

(1990) 11 AP CK 0017

In the Andhra Pradesh High Court

Case No : C.C. No's. 27, 29 and 31 of 1977

Advocate General, Andhra Pradesh, Hyderabad

APPELLANT

Vs

Rachapudi Subba Rao

RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:

Constitution of India, 1950 — Article 124, 215, 217

Contempt of Courts Act, 1971 — Section 2

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1), 218, 219, 220

Citation : (1991) 1 APLJ 1 : (1991) CriLJ 613 : (1991) 2 RCR(Criminal) 189

Hon'ble Judges : N.D. Patnaik, J; M.N. Rao, J; Immaneni Panduranga Rao, J

Bench : Full Bench

Advocate : Advocate General and Govt. Pleader, for the Appellant; Party in person, for the Respondent

Judgement

M.N. Rao, J.—This is the second Full Bench to hear these contempt cases. In 1987 a Full Bench of this Court presided over by P. A. Choudary, J. heard these cases. The hearing was completed on 6-7-87 and judgment was reserved. Nearly one year thereafter on 1-7-88 the learned presiding judge laid down the office on attaining the age of 62 years without convening the Full Bench for delivering the judgment. Because of this unfortunate situation this Full Bench has again been constituted by the Hon'ble the Chief Justice.

2. Dealing with the question whether sanction of the Central Government under S. 197(1) of the Code of Criminal Procedure is a condition precedent for a court to take cognizance of an offence alleged in a private complaint against a judge of the High Court in respect of his acts in the discharge of judicial functions, a Division Bench of this Court comprising the Hon'ble Chief Justice B. J. Divan and Raghuvir, J. (as he then was), in Cri.L.R.C. No. 534 and 523 of 1976 dated 19-8-1976, expressed the view :

"..... u/S. 197(1) of the Criminal Procedure Code, 1973, no court can take cognizance of an offence alleged to have been committed by a judge of the High

Court while acting or purporting to act in the discharge of his official duties except with the sanction given by the Central Government."

A later Division Bench consisting of Madhava Reddy (as he then was) and P. A. Choudary JJ. in Contempt case Nos. 27, 29 and 31 of 1977, dealing with an identical question, after noticing the relevant provisions in the Constitution of India, the Indian Penal Code, the Criminal Procedure Code, the Judicial Officers' Protection Act and the Contempt of Courts Act, came to the conclusion that :

"..... a Judge of the High Court discharging judicial functions, in our opinion, is not an employee of the State Government or Central Government and is not employed exclusively either in connection with the affairs of the Union or in connection with the affairs of the State. The High Court and its Judges constitute a wing of the State. Hence, u/S. 197 Cr.P.C., neither the Central nor the State Government can grant previous sanction envisaged by S. 197(1) Cr.P.C. In our view, the Constitution makes a special provision in Art. 124 in regard to High Court Judges. There is no other mode by which the discharge of judicial functions of a High Court Judge could be called in question. Neither a civil action nor a criminal complaint can be instituted against him by any person aggrieved in respect of the discharge of judicial functions. The Constitution, in our view, does not place the High Court Judge in the discharge of judicial functions at the mercy of the State Government or Central Government to save him from prosecution in a criminal Court by vesting them with the power to accord or refuse sanction u/S. 197 Cr.P.C. Art. 124 by implication gives a constitutional protection. In the earlier pronouncement of this Court, this aspect has not received consideration and, in our opinion, the view that a complaint could be lodged against a Judge of the High Court of Andhra Pradesh in respect of discharge of his judicial functions with the previous sanction envisaged by S. 197(1) Cr.P.C. requires reconsideration by a Full Bench."

The Division Bench, on the main question whether the contemner, R. Subba Rao, was guilty of the alleged acts of contempt has recorded a finding that he had committed criminal contempt u/S. 2(c) of the Contempt of Courts Act.

3. In brief the allegations against the contemner, Subba Rao, are that he issued notices to certain judges of this Court threatening them with civil action for damages if they refused to pay the amounts claimed by him in the suit notices, and he also filed private complaints in criminal courts under Ss. 218, 219 and 220 Cr.P.C., against the judges. So far as the merits of the allegations levelled against the contemner are concerned, the Division Bench dealt with them exhaustively and, after rejecting all the contentions put forth by the contemner, held him guilty u/S. 2(c) of the Contempt of Courts Act.

4. The present reference is, therefore, confined only to the question whether the decision of the earlier Division Bench in Crl.R.C. Nos. 523 and 534 of 1976 holding that sanction u/S. 197(1) Cr.P.C. is a necessary pre-condition for instituting criminal proceedings against a judge of the High Court by a person

claiming to be aggrieved in respect of the judicial decisions rendered by the judge, is correct in law.

5. The learned Advocate-General has argued that a High Court judge appointed by the President of India by Warrant under his hand and seal u/c clause (1) of Art. 217 is neither an employee of the Central Government nor a State Government. The Presidential Warrant of appointment of a judge cannot be equated with an order of the Central Government u/S. 197(1) Cr.P.C. The necessary pre-condition for application of the provisions of Section 197(1) of the Cr.P.C. is that, the person concerned must be one :

"not removable from his office save by or with the sanction of the Government."

A High Court judge is not employed either in connection with the affairs of the Union or a State Government. A High Court judge is, therefore, totally outside the purview of S. 197 Cr.P.C. He further argued that this Full Bench need not go into the question whether the acts alleged against the respondent-contemner really constitute contempt of court; that question has already been decided by the Division Bench and the reference to the Full Bench is confined only to the question of law as to whether a judge of the High Court in respect of the judicial functions discharged by him comes within the protective wings of S. 197(1) of the Cr.P.C.

6. The respondent, who himself has argued the case contended that a High Court judge is not above law. Whatever he does even in discharge of his official duties, he is answerable to a court of law when his actions are challenged. A party to a dispute which was decided by a judge of the High Court is entitled to set the law in motion against the judge and the right to resort to legal remedies being a fundamental right cannot be scuttled by the application of the provisions of Contempt of Courts Act. He also raised the plea of limitation.

7. The respondent requested that permission should be granted to him to cross-examine the deponent who filed the affidavit in support of the present contempt cases and for that purpose he requested either this court to take evidence or direct any Subordinate Court to record the evidence. On 18-9-90 the hearing was completed and the cases are directed to be posted for judgment on 12-11-90.

8. The respondent had sent two letters by registered post to the Hon'ble the Chief Justice marking copies of the same to all the three of us. The first letter is dated 23-9-90 in which he raised an objection that the constitution of this Full Bench with Panduranga Rao, J. as one of the members "is illegal and ultra vires" and "he has no locus standi". The second letter dated 29-9-90 which runs to nine pages refers to the adjournment granted in CRP Nos. 640, 642/86 and CRP Nos. 2497, 2498 and 2499 of 1987 when they were listed before one of us (N. D. Patnaik, J.) sitting single and the request made by the respondent to the Hon'ble the Chief Justice is to cancel CRP Nos. 2497, 2498, 2499/87 and direct listing of CRP Nos. 640 and 642 of 1986 for hearing before the Hon'ble the Chief Justice.

9. Before considering the question of law referred to this Full Bench we feel it necessary to dispose of the objections raised by the contemner to the constitution of this Full Bench and his request for permission to cross-examine the deponent of the affidavit filed in support of the contempt cases. The affidavit was sworn to by one Sri A. V. Ramamurthi, the then Manager in the office of the Advocate-General. The acts alleged against the contemner were narrated in the affidavits. The prayer in each of the affidavits is that this court should be pleased to punish the respondent u/S. 12 read with S. 2(c) of the Contempt of Courts Act, 1971.

10. R. 24 of the Rules framed by this Court u/S. 23 of the Contempt of Courts Act read with Arts. 215 and 227 of the Constitution of India says that this court may determine the matter of contempt either on the affidavits filed or after taking such further evidence as may be necessary and this Court may direct any Subordinate Court to record evidence and submit the same. In this case we do not find any necessity to take any evidence or direct any Subordinate court to record evidence and submit the same to this Court for the reason that the respondent had admitted having issued notices and filing criminal complaints against several judges of this Court which are adverted to in the affidavits sworn to by Shri A. V. Ramamurthy. The Division Bench after referring to the registered notices issued and the criminal complaints filed by the respondent against the judges of this Court, recorded a finding at page 27 :

"The respondent admits having issued the said notices and also having filed the criminal complaints making the aforesaid allegations. We may, therefore, straightway proceed to consider how far the allegations made by him extracted above constitute "Criminal Contempt" and whether they substantially tend to interfere with the administration of justice."

On the question whether a contemner should be permitted to lead evidence to justify the alleged act of contempt, a Constitution Bench of the Supreme Court in Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, speaking through the Hon"ble the Chief Justice held :

"We indicated, to him during the course of the hearing that he should file his affidavit or affidavits dealing with the merits of the case but that he would not be permitted to lead any other evidence to justify contempt. We have already referred to cases which show that he cannot justify contempt. If a judgment is criticised as containing errors, and coupled with such criticism, dishonesty is alleged, the Court hearing the contempt petition would first have to act as an appellate Court and decide whether there are errors or not. This is not and cannot be the function of a Court trying a petition for contempt. If evidence was to be allowed to justify allegations amounting to contempt of Court it would tend to encourage disappointed litigants - and one party or the other to a case is always disappointed - to avenge their defeat by abusing the Judge."

The question of permitting the respondent to cross-examine the deponent who

filed affidavits in support of the contempt cases therefore would not arise. We do not find any merit in the objection raised by the respondent in his letter addressed to the Hon'ble the Chief Justice that the constitution of this Full Bench with one of us, Panduranga Rao, J. as a member is illegal. Though no reasons have been stated, he cited two cases : The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others, and Blaze and Central (P.) Ltd Vs. Union of India and Others, as "revealing the principles of natural justice." Presumably the respondent had in view the fact that Panduranga Rao, J. was a member of the Division Bench which decided the contempt case No. 32/88 dated 18-11-1988, Advocate General v. R. Subba Rao (1989) 1 ALT 55 in which he was convicted for contempt of court u/S. 12 read with S. 10 of the Contempt of Courts Act and sentenced to undergo imprisonment for a period of two months. That contempt case has nothing to do with either the present fact situation or the question of law that has now arisen. A notice issued by the respondent to the Special Mobile Judicial First Class Magistrate for Municipal Corporation of Vijayawada had given rise to the contempt proceedings which culminated in his conviction and sentence in Contempt Case No. 32/88. The fact that, the judgment was rendered by Panduranga Rao, in that case, in our view, will not disqualify him from being a member of this Full Bench. There is no rule at all that a judge who adjudicated a matter concerning a litigant is disqualified from hearing any other case concerning that litigant. The well accepted principles concerning "Bias" have been restated by the Supreme Court in The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others, . A person hostile to a party whose cause he is called upon to try would introduce the infirmity of bias and disqualify him from trying the cause was specifically reiterated by the Supreme Court. This principle has absolutely no application to the present case. There is no allegation of hostility or animosity against Panduranga Rao, J. Although the matter was heard for a good length of time the respondent did not choose to even indirectly raise this objection. The principle that -

"justice should not only be done but manifestly and undoubtedly be seen to be done"

laid down in R. v. Sussex JJ. exp. Me. Carthy, (1924) 1 KB 256 was reiterated by Jagannatha Shetty, J. (as he then was) in Blaze and Central (P.) Ltd Vs. Union of India and Others, , There is, therefore, no basis at all for the respondent to entertain a feeling that by reason of Panduranga Rao, J. being a member of the Full Bench there is a "real likelihood of bias" or "a reasonable suspicion of bias" in the adjudication. As regards Shri N. D. Patnaik, J. the objection of the respondent relates to hearing in certain C.R.Ps., but not the present contempt case.

11. The respondent pleaded that the present proceedings are barred by limitation. As already stated these contempt cases have been pending since 1977

on the file of this Court. The objection raised by the petitioner is that this Full Bench cannot proceed with the hearing of the cases because of the bar of limitation provided in Section 20 of the Contempt of Courts Act. S. 20 lays down that no court shall initiate any proceedings for contempt after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. If the proceedings are initiated within the time specified in S. 20 no illegality will ensue whatever be the duration of the pendency of the proceedings. The objection raised in this regard by the respondent is wholly misconceived.

12. Chapter XI of the Indian Penal Code deals with the offences against public justice. A public servant, when entrusted with the duty of preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect with intent to cause, or knowing it to be likely that he will thereby cause loss or injury to the public or to any person or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment is liable for punishment u/S. 218 IPC with imprisonment of either description for a term which may extend to three years, or with fine, or with both. U/S. 219 IPC, if a public servant, in as judicial proceeding, makes corruptly or maliciously any report, order, verdict or decision which he knows to be contrary to law, is liable for punishment with imprisonment of either description for a term which may extent to seven years, or with fine, or with both. Any person holding an office, which gives him legal authority to commit persons for trial or to confinement or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement in the exercise of that authority, knowing that in so doing he is acting contrary to law, is punishable u/ S. 220 IPC, with imprisonment of either description for a term which may extend to seven years or with fine, or with both. Every judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions, is a public servant u/S. 21(3) IPC.

13. S. 197 Cr.P.C., concerns with the procedure for prosecution of judges and public servants. Sub-section (1) of S. 197, which is relevant reads :

"When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction -

(a) in the case of a person, who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person, who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government."

It will be clear from the above sub-section that the sanction of the Government is

a necessary precondition for a criminal court to take cognizance of an offence alleged against a Judge or Magistrate or a public servant, past or present, in respect of acts committed by him in the discharge of official duties or in the purported discharge of official duties. The Central Government is empowered to accord sanction in the case of a person who is employed or was employed at the time of the commission of the alleged offence, in connection with the affairs of the Union. The State Government, likewise, is empowered to accord sanction in the case of a person who is employed or was employed at the time of the commission of the alleged offence, in connection with the affairs of the State. So far as civil liability of a judge is concerned, the Judicial Officers' Protection Act, 1850 grants immunity for any act done or ordered to be done by him in good faith in the discharge of his official duty, whether or not the act committed by him was within the limits of his jurisdiction. The immunity extends to acts done by him in the belief that he has jurisdiction to do the same. A judge of the High Court certainly answers the description of "public servant" within the meaning of S. 21 IPC, and the provisions of the Judicial Officers' Protection Act, 1850.

14. In respect of judges of Superior Courts and inferior courts, a notable change was brought about in regard to their liability, both civil and criminal, for acts committed or purported to have been committed by them in the discharge of their judicial functions, by the Judges (Protection) Act, 1985 enacted by Parliament. By S. 2, "Judge" is defined as not only every person who is officially designated as a judge, but also every person who is empowered by law to give in any legal proceedings a definitive judgment or a judgment which, if not appealed against, would be definitive and the expression includes anyone who is a member of a body of persons, which body is empowered by law to give a definitive judgment. S. 3, which affords additional protection to judges, reads :

"3. (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

Sub-section (1), as can be seen from the above extract, confers total immunity in respect of civil and criminal liabilities against a judge, past and present, in regard to acts committed by him while acting or purporting to act in the discharge of his official or judicial functions. Sub-section (2) preserves the power of the Central Government, the State Government, the Supreme Court of India, the High Courts or other authorities empowered by law for the time being in

force to take action, whether by way of civil, criminal or departmental proceedings or otherwise against any person who is or was a judge. This provision was found to be necessary in order to have effective disciplinary control over persons functioning as judges. So far as judges of the Supreme Court and the High Courts are concerned, sub-section (2) in no way brings them within any disciplinary domain for the self-evident reason that what has been ordained by the Constitution cannot be modified or departed from by an ordinary law.

15. A Judge of the High Court is appointed under Art. 217(1) of the Constitution of India by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court. He holds office until he attains the age of sixty-two Years. He shall not be removed from office except on the ground of proved misbehaviour or incapacity. The procedure for removal of a High Court Judge, by virtue of

Art. 218, is the same as in respect of Supreme Court Judges specified in clauses (4) and (5) of Article 124. Clause (4) of Art. 124 lays down that the President shall not order the removal of a judge of the Supreme Court except after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, has been presented to the President in the same session. Clause (5) empowers Parliament to regulate by law the procedure for the presentation of an address, and for investigation and proof of the misbehaviour or incapacity of a judge. Except the aforesaid provisions, there are none in the Constitution empowering any authority in the country to take action for removal or initiate any procedure culminating in the removal from office of a judge of the High Court. Misbehavior or incapacity are the only two grounds on which the judges of the Supreme Court and the High Courts can be removed from office by the President of India by following the procedure laid down in clauses (4) and (5) of Art. 124 of the Constitution.

16. The power to constitute and organise the High Courts is exclusively vested in Union Parliament under Art. 246(1) read with Entry. 78 of List I to the Seventh Schedule to the Constitution.

17. The salaries of the High Court judges are specified in the Second Schedule to the Constitution. Their allowances and rights in respect of leave, pension and other conditions of service have to be determined by law by Parliament under Art. 221(2) of the Constitution and the same shall not be varied to their disadvantage after their appointment. Their salaries, allowances and pension and even the administrative expenses of the High Court are charged on the Consolidated Fund of the State. The High Court is empowered under Art. 226 to issue to any authority or person throughout the territory, in relation to which it exercises jurisdiction, orders or writs for the enforcement of the rights conferred by the Constitution. The Governor of the State has no power to refer any question of law or fact for the advisory opinion of this Court, unlike the President of the Union who can make such reference to the Supreme Court of India under

Art. 143. The control over the district courts and courts subordinate to them Is vested in the High Court by Art. 235. Unless a person is appointed in connection with the affairs of the State, the question of the State Government according previous sanction would not arise u/S. 197(1) Cr.P.C. The appointment of a judge of the High Court made by the President of India by following the procedure prescribed in Art. 217 of the Constitution, clearly rules out any possibility, even remotely, to contend that the State Government is the appointing authority for purposes of S. 197(1) Cr.P.C.

18. Art. 218, which says, by reference, that the procedure for removal of a judge of the High Court from office is the same as the one adumbrated in clauses (4) and (5) of Article 124, concerning judges of the Supreme Court, corresponds to Art. 194 of the Draft Constitution. The article in the Draft Constitution corresponding to the present Article 217 was Article 193. The corresponding article to the present Art. 124 in the Draft Constitution was Art. 103. Clause (b) of Art. 193(1) of the Draft Constitution was in the following terms :

"A judge may be removed from his office by the President in the manner provided in clause (4) of Art. 103 of this Constitution for the removal of a Judge of the Supreme Court."

Clause (4) of Art. 103 of the Draft Constitution read as follows :-

"A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity."

Even in the draft prepared by the Constitutional Adviser, Sri. B. N. Rau, it was provided in Art. 164(4) :

"A judge of a High Court shall not be removed from his office except by an order of the President passed on an address being presented in accordance with the procedure prescribed in this behalf by an Act of the Federal Parliament to the President by both Houses of the Federal Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity."

(See "The Framing of India's Constitution" by Shri B. Shiva Rao, Vol. III, at page 68).

When the matter came up for discussion before the Constitution Assembly on 7th June, 1949, an attempt was made by Sri H. V. Kamath to substitute the words "State Legislature" for the word "Parliament" so as to empower the State Legislature to pass a resolution for the removal of a judge of the High Court. The logic behind this amendment in the words of Sri H. V. Kamath :

"If we put trust in Parliament, can we not put trust in the State Legislature as well ?"

(See Constituent Assembly Debates, Vol. 8 (1949) at page 664)

Sri Kamath proceeded on the assumption that both the authorities - the Governor of the State and the Chief Justice - that are required to be consulted in the matter of appointment of a judge of the High Court are provincial authorities. He was supported in this by another member, Dr. P. S. Deshmukh, who contended :

"I do not think the Legislatures of the State should either be distrusted to this extent as to have no say in the matter of the removal of High Court judges or it should be imagined that they would be trying to remove judges on frivolous grounds."

This move was stoutly opposed by several other members. Dr. Bakshi Tek Chand, opposing Sri Kamath's amendment, expressed the fear that, if the State Legislature is empowered to pass a resolution regarding the removal of a judge of a High Court,

"the members may be swayed by local prejudices and other considerations."

He apprehended that the independence of Judiciary would be impaired to a very large extent, if such a power was conferred on the State Legislature. Dr. Bakshi Tek Chand warned that,

"if there is a judge whom the leader of the party in power does not like, or who has by his judicial decisions or otherwise incurred the displeasure of that party, there is a chance of local prejudices coming in."

Shri Prabhudayal Himatsingka, while opposing Sri Kamath's amendment, expressed the view that :

"it will be a dangerous thing to do so and to empower the Provincial Legislature to be able to remove a High Court Judge." He cautioned that

"the Provincial Legislature can be very easily swayed by political considerations and by local influence when a judge of the High Court gives certain decisions which are not acceptable or which may not be palatable to the party in power or to the majority party in the Legislature. Therefore, it should not be made easy for a High Court judge to be removed." One more member, Sri Rajeshwar Prasad expressed the view that :

"when the Provincial Legislatures are reconstituted under adult franchise, it will not be safe to vest Such a power in the hands of the provincial legislature. Already passions and prejudices run very high in the provinces. Communalism and provincialism are rampant."

The Constituent Assembly, therefore, negatives the amendment proposed by Sri H. V. Kamath.

19. The legislative history of these provisions, the historical fact that our federal set up is not the result of a compact between the Union and the States, and

anterior to the Constitution the present States of the Union were not in existence, were not noticed by the Rajmanner Committee appointed by the Government of Tamilnadu when it observed in its report on the Center-State Relations :

"It will be more consistent with the federal principle and in consonance with the autonomy of the State, if it is provided that the power of removal should be exercised on an address being presented by each House of the State Legislature supported by the requisite majority." (See pp. 115-116 : Report of the Centre-State Relations Enquiry Committee, Government of Tamil Nadu, 1971.

The Scheme of our Constitution, the pattern of division of power between the Union and the States, the strikingly unitary features the Constitution incorporated to ensure national unity in times of emergency, judicial interpretation *State of West Bengal Vs. Union of India*, of the Constitution as regards its federal character and the views of eminent Writers Prof. K. C. Wheare : *Federal Government* IV Edn. page 27 do not lend any weight to the aforesaid view expressed by the Rajmanner Committee.

20. Chapter IV of Part V of the Constitution bears the heading "The Union Judiciary." It is self-evident that as chapter V deals with the constitution, composition and jurisdiction of the Supreme Court, the apex court in the country exercising judicial power and jurisdiction throughout the length and the breadth of the country, the chapter is appropriately entitled "The Union Judiciary." In no way it is suggestive of the inference that in connection with the affairs of the Union only the Union Judiciary comes into play. There is no corresponding chapter dealing with "State Judiciary" in the Constitution. On the otherhand Chapter V of Part VI very appropriately bears the title "The High Courts in the State." It is a settled rule of interpretation that the mere heading of a chapter cannot control or cut down the meaning of the clear words employed in the enactment.

21. Our country, unlike the United States has no dual judicial system - State Courts interpreting the State laws and Federal Courts, the Federal laws. We have an integrated judicial structure : all courts enforce both State and Union laws. Although Article 247 empowers Parliament by law to establish additional courts :

"for the better administration of laws made by Parliament or any existing law with respect to a matter enumerated in the Union List."

there is no warrant for the presumption that we have a separate Union Judiciary. There is no provision analogous to Art. 247 empowering the State to establish separate courts for administering State laws.

22. The context induces us to allude to our federal set up. Our Constitution envisages a strong Centre and States have been formed only for administrative convenience. The most essential feature of a traditional federal set up, namely agreement between the federal Union and federating States, is totally absent in

our Constitution. Our organic law is not the result of any compact between the States and the Union. When the Constitution came into force on 26th January, 1950 the States specified in Schedule 1 to the Constitution were not in existence. We have not followed the American model : Ours is not an indestructible Union of indestructible States. Our Union alone is indestructible, but not the States. In the words of Dr. Ambedkar, the Chief Architect of our Constitution :

"The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for conveniences of administration, the country is one integrated whole, its people a single people living under a single imperium derived from a single source."

(Constituent Assembly Debates Vol. VII page 43).

Our Constitution reflects only the barest requirements of a federal set up, namely - i) a Written Constitution; ii) division of powers between the Centre and the States; and iii) a superior judiciary to interpret the organic law. Noticing the fact that our Constitution does not establish a "federal Union" and is tilted heavily in favour of a strong Centre and tends to assume unitary set up on certain occasions, Prof. K. C. Wheare concluded. : "It seems clear that, after allowing for the federal features of the Indian Union it can only be concluded that the Constitution is quasi-federal."

(See K. C. Wheare : Federal Government, 4th Edn. P. 27)

23. Judicial interpretation of the Constitution substantially accords with the view of Prof. Wheare, The Supreme Court in *State of West Bengal Vs. Union of India*, by a majority of 6 to 1 restated the self-evident truth that our federation is not the result of any compact or agreement between the Union and the States. "The basis of distribution of powers," rule the majority speaking through the Chief Justice B. P. Sinha, "between the Union and the States is that only those powers and authorities which are concerned with the regulation of local problems are vested in the States, and the residue specially those which tend to maintain the economic, industrial and commercial unity of the nation are left with the Union." The majority also ruled (at p. 1252 of AIR) :

"There is undoubtedly distribution of powers between the Union and the States in matters legislative and executive; but distribution of powers is not always an index of political sovereignty. The exercise of powers legislative and executive in the allotted fields is hedged in by numerous restrictions, so that the powers of the States are not co-ordinate with the Union and are not in many respects independent."

In *Samsher Singh Vs. State of Punjab* and *Another*, His Lordship V. R. Krishna Iyer, J. after briefly tracing the constitutional developments and referring to the speeches of the national leaders in the Constituent Assembly held :

"What emerges from such a study is that, with minimal innovations, a parliamentary-style quasi-federalism was accepted, rejecting the substance of a

Presidential-style executive."

In *State of Rajasthan and Others Vs. Union of India and Others*, , His Lordship Beg C. J., held :

"A conspectus of the provisions of our Constitution will indicate that, whatever appearances of a federal structure our Constitution may have, its operations are certainly judged both by the contents of power which a number of its provisions carry with them and the use that has been made of them, more unitary than federal"

After quoting the views of the renowned Constitutional lawyer, A. V. Dicey, the learned Chief Justice observed (para 52) : "In a sense, therefore, the Indian Union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically co-ordinated and socially, intellectually and spiritually uplifted."

Reference was also made to the opinion expressed by Dr. Ambedkar in the Constituent Assembly that our Constitution is :

"both unitary as well as federal according to the requirements of time and circumstances."

24. The considered view of the Supreme Court is that ours is not a true federation.

25. Criticism founded on American analogy of State autonomy has been on the increase in the recent years. Stray voices are heard for restructuring the Indian federalism so as to make the States real independent units. The organic law of this country plainly forbids this : the present federal structure tilting in favour of a strong Centre reflects the overwhelming desire and determination of the Founding Fathers to preserve the unity and territorial integrity of the nation, thus ensuing insulation from possible attacks by provincial zealots. Uninformed comparisons are odious. American federalism is not our prototype : the contrast stares in the eye. Our federation is not the result of a compact between the States, we do not have a dual citizenship, we have no two tier judicial system to interpret Union and State laws, neither our Governors nor our judges are elected by the people, the residuary powers are not vested in the States, and above all our States are not permanent entities with immutable territorial limits. These are some of the notable features of discord, too transparent to escape attention. Even in the United States the recently evolved concept of "Cooperative Federalism" has not conceded equality to the States in their relations vis-a-vis the Union. It only seeks to "produce the advantages of a unitary State without destroying the essential values of federalism." (See J. W. Burns and J. M. Peltason : *Government by the People* 4th Edition p. 121). Constitutional developments in the United States in the last five decades clearly show that the Federal Government wields enormous powers and overshadows the States. In

true democratic tradition the States bowed to the will of the strong Federal Government "however distasteful this may be". (See Major Problems in State Constitutional Revision Edited by W. Brook Graves).

26. Shri M. C. Setalvad, the first Attorney-General of India in his Tagore Law Lectures delivered at the Calcutta University on "Union and State Relations under the Indian Constitution" (1964) observed that "the Indian federation is an artificial federation" The result of his critical study of the Constitution is that it leans heavily in favour of a strong Centre : "The power given the Union to alter State boundaries, the Universal and single Indian Citizenship, the concurrent legislative powers for the Union and the States with overriding powers to the Centre, the vesting of residuary powers of legislation in the Union, the common pools of taxation, the power to the Centre to give directions to the States and finally the powers vested in the Centre in emergencies to divest State units of all or most of their functions, are all devices to erect a strong Centre which could keep the country united and control the numerous divisive forces in it. The integrated judicial administration controlled by the Centre would appear to be yet another instrument aimed at achieving the same purpose." (p. 181). Why the Constitution has conferred power only on the Union, but not on the States in the matter of appointment of judges of the supreme judiciary ? The purpose clearly, according to Shri M. C. Setalvad, "is to ensure the functioning of a system of impartial administration of justice unaffected by local influences and pressures from the regional Governments." (p. 175).

Articulated proclivities of any functionary under the State can hardly change the colour and content of the Indian organic law. Neither the Union nor a State can have any power it claims. What they claim are not what the Constitution, as interpreted by the Judiciary, confides in them. This is axiomatic and irrefragable.

27. Even though the Constitution inclines in favour of a strong Centre, its federal character as it obtains today cannot be destroyed or abrogated. The basic structure of the Constitution is beyond the amendatory process of Article 368, ruled the majority (C.J., Shelat, Grover, Hegde, Mukherjea, P. J. Reddy and Khanna JJ.) in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, . One of the basic features is the federal character of the Constitution. What constitute the essential or basic features of the Constitution, the majority did not enumerate : Illustratively they were alluded to supremacy of the Constitution, Republican and Democratic form of Government, Secular character of the Constitution, Separation of powers between the legislature, the executive and the judiciary, and independence of the judiciary. Taking a pragmatic view of the Indian ethos the Constitution-makers did not repose faith in the legislatures of the States in the matter of removal of judges. The procedure incorporated in clauses (4) and (5) of Art. 124 read with Art. 118 which ensures the independence of the judges of the superior courts, in our considered view, is one of the basic features of the Constitution which cannot be abrogated, tinkered with or altered adversely by invoking the provisions of Art. 368. 28. Is the

Central Government the competent authority for according sanction for the prosecution of a judge of the High Court u/S. 197(1) of the Cr.P.C. ? Our answer is emphatically in the negative. There is little doubt that a judge of the High Court is a public servant within the meaning of S. 21(3) of the Penal Code. The Government competent to accord sanction for prosecution of a judge or public servant under 197(1) of the Cr.P.C., is the Government which has power to remove him from office. A High Court judge cannot be removed by the Central Government for the obvious reason that the procedure for his removal is specified in Art. 124(4) and (5) of the Constitution under which the Central Government has no part to play. Unless not less than two-thirds members of each House of Parliament and also a majority of the total membership of each House passes a resolution to the effect that a High Court judge is guilty of misbehaviour or incapacity the President cannot pass an order removing the judge from office. The resolution passed by the two Houses must also be presented to the President in the same session. Although all executive actions of the Government of India shall be expressed to be taken in the name of the President under Art. 77(1), the President is bound to act in accordance with the advice tendered by the Council of Ministers headed by the Prime Minister as enjoined by Art. 74(1) *Samsher Singh Vs. State of Punjab and Another*, . But if the procedure contemplated in Art. 124(4) and (5) is complied with the President must pass an order for the removal of a judge from office. In the performance of this Constitutional duty the President is not required to take the advice of the Council of Ministers. Neither the inclination nor the initiative of the Central Government has any relevance in the context of Art. 124(4).

29. Only in respect of persons employed in connection with the affairs of the Union, the Central Government is the appropriate Government for according sanction for prosecution under 197(1) of the Cr.P.C., provided that Government has power to remove that person from office. A judge of the High Court is not employed in connection with the affairs of the Union in which case alone the Union Government will have jurisdiction under 197(1) to accord sanction. Cumulatively two tests must be satisfied :

- (i) the authority to remove must be the Central Government; and
- (ii) the person at the relevant time must have been employed in connection with the affairs of the Union.

Both the tests are not satisfied in the case of a judge of a High Court. A judge of a High Court in the Judicial set up under our Constitution occupies a pivotal position. The power of judicial review which is a basic feature of the Constitution is vested in the High Courts and the Supreme Court. In the discharge of his functions a High Court judge not only deals with civil and criminal matters to the extent the adjudicatory functions are conferred on him by the relevant statutes, he also has power to declare ultra vires any law made by either the Union Parliament or the State Legislature if it is in conflict with any of the provisions of the Constitution. He has power to set aside the actions of individuals impugned

before him if the same are contrary to law. He tests the validity of laws made by Parliament and the State Legislature on the touchstone of the Constitutional provisions : the Constitution being the mechanism under which laws are made, the latter must conform to what the Constitution lays down. When such great and far reaching powers are conferred by the Constitution on the High Courts, the judges of the High Courts who exercise those powers must be insulated from local prejudices, vicious attacks by disgruntled litigants and dissatisfied Executive whose actions the judge had occasion to strike down. In that context the independence of the superior judiciary assumes primordial importance and concern. There is a real risk of the Government-either the State or the Union-according sanction for prosecution of a High Court judge whose decisions are not to their liking. Unless the judge has absolute independence in the discharge of his judicial functions, the power of judicial review which is a basic feature of the Constitution and a cardinal principle of the Rule of Law will become a spurious ritual. From this functional point of view, independence of the judge in the discharge of his judicial functions is ensured by the Constitution the protection is not in the personal interest of the judge but it is in the public interest for proper and effective administration of justice. That is the reason why the Constitution-makers wisely and advisedly did not trust either the State or the Central Government : they did not even trust the State Legislature but reposed faith in Union Parliament by providing a stringent procedure in Art. 124(4) for removal of the judges of the superior judiciary.

30. The decisional law unmistakably lays down that judges of the Supreme Court and the High Courts are not employees of either the Union or any State Government. The primary question that fell for consideration before a Constitution Bench of the Supreme Court in *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, was whether a judge could be transferred from one High Court to another. His Lordship Bhagwati, J. (as he then was) after examining the provisions of the relevant Articles in the Constitution and the Oath required to be taken by a judge of the High Court before his entering upon office stated the legal position thus :

"Two propositions clearly emerge on a consideration of these provisions read in the context of the constitutional scheme. The first is that the, appointment contemplated under these provisions is appointment of a person as a Judge of a particular high Court and not as a Judge simpliciter. There is no All India Cadre of High Court Judges. Secondly, a Judge of the High Court is not a Government servant but he is the holder of a constitutional office. He is as much part of the State as the executive Government. The State has in fact three organs, one exercising executive power, another exercising legislative power and the third exercising judicial power. Each is independent and supreme within its allotted sphere and it is not possible to say that one is superior to the other. The High Court, constituted of the Chief Justice and other Judges, exercises the judicial power of the State and is co-ordinate in position and status with the Governor aided and advised by the council of Ministers, who exercises the executive power

and the Legislative Assembly together with the Legislative Council, if any, which exercises the legislative power of the State. Plainly and unquestionably, therefore, a High Court Judge is not subordinate either to the executive or to the legislature. It would, indeed be a constitutional heresy to so regard him. He has a constitutional function to discharge, which includes adjudication of the question whether the executive or the legislature has overstepped the limits of its power under the Constitution. No doubt Art. 217, Clause (1) provides for appointment of a person to the office of a High Court Judge by the President, which means in effect and substance the Central Government but that is only laying down a mode of appointment and it does not make the Central Government an employer of a High Court Judge. In fact a High Court Judge has no employer, he occupies a high constitutional office which is co-ordinate with the executive and legislature."

In the same case, His Lordship V. R. Krishna Iyer, J. explained the Constitutional position thus (para 93 of AIR) :

"We must first understand that judges have been assigned, by the supreme lex an independent sentinel's duty. To defeat this robe (role ?) subtly or crudely is to rob the Constitution of a vital value. So it is that we must emphatically state a judge is not a government servant but a constitutional functionary. He stands in a different category. He cannot be equated with other "services" although for convenience certain rules applicable to the latter may, within limits, apply to the former. Imagine a judge's leave and pension being made precariously dependent on the Executive's pleasure! To make the Government not the State the employer of a superior court judge is to unwrite the Constitution."

31. The earlier Division Bench of this Court comprising B. J. Divan, C. J., and Raghuvir, J. in Crl.R.C. Nos. 534 and 523 of 1976 although has noticed the provisions of Articles 217 and 124 felt that :

"..... the final order of removal is by the President of India, who for this purpose will be the Central Government, it is obvious that the High Court judge is removable from office by the Central Government"

This view is plainly wrong and ignores the set up of the superior judiciary under our Constitution, the procedure for removal, the conditions precedent for such removal and other related matters. We, therefore, express our respectful disagreement and over-rule the same.

32. if the Central Government and the State Government are not the competent authorities for according sanction under 197(1) Cr.P.C., does the situation lend itself to exposing a judge of the High Court to criminal prosecution under Ss. 218, 219 and 220 of the IPC by a dissatisfied litigant as was sought to be done by the respondent Subba Rao in this case ? It sounds paradoxical. A closer scrutiny of the legal position would disclose that neither the provisions of the IPC nor for that matter any law made either by Parliament or the State Legislature can fasten any liability civil or criminal on judges of the superior judiciary in so far as their judicial acts or acts purported to be in the discharge of judicial functions are

concerned.

The High Court is a "Court of Record" and as such it has all the powers of such a court including the power to punish for contempt of itself. This position is made explicit by Art. 215 in respect of the High Courts and by Art. 129 in respect of the Supreme Court. The parameters of this power are not set out in Art. 215 or 129. Explaining what is meant by "Court of Record" Dr. Ambedkar in the course of discussion of these Articles in the Constituent Assembly observed :

"I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words "Court of Record". Then, the second part of Article 108 says that the court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced."

(Constituent Assembly Debates Vol. 8, 1949 at page 382 : The present Art. 129 corresponds to Art. 108 of the draft constitution)

33. A Division Bench of the Madras High Court in *In Re: G. Vasantha Pai*, while holding that the High Court has power to expunge objectionable matter from the record of a subordinate court, incidentally considered the question whether a Division Bench or a Fuller Bench of a High Court has power to expunge any remarks or Observations from the judgment of a single judge. Answering the question in the negative the Division Bench speaking through the learned Chief Justice P. V. Rajamannar held (para 13) :

"No instance was cited at the Bar by the learned Attorney General in which a High Court invoked its inherent power to expunge from the judgment of a judge of the High Court any remarks or observations. A judgment of a single Judge of this court whether it be on the Original Side or on Appellate Side, in civil or criminal proceedings is a judgment of the High Court. We do not think that a Divisional Bench or a Fuller Bench of this court has the power to delete passages from the judgment of this court delivered by a single judge. The High Court is a court of record and that is another reason why we have no power to direct any expunging from the judgment of a learned judge which is a part of the record of this court."

34. In this context we are also aware of the fact that in *Advocate General of Bihar v. High Court of Judicature at Patna*, AIR 1986 SC 1080 : (1986 Cri LJ 1260) the Supreme Court expunged certain observations made and strictures passed in a contempt case against the Advocate-General of the State of Bihar by a learned single Judge of the Patna High Court but the question whether the High Court being a "Court of Record", any part of the judgment of a judge of the High Court

can be expunged was neither raised nor decided in that case.

35. A Division Bench of this Court in Mohammad Osman v. Mohammad Baqar

Mohd. Osman Shaheed Vs. Mohd. Baqur Hussain Shaa and Others, speaking through P. A. Choudary, J. explained the rational behind the conferral of power on the High Courts under Art. 215 thus :

"An independent and impartial judiciary cannot be effective unless it possesses in full measure the power to punish any one who impedes its working and obstructs the execution of its orders and decrees so that for its purposeful functioning the courts need not depend upon the other limbs of State. The Constitution therefore by means of a self-executing ordinance confers this power on the High Court (Art. 215). But what conduct amounts to a contempt of court is advisedly left by the Constitution for judicial definition and determination. The idea is to make the High Court's power to punish acts of contempt as plenary as the necessity of a particular case requires without crippling it by a formal constitutional definition. But our courts under the Constitution, have adopted the classic definition of Oswald as a working guide. Oswald in his classic book on Contempt of Court, defined contempt of Court in these words :

"To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigants or their witnesses during the litigation." (Para 11 at p. 848)

Why the power conferred by Article 215 cannot be taken away or abrogated by any law was explained by the learned judge (para 25 at p. 852) :

"The power to punish contempt is conferred on this Court by reason of Art. 215. This power being directly in the gift of the constitution cannot be taken away or abrogated or whittled down by any Act of the Parliament. For the power of the Parliament to make laws is subject to the provisions of the Constitution. For its limitation we must look to Art. 215 of the Constitution only and in Art. 215 we find none. It does not stand to reason to argue that what the Parliament cannot abridge a contemner can render nugatory."

We entirely agree.

36. The freedom of speech and expression which is a fundamental right under Article 19(1)(a) is also subject to reasonable restrictions imposed by the law relating to contempt of courts. It must be remembered that the provisions in IPC which were enacted nearly 130 years ago, therefore, cannot have any effect to cut down or abridge the power of the High Court as court of record under Art. 215 of the Constitution to punish any one for contempt of court. Resort to prosecution u/Ss. 218, 219 and 220 of the IPC by a disgruntled and motivated litigant against the judge who decided a cause against him clearly has the effect of impeding the independence of the judiciary.

37. So far as members of subordinate judiciary are concerned Section 197(1) of the Cr.P.C., takes care to ensure their independence by insisting upon the requirement of previous sanction. Although the members of subordinate judiciary cannot strictly be said to be persons exclusively employed in connection with the affairs of a State, since the statutory rules governing their conditions of service are framed by the Governor of the State under the proviso to Art. 309 in consultation with the High Court, inferentially it can be said that the State Government after obtaining concurrence of the High Court has the power to accord previous sanction for the prosecution of a member of the subordinate judiciary.

38. The inapplicability of S. 197 Cr.P.C. should not lead to the absurd result of there being no safeguard for the judge of a High Court from being harassed by dissatisfied and disgruntled litigants. The safeguard is embodied in Art. 215 of the Constitution. The provisions of the IPC in chapter XI in so far as they concern the judge of a High Court, therefore, have no application. As the Constitution Makers advisedly incorporated a stringent procedure in clauses (4) and (5) of Art. 124 and Art. 218 for removal of judges of the Supreme Court and High Courts they felt unnecessary to provide any immunity to judges of the superior judiciary other than the one incorporated in Arts. 129 and 215 of the Constitution.

39. A doubt might arise that when immunity was provided under Art. 361 to the President and the Governors in respect of "exercise and performance of their powers and duties" they are not answerable to any court whether an inference would not follow that the absence of such immunity in respect of High Court judges would compel them to justify their judicial Actions in a court of law when questioned ? There is absolutely no warrant for such an inference. The President and the Governors in the discharge of their official duties act in accordance with the advice tendered by the Council of Ministers, and, therefore, immunity was accorded to them under Art. 361. The position in the case of members of the superior judiciary is entirely different. As already adverted to supra, the independence of the judiciary is one of the basic features of our Constitution and to ensure that independence the superior judiciary is vested with the powers under Art. 129 and 215 of the Constitution to punish any one for contempt of court. A conjoint reading of clauses (4) and (5) of Art. 124, Art. 129 and 215 will show that except in regard to proved misbehaviour or incapacity no judge of a superior court in this country is liable to be proceeded against in respects of acts performed qua judge. Any other interpretation, in our considered view, would be plainly inconsistent with the constitutional intendment to ensure the independence of the judiciary. Independence of the judiciary, implying there by freedom from interference by the Legislature and the Executive in the discharge of judicial functions is an indispensable desideratum of the Rule of Law, a basic feature of our Constitution.

40. A related question in the context of the present discussion is whether in juxta-position of the right of an individual to seek his legal remedies in

accordance with what the statutes and the Constitution permit, which itself is considered to be a basic feature of the Constitution and a facet of the Rule of law, how far the deprivation of that right on the ground that it amounts to contempt of Court is justified ?

41. Rule of Law is not a static concept. Its connotation in democratic countries varied differently in different ages. Chief Justice Coke's answer to the British Monarch in the 17th Century that the Rule of Law implies : "Leave to live under laws by nobody's leave." bring out the quintessence of the concept supremacy of the law. Even so the English law did not view with disfavour the disabilities suffered by the Non-Conformist and the Catholic : "The latter was forbidden to worship in public till 1779; the former could not be a candidate for Parliament till 1828, or enter the Universities of Oxford and Cambridge till 1871." (See R.H.S. Crossman : Government And The Governed, 4th Edn. page 83). Franchise to British women was denied till 1928. To Prof. A. V. Dicey, the concept meant absence of arbitrary power so as to enable the individual to ascertain the legal powers available to government in order to safeguard his private rights. (See A. V. Dicey : Introduction to the study of the Law of the Constitution).

42. In a democratic set up no law can survive for long if it does not enjoy the support of the majority. As social values change, legal concepts receive new interpretations. Any break with a tradition especially during the interregnum between the break and its social acceptance would be breach of the Rule of Law to the adherents of the tradition. In the last century slavery was sanctified by law in the United States when the Supreme Court rules in 1857 in Dred Scot v. Sanford that blacks were not included and were "not intended to be included under the word "citizen" in the Constitution". In our country every time a legislation was made to give effect to the Directive Principles of State Policy, the challenge to its constitutionality was based mainly on the ground that the impugned law was a threat to the Rule of Law, implying thereby the inviolability of the rights of the individual vis-a-vis the larger interests of the society. Even so, by and large Courts have not enthroned individualism at the cost of communitarianism. The reality that welfare of the whole ensures the welfare of the part was realised by the International Commissioner of Jurists when it declared at its New Delhi Convention (159) that the Rule of Law concept also concerns "with the claim of every individual on the State to have access to the minimum material means whereby he may atleast be in a position to take advantage of his spiritual and political rights," an anathema to the pre constitution legalism.

43. The legal position must, therefore, be ascertained and determined not by placing reliance on abstract theoretical concepts, but by examining pragmatically their content.

44. Our societal values bear no comparison with England, America and other democratically advanced nations. In the last sixty (60) years in England there has not been a single case of Contempt by scandalising the court. See B. R.

Varma : Law of Contempt of Court II Edition page 88 : The Committee headed by Lord Shawcross P.C., Q.C., constituted by the Organisation Justice to study the issues relating to contempt of court, declared :

"we known of no charge being made in this century of judicial corruption." (page 15) :

A gracious compliment indeed to the sobriety and restraint of the litigants and the lofty standards of the British Judiciary. In our country things speak for themselves. Narrow prejudices, insular loyalties, regional biases, local passions, sectarian interests and caste prejudices not infrequently play a dominant role in denigrating the judiciary. Some times litigants lose equilibrium when they lose causes and indulge in scurrilous attacks on the judges who decided the causes. In the present context of the Indian conditions if any one, more so a disgruntled litigant, was permitted to institute cases against judges of the superior superior courts, it would inevitably result in the corrosion of independence of the judiciary. A remedial process, as held by the Supreme Court in *Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another*, cannot be a mask to malign a judge. To say that it would amount to breach of the Rule of Law if any one is prevented from approaching a criminal court to prosecute a judge for rendering a decision against him would be totally unrealistic, nay ominous. The Rule of Law and the Supremacy of the Constitution, among others, constitute the basic structure of our Constitution as held by the majority in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, . We cannot uphold any fanciful facet of the Rule of Law if it is in conflict with any of the provisions of the Constitution. The Rule of Law concept in the Indian context must be construed and interpreted subject to the powers of the Supreme Court and the High Courts under Art. 129 and 215 as judicially interpreted. Stated differently, where Arts. 129 and 215 come into play the alleged right of a person to resort to legal remedies against members of the superior judiciary in respect of the acts performed or purported to have been performed by them in the discharge of their judicial functions, must yield. We, therefore, hold that the actions of any member of the superior judiciary qua judge cannot be called in question before any forum except by way of impeachment as provided by the Constitution.

44A. Although the question referred to this Full Bench does not cover the aspect whether or not the respondent is guilty of the alleged contempt since the Division Bench has already recorded a finding against him the respondent, who argued the case in person, says that it is open to this Full Bench to go into the question afresh and decide the matter. We are unable to agree with his request. We cannot go beyond the scope of reference. Even assuming that the entire matter was before this Full Bench, still our conclusion would not be different from what has been recorded by the Division Bench.

"Contempt of Court" is an offence not covered by the provisions of Chapter XI of the IPC. Before the passing of the Contempt of Courts Act, 1952, which was repealed by Act 70 of 1971, courts of record had no power to punish anyone for

contempt. That power was conferred only by the Contempt of Courts Act, 1952. What precisely constitutes "contempt" has not been defined by the Contempt of Courts Act, 1971. Clauses (b) and (c) of S. 2 of the Act speak of what is meant by "civil contempt". Doing of any act either by publication or otherwise, which scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court; or if such act interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner, inter alia, constitute "criminal contempt." The power to punish for contempt is conferred on the judges "to keep the course of justice free." A court of Justice without power to vindicate its own dignity, to enforce obedience to its mandates, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly which could not be permitted to exist in any civilized community" There are many ways of obstructing the Court and, therefore, "powers are given to the judges to keep the course of justice free : powers of great importance to society, for by the exercise of them law and order prevail; those who are interested in wrong are shown that the law is irresistible." Oswald's Contempt of Court, III Edn. p. 9. The obstruction to the course of justice is what is called in law "contempt" and (his has nothing to do with the personal feelings of the judge. Oswald's definition : "To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigants or their witnesses during the litigation," was accepted by the Supreme Court : vide Pratap Singh and Another Vs. Gurbaksh Singh, , Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, and Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra, . The rationale for the existence of power to punish for contempt, as expressed by Oswald, was also accepted by the Lord Shaw-cross Committee, in its report on contempt of Court submitted to the organisation "Justice". According to this Committee, "..... it is essential to the maintenance, and indeed to the very existence, of the legal system of any State that the Court should have ample powers to enforce its orders to protect itself from abuse of itself or its procedure. We desire at the outset to make it clear that we recognise and accept this principle. In our view any alteration or amendment of the law of contempt of court must be such as will, without any doubt, leave the court with sufficient powers for these purposes."

45. In the context of the contention urged by the respondent that because he was pursuing legal remedies as provided by the law it would not amount to contempt of court, it must be noticed that the allegations levelled by the respondent in the notices issued by him to the Honourable Judges of this Court and in the criminal complaints filed by him against them, concerned exclusively with their judicial functions the decisions rendered by them in the cases in which the respondent figures as a party. Three former Chief Justices of this High Court Chief Justice B. J. Divan, Chief Justice A. Sambasiva Rao and Chief Justice Alladi Kuppaswami, two former Judges Justice A. Gangadhara Rao and Justice K.

Amareswari and two former judges who are now Chief Justices-Justice A. Raghuvir (now Chief Justice Gauhati) and Justice B. P. Jeevan Reddy (now Chief Justice Allahabad) have been the targets of scurrilous attacks made by the contemner, Subba Rao.

46. Justice Alladi Kuppaswami and Justice K. Amareswari, by an order dated 8-4-1977 in Contempt Case No. 28 of 1976, found the present contemner, Subba Rao, guilty of gross contempt. That contempt case arose in the following circumstances : A criminal complaint bearing No. 177 of 1976 was filed in the court of the 4th Additional Judicial First Class Magistrate, Vijayawada, by Subba Rao against Justice A. Sambasiva Rao, Acting Chief Justice (as he then was) and Justice A. Gangadhara Rao in respect of a judgment rendered by them on 23-4-75 convicting him for gross contempt of court of the "worst type" and sentencing him to one month simple imprisonment. In that criminal complaint, he alleged that the Acting Chief Justice A. Sambasiva Rao, with mala fide intention, punished him without any legal basis on account, of the recommendation and influence of one Sri Boppana Venkata Kutumbarao Chowdary, an advocate of Vijayawada and an intimate friend of the Acting Chief Justice. Against Justice A. Gandhara Rao, he alleged that, though at the initial stage of hearing of the contempt petition, he expressed the view that Subba Rao had not committed contempt, later on, he changed his view and agreed with the Acting Chief Justice. The complaint petition was dismissed by the 4th Additional Judicial First Class Magistrate on the ground of want of territorial Jurisdiction. Thereafter, the contemner filed Criminal Miscellaneous petition No. 722 of 1976 in the Court of the 4th Metropolitan Magistrate, Hyderabad, with identical allegations and that complaint was returned for want of sanction u/S. 197(1) Cr.P.C. Questioning that, Subba Rao filed Criminal Revision Case No. 534 of 1976, which was dismissed by this Court on 19-8-1976. He circulated a printed copy of the complaint to the public and to the High Court and also forwarded a copy of the same to the Government of India. That action of his was the subject matter of Contempt Case No. 28 of 1976 filed by the Advocate-General and admitted by Chief Justice B. J. Divan and Justice A. Raghuvir. Subba Rao issued a registered notice on 13-5-1977 to Chief Justice B. J. Divan and Justice A. Raghuvir calling upon each of them to pay a sum of Rs. 30,000/- as damages. He also filed a criminal complaint in the Court of the 5th Metropolitan Magistrate, Hyderabad, on 3-5-1977 against both the learned Judges. C.C.No. 31 of 1977 was filed by the Advocate-General for the aforesaid action of Subba Rao.

47. The contemner, Subba Rao, once again issued a registered notice on 13-5-1977 to Justice A. Kuppaswami and Justice K. Amareswari demanding payment of Rupees 2,00,000/- (Rupees two lakhs) by way of damages on the ground that they tried and decided Contempt Case No. 28 of 1976 with bad faith. He also filed a criminal complaint before the 5th Metropolitan Magistrate, Hyderabad, alleging that both the learned Judges were guilty of offences punishable u/Ss. 218, 219 and 220 I.P.C. Contempt Case No. 27 of 1977 was, therefore, filed by the Advocate-General on the above facts.

48. An order was made by the Bar Council of Andhra Pradesh on 31-3-1974 dismissing the complaint of the contemner, Subba Rao, against two Advocates of Vijayawada Bar Sri Hari Anantha Padmanabha Sastry and Sri Boppana Venkata Kutumba Rao Chowdary alleging that they misappropriated certain amounts collected for purchase of law books for the Vijayawada Bar Association Library. Challenging the order of the Bar Council, Subba Rao filed Writ Petition No. 5329 of 1974 on 30-7-1974 and that writ petition was dismissed by Justice B. P. Jeevan Reddy (as he then was) on 14-9-1976. A registered notice was issued by Subba Rao to the learned Judge to pay a sum of Rs. 20,000/- by way of damages and he also filed a criminal complaint in the Court of the 5th Metropolitan Magistrate, Hyderabad, against the learned judge u/S. 218 and 219 IPC. That action of Subba Rao is the subject matter of C.C.No. 29 of 1977.

In the suit notice issued to Chief Justice B. J. Divan and Justice A. Raghuvir, the contemner alleged, inter alia, that they admitted the case "only to threaten me unlawfully as I filed the said complaints against your fellow judge, Mr. Justice A. Sambasiva Rao to punish me with imprisonment only to please his (Justice A. Sambasiva Rao's) intimate friend, Mr. Boppana Venkata Kutumbarao Chowdary of Vijayawada". In the criminal complaint filed against the aforesaid two learned judges, Subba Rao, inter alia, alleged that "the accused (the two learned judges) ignored wantonly and with bad faith all the rules mentioned in Chapter X of the Rules of the High Court of Judicature, Andhra Pradesh, Hyderabad. The accused also ignored wantonly and with bad faith the provisions of the Contempt of Courts Act, 1971 the accused purposely and wantonly and with bad faith infringed the procedural sections of the Contempt of Courts Act, 1971. The accused corruptly and maliciously ordered to admit the Contempt Case No. 28/76 against the complainant."

49. In the suit notice issued by the contemner, Subba Rao, the Justice Alladi Kuppaswami and Justice K. Amareswari, he alleged, inter alia, that they tried to decide Contempt Case No. 28 of 1976 with bad faith and punish him for taking legal action against the sitting Judge. In the criminal complaint filed against the two learned judges, Subba Rao attributed mischief and had faith to them stating that they harassed him for filing a complaint against a High Court judge. He alleged that there was "some sort of conspiracy between Mr. Justice A. Sambasiva Rao and themselves as Mr. Justice A. Sambasiva Rao happened to be a sitting judge."

Corruption, malice and manipulation of judicial records with bad faith were also alleged.

50. In the suit notice issued to Justice Jeevan Reddy claiming Rs. 20,000/- by way of damages, the contemner, Subba Rao, alleged that the learned judge "intentionally with bad faith and maliciously made wrong comment ignoring the words clearly used in the statute made by the Parliament." In the criminal complaint filed against the same learned judge, the contemner attributed mala fides.

51. Before examining the position obtaining in India, it is useful to advert to the position in U.K. and U.S.A. In England immunity extends to judges from the highest to the lowest in respect of their judicial acts which they honestly believe to be within their jurisdiction;" if the judge has accepted bribes or been in the least degree corrupt, or has prevented the course of justice, he can be punished in the criminal courts." no judge should be "plagued with allegations of malice or ill-will or bias or anything of the kind."(per Lord Denning M. R., in *Sirros v. Moore*, 1975 QB 118. As already noticed in England in the recent times there was no allegation of judicial corruption.

52. The English Contempt of Courts Act, 1981 adopts the common law rule of "strict liability". It concerns mainly with criminal contempt. By S. 1, conduct "tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so" alone amounts to contempt of court, unlike the Indian Contempt of Courts Act (Act 70 of 1971) which by S. 2(c) enlarges the scope of criminal contempt. Conduct or acts tending to scandalise the court, prejudicing or obstructing the due course of justice also constitute criminal contempt under the Indian law.

53. Federal Judges in the United States are absolutely immune from liability for damages for acts committed by them within their judicial discretion and "this immunity applies even when the judge is accused of acting maliciously and corruptly. It is a judges duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute riot to principled and fearless decision making but to intimidation." (per Chief Justice Warren in *Pierson v. Ray*, U.S., S.C. Reports (1967) 18 LEd 288. The law relating to contempt of court does not apply to the judges of the State Court; they are elected for a term And exercise of contempt jurisdiction would conflict with the power of the people to elect judges. "Contempt against these Courts, the administration of their laws, are insults offered to the authority of the people themselves, and not the humble agents of the law, whom they employ in the conduct of their government." (28 U.S.C. 386, 389, quoted in *Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another*, . The judges of State Courts are neither isolated nor insultated from local political currents and controversies. That situation, therefore, bears no comparison with either the position obtaining in England or in our country.

54. In the notices issued by the respondent to the judges of this Court and in the complaints filed by him against them in the criminal courts, he attributed specifically malice, bad faith, ill will, bias and favouritism. No judge who decided a cause in which the respondent was a party escaped his scurrilous attacks by way of notices and complaints in criminal courts. It is, therefore, impossible to believe that the respondent was only interested in pursuing his legal remedies.

This plea is plainly a subterfuge to scandalize the judges of this Court and to terrorize them from discharging their functions fearlessly, impartially and objectively. His motives are apparent and transparent. No member of the subordinate judiciary, after seeing what the respondent has done to the judges of this Court, would have courage to decide matters fearlessly and impartially. The allegations levelled by the respondent are so outrageous as to shake the confidence of the public in the integrity and the objectivity of the judicial system itself. He has thus, obstructed the course of justice by scandalizing and terrorizing the judges of this Court.

55. In the face of the facts as disclosed and in view of the consistent conduct of the respondent, there is absolutely no scope, even remotely, to entertain any doubt that in good faith and belief, he was prosecuting his legal remedies. His object was only to scandalize the entire judicial system. "Irrelevant or unvarnished imputations under the pretext of grounds of appeal amount to foul play and perversion of legal process. In this sector even truth is no defence because it may demoralise the community about courts and is forbidden in the interests of public justice as contempt of court." (vide *Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another*, .

56. The respondent is a seasoned litigant fully conversant with the law of Contempt. In 1974 he issued a notice to a judicial officer in Vijayawada (who decided a case against him) attributing "bad faith" and "mala fide exercise of power" for which he was convicted and sentenced to imprisonment for a period of one month by this Court. On appeal the Supreme Court in *Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh*, ruled :

"We agree with the High Court that the contempt of court committed by the appellant is serious and gross as he has recklessly imputed mala fides and lack of good faith to the judicial officer who had decided the cases against him. The imputations levelled were per se scandalous and actuated by bad faith."

57. The respondent who has argued his case in person filed a "Concise Argument Memo" in which he cited large number of decisions in support of his contention that for invoking legal remedies available under the law he cannot be proceeded against under the provisions of the Contempt of Courts Act. We have perused these decisions *Shankar Lal Sharma Vs. M.S. Bisht*, , *Rama Surat Singh Vs. Shiv Kumar Pandey and Others*, , *In Re: Ram Pratap Sharma and Others*, , *In Re G. Vasantha Pai* (AIR 1960 Madras 73) (supra), *In Re: A.I. Jaleel*, , *Shri Harish Chandra Mishra and Others Vs. The Hon"ble Mr. Justice S. Ali Ahmed*, , *H.W.F. D'Souza Vs. Chandrika Singh*, , *In Re: Ram Pratap Sharma and Others*, , *T. Venkanna v. Mysore High Court* AIR 1973 Mys 127, *In Re: V. Venkataraman*, , *Liversidge v. Sir John Anderson*, 1942 AC 206, *Ratan Roy Vs. State of Bihar and Others*, , *In Re Jayantilal*, AIR 1949 Born 319 : (1950 Cri LJ 184) (FB), *Syed Azimudin Vs. Syed Mazharuddin and Another*, , *Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another*, , *Nand Kishore Chela Mal Vs. Commissioner of the Municipal Corporation of Delhi and Others*, , *Sheoraj Vs. A.P.*

Batra and Another, , G.N. Verma Vs. Hargovind Dayal and Others, , R.L. Gupta Vs. H.L. Sehgal, and S. Sher Singh Vs. Raghu Pati Kapur and Another, . They do not lay down any rule that non-suited litigants are entitled to issue notices seeking damages attributing bad faith to and file criminal complaints against the judges who adjudicated the cause : nor can a legal principle be deduced from them that such conduct is not contumacious. It is unnecessary to refer to all those cases; illustratively we shall advert to a few, the cornerstones of his defence.

58. Shankar Lal Sharma Vs. M.S. Bisht, lays down that any kind of threat or action amounting to a threat, if held out to a person who has approached a civil court for redressal of his grievances, amounts to contempt of court. Rama Surat Singh Vs. Shiv Kumar Pandey and Others, concerns with a complaint against a Magistrate made to the higher authorities alleging that he was taking bribes. Investigations were started and charge-sheet was laid. The Magistrate thereafter filed a contempt petition that the allegations levelled against him constituted contempt of court. The Allahabad High Court ruled that if a judge or a Magistrate is corrupt, a bona fide complaint to higher authorities to take necessary action would not constitute contempt of court. The decision in Bhagwan Giri Goswamy President, Dhamtari Co-op. Marketing Society Ltd. Vs. R.P. Nayak, concerns with the situation of a Deputy, Registrar of Co-operative Societies ordering supersession of a Society during the subsistence of an order of stay granted by the High Court restraining the Election Officer from holding election to the Society. The Madhya Pradesh High Court observed (at p. 136) :

"..... doing a thing in lawful manner empowered by the statute during the pendency of a writ petition, by itself, cannot amount to a civil contempt u/S. 12 of the Contempt of Courts Act, 1971, nor can it be said to amount to a criminal contempt u/S. 15 of the said Act."

59. The surrounding circumstances and the consistent conduct of the respondent undoubtedly demonstrate that the allegations levelled by him against the judges of this Court are false and negate the plea of good faith on his part. Instead of canvassing the correctness of the judgments/orders which according to him were not correct and about which he felt aggrieved, by preferring appeals or Special Leave Petitions as provided by law, which alone would have proved his good faith and vindication of rights in a manner known to law, he issued notices to and filed criminal complaints against the learned judges attributing to them bad faith and malice. Any attack on the competence and integrity of a judge, whether of a superior court or a subordinate court, amounts to scandalizing the Court itself. If an apprehension is created in the public mind about the integrity, ability or fairness of a Judge, it is a contempt of Court. Affirmatively it need not be proved that there is an interference with the administration of justice. An individual occupying a judicial office cannot be treated apart from his office in respect of the work he does in the Court : (Vide Advocate General, Andhra Pradesh Vs. D. Seshagiri Rao, , In Re Tarit Kanti Biswas, AIR 1918 Cal 988 : (1918 (19) Cri LJ

530), In Re Tulsidas Amanmal, AIR 1941 Bom 228 : (1941 (42) Cri LJ 723), Rao Harnarain Singh Sheoji Singh Vs. Guman Ram Arya, , In Re K. L. Gauba, AIR 1942 Lah 105 : (1942 Cri LJ 599) (FB), Emperor Vs. Murli Manohar Prasad and Others, . Any allegation that causes distrust in the mind of the public or impair the confidence of the public is an act of contempt : vide Advocate General, Andhra Pradesh, Hyderabad Vs. Abbaraju Ramarao, . The High Court being a Court of record, the Judges of the High Court are not answerable in respect of their judicial acts to any authority; they can only be impeached : vide Harish Chandra v. Justice S. Ali Ahmed, (1986 Cri LJ 320) (Pat) (FB) (supra).

60. A Full Bench of the Lahore High Court in K. L. Gauba's case (1942 Cri LJ 599) (supra) had taken the view that truth is no defence in an action for contempt of Court, and the contemner cannot lead evidence in support of his allegations. That case related to certain scandalous allegations of improper and corrupt motives attributed to Judges of the Lahore High Court in a book written by a barrister. In finding the barrister guilty of gross contempt, the Full Bench followed the view expressed by the Privy Council in William Rainy v. The Justices of Sierra Leone 1852) 8 PC 47, that every Court of record is the sole and exclusive Judge of what amounts to a contempt of Court. Even while seeking an ordinary remedy by way of an appeal no person should indulge in scandalous allegations and if he were to do so, he would be guilty of contempt was the rule laid down in Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, . Courts have consistently taken the view that truth is no defence in an action for contempt : vide Advocate-General, Andhra Pradesh Vs. Vankadaru Laxminarayana Tobacco Merchant, , Advocate General, Andhra Pradesh Vs. D. Seshagiri Rao, , Advocate-General, Andhra Pradesh, Hyderabad Vs. V. Ramana Rao, and Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, .

61. It is no doubt true that in Bathina Ramakrishna Reddy Vs. The State of Madras, a five Judge Bench of the Supreme Court speaking through B. K. Mukherjee, J., (as he then was), while dealing with certain scurrilous allegations levelled by a newspaper against a Magistrate, observed at page 153 (of AIR) : (835 of Cri LJ) :

"If the allegations were true, obviously it would be to the benefit of the public to bring these matters into light. But if they are false, they cannot but undermine the confidence of the public in the administration of justice and bring judiciary into disrepute."

It must be remembered that the question before the Supreme Court was not whether the allegations levelled by the newspaper were true or otherwise. The contemner in that case admitted that what was published in the newspaper was based on hearsay and dealing with this aspect, the Supreme Court observed (Para 12) :

"He does not appear to have made any endeavour in this direction (verifying the

information before publishing it). As the appellant did not act with reasonable care and caution, he cannot be said to have acted bona fide even if good faith can be held to be a defence at all in a proceeding for contempt."

The Supreme Court, thus, did not hold that good faith is a defence in a proceeding for contempt, nor can it be said that the Supreme Court laid down that truth is a defence. That issue did not arise for decision. The Supreme Court did not intend to lay down the rule that truth is a defence in contempt proceedings. This is clear from a later decision of a five Judge Bench in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, which was also rendered by the very same Judge, B. K., Mukherjee, J., wherein it was held :

"it may be that pleas of justification of privilege are not strictly speaking available to the defendant in contempt proceedings." 62. After the rulings in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, , *Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others*, and *Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another*, , it is not open to any contemner to take the plea that truth of the allegations is a justification. When a Court tries a contempt application, if it were to permit the contemner to establish the truth of the allegation, it would have to act as an appellate Court and then decide the allegation, and that is not the function of the Court trying a petition for contempt : vide C. K. Daphtary's case (supra).

62A. Even in England the position is that if anybody has any grievance the only course open to him is to make a complaint to the Lord Chancellor. The Phillimore Committee in its report expressed the view that because of the "constitutional position of Courts and Judges, truth alone should not be a defence in this form of contempt because it would then give a platform for the repetition of the original scandal." (Law of Contempt of Court, 2nd Edn. by B. R. Varma, page 99.) In an unreported decision in *Baba Chandra-sekhar v. Kumaraswamy*, (Quoted in Law of Contempt of Court, 2nd Edn. By B. R. Varma, at p. 107), the Supreme Court while rejecting the plea of the contemner that he should be permitted to establish the truth of the allegations observed :

"If we were to grant an opportunity to establish the truth that would have aggravated the contempt. A reckless and malicious person like the contemner could have borrowed the support of some disgruntled litigants of his own feather to aid and abet him."

Same situation might result if we accept the plea of the respondent to lead evidence and cross-examine the deponent of the affidavits filed in support of these contempt cases.

63. The respondent has requested us to peruse certain articles published in news papers and journals. In our considered view they are not relevant for deciding the questions at issue before us.

64. We fully agree with the finding of the Division Bench that the respondent is

guilty of criminal contempt u/s 2(c) read with Section 12 of the Contempt of Courts Act.

So far as the punishment aspect is concerned, the Division Bench has not expressed any opinion, as the question regarding sanction u/s 197(1) of the Code of Criminal Procedure required consideration by a Full Bench.

65. A deliberate denigrator of Judges, the respondent has not expressed regrets for what he did, despite many a suggestion from us in the course of the hearing in view of his old age and the long lapse of time since the commission of contumacity. His scurrilous attacks were directed against almost every Judge of this Court who held against him in any case. His earlier convictions and sentences under the Contempt of Courts Act *Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh*, had little chastening effect on him. He is impervious to reason and reality. His calculated and obstinate defiance dispels any traces of doubts about his motives and intentions. The situation demands severe deterrent punishment. Accordingly we convict the respondent for criminal contempt u/s 2(c) read With Section 12(1) of the Contempt of Courts Act and sentence him to undergo simple imprisonment for four months.

66. The respondent who was present on the last occasion was informed of the date of judgment. The date was given to suit his convenience. Today the respondent is not present when the matter is called. The respondent is called absent. The judgment is pronounced. The Registrar (Judicial) will take steps for execution of the sentence imposed on the respondent.

67. Order accordingly.