

(1965) 12 AP CK 0012

In the Andhra Pradesh High Court

Case No : Contempt Case No. 3 of 1965

Advocate-General, Andhra Pradesh, Hyderabad

APPELLANT

Vs

V. Ramana Rao

RESPONDENT

Date of Decision : 24-12-1965

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 215, 225, 227
Contempt of Courts Act, 1971 — Section 2, 3(1)
Government of India (Amendment) Act, 1935 — Section 220(1), 223
Government of India Act, 1915 — Section 106, 113

Citation : AIR 1967 AP 299 : (1967) CriLJ 1470

Hon'ble Judges : Narasimham, J;Gopalakrishnan Nair, J

Bench : Division Bench

Advocate : A.G, for the Appellant; T.V. Sarma and N. Ramachandra Rao, for the Respondent

Judgement

Gopalakrishnan Nair, J.

(1) This contempt case was filed by the learned Advocate General for punishing the respondent for contempt of the High Court the subordinate judiciary and also the Election Tribunal constituted under the provisions of the Representation of the People Act, 1951. The respondent is the Editor, Printer and Publisher of a weekly called "The Andhra Herald". In its issue dated 29-11-1964, he published certain articles which are alleged to constitute to contempt of Court. "The Andhra Herald" is a bilingual weekly. A good part of it is in English and the rest in Telugu. Portions of the articles published in both these languages are relied upon by the learned Advocate General to make out that the respondent is guilty of contempt of Court.

On the first page, in the English Section of the weekly, under the caption "You will hardly believe" the following passages occur:

"That in strict variance with the directions of the Supreme Court, Justice Sreenivasachari"s one man election tribunal would prefer to drag the trial over

the election petition against Chief Minister Brahmanand Reddi till after the next general election, continuously shifting the venue of trial between Guntur and Hyderabad, to ensure better pay conditions and travelling allowances to the personnel".

"That the unceremonious way in which Chief Justice Mr. P. Chandra Reddy was packed from Hyderabad with bag and baggage is symptom of the prevalence of the "rule of law" in the State of Andhra Pradesh."

Then on page 5, under the heading "Kasu to face no-confidence move" it is stated:

"All this story has been narrated in detail to enable the readers to understand and appreciate the treacherous role played by the Chief Minister Sri K. Brahmananda Reddi to interfere with the course of justice and the helpless way in which the beneficiaries of the Trust, having lost confidence in the integrity of the judiciary had to wind up their battle against corruption in the State of Andhra Pradesh."

"All this story" referred to in the above passage appears to be the story of "H. E. H. The Nizam's charitable trust" and of "TELCO case" discussed in this previous paragraphs on pages 4 and 5 of the weekly

(2) Then we come to another passage on page 5 under the heading "Reddi Justice". It reads as follows:

"Speaking at the inaugurating of the Andhra High Court at Guntur in 1954 Dr. N. Sanjeeva Reddy, then Home Minister observed that from now "we shall dispense with justice" to the merriment of all those who participated in the function.

Where Dr Reddi failed to implement his words into deeds, his political heir Sri Kasi Brahmananda Reddi did succeed, as he boldly asserted while laying the foundation stone to the building of the Bar Council, that, there existed admirable co-operation between the judiciary and the executive in Andhra Pradesh.

The way in which the administration of the Andhra Pradesh High Court was conducted during the last few years when Justice Mr. P. Chandra Reddy was the Chief Justice provides ample evidence to substantiate Sri Brahmananda Reddi's claim not only in the appointment of law officers of the State and the promotion or transfer of Judges but also in the matter of constituting the Benches to dispose of matters in which the members of the executive are involved."

Stress is laid by the learned Advocate General on the last portion of this passage which speaks of the administration of the Andhra Pradesh High Court and the constitution of Benches to dispose of matter in which the members of the executive are involved.

(3) The rest of the allegedly offending publication is in Telugu and it appears on pages 7 and 8 of the same issue of the weekly. The official translation of the passage alleged to be offending are as under:

"Sri Kasu Vengala Reddi who, at the time of Guntur Zilla Parishad elections, had previously for the reason that the atmosphere was unfavourable to him, obtained an injunction order after winning over the Munsif and who had after mustering up his strength got himself unanimously elected at the mediation effected by Sri Neelam Sanjeeva Reddi; and his knack in also managing to secure Court orders during the course of his trial to capture the Marketing Society, deserves all praise.

"As he had not the courage that he would win the elections he (Kasu Vengala Reddi) had, on the ground that the Cotton Growers' Society was not admitted as a member, made Sri Ganapa Ramaswamy Reddi to file a writ Petition in the High Court for staying the elections and was with the hope that if Public Prosecutor Sri Chinnappa Reddi was engaged, Chief Justice Chandra Reddi would immediately pass favourable orders. But this time Sri Chandra Reddi did not somehow yield. On the other hand he gave decision to the effect that the Court had not jurisdiction to pass any orders for directing the membership to be given.

Sri Thamma Ranga Reddi, who should have fully well realised his real position after having noticed the hurdles he had to encounter even at the very outset, failed to be have properly, and it fell to his poor lot that with the arrogance that the District Munsif is one from his own Reddi community and resorting to brow-beating (Fiduguralla Dibayimpu Section), he had to manage to secure another injunction order for staying the elections.

Wherefrom did the District Munsif get the power to issue an injunction restraining the officer who was specially appointed as per the orders of the High Court to conduct the elections, from discharging his duties? While so obtaining the said orders did not the petitioner who had filed the plaint and the pleader who argued the matter bring it to the notice of the Munsif about the orders of the High Court? Without any reference being made either in the plaint or in the affidavit in this regard, how could the election officer have been made a party. Unless the whole matter is trashed out as to how the Munsif had passed injunction orders restraining the said officer, it will not come to light as to how the Courts under the Reddi Raj in this State are abusing their power and thereby forfeiting the confidence of the general public.

"As Chief Justice Chandra Reddi will also be not available hereafter in the Andhra Pradesh High Court to come to their rescue when ever required, it is better for them to note that though Munsifs and Judges are Reddies and pass wrong orders the Rule of Law in this State will hereafter go on unhampered, that rowdyism will be uprooted and that it would be in the interests of one and all that Thamma Ranga Reddi should divert all his legal acumen in a right direction."

It is common ground that Kasu Vengala Reddy mentioned in the above passages is the brother of Chief Minister Brahmananda Reddi and that Thamma Ranga Reddi is an Advocate practising at Guntur.

(3A) There is another passage in English in the issue dated 29-11-1964 of the Andhra Herald to which reference has been made in the affidavit and also in the

counter affidavits of the respondent. It occurs at page 4 of the issue under the caption "H.E.H. The Nizam's Charitable Trust" It reads:

"H.E.H. The Nizam's Charitable Trust, described by the Supreme Court as a Secular Comprehensive Public Charitable Trust had a prolonged litigation providing abundant scope for ministerial and official corruption.

When the litigation questioning the validity of the Hyderabad Endowment Regulation Act was in progress in the Supreme Court and the audit report of M/s. A. F. Fergusson & Co., was available to the Court, corruption reached its climax the Government of Andhra Pradesh entering into a COMPROMISE with the Trustee. The Supreme Court, which recorded this Compromise memo on 23rd April 1962 created legal history unprecedented in the legal history of the world, for, how can the validity of an enactment be determined by a compromise. The issue then before the Supreme Court was a single and straight one (i.e) whether the Hyderabad Endowment Regulation Act was valid or not and if it was valid whether H.E.H. The Nizam's Charitable Trust comes under its applicability". Instead of giving a clear cut verdict on this vital matter, the Supreme Court after thirteen adjournments naturally managed by the Attorney General representing the trustees and the State's Advocate General representing the Chief Secretary and the Director of Endowments, recorded the compromise which in effect admits the applicability of only particular clauses of the Hyderabad Endowment Regulation Act, which on the very face of it is discriminatory and hence not valid.

It is surprising that the same Supreme Court which thus allowed itself to be a party to this, held the Hyderabad Endowment Regulation Act valid in the Director of Endowments v. Seetarambagh Temple, only a few months afterwards"

It has been vigorously urged before us by the learned counsel for the respondent that this passage was referred to in the affidavit filed on behalf of the petitioner with a view to prejudice this Court and further that the passage was wrongly quoted in the affidavit on the side of the petitioner by inserting commas with a view to enable a wrong interpretation to be placed on it. Sri B. Viswanatham, Manager of the Advocate General's office, who filed the affidavit, has sworn to another affidavit expressing regret for the insertion of the commas while quoting the said passage in para 10 of his original affidavit and affirming that the inaccuracy in the quotation was not intentional but only inadvertent.

Sri Viswanatham has also averred in his new affidavit that the meaning of the passage as quoted by him in his original affidavit is in no way different from the meaning of the original text published by the respondent. The learned Advocate General has also represented to us that there was no attempt or intention whatsoever, to alter the meaning of the passage in question by adding or omitting commas. On reading the passage as quoted in Para 10 of the affidavit and comparing it with the printed passage published by the respondent in the issue of the weekly in question, we are not at all satisfied that there was any deliberate, much less sinister attempt on the part of Sri Viswanatham to

misquote the published passage. This however, is a comparatively less important aspect of the matter.

(4) The main contention advanced before us by the respondent's learned counsel with reference to this passage is that this Court has no jurisdiction to go into it for the purpose of ascertaining whether or not it constitutes contempt of Court. The argument is that this Court has no jurisdiction either under the Constitution or under the Contempt of Courts Act, 1952, to deal with alleged contempt of the Supreme Court. We think this argument is well-founded. We should therefore refrain from dealing with the said passage in these proceedings and eschew it altogether from our minds in considering the merits of this contempt case. In other words, we propose to devote our attention only to the other passages which are alleged to constitute contempt of the High Court, the Subordinate Courts and the Election Tribunal. What the respondent has said regarding the Supreme Court can thus be kept completely out of our minds in the present proceedings.

(5) The respondent has filed two counter affidavits one dated 30-7-1965 and the other dated 12-8-1965. A good part of these counter affidavits is devoted to what we consider to be matters not quite relevant to the enquiry in hand. We shall briefly notice the relevant pleas taken by the respondent in his counter affidavits. The main plea appears to be that what the respondent has published in the issue of the Andhra Herald dated 29-11-1964 does not constitute contempt of Court. He published the articles in question in pursuance of the duty he owed to the public as a journalist. Further, he states in paragraph 19 of his first counter affidavit that nowhere did he comment that "in any particular case, the Ex. Chief Justice or if it comes to that, any member of the Judiciary gave wilfully any wrong, illegal or perverse judgments or with any bias or to favour this party or other". HE pleads that his criticism was of the executive and not of the judiciary and that whatever he said was bona fide and not intended to bring the judiciary into contempt or disrespect. He claims that the writings in question, far from undermining the confidence of the Public in the High Court or in the Subordinate judiciary, will only help in establishing the Rule of Law. He then states that this contempt proceeding was initiated by interested parties to wreak vengeance on him. In paragraph 36 of his first affidavit, the respondent says that "the Reddy Law Officers viz., Third Government Pleader and Public Prosecutor and Chief Minister are the real persons behind this prosecution. In no manner, there is ever any intention on my part to disparage the judiciary or any individual Judge at any time".

(6) The respondent has also raised certain constitutional pleas. He says that he is entitled to the fundamental rights guaranteed to every citizen of India under Article 19(1)(a) and (g) and that he is therefore entitled to offer fair comments on public issues in the public interest and also to practise the profession of journalism. According to him, any punishment imposed upon him under the Contempt of Court Act, 1952, will deprive him of the fundamental right of

practising the profession of journalism and that therefore the Contempt of Courts Act is ultra vires the Constitution. The other ground on which he assails the validity of the Contempt of Court Act is that it "does not provide for any defence of truth and public interest to any one practicing the profession of journalism". The next point taken by him is that this Court has no jurisdiction to punish him for contempt in respect of anything published about an Ex-Chief Justice or Ex-Judge or Election Tribunal because none of them is subordinate to this Court. He further states that the Election Tribunal is not a Court in the strict sense of the term.

(7) Before proceeding further, we consider it necessary to clear the ground by dealing with the allegation of the respondent that this contempt case was launched against him at the instance of "the Reddy Law Officers, viz. Third Government pleader and the Public Prosecutor and Chief Minister of the State". The learned Advocate General has stoutly repudiated this allegation as baseless and mischievous. At the instance of the learned Advocate General, his Junior has filed an affidavit stating unequivocally that the Advocate General alone was responsible for initiating the contempt proceedings and that neither the Third Government Pleader nor the Public Prosecutor nor the Chief Minister was "behind it."

This affidavit further avers that the Advocate General himself had dictated "every paragraph and every word" of the affidavit which was filed in support of the contempt application. The learned Advocate General submitted to us that he did not file an affidavit himself because he considered it would be improper for him to do so as he was appearing and arguing the contempt case as Advocate General. He also pointed out that the practice in this Court and in the Madras High Court and in other High Courts so far as he was aware, was for the Advocate General to refrain from filing an affidavit himself in contempt proceedings which are initiated and argued by him. In view of the above submissions made by the learned Advocate General and the affidavit filed by his Junior (Sri S. Ramachandra Reddy), we find it extremely difficult to accept the respondent's allegation that these contempt proceedings were commenced against him at the instigation of the Third Government Pleader or the Public Prosecutor or the Chief Minister.

We must add that so far as this aspect of the matter is concerned, we find no reason whatsoever for not accepting the representations made by the learned Advocate General or the averments contained in the affidavit filed by his Junior. We must, therefore, proceed on the basis that these proceedings were instituted by the learned Advocate General bona fide with a view to uphold the prestige and authority of Courts and to prevent obstruction to the due administration of justice and to maintain the confidence of the public in Courts.

(8) It is useful at this stage to notice briefly the content, ambit and amplitude of the expression "contempt of Court". In *St. James Evening Post Case*, (1742) 2 Atk 469 Lord Hardwicke, L.C., classified contempts as follows:

"There are three different sorts of contempt. One kind of contempt is scandalising the Court itself. There may likewise be a contempt of this Court in abusing parties who are concerned in causes here. There may be also a contempt of this Court in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters."

In *Birch v. Walsh*, (1846) 10 Ir. Eq. 93, Cusack Smith M.R., made a three fold division of cases in which Courts of England exercised the authority of committing parties for contempt of Court. He said:

"The first class may be described in the language of an eminent person, afterwards on the English Bench, thus: "where the Court which issues the attachment has awarded some process given some judgment, made some legal order or done some act, which the party, against whom it issues, or others on whom it is binding have either neglected to obey, contumaciously refused to submit to incited others to defeat by artifice or force, or treated with terms of contumely or disrespect in the face of the Court, or of its Minister charged with the execution of its acts." There may be some other cases of a similar nature falling within this class, although not exactly within the description; and it is clear that Court of Equity, as well as every other Court, must be entrusted with power to enforce its orders. The Second Class of cases, in which Courts of equity have exercised the jurisdiction of committing for contempt, are those in which letters or pamphlets have been addressed to the Judge who had to decide upon the case, with the intention either by threats or flattery or bribery, to influence his decisions. The Third Class of cases in which Courts of Equity have committed for contempt are those adverted to by Lord Erskine in the case (1806) 13 Ves. 237, that is cases of constructive contempt depending upon the inference of an intention to obstruct the course of justice."

The species of contempt which Lord Hardwicke characterized as "scandalising the Court itself" falls within the third class described in (1846) 10 Ir. Eq. 93, as "constructive contempt depending upon the inference of an intention to obstruct the course of justice." In *Rex. V. Almon*. (1765) Wilmot's opinion 243, the reason for punishing for contempt of Court is stated thus:

"The arraignment of the justice of the Judges is arraigning the King's justice; it is an impeachment of his wisdom and goodness in the choice of his Judges and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to by them; and whenever men's allegiance to the law is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice and in my opinion call out for a more rapid and immediate redress than any other obstruction, whatsoever, not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people. To be impartial, and to be universally thought so, are both absolutely necessary for the giving justice that

free, open, and uninterrupted current, which it has, for many ages, found all over this kingdom.... " Blackstone in his commentaries (Vol. IV, 286) stated, "Laws without a competent authority to secure their administration from disobedience and Contempt would be vain and nugatory. A power therefore in supreme courts of justice to suppress such Contempts by an immediate attachment of the offender, results from the first principles of judicial establishments and must be an inseparable attendant upon every superior Tribunal."

(9) The Superior Courts of Record in England have, from early times, exercised the power to commit for contempt persons who scandalise the Court or the Judges. In *Reg. V. Gray*, (1900) 2 QB 36 at p. 40, Lord Russell, C.J., said:-

Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice of the lawful process of the courts is a contempt of court. The former class belongs to the category which Lord Hardwicke L. C. Characterised as "scandalising a Court or a Judge .. ." This is not a new-fangled jurisdiction; it is a jurisdiction as old as the common law itself, of which it forms part. It is a jurisdiction, the history, purpose, and extent of which are admirably treated in the opinion of Wilmot C.J., then Wilmot J in his opinions and Judgments (1765) Wilmot's Opinions 243.

Even after 1900, Courts in United Kingdom have committed persons for this species of contempt, See, *Rex. V. Editor of the "New Statesman"*, (1928) 44 TLR 301, where Lord Hewart followed Lord Russell in (1900) 2 Q.B. 36. No doubt, in *McLeod v. St. Aubyn*, 1899 AC 549, Lord Morris stated that "Committals for contempt of Court by scandalising the Court itself have become obsolete in this country." But this view does not appear to be correct because the very next year Lord Russell exercised the power to commit for this class of contempt in (1900) 2 QB 36. The observation of Lord Morris adverted to above has been pointed out to be incorrect by a Special Bench of the Calcutta High Court in *In re, Motilal Ghose*, ILR 45 Cal 169: (AIR 1918 Cal 988) (SB), and by a Full Bench of the same High Court in *In Re: Tushar Kanti Ghosh. Editor, Amrit Bazar Patrika, and Another, . In Ambard v. Attorney General for Trinidad and Tobago*, 1936 AC 322 at p. 335, Lord Atkin described the aforesaid observation of Lord Morris in 1899 AC 549, as "an observation sadly disproved the next year in the case last cited ((1900) 2 QB 36). In AIR 1943 202 (Privy Council) the Judicial Committee appears to have proceeded on the footing that in proper cases, High Courts in India have the power and jurisdiction to commit persons for "scandalising" the Courts or Judges. In *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, , Mr. Justice Mukherjea, speaking for the Court, said:

"The observation of Lord Morris that contempt proceedings for scandalising the courts have become obsolete in England and is not, strictly speaking, correct; for, in the very next year, such proceedings were taken in (1900-2 Q.b. 36)."

(10) The solitary observation of Lord Morris in 1899 AC 549, cannot, therefore, be successfully harnessed for use in an attempt to make out that High Courts in India cannot take proceedings in contempt in "scandalising" Courts or Judges because committals for this species of contempt had become obsolete in England even in the year 1899.

(11) The three Chartered High Courts of Calcutta, Bombay and Madras have been exercising the summary jurisdiction to punish for contempt at least from 1867. Chief Justice Peacock laid down in *In re, Abdool*, (1887) 8 Suth WR Cr. 32 at p. 33, as follows:

"There can be no doubt that every court of record has the power of summarily punishing for contempt."

In *Surendranath Banerjea v. Chief Justice and Judges of the High Court at Fort William in Bengal*, (1883) 10 Ind App 171 at p. 179 (PC), the Privy Council clearly held that the Chartered High Courts in India had summary jurisdiction to commit for contempt for scandalising them or their judges. In the matter of, *Sashi Bhushan Sarbadhichary*, (1907) ILR 29 All 95 (PC) the Privy Council again held that "There is also no doubt that the Publication of this libel constituted a contempt of court which might have been dealt with by the High Court in a summary manner by fine or imprisonment or both."

(12) While this was the position of law, the Government of India Act, 1915, was passed. Section 106 of that Act continued to all High Courts then in existence the same jurisdiction, powers and authority as they had at the commencement of that Act. Section 113 of the 1915 Act empowered the establishment of new High Courts by Letters Patent and the conferment on them of the same jurisdiction, powers and authority "as are vested in or may be conferred on any High Court existing at the commencement of this Act."

Several High Courts have, after 1915 held that they have the summary jurisdiction to punish contempts of themselves by scandalising them or the Judges, Vide. In the matter of *Habit*, ILR 6 Lah 528: (AIR 1926 Lah 1) (FB), *Hadi Husain and Others Vs. Nasir Uddin Haider and Another and Emperor Vs. Murli Manohar Prasad and Others*, . There are a number of later decisions of the several High Courts in India including the chartered High Courts which have held the same way. There can, therefore, be no doubt that the High Courts in India, before the commencement of the Government of India Act, 1935, had power, jurisdiction and authority to punish summarily contempts of themselves and of their judges. The Government of India Act, 1935, continued this power, authority and special summary jurisdiction to the various High Courts then existing. By Section 220(1) it declared that every High Court shall be a court of record, and by Section 223 it continued to the existing High Courts the summary jurisdiction and powers which they had "immediately before the commencement of Part III of this Act."

Under Article 215 of the Constitution it has been declared that "every High Court

shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself" Article 225 has continued to the High Courts the jurisdiction and powers which they possessed immediately before the commencement of the Constitution.

(13) The High Court of Andhra Pradesh has inherited all the powers, authority and jurisdiction of the Chartered High Court of Madras. There can, therefore, be no doubt regarding the authority and jurisdiction of this court to punish summarily contempt of itself or its judges.

(14) The entire law bearing on the power and jurisdiction of the High Courts to punish contempts by summary process has been reviewed and authoritatively settled by the Supreme Court in Sukhdeo Singh v. Chief Justice and Judges of the Pepsu High Court, Sukhdev Singh Sodhi Vs. The Chief Justice and Judges of The Pepsu High Court, This decision also quotes the following passage from In the matter of, K.L. Gauba, (1942) ILR 23 Lah 411: (AIR 1942 Lah 105) (FB), which was based on two American decisions:

"The power to fine and imprison for contempt from the earliest history of jurisprudence has been regarded as a necessary incident and attribute of a court without which it could no more exist than without a Judge"

Their Lordships of the Supreme Court also referred to AIR 1945 134 (Privy Council) at p. 136, where it was stated that "this summary power of punishing for contempt .. . is a power which a court must of necessity possess."

(15) Although there was no doubt that the High Courts in India had summary jurisdiction to punish for contempts of themselves, there was some doubt as to whether this jurisdiction could be extended to punish contempts of courts subordinate to them. To resolve this doubt, the Contempt of Courts Act, 1926, was passed. By Section 2 of that Act, the High Courts of Judicature were empowered "to exercise the same jurisdiction, power and authority in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves."

This Act was replaced by the Contempt of Courts Act, 1952, "Section 3 of the new Act is similar to Section 2 of the old Act and far from conferring a new jurisdiction, assumes, as did the old Act the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction., powers and authority "in accordance with the same procedure and practice". It is therefore not open to question that the High Court has power and jurisdiction to punish summarily contempts of Courts subordinate to it in the same manner as it is entitled to punish contempts to itself.

(16) Although the power and jurisdiction of the High Courts to punish summarily contempts of themselves and of the Courts subordinate to them is well

established, there are certain well recognised principles which govern the exercise of this power and jurisdiction. First, a High Court will not exercise the summary jurisdiction except in a case beyond reasonable doubt Secondly the power to commit for contempt will not also be used for the vindication of a Judge as a person but only with a view to protect the interests of the public for whose benefit and for the protection of whose rights and liberties the courts exist and function.

It has been pointed out by the Supreme Court in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, at page 1176 (of SCR): (at p. 13 of AIR):

"It admits of no dispute that the summary jurisdiction exercised by superior courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the courts. It would be only repeating what has been said so often by various judges that the object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice by it is weakened."

There are indeed innumerable ways by which attempts can be made to hinder or obstruct the due administration of justice in courts. One type of such interference is found in cases where there is an act or publication which "amounts to scandalising the court itself" an expression which is familiar to English lawyers since the days of Lord Hardwick (*Vide In re, Read Huggonson*, (1742) 2 Atk 469 at p. 471). This scandalising might manifest itself in various ways but, in substance, it is an attack on individual judges or the court as a whole with or without reference to particular cases, casting unwarranted and defamatory aspersions upon the character or ability of the judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair the confidence of the people in the courts which are of prime importance to the litigants in the protection of their rights and liberties."

Every libel on a court or a judge need not necessarily be a contempt of court. The distinction between a mere libel on a judge and a contempt of Court is well marked-*vide*. In the matter of a special reference from the Bahama Islands, 1893 AC 138 and 1899 AC 549. Regarding the distinction between a mere libel and a contempt of Court, the Supreme Court in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, stated as follows:-

"One is a wrong done to the judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in

the mind of the judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of Law."

The third principle is that "the reflection on the conduct or character of a judge in reference to the discharge of his judicial duties would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice". Lord Russell in (1900) 2 QB 36 at p. 40, said:-

"Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no court could or would treat that as contempt of Court. The law ought not to be astute in such cases to criticise adversely what under such circumstances and with such an object is published; but it is to be remembered that in this matter the liberty of the press is no greater and no less than the liberty of every subject of Queen."

Lord Russell then observed as follows with reference to the facts of that case which related to a scurrilous abuse published against Darling J., in a newspaper called the Birmingham Daily Argus which had circulation in Birmingham;

"Now, as I have said, no one has suggested that this is not a contempt of Court, and nobody has suggested, or could suggest, that it falls within the right of public criticism in the sense I have described. It is not criticism; I repeat that it is personal scurrilous abuse of a judge as a judge. We have, therefore, to deal with it as a case of contempt, and we have to deal with it brave manu. This is not a new-fangled jurisdiction; it is a jurisdiction as old as the common law itself, of which it forms part. It is a jurisdiction, the history, purpose and extent of which are admirably treated in the opinion of Wilmot C.J., then Wilmot J., in his *Opinions and Judgments* (Rex. V. Almon, (1765) Wilmot's *Opinions* 243)."

In 1936 AC 322, Lord Atkin quoted with approval the above-mentioned observations of Lord Russell and added at page 335:

"But whether the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way: the wrong headed are permitted to err therein: Provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune "

We should like to state that every word in the proviso of Lord Atkin in the above

passage is important. The view expressed by Lord Russell and Lord Atkin has been cited with approval in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, .

(17) Another factor which a High Court will take into consideration in exercising its contempt jurisdiction is whether the Contempt is merely technical, slight or trifling in character. If it is only of a technical, slight or trifling nature, the Court will be satisfied with an expression of genuine regret and will not proceed to inflict punishment on the contemner. *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, itself illustrated this. The Supreme court has said:

"the contempt, if any, was only of a technical character, and that after the affidavits were filed on behalf of the appellants before the High Court, the proceedings against them should have been dropped."

In that case, the contemnors were the members of the Executive Committee of the District Bar Association at Muzaffarnagar within the State of Uttar Pradesh. In the contempt proceedings taken against them before the Allahabad High Court, they expressed their regret and tendered unqualified apology. Yet, the High Court directed them to pay costs of the Government Advocate, which were fixed at Rs. 300 *Vide State Vs. Brahma Prakash and Others*, .

Aggrieved by the order directing them to pay costs, they preferred an appeal to the Supreme Court which held, as we have already stated, that the contempt, if any was of a technical character and that therefore, the contempt proceedings against them should have been dropped after the contemnors had filed affidavits expressing regret and tendered unqualified apology. In *Ananta Lal Singh and Others Vs. Alfred Henry Watson and Others*, a Division Bench of the Calcutta High Court held:

"The Court's jurisdiction in contempt is not to be invoked unless there is a real prejudice which can be regarded as a substantial interference with the due course of justice. It is not very theoretical tendency that will attract the action of the Court in its very special jurisdiction. The purpose of the Court's action is practical purpose and, it is reasonably clear on the authorities that this Court will not exercise its jurisdiction upon a mere question of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment is otherwise such that it can properly be ignored. This is no new law."

Of course, that was not a case of "scandalising the Court" but of prejudicing mankind against persons who were on their trial. The facts of that case clearly show that the graven of the charge was the omission of the word "alleged" before the words "Chittagong raiders" which occurred in a rather long article which was mainly devoted to a controversy between the newspaper *Statesman* and its contemporary *Advance*.

The view expressed in *Ananta Lal Singh and Others Vs. Alfred Henry Watson and*

Others, was approved by the Supreme Court in *Rizwan-ul-Hasan and Another Vs. The State of Uttar Pradesh*, which related to an alleged attempt to interfere with certain proceedings u/s 145 Cr. P.C. which were pending before the Sub-Divisional Magistrate, Jalaun. During the pendency of the said proceedings, the District Magistrate forwarded to the Sub-Divisional Magistrate an application signed on behalf of one of the parties to the proceedings. The application was accompanied with the recommendation of the Secretary of the District Congress Committee. The Sub-Divisional Magistrate returned that application with the endorsement that the applicant has to file a formal complaint. The District Magistrate, thereafter, returned the application to the applicant drawing his attention to the remarks of the Sub-Divisional Magistrate. The forwarding of the application to the Sub-Divisional Magistrate was alleged to constitute contempt of Court. The Allahabad High Court convicted both the District Magistrate and the Secretary of the District Congress Committee. The latter accepted the judgment of the High Court. But the District Magistrate appealed to the Supreme Court which held that the forwarding of the application by the District Magistrate was by way of routine work and that he did not intend to interfere with the course of justice in relation to the proceedings u/s 145 Cr. P.C. pending before the Sub-Divisional Magistrate. It was in this connection that their Lordships of the Supreme Court approved of the view of the Division Bench of the Calcutta High Court in *Ananta Lal Singh and Others Vs. Alfred Henry Watson and Others*,

(18) We have dwelt at some length on the nature and scope and also the principles which guide the exercise of the summary jurisdiction of High Courts to punish contempts of themselves and of the Courts Subordinate to them, to show with what scrupulous care and restraint the High Courts exercise this jurisdiction. It is against this background that we now propose to consider the contention of the Respondent's learned counsel that the law relating to contempt of Courts is violative of the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and also of the freedom to practice any profession, or to carry on any occupation, trade or business enshrined in Article 19(1)(a).

(19) In his Counter affidavit, the respondent has challenged the validity of the Contempt of Courts Act, 1952, on the ground that it is repugnant to Article 19(1)(a) and (g) of the Constitution. The learned counsel for the respondent based his attack also on Article 21. So far as Article 19(1)(a) is concerned, the obvious answer is that the law in relation to contempt of Courts is expressly saved by clause (2) of Article 19.

We have already referred to the reason why the Courts in England as well as in India have thought that the power and jurisdiction to punish contempt of Courts is necessary to ensure free and unhampered administration of justice and for curbing unjustified attempts to impair the confidence of the public in the Courts. We have also stated at some length that the jurisdiction in contempt is exercised not for the vindication of the personal interests of a particular judge, but for the good of the general public. The public good is equally, if not, more important

than the individual freedom of speech and expression. A balance has therefore necessarily to be struck between the two in order to ensure both of them. It is trite to say that unrestricted freedom is likely to degenerate into licence; but an oppressive regimentation of this freedom will seriously cripple it and make it almost non-existent and valueless. An adjustment between the individual freedom of speech and expression on the one hand and the need for healthy social control over that freedom on the other, is sought to be achieved by clause (2) of Article 19.

Nobody can deny that the maintenance of the prestige and authority of Courts is a public concern. So also, the need to ensure that the course of justice is not obstructed is a matter of great public importance. Equally, if not more important it is to maintain unimpaired the confidence of the public in the Courts of Law. If the Courts are brought into reducible and disrepute and if the public cease to have confidence in them, the very foundation of State and society will be shaken. Therefore it is, that from early times Superior Courts of Record in England and the High Courts in India have been riveted with summary powers to punish for contempt of Courts. Freedom of speech and expression cannot therefore be permitted to go to the length of bringing Courts of Law into contempt and disregard and undermining public confidence in them. It is difficult to see how this necessary restriction on the freedom of speech and expression can be said to be unreasonable. We have no hesitation in saying that it is a very reasonable restriction on the freedom of speech and expression which includes freedom of the press. The very fact that the contempt jurisdiction is vested in the High Courts is sufficient to hold that the restrictions reasonable. A wide and unguided discretionary power vested in an administration body may be pronounced an unreasonable restriction upon the exercise of a fundamental right. The conferment of such discretion upon a judicial authority cannot be so regarded.

A judicial authority, especially a High Court, which is the highest Court in a State, must be trusted to exercise its discretion along sound judicial lines and in conformity with the fundamental principles of natural justice. It will duly consider the facts and circumstances of each case and apply well settled principles of law to them before arriving at a decision. In no case does a High Court pass an order without hearing the opposite party. All this forms part of the normal judicial procedure followed by a High Court. One can legitimately say that if there is an authority in whom discretion can be vested without fear of its being abused, it is the Judicial authority more especially so, the highest judicial authority in the State, namely, the High court.

The large number of contempt cases heard and disposed of by the High Courts bear ample testimony to this. Furthermore, in the matter of exercising contempt jurisdiction, the High Court cannot be said to be vested with an unguided and uncontrolled power of discretion.

We have already referred to the several settled principles which guide the High Courts in exercising their contempt jurisdiction. The observance of these

principles by the High Courts make the exercise of their power to punish contempts of Courts, a reasonable restriction on the freedom of speech and expression of citizens. The High Courts in India have been exercising the contempt jurisdiction for a long period of time now. The many precedents of the past serve as guides in the exercise of its power and jurisdiction in regard to contempt of Court.

The framers of the Constitution must undoubtedly be taken to have been well aware of the fact that the High Courts in India had been exercising summary jurisdiction in contempt, for a long time. They must also have been aware of the case law bearing on the subject. This knowledge must have led them to continue to the High Courts the same powers and jurisdiction under Article 225 of the Constitution. And in enacting the Contempt of Courts Act, 1952, Parliament gave express statutory recognition to the procedure and practice which had been followed by the High Courts in dealing with contempts of themselves. This procedure and practice was asked to be applied to cases of contempts of Courts subordinate to the High Courts. The position is as if the procedure and practice which the High Courts had been following prior to 1952 were incorporated into the Contempt of Courts Act, 1952.

(20) The learned counsel for the respondent, however, contends that the summary jurisdiction exercised by the High Court is not reasonable. According to him the High Court must take elaborate evidence and then only pronounce its decision in a contempt case. We are not satisfied that this contention ought to prevail. In the exercise of writ jurisdiction, the Supreme Court as well as the High Courts have not ordinarily been recording evidence. This has been the general practice before as well as after the coming into the force of the Constitution. It has not been urged that because in the exercise of the writ jurisdiction neither the Supreme Court nor the High Courts ordinarily record evidence of parties or witnesses, any of the fundamental rights, for the enforcement of which the writs are filed, have been rendered any the less effective.

Moreover, the very nature of contempt jurisdiction and the purpose for which it is exercised demand a speedy disposal of the case. A long drawn out trial which elaborates recording of evidence of parties and witnesses would entail, will not accord with the public purpose which is intended to be served by the exercise of the powers of the High Court to punish contempts. In *In Re: Tushar Kanti Ghosh*. Editor, *Amrit Bazar Patrika*, and *Another*, at p. 426) (FB) Derbyshire, C.J., delivering the leading judgment stated:

"With regard to the argument that these proceedings summary in nature were not the appropriate proceedings, and that the appropriate course would have been to lay an information against the opposite parties and have the matter tried in a criminal Court if these words are a contempt of Court and I have held that they are then the Court has jurisdiction to deal with them in the usual way, in which contempts are dealt with, namely, by summary procedure. This is a

contempt which, in my view, unless dealt with speedily, is likely to produce the gravest results as regards respect for law in this province, since it is calculated to undermine the confidence of the public in the administration of justice. No instance of a case of this kind being dealt with by way of information or indictment in modern times was brought to our notice by the respondent's advocates and I have not been able to find any. My view is that taken by Wills, J., in (1906) 1 K.B. 32:

The undoubted possible recourse to indictment or criminal information is too dilatory and too inconvenient to afford any satisfactory remedy. It is true that the summary remedy, with its consequent withdrawal of the offence from the cognizance of a jury, is not to be resorted to if the ordinary methods of prosecution can satisfactorily accomplish the desired result, namely to put an efficient and timely check upon such malpractice's. But they do not, Wilmot, C.J., said: "I am as great a friend to trials of facts by a jury, and would step as far to support them as any judge who ever did or now does sit in Westminster Hall, but if to deter men from offering any indignities to Courts of Justice, it is a part of the legal system of justice in his Kingdom that the Court should call upon the delinquents to answer for such indignities, in a summary manner by attachment, we are as such bound to execute this part of the system as any other."

The learned Chief Justice then proceeded to quote from an American case, *Yates v. Lansing*, (1810) 5 Johnson 282, which was cited by Mr. Justice Ashutosh Mookerjee in *In re, Amrita Bazar Patrika*, ILR 45 Cal. 169: (AIR 1918 Cal. 988) (SB). He said as follows:

"No doubt, as Lord Morris observes in (1899) A.C. 549 to p. 561, Courts may be satisfied sometimes to leave to public opinion attacks or comments derogatory or scandalous to them. But I do not accede to the argument that it is invariably prudent for the Court to assume an attitude of indifference or to institute regular criminal proceedings against the offender. In this connection reference may appropriately be made to the weighty words of Kent. C.J., in an American case, (1810) 5 Johnson 282:

"Whenever we subject the established Courts of the land to the degradation of private prosecution, we subdue their importance and destroy their authority. Instead of being venerable before the public, they become contemptible; and we thereby embolden licentious to tramp upon everything sacred in society and to over-throw those institutions which have hitherto been deemed the best guardians of civil liberty."

Contemnners are entitled to file affidavits stating their case fully in answer to the Rule. On reading the offending publication and carefully considering its trend, purport and meaning and taking into account the statements contained in the contemner's affidavit, it will be possible for a High Court to come to a fair conclusion as to whether the offending publication constitutes a contempt of

Court and if so whether any punishment should be inflicted on the contemner. In a case where the High Court thinks that it is not a clear case of contempt, it will refrain from imposing any penalty on the contemner. So also, if the publication is bona fide and is a fair and legitimate criticism, the High Court will drop the proceedings against the contemner. These are ample safeguards to any contemner and the mere circumstance that the High Courts does not ordinarily record evidence of the parties or witnesses in a contempt case is all too inadequate for holding that the procedure and practice followed by the High Court in this regard is an unreasonable restriction on the freedom of speech and restriction.

(21) The learned counsel for the respondent then urges that according to the procedure and practice of the High Court and even of the Supreme Court, a contemner is not given an opportunity to prove by evidence the truth of the allegations published by him which constitute contempt by "scandalising" Courts or Judges.

This argument also does not appear to be well founded in the view of the object which the law of contempt and contempt proceedings have in view. The object is to ensure that the confidence of the public in the Courts of law is not shaken and to see that the due course of administration of justice is not obstructed. By seeking to prove the truth of a publication which is plainly calculated to impair the confidence of the public in the Courts and in the administration of justice, the object of maintaining public confidence in the Courts and the administration of justice, instead of being advanced, will be frustrated. There are certainly other means of curing the evils if any, connected with the administration of justice than by widely publicising them and by seeking to establish their truth, which course, if resorted to, will only serve to engender discontent and lack of evidence in the public mind. This is the very mischief which contempt proceedings seek to combat. Therefore it is that Courts have held that justification by truth is not a defence in contempt proceedings. Vide ILR (1942) Lah 411: AIR 1942 Lah 105 (FB), M.G. Kadir Vs. Kesri Narain Jaitly and Others, ; In Re: Ram Mohan Lal Agarwala, Advocate General v. Seshagiri, ILR (1959) Andh Pra 1282, and Advocate General, A.P. v. Subbarao, 1965-2 Andh LT 170.

In J. & P. Coats v. Chadwick, 1894 1 Ch. 347, Chitty, J. Stated thus:

"The plaintiff's counsel not only admitted, but boldly asserted, and made it part of their argument, that the circular was libellous, and that they could justify the libel, and they referred to some of the evidence which apparently had been adduced for the purpose of sustaining the justification . But the evidence and the argument founded on it are irrelevant on this motion. Interference with the course of justice by the publication of ex parte statements by a party to an action is not the less a contempt of court because the statements are libelous, or because the party is prepared to justify the libel, or because the libel deals with the merits of the action. The considerations applicable to the granting or refusing an injunction on interlocutory motion in a libel action have no application in the

present case. On such a motion as the present, the Court declines to go into the merits of the action"

In *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, the Supreme Court has observed:

"It may be that pleas of justification or privilege are not strictly speaking available to the defendant in contempt proceedings."

It may be relevant to notice here the following view expressed by Lord Tenterton, C.J., in *Garnett v. Ferrand*, (1827) 6 B&C 611 (624), while dealing with a somewhat kindred aspect:

"In the imperfection of human nature, it is better even that an individual should occasionally suffer a wrong, than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who are to administer it."

In *Bathina Ramakrishna Reddy Vs. The State of Madras*, , their Lordships of the Supreme Court said:

"Specific instances have been given where the officer is alleged to have taken bribes or behaved with impropriety to the litigants who did not satisfy his dishonest demands. If the allegations were true, obviously it would be to the benefit of the public to bring these matters into light. But if they were false, they cannot but undermine the confidence of the Public in the administration of justice and bring judiciary into disrepute. The appellant, though he took sole responsibility regarding the publication of the article, was not in a position to substantiate by evidence any of the allegations made therein."

These observations do not amount to saying that justification by truth can be demanded by a contemner as of right and that it is a valid and permissible defence. The observations we have already extracted from the later judgment of the Supreme Court in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, make the position clear. It will be noted that the judgments of the Court were delivered by Mukherjee, J., both, *Bathina Ramakrishna Reddy Vs. The State of Madras*, , and *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, . In *Bathina Ramakrishna Reddy Vs. The State of Madras*, , it appears the Madras High Court had called upon the contemner to substantiate by evidence the truth of his allegations of corruption against the Magistrate. Their Lordships of the Supreme Court appear to have made the above observations with reference to that circumstance.

(22) In view of what we have stated above, we are satisfied that neither the exercise of summary jurisdiction by the High Court in matters of contempt nor the fact that evidence of the parties is not recorded by the Court nor that evidence by way of justification of the contempt of Court is not allowed to be led, makes the law of contempt as it exists today an unreasonable restriction on the freedom of speech and expression guaranteed by Article 19(1)(a) of the

Constitution. We may also state that the contention that the law of contempt of Courts as it exists today is repugnant to Article 19(1)(a) of the Constitution was raised and repelled in several cases, vide, *The State of Bombay Vs. P.*, , In the matter of *In Re: Basanta Chandra Ghosh, Advocate and Others*, *Lakhan Singh Vs. Balbir Singh and Another*, , and *The State (at the instance of the S.D.M. Titiagarh) Vs. The Editor, Printer and Publisher of Matrubhumi and Others*, , All these decisions have held that the restrictions imposed on the freedom of speech and expression by the law relating to contempt of Court is a reasonable restriction.

(23) Coming to the present case, we may point out that in the course of the arguments, we made it clear to the respondent's learned counsel that we will be prepared to record any relevant evidence to substantiate the truth of the passages constituting contempt and we also directed the learned counsel that he may file an application for this purpose, if the respondent desired to adduce evidence. In pursuance of this, the respondent filed Application No. 222 of 65 on 2-12-1965. But when it was posted, after notice to the learned Advocate General, on 6-12-1965, we were invited to dismiss it as not pressed.

(24) Before we leave the topic of freedom of speech and expression, it is well to say that the freedom of the press under Article 19(1)(a) is no greater or no less than the freedom of any ordinary citizen of India. We are referring to this because the respondent's learned counsel, more than once, pressed upon us that the respondent is a journalist and that in the discharge of his duties to the public he is entitled to a higher degree of freedom of speech and expression than the ordinary citizens. In *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, , it has been held as follows:-

"Further, being only a right flowing from the freedom of speech and expression, the liberty of the press in India stands on no higher footing than the freedom of speech and expression of a citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of the citizen. In short, as regards citizens running a newspaper the position under our Constitution is the same as it was when the Judicial Committee decided the case of *C. Arnold v. King Emperor*, 26 Mad, LJ 621 (AIR 1914 PC 116)."

In 41 Ind App. 149 (AIR 1914 PC 116), Lord Shaw made the following observations at page 169 (of Ind App): (at p. 124 of AIR):

"Their Lordships regret to find that there appeared on the one side in this case the timeworn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful: but the range of

his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject . No privilege attaches to his position."

(25) The next contention of the respondent's learned counsel is that the law of contempt infringes his fundamental right under Article 19(1)(a) to practice the profession of journalist. The argument here is somewhat involved. The respondent's learned counsel says that in case the respondent is committed to prison in these contempt proceedings his right to practice his profession will be interfered with and that therefore the law relating to contempt of Court is obnoxious to the fundamental right enshrined in Article 19(1)(a). We have no hesitation in saying that this argument is devoid of substance. It is no part of the profession of a journalist to indulge in contempt of Courts. The law relating to contempt of Court does not in any manner prevent him from practising his profession as a journalist without committing contempt of Court. It cannot be said that the commission of contempt of Court is an essential or integral part of a journalist's profession or occupation. We are therefore wholly unable to uphold the contention based on Art. 19(1)(a). Further, if the contemner is committed to prison, he cannot complain of loss of any freedom under Article 19(1)(a).

(26) We shall now turn our attention to the argument founded on Article 21 of the Constitution which says that no person shall be deprived of his life or personal liberty except according to procedure established by law. According to the learned counsel for the respondent, there is no "procedure established by law" which can be followed in sentencing contemnors to terms of imprisonment as prescribed by the Contempt of Courts Act, 1952. A similar argument was advanced before a Division Bench of the Bombay High Court in *The State of Bombay Vs. P., ,* and was repelled. Practically the same argument was advanced before a Full Bench of the Patna High Court in *In Re: Basanta Chandra Ghosh, Advocate and Others, ,* and was rejected. Following the decision in *The State of Bombay Vs. P., ,* the Full Bench said in *In Re: Basanta Chandra Ghosh, Advocate and Others, :-*

"The expression "procedure established by law" in Art. 21 contemplates a procedure which was followed by the various High Court prior to the passing of the Indian Constitution and includes summary procedure based on fairness and justice without the trammels of technicality and there is nothing invalid in the practice and procedure followed in matters of contempt on account on Art. 21 of the Constitution."

As we have pointed out earlier, u/s 223 of the Government of India Act, 1935, the jurisdiction and powers of the High Courts and of the Judges thereof which existed immediately before the commencement of Part III of the Government of India Act, 1935, were continued to them. The jurisdiction and powers so continued included the jurisdiction to punish contemnors summarily with imprisonment or fine or both. Under Article 225 of the Constitution the powers and jurisdiction which were exercised by the High Courts in India immediately before the commencement them. Thus, the summary jurisdiction and the powers

of the High Court to punish contempts of themselves have been preserved. Contempt of Courts Act, 1952, has accorded statutory recognition to the procedure and practice which the High Courts in India have been following in dealing with contempts of themselves: vide Section 3. This procedure and practice have thus practically obtained the status of enacted law. Clause 38 of the Letters Patent of the Madras High Court which applies to the High Court of Andhra Pradesh also, reads:

"And we do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at Madras .. in the exercise of its ordinary original criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by procedure and practice which was in use in the said High Court immediately before such publication subject to any law which has been or may be made in relation thereto by competent legislative authority for India; and that proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid."

It has been held that proceedings in "criminal contempt" are in the nature of original criminal proceedings. Such Proceedings shall be regulated, according to clause 38 of the Letters Patent, by the procedure and practice which was in use in the Madras High Court immediately before the Letters Patent came into force. The Madras High Court which succeeded the Supreme Court at Madras, and which is a Chartered High Court, always exercised summary jurisdiction in dealing with contempts of itself in the same manner as superior court of Record in England. The procedure and practice so followed in respect of contempt proceedings were continued under Clause 38 of the Letters Patent which even today remain valid law. Furthermore, the expression "Law" in Art. 21 need not be construed in the context of contempt of Courts as statute law. It can well refer to the common law relating to contempt of Courts which was in force in India prior to the commencement of the Constitution.

The English common law doctrine of priority of Crown debts which was adopted and applied by Courts in this country prior to the commencement of the Constitution has been held to be "law in force" within the meaning of Article 372(1) - Vide, Director of Rationing and Distribution Vs. The Corporation of Calcutta and Others, . The decision has been followed in a recent decision of the Supreme Court in Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, . By parity of reasoning, we think that the expression "law" in Article 21 can also be construed as the common law which was adopted and followed by the Indian High Courts in the matter of contempt of court, prior to the commencement of the Constitution. This judge-made law, he consistently held that the High Courts

in India are entitled to exercise summary jurisdiction to punish contempts of themselves. The summary procedure adopted by the several High Courts in contempt proceedings can therefore be taken to be "procedure established by law" within the meaning of Article 21. It is the same procedure and practice that we are now following. It is this procedure and practice that has been statutorily recognised in the Contempt of Courts Act, 1952, and which have been made expressly applicable in dealing with contempt of courts subordinate to the High Courts.

Further, Article 215 itself is "law", and acting in the exercise of the inherent powers of a Court of Record to punish contempts of itself, is acting according to "law". Thus, from whatever angle the matter is viewed, it seems to us that the law relating to contempt of Courts, as it exists today does not violate Article 21 of the Constitution.

(27) It is opposite in this context to refer to what has been authoritatively laid down by the Supreme Court in *Sukhdev Singh Sodhi Vs. The Chief Justice and Judges of The Pepsu High Court*,

"We hold there that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council in *re, Pollard*, (1868) L.R. 2 P.C. 106 at p. 120, and was followed in India and in Burma in *In re, Vallabhadas, Jairam* (1903) ILR 27 Bom. 394 at p. 399 and *Ebrahim Mammojee v. King Emperor*, ILR 4 Ran 257 at pp. 259-61. (AIR 1926 Rang. 188 at pp. 189-190). In our view that is still the law."

(28) Ten days after we reserved judgment in this case, the learned counsel for the respondent addressed a letter to the Registrar requesting that the case may be posted for "being spoken to". That letter was circulated to us and we acceded to the request of the respondent's learned counsel. When the matter was posted again in this way, the learned counsel for the respondent raised the plea that we had no jurisdiction to try this contempt case. His entire argument was based on Rule 3 of the "Rules to regulate proceedings for contempts of subordinate courts and of the High Court" which came into force on 17-10-1957, and which we may, for brevity refer to as "contempt rules". Rule 3 reads:

"Every such contempt application shall be posted before the First Bench, if the contempt alleged is of a Subordinate Court and before such Bench as the Chief Justice directs, if the contempt alleged is in respect of the High Court under Rule 1(b)."

The learned counsel for the respondent contends that in view of this Rule, only the First Bench that is, the Bench in which the Chief Justice sits, has jurisdiction to try cases of contempt of subordinate courts. It is pointed out that the instant contempt case was not posted before the First Bench even at the initial stage of

issuing Rule Nisi. Therefore, it is argued, we have no jurisdiction whatever to pass any orders in the present case. This plea or anything approaching it, was not raised anywhere in the counter affidavits filed by the respondent. Nor was it even hinted at in the course of the elaborate arguments which were addressed to us previously by the respondent's learned counsel. It was raised for the first time on 20-12-1965, that is to say, when the case was posted "for being spoken to" in pursuance of a letter addressed to the Registrar by the respondent's learned counsel on 18-12-1965. Ordinarily, a question as to jurisdiction should be raised at the outset of the proceedings. We do not, however, desire to rest our decision on this somewhat technical aspect of the matter.

(29) The contention raised on behalf of the respondent is that no Bench except the First Bench has jurisdiction to hear a case of contempt relating to a subordinate Court. We are not able to agree. Rule 3 of the contempt rules does into purport to confer jurisdiction nor does it oust jurisdiction. The contempt rules cannot derogate from the inherent powers of the High Court as a Court of Record. Nor can they detract from the powers conferred on this High Court under Article 215 of the Constitution or under the Constitution of Courts Act, 1952. Indeed, the contempt rules do not purport to do so. The relevant portion of Clause 36 of the Letters Patent of the Madras High Court (as amended in 1919) which applies to this Court reads:

"Single Judges and Division Courts" - And we do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose in pursuance of Section 108 of the Government of India Act, 1915."

This provision, which is still the law in force, unmistakably shows that any Division Bench of this High Court has jurisdiction to try cases of contempt of subordinate courts. There is nothing in Clause 36 which indicates that only the First Bench consisting of the Chief Justice and another Judge has jurisdiction to hear cases of contempt relating to subordinate Courts. Section 108(2) of the Government of India Act, 1915, which is, so to say, preserved for purposes of Clause 36 of the Letters Patent, says:

"The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what judges of the court, whether with or without the Chief Justice, are to constitute the several division courts."

This power of the Chief Justice is not and cannot be taken away by Rule 3 of the contempt Rules. It is in exercise of the power conferred on the Chief Justice u/s 108(2) of the Government of India Act, 1915, which is incorporated in clause 36 of the Letters Patent that the present case has been posted before us for being heard and disposed of. The contention that this Division Bench has no jurisdiction to hear this case or to pass orders on it, is not, therefore, tenable. Besides, the instant case relates to contempt of the High Court or the Judge or Judges thereof

as well as to contempt of subordinate Courts. This is therefore what may be called a composite case which falls outside the contemplation of Rule 3.

(30) Moreover, Rule 3 of the contempt rules is only directory and not mandatory. It is only in the nature of a direction issued to the High Court office in the matter of posting contempt applications relating to subordinate courts. It is as if a general direction in the matter of posting this class of contempt cases was given to the Registrar by this rule. But it cannot override the undoubted authority of the Chief Justice under clause 36 of the Letters Patent read with Section 108(2) of the Government of India Act, 1915. The true construction of Rule 3 therefore is that contempt applications which allege contempt of subordinate Courts should be posted before a Bench consisting of the Chief Justice and another Judge, unless the Chief Justice otherwise directs. This interpretation of Rule 3 will harmonise the rule with clause 36 of the Letters Patent read with Section 108(2) of the Government of India Act, 1915. If Rule 3 is held to conflict with clause 36 of the Letters Patent, the Rule will have to be held to be ultra vires.

(31) The learned counsel for the respondent has drawn our attention to a very recent decision of the Madras High Court in C. Hariprasad Vs. G. Vasantha Pai, . We are not satisfied that this can be regarded as an authority for the proposition contended for by the respondent's learned counsel, namely, that only a Bench in which Chief Justice sits has jurisdiction to hear applications which alleges contempt of Subordinate Courts and that a Bench composed of any two of the other Judges of the High Court is wholly and inherently devoid of jurisdiction to deal with such applications. The Chief Justice, as we have already stated, has power and authority to direct that a Bench in which he does not sit, should deal with a contempt application which alleges contempt of subordinate courts. There is no question of any inherent lack of jurisdiction on the part of such a Bench to hear and dispose of such an application. Consequently we hold that the plea as to jurisdiction raised on behalf of the respondent has no merit.

(32) We shall now, proceed to examine each of the passages the publication of which is alleged to be a contempt of Court. We shall first take up the passage in which the High Court has been directly brought in. It is entitled "Reddy Justice" and is published on page 5 of the Andhra Herald dated 29-11-1964. We have already extracted the offending passage in the early part of this judgment. The particular portion on which considerable stress has been laid by the learned Advocate General reads:-

"The way in which the administration of the Andhra Pradesh High Court was conducted during the last few years when Justice Mr. P. Chandra Reddi was the Chief Justice provides ample evidence to substantiate Sri Brahmananda Reddi's claim, not only in the appointment of law officers of the State and the promotion or transfer of Judges but also in the matter of constituting the Benches to dispose of matters in which the members of the executive are involved."

This passage appears to us to be a clear contempt of the High Court. It

unmistakably suggests that benches favourable to the executive or Benches which would suit the executive have been constituted in this High Court to dispose of matters in which "members of the executive are involved." The true meaning and import of this passage can only be that partiality and favouritism were shown by this High Court in adjudging cases in which members of the executive were involved. This appears to us to be a serious reflection on the integrity and impartiality of the High Court. This passage casts a serious asperion not only on the Chief Justice but also on other Judges who were members of the Benches said to have been constituted to dispose of matters in which the members of the executive were involved. It is known to every body that Chief Justice presided over Division Benches in this Court. This High Court has always had many causes in which the several departments of the executive and the several members of the executive were parties. Even today, many such causes are pending in this Court. Invariably, ordinary citizens have been pitted against the executive Government or the members of the executive in such causes.

Therefore, to suggest that Benches favourable or suitable to the executive Departments or to the members of the executive were constituted to dispose of such causes is a direct attack on the administration of justice by this High Court. An attack like this is bound to lower the prestige and dignity of this Court and bring it into contempt and disrepute. What is more, it is calculated to impair the confidence of the litigating public in this Court. A perusal of the entire passage headed "Reddy Justice" published in the issue of Andhra Herald dated 29-11-1964 only serves to confirm this conclusion. The passage can have no other meaning or implication. There is hardly anything veiled in this passage. It is an express act of scandalising this Court. The concluding paragraph of the article under the caption "Reddy Justice" reads:

"To provide one more glaring instance of the co-operation of the judiciary and the Executive in Andhra Pradesh, the recent recruitment of District Judges is enough to convince even the best of optimists how High Court of Andhra Pradesh allowed itself to become the hand-maid of the Chief Minister."

The first paragraph in this article recalls that Dr. N. Sanjeeva Reddi, the then Home Minister observed when the Andhra High Court was inaugurated in Guntur in 1954 that "from now on "we shall dispense with Justice." The next paragraph says:

"Where Dr. Reddi failed to implement his words into deeds, his political heir Sri Kasu Brahmananda Reddi did succeed ... "

This paragraph then refers to the alleged statement of Chief Minister Sri Brahmananda Reddi when he laid the foundation stone of the Bar Council building that "there existed admirable co-operation between the judiciary and the executive in Andhra Pradesh". After this, comes the passage we have already extracted. Thus, the whole trend, tenor and import of this article convey the impression that justice was no fairly administered in the Andhra Pradesh High

Court and that it was partial to the executive in judicial adjudication's and that it was a hand-maid of the Chief Minister. We are not able to conceive of anything more detrimental to the prestige and authority of the High Court or more calculated to shake the confidence of the public in this High Court.

(33) The learned counsel for the respondent tried to escape from the difficult position in which he apparently found himself by stating that no such Benches as alleged in the article in question were constituted in this High Court and that therefore the passage cannot be regarded as constituting contempt of this Court. This stand seems to us only to make the position worse for the respondent. If in fact no Benches as mentioned by the writer in the passage above cited were really constituted in this Court, there was no excuse at all for the writer to have made mention of the constitution of Benches "to dispose of matters in which the members of the executive are involved." It is then an untrue statement devoid of bona fides and far removed from any fair comment or permissible criticism.

(34) The Respondent's learned counsel then urged that the article did not mention any specific cause or causes in which the members of the executive were involved and what the respondent indulged in was only a broad and general statement which cannot constitute contempt. We do not think this is a tenable position to take. A general statement that a High Court is partial or that it shows favouritism in cases in which members of the executive are involved is sufficient to make it contempt of Court. In the article headed "Reddi Justice" the impartiality, integrity and the independence of the High Court have been attacked. Two decisions of the Calcutta High Court appear to be rather close to the facts of the instant case. One is, ILR 45 Cal 169: AIR 1918 Cal 988 (SB), which was decided by a Special Bench composed of five Judges. There two articles were published in the Amrita Bazar Patrika regarding the proposed constitution of a new appellate Bench of the Calcutta High court for hearing appeals against the awards of the Calcutta Improvement Trust. The suggestion was that the new appellate Bench proposed to be constituted was intended to be favourable to the Calcutta Improvement Trust. The Special Bench held that these publications constituted contempt of the High Court by "scandalising" it. Ashutosh Mookerjee, J., in his separate concurring judgment observed as follows:-

"It is a public wrong, a crime against the State, to undertake, by libel or slander on the Judges, to impair confidence in the administration of justice. That a party indulges in calumny of the gravest character, and, consequently, does not succeed in his endeavour to shake the confidence of the public in the Court, surely does not alter the quality of his act or make it any the less reprehensible. From this standpoint, it is immaterial whether the attack on the Judge is with reference to a cause about to be tried, or actually under trial, or recently adjudged; in each instance, the tendency is to poison the fountain of justice, to create distrust, and to destroy the confidence of the people in the Courts, which are of prime importance to them in the protection of their rights and liberties..."

This passage was approved by a Full Bench of five Judges of the Calcutta High Court in a later case in *In Re: Tushar Kanti Ghosh*. Editor, *Amrit Bazar Patrika*, and Another, . In that case, proceedings in contempt were taken for publishing in the *Amrita Bazaar patrika* an article which said:

"It is so unfortunate and regrettable that at the present day the Chief Justice and the Judges find a peculiar delight in hobnobbing with the Executive, with the result that the judiciary is robbed of its independence which at one time attracted the admiration of the whole country. The old order of things has vanished away. We wish the Chief Justice and the Judges appreciate the sentiments of the public. The generation that has gone by should be an ideal to them."

It will be noted that this publication did not refer to any particular case. It was of a general character. Nevertheless the Editor, Printer and Publisher was found guilty of contempt of court *Derbyshire, C.J.*, stated thus in his leading judgment:

"In this Court there are at all times cases being tried or waiting to be tried in which the Crown through some branch of the Executive is interested, either as a prosecutor or a litigant, and the inference is that in these cases the Chief Justice and the Judges cannot do evenhanded and impartial justice. This Court has, and I trust always will have, the deserved reputation of doing even-handed and impartial justice. Once the impression is created in the minds of the public that the Chief Justice and the Judges of this Court are not independent, and that they lean towards the Executive and that consequently in matters in which the Crown is concerned either as prosecutor or litigant, the case of the prisoner or accused or the opposite party cannot or will not be heard and determined solely according to the evidence and the law, the confidence of the whole community in the administration of justice in this province in Bengal will be undermined. No greater public mischief than that can be possible. Such words are in my view clearly within the definition of contempt by scandalising as enunciated by Lord Russel in (1900) 2 QB 36 and are clearly within the definition given by *Wilmot, C.J.*"

These observations apply with equal force to the instant case. We may also recall the observations in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, that scandalising the Court might manifest itself in various ways, but in substance, it is an attack on individual judges or the Court as a whole, with or without reference to particular cases, casting unwarranted and defamatory aspersions upon the character or ability of the judges.

(35) The respondent's learned counsel made an attempt to explain that the reference to constitution of Benches related only to the delay in posting Contempt Case No. 5/64 before a Bench. This attempted explanation appears to be much too lame. Firstly, the offending passage does not even hint at any delay in constituting a Bench. It refers to "Benches" and not merely "a Bench". It clearly suggests that Benches have been constituted to suit the executive. The implication that the Judges who formed these Benches had a learning in favour

of the executive appears to us to be inescapable. It is therefore apparent that several Judges of this Court have been scandalised in this passage. Everyday, several matters in which the executive is directly involved were and are being heard by more than one Bench in this Court. To suggest that during the time of Chief Justice Chandra Reddi matters in which the members of the executive were involved were posted before those judges who were favourably inclined towards the executive is plainly to scandalise all those judges of this court who are even today judges of this High Court.

(36) Contempt Case 5/64 related to the bolding of elections to the Andhra Pradesh Congress Committee. A day before the elections were scheduled to take place, an order of interim injunction to restrain the conduct of the elections was obtained from the District Munsif at Vijayawada. In spite of this, elections to the Andhra Pradesh Congress Committee were alleged to have been held the next day, as scheduled. Therefore, one Satyanarayana moved this Court to punish five respondents for contempt of Court. The first respondent was Sri M. V. Krishnappa, Revenue Minister of Mysore State, who had been appointed Pradesh Returning Officer. The Second respondent was Sri G. Brahmayya, the then President of the Andhra Pradesh Congress Committee. The third respondent was Sri N. Sanjeeva Reddi, who was a member of the Andhra Pradesh Congress Committee. The fourth respondent was Sri Brahmananda Reddi, who was a member of the Andhra Pradesh Congress Committee, and also the Chief Minister of Andhra Pradesh, and the fifth respondent was Sri V. Basava Raju, who was the Vice-President of the Andhra Pradesh Congress Committee. The record of the case shows that the Contempt Application was presented in this Court on 30-3-1964. It was returned by the office on 2-4-1964 for rectification of certain irregularities.

After they were rectified the application was taken on file by the office on 6-4-1964 and it was posted for admission before a Bench of this Court on 9-6-1964. The Bench consisting of Satyanarayana Raju, J. (As he then was) and Venkatesam, J. Dismissed the contempt petition in limine as against respondents 3 to 5 and directed a Rule Nisi to issue as against respondents 1 and 2. Subsequently on 1-9-1964 it was dismissed against respondents 1 and 2 also on grounds which it is unnecessary to state here. It cannot, therefore, be said that there was any Bench for hearing Contempt Case No. 5 of 1964. Nor was there any question of co-operating with the executing in any manner. Reference to this case does not in any manner avail the respondent in the present case. It does not to any extent mitigate the gross contempt of this Court which he has committed by publishing the article headed "Reddy Justice" which contains the passage which we have already discussed. After a careful and anxious consideration of the matter, we are satisfied that the passage referred to above which was published by the respondent on 29-11-1964 in the Andhra Herald constitutes clear contempt of this Court.

(37) It is perhaps useful to state here that in the matter of promotions of District

Munsifs and Sub-Judges, the practice obtaining in this Court for a long time has been to act according to the majority decision reached at a meeting of all the Judges of the High Court. In the matter of transfers also, the practice has been for the Chief Justice to obtain the written views of two or more of his colleagues, by circulating the files to them. For recommending persons not already in service for appointment as District Judges, as required by Article 233(2) of the Constitution, a Committee consisting of Chief Justice Chandra Reddi and two of his colleagues in the order of seniority was constituted. This Committee interviewed the candidates and made recommendations to the Governor.

(38) Just above the passage under the caption "Reddy Justice" which we have already dealt with occurs the following passage under the head "Telco case".

"All this story has been narrated in detail to enable the readers to understand and appreciate the treacherous role played by the Chief Minister. Sri K. Brahmananda Reddi, to interfere with the course of justice and the helpless way in which the beneficiaries of the Trust, having lost confidence in the integrity of the judiciary had to wind up their battle against corruption in the State of Andhra Pradesh."

The objectionable portion is "the beneficiaries of the Trust, having lost confidence in the integrity of the judiciary had to wind up their battle against corruption in the State of Andhra Pradesh." There is nothing in the article to suggest even remotely that there was any semblance of a reason for the beneficiaries of the Trust for losing confidence in the integrity of the judiciary. The reference to loss of confidence in the integrity of the judiciary does not at all appear reasonably to follow from any statement of fact made anywhere in the article in question. It appears to us to have been wantonly made without any justification whatsoever. It is surely not fair or bona fide comment or criticism. It is a sweeping denunciation of the judiciary -denunciation of the worst kind calculated to bring the judiciary into contempt and disregard and to shake the public confidence in it. In our opinion, this statement is likely to do great public harm and mischief. We think it is a reckless act of contempt of Courts and we hold accordingly.

(39) The other passage on which reliance is placed by the learned Advocate General reads:

"That the unceremonious way in which Chief Justice Mr. P. Chandra Reddi was packed off from Hyderabad with bag and baggage is symptom of the prevalence of the "rule of Law" in the State of Andhra Pradesh".

This passage is highly disrespectful to Chief Justice Chandra Reddi. But that by itself cannot make it a contempt of Court. It was published just five days after he left this High Court on transfer to assume charge as the Chief Justice of the Madras High Court. The fact that nothing against him was published by the respondent during his tenure as Chief by the respondent during his tenure as Chief Justice of the High Court has been pointedly referred to by the learned Advocate General. We do not consider that the mere circumstance that this

distasteful reference was published within a week after the Chief Justice left this High Court does by itself make it a contempt of this Court. It is then argued by the learned Advocate General that the statement that his transfer is a symptom of the prevalence of Rule of Law in the State of Andhra Pradesh is contempt because it suggests that previous to the transfer of Sri Chandra Reddi, Rule of Law was not prevalent in this State. We think that this is somewhat far-fetched reasoning. We are not satisfied this is a case of contempt beyond reasonable doubt. We would therefore prefer not to act on it.

(40) The next offending passage relates to the Election Tribunal which was constituted under the Representation of the People Act, 1951, to hear and adjudicate upon certain election petitions. One of them was the petition challenging the election of Sri Kasy Brahmananda Reddi (Chief Minister) to the State Legislative Assembly. Sri A. Srinivasachari, a retired Judge of this High Court was appointed Election Tribunal. The passage which is alleged to be in contempt of the Election Tribunal reads:

"In strict variance with the directions of the Supreme Court, Justice Srinivasachari's one man election tribunal would prefer to drag the trial over the election petition against Chief Minister Brahmananda Reddi till after the next general elections, continuously shifting the venue of trial between Guntur and Hyderabad, to ensure better pay condition and travelling allowances to the personnel."

By saying that "the election tribunal would prefer to drag the trial over the election petition against Chief Minister Brahmananda Reddi till after the next general elections", an imputation is made against Sri Srinivasachari that he is disposed to favour Sri Brahmananda Reddi by not deciding the election petition till the term of election of Sri Brahmananda Reddi expires. This surely is a reflection on the integrity and impartiality of Sri Srinivasachari as the Election Tribunal. An ordinary person reading the passage will get the impression that Sri Srinivasachari is shirking his duty to dispose of the election petition promptly and is deliberately protracting the trial so that Sri Brahmananda Reddi may be helped by the delay. Thus, improper motives like lack of honesty in the discharge of his enjoined duties as Election Tribunal and a desire to favour the person against whom the Election Petition is filed are ascribed to the Election Tribunal. It cannot be doubted that this is a libellous attack on the Election Tribunal as such.

(41) The other statement that Sri Srinivasachari has been "continuously shifting the venue of trial between Guntur and Hyderabad, to ensure better pay conditions and travelling allowances to the personnel" is also an aspersion on the Tribunal. It unmistakably indicates that the venue of the trial was shifted between Guntur and Hyderabad not for any legitimate purpose connected with the trial of the election petition but for securing pecuniary advantages. This is nothing but attributing an improper motive to the Election Tribunal in regard to its proceedings as Election Tribunal. The fact of the matter was that the Election Tribunal recorded the evidence of a number of witnesses at Guntur for the

convenience of the parties and the witnesses. The headquarters of the Election Tribunal was at Hyderabad. Witnesses from Hyderabad and the neighbourhood were examined at Hyderabad and witnesses from Guntur and the neighbourhood were examined at Guntur. After the entire evidence was recorded, arguments were heard at Hyderabad where judgment also was pronounced by about the middle of 1965.

An appeal which was preferred to this Court from the decision of the Election Tribunal has also been disposed of the writing in question was published by the respondent while the proceedings relating to the election petition against Sri Brahmananda Reddi were pending before the Election Tribunal. We have no doubt that if the Elections Tribunal can be considered to be a Court Subordinate to this High Court within the meaning of Section 3(1) of the Contempt of Courts Act, 1952, the writing published by the respondent is a contempt of a Court subordinate to this High Court. The learned counsel for the respondent has argued that the Election Tribunal is not a Court subordinate to the High Court within the contemplation of Section 3(1) of the Contempt of Courts Act, 1952. The question, therefore is whether the Election Tribunal is a Court subordinate to this High Court.

In *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, , the Supreme Court had to consider whether a returning officer acting u/s 36 of the Representation of the People Act, can be regarded as a "Court". In that connection, their Lordships of the Supreme Court compared the nature and functions of an Election Tribunal with those of the returning officer Mr. Justice Venkatarama Ayyar who rendered the judgment of the Court stated as follows:

"There has been considerable discussion in the Courts in England and Australia as to what are the essential characteristics of a Court as distinguished from tribunal exercising question judicial functions. Vide 1931 AC 275, *Shell Co., of Australia v. Federal Commissioner of Taxation* : 1931-2 KB 215, *R. V. London Country*; 1931-2 K. B. 309, *Cooper v. Wilson*; (1909) 8 CLR 330, *Huddart Parkar and Co., v. Moorhead*; and (1944) 69 CLR 185, *Rola Co., v. The Commonwealth*. In this Court, the question was considered in some fullness in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi*, .

It is unnecessary to traverse the same ground once again. It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment.

To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court

as distinguished from a queasy-judicial tribunal, what has to be decided is whether having reaged to the provisions of the Act it possesses all attributes of a Court.

We have not to decide whether in view of the principles above stated and the functions and powers entrusted to the returning officer under the Act, he is a court. The statutory provision bearing on this matter is S. 36. Under S. 36. The returning officer has to examine the nomination paper and decide all objections which may be made thereto. This power is undoubtedly judicial in character. But in exercising this power, he is authorised to come to a decision "after such summary enquiry, if any, as he thinks necessary". That means that the parties have no right to insist on producing evidence which they may desire to adduce in support of their case.

There is no machinery provided for summoning of witnesses, or of compelling production of documents in an enquiry under S. 36. The returning officer is entitled to act "suo motu" in the matter. When one compares this procedure with that prescribed for trial of election petitions by the Election Tribunal under Sections 90 and 92 of the Act, the difference between the two becomes marked. While the proceedings before the Election Tribunal approximates in all essential matters to proceedings in Civil Court the proceedings under S. 36 present a different picture.

There is no "lis" in which persons with opposing claims are entitled to have their rights adjudicated in a judicial manner, but an enquiry such as is usually conducted by an "ad hoc" tribunal entrusted with a quasi-judicial power. In other words, the function of the returning officer acting under S. 36 is judicial in character but he is not to act judicially in discharging it....."

In this passage their Lordships have not only indicated the essential characteristics of a Court as distinguished from a mere quasi-judicial tribunal, but have also stated that "the proceedings before the Election Tribunal approximate in all essential matters to proceedings in civil courts". The trend of the discussion of their Lordships seems to indicate that they were inclined to the view that an election tribunal is a Court and not a mere quasi-judicial tribunal. In *Brajnandan Sinha Vs. Jyoti Narain*, , there is a detailed discussion of the characteristics of a Court. The question for determination in that case was whether a commissioner appointed under the Public Servants (Inquiries) Act (37 of 1850) was a court within the meaning of the Contempt of Court Act, 1952. In the judgment, their Lordships reviewed a number of English and Indian decisions and referred to the provisions of several Indian statutes and pointed out the distinction between a Court and a quasi-judicial Tribunal and brought out the essential characteristics of a Court. It was held that the Commissioner appointed under the Public Servants (Inquiries) Act. 1950 was not a "Court" mainly because his findings were a not a definitive judgment or a judicial pronouncement which had any finality. Their Lordships observed:-

"It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a Judicial Tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a Judicial pronouncement".

Applying the tests laid down by their Lordships in the above decision, we are of the view that an Election Tribunal is a court subordinate to the High Court within the meaning of Section 3(1) of the Contempt of Courts Act, 1952. Two Division Bench decisions of the Madhya Pradesh High Court, after referring to the tests laid down by the Supreme Court in the above cases, have held that the Election Tribunal constituted under the Representation of the People Act, 1951, is a Court and that as an appeal from its decision lies to the High Court under Sec. 116-A of the Representation of the People Act. It is a court subordinate to the High Court. Vide *Chunnilal Ken Vs. Shyamlal Sukhram and Others*, , and *Nirbhayadas Gangaram Vs. Rameshwar Agnibhoj*, . We are in agreement with these decisions of the Madhya Pradesh High Court which seem to us to accord with principles as well as authority. The subordination of the tribunal to the High Court can also be based on Article 227 of the Constitution. We hold, therefore, that the Elections Tribunal is a Court subordinate to the High Court within the intendment of Section 3 of the Contempt of Courts Act. 1952, and that a contempt of the Election Tribunal can be dealt with by this Court under the provisions of that Act. We hold accordingly that the respondent who published the article already referred to casting serious aspersions on the Election Tribunal, has committed contempt of a Court subordinate to this High Court.

(42) Now, we come to what was published in Telugu in the same issue of the Andhra Herald. At more than one place in this publication exceedingly disparaging references have been and to Chief Justice Chandra Reddi and also the members of the subordinate Judiciary. One passage states that Sri Kasu Vengala Reddi obtained an injunction order, after winning over the Munsif of Guntur Another passage states that Sri Thamma Ranga Reddi (an Advocate practising at Guntur) "with the arrogance that the District Munsif was one of his own Reddi community, and reorting it browbeating (Piduguralla Dabaimpu section -which could mean underhand methods as we are told at the Bar) managed to secure an injunction order from him". The writer then proceeds to say that "unless the whole matter is thrashed out as to how the Munsif has passed injunction orders restraining the said officer, it will not come to light as to how courts under the Reddi Raj in this State are abusing their power and thereby forfeiting the confidence of the general public Lower down, another passage reads:

"As Chief Justice Chandra Reddi will also the not available hereafter in the Andhra Pradesh High Court to come to their rescue whenever required, it is better for them to note that though Munsifs and Judges are Reddies and pass wrong order, the Rule of Law in this State will hereafter go unhampered....."

All these passages undoubtedly cast damaging reflections not only on Chief Justice Chandra Reddi but also on the Munsifs and Judges belonging to the Reddi community, as a whole. The impression which these articles create in the mind of an ordinary reader is that under the "Reddi Raj" Courts have been acting in such a way as to lose the confidence of the general Public and that Munsifs and Judges who belong to the Reddi community have been allowed to abuse their powers and pass wrong orders with impunity. An attack of this kind is unusual and disparages a whole section of the members of the subordinate judiciary who happen to belong to the Reddi community.

This attack on the members of the judiciary who belong to the Reddi community is bound to lower their prestige and authority and to impair considerably the public confidence in Courts presided over by them. Attacks like this are bound to embarrass the Munsifs and Judges who belong to the Reddi community in the discharge of their judicial duties and functions. How can they, in the face of such attacks, act with hold impartiality and fearless independence in deciding cases in which one of the parties belongs to the Reddi community or in which the Executive Government, of which the Chief Minister is a gentleman belonging to that community, is a party? The publication of the offending statements tends to obstruct the administration of justice, to lower the prestige of several members of the Judiciary who, for no fault of their, happen to belong to the Reddi community and shake the confidence of the litigant public in them.

(43) But it is argued for the respondent that the District Munsif, Guntur from whom Sri Thamma Ranga Reddi was alleged to have obtained an injunction order staying the elections was impleaded as a respondent along with another in Contempt Case No. 20 of 1964 of this Court which was disposed of on 10-2-1965 by a Bench consisting of Satyanarayana Raju. C. J. (As he then was) and Chandrasekhara Sastry J. That contempt application was filed by the Guntur District Co-operative Marketing Society Limited by its president Sri J. Chandramouli. The first respondent was one Chakra Reddi who filed O.S. 414/64 in the Principal District Munsif's Court Guntur, which was subsequently transferred to the Additional District Munsif, Guntur, because it bore an even numbers. Along with the plaint in that suit, I. A. No. 2336/64 for the issue of an ad interim injunction to restrain the defendant (Joint Registrar of Co-operative Societies) from conducting elections to the Board of Directors of the said Co-operative Marketing Society was also filed. The election were scheduled to take place on 11-11-1964. The suit O.S. 414/64 and the I.A. 2336/64 were filed in the District Munsif's Court, Guntur on 10-11-1964. The Additional District Munsif to whose file the suit and the I.A. had been transferred by the Principal District Munsif, passed an order of interim injunction as asked for and issued notice returnable on 13-11-1964. The defendant in O.S. 414/64 was a person appointed by the Registrar of Co-operative Societies to conduct the elections, in pursuance of the order passed by this Court in CMP in W.P. No 1727/64. The plaintiff in O.S. 414/64 was not a party to the writ petition or the C.M.P. therein. But the ad interim injunction issued by the Addl. District Munsif, Guntur had the effect of

preventing the defendant Joint Registrar from conducting the Elections on 11-11-1964.

Thereupon the President of the Marketing Society filed the contempt application against the plaintiff in O.S. No. 414/64 and also against the Additional District Munsif Guntur, who issued the order of interim injunction in the suit. It is the issue of this interim order of injunction that is referred to in the publication complained of as an injunction order which Sri Thamma Ranga Reddi managed to get from the District Munsif. Improper motives were imputed to the Additional District Munsif in the contempt application against him. But a Bench of this Court consisting of Satyanarayana Raju C. J. (As he then was) and Chandrasekhara Sastry, J. Found themselves unable to uphold these allegations. They observed in their judgment as follows:

"As we have already pointed out, the Second respondent may have acted without due care and caution but there is no basis for the allegations made against him that he was motivated by extraneous considerations in passing the order which he did, and there is certainly no warrant for attributing any improper or corrupt motives to the 2nd respondent. We therefore hold that the 2nd respondent is not guilty of contempt."

We are wholly unable to see how this judgment can be of any assistance to the respondent in the instant case. Neither the contempt case filed against the Additional District Munsif nor the order of interim injunction passed by him in O. S. No. 414/64 can afford any justification for the respondent to make serious imputations and insinuations against all the Munsifs and Judges belonging to the Reddi community. We must, add that the passage which refers to Sri Kasu Vengala Reddi having won over the Munsif and obtained an interim injunction order in another case is totally devoid of bona fides and goes far beyond the limits of fair comment. The rather undisguised suggestion that Chief Justice Chandra Reddi was shielding Munsiffs and Judges who belonged to the Reddy community although they passed wrong orders is a slander of the worst type that can ever be made against a Chief Justice. It imputes favouritism to him in the discharge of his Judicial functions in regard to the wrong orders passed by Munsifs and Judges of the Reddi community. The offending passage proceeds to imply that by so doing, the Rule of Law was not given effect to in this State during the tenure of Sri Chandra Reddi as Chief Justice of this High Court.

(44) The other passage which adversely reflects on the impartiality of Chief Justice Chandra Reddi is to the effect that Sri G. Ramaswami Reddi filed a writ petition in the High Court for staying the elections to the Board of Directors of the Guntur District Co-operative Marketing Society with the hope that if Public Prosecutor Sri Chinnappa Reddi was engaged as his lawyer. Chief Justice Chandra Reddi would immediately pass favourable orders. The passage no doubt, states that Sri Chandra Reddi gave a decision against the writ petitioner. But while saying so, the respondent has imported a bad sting which is contained in these words:

"But this time Sri Chandra Reddi did not somehow yield."

The suggestion plainly is that in other cases in which Public Prosecutor Sri Chinnappa Reddi appeared, orders favourable to him were passed by Chief Justice Chandra Reddi. We asked the learned counsel for the respondent to state a single case where one could possibly say that a particular order was passed by Chief Justice Chandra Reddi because Public Prosecutor Chinnappa Reddi appeared in it. The respondent's learned counsel stated that there was no such case. But he sought to explain away the offending passage by stating that the respondent had only put down in the passage what he conceived was the expectation of G. Ramaswami Reddi. It is impossible to accept the explanation because the plain words in the passage in question do not bear it. The passage stated first that Ramaswami Reddi engaged Chinnappa Reddi with the hope that the Chief Justice would immediately pass favourable orders. Then comes the sentence that "this time Sri Chandra Reddi did not somehow yield." Besides, as we pointed out earlier, Chief Justice Chandra Reddi rarely, if ever, sat alone: he always sat in a Bench along with another Judge, G. Ramaswami Reddi's writ petition was dismissed in limine by a Bench composed of the Chief Justice and Mr. Justice Gopala Rao Ekbote. It is clear that one of the two Judges cannot, without the concurrence of the other, pass any effective order in a cause. As Chief Justice Chandra Reddi almost always sat in a Bench along with another Judge, he could not have given favourable decisions to Sri Chinnappa Reddi as he pleased. The pejorative statement and animadversion against Chief Justice Chandra Reddi in this passage is such as to lower the prestige and dignity of this High Court and to bring it into disrepute.

(45) In the aforesaid passages published by the respondent all the Munsifs and Judges belonging to the Reddi community have been sought to be brought into disrepute and contempt. A marked tendency to impair the confidence of the public in the courts presided over by persons belonging to the Reddi community, is clearly discernible in the publication complained of. Expressions like "Reddi Justice" and "Courts under the Reddi Raj" lend a sinister colour to the offending passages.

(46) The writings published by the respondent constitute perhaps the worst and the most daring contempt of courts and judges ever committed by any person. It is not just one stray passage here or there that the respondent has been guilty of publishing. He has thought fit to publish quite a string of scandalous allegations and imputations against Courts and Judges. The counter affidavits filed by him do not anywhere manifest even a trace of contrition. The statement of the respondent at the end of paragraph 19 of his counter affidavit dated 30-7-1965 that "nowhere did he comment that in any particular case, the Ex. Chief Justice or if it comes to that, any member of the Judiciary gave wilfully any wrong, illegal or perverse judgments or with any bias or to favour this party or other" is very poor consolation.

A contempt by scandalising a Court or a Judge can be committed without making

reference to a particular case or a particular decision. A wholesale and unbridled denigration of a Court or a Judge is perhaps more damaging and more likely to undermine public confidence in the Court and the Judge. Even during the course of the long arguments which the learned counsel for the respondent addressed to us, not a word was said expressing regret on behalf of the respondent for the writings published by him in contempt of Courts and Judges. On the other hand, the respondent's learned counsel made it clear to us that the respondent was not prepared to express even a regret, not to speak of tendering any unconditional apology. This obduracy on the part of the respondent cannot but be taken note of.

(47) We must also notice that any one offending passage is sufficient for holding the respondent guilty of contempt of Court. But in the instant case, we have several offending passages. The argument advanced on behalf of the respondent that as Chief Justice Chandra Reddi was transferred from this Court to the Madras High Court five days before the publication of the offending articles in the Andhra Herald, anything said against him in regard to his judicial functions or administration of justice should be ignored, is not supported by authority or principle. If the judicial acts performed by Chief Justice Chandra Reddi during the period of about seven years of his tenure as Chief Justice of this High Court, in collaboration with the other learned Judges of this Court can be allowed to be attacked with impunity as actuated by improper motives such as partiality, favouritism, communalism, etc., we are afraid that the law of contempt would become almost a dead letter.

It will also be an extremely unhealthy precedent which might embolden other persons to indulge in similar attacks against Courts and judges by taking shelter behind the fact that the judge or the Chief Justice was transferred to another Court about a week prior to the offending publications. It cannot reasonably be said that the confidence of the public is likely to be impaired any the less because the particular Judge who is scandalised as judge was transferred to another Court about a week earlier. It is not only Chief Justice Chandra Reddi but also the other Judges of this Court and the judges and courts subordinate to this court that have been wantonly assailed by the respondent in his articles.

(48) In view of the foregoing, we have no hesitation in holding that the Respondent is guilty of contempt of Court. We, therefore, sentence him to undergo simple imprisonment for a period of three months and also pay a fine of Rs. 1000 in default of which the respondent will suffer simple imprisonment for a further period of one month. We also direct that the respondent will pay costs to the Advocate General which we assess at Rs. 500. The respondent shall be committed to the District prison Secunderabad.

(49) Petition allowed.