

(1995) 10 BOM CK 0001

In the Bombay High Court

Case No : Criminal Contempt Petition No. 6 of 1994

Arun Kumar Krishnarao Balpande

APPELLANT

Vs

Wasudeorao Kondbaji Ganar and others

RESPONDENT

Date of Decision : 13-10-1995

Acts Referred:

Constitution of India, 1950 — Article 129, 19(1), 20(3), 215
Penal Code, 1860 (IPC) — Section 201, 302, 34, 376

Citation : (1996) CriLJ 1091 : (1996) 1 MhLj 491

Hon'ble Judges : L. Manoharan, J;A.A. Desai, J

Bench : Division Bench

Advocate : Uday Dastane, for the Appellant; S.R. Deshpande, S.G. Aney, M.M. Agnihotri, S. Sanyal, S.P. Dhole, B.A. Udhoji, Mrs. S.M. Mudaliyar, Miss S.M. Muley, C.S. Kaptan, Ramesh Darda, M.G. Bhangade and V.V. Bhangade and H. Ahmad, Assistant Public Prosecutor, for the Respondent

Judgement

L. Manoharan, J.—By this criminal contempt petition, the petitioner seeks to invoke the suo motu jurisdiction of this Court to punish the respondent Nos. 1 and 3 to 14 for having committed criminal contempt of Courts.

2. The facts as could be ascertained from the petition are that on 28-3-1994, dead body of Smt. Manorama Kamble was found in the house of one Shri Sham Dewani, a practising Advocate. It was first reported to be an accidental death by the said Shri Sham Dewani. The complainant said that Manorama Kamble had died of electrocution. On post-mortem of the dead body, it was discovered that she died of strangulation by throttling and that she was raped. Therefore, Jaripatka Police Station registered an offence punishable under Sections 302, 376, 201 read with Section 34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The case, though was initially registered against unknown persons, later accused were identified as Sham Dewani, his father and brothers. Incidentally it is necessary to note that the said Manorama Kamble was a maid-servant in the house of Sham Dewani.

3. The first respondent who is an office bearer of the Republican Party of India, had issued press statements and also conducted press conferences which, according to the petitioner, was designed to scandalise and lower the authority of this Court as well as the Courts subordinate to it and the same was also to prejudice and interfere with the due course of judicial proceedings. In paragraph-3 of the petition, the petitioner makes reference to various acts which, according to him, would amount to criminal contempt of this Court. It further states :

".....More particularly respondent No. 1 held a press conference on 23-4-1994 in which he made various statements as under -

(a) Shri Damle, learned Sessions Judge, Nagpur, granted anticipatory bail to the accused persons for facilitating destruction of evidence after the post-mortem report revealed that late Manorama was raped and murdered;

(b) On the day of Holi, there was a wet party at the house of Advocate Dewani in which 4 Sessions Judges were present and although the police know their names, they have not been arrested;

(c) There was no hope that the family of late Manorama Kamble would get justice at the hands of the District and Sessions Courts, Nagpur; and

(d) He named 3 Judges of this Hon"ble Court before whom the trial should be held, clearly implying that in so far as the rest of the Hon"ble Judges of this Court are concerned, he had no faith."

It is further alleged that these statements were widely published in the newspapers of 24-3-1994 which are collectively marked as Annexure-I to this petition. Respondents Nos. 3 to 14 are responsible for such publication. According to the petitioner, the respondent No. 1 issued public statement - Annexure-II dated 27-4-1994 to the effect that there was a party on 27-3-1994 at the residence of Sham Dewani where certain Judges were present. According to the petitioner, not only the first respondent by issuing such statements but also respondents Nos. 3 to 14 who published the said news items have committed contempt of Court, as according to him, by publication of the same, respondents Nos. 1 and 3 to 14 have scandalised the Courts so as to lower its authority. It is on the basis of the said allegations mainly the petitioner seeks this Court's indulgence to take suo motu cognisance of the criminal contempt against the respondents Nos. 1, and 3 to 14 and to punish them for the commission of the said criminal contempt.

4. Respondent No. 2 is the State of Maharashtra which was impleaded as required under Rule 4(b) of the Rules framed by the Appellate Side of the High Court of Judicature at Bombay, under the Contempt of Courts Act, 1971. Respondents Nos. 3 to 14 were later impleaded and paragraphs 5-A and 5-B were added as per Order dated 14-9-1994. Notice before admission was issued on 7-3-1995. Even before that a notice was issued to the Advocate General. Rule

was ordered on 25-4-1995. Except respondent No. 2 and respondents 13 and 14, other respondents have filed their submissions. Detailed advertence to the individual contentions of the respondents will be taken up when their respective pleas against the prayer are considered.

5. The first respondent, in his submissions did not wholly admit the allegations made in the petition. He would maintain that he had absolutely no intention to prejudice or interfere with the due course of judicial proceedings or obstruct the administration of justice. According to him; he holds this Court in the highest esteem and regard and he has no intention to scandalise or lower the authority of this Court or any other Courts. He would deny the allegations specifically in para 3(a) and would maintain that all that he said was that the District Judge had extended the time limit of anticipatory bail from 30-3-1994 to 2-4-1994 and that due to the same, accused got ample time to destroy the evidence. Then in paragraph 4 he states that four Judges were present at the time of rape was revealed at the time of investigation and that because of that it was felt that the family of Manorama Kamble will not get the justice as the associates of the accused are involved in the rape and murder. He went on to explain that naming three Judges of this Court was with the object of upholding the honour of judiciary as according to him, since the deceased belonged to Scheduled Caste community, the first respondent requested, for upholding the fairness and impartiality of the judiciary, that the case be decided by Judges from other community. He would maintain that the other allegations in the petition cannot be attributed to him.

6. Shri S. G. Aney, learned counsel for the respondent No. 1, attached the very maintainability of the petition on several grounds. He maintained that as per Section 15 of the Contempt of Courts Act 1971 (for short "the Act"), this petition is not maintainable as consent in writing of the Advocate General as required u/s 15(1)(b) of the Act was not obtained. According to the learned counsel, having obtained the opinion of the Advocate General, this Court should not have ordered Rule without setting aside the opinion of the Advocate General. It was also contended by the learned counsel that a charge ought to have been framed and at least the notice should have mentioned the charge, to enable the respondent to answer the same.

7. Admittedly, neither did the petitioner apply u/s 15(1)(b) of the Act for the consent of the Advocate General nor did he obtain the same. This argument of the learned counsel forgets the averment in paragraph-7 of the petition and as well as the prayer in the petition invoking the suo motu jurisdiction of this Court and to take cognisance of the alleged criminal contempt committed by respondents 1, and 3 to 14. In the context of the said prayer, the question that would arise for consideration is - under law at the instance of the petitioner can this Court take suo motu cognisance of the contempt of Court.

8. The learned counsel for the respondent No. 1 Mr. S. G. Aney, referred us to decision in the case of B.K. Misra Vs. Chief Justice, Orissa H.C., in support of his

contention that without the consent of the Advocate General cognisance of criminal contempt cannot be taken u/s 15(1) of the Act. The learned counsel also made reference to the decision in the case of *Conscientious Group Vs. Mohammed Yunus and Others*, in support of his contention that once the Advocate General has declined consent the Court need not take cognisance of the contempt. Reference was also made to the decision in the case of *P.N. Dua Vs. P. Shiv Shanker and Others*, , to contend that the consent of the Advocate General is a pre-requisite for taking cognisance of the contempt.

9. In the context of the said argument of the learned counsel, it is necessary to read Section 15 of the Act. The relevant portion in Section 15, of the Act reads as under :

"15(1) In the case of a criminal contempt other than a contempt referred to in Section 14, the Supreme Court to the High Court may take action on its own motion or on a motion made by -

(a) the Advocate General, or

(b) any other person, with the consent in writing of the Advocate General, or

(c) in relation to the High Court for the Union Territory of Delhi, such Law Officer as the Central Government, may by notification in the official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

The very Section itself states that in the case of criminal contempt, the Supreme Court or the High Court may take action on its own motion. So it may not be consistent with that Section to maintain that in a given circumstance the High Court cannot take action suo motu. It is open to a party to bring to the notice of the Court the facts and the Court can, if satisfied that a case of criminal contempt is made out, take cognisance suo motu. With due regard to the jurisdiction of this court under Article 215 of the Constitution of India, this Court being a Court of record the said Article recognises the power of this Court to punish for contempt of Court, and it is open to the High Court when it takes proceedings to adopt its own procedure provided the same is fair and gives a reasonable opportunity to the contemner to defend himself. In the decision in the case of *Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others*, , the Supreme Court considered the powers of the Supreme Court under Article 129 of the Constitution of India and the Supreme Court held that the Central Legislation has no legislative competences to abridge or extinguish the jurisdiction or power conferred on the Supreme Court under Article 129 of the Constitution. The Parliament's power to legislate in relation to law of contempt relating to Supreme Court is limited and, therefore, the Contempt of Courts Act does not impinge upon the Supreme Court's power with regard to the contempt of subordinate Courts under Article 129. The said reasoning is applicable to the power of this Court under Article 215 of the Constitution of India also. In para-19 of the said decision, the Supreme Court observes :

"Article 129 provides the Supreme Court shall be a Court of record and shall have all the powers of such a Court including power to punish for contempt of Court itself. Article 215 contains similar provision in respect of High Court."

Consequently restrictions imposed on the exercise of jurisdiction under the Act cannot apply once this Court decides to take action suo motu though the said provisions under the Act will have to be kept in view in the exercise of that power.

Mr. S. G. Aney, learned counsel for the respondent No. 1, further relied on the decision in the case of Vishwanath Vs. E.S. Venkatramaih and others, to point out that with reference to the decision in P.N. Dua Vs. P. Shiv Shanker and Others, there was no difference of opinion between their Lordships to the effect that motion moved by the private person under the Act has to be with the consent in writing of the Advocate General. Yet it will be worthy in this connection to point out that His Lordship Ranganathan, J. in para 53 of the said Judgment said :

". . . . The "petition" at this stage, constitutes nothing more than a mode of laying the relevant information before the Court for such action as the Court may deem fit and no proceedings can commence until and unless the Court considers the information before it and decides to initiate proceedings....."

Then in para 59, after referring to the consent of the Attorney General and the Solicitor General, His Lordship observes :

". . . . Thirdly, both of them may refuse their consent. In the latter two cases, I am unable to see what purpose would be served by the Court spending its time to find out whether the Attorney General/Solicitor General should have been given a decision one way or the other. For, the petitioner is not without remedy. It is open to him always to place the information in his possession before the Court and request the Court to take action. (See-Lord Cross in A. G. v. Times Newspaper 1974 AC 273 at p. 321)"

10. In view of the decision of the Supreme Court reported in Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, it has to be held now that it is open to the High Court to take suo motu action on the materials being placed before it provided the Court is satisfied that criminal contempt really exists. But when such a course is adopted it need hardly be emphasised that the suo motu jurisdiction has to be exercised with circumspection and caution so that frivolous petitions are never entertained. As a matter of fact, the decision reported in 1980 Cri LJ 2179 (cited supra) relates to a statement made by former Chief Justice E. S. Venkatramaih which was alleged to be contemptuous. Though it was held that the petition is not maintainable as the petitioner did not obtain consent of the Advocate General, in paragraph 12 of the judgment Their Lordships went into the merit of the alleged contempt and dismissed the petition on merits as well as on maintainability.

11. As we have already pointed out on the basis of the decision reported in Delhi

Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, that power of this Court, under Article 215 of the Constitution of India, as a Court of record to punish for contempt cannot be in any way impinged upon by the Legislation, the function of this petition being only to bring to the notice of this Court that certain circumstances exist which would constitute criminal contempt, if the Court is satisfied on perusal of the said material placed before the Court that criminal contempt has been committed, the restrictions imposed under the Act cannot be a hurdle for the Court to take cognisance of the criminal contempt suo motu even though the said materials were placed by a party.

12. The ratio of the decision in Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, , in our view, makes the position more clear. In the said decision Their Lordships observes that the Supreme Court and the High Court, being Courts of Record as embodied under Articles 129 and 215 respectively, the constitutionally vested right cannot be either abridge by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provisions of the Code of Criminal Procedure or any Rules. In paragraph-42 of the said decision, Their Lordships observed :

".....Incidentally, we may say that the submission of the contemner that the impugned order is vitiated on the ground of procedural irregularities and that Article 215 of the Constitution of India is to be read in conjunction with the provisions of Sections 15 and 17 of the Act of 1971, cannot be countenanced and it has to be summarily rejected as being devoid of any merit."

But caution is made in the exercise of this jurisdiction. Their Lordships in paragraph-41 further held that :

".... The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself."

From the said decision, it is clear that when the Court is at the question as to whether it should exercise its jurisdiction under Article 215 suo motu it cannot be successfully maintained that the same has to be subjected to the provisions of the Contempt of Courts Act. Therefore, the contention of the learned counsel Mr. S. G. Aney as to the maintainability on that ground no longer can be sustained.

13. The next contention raised by the learned counsel Mr. S. G. Aney as to the maintainability is that this Court has inasmuch as obtained the opinion of the Advocate General and the said opinion is against the exercise of the suo motu jurisdiction, without setting aside the said opinion of the Advocate General, no Rule could have been issued. It was also urged by the learned counsel Mr. Aney, relying on the decision reported in Conscientious Group Vs. Mohammed Yunus and Others, that the said opinion of the Advocate General should have been accepted and the proceedings ought to have been dropped. It should be noted

that this is not the view expressed by the Advocate General on an application u/s 15(1)(b) of Act. As noticed, this Court issued notice to the Advocate General. In answer to that, he did not file any submission. But on behalf of the Advocate General the Government Pleader filed a copy of the communication between the Advocate General and the Government Pleader. The learned Govt. Pleader on behalf of the Advocate General argued in support of the opinion expressed by the Advocate General in the said communication. Still we are prepared to go into the question, because of the status of the Advocate General - both as a constitutional as well as a statutory authority. In relation to a proceeding of this nature, the status of the Advocate General can only be that of an amicus curie (see decision reported in P.N. Dua Vs. P. Shiv Shanker and Others, . Of course the learned Advocate General has opined that this Court need not take cognisance of the alleged contempt. But he proceeded to add - the High Court itself is free to form its own opinion and take cognisance of the matter on its own. It is stated in the said opinion that allegations in para-3 of the petition is intricately involved with the correctness of the fact and the learned Advocate General says that :

"..... truth cannot be pleaded to justify the contempt yet this is a very shaky part of the law and considerably doubted by jurists and legal opinion outside this country....."

At once it has to be observed that we are unable to agree with the aforesaid statement of the learned Advocate General. In the decision in the case of V.M. Kanade Vs. Madhav Gadkari and others, , it has been held that a contemner cannot justify the allegations by pleading truth. It is further held that truth cannot be pleaded and examined as a defence to a charge of contempt of Court.

14. The next ground stated by the learned Advocate General is that - "one has to consider over-all standards of the lower judiciary and also the free-dome of expression and of the press to criticise all public institutions in public interest". The implication appears to be - the standard of the lower judiciary is such that when the question of taking contempt proceeding is considered, the Court must be informed of the same. We are totally in disagreement with the aforesaid observations of the Advocate General. There is nothing to show that the standard of the subordinate judiciary is, in any way, such that one can justify scandalous allegations against the same in the guise of exercise of right to freedom of speech or the right of the press in a democratic society. In the decision In Re: S. Mulgaokar, , the Supreme Court held that the judiciary cannot be immune from criticism. The Court held that (at p. 734 of AIR) :

"..... But, when there appears some scheme and a design to bring about results which must damage confidence in our judicial system and demoralize Judges of the highest Court by making malicious attack, any one interested in maintaining high standards of fearless, impartial, and unbending justice will feel perturbed....."

It is in public interest that criticism of the judiciary which would lower or tend to

lower the authority of judiciary is not permitted. In V.M. Kanade Vs. Madhav Gadkari and others, , as regards contempt of Court and its effect, it is observed that :

".....It is an injury to the public because it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge. The viability of the Judiciary as an institution depends on continued public assumption that the Judiciary is an honest and incorruptible institution and any allegations of corruption ostensibly or apparently deriving their veracity from some facts are bound to undermine the status of the Judiciary. It is for this reason that the Courts in contempt proceedings refuse to examine the strength of the allegations....."

In Conscientious Group Vs. Mohammed Yunus and Others, the opinion of the Attorney General/Solicitor General declining consent was accepted by the Supreme Court. In paragraph-8, the Supreme Court observed that elaborate reasons have been stated by the learned Solicitor General in support of his conclusion that it would not be in the public interest to give his consent to the initiation of the contempt proceedings. The Court found that the view expressed by the Solicitor General cannot be characterised as arbitrary illegal or unreasonable, and that was why the view of the Solicitor General was accepted. That is not case here. Therefore, we are unable to accept the view of the Advocate General in this regard.

15. The next point urged by the learned counsel Mr. Aney is that the Rule should have stated the grounds. It was also urged by him that charge ought to have been framed and served on the contemner. The assumptions of the learned counsel in this regards also are not sustainable. Reliance was made by the learned counsel on the decision in the case of Jayantilal Hiralal & Co. v. Waman Narayan Velinkar, AIR 1923 Bombay 638. It is enough in this connection to point out that we have already adverted to observations of the Supreme Court in Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, , wherein the Supreme Court has held that when the Court takes suo motu action, the procedure need be fair, the contemner need be made aware of the charge against him and he should be afforded a reasonable opportunity to defend himself.

16. Notice issued by this Court was accompanied by the copy of the petition. In this connection it is necessary to refer to the decision in Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, . In that decision, in the context, of Article 20(3) of the Constitution of India, the Supreme Court held that procedure for criminal contempt is not a criminal proceeding for it is punishable by the superior Courts by fine or imprisonment, but it has many characteristics which distinguishes it from ordinary offence. The proceeding is a quasi-criminal in character. Therefore, aforesaid contention too cannot be sustained.

17. We may now take up the specific allegations made against the first respondent para-3 Clause (a) of the petition alleges that the first respondent has committed criminal contempt as he stated that the anticipatory bail was granted to the accused persons for facilitating destruction of the evidence. In reply to this, as we have already pointed out, first respondent maintained, all that what he said was, in view of the extension of the anticipatory bail, the accused got ample time for destruction of the evidence. What is significant to be noticed is, the said allegation does not impute any motive to the Judge. He has only mentioned which according to him is the consequence of such extension of time. Therefore, the said accusation in that manner cannot be sustained against the first respondent. For Clause (b) of para-3 also the first respondent gives an explanation in his reply, wherein he has gone even to the extent by stating that for judges were present at the time of rape which was revealed at the time of investigation. It is also stated that the said family of Manorama Kamble will not get the justice as the associates of the accused are involved in the rape and murder. Further, he owns that, therefore, he prayed for appointment of one of the three Judges of this Court named by him therein to hear the case.

18. The first contention taken by the learned counsel Mr. Aney is that the imputation being against four unnamed judges that will not constitute contempt. He made reliance on the decision in the case of Vishwanath Vs. E.S. Venkatramaih and others, (referred to early). Particular reference was made by the learned counsel to para-12 of the said decision in support of his contention. Apart from the fact that the said case rests on different set of facts, the statement of the first respondent to the effect that since the said four judges are the associates of the accused, the family of Manorama Kamble will not get justice and, therefore, one of the three judges of this Court has to try the case reveals that they have no faith in the subordinate judiciary. The said statement as a whole is scandalous and will lower the authority of Court and, therefore, would constitute contempt. The touch stone, on which whether a particular allegation would amount to contempt or not is tested is as to what a common man would in his assessment understand by the said imputation. It should be at once observed that the power to punish for contempt is not aimed to protect the judge, but it is vested in this Court in public interest so that the public may have faith in this institution that it is manned by men of character who would render justice without fear or favour.

19. Respondents 10 and 11, along with their submissions filed the press note issued by the first respondent. The first para in the press note is to the effect that, on 28-3-1994 in between 1.30 to 2.00 p.m. the entire Dewani family and certain friend Judges of his committed a gang-rape on her and later murdered her. Though this does not find a place in the petition, in the affidavit filed by the petitioner, after the filing of the return by respondents 10 and 11, there is no denial of the said press note. This press note, being authored by the first respondent, he cannot say that he had no notice of the same, particularly when the same was produced by some of the respondents along with their submissions

and after that he filed affidavit wherein also he did not deny the said statement. Though certain imputations against a Judge may be only libellous against that particular individual, it may at times amount to contempt also depending upon the gravity of the allegations. In the decision in the case of *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, , the Supreme Court held that a defamatory attack on a Judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the labeler in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such Court, it can be punished summarily as contempt. The same view has been taken in the decision in *Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra*, and *Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others*, . Therefore, apart from the fact that a particular statement is libellous, it can constitute criminal contempt if the imputation is such that the same is capable of lowering the authority of the Court. The gravity of the aforesaid statement is that the same would scandalise the Court.

20. Further allegation is made that the first respondent had issued Annexure-I at page 18-A wherein he said that if the senior Advocate Shri Jethmalani is to appear for the accused, he would lead a procession of donkeys. In the decision in the case of *Damayanti G. Chandiramani Vs. S. Vaney*, , the Division Bench of this Court held that disrespect or disregard to an advocate in certain circumstances so as to deter him from discharging his duties would amount to contempt of Court, and that would amount to a direct interference with the administration of justice. Since there is nothing on record to show that senior counsel Shri Ram Jethmalani was engaged or that on account of the said threat the said counsel could not appear in the case, we do not consider that we should take cognisance on the said ground. But what we hasten to add, in a given case, when a threat is offered to an advocate which would pressurise him from appearing in a Court of law on behalf of his client, under law, would amount to interference of administration of justice. The allegation that the family of Manorama Kamble will not get justice because the accused and their associate Judges have participated in the commission of rape and murder, certainly is capable of lowering the authority of the Court and the same is against the public interest and consequently the same is a contempt. Therefore, the first respondent is guilty of criminal contempt.

21. Respondents 3 and 4 had published in their newspapers the news item at page-11A. The offending portion therein reads as under :

"As soon as it was proved in the Post-Mortem report that after committing rape on Manorama, she was murdered. District and Sessions Judge Vasantrao Damle granted anticipatory bail to Dewani brothers for destroying the evidence. Dewani brothers destroyed all the evidence within four days."

This is criminal contempt, inasmuch as the said news item imputes motive to the Sessions Judge as it is specifically stated that bail was granted with the object of

enabling the Dewani brothers to destroy the evidence. The said news item itself is a criminal contempt as it scandalises and lowers the authority of the Court. Therefore, the respondent Nos. 3 and 4 have committed criminal contempt of Court.

22. The respondents Nos. 5, 6 and 7 have published news item in their newspapers. A copy of the translation of the said news item is at page 12-A. The statement in the said news item is to the effect that the first respondent maintained that the Judges were present at the residence of Advocate Dewani and that they have got evidence in support of the same. The other part of the news item is that there is general talk about the involvement of many Judges in Manorama Kamble's case and that a complaint has been made to the Chief Justice of High Court to enquire about it. Next part of the allegation in the said news item is to the effect that the District and Sessions Judge should not have granted anticipatory bail on 30th and then on 31st, when all the facts were known to the Court two days time should not have been granted and, lastly, the offending allegation, according to the petitioner, is the news item to the effect that on 28th if Advocate Shri Ram Jethmalani comes for defending Dewani family members, then intense demonstration would be made by the first respondent.

23. Learned counsel for the respondent Nos. 5, 6 and 7 - Shri B. A. Udhoji, apart from supporting the agreement of Mr. Aney as regards maintainability of this petition, maintained that the said news item cannot constitute criminal contempt. The learned counsel insisted that the same is only a fair comment. The learned counsel also maintained that he is entitled to the protection under Sections 4 and 5 of the Act. As regards the news item concerning Advocate Shri Ram Jethmalani, we have already adverted to the same while considering the contentions relating to the first respondent. On the said reasoning that part of the news item in the manner in which it is made cannot, in the circumstances, constitute criminal contempt. The learned counsel made reliance on the decision in the case of *In Re: S. Mulgaokar*, to maintain that judiciary cannot be immune from criticism. But, at once it has to be noted that the Supreme Court proceeded to add that when the criticism is based on obvious distortion or gross misstatement and made in a manner which seems designed to lower respect of the judiciary and destroy public confidence in it, it cannot be ignored. There can be no doubt that press is a necessary instrumentality for strengthening the forces of democracy. But every freedom is subject to reasonable restriction. As we have already pointed out, it is in the public interest to see that allegations or criticisms which would scandalise or tend to scandalise or tend to lower authority of the Courts is not permitted because in the functioning of democracy an independent judiciary to dispense justice without fear or favour is necessary and its strength is the faith of the public in general in that institution. That cannot be permitted to be undermined because that will be against public interest. Therefore, the news item has to be examined and scrutinised in the backdrop of the aforesaid position of law. Of course, this particular offending portion is a part of the news item. Naturally, therefore, the said part of the news item cannot be read in isolation.

The first part of the news item refers to Manorama Kamble's rape and murder case and then it proceeded to state that some Judges were present at the house of Dewani brothers - certainly meaning thereby that at the time of the commission of the offence those Judges were present. It was urged by Shri B. A. Udhoji on behalf of the respondents Nos. 5, 6 and 7 that that is only a fair reporting of the news that the Judges were present at the house of Dewani and nothing more is stated about them. But the said portion is followed by a further statement that there is general talk about the involvement of many Judges in Manorama Kamble's case and, therefore, a complaint was made before the Chief Justice to conduct an enquiry and transfer the guilty Judges. If the news item was to the effect that complaint has been made to the Chief Justice against the Judges, perhaps it could have been said that the said news item did not contain any offending portion at all. But the statement that since there is a general talk about the involvement of the Judges in Manorama Kamble's case, makes the said news item vulnerable. To request the Chief Justice to conduct an enquiry on certain allegation in one thing, but to publish the contents in the said manner is another; and in our view the same certainly will lower the authority of the Court. Shri Udhoji further states that the translation in this regard is not correct as the correct translation is that there is a general talk about the "connection" of many Judges and not "involvement" of many Judges. That hardly makes any difference.

24. As regards the claim that respondents Nos. 5, 6 and 7 are protected by doctrine of public good, the learned counsel Shri Udhoji relied on the "Contempt of Court" by Ramchandran fifth edition page 977, in which it is observed that performance of public duty cannot be penalised as contempt and fair comments far from being a contempt can be treated only as public benefit. We have already dealt with the effect as well as the manner in which the aforesaid news item was reported and its implications. Therefore, the aforesaid offending part of the news item, in our view, cannot be taken as fair comment. It is also not possible for us to agree with the learned counsel that the same is fair criticism so that he could claim the protection u/s 5 of the Act. In the context of interpreting Sections 499 and 500 of I.P.C. as well as Article 19(1)(a) of the Constitution of India, in the decision in *Sewakram Sobhani Vs. R.K. Karanjia Chief Editor, Weekly Blitz and Others*, the Supreme Court observed :

"..... 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 on higher....."

Therefore, the respondents Nos. 5, 6 and 7 have committed criminal contempt of Court. 25. So far as the respondents Nos. 8, 9 and 12 are concerned, they have published the news item at page 13-A. In the said news item, it is reported that the first respondent wanted that the Judges having concern with the offence be arrested. It proceeded to add that because the accused being rich Advocate and Shri Dewani is famous for obtaining bail, injunctions, by maintaining relations with the Judges, by maintaining relations with the Judges, the accused be not

released on bail. It is also stated in the aforesaid news item that names of four Judges are mentioned in connection with the said case and proceeded to add that whether Kamble's family will get justice is doubted and, therefore, the case has to be prosecuted before one of the three Judges of this Court whose names are mentioned in the said news item. We have already adverted to the effect of such a statement when dealing with the case of the first respondent in this regard and found that the said statement would constitute criminal contempt. This is particularly so when understood in the light of the other part of the impugned news item. Therefore, we have no doubt in our mind in holding that respondents Nos. 8, 9 and 12 are guilty of criminal contempt of Court.

26. Coming to the case of respondents Nos. 10 and 11, the copy of the translation of the news item appears at page 14-A. The news item states that Dewani family and their Judges friends committed gang rape of Manorama Kamble and murdered her. This ex-facie is criminal contempt and, therefore, we hold that respondents Nos. 10 and 11 are guilty of criminal contempt.

27. As regards respondents Nos. 13 and 14, though they have not filed any submission on their behalf, Shri M. G. Bhangade, Advocate, appeared and argued on behalf of them that the impugned publication at page 16, since concerns only investigation and no reference whatsoever is made about the Courts or the merits of the case, these respondents are entitled to the protection u/s 3 of the Act. We have already held that when we have taken cognisance suo motu, though provisions in the Act need not control the said jurisdiction, the legislation certainly can be kept in view in deciding whether a particular publication would constitute criminal contempt. The point urged by Mr. Bhangade was that as per explanation to Section 3 of the Act, since the proceedings will be deemed to be pending only when the charge-sheet is filed, a news item which would not fall u/s 2(c)(i) of the Act will get protection u/s 3(1) of the Act. This news item at page 16 only criticises the investigation and nowhere it makes any reference to the merit of the case, about the Courts or about the Judges. Therefore, we do not consider that the said news item can constitute criminal contempt of Court. Consequently, we drop the proceedings with respect of respondents Nos. 13 and 14.

28. In view of the aforesaid discussion, we hold that respondent Nos. 1 and 3 to 12 are guilty of criminal contempt of Court. As regards punishment, certain factors have to be taken into account. Except respondent Nos. 5, 6 and 7 all the other respondents who are found guilty of criminal contempt of Court have tendered unconditional apologies in their respective submissions themselves. Therefore, it cannot be said that the said unconditional apologies are not supported by bona fide or it was an after-thought. The first respondent avers in his affidavit that he is an office bearer of the Republican Party of India. According to him the object of his party is the upliftment of the downtrodden, backward and Scheduled Caste communities. In para-1 of the petition itself it is stated that Manorama Kamble, a member of the backward class community was found dead

and in the post-mortem it was revealed that she was raped and then was murdered. It was in that context that the first respondent made press conferences and issued the press notes; and those were the basis for respondents Nos. 3 to 14 to publish the said news items in their respective newspapers. They were reacting to an incident wherein an exploited maidservant was raped and murdered. This background cannot be forgotten in deciding as to whether the apologies tendered by the respondents are to be accepted or not. With due regard to the facts and circumstances of the case, we consider that their apologies are genuine and bona fide and, therefore, they are to be accepted and we accept the same. Respondent Nos. 3, 4 and 8 to 12 shall publish their apologies in their respective news papers prominently within a week of this Judgment. As regards respondent Nos. 5, 6 and 7, they did not tender any apology. But in punishing them the Court certainly should be informed of the aforesaid circumstance in which they published the said news item. Therefore, we consider that it is a fit case where we must show leniency and, therefore, the respondent Nos. 5, 6 and 7 are directed to suffer imprisonment till the raising of the Court.

29. We record our appreciation and gratitude to Shri S. R. Deshpande, Advocate, for the able assistance rendered by him as amicus curie. With the above directions, the criminal contempt petition No. 6 of 1994 stands disposed of.

30. Order accordingly.