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**(2009) 02 GAU CK 0076**  
**In the Gauhati High Court**

Bharadwaj Mrinal Choudhury

APPELLANT

Vs

Sanjib Sobhapandit and Others

RESPONDENT

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**Date of Decision :** 03-02-2009

**Acts Referred:**

Constitution of India, 1950 — Article 143(1)

**Citation :** (2009) 5 GLR 651 : (2009) 1 GLT 788

**Hon'ble Judges :** Ranjan Gogoi, J;Hrishikesh Roy, J

**Bench :** Division Bench

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## Judgement

Ranjan Gogoi, J.—An article titled "Bharat Borokhot Nyai", i.e., "Justice in India" was published in the issue dated 9.3.2008 of "Sambhar", a Sunday magazine circulated along with a widely read Assamese Daily "Asomiya Pratidin". The respondent No. 1 is the author of the said article whereas the respondent Nos. 2 and 3 are the editor, printer and publisher of the magazine.

2. The entire translation of the article made by the petitioner and enclosed to the writ petition will be necessary to be extracted below for a proper appreciation of the issues involved in the present proceeding:

### JUSTICE IN INDIA

A beautiful clear sky with hovering pieces of white clouds. The Indian Tricolour is merrily fluttering atop the lofty white dome, looking majestic and constantly proclaiming the mastery of its architect. The garden in front of the gigantic building has further enhanced its beauty. The serenity of its view should have filled my mind with an unearthly pleasure and I should have uttered a word of praise. A poem or a song dedicated to autumn in its most picturesque form should have come to my lips. Instead, my mind was filled with untold irritation and loathing. I felt like one whose mind becomes infested with abhorrence when one comes to know of the dark sides of a man with an otherwise attractive personality, significant wealth and integrity of character. Feeling disgusted with the artifices committed by the uniformed inmates taking refuge of the

voluminous books inside the building my friend literally spat out muttering words of contempt ("dhuyt sala !").

Devastated by the bitterness, fatigue and heavy expenditure incurred over the last thirteen months, the two of us came away from the so called "white temple of justice", adding our names to the list of the living witnesses reduced to wreckage by the said edifice. Just as we were crossing the road, the man in the black suit passed us in his red Swift Car. Earlier, we had approached him to ask something. My friend is my maternal uncle-in-law by relation and is almost of my age. He works in a Government department and is known for his honesty. Suddenly he was transferred to another place. But like the others, he did not rush to Dispur. He did not like doing that. He has so far gone wherever transferred. This time, too, there was no exception. Handing over his charge to his superior officer, he obtained his release order and went to his new place of posting to join there. But once there, trouble brewed up. The officer whom he was to replace was not available. He had gone to Dispur. My friend met the superior officer who told him that his joining would be deemed invalid unless the charge is handed over to the gazetted officer. The boss advised him to wait for a couple of days more.

Things did not improve even after that. The other officer continued to remain untracked. He was on a mysterious leave. Work on his table was at a standstill. Whenever anyone enquired about him, everyone answered in the same tone "He is on leave". But none could elaborate. The boss too maintained a stoic silence. He just said once, "if you are upset, write to the top". My friend wrote a letter to his superiors and sent them to four different addresses. No reply came.

A few days later it was learnt that the other officer, in the meantime, had challenged the transfer order in the High Court. It seems the court could not take a decision immediately. It was a Herculean task indeed. The solution had to be looked into the voluminous books. It was a critical and laborious job...dispensing justice. Nobody knows when and where the search would end. ALL THAT THE HON"BLE JUDGES SEATED INSIDE THE DOME CAN DO IS - FDC AN AUSPICIOUS DATE EVERY MONTH FOR PRODUCTION OF DOCUMENT BEFORE THEM SO AS TO ENSURE THAT THE LITIGANTS DO NOT DARE TO FORGET .THE ISSUE AND ALSO TO MAKE IT APPEAR AS IF THE MATTER HAS MADE SOME PROGRRESS, ALBEIT AT A SNAIL"S PACE. A COUPLE OF PAGES ARE ADDED TO THE FILES ON EVERY SUCH DATE FATTENING THEM LIKE THE RODENTS IN THE MARWARY"S WAREHOUSE. This is actually a game of papers. The parties concerned receive copies of the documents and thus the days on the calendar kept rolling.

In the meantime my friend was in a real fix. He had joined at his new post but sans responsibilities. No chair was allotted to him because technically he did not belong to that office. The reply to his four letters did not arrive. I told him that since the matter had become sub-judice and the Government was barred from taking a decision. I advised him to wait till the case was finally resolved. This put him in since he depended solely on his salary. The Treasury would not clear his

bills unless he is shown to have joined somewhere specifically. So couldn't a lawyer be consulted?

I asked for advice from a lawyer friend of mine. If the other officer at all has the right to get what he has claimed, let the "colossal dome" do what it liked. If my friend could not be posted there, then let him be posted elsewhere. He is not averse to going anywhere, I said. After a long contemplation, the lawyer friend answered, "OK, let us make a petition to the court to dispose the case early and give him a posting". I thought it was a good idea. Accordingly I told my friend. Both of us then went to the lawyer. The papers were formally handed over. My friend submitted himself to the lawyer's mercy when he signed the requisite papers. As we were leaving his chamber, my lawyer friend whispered into my ears in his usual gimmickry: "Look brother, he is your relative. I won't charge a farthing for the case. But there are juniors in the case. Besides, there are some incidental expenses. Please ask him to pay a "Twenty". I felt as if my head had been severed from my shoulders. A staggering rupees twenty thousand! Just for this trivial job! I shuddered to imagine what the final amount would have been if his fees were added.

In the verandah of the lawyer's house I told my friend what the lawyer had said. He was non-plussed. After a long pause he said, "In that case the case need not be filed". I was at a loss. So was the lawyer. It seemed life had come to a grinding halt. Guessing our helplessness, the lawyer said. "It's all right. I shall try to minimize the expenses as far as I can". After a brief animated discussion between ourselves we finally acceded to the proposal and left. We always blame the petty sellers for the rise in the price of vegetables. But no one voices anything about these people. May be because they are shielded by the White Building. Reproach them at your own peril for you will then certainly be hurled into the jail. They are greater crooks than God himself. God is such an element that he will fry the infidel in the boiling oil. He is so intolerant. But these people are one up on God himself. There is a thing called "Contempt of Court". It dissuades one from even pointing a finger at the "White Structure".

That was the beginning of the ordeal. The case pops up every month. However, nothing material happens. Now and then they talk about putting the case in the list. It would allegedly cost a fortune. Or else, the case would be put at the bottom of hundreds and thousands of other cases in the sit and would never be able to raise its head. After a long wait of nine months, my exasperated friend forayed into the dome. He was, however, unable to locate the papers and could not meet the lawyer too. Enquiries revealed that the uniformed man would be hard to trace. Identifying himself as a "junior" to the lawyer, someone asked by friend for the purpose of his visit. Once it was divulged, the "junior" led him to a room and said something to a person seated at a table. The "junior" then asked my friend for one hundred rupees which the latter gave. Pocketing the crisp note the man consulted some register and put down a number on a piece of paper. On his way out of the room with that paper, the "junior" "whispered into my friend's

ear, "just "two" will be enough for me". Being terribly infuriated, my friend shouted back, "You rascal! I've not received salary for twelve months. I can't afford to give you alms, get it?" The rouge in black vanished. Bursting with rage, my friend stormed into the chamber of a man in a baggy black robe. It was then 1 O'clock and his time for recess, it seemed. My friend flared up, "How dare you relax? Sola (slang)! You come at eleven O'clock and have the guts to take tiffin break after whiling away the last two hours".

A sentry on duty dragged my friend out. His outburst, however, continued,

PEOPLE ARE STARVING TO DEATH AND LOOK AT YOU? GUARDING THE INDIAN CONSTITUTION, ARE YOU? I HAVE BEEN KEENLY OBSERVING YOU PEOPLE FOR THE LAST ONE YEAR. THE WORLD IS AT YOUR FEET. BY DINT OF BEING JUDGES, YOU HAVE BEEN ALLOTTED HOUSES, CARS, DRIVERS, FUEL, FREE! YOU DON'T HAVE TO PAY FOR THE ELECTRICITY, NEWSPAPERS, INDIAN AND FOREIGN MAGAZINES, AND WHAT NOT. YOU HAVE SDC MANUAL STAFF AT YOUR DISPOSAL. TWICE A YEAR YOU GET FREE AIR TICKETS FOR YOUR FAMILY TO TRAVEL TO ANYWHERE IN INDIA, ENJOYING THE STATUS OF STATE GUESTS WHEREVER YOU PEOPLE GO. ON TOP OF THAT, YOU DRAW SOMETHING CLOSE TO HALF A LAKH OF RUPEES AS SALARY. WHAT ELSE IS THERE TO BE HAD? WHY, THEN, DON'T YOU DO YOUR DUTY? WHY ARE YOU SUCKING OUR BLOOD?

FINDING THE COMMOTION TOO MUCH, THE JUDGE WANTED TO KNOW ABOUT THE CASE AND THE LAWYER INVOLVED. THE CONCERNED ADVOCATE WAS CALLED FOR. THE JITTERY LAWYER CAME HUFFING AND PUFFING. WORK WAS SUSPENDED FOR THE DAY.

The Judge ordered the list of the case a couple of days later. He heard the case at length and finally gave the verdict: "The Government is directed to give him a suitable posting and release his salary forthwith...the court is pleased to impose a fine of Rs. 1000.00 for showing disrespect to the court." An epoch making verdict indeed!

A copy of the judgment was required to be furnished to the Government. The lawyer whispered into my ears. Ask him to give me another "One" Rs. 100, for the certified copy. I conducted the case entirely from my own pocket." No inkling about how and where the twenty thousand rupees were spent. Finally, a Certified Copy of the order was obtained. Copies were given to the Government and the Accountant General. The Accountant General remarked, "The Government must first regularize the service of this period. Otherwise, "Pay Slip" cannot be issued". The file began its never-ending journey in the corridors of power that be Accountant General, Dispur-Personal Branch-Finance. Days turned into weeks, weeks into months. The court was not humiliated. It never even bothered to understand how my friend was surviving under the circumstances. Only artful words, filling in fifty pages for what could be done in one.

Helpless, my friend once again approached the "While-Building". The Judge got infuriated. He wrote in very strong words why the salary was not released

forthwith as had been ordered and gave the Government thirty days time to file a satisfactory reply. Once again my friend had to bribe the lawyer find hundred rupees to get a Certified Copy of that order.

And this is how the symbol of sanctity, i.e., the "White Building" with the lofty dome with the Tricolour fluttering under the azure sky, dispenses justice under the Constitution.

3. According to the petitioner, who is a practicing advocate, by publishing the article in question the respondents have denigrated and scandalized the institution of the courts and have, therefore, committed criminal contempt. The article which was published under the column "Samayiki", which means contemporary events, contains a photograph of the. High Court leaving no doubt in the public mind that the imputations attributed are to the High Court. According to the petitioner, though the legal system should be open to fair criticism and comments, the article oversteps all permissible limits of acceptable criticism. The language used is offensive. The contents are far from true and there is an apparent attempt to bring the institution as a whole to disrepute. The aforesaid act, according to the petitioner, has the effect of eroding public confidence in the system of administration of justice. An essential foundation of the democratic system enshrined by the Constitution has been attempted to be undermined and. destroyed. Hence, according to the petitioner, the respondents are liable in contempt law.

4. A reading of the article in question indicates that it is a narration of the experiences of a friend of the author who got involved in a court proceeding. According to the author of the article, the concerned person was made to part with a large amount of money by the lawyer he had engaged and the proceedings of the case continued for long without any good reason. The order that was eventually passed by the court after a long delay i.e., a direction to give a suitable posting to the friend of the author and for release of his salary, ought not to have taken the time that the proceedings finally consumed. Furthermore, according to the author, even after the order of the court was passed, the same was not implemented which led to another proceeding, perhaps, for contempt on account of non-implementation of the said order of the court.

5. While narrating the aforesaid experience of his friend, the author, in the article in question, had expressed the view that it appeared that the courts cannot take a decision and have to look into voluminous books and further that "ALL THAT THE HON'BLE JUDGES SEATED INSIDE THE DOME CAN DO IS - FIX AN AUSPICIOUS DATE EVERY MONTH FOR PRODUCTION OF DOCUMENT BEFORE THEM SO AS TO ENSURE THAT THE LITIGANTS DO NOT DARE TO FORGET THE ISSUE AND ALSO TO MAKE IT APPEAR AS IF THE MATTER HAS MADE SOME PROGRRESS, ALBEIT AT A SNAIL'S PACE. A COUPLE OF PAGES ARE ADDED TO THE FILES ON EVERY SUCH DATE FATTENING THEM LIKE THE RODENTS IN THE MARWARTS WAREHOUSE."

6. In the article in question the author also narrated that his friend had visited the Judge in the chamber during the recess hours of the court and, thereafter, described the exchange that took place in the following words:

Bursting with rage, my friend stormed into the chamber of a man in a baggy black robe. It was then 1 O'clock and his time for recess, it seemed. My friend flared up, "How dare you relax" Sala (slang)! You come at eleven O'clock and have the guts to take tiffin break after whiling away the last two hours.

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7. The question that has to be decided in the present case is as to whether in authoring the said article and in publishing it the respondents are liable under the contempt law.

8. The respondents have filed individual affidavits in the case. The first respondent after declaring his ever present respect for the majesty, honour and dignity of the court and after tendering his "unconditional and unqualified apology for the inadvertent omission and commission" had gone on to say that the article in question was a legal fiction drawing allegoric references from the working of the Indian judiciary derived from speeches of eminent jurists and personal accounts of litigants. While expressing remorse for the use of certain expressions in the article, the author, in his affidavit filed, has stated that the language of the article should have been different for which he is tendering sincere apologies to the court. However, the respondent No. 1 has maintained that he had authored the article bona fide and the same was perceived by him to be necessary in public interest.

9. The respondent Nos. 2 and 3 have also filed separate affidavits taking a more or less similar stand as the respondent No. 1. They have, however, further stated that they had not fully read the article before publication of the same. The respondent Nos. 2 and 3 have also tendered their unqualified apology to the

court and have undertaken that such mistakes will not occur in the future.

10. Having set out the translated version of the allegedly offending article, besides taking note of the meaning and the effect thereof and also having noticed the stand of the respondents in the matter, it will now be necessary for the court to briefly notice the views expressed by the Apex Court from time to time in some leading judgments to understand what should be the approach of the court in dealing with allegations of commission of criminal contempt by publication of such articles.

11. The first judgment that must be noticed in this regard is that of the Privy Council in *Andre Paul Terence Ambard v. The Attorney General of Trinidad and Tobago* AIR 1936 PC 141, which has all along been understood to have laid down a near correct approach to be adopted by the courts while exercising the contempt jurisdiction. The observations of Lord Atkin in the said judgment may be usefully extracted below:

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 criticizing 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 wrongheaded 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. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men.

12. In *Bathina Ramakrishna Reddy Vs. The State of Madras*, the Apex Court while dealing with the contentions advanced in the case that libellous reflection upon the conduct of a Judge, at best, is a penal offence, took the view that in situations where the act of defaming an individual Judge has the effect of obstructing or interfering with the due course of justice or proper administration of law it would certainly amount to contempt. The Apex Court further held that the offence of contempt is really a wrong done to the public by attempting to undermine the authority-of the courts which exists for public good.

13. In *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, the Apex Court again dealt with the question as to in what situations a defamatory attack on an individual Judge, apart from being libellous so far as the Judge is concerned, may also amount to interference with the administration of justice and, hence, punishable in contempt. The following observation contained in paragraphs 11 and 12 of the judgment may be usefully extracted below:

(11) It seems, therefore, that there are two primary considerations which should weigh with the court when it is called upon to exercise the summary powers in cases of contempt committed by "scandalising" the court itself. In the first place, 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. It is not by stifling criticism that confidence in courts can be created.

....

(12) In the second place, when attacks or comments are made on a Judge or Judges, disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on the Judge and what amounts really to contempt of court. The fact that a statement is defamatory so far as the Judge is concerned does not necessarily make it a contempt.

....

The position, therefore, is 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 libellor 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. 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.

14. In the decision *In the matter of: Under Article 143 of the Constitution of India*, the Apex Court while answering a Presidential reference made under Article 143(1) of the Constitution expressed the following views with regard to the use of the contempt powers:

We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct.

15. The principles for exercising the contempt power, as stated in para 17 of the judgment of the Apex Court in *Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra*, extracted hereinbelow, also must be noticed by the court

while exercising its jurisdiction in the present case:

(1) It will not be right to say that committals for contempt scandalizing the court have become obsolete.

(2) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.

(3) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

(4) A distinction must be made between a mere libel or defamation of a judge and what amounts to a contempt of the court.

The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law by his court, It is only in the latter case that it will be punishable as contempt.

(5) Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. To borrow from the language of Mukherjee, J. (as he then was) *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, the publication of a disparaging statement 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.

16. The observations contained in paragraphs 15 and 16 of the judgment In *Re: S. Mulgaokar*, would also be apt to be re-noticed for the purpose of the present consideration:

15. National interest requires that all criticisms of the judiciary must be strictly rational and sober and proceed from the highest motives -without being coloured by any partisan spirit or tactics. This should be a part of national ethics. Newspapers, in particular, ought to observe such a rule imbued with what Montesquieu considered essential for a healthy democracy: the spirit of "virtue". They should, if they are interested in promoting national welfare and progress, support proposals for framing correct rules of ethics for every class of office-holder and citizen in the country. And, the judiciary must, in its actions and thoughts and pronouncements, hold aloft the values and the spirit of justice and truth enshrined in the Constitution and soar high above all other lower loyalties and alignments if it is to be truly independent.

16. The judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. I am not one of those who think that an action for contempt of court, which is discretionary, should be frequently or lightly taken. But, at the same time, I do not think that we should abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the Judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement. But, when there appears some scheme and design to bring about results which must damage confidence in our judicial system and demoralize Judges of the highest court by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial, and unbending Justice will feel perturbed. I sincerely hope that my own undisguised perturbation at what has been taking place recently is unnecessary. One may be able to live in a world of yogic detachment when unjustified abuses are hurled at one's self personally, but, when the question is of injury to an institution, such as the highest court of Justice in the land, one cannot overlook its effects upon national honour and prestige in the comity of nations. Indeed, it becomes a matter deserving consideration of all serious-minded people who are interested in seeing that democracy does not founder or fail in our country. If fearless and impartial courts of Justice are the bulwark of a healthy democracy, confidence in them cannot be permitted to be impaired by malicious attacks upon them. However, as we have not proceeded further in this case, I do not think that it would be fair to characterize anything written or said in the Indian Express as really malicious or ill-intentioned and I do not do so. We have recorded no decision on that although the possible constructions on what was written there have been indicated above.

17. The six broad guidelines contained in the separate judgments of Justice Krishna Iyer in the same case dealing with "wise economy of the use of the contempt power and the role of judiciary and the Fourth Estate in democratic process" must also be kept in mind. Of equal importance would be the contents of para 17 of the judgment of the Apex Court in P.N. Dua Vs. P. Shiv Shanker and Others, which reads as follows:

17. It has been well said that if judges decay, the contempt power will not save them and so the other side of the coin is that judges, like Caesar's wife must be above suspicion, per Krishna Iyer, J. in Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, It has to be admitted frankly and fairly that there has been erosion of faith in the dignity of the court and in the majesty of law and that has been caused not so much by the scandalizing remarks made by politicians or ministers but the inability of the courts of law to deliver quick and substantial justice to the needy. Many today suffer from remedyless evils which courts of justice are incompetent to deal with. Justice cries in silence for long, far too long. The procedural wrangle is eroding the faith in our justice system. It is a

criticism which the Judges and lawyers must make about themselves. We must turn the search light inward. At the same time we cannot be oblivious of the attempts made to decry or denigrate the judicial process, if it is seriously done. This question was examined in *Rama Dayal Markarha Vs. State of Madhya Pradesh*, where it was held that fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt, In fact such fair and reasonable criticism must be encouraged because after all no one, much less Judges, can claim infallibility. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts. But when it is said that the Judge had a pre-disposition to convict or deliberately took a turn in discussion of evidence because he had already made up his mind to convict the accused, or has a wayward bend of mind, is attributing motives, lack of dispassionate and objective approach and analysis and pro-judging of the issues which would bring administration of justice into ridicule. Criticism of the Judges would attract greater attention than others and such criticism sometime interferes with the administration of justice and that must be judged by the yardstick whether it brings the administration of justice into a ridicule or hampers administration of justice. After all it cannot be denied that pre-disposition or subtle prejudice or unconscious prejudice or what in Indian language is called "Sanskar" are inarticulate major premises in decision making process. That element in the decision process cannot be denied, it should be taken note of.

18. Lastly, regard must be had to the following views of the Apex Court contained in para 11 of the judgment in *Rajendra Sail Vs. Madhya Pradesh High Court Bar Association and Others*,

11. It has been repeatedly held that the rule of law is the foundation of democratic society. The Judiciary, is the guardian of the rule of law. The confidence, which the people repose in the courts of Justice, cannot be allowed to be tarnished, diminished or wiped out by the contemptuous behaviour of any person. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded. It is for the purpose that the courts are entrusted with extraordinary powers of punishing for contempt of court those, who indulge in acts, which tend to undermine the authority of law and bring it in disrepute and disrespect by scandalizing it. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalized, but to uphold the majesty of the law and of the administration of Justice.

19. On due consideration of the aforesaid judgments, the relevant parts of which have been extracted above, a Division Bench of this Court In re In Re: Lalit Kalita and Others, , had, in paragraphs 12, 13 and 14 of its judgment, expressed certain views which must receive consideration of the present Bench in dealing with the instant matter. Paras 12, 13 and 14 of the aforesaid judgment, therefore, are extracted below:

12. Judiciary is not over-sensitive to criticism; in fact, bona fide criticism is welcome, perhaps, because it opens the doors to self-introspection. Judges are not infallible; they are humans and they often err, though, inadvertently and because of their individual perceptions. In such a situation, fair criticism of the viewpoint expressed in a judicial pronouncement or even of other forms of judicial conduct, is consistent with public interest and public good that Judges are committed to sent and uphold. The system of administration of justice, therefore, would receive due impetus from a realization amongst Judges that they can or have actually erred in their judgments; another perspective, a new dimension or insight must, therefore, always be welcome. Such a realization which would really enhance the majesty of the rule of law, will only be possible if the doors of self-assessment, in the light of the opinions of others, are kept open by Judges.

13. Escalating arrears; endless debates even on interlocutory matters and procedural wrangles; decade long trials are some of the instances that demonstrate the increasing inability of the judicial system to deliver the goods expected of it. Such instances have far more ominous portents of eroding public confidence in the system than mere publication of a few misguided expressions of opinion either on the substance of a judicial verdict or on the manner in which the verdict has been reached. Public confidence is bound to grow if the system of administration of justice is capable of delivering "timely justice", the deleterious effect of a few misguided publications, notwithstanding. The aim, therefore, should be to gain public confidence by exemplary conduct and performance instead of proceeding in the contempt jurisdiction, an exercise which has often been labeled as a close circuit proceeding where the Judge is the accuser as well as the arbiter. That is why in modern European democracies including the United Kingdom the offence of scandalizing the court has become near obsolete, as noticed by Michael Addo of the University of Exeter in his Work "Freedom of Expression and the Criticism of Judges", The approach of the British judiciary in maintaining a story silence in respect of the publication "The fools" appearing in the Times London following a spy catcher case bears ample testimony to the above. The exercise of the contempt jurisdiction must also be viewed from the standpoint of the necessity of not only having a confident judiciary but also a (earless press both of which are indispensable requirements of a healthy democracy. Such a realization must also dawn upon the Fourth Estate and if required by means of a judicial message. The observations of Lord Denning in Regina v. Commr of Police of the Metropolis, Ex parte Blackburn (1968)2 WLR 1204, extracted below would amply sum up the above situation.

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to be winds of criticism, nothing which is said by this person or that, nothing which is Written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter I hand. Silence is not an option when things are ill done.

14. But when should silence cease to remain an option? Where is the line to be drawn? A contemptuous action is punishable on the touchstone of being a wrong to the public as distinguished from the harm caused to the individual Judge. Public confidence in the judicial system is indispensable. Its erosion is fatal. Of course, Judges by their own conduct, action and performance of duties must earn and enjoy the public confidence and not by the application of the rule of contempt. Criticism could be of the underlying principle of a judicial verdict or its rationale or reasoning and even its correctness. Criticism could be of the conduct of an individual Judge or a group of Judges. Whichever manner the criticism is made it must be dignified in language and content because crude expressions or manifestations are more capable of identification of the alleged wrong with the system as a whole. Motives, personal interest, bias, pre-disposition, etc., cannot be permitted to be attributed as being responsible for the judicial verdict, unless, of course, the same can be established as an existing fact. It is the above category of acts or publications that would fall within the prohibited degree warranting action in contempt law.

20. Long pendency or mounting arrears leading to the inability of the judicial system to ensure timely delivery of goods is the most acute problem faced by the institution. The consequential hardships caused to the litigants has been the single most serious challenge to the credibility of the system. That the litigants have been suffering on account of the long delays is an acknowledged fact. This is precisely why the holder of every office in the system of administration of laws has been seriously considering how best the problem can be resolved and measures have been initiated at all levels to tackle the problem, though individual perceptions about the success thereof may vary. Expression of the

anguish suffered by the litigants on account of the delays caused by the system, therefore, cannot be faulted with. The system would thrive and prosper only if the challenges caused by the delays are met and not by stifling criticism of such delays. But can such right of criticism, which the courts have always acknowledged, extend to an expression of the views, as has been done by the author in the present case that "all that the hon"ble Judges can do is to fix a fresh date every month merely to keep the case alive"? Merely because the friend of the author considered the demand of fees made by his lawyer to be exorbitant, can lawyers as a class be termed as crooks? Can the reference to the exchange between the author's friend and the Judge in the chamber, as described in the article, be justified? Is it correct that in spite of all facilities and amenities being provided, Judges do not work and are out to suck the blood of the litigants ?

21. Even if it is to be acknowledged that the conduct of a section of lawyers may not be on the accepted lines and that some Judges do not work to the extent that may be required, can the author of the article be allowed to make the generalizations that has been sought to be made of the lawyers and the Judges as a class. The answers to the queries posed above, in our considered view, have to be in the negative and publication of such facts even on an allegoric reference has to be disapproved. The ultimate picture that is sought to be presented to the general public is that the lawyers as a class are exploiters and the Judges do not work and eventually pass ineffective orders after inexplicable delays. The above is not only far from true but also overlooks/ignores several ground realities in the system. The article has the potential of giving rise to a feeling amongst conscientious Judges of being let down besides eroding public confidence in the courts. The members of the public are bound to ask if this is the real face of the Indian judiciary, is it not better for us to stay away from the courts even by tolerating the perpetration of injustice. The article in question, therefore, has the affect of not only tarnishing the image of the judiciary but also ineffecting its credibility in the public mind. An average reader cannot but lose faith in the system on reading the article. We, therefore, have no hesitation in coming to the conclusion that by publishing the article in question, the respondents have exceeded the acceptable frontiers of fair comment and criticism and are, therefore, guilty of commission of contempt.

22. In the affidavit filed, the respondents have tendered their unqualified apology for the acts committed. There are virtual admissions in each of the affidavits of the respondents that the article in question has transcended the permissible boundaries of fair comment and criticism. The author, in the affidavit filed, has also expressed regret for the language used whereas the respondent Nos. 2 and 3 have assured the court that publication of such articles will not recur in the future.

23. Acceptance of apology tendered by a wrong doer is a magnanimous act on the part of the court. Such magnanimity flows from the fact that the apology

tendered for an acknowledged guilt and realization of the wrong done is accepted notwithstanding the damage caused to the institution by the initial contemptuous act. Acceptance of apology is based on the principle that the court does not do any harm to any person.

24. Keeping in view all that has been stated above, we accept the apology tendered by the respondents in the present case. Such acceptance of apology, though we have held the respondents to be guilty of contempt, would leave us with the discretion not to impose any punishment on the respondents, which discretion we deem it proper to exercise in the present case, however, by treating the article itself with contempt rather than in our contempt jurisdiction. Our acceptance of the apology tendered and on that basis our decision not to impose any penalty on the respondents is, however, subject to the condition that the respondents shall publish their apology in an issue of "Sambhar" within the next two weeks with a copy thereof to the Registry of this Court. The said apology will be published in the front cover of the magazine and shall be free from any ambiguity or doubt as regards what is being expressed. Furthermore, in the apology to be published by the respondents, it will be clearly indicated that the article in question was a work of fiction and further that, in the future, the respondents will conduct themselves with utmost care and caution keeping in mind the principles of law stated in the present order. We also make it clear that in the event publication of the apology in terms of the present order is not made within the time frame stipulated, the Registry shall put up the case before us once again for passing of such further orders as may become necessary.

25. The contempt petition shall stand closed and disposed of in the above terms.