

VISHRAM SINGH RAGHUBANSHI

v.

STATE OF U.P.

(Criminal Appeal No. 697 of 2006)

JUNE 15, 2011

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

*Contempt of Courts Act, 1971:*

s.15 – Contempt by advocate – Appellant-advocate abused the Judge/Presiding Officer in most filthy words when the Presiding Officer alleged the involvement of appellant in the impersonification of the person who came to surrender before the Presiding Officer – Conviction of appellant for contempt of court – On appeal, held: The case of impersonification of a person to be surrendered is serious— If any issue was raised in this regard by the court, it was the duty of the appellant to satisfy the court and establish the identity of the person concerned – The conduct of the appellant in abusing the Presiding Officer was in complete violation and in contravention of the “standard of professional conduct and etiquette” laid in Section 1 of Chapter 2 (Part-VI) of the Bar Council of India Rules – Courts cannot be intimidated to seek favourable orders – Appellant intimidated the presiding officer by hurling filthiest abuses and lowered the authority of the Court, which tantamounted to interference with the due course of judicial proceedings – The charge stood proved against the appellant – In such a fact-situation the apology tendered by him, being not bona fide, is not acceptable – Bar Council of India Rules, Chapter 2 (Part-VI), s.1.

*Contempt – Nature of – Held: It is the seriousness of the irresponsible acts of the contemnor and degree of harm caused to the administration of justice, which decisively*

- A determine whether the matter should be tried as a criminal contempt or not – The court has to examine whether the wrong is done to the judge personally or it is done to the public – The act 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 – Administration of justice.
- B
- C Apology tendered by contemnor – Acceptance of – Held: Can be accepted in case the conduct for which the apology is given is such that it can be "ignored without compromising the dignity of the court", or it is intended to be the evidence of real contrition – 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 a contempt" – 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 – Apology tendered is not to be accepted as a matter of course and the Court is not bound to accept the same and can impose the punishment recording reasons for the same – In the instant case, it was not the case of the appellant that he was not given full opportunity to defend himself or lead evidence in support of his case – The so-called apology tendered by the appellant contained ifs and buts – Apology was not tendered at the earliest opportunity, rather tendered belatedly just to escape the punishment for the grossest criminal contempt committed by him – There was no repent or remorse on the part of the appellant at an initial stage – Such attitude has a direct impact on the court's independence, dignity and decorum – In order to protect the administration of public justice, action has to be taken against the appellant as his conduct and utterances cannot be ignored or pardoned – Thus, the apology tendered by the appellant
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had neither been sincere nor bona fide and thus, not worth acceptance. A

Administration of justice: Where a person is really aggrieved of misbehaviour/conduct or bias of a judicial officer, he definitely has a right to raise his grievance, but it should be before the appropriate forum and by resorting to the procedure prescribed for it – Under no circumstances, such a person can be permitted to become the law unto himself and proceed in a manner he wishes, for the reason that it would render the very existence of the system of administration of justice at stake. B C

Jurisdiction: Contempt jurisdiction – Scope and purpose – Held: Contempt jurisdiction is to uphold majesty and dignity of the law courts – The superior courts have a duty to protect the reputation of judicial officers of subordinate courts, taking note of the growing tendency of maligning the reputation of judicial officers by unscrupulous practising advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose – Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the Institution as a whole – The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse – The Bench and the Bar have to avoid unwarranted situations that hamper the cause of justice and are in the interest of none. D E F

Words and phrases: Apology – Meaning of.

The appellant was a practicing advocate. The allegation against him was that he was involved in impersonification of a person who was wanted in a criminal case in the District Court. Since the Presiding Officer doubted the genuineness of the person who came to surrender before him, he raised certain issues. At that G H

A time, the appellant stepped over the dais and started  
abusing the Presiding Officer in the court and  
misbehaved with him. The Presiding Officer made a  
complaint to the U.P. Bar Council and made a reference  
to the High Court for initiating contempt proceedings  
under Section 15 of the Contempt of Courts Act, 1971  
against him. The High Court issued a show cause notice  
to the appellant. In response, the appellant denied the  
allegations made against him but tendered an apology in  
the form of the affidavit stating that he placed the court  
in the highest esteem. The Bar Council dismissed the  
complaint, but the High Court did not accept the  
explanation and the apology tendered by him, rather it  
framed the charges against the appellant. The High Court  
after giving full opportunity to the appellant to defend  
himself held him guilty of contempt of court and  
sentenced him to undergo 3 months simple imprisonment  
with the fine of Rs.2000. The instant appeal was filed  
challenging the order of the High Court.

**Dismissing the appeal, the Court**

E HELD: 1.1. Admittedly, the case of impersonification  
of the person to be surrendered is a serious one.  
However, being an officer of the court, if any issue was  
raised in this regard either by the court or opposite  
counsel, it was the duty of the appellant to satisfy the  
Court and establish the identity of the person concerned.  
The conduct of the appellant had been in complete  
violation and in contravention of the "standard of  
professional conduct and etiquette" laid in Section 1 of  
Chapter 2 (Part-VI) of the Bar Council of India Rules  
which, inter-alia, provides that an advocate shall maintain  
towards the court a respectful attitude and protect the  
dignity of the judicial office and he shall use his best  
efforts to restrain and prevent his client from resorting to  
unfair practices and conduct himself with dignity and self

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respect in the court etc. etc. Where a person is really A  
 aggrieved of misbehaviour/conduct or bias of a judicial  
 officer, he definitely has a right to raise his grievance, but  
 it should be before the appropriate forum and by  
 resorting to the procedure prescribed for it. Under no  
 circumstances, such a person can be permitted to B  
 become the law unto himself and proceed in a manner  
 he wishes, for the reason that it would render the very  
 existence of the system of administration of justice at a  
 stake. It was not the case of the appellant that he was not  
 given full opportunity to defend himself or lead evidence C  
 in support of his case. The appellant did not choose to  
 defend himself on merit before the High Court, rather he  
 merely tendered apology thrice. [Paras 7, 10] [118-D-H;  
 119-A; 120-C-D]

1.2. It is settled principles of law that it is the D  
 seriousness of the irresponsible acts of the contemnor  
 and degree of harm caused to the administration of  
 justice, which would decisively determine whether the  
 matter should be tried as a criminal contempt or not. The  
 court has to examine whether the wrong is done to the E  
 judge personally or it is done to the public. The act 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 F  
 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. [Paras 11, 12] [120-  
 E-H]

*The Aligarh Municipal Board & Ors. v. Ekka Tonga* G  
*Mazdoor Union & Ors.*, AIR 1970 SC 1767; *Brahma Prakash*  
*Sharma & Ors. v. The State of U.P.* AIR 1954 SC 10: 1954  
 SCR 1169; *Perspective Publications (P.) Ltd. & Anr. v. The*  
*State of Maharashtra* AIR 1971 SC 221: 1969 SCR 779;  
*Delhi Judicial Service Association v. State of Gujarat & Ors.* H

- A AIR 1991 SC 2176: 1991 (3) SCR 936; *E.M. Sankaran Namboodiripad v. T.Narayanan Nambiar* AIR 1970 SC 2015: 1971 (1) SCR 697 – relied on.

2. The contempt jurisdiction is to uphold majesty and dignity of the law courts and the image of such majesty in the minds of the public cannot be allowed to be distorted. Any action taken on contempt or punishment enforced is aimed at protection of the freedom of individuals and orderly and equal administration of laws and not for the purpose of providing immunity from criticism to the judges. The superior courts have a duty to protect the reputation of judicial officers of subordinate courts, taking note of the growing tendency of maligning the reputation of judicial officers by unscrupulous practising advocates who either fail to secure desired orders or do not succeed in browbeating for achieving ulterior purpose. Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the Institution as a whole. The dangerous trend of making false allegations against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse. The Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system, would cause a very serious damage to the Institution of judiciary. An Advocate in a profession should be diligent and his conduct should also be diligent and conform to the requirements of the law by which an Advocate plays a vital role in the preservation of society and justice system. Any violation of the principles of professional ethics by an Advocate is unfortunate and unacceptable. [Paras 15, 16] [121-H; 122-H A-H]

*O.P. Sharma & Ors. v. High Court of Punjab & Haryana* (2011) 5SCALE 518; *M.B. Sanghi v. High Court of Punjab & Haryana & Ors.* (1991) 3 SCC 600: 1991 (3) SCR 312 – relied on. A

3.1. Apology means a regretful acknowledge or excuse for failure or an explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionable in sincerity. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment. Clause 1 of Section 12 and Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tempered at a belated stage if the accused makes it bona fide. There can be cases where the wisdom of rendering an apology dawns only at a later stage. [Paras 18, 19] [123-E-H] B C D

*P.G. Wodehouse in his work "The Man Upstairs (1914)* – referred to. E

3.2. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which is in contempt of court. An apology can be accepted in case the conduct for which the apology is given is such that it can be "ignored without compromising the dignity of the court", or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as paper apology. So an apology should not be paper apology and expression of sorrow F G H

A should come from the heart and not from the pen; for it is one thing to 'say' sorry-it is another to 'feel' sorry. [Paras 20, 22] [124-A-B; D-E]

B *Re: Bal Thackeray, Editor Samna*, (1998) 8 SCC 660; *L.D. Jaikwal v. State of U.P.* AIR 1984 SC 1374: 1984 (3) SCR 833; *T.N. Godavarman Thirumulpad v. Ashok Khot & Anr.* AIR 2006 SC 2007: 2006 (2) Suppl. SCR 215 – relied on.

C 3.3. 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 a contempt”. 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  
D 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  
E act of a cringing coward. 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  
F 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. [Paras 23, 25] [124-G-H; 125-A; E-F]

G *Mulkh Raj v. The State of Punjab* AIR 1972 SC 1197; *The Secretary, Hailakandi Bar Association v. State of Assam & Anr.* AIR 1996 SC 1925: 1996 (2) Suppl. SCR 573; *C. Elumalai and Ors. v. A.G.L. Irudayaraj and Anr.* AIR 2009 SC 2214: 2009 (4) SCR 774; *Ranveer Yadav v. State of Bihar* (2010) 11 SCC 493: 2010 (6) SCR 1073; *Debabrata*

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*Bandopadhyay & Ors. v. The State of West Bengal & Anr.* AIR 1969 SC 189; 1969 SCR 304; *Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr.* AIR 1974 SC 710; 1974 (2) SCR 282; *The Bar Council of Maharashtra v. M.V. Dabholkar etc.* AIR 1976 SC 242; 1976 (2) SCR 48; *Asharam M. Jain v. A.T. Gupta & Ors.* AIR 1983 SC 1151; 1983 (3) SCR 719; *Mohd. Zahir Khan v. Vijai Singh & Ors.* AIR 1992 SC 642; *In Re: Sanjiv Datta* (1995) 3 SCC 619; *Patel Rajnikant Dhulabhai & Ors. v. Patel Chandrakant Dhulabhai & Ors.* AIR 2008 SC 3016; 2008 (10) SCR 1169 – relied on.

3.4. The High Court considered the case elaborately examining every issue microscopically and held that there was no reason to disbelieve the facts stated by the judicial officer against the contemnor/appellant, the facts were acceptable, and it was clearly proved that the contemnor was guilty of gross criminal contempt. The charges levelled against the appellant stood proved. A Judge has to discharge his duty and passes order in the manner as he thinks fit to the best of his capability under the facts and circumstances of the case before him. No litigant, far less an advocate, has any right to take the law in his own hands. The contemnor abused the Judge in most filthy words unworthy of mouthing by an ordinary person. The courts certainly cannot be intimidated to seek the favourable orders. The appellant intimidated the presiding officer of the court hurling filthiest abuses and lowered the authority of the Court, which is tantamount to interfere with the due course of judicial proceedings. The charge which stood proved against the appellant could not be taken lightly and in such a fact-situation the apology tendered by him, being not *bona fide* was not acceptable. [Para 28] [126-H; 127-A-E]

3.5. The so-called apology tendered by the appellant contained ifs and buts. The appellant was not even sure as to whether he has committed the criminal contempt

A of the court or whether the most filthy abuses could hurt the Presiding Officer. The appellant was of the view that the Officer was a robot and has no heart at all, thus incapable of having the feelings of being hurt. The appellant filed second affidavit tendering apology. The  
B apology was tendered under pressure only after framing of the charges by the High Court in the Criminal Contempt when appellant realised that he could be punished. The apology was not tendered at the earliest opportunity, rather tendered belatedly just to escape the  
C punishment for the grossest criminal contempt committed by him. The language used by the Advocate for a judicial officer where he practices regularly and earns his livelihood is such that any apology would fall short to meet the requirement of the statutory provisions. There was no repent or remorse on the part of the  
D appellant at an initial stage. Had it been so, instead of making grossest and scandalous allegations against the judicial officer, writing complaint against him to the Administrative Judge in the High Court of Allahabad, the appellant could have gone to the concerned judicial  
E officer and tendered apology in open court. The appellant instead of yielding to the court honestly and unconditionally, advanced a well guarded defence by referring to all the facts that led to the incident. Apology  
F tendered by the appellant would give an impression that the same was in the alternative and not a complete surrender before the law. Such attitude has a direct impact on the court's independence, dignity and decorum. In order to protect the administration of public  
G justice, action has to be taken against the appellant as his conduct and utterances cannot be ignored or pardoned. The appellant had no business to overawe the court. Thus, the apology tendered by the appellant had neither been sincere nor bona fide and thus, not worth acceptance. [Para 29] [127-F-H; 128-A-F]

**Case Law Reference:**

|                         |           |         |          |
|-------------------------|-----------|---------|----------|
|                         |           |         | <b>A</b> |
| AIR 1970 SC 1767        | relied on | Para 11 |          |
| 1954 SCR 1169           | relied on | Para 12 |          |
| 1969 SCR 779            | relied on | Para 12 | <b>B</b> |
| 1991 (3) SCR 936        | relied on | Para 13 |          |
| 1971 (1) SCR 697        | relied on | Para 14 |          |
| (2011) 5 SCALE 518      | relied on | Para 16 | <b>C</b> |
| 1991 (3) SCR 312        | relied on | Para 17 |          |
| (1998) 8 SCC 660        | relied on | Para 21 |          |
| 1984 (3) SCR 833        | relied on | Para 22 |          |
| 2006 (2) Suppl. SCR 215 | relied on | Para 22 | <b>D</b> |
| AIR 1972 SC 1197        | relied on | Para 23 |          |
| 1996 (2) Suppl. SCR 573 | relied on | Para 23 |          |
| 2009 (4) SCR 774        | relied on | Para 23 | <b>E</b> |
| 2010 (6) SCR 1073       | relied on | Para 23 |          |
| 1969 SCR 304            | relied on | Para 24 |          |
| 1974 (2) SCR 282        | relied on | Para 25 | <b>F</b> |
| 1976 (2) SCR 48         | relied on | Para 25 |          |
| 1983 (3) SCR 719        | relied on | Para 25 |          |
| AIR 1992 SC 642         | relied on | Para 25 |          |
| 2008 (10) SCR 1169      | relied on | Para 25 | <b>G</b> |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 697 of 2006.

From the Judgment & Order dated 5.5.2006 of the High **H**

A Court of Judicature at Allahabad in Contempt of Court case No. 13 of 1999.

Sanjeev Bhatnagar (for Kusum Chaudhary) for the Appellant.

B R.K. Gupta, Suraj Singh and Pradeep Misra for the Respondent.

The Judgment of the Court was delivered by

C **DR. B.S. CHAUHAN, J.** 1. This appeal has been preferred under Section 19 of the Contempt of Courts Act, 1971, (hereinafter called the 'Act 1971') arising out of impugned judgment and order dated 5.5.2006 passed by the Division Bench of the Allahabad High Court in Contempt of Court Case No. 13 of 1999.

D 2. FACTS:

E (A) Appellant is an advocate practising for last 30 years in the District Court, Etawah (U.P.). On 25.7.1998, he produced one Om Prakash for the purpose of surrender, impersonating him as Ram Kishan S/o Ashrafi Lal who was wanted in a criminal case in the court of IInd ACJM, Etawah. There was some controversy regarding the genuineness of the person who came to surrender and therefore, the Presiding Officer of the Court raised certain issues. So, the appellant misbehaved with the said officer in the court and used abusive language.

F (B) The Presiding Officer of the court vide letter dated 28.9.1998 made a complaint against the appellant to the U.P. Bar Council and vide letter dated 27.10.1998 made a reference to the High Court for initiating contempt proceedings under Section 15 of the Act, 1971 against him. The High Court considered the matter and issued show cause notice on 5.5.1999 to the appellant. In response to the said notice, the appellant submitted his

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reply dated 24.5.1999, denying the allegations made against him, but, tendering an apology in the form of an affidavit stating that he was keeping the court in the highest esteem.

(C) The Bar Council of U.P. dismissed the complaint referred by the Presiding Officer vide order dated 18.3.2001, but the Allahabad High Court did not consider it proper to accept the explanation submitted by the appellant or accept the apology tendered by him, rather, it framed the charges against the appellant on 27.9.2004. In response to the same, the appellant again submitted an affidavit dated 18.10.2005 tendering an apology similar to one in the affidavit filed earlier.

(D) The Division Bench of Allahabad High Court considered the matter on judicial side, giving full opportunity to the appellant to defend himself. The High Court ultimately held the appellant guilty of committing the contempt and sentenced him to undergo 3 months simple imprisonment with a fine of Rs.2,000/-. Hence this appeal.

3. This Court vide order dated 26.6.2006 suspended the operation of sentence and directed the appellant to deposit the fine of Rs. 2,000/- in this Court, which seems to have been deposited.

4. Shri Sanjeev Bhatnagar, learned counsel appearing for the appellant, has submitted that he would not be in a position to defend the contemptuous behaviour of the appellant but insisted that the appellant is aged and ailing person and had tendered absolute and unconditional apologies several times. Thus, the apology may be accepted and the sentence of three months simple imprisonment be quashed.

5. On the contrary, Shri R.K. Gupta, learned counsel appearing for the respondent, has vehemently opposed the prayer made by Shri Bhatnagar and contended that the appellant does not deserve any lenient treatment considering

A the language used by him to the Presiding Officer of the court and such a person does not deserve to remain in a noble profession. He further contended that the apology has not been tendered at the initial stage. The first apology was tendered only after receiving show cause notice dated 5.5.1999 from the High Court and under the pressure. More so, the language of the apology is not such which shows any kind of remorse by the appellant, thus, considering the gravity of the misbehaviour of the appellant, no interference is wanted. Therefore, the appeal is liable to be rejected.

C 6. We have considered the rival contentions made by learned counsel for the parties and perused the record.

D 7. Admittedly, the case of impersonification of the person to be surrendered is a serious one, however we are not concerned as to whether the appellant had any role in such impersonification, but being an officer of the court, if any issue had been raised in this regard either by the court or opposite counsel, it was the duty of the appellant to satisfy the Court and establish the identity of the person concerned. The conduct of the appellant seems to have been in complete violation and in contravention of the "standard of professional conduct and etiquette" laid in Section 1 of Chapter 2 (Part-VI) of the Bar Council of India Rules which, inter-alia, provides that an advocate shall maintain towards the court a respectful attitude and protect the dignity of the judicial office. He shall use his best efforts to restrain and prevent his client from resorting to unfair practices etc. The advocate would conduct himself with dignity and self respect in the court etc. etc.

G There may be a case, where a person is really aggrieved of misbehaviour/conduct or bias of a judicial officer. He definitely has a right to raise his grievance, but it should be before the appropriate forum and by resorting to the procedure prescribed for it. Under no circumstances, such a person can be permitted to become the law unto himself and proceed in a manner he wishes, for the reason that it would render the very

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existence of the system of administration of justice at a stake. A

8. Before proceeding further with the case, it may be necessary to make reference to certain parts of the complaint lodged by the Presiding Officer to the High Court against the appellant:

- (i) During the course of cross examination in a criminal case on 22.8.1998, the appellant was advised that he should ask questions peacefully to the witness on which the appellant stepped over dias of the court and tried to snatch the paper of statement from him and started abusing him that "Madarchod, Bahanchod, make reference of contempt to the High Court" and stepped out, abusing similarly from the court room. C
- (ii) In another incident on 25.7.1998, three accused persons namely, Ram Krishan, Ram Babu and Rampal surrendered before the court and filed an application no. 57Kha for cancellation for non-bailable warrants, and the whole proceeding was completed by him. Aforesaid three accused persons, namely, Ram Krishan and Ram Babu were real brothers and sons of Ashrafi Lal. On 30.7.1998 order was passed to release them on bail but before they could be released, it came to the knowledge of the court that right accused Ram Krishan son of Ashrafi Lal had surrendered and sent to jail. This fact was brought before the court by the mother of the person Om Prakash who was actually sent to jail on 1.8.1998, of which enquiry was done and after summoning from jail the person in the name of Ram Krishan stated in the court that his name was Om Prakash, son of Sh. Krishan Jatav. The complainant Bhaidayal was also summoned who also verified the above fact. Thereafter, an inquiry was conducted by the H

A Presiding Officer who found the involvement of the  
appellant in the above case of impersonification.

B 9. The High Court examined the complaint and the reply  
submitted by the appellant to show cause notice issued by the  
High Court. The High Court did not find the explanation worth  
acceptable and, thus, vide order dated 27.9.2004, framed  
charges against the appellant in respect of those allegations  
dated 22.8.1998 and 25.7.1998 respectively.

C 10. It is not the case of the appellant that he was not given  
full opportunity to defend himself or lead evidence in support  
of his case. The appellant has not chosen to defend himself on  
merit before the High Court, rather he merely tendered apology  
thrice. Even before us, Shri Sanjeev Bhatnagar, learned  
D counsel for the appellant, has fairly conceded that the appellant  
had been insisting from the beginning to accept his apology  
and let him off. Mr. Bhatnagar's case has been that in the facts  
and circumstances of the case, particularly considering the age  
and ailment of the appellant, apology should be accepted and  
sentence of three months simple imprisonment be set aside.

E 11. It is settled principle of law that it is the seriousness of  
the irresponsible acts of the contemnor and degree of harm  
caused to the administration of justice, which would decisively  
determine whether the matter should be tried as a criminal  
contempt or not. (Vide: *The Aligarh Municipal Board & Ors.*  
F *v. Ekka Tonga Mazdoor Union & Ors.*, AIR 1970 SC 1767).

G 12. The court has to examine whether the wrong is done  
to the judge personally or it is done to the public. The act 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. (See:  
H *Brahma Prakash Sharma & Ors. v. The State of U.P.*, AIR  
1954 SC 10; and *Perspective Publications (P.) Ltd. & Anr. v.*



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*The State of Maharashtra*, AIR 1971 SC 221).

13. In the case of *Delhi Judicial Service Association v. State of Gujarat & Ors.*, AIR 1991 SC 2176, this Court held that the power to punish for contempt is vested in the judges not for their personal protection only, but for the protection of public justice, whose interest requires that decency and decorum is preserved in courts of justice. Those who have to discharge duty in a Court of Justice are protected by the law, and shielded in the discharge of their duties; any deliberate interference with the discharge of such duties either in court or outside the court by attacking the presiding officers of the court would amount to criminal contempt and the courts must take serious cognizance of such conduct.

14. In *E.M.Sankaran Namboodiripad v. T.Narayanan Nambiar*, AIR 1970 SC 2015, this Court observed that contempt of court has various kinds, e.g. 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; scandalising the Judges or the courts; conduct of a person which tends to bring the authority and administration of the law into disrespect or disregard. Such acts bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. In a given case, such a conduct be committed "in respect of the whole of the judiciary or judicial system".

The court rejected the argument that in particular circumstances conduct of the alleged contemnor may be protected by Article 19(1)(a) of the Constitution i.e. right to freedom of speech and expression, observing that the words of the second clause, of the same provision bring any existing law into operation, thus provisions of the Act 1971 would come into play and each case is to be examined on its own facts and the decision must be reached in the context of what was done or said.

15. Thus, it is apparent that the contempt jurisdiction is to

- A uphold majesty and dignity of the law courts and the image of such majesty in the minds of the public cannot be allowed to be distorted. Any action taken on contempt or punishment enforced is aimed at protection of the freedom of individuals and orderly and equal administration of laws and not for the
- B purpose of providing immunity from criticism to the judges. The superior courts have a duty to protect the reputation of judicial officers of subordinate courts, taking note of the growing tendency of maligning the reputation of judicial officers by unscrupulous practising advocates who either fail to secure
- C desired orders or do not succeed in browbeating for achieving ulterior purpose. Such an issue touches upon the independence of not only the judicial officers but brings the question of protecting the reputation of the Institution as a whole.

16. The dangerous trend of making false allegations
- D against judicial officers and humiliating them requires to be curbed with heavy hands, otherwise the judicial system itself would collapse. The Bench and the Bar have to avoid unwarranted situations on trivial issues that hamper the cause of justice and are in the interest of none. "Liberty of free
- E expression is not to be confounded or confused with license to make unfounded allegations against any institution, much less the Judiciary". A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client maligning the reputation of judicial officers merely because his client failed
- F to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system, would cause a very serious damage to the Institution of judiciary. An Advocate in a profession should be diligent and his conduct should also
- G be diligent and conform to the requirements of the law by which an Advocate plays a vital role in the preservation of society and justice system. Any violation of the principles of professional ethics by an Advocate is unfortunate and unacceptable. (Vide: *O.P. Sharma & Ors. v. High Court of Punjab & Haryana*, (2011) 5 SCALE 518).
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17. This Court in *M.B. Sanghi v. High Court of Punjab & Haryana & Ors.*, (1991) 3 SCC 600, observed as under: A

“The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officer with impunity....It is high time that we realise that much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society”. B C

18. This leads us to the question as to whether the facts and circumstances referred hereinabove warrant acceptance of apology tendered by the appellant.

The famous humorist P.G. Wodehouse in his work “*The Man Upstairs* (1914)” described apology : D

“The right sort of people do not want apologies, and the wrong sort take a mean advantage of them.”

The apology means a regretful acknowledge or excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionable in sincerity. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment E F

19. Clause 1 of Section 12 and Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tempered at a belated stage if the accused makes it *bona fide*. There can be cases where the wisdom of rendering an apology dawns only at a later stage. G

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A 20. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which is in contempt of court. An apology can be accepted in case the conduct for which the apology is given is such that it can be "ignored without compromising the dignity of the court", or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as paper apology.

C 21. In *Re: Bal Thackeray, Editor Samna*, (1998) 8 SCC 660, this Court accepted the apology tendered by the contemnor as the Court came to conclusion that apology was unconditional and it gave an expression of regret and realisation that mistake was genuine.

D 22. In *L.D. Jaikwal v. State of U.P.*, AIR 1984 SC 1374, the 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.

E (See also: *T.N. Godavarman Thirumulpad v. Ashok Khot & Anr.*, AIR 2006 SC 2007)

F 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.

G 23. 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 a contempt". 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

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coward. (Vide : *Mulkh Raj v. The State of Punjab*, AIR 1972 SC 1197; *The Secretary, Hailakandi Bar Association v. State of Assam & Anr.*, AIR 1996 SC 1925; *C. Elumalai and Ors. v. A.G.L. Irudayaraj and Anr.*, AIR 2009 SC 2214; and *Ranveer Yadav v. State of Bihar*, (2010) 11 SCC 493).

24. In *Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr.*, AIR 1969 SC 189, this Court while dealing with a similar issue observed as under:

".....Of course, an apology must be offered and that too clearly and at the earliest opportunity. A person who offers a belated apology runs the risk that it may not be accepted for such an apology hardly shows the contrition which is the essence of the purging of a contempt. However, a man may have the courage of his convictions and may stake his on proving that he is not in contempt and may take the risk. In the present case the appellants ran the gauntlet of such risk and may be said to have fairly succeeded."

25. This Court has clearly laid down that 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 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 & Anr.*, AIR 1974 SC 710; *The Bar Council of Maharashtra v. M.V. Dabholkar etc.*, AIR 1976 SC 242; *Asharam M. Jain v. A.T. Gupta & Ors.*, AIR 1983 SC 1151; *Mohd. Zahir Khan v. Vijai Singh & Ors.*, AIR 1992 SC 642; In *Re: Sanjiv Datta*, (1995) 3 SCC 619; and *Patel Rajnikant Dhulabhai & Ors. v. Patel Chandrakant Dhulabhai & Ors.*, AIR 2008 SC 3016).

26. In the instant case, the appellant has tendered the apology on 24.5.1999 after receiving the show cause notice

A from the High Court as to why the proceedings for criminal contempt be not initiated against him. It may be necessary to make the reference to the said apology, the relevant part of which reads as under:

B “That from the above facts, it is evident that the *deponent*  
has not shown any *dis-regard* nor abused the *Presiding*  
Officer, learned Magistrate and so far as allegations  
C against him regarding surrender of Om Prakash is the  
name of Ram Kishan are concerned, the deponent has no  
knowledge regarding fraud committed by Asharfi Lal in  
connivance with others and deponent cannot be blamed  
for any fraudulent act.

D *That notwithstanding mentioned in this affidavit, the*  
deponent tenders unconditional apology to Mr. S.C. Jain,  
IInd Addl. Chief Judicial Magistrate, Etawah if for any  
conduct of the deponent the feelings of Mr. S.C. Jain are  
hurt. The deponent shall do everything and protect the  
dignity of judiciary. (Emphasis added)

E 27. On 24.11.2005, the appellant has submitted an affidavit  
saying as under:

F “That the deponent expresses his unqualified  
remorse for the incident giving rise to the present contempt  
application. The deponent tenders his unconditional  
apology to this Hon’ble Court and to Shri Suresh Chandra  
Jain, the then A.C.J.M.-2 Etawah for the entire incident  
without any qualification or pre-condition. The deponent  
gives the following solemn undertaking that no such  
incident would occur in future. The deponent has immense  
respect for this Hon’ble Court and all other Courts of Law  
G in the land.

The deponent also expresses bona fide, genuine and  
heart-felt regret for the occurrence which the deponent consider  
a blot on him”.

H 28. The High Court considered the case elaborately

examining every issue microscopically and held that there was A  
no reason to disbelieve the facts stated by the judicial officer  
against the contemnor/appellant, the facts were acceptable,  
and it was clearly proved that the contemnor was guilty of gross  
criminal contempt. The charges levelled against the appellant  
stood proved. A Judge has to discharge his duty and passes B  
order in the manner as he thinks fit to the best of his capability  
under the facts and circumstances of the case before him. No  
litigant, far less an advocate, has any right to take the law in  
his own hands. The contemnor abused the Judge in most filthy  
words unworthy of mouthing by an ordinary person and that is C  
true without any justification for him ascending the dais during  
the course of the proceedings and then abusing the judicial  
officer in the words "Maaderchod, Bahanchod, High Court Ko  
Contempt Refer Kar". The courts certainly cannot be intimidated  
to seek the favourable orders. The appellant intimidated the D  
presiding officer of the court hurling filthiest abuses and lowered  
the authority of the Court, which is tantamount to interfere with  
the due course of judicial proceedings. The charge which stood  
proved against the appellant could not be taken lightly and in  
such a fact-situation the apology tendered by him, being not E  
bona fide, was not acceptable.

29. We have considered the facts and circumstances of  
the case. The show cause notice was given by the High Court  
on 5.5.1999. The appellant submitted his reply on 24.5.1999.  
The charges were framed against him on 27.9.2004 and in his F  
first affidavit dated 18.10.2005, the appellant had denied all the  
allegations made against him. The so-called apology contained  
ifs and buts. Appellant is not even sure as to whether he has  
committed the criminal contempt of the court or whether the  
most filthy abuses could hurt the Presiding Officer. Appellant G  
has been of the view that the Officer was a robot and has no  
heart at all, thus incapable of having the feelings of being hurt.

The appellant filed second affidavit dated 24.11.2005  
tendering apology. The apology has been tendered under  
pressure only after framing of the charges by the High Court in H

- A the Criminal Contempt when appellant realised that he could be punished. The apology was not tendered at the earliest opportunity, rather tendered belatedly just to escape the punishment for the grossest criminal contempt committed by him. The language used by the Advocate for a judicial officer
- B where he practices regularly and earns his livelihood is such that any apology would fall short to meet the requirement of the statutory provisions. There has been no repent or remorse on the part of the appellant at an initial stage. Had it been so, instead of making grossest and scandalous allegations against
- C the judicial officer, writing complaint against him to the Administrative Judge in the High Court of Allahabad, the appellant could have gone to the concerned judicial officer and tendered apology in open court.

- The appellant instead of yielding to the court honestly and
- D unconditionally, advanced a well guarded defence by referring to all the facts that led to the incident. Apology tendered by the appellant gives an impression that the same was in the alternative and not a complete surrender before the law. Such attitude has a direct impact on the court's independence, dignity
- E and decorum. In order to protect the administration of public justice, we must take action as his conduct and utterances cannot be ignored or pardoned. The appellant had no business to overawe the court.

- Thus, we are of the view that the apology tendered by the
- F appellant had neither been sincere nor bona fide and thus, not worth acceptance.

30. The appeal lacks merit and is, accordingly, dismissed. A copy of the judgment and order be sent to the Chief Judicial
- G Magistrate, Etawah, for taking the appellant into custody and send him to the jail to serve out the sentence.

D.G.

Appeal dismissed.