

(2015) 10 AHC CK 0138

In the Allahabad High Court

Case No : Contempt Application (Criminal) No. 27 of 2004

Addl. Distt. & Sessions Judge, Etah

APPELLANT

Vs

Mahipal Singh Rana

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 8 Rule 10, 24
Constitution of India, 1950 — Article 227, 235
Contempt of Courts Act, 1971 — Section 13, 13(b), 14(3), 15, 15(1)(b)
Criminal Procedure Code, 1973 (CrPC) — Section 407

Citation : (2015) 9 ADJ 713 : (2016) 2 ALJ 17 : (2015) 113 ALR 449 : (2016) CriLJ 1272

Hon'ble Judges : Sudhir Agarwal and B.K. Srivastava-II, JJ.

Bench : Division Bench

Advocate : V.K. Singh and M.N. Singh, for the Respondent

Judgement

Sudhir Agarwal, J.—Sri Jai Ram Verma, Additional District & Sessions Judge, Court No. 7, Etah sent a Reference dated 24.09.2004 with regard to conduct of Mahipal Singh Rana, Advocate(hereinafter referred to as "Contemnor") shown on 23.09.2004 in Civil Revision No. 45 of 2003, Smt. Jalebshri Vs. Smt. Gyanshri, which according to him amounts to "criminal contempt" as defined in Section 2(c) of the Contempt of Courts Act, 1971 (hereinafter referred to as "Act, 1971"). The Reference has been forwarded by Sri Vikram Jeet Singh, District Judge, Etah vide letter dated 25.09.2004 and has been registered pursuant thereto.

2. This Court framed following charge against Contemnor by order dated 11.01.2005:

"That you Sri Mahi Pal Singh Rana, Advocate on 23.9.2004 in a case, Civil Revision No. 45/2003 Smt. Jalebshree Vs. Smt. Gyanshree, which was fixed for argument in which the revisionist was represented by you as an Advocate, appeared in the Court of Shri Jai Ram Verma, the Additional District & Sessions

Judge, Etah, who was busy in disposal of other cases. You started shouting loudly telling him that you will not do work in the Court of corrupt Judge and will get all your cases transferred from his Court. Saying this you walked out from the Court and did not return to do the case. The aforesaid act done by you and the statement made by you scandalized the Court, obstructed the work and lowered the authority of the Court and thereby you have committed criminal contempt as defined under Section 2(c) and punishable under the Contempt of Courts Act 1971."

3. Consequent to the issuance of notice, Contemnor appeared and filed counter affidavit, sworn on 19.01.2005. The defence taken by Contemnor is, complete denial of visiting the Court of Sri Jai Ram Verma, Additional District Judge, Court No. 7, Etah on 23.09.2004, alleging that the order sheet has been manipulated to implicate Contemnor falsely. On that date Sri Lok Pratap Singh, Advocate, junior of Contemnor actually went to the Court and since the matter was adjourned, noted the date and came back. He has also said that rest of things are false.

4. Subsequently he filed an application dated 27.04.2015, raising plea of maintainability of contempt on the ground that before making Reference, no opportunity was afforded to Contemnor, though it was necessary. It is contended that when matter was examined on the administrative side by this Court, at that stage, an opportunity ought to have been afforded to Contemnor as to whether matter should be referred to be proceeded on judicial side or not. But since no such opportunity was afforded, hence, the entire proceedings are vitiated in law. It is contended that Presiding Officer of the Court can also commit a contempt of his own court and is liable to be proceeded against under Section 16 of Act, 1971. It was necessary to be examined whether there was contempt committed by Presiding Officer of Court which was triable under Section 16 of Act, 1971 or there was alleged contempt on the part of Contemnor-advocate which was referable to under Section 15(2) of Act, 1971. It is also stated that the District Judge, before making Reference to this Court, as also the Hon'ble Chief Justice, before approving the matter on administrative side so as to place before Court on the judicial side, ought to have afforded opportunity to Contemnor. In absence of such opportunity afforded to Contemnor, the entire proceedings are vitiated in law. He said that it was a case which was to be registered against Presiding Officer of Court and has wrongly been registered against Contemnor. The Contemnor made a complaint against Presiding Officer of the Court below regarding corruption on his part and as a counter blast thereof, he (Presiding Officer) made Reference to protect himself.

5. Contemnor also filed a Misc. Modification Application No. 194033 of 2015, seeking modification of this Court's order dated 05.05.2015, whereby Contemnor was allowed to adduce evidence alleging that unless prosecution proves charge, question of asking Contemnor to adduce evidence, does not arise. Contemnor has already submitted his reply stating that entire Reference made is

based on false and incorrect facts. He further stated that on the date on which contempt is alleged to have been committed, the civil revision was not even listed/placed before the court concerned. It was the first date fixed after issuance of notice, as such Contemnor's junior Lok Pratap Singh, Advocate went to see office report and to note down further date. It is suggested that the standard of proof required in a criminal contempt is that of a criminal case and unless it is ascertained that Contemnor has gone to the Court room on the date on which the alleged contempt has taken place, there was no question of framing any charge or proceeding or trying the Contemnor in the aforesaid criminal contempt, and it is liable to be dismissed on this ground.

6. Looking to the complaint of Contemnor that the civil revision was not listed before Court on the date when contempt is said to have been committed, we called record of Civil Revision No. 45 of 2003 from the court below and have perused the same.

7. Brief facts as borne out from record are as hereunder:

8. Original Suit No. 165 of 2000 was instituted by Smt. Gyanshri impleading Smt. Jalebshri as the sole defendant, in the Court of Civil Judge(Junior Division), Etah for a declaration that sale deed dated 15.02.1996 is illegal and be cancelled and intimation be given to the Office of Sub Registrar, Aliganj. The brief facts set out in plaint were that the plaintiff was Bhoomidhar-Tenure holder of Gata No. 212A, area 0.72, whereupon land revenue of Rs. 6.20/- per annum was payable. The plaintiff's husband was doing "kabadi" (scrap) business at Delhi and in that context, plaintiff also used to stay with her husband at Delhi. Raghubir Singh and Ram Rais are brothers of plaintiff. Smt. Jalbeshri is the wife of Raghubir Singh and both were aware that the plaintiff used to stay at Delhi with her husband, colluded to get a forged sale deed dated 15.02.1996 executed by presenting a third lady as if she was the plaintiff and thus, by impersonation got a false and fabricated sale deed, executed.

9. Defendant contested the suit by filing application No. 13C-2, with a prayer that plaint be rejected under Order VII Rule 11 C.P.C. The plaintiff, on the contrary filed an application No. 14C-2 requesting to decree suit under Order VIII Rule 10 C.P.C. since no written statement was filed by defendant in prescribed time.

10. The trial court rejected defendant's application No. 13C-2 stating that objection under Order VII Rule 11 would be considered after filing of written statement and permitted defendant to file written statement within a month, fixing 07.10.2003. The application 14C-2 was disposed of accordingly.

11. Against this order dated 27.08.2003 passed by Civil Judge (Junior Division), Etah, the defendant, Smt. Jalebshri came up in Civil Revision No. 45 of 2003, which was entertained by Incharge District Judge, Etah on 04.09.2003. He issued notice to plaintiff staying further proceedings before Trial Court and fixed 21.10.2003. Thereafter revision was fixed on 10.12.2003, 09.02.2004 and

22.04.2004. On 11.06.2004 the revision was transferred to the Court of Additional District Judge, Court No. 7, Etah, whereupon file was received by Court on 26.06.2004. The matter was taken up on 28.07.2004, on which date counsel for both the parties were present but revision was adjourned to 02.09.2004, for hearing. On 02.09.2004 when the case was called out, parties were present but advocate for revisionist was not present, hence the matter was adjourned to 23.09.2004 for hearing. The order sheet of Civil Revision No. 45 of 2003, dated 02.09.2004 and 23.09.2004 read as under:

"02.09.2004

"02.09.2004

Case called out. Parties present. Counsel for the Revisionist is not present. File be put up for 23.09.2004.

Sd/- Illegible Addl. District & Sessions Judge Etah, Court No. 7"

"23.09.2004

"23.09.2015

Case called out.

Present: Mr. Mahipal Singh Rana, Counsel for the Revisionist.

Opposite party absent.

The counsel for the Revisionist started shouting in the court and said, "I shall not appear in the court of a dishonest judge and shall get all the files transferred." While saying this, he left the court and did not return. The copy of order be sent to the District Judge for necessary action and a letter be written for transfer of the case.

Sd/-Illegible (English translation by Court)

12. Since this Court is not concerned with the merits of revision, therefore, it is not necessary to notice further facts of revision, except that ultimately the aforesaid revision was rejected by Additional District & Sessions Judge, Court No. 1, Etah by judgment and order dated 07.11.2006. The record of court below also contained paper No. 27/11-D, which is a letter sent by Sri Jai Ram Verma, Additional District Judge, Court No. 7, Etah, which reads as under:

"Sir,

With reference to the subject cited above, it is submitted that the aforesaid revision was fixed for 23.09.2004 for arguments in my court, in which Mr. Mahipal Singh Rana, Advocate is appearing on behalf of the Revisionist. On the said case being called out, Mr. Mahipal Singh Rana appeared before the court. In the meantime, I was busy in disposing other cases and Mr. Rana after coming over to the court started shouting out of nowhere, "I shall not appear in the

court of a dishonest judge and shall get all the files transferred." While saying this, he left the court and did not return. I am deeply offended by his such conduct and the presiding officer has been insulted by him by way of levelling unnecessary and false allegations. Hence, I do not want to keep the aforesaid revision in my court for disposal.

You are, therefore, requested to please transfer Civil Revision No. 45/2003 from my court to any other court.

With regards,"

(English Translation by Court)

13. On the said letter itself the District Judge, Etah passed following order on 24.09.2004:

"Allowed.

Record & transfer to Sp. Judge(ST/SC) Act for hearing & Disposal according to law.

The P.O. (Sri Verma) may take legal recourse if he so thinks fit.

Sd/-Illegible. 24/9/2003"

14. Sri Jai Ram Verma, Additional District Judge, Court No. 7, Etah, then sent Reference dated 24.09.2004, in which he has given details of conduct of Contemnor shown on 23.09.2004 in Civil Revision No. 45 of 2003. The relevant extract thereof reads as under:

"On the case being called out for disposal, Shri Mahipal Singh Rana, Advocate appeared before the court. Meanwhile, I was busy in disposal of other cases. Shri Mahipal Singh Rana, Advocate, came in the court and started shouting, "I will not pursue my case in the court of a dishonest judge and I will get the files of all the cases transferred." And uttering these words, he went out of the court-room and did not come back to the court again.

An order was passed for sending an intimation to the learned District and Sessions Judge, Etah about this conduct of Shri Mahipal Singh Rana, Advocate and for transferring the said revision to another court from my court. A photocopy of the order-sheet dated 23.09.2004 is attached herewith.

Learned advocate Shri Mahipal Singh Rana for the revisionist, with a view to obstruct functioning of the court and to defame it, has levelled false and useless allegations against me. Such conduct of Shri Mahipal Singh Rana, Advocate is not only with my court but also with the presiding officers of all judges; and this is the reason why all presiding officers feel not at ease because of him; and a possibility lingers that this advocate, using foul languages, may level false and useless allegations against presiding officer of any court at any time.

Before this court, I was also presiding officer at the court of Additional District

and Sessions Judge, Courtroom No. 10. There as well, a miscellaneous case against Shri Mahipal Singh Rana has been registered by my predecessor-in-office, Shri Yatish Chandra for passing an order for initiating action against him. The case is still pending.

By this conduct of Shri Mahipal Singh Rana, presiding officers of all courts are anguished. Shri Rana, so as to serve his vested interests, tries to overawe presiding officer of any court so that such presiding officer may always keep passing orders in his favour.

Sri Mahipal Singh Rana, Advocate wishes that orders should continue to be passed in his favour, in all his cases, be they have merits or are bereft of merits; and in case of order not being passed, the said advocate makes comments against the presiding officer using unparliamentary language.

There have been several occasions when even indecent language has been used by Sri Rana against the presiding officer of the subordinate court during argument (in appeals or revisions). If, in course of hearing over any appeal or revision, such indecent words are used; then the situation emerging before the court hearing case cannot be imagined.

The civil revision No. 45/2003: Smt. Jaleb Shree versus Smt. Gyan Shree was fixed for 23.09.2004 in my court. In the aforesaid case, Sri Mahipal Singh, Advocate made a comment against me in the open court which impeded the judicial process in other cases pending with my court, thus defaming the court. Many other advocates, officials and litigants were also present in the court at that time; and all this tarnished the dignity of the court.

(English Translation by Court)

15. The contempt Reference was received in Registry on 30.09.2004. Under the instructions of Hon''ble Acting Chief Justice, the Registrar General of this Court placed the matter before Hon''ble Mr. Justice S.P. Mehrotra, Administrative Judge, Etah judgeship, along with his note dated 08.11.2004. The Hon''ble Administrative Judge opined that the conduct shown by Contemnor is such that the matter be placed before appropriate Bench dealing with criminal contempt matters and made his recommendation on 25.11.2004, which was approved by Hon''ble The Acting Chief Justice on 29.11.2004, whereafter contempt was placed before a Division Bench consisting of Hon''ble Mr. Justice Dr. B.S. Chauhan (as his Lordship then was) and Hon''ble Mr. Justice Sunil Ambwani. The Hon''ble Court on 11.01.2005 framed the charge as noted above.

16. We have heard Sri Sudhir Mehrotra, learned Special Counsel nominated by the Court to assist in this matter on behalf of Court and Contemnor himself, who has appeared in person, since various learned counsel, who initially put in appearance on his behalf, have subsequently withdrawn.

17. Sri Mehrotra submitted that conduct of Contemnor is writ large from a bare reading of Reference and since his conduct shows serious contemptuous

activities, therefore, he should be appropriately punished for committing "criminal contempt" of subordinate court.

18. Contemnor, on the contrary, has advanced following submissions:

(i) The very fact that he visited the court of Additional District and Sessions Judge, Court No. 7, Etah on 23.09.2004 is false in as much as he has not gone to the Court on that date. It was the first date after issuance of notice to either side and, therefore, Contemnor's junior had gone to see office report and to note further date, therefore, entire allegations levelled against him are false.

(ii) Before making Reference, the District Judge or the Hon'ble Chief Justice, ought to have afforded opportunity to Contemnor, but since it has not been done, therefore, entire proceedings are vitiated in law.

(iii) Contemnor has made a complaint against the activities of Presiding Officer of Court below, constituting corruption and it is a case where Presiding Officer of court below himself was in contempt, liable to be tried under Section 16 of Act, 1971, but, instead, and also as a counter blast, Presiding Officer has made a Reference against Contemnor, implicating him falsely.

(iv) No witness or evidence has been given by court below in support of allegations though a "criminal contempt" is liable to be proved as a criminal charge since standard of proof is same but in absence of any evidence led by court below, charge levelled against Contemnor is liable to be dropped. The question of affording any evidence on the part of Contemnor would arise only when Reference Court first leads evidence to prove charge.

19. In support of his first submission advanced by Contemnor as above, he placed reliance on Apex Court's decisions in Deepak Kumar Prahladka Vs. Chief Justice Prabha Shanker Mishra and Another, ; Muthu Karuppan Vs. Parithi Ilamvazhuthi and Another, ; and R.S. Sujatha Vs. State of Karnataka and Others, .

20. We have heard parties and perused the record and also the various authorities applicable on the subject.

21. In paras 4 and 8 of counter affidavit, with regard to first objection that Contemnor has not gone to attend the court below on 23.09.2004, we find facts stated by Contemnor as under:

"The answering respondent has never gone in the Court room of Mr. Jai Ram Verma in the aforesaid case i.e. Revision No. 45 of 2003, Smt. Jaleb Shree Vs. Smt. Gyan Shree. In fact, this case was listed only with regard to service of notice upon the respondent and, as such, the answering respondent's Junior Advocate, namely Mr. Lok Pratap Singh had gone to look about the service of notice and thereafter, a further date has been noted by him because no one has appeared on behalf of the respondent as it was the first date of the case and, as such, a subsequent date has been given to the Junior Advocate to the answering

respondent for giving notice to the opposite party. There was no occasion for the answering respondent to go in the Court room for above case and he had never gone in the Court room of Mr. J.R. Verma on 23.09.2004.

That, the order-sheet made in the aforesaid revision was absolutely false and prepared on account of the complaint made by the answering respondent to the learned District Judge. This fact is also proved because none of the person has been shown as witness of the alleged incident as written in the order-sheet and two order-sheets at the same time can not be written. The allegations against the answering respondent are result of after thought and only in order to save his skin and to give a counter blast to the complaint made by the answering respondent to the learned District Judge."

22. Again in para 3 of his affidavit accompanying Modification Application No. 194033 of 2015, Contemnor has said that the case was not even listed/placed before court on that date. His assertions read as under:

"..... the applicant/respondent had never gone in the court-room of the Presiding Officer concerned, and in fact, on the date, on which the contempt is alleged to have been committed by the applicant/respondent, the matter was not even listed/placed before the Court inasmuch as it was the first date fixed in the suit after issuance of notice and as such, a junior counsel Mr. Lok Pratap Singh, Advocate had gone to see the office report and to note down the further date."

23. We have already referred the proceedings contained in the order sheet of Civil Revision No. 45 of 2004, showing that on 02.09.2004, revision was listed for hearing but due to absence of counsel for Revisionist(Contemnor), the revision was adjourned to 23.09.2004 for hearing. On 23.09.2004 the incident has occurred before the court below. The defence taken by Contemnor that it was not a date fixed before court is clearly incorrect. This is also evident from record that the revision was listed for hearing, which obviously means that the revision was to be listed before court and, therefore, to suggest that there was no occasion for Contemnor to attend the court on that date is clearly false and incorrect.

24. Further in the order sheet, Reference Court has mentioned detailed incident. On the next date it separately sent a letter to the District Judge, mentioning entire things and requesting to transfer revision to some other court looking to the conduct of Contemnor. It is also evident from the record that District Judge on 24.09.2004 itself, allowed request of Presiding Officer of court below and transferred revision to another court. All these things are immediate and part of record. There is no reason to doubt the same, particularly when we have found stand taken by Contemnor that 23.09.2004 was not the date fixed for hearing, false and contrary to record.

25. In respect of the procedural aspect and the argument advanced by Contemnor that he ought to have been afforded opportunity by District Judge or by Hon"ble the Acting Chief Justice before making reference or before sending the same to be considered on judicial side, we find no substance. No such

procedure is prescribed in law.

26. The rules dealing with procedure for contempt cases are contained in Chapter XXXV-E of High Court Rules, 1952 (hereinafter referred to as "Rules, 1952"). These rules under Chapter XXXV-E have been framed under Act, 1971. Rule 4(b) and (c) deal with the procedure for "criminal contempt", where a reference is made by Subordinate Court, and read as under:

"4(b). Every case of criminal contempt coming under Section 15 of the Act, shall be presented before the Bench of not less than two Judges constituted for the purpose.

4(c). Provided that every case of Contempt of Court presented before the Court shall bear the report of the Stamp Reporter as to sufficiency of Court-fee paid and also about limitation. References relating to Contempt of Court received on Administrative side from the Subordinate Courts shall, along with the office report with respect thereto, be laid before the Chief Justice, who shall have the discretion to file the same or to order that the same be laid before the Bench concerned, [at Allahabad or Lucknow as the case might be] for further proceedings in connection with the case."

27. Thereafter, Rule 5 and 6 provide further procedure and read as under:

"5. Issuance of notice:- Such allegations contained in the petition as appears to the Court to make out a prima facie case of Contempt of Court against the person concerned, shall be reduced into charge or charges by the Court against such person, and notice shall be issued only with respect to those charges:

Provided that the Court shall not issue notice if more than a year has elapsed from the alleged act of Contempt of Court.

6. Documents accompanied notice:- Where an order has been made directing that notice be issued to any person to show cause why he should not be punished for Contempt of Court, a date shall be fixed for the hearing and a notice thereof in the prescribed form given to the person concerned. The notice of a criminal contempt shall also be served on the Government Advocate. The notice shall be accompanied by copies of the application, motion and the affidavit or a copy of the reference by a subordinate court as the case may be, and a copy of the charge or charges as framed by the court and shall require the person concerned to appear either in person or through counsel unless otherwise ordered before the Court at the time and on the date specified therein to show cause why he should not be punished for Contempt of Court. Notice of every proceeding under Section 15 of the Act shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise."

28. Under these rules, the stage of opportunity to the alleged Contemnor comes only when allegations contained in the reference petition, if prima facie discloses contempt of Court, are reduced into charge or charges by the Court and notice is issued to the alleged Contemnor with respect to those charges. Prior thereto, no

opportunity is contemplated under the Rules. In fact, a reference made by Subordinate Court by itself is not an action against the alleged Contemnor. It is only a kind of information or intimation given by Subordinate Court regarding the conduct of a person or an advocate, which according to reference, amounts to an act of "criminal contempt". It is only when on judicial side the court applies mind and finds that the allegations constitute prima facie "criminal contempt", it is required to reduce such allegations into charge or charges, as the case may be, and, thereafter, issue notice to Contemnor, communicating the charge and also relevant documents which comprise reference. Under Act, 1971 also, neither we find any such provision nor has been shown by Contemnor which obliges the Reference Court or the District Judge or the Hon"ble Chief Justice to give an opportunity to Contemnor before referring the matter on judicial side.

29. Examination of Reference made by Subordinate Court on administrative side by Hon"ble Chief Justice under Rule 4(c) is only a procedure to safeguard valuable time of Court from being vested by frivolous contempt.

30. So far as the contempt by Presiding Officer of his own court is concerned, reliance placed by Contemnor on Section 16 is thoroughly misconceived, in as much as it provides that for the purpose of dealing with such matters it shall be in the same manner as any other individual is reliable. Therefore, the complainant has to approach Advocate General under Section 15(1)(b) to obtain his consent and, thereafter, it must file a petition before appropriate Court. The Contemnor has no right on his own to suggest that High Court suo motu would be obliged to initiate proceedings of contempt under Section 16 against Presiding Officer of Subordinate Court as no such right is vested with the Contemnor or any other person.

31. Now coming to the question of evidence, the procedure to be observed by Court in respect to the contempt of Subordinate Court is the same as if it is dealing with the contempt of its own. Section 14(3) provides that it shall not be necessary for the Judge, in whose presence an offence of contempt has been committed, to appear as a witness. Instead, the statement placed by Judge before the Hon"ble Chief Justice shall be treated as evidence. In the present case Reference constitutes statement of facts given by Judge concerned in whose presence the act of contempt has been committed by Contemnor. The said Reference thus constitutes evidence of facts stated therein.

32. We have also given further opportunity to Contemnor, though it was not necessary, to prove his allegation made against Presiding Officer of Subordinate Court vide alleged complaint dated 23.09.2004, which he has filed as Annexure-1 to the counter affidavit but he chose not to adduce any evidence in this regard. Contemnor, on the contrary argued that a complaint against Presiding Officer of Subordinate Court will not constitute "contempt" and relied on Section 6 of Act, 1971. He also relied on Section 13 of Act, 1971 as amended by Act No. 6 of 2006, whereby "truth" has been permitted as a valid defence provided a request is made by Contemnor for invoking the said defence in a bona fide manner and if

the Court is satisfied that it would be in public interest. However, in the present case, neither any request was made by Contemnor to prove his defence as truth, nor we find that stand taken by Contemnor is bona fide for the very reason that his basic defence that he has not gone to court, since 23.09.2004 was not the date fixed for any other purpose except of seeing office report with regard to service of notice upon the other side, has been found false and incorrect. The order sheet we have already discussed and it is clear therefrom that it was a date fixed for hearing and not, as suggested by Contemnor. Therefore, the stand taken by Contemnor is not only contradicted by record but clearly proves to be false. Therefore, various defence taken by Contemnor as formulated above are answered against him.

33. Now we come to the conduct of Contemnor and examine whether it would amount to a "criminal contempt" under Section 2(c) of Act, 1971, which reads as under:

"(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

34. It cannot be doubted that shouting in the court and levelling serious allegations regarding integrity of a Presiding Officer of Court in an open court, and in presence of various litigants, advocates and others, is an act which is bound to lower down authority of the Court in the eyes of general public and tends to scandalize the Court.

35. Publication whether by words, spoken or written etc., on any matter or doing of any other act, which scandalizes or tends to scandalize or lowers or tends to lower the authority of any Court constitutes "criminal contempt". Such act, as aforesaid, if prejudices or interferes or tends to interfere with due course of any judicial proceeding also amounts to "criminal contempt". Thirdly, if such an act interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner, again it would constitute "criminal contempt". The word "scandalize" has not been defined in Act, 1971. In Black's Law Dictionary word "scandal" has been described as under:

"Scandal consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to decency or good manners, or which charges some person with a crime not necessary to be shown in the cause, to which may be added that any unnecessary allegation, bearing cruelly upon the moral

character of an individual, is also scandalous. The matter alleged, however, must be not only offensive, but also irrelevant to the cause, for however, offensive it be, if it is pertinent and material to the cause the party has a right to plead it. It may often be necessary to charge false representations, fraud and immorality, and the pleading will not be open to the objection of scandal, if the facts justified the charge.

(emphasis added)

36. In Aiyer's Law Lexicon, second edition, Page 1727, reference has been made to Millington Vs. Loring (1880) 6 QBD 190, where the word "scandalous" has been explained as under:

"A pleading is said to be "scandalous" if it alleges anything unbecoming the dignity of the court to hear or is contrary to good manners or which charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading."

37. In Narmada Bachao Andolan Vs. Union of India (UOI) and Others, , in para 7 of the judgment the Court said:

"7. We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the court and bring it into disrepute or ridicule."

38. Recently, the aforesaid definitions of the term "scandalise" has been quoted with approval in Indirect Tax Practitioners Association Vs. R.K. Jain, .

39. In Subramanian Swamy Vs. Arun Shourie, , the court had occasion to examine Section 13(b) as came to be amended by Act 6 of 2006. The Court observed that the amended provision enables the Court to permit justification by truth as a valid defence in any contempt proceeding if it is satisfied that such defence is in public interest and the request for invoking the defence is bona fide, unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of justice.

40. A Division Bench of Andhra Pradesh High Court in State of A.P. Vs. Dr. A. Gopal Menon, Secretary, Vigyanapuri Allottees Welfare Association, said:

"The test for determining whether this kind of contempt has been committed is to find out whether the act in question has a tendency to pollute the fountain of justice and whether it has a tendency to destroy the confidence of common man in the administration of justice."

41. If an impression is made in the minds of public that Judges of the Court act on extraneous considerations in deciding cases, confidence of the litigants, in particular, and, public in general, in the administration of justice is bound to be

undermined. No greater mischief than that can possibly be imagined.

42. The allegation of mala fide, bad intention against a Judge clearly amounts to scandalizing the Court and is a "criminal contempt". Vilificatory criticism of a Judge functioning in the court is nothing but a clear criminal contempt since it not only affects the "administration of justice" but also lowers the authority and dignity of the Court. It creates a distress in the public mind as to the capacity of Judge to meet out even-handed justice. Reckless and scurrilous attack made against a Judge, imputing oblique motives in discharge of his judicial functions and suggesting unholy acquaintance and constant contacts with one of the litigant to favour him/them for granting relief amounts to criminal contempt.

43. In *In Re: S. Mulgaokar*, , the Court said that judiciary cannot be immune from criticism, but, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for judiciary and destroy public confidence, it cannot be ignored. When there appears some scheme and a design to bring about results which must damage confidence in judicial system and demoralize Judges by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial, and unbending justice will feel perturbed.

44. In *In re: Vinay Chandra Mishra* (the alleged contemner), , the Court observed that normally, no Judge takes action for *in facie curiae* contempt against lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which it is expressed and intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the court and to threaten and obstruct the course of justice. It was also observed that making allegations or aspersions on the integrity of Judge is not to be misunderstood as a outspoken fearless attitude of an advocate. Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Rule of law is the foundation of the democratic society. If judiciary is to perform its duties and its functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. The foundation of judiciary is trust and confidence of people in its ability to deliver fearless and impartial justice. When foundation itself is shaken by acts which tend to create disaffection and disrespect for authority of court by creating distrust in its working, the edifice of the judicial system gets eroded.

45. Of late, we find a deep increase in tendency of advocates in making allegations against Presiding Officers of the Courts and thereafter also try to justify their allegations by filing transfer applications with such allegations. In the context of allegations of bias etc. against Presiding Officers made in transfer applications filed under Section 24 C.P.C. Or 407 Cr.P.C., the Court, time and again has held that apprehension of bias must be shown bona fide and

reasonably. It should be substantiated by material placed before the Court. Reminding the duties of advocate, in *Smt. Sudha Sharma Vs. Ram Naresh Jaiswal*, , the Court said that a foremost duty casts upon the counsel concerned while drafting and making allegations against the Judge concerned, is to take utmost care and caution in making wild allegations against the Presiding Judge. The counsel should realise that he is officer of the Court. Introducing fanciful and imaginary allegations for harbouring apprehension that fair and impartial justice would not be done should be avoided. Mere suspicion by party is not sufficient. There must be reasonable apprehension based on material.

46. The justice delivery system knows no caste, religion, creed, colour etc. It is a system following principle of black and white, i.e., truth and false. Whatever is unfair, that is identified and given its due treatment and whatever is good is retained. Whoever suffers injustice is attempted to be given justice and that is called dispensation of justice. The prevailing system of dispensation of justice in Country, presently, has different tiers. At the ground level, the Courts are commonly known as "Subordinate Judiciary" and they form basis of administration of justice. Sometimes it is said that subordinate judiciary forms very backbone of administration of justice. Though there are various other kinds of adjudicatory forums, like, Nyaya Panchayats, Village Courts and then various kinds of Tribunals etc. but firstly they are not considered to be the regular Courts for adjudication of disputes, and, secondly the kind and degree of faith, people have in regular established Courts, is yet to be developed in other forums. In common parlance, the regular Courts, known for appropriate adjudication of disputes basically constitute subordinate judiciary, namely, the District Court; the High Courts and the Apex Court.

47. The hierarchy gives appellate and supervisory powers in various ways. The administrative control of subordinate judiciary has been conferred upon High Court, which is the highest Court at provincial level and is under constitutional obligation to see effective functioning of subordinate Courts by virtue of power conferred by Article 235 read with 227 of the Constitution. No similar power like Article 235 , in respect to High Court is exercisable by Apex Court, though it is the highest Court of land. Its judgments are binding on all. Every order and judgment of any Court or Tribunal etc., in the Country, is subject to judicial review by Apex Court. This is the power on judicial side. Thus scheme under the Constitution imposes heavy duty and responsibility upon High Court to ensure due or proper honour of subordinate Court and Judge and to save them from such scurrilous attack.

48. In *In Re: Ajay Kumar Pandey, Advocate*, , the Court said that superior Courts, i.e. High Court as also the Apex Court is bound to protect the Judges of subordinate Courts from being subjected to scurrilous and indecent attacks, which scandalise or have the tendency to scandalise, or lower or have the tendency to lower the authority of any court as also all such actions which interfere or tend to interfere with the due course of any judicial proceedings or

obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the courts to enable them to discharge their judicial functions without fear.

49. If there is a deliberate attempt to scandalize a judicial Officer of subordinate Court, it is bound to shake confidence of litigating public in the system and has to be tackled strictly. The damage is caused not only to the reputation of the concerned Judge, but, also to the fair name of judiciary. Veiled threats, abrasive behaviour, use of disrespectful language, and, at times, blatant condemnatory attacks, like the present one, are often designedly employed with a view to tame a Judge into submission to secure a desired order. The foundation of our system is based on the independence and impartiality of the men having responsibility to impart justice i.e. Judicial Officers. If their confidence, impartiality and reputation is shaken, it is bound to affect the very independence of judiciary. Any person, if allowed to make disparaging and derogatory remarks against a Judicial Officer, with impunity, is bound to result in breaking down the majesty of justice.

50. We cannot ignore the fact that much cherished judicial independence needs protection not only from over zealous executive or" power hungry legislature but also but also from those who constitute, and, are integral part of the system. Here is a case where an Advocate has appeared in court and made serious aspersions openly in presence of others against the Presiding Officer of Court. The Advocate forgetting the high status conferred upon him, by making him an officer of the Court, has chosen to malign Judicial Officer of the Subordinate Court.

51. We do not intend to lay down any code of conduct for the class of the peoples known as "Advocates", but certainly we have no hesitation in observing that no Advocate has any business to condemn a Judge merely by abusing etc. If there is something lacking on the part of a Judicial Officer touching his integrity, Advocates, being Officers of the Court, may not remain a silent spectator, but should come forward, raising their voice in appropriate manner before the proper authority. There cannot be a licence to any member of Bar to raise his finger over competency and integrity etc. of a Judicial Officer, casually or negligently, or on other irrelevant grounds. Here the competence and capacity of the concerned Judicial Officer has been attempted to be maligned commenting upon his integrity and honesty. It deserves to be condemned in the strongest words. No one can justify it in any manner. Thinking of intrusion of such thought itself sounds alert. It is a siren of something which is not only very serious, but imminent. It is a concept or an idea which should not have cropped up in anybody's mind, connected with the system of justice, and if has cropped up, deserves to be nipped at earliest, else, it may spreads its tentacles to cover others and that would be a dooms day for the very institution.

52. This Court has a constitutional obligation to protect subordinate judges. In Smt. Munni Devi and Others Vs. State of U.P. and Others, this Court in para 10,

has said:

"10. Be that as it may, so far as the present case is concerned, suffice is to mention that the Constitution makers have imposed constitutional obligation upon the High Court to exercise control over subordinate judiciary. This control is both ways. No aberration shall be allowed to enter the Subordinate Judiciary so that its purity is maintained. Simultaneously Subordinate Judiciary can not be allowed to be attacked or threatened to work under outside pressure of anyone, whether individual or a group, so as to form a threat to objective and independent functioning of Subordinate Judiciary."

53. Criticism of a Court cannot be equated with making scurrilous attack on the conduct and integrity of the Judicial Officer/Presiding Officer of the Court.

54. In the present case, an open attack by misbehavior and abuse has been shown against concerned Judicial Officer. Wild imaginary allegations against conduct of Judicial Officer without having any material to substantiate the same cannot be tolerated, inasmuch as, it not only brings into disrepute the entire justice system but is also likely to cause serious erosion in the confidence of public in case such tendency is not snuffed at the earliest.

55. In the entirety of facts and circumstances, as discussed above, we are clearly of the opinion that Contemnor is guilty of committing "criminal contempt" as defined in Section 2(c) of Act, 1971 and the charge levelled against him stands proved.

56. Now coming to the question of sentence, we find that earlier also Contemnor has been found guilty and punished. It is true that his appeal is pending in Apex Court but the facts remains that earlier occasion has not deterred the Contemnor from continuing with his activities of condemning Presiding Officer of Court indiscreetly, openly and in a casual manner so as to scandalize Presiding Officer and also the Court. Hence, Contemnor deserves no sympathy.

57. We, therefore, impose punishment of simple imprisonment for six months, besides fine of Rs. 12,000/-. In case of non payment of fine, Contemnor shall further undergo simple imprisonment for a further period of three months.

58. Besides, looking to the conduct of Contemnor and continuous interruption and nuisance in the Subordinate Court, we find it appropriate to restrain him from entering the premises of District Judgeship Etah for a period of one year. This restraint order shall commence from 02.11.2015.

59. The District Judge is also directed to keep the conduct of Contemnor under constant watch, after he starts entering premises to practice law in Judgeship Etah, and whenever he finds any objectionable or contemptuous attitude of Contemnor, he shall report the matter to this Court without any further delay.

60. The Reference is allowed in the manner as aforesaid.

61. A copy of this order shall be certified to the District Judge, Etah and Chief

Judicial Magistrate, Etah forthwith for communication and compliance.

62. After delivery of judgment in this case, Contemnor prays that sentence imposed by this Court vide judgment of date be suspended to enable him to avail statutory remedy of appeal under Section 19 of Contempt of Courts Act, 1971 before the superior Court.

63. In the circumstances, we suspend the sentence for a period of two months. In case, the appeal is not filed or if filed but no otherwise order is passed in the appeal, Contemnor shall surrender before Chief Judicial Magistrate, Etah, after two months i.e. on or after 07.12.2015, but not beyond 14.12.2015, who shall take steps to get the sentence served out by Contemnor.