by the sender and enveloped in a sealed cover to be opened only by the sendee for reading. That apart, it cannot be successfully contended by the Contemnor that there was no publication of the telegraphic communication despatched by him to the Chief Justice of India because when C he filed the criminal complaint in the court in implementation of the telegraphic threat hurled to the CJI, he appended a copy of the telegram therewith, Thus, he made it public at his own volition. [689-E, F; 690-B]

4.1. The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person D concerned has honestly believed the truth of what is said. The definition of "good faith" in Section 52 IPC starts in the negative tone excluding all except what is allowed to be in its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the E expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. So before a person proposes to make an imputation on another the author must first make an inquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make-believe show for an inquiry. The enquiry expected of him is of such a depth as a reasonable and prudent F man would make with the genuine intention in knowing the real truth of the imputation which is up in his sleeves. If he does not do so he cannot claim that what he did was *bonafide.* [690-D, E, F, H; 691-A]

Harbhajan Singh v. *State of Punjab & Anr.* AIR (1996) SC 97, referred to.

G 4.2. A contemnor, if he is to establish "good faith" has to say that he conducted a reasonable and proper enquiry before making an imputation that the CJI has usurped in his office as his year of birth was definitely 1934, and that was the reason which actuated the contemnor to venture for launching the acts which he perpetrated. [691-E]

H 5.1. Once the question of age was determined by the President of India

in exercise of his constitutional authority, in whom alone is the power reposed to determine the question of the age of a Judge of the High Court, it was not open to the contemnor to raise this question over again and again. When the contemnor once again raised the question in the year 1991, the Government of India issued a press communication which, after referring to the earlier proceedings adopted by the President of India, has stated thus : "This pleas was again rejected on the ground that there was no basis for reopening the matter. The decision of the President is final under Article 217 of the Constitution." [692-F]

5.2. There is absolutely no doubt that when the President of India resolved the question of age of the CJI in 1991 when he was Judge of a High Court, that too pursuant to the contemnor himself raking up the question then, he should have, as a dutiful citizen of India, realized that the said decision attained finality. Such decision was based on very weighty and formidable materials available to the President of India then. Thus the telegrahic communication and the criminal complaint launched by him smacks of utter lack of *bonafides.* [693-C, D]

6. When the court appoints an *Amicus* it is for the court to get assistance in the proceedings. Power of the court in making such appointment is plenary and cannot be objected to by others. Also nowhere in the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, a particular stage has been fixed for the court to make such appointment. The power of the court to make such appointment is thus unrestricted and it can be ordered at any stage. [684-H; 685-B]

7. The contempt of court jurisdiction is not to protect an individual Judge; it is to protect the administration of justice from being maligned. Hence, when the expectation of the contemnor that the Chief Justice of India would have personally filed a petition against him did not fructify, he cannot question the maintainability of the action which was initiated *suo motu* by the court. [684-E]

ORIGINAL JURISDICTION : Suo Motu Contempt Petition (CRL) No. 5 of 2000.

Suo Motu Contempt Petition under section 420, 406, 471 Indian Penal Code.

S. Kuruppan and Ashok Kumar Singh for the Contemnor.

A Harish N. Salve, Solicitor General to assist the Court.

The Judgment of the Court was delivered by:

THOMAS, J. "The contempt of court jurisdiction is not exercised to protect the dignity of an individual judge, but to protect the administration B of justice from being maligned." While dealing with this contempt proceedings we remind ourselves of the said observation made by a Constitution Bench of this Court in *Supreme Court Bar Association* v. *Union of India & anr.*, [1998] 4 SCC 409.

C One S.K. Sundaram, Advocate (hereinafter referred to as the contemnor) sent a telegraphic communication to Dr. Justice A.S. Anand, the Hon'ble Chief Justice of India on 3.11.2000. As the present proceedings are founded on the wordings of that communication we feel it necessary to extract the material portion thereof. It reads thus:

D "I call upon Shriman Dr. A.S. Anand Hon'ble Chief Justice of India to step down from the Constitutional office of Chief Justice of India forthwith, failing which I will be constrained to move the criminal court for offences under Sections 420, 406, 471 Indian Penal Code for falsification of your age, without prejudice to the right to file a writ of quo-warranto against you and for a direction to deposit a sum of E Rs. 3 crores for usurping to the office of Chief Justice of India even after attaining the age of superannuation."

Within three days of despatch of the said telegram the contemnor filed a criminal complaint before the Chief Metropolitan Magistrate, Madras (Chennai) in which he arraigned the Chief Justice of India as an accused in the case. F He produced a copy of the above quoted telegram as one of the documents appended with the complaint. He averred in the complaint, *inter alia,* thus:

"The accused (CJI) after attaining superannuation usurped the office of Chief Justice of India, travelled to foreign countries, taken part in G many conferences, seminars inside and outside India making appointments to the apex court, the High Courts and other local bodies and caused loss to the Exchequer to the tune of not less than three crores of rupees, apart from drawing salary and enjoying other perquisites and the same is estimated at not less than Rs. 1.50 crores which the accused is bound to indemnify to the Government of India; H and the complainant reserves the right to take proceedings for recovery

of the same. The complainant states that in order to squat without any legal right or justification, but solely on the basis of giving a deliberate false age, the accused is occupying the highly respected office of Chief Justice of India. The complainant charges the accused for offences under Sections 420, 406, 466, 468 and 471 of the Indian Penal Code and prays that this Hon'ble Court may be pleased to issue notice against the accused and he be dealt with according to law and thus render justice."

On a note put up by the Registrar-General of the Supreme Court regarding the said telegraphic communication the matter was taken up on the judicial side and we passed an order on 7.11.2000 that *prima facie* we are satisfied that the contents of the said telegram sent by S.K. Sundaram, Advocate, amount to gross contempt of court. Hence we issued notice to Mr. S.K. Sundaram, Advocate. In the same proceedings we directed the Registry to inform Mr. Harish N. Salve, Solicitor General of India to assist the Court in these proceedings.

The contemnor filed a written reply to the notice issued to him. Therein he said, *inter-alia*, that he had sent a telegram and it was followed up with the criminal complaint filed before the Magistrate concerned. The contemnor endeavoured to justify his actions by saying that he had done what he believed to be right and fair within the bounds of his knowledge of law and language. In the succeeding paragraph the contemnor tried to defend his actions stating that he had earlier filed a writ petition on behalf of his client relating to the question of age of Dr. Justice A.S. Anand and that writ petition was dismissed. We reproduce here what the contemnor has stated on that aspect in his reply:

"The contemnor submits that even as on date, the age factor of the Chief Justice stands shrouded by mystery. The confusion stands further confounded due to the documents supplied to the Press. The contemnor on dismissal of the writ appeal filed on behalf of his client, came to the conclusion that it was an uphill task and the question in hand was only a controversy. But on seeing the Publication in the Hindu on 3.11.2000 the annexure found in the book "Big Ego Small Men" he was subjected to the rudest shock of his life and became agitated. It led to the strong belief that Hon'ble Mr. Chief Justice Anand is holding the post for the past one year even after reaching the age of superannuation and was on the verge of continuing for a further spell. He felt the whole world was reeling under his feet. The

A contemnor also virtually had a heart attack. Immediately prompted by the desire for bringing this constitutional crisis to an end he had rushed and sent the telegram. The contemnor was of the opinion that this was a matter, which cannot brook even a moment's delay. As he did not find any reaction to the telegram, actuated by his limited knowledge, attempted to seek redress through the criminal court by filing a private complaint before the Chief Metropolitan Magistrate Court at Chennai."

The contemnor raised two preliminary objections. First was that the contempt proceedings were initiated under Section 2(b)of the Contempt of Courts Act 1971 (for short "the Act") and that refers only to civil contempt and hence the present proceedings must fail. However, when it was pointed out to the learned counsel to the contemnor that Section 2(b) was got typed in the notice due to a typographical error and that it was corrected subsequently as Section 2(c) of the Act, learned counsel did not pursue that objection.

The second objection was that "hitherto all suo motu contempts were initiated by a report of the witness to the contempt, which would be the basis on which the contemnor would be charged." In other words, he expected Hon'ble Chief Justice of India to initiate the contempt proceedings against him. As mentioned by us at the very outset, the contempt of court jurisdiction is not to protect an individual judge, it is to protect the administration of justice from being maligned. Hence, when his expectation that the Chief Justice of India himself would have personally filed a petition against the contemnor did not fructify, he cannot question the maintainability of the action which was initiated *suo motu* by the court.

The third objection relates to the appointment of Shri Harish N. Salve, learned Solicitor General for India, as Amicus, to assist the court. The said objection was elaborated by the contemnor by stating that the rules governing contempt proceeding envisage the appointment of Solicitor General only on the court framing the charge and when the court intends to proceed with the case. He felt that the appointment of the Solicitor General to assist the court, made in these proceedings, amounted to putting the cart before the horse.

There is neither any substance in nor any purpose for raising such an objection. It appears to us to be a frivolous objection. When the court appoints an advocate as Amicus it is for the court to get assistance in the proceedings. Power of the court in making such appointment is plenary and cannot be objected to by others.

That apart, the said objection was raised without reference to the relevant rules. The Supreme Court formulated rules in exercise of the powers under Section 23 of the Contempt of Courts Act read with Article 145 of the Constitution of India. It is called "Supreme Court of India Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975". Rule 10 says: "The court may direct the Attorney General or Solicitor General to appear and assist the Court." Nowhere in the Rules a particular stage has been fixed for the Court to make such appointment. The power of the Court to make such appointment is thus unrestricted and it can be ordered at any stage. We therefore repel the said objection.

On the merits, Shri Karruppan, learned counsel for the contemnor raised mainly three lines of arguments. First is that the action initiated against the contemnor is on the telegraphic communication sent by him to the CJI and it would not amount to publication and hence no contempt action could be taken on that premise. Second is that the contemnor *bona fide* believed that the year of birth of Dr. Justice Anand was 1934 and hence he was actuated by good faith in resorting to the acts done by him. Third is that sending of the telegram, even if it amounts to publication, would not tend to undermine the administration of justice and hence the proceedings are liable to be dropped.

Dealing with the first contention we may look at the definition of "criminal contempt" in the Act. Section 2(c) contains the definition of "criminal contempt" which reads thus:

> "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-
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> (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or
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> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
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> (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner".

Criminal contempt is thus vivisected into two categories. One is publication of any matter which scandalises or tends to scandalise the authority

A of any court etc. etc. Second is the doing of any act whatsoever which scandalises or tends to scandalise the authority of any court etc. etc. If an act is not a criminal contempt merely because there was no publication such act would automatically fall within the purview of the other category because the latter consists of "the doing of any other act whatsoever". The latter category is thus a residuary category so wide enough from which no act of B criminal contempt can possibly escape. The common denominator for both is that it scandalises or tends to scandalise etc. etc. of any court.

One of the earliest occasions when this Court had to deal with criminal contempt of court was when a Constitution Bench of this Court (Patanjali C Sastri, CJ, B.K. Mukherjea, S.R. Das, Ghulam Hasan, and N.H. Bhagwati, JJ.) decided the case of *Brahma Prakash Sharma & ors.* v. *State of U.P.*, [1953] SCR 1169. Their Lordships referred to certain decisions of English courts including some observations of the Privy Council and pointed out that there are primarily two considerations in such matters. In the first place, the reflection on the conduct or character of a judge in reference to the discharge of his D judicial duties would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. In the second place, *when attacks or comments are made on a judge or judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between* E *what is a libel on the judge and what amounts really to contempt of court.*

The position is that a defamatory attack on a judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libellor in a proper action if he so chooses. The Constitution Bench laid down the ratio thus:

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> "If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the judge personally while the other is a wrong done G to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. It is well established H 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." A

In Halsbury's Laws of England, the learned author cited various decisions of courts in England, of which one at paragraph 28 in Volume 9 is worth extracting: B

"It is also a contempt to write threatening or abusive letters to a judge in relation to the exercise of his judicial functions."

In *Delhi Judicial Service Association, Tis Hazari Court, Delhi* v. *State of Gujarat and Ors.*, [1991] 4 SCC 406 a three Judge Bench of this Court C observed thus:

"The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake ineffective and orderly administration of justice. The D Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with." E

In *Dr. D.C. Saxena* v. *Hon'ble the Chief Justice of India*, [1996] 5 SCC 216 a contemnor filed a writ petition against the then Chief Justice of India and sought a declaration that the then Chief Justice of India was unfit to hold that office and hence he should be stripped of his citizenship. He also sought F for a direction to register an FIR against the then Chief Justice of India under different provisions of IPC and to prosecute him under the Prevention of Corruption Act, and lastly he prayed for a direction that the Chief Justice of India should pay a sum from his personal pocket to defray the expenses incurred by the petitioner. Dealing with the said acts of that individual a three Judge Bench of this Court, after holding him guilty of criminal contempt, has G observed thus:

"Scandalising the court, therefore, would mean hostile criticism of judges as judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the H

A court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice."

B Dealing with the imputation that the then Chief Justice of India deliberately and willfully failed to perform his duties the three Judge Bench further observed thus:

> "It tends to lower the dignity and authority of the Court and also
> C sows seeds for persons with similar propensity to undermine the authority of the Court or the judiciary as a whole; he crossed all boundaries of recklessness and indulged in wild accusations."

In Re: Ajay Kumar Pandey, [1996] 6 SCC 510 the contemnor Ajay Kumar Pandey issued a notice to two Judges of this Court on 10.8.1996
D containing a warning that unless those two judges tender unconditional apology to him and pay a sum of Rs. 2000 as compensation, besides a further handsome amount towards the mental agony inflicted on him, he would initiate criminal proceedings against the judges. He also filed criminal complaint on 23.9.1996 before the Court of Chief Metropolitan Magistrate, New Delhi against the two Judges alleging offences under Sections 167, 504 and 506 of
E the Indian Penal Code.

This Court after making a survey of a number of decisions including Dr. D.C. Saxena's case, made the following observations:

> "We may observe that any threat of filing a complaint against the
> F Judge in respect of the judicial proceedings conducted by him in his own court is a positive attempt to interfere with the due course of administration of justice. In order that the Judges may fearlessly and independently act in the discharge of their judicial functions, it is necessary that they should have full liberty to act within the sphere
> G of their activity."

It is unnecessary now to multiply the citations of decisions which deal with such threats and criminal complaints made against the judges, as the legal parameters are well neigh laid down through the decisions already referred to by us. The acts, admittedly done by the contemnor and reflected
H poignantly in the telegraphic communication must be viewed from the above

legal perspective. A

The telegraphic communication sent by the contemnor contains four biddings. The first is a command hurled at the CJI to step down forthwith from the constitutional office. The second is a threat administered to him that if the command is not obeyed forthwith, the CJI would be described as an offender having committed offences of cheating and falsification of records B and criminal breach of trust. The third is another intimidatory epithet that he would file a writ petition for a direction that Chief Justice of India should pay a sum of Rs. 3 crore. Fourth is an imputation that the CJI A.S. Anand is a usurper in the office of Chief Justice of India. Any one of those postulates would certainly scandalise and at any rate would tend to scandalise and lower C the authority of the courts as a whole, and particularly the Supreme Court of India. Chief Justice of India by virtue of his constitutional ranking is the head of the Indian judiciary. When threats of the above nature have been hurled at him they would unmistakably tend to undermine the position, majesty and dignity of the courts and the law.

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In this connection we also considered the contention of the learned counsel for the contemnor that sending such a telegram would not amount to publication. On the legal premise the contention is unacceptable. A telegraphic message can be transmitted only after the sender gives the contents of the message to the telegraph office which would invariably be manned by the staff of that office. The message after transmission reaches the destination E office which also is manned by the members of the staff. From there only the message would be despatched to the sendee. At all those levels the message is open to be read by at least those who are engaged in the process of transmission. It must be remembered that a telegraphic message is not like a letter handwritten by the sender and enveloped in a sealed cover to be F opened only by the sendee for reading.

In this connection a reference can be made to Gatley on "Libel and Slander" under the Chapter "Publication" (Chap.6). The learned author has stated the following:

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> "222. How publication is effected. Publication is effected by any act on the part of the defendant which conveys the defamatory meaning of the matter to the person to whom it is communicated.
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> 223. If for example, a person reads a defamatory letter, knowing it is defamatory, to any person other than the person defamed, there is H

A publication of the libel. Again, if the writer of a defamatory letter hands the letter to his clerk to be copied or typewritten before it is sent to the person defamed, and the clerk does copy or typewriter the letter, there is publication of the libel to the clerk."

That apart, it is not now open to the contemnor to contend that there B was no publication of the telegraphic communication despatched by him to the Chief Justice of India because when he filed the criminal complaint in the court in implementation of the telegraphic threat hurled to the CJI, he appended a copy of the telegram therewith. Thus, he made it public at his own volition.

Now, we will consider the alternative contention of the learned counsel C for the contemnor that it was an act done in good faith as he believed honestly that the year of birth of Dr. Justice A.S. Anand was 1934.

The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. Good faith is D defined in Section 52 of the Indian Penal Code thus:

> "Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention."

See the language of the law in this regard. It starts in the negative tone E excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised. In Black's Law Dictionary, "reasonable F care" is explained as "such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act."

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So before a person proposes to make an imputation on another the author must first make an enquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make-believe show for an enquiry. The enquiry expected of him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real H truth of the imputation which is up in his sleeves. If he does not do so he

cannot claim that what he did was *bona fide* i.e. done in good faith. A

Dealing with the expression "good faith" in relation to the exceptions enumerated under Section 499 of the Indian Penal Code (relating to the offence of defamation) this Court in *Harbhajan Singh* v. *State of Punjab and anr.* AIR (1966) SC 97 has stated thus: B

> "The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Penal Code; and we are governed by the definition prescribed by S.52 of that Code. So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to enquire whether he acted with due care and attention. There is no doubt that the mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the Ninth Exception. Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith." C D

Thus, a contemnor, if he is to establish "good faith" has to say that he conducted a reasonable and proper enquiry before making an imputation that Dr. Justice A.S. Anand has usurped in the office of CJI as his year of birth was definitely 1934 and that was the reason which actuated him to venture for launching the acts which he perpetrated. E

In the above context we may point out that the contemnor himself filed a writ petition in 1991, on behalf of his client, (one Smt. Kasturi Radhakrishnan) when Dr. Justice A.S. Anand was the Chief Justice of the High Court of Madras. The contemnor in that writ petition arrayed the President of India as respondent No.1, the then Chief Justice of India as respondent No. 2 and Dr. Justice A.S. Anand as respondent No. 3 and prayed for a writ of mandamus directing the President of India to decide the question of age of Dr. Justice A.S. Anand in conformity with Article 217(3) of the Constitution of India. Though the said writ petition was dismissed by the Single Judge and the Letters Patent Appeal filed by the contemnor against dismissal of the writ petition was also dismissed by a Division Bench of the Madras High Court on 1.8.1991 the President of India in consultation with the then Chief Justice F G H

A of India decided the question relating to his age as early as 16.5.1991 holding that the date of birth of Dr. Justice A.S. Anand was 1.11.1936. The documents which the President of India then considered for that purpose were (1) The certificate of matriculate examination dated 1.9.1951 issued by the University of J & K in respect of Adarsh Sein Anand (the present CJI) which showed explicitly that his date of birth was 1.11.1936. (2) The passport issued to B Adarsh Sein Anand (the present CJI) on 3.8.1960, also explicitly showed that his date of birth was 1.11.1936. (3) The report prepared by the then CJI in respect of the age of Dr. Justice A.S. Anand, who was then a Judge of the High Court.

C The President's Secretariat issued an order way back on 16.5.1991, which can be extracted below:

> "The petition from Shri S.K. Sundaram, Advocate, Madras, to the President on behalf of his client Shrimati Kasturi Radhakrishnan, Chairperson, Madras Citizens Progressive Council, Madras and the D records have been perused and the matter considered by the President, in consultation with the Chief Justice of India. The President has come to the conclusion that the petitions of Shri S.K. Sundaram, Advocate, Madras, in respect of the age of Dr. Justice A.S. Anand of the Madras High Court, be rejected and that no inquiry as stipulated under Article 217(3) of the Constitution need be undertaken."

E

Once the age of Dr. Justice A.S. Anand was so determined by the President of India in exercise of his constitutional authority, in whom alone is the power reposed to determine the question of the age of a judge of the High Court, it was not open to this contemnor to raise this question over F again and again. When this contemnor once again raised the question of the age of Dr. Justice A.S. Anand, in the year 1999, the Government of India issued a press communication which, after referring to the earlier proceedings adopted by the President of India, has stated thus: "This plea was again rejected on the ground that there was no basis for reopening the matter. The decision of the President is final under Article 217 of the Constitution."

G

When the contemnor filed a criminal complaint before the Chief Metropolitan Magistrate against the present CJI he adverted to the following as the basis for his case:

> "The complainant states that in the Hindu dated 3.11.2000 at page 13 H a photostat copy of the age particulars of the accused printed which

categorically states that the accused had given his date of birth as 1934. But the fact remains that the accused had not chosen to give any original date of birth from the School Certificate: Municipality or from the College authorities. The date of birth published in the Hindu dated 3.11.2000 clearly reveals that the accused had already attained the age of superannuation but still he is holding the high constitutional office of the Chief Justice of India in charge of Administration of nearly 21 State High Courts."

What was contained in the "Hindu" dated 3.11.2000 was a statement issued by Mr. Ram Jethmalani, former Union Minister for Law, in answer to a statement issued by Mr. K. Parasaran, former Attorney General for India, in the Hindu published on 25.10.2000. We have absolutely no doubt that when the President of India resolved the question of age of Dr. Justice A.S. Anand in 1991 when he was the Judge of the High Court, that too pursuant to the contemnor himself raking up the question then, he should have, as a dutiful citizen of India, realised that the said decision attained finality so far as the question of the age of Dr. Justice A.S. Anand is concerned. Such decision was based on very weighty and formidable materials available to the President of India then. Thus the telegraphic communication and the criminal complaint launched by him smacks of utter lack of *bona fides.*

Well, if he is determined to feign that he would not look at any one of those materials as well as the final decision rendered by the President of India regarding the age of Dr. Justice A.S. Anand, and then decided to persistently jump into the foray with the tirade, putting himself into the outfit and chasuble of his professional insignia, it is only reminiscent of the Spanish hero Don Quixote of La Mancha. On the part of this Court we may observe that if the contemnor had stopped with his telegram we would have persuaded ourselves to ignore it as a case of ranting gibberish. But when he followed it up with lodging of a criminal complaint before a criminal court in which CJI was arrayed as an accused having committed offences of cheating, criminal breach of trust and falsification of records, we realised that he seriously meant to malign and undermine the dignity and authority of this Court.

It may be relevant to point out that the note of the Registrar, on the basis of which *Suo Motu* Contempt was initiated against the contemnor specifically referred to and reproduced the Presidential Order dated 16.5.1991 issued under Article 217(3) of the Constitution. The defiant and *malafide* attitude of the Contemnor is apparent from the fact that despite knowing about the actual date of birth of the Chief Justice of India and the Presidential

A Order dated 16.5.1991 which was read over by the Solicitor General in the open Court on 21st November, 2000 in presence of the contemnor, he chose to adhere to his false claim alleging the age of the Chief Justice of India to be the year 1934.

We have, therefore, not a speck of doubt in our mind that the impugned B action of the contemnor is a case of gross criminal contempt of court. It is a serious matter for this Court because vilification of the high personage of Chief Justice of India would undermine the majesty of the court and dignity of this institution. We, therefore, hold him guilty of criminal contempt and convict him thereunder. We sentence him to undergo imprisonment for six C months.

But then, we consider another aspect. The contemnor said that he is a heart patient. Mr. Harish N. Salve, learned Solicitor General pleaded with us that the said statement of the contemnor may be considered as a ground in deciding how to inflict the punishment. We therefore order that the sentence D of imprisonment for six months will stand suspended for a period of one month from today. If the contemnor would give an undertaking in this court, in the form of an affidavit, to the effect that he would not commit or even attempt to commit any act of criminal contempt, then the sentence now imposed by us would remain suspended for a further period of five years. But if the contemnor commits any act of criminal contempt during the said period E of five years, the suspension of the sentence will stand revoked and then he will have to undergo the sentence of imprisonment for six months. Otherwise the question of revival of the sentence would depend upon the order which this Court would pass on the expiry of five years. Ordered accordingly.

F We place on record our gratitude to Shri Harish N. Salve, learned Solicitor General for India, for the assistance he rendered to us in these proceedings.

A copy of this judgment will be forwarded to the Bar Council of Tamil Nadu and also to the Bar Council of India, for information.

G R.C.K. Petition disposed of.