
(1985) 08 P&H CK 0088
In the Punjab And Haryana At Chandigarh

Court on its own Motion

APPELLANT

Vs

Shamsher Singh Bedi and Others

RESPONDENT

Date of Decision : 12-08-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 21
Contempt of Courts Act, 1971 — Section 2
Criminal Procedure Code, 1973 (CrPC) — Section 436
Judicial Officers Protection Act, 1850 — Section 1
Penal Code, 1860 (IPC) — Section 148, 149, 307, 332, 342

Citation : (1986) CriLJ 293 : (1986) 1 RCR(Criminal) 27

Hon'ble Judges : S.S. Dewan, J;K.S. Tiwana, J

Bench : Division Bench

Judgement

K.S. Tiwana, J.—The facts of this case which can be gleaned from the different documents placed on the file, are that Gurdial Singh contemner was arrested in case F. I. R. No. 25 Dt. 24th April, 1983, of Police Station Anandpur Sahib, district Ropar, for various offences, including under Sections 307/353/392/394 etc, of the Indian Penal Code. Gurdial Singh was produced before Shri N.C. Prashar, Judicial Sub Divisional Magistrate, Anandpur Sahib by the police for remand. Shri Prashar did not agree with the request for granting police remand, but granted judicial remand. According to Gurdial Singh, order dt. 27th April, 1983 passed by Shri N.C. Prashar, Judicial Magistrate, Annexure Rule 2/1 with his reply, shows that the Magistrate was satisfied that there was no injury, which may be actionable u/s 307, Indian Penal Code, and that offence u/s 392/394, Indian Penal Code, was also not strictly made out. It was this reason which led Shri N.C. Prashar to refuse police remand. On the same day Shri Prashar refused application for bail filed by Gurdial Singh. Gurdial Singh was, however, released on bail by the learned District and Sessions Judge, Ropar.

2. Gurdial Singh contemner served notice on Shri N.C. Prashar under the signatures of shri Shamsher Singh, Advocate, Kharar, u/s 80, Civil Procedure

Code, claiming damages. The notice is as under:

My client Sh. Gurdial Singh Sarpanch son of Shri Sewa Singh, resident of village and Post Office Dher, Tehsil Anandpur Sahib, District Rupnagar, has instructed me to serve the following notice upon you:

1. That A. S. I. Sangat Singh stationed at Police Station Anandpur Sahib got an F. I. R. No. 25 registered at Anandpur Sahib Police Station allegedly at 10-30 p.m. on 24-4-1983 under Sections 307/353/342/148 and 149, I. P. C. against Joginder Singh son of Puran Singh and other 8 persons of village Dher including my client Gurdial Singh, who is the Sarpanch of the village.
2. That about 2-00 or 2-30 A.M. the same night my client was brought to the police station by the A. S. I. in this case as an accused person.
3. That the A. S. I. did not allow my client the benefit of bail in a bailable offence and was kept in illegal police custody at the police station till 27-4-83 when in the afternoon he was produced before your honour. For this illegal detention by the A. S. I. my client is issuing a separate notice u/s 80 C. P. C. to the A. S. I. for filing a suit for recovery of damages against him separately.
4. That on 27-4-83 when my client was produced in your court in hand-cuffs the learned A. P. P. submitted a request in writing for remanding my client to further police custody for further investigation and by that time the police had also added three more offences under Sections 392, 394 and 332 I.P.C.
5. That the remand to police custody was opposed by the counsel appearing on behalf of my client on the ground that originally in the F. I. R. there was no allegation against my client which could spell out any non-bailable offence against him. Even the added offences under Sections 393, 394 and 332 I. P. C. did not concern my client in any manner. Agreeing with the submission of the counsel you rightly declined the police request for police remand by your order dt. 27-4-83, This order of yours reads as under:

Heard. No injury is attributed against the accused that may be punishable u/s 307 I. P. C. All other offences are bailable as the offence punishable u/s 392, 394, also not strictly seems to be made out, the request for police remand is declined and the accused is remanded to judicial custody till 10-5-83."

6. That at the very same time an application for releasing the accused Gurdial Singh on bail was also submitted before you. It was mentioned in this application that Section 307 I. P. C. has been entered into the F. I. R. only to make the offence non-bailable and to keep the accused in illegal custody, although there was no injury on the person of the complainant A. S. I. Sangat Singh. It was further submitted in the bail application that under all circumstances no specific allegation has been made against the accused, which could amount to any non-bailable offence. Reading of the F. I. R. from the beginning to the end clearly shows that Gurdial Singh accused was not present at the time of the alleged occurrence when some thing happened. It was also pointed out that taking the F.

I. R. to be wholly correct and the maximum that could be made out stretching every word of it was tantamount to an offence falling u/s 342 I. P. C. against Gurdial Singh and the same was bailable.

7. That the A. S. I. had admitted in the F. I. R. lodged by him that he had fired two shots with his service revolver at Joginder Singh and had injured him. As this firing was unjustified and reckless by the A. S. I., who. was smelling liquor so in order to cover up his own offence u/s 307 I. P. C. he had lodged a false report with the help and consultation of his superior officers. This fact was also brought to your notice in the bail application. Besides this the A. S. I. had also tried to give the incidence a political colouring by bringing unnecessarily the political affiliations of the Sarpanch Gurdial Singh.

8. That after your own finding that no injury was attributed against the accused that may be punishable u/s 307 I. P. C. and in fact no injury had been caused by any of the accused to the A. S. I. Sangat Singh or to any other constable so the question of any act of any of the accused and particularly of Gurdial Singh coming in the scope of Section 307 I.P.C. did not arise. In this view of the matter and a careful reading of the F. I. R. application for bail and the submissions made at the bar, it was your legal duty to allow my client the bail to which he was legally entitled, but instead of performing your act legally and judicially you* rejected his application for bail holding that as the offence u/s 307 I. P. C. was triable exclusively by Sessions Court, hence the request for bail was declined. This order of yours is self-contradictory on the face of it. After perusal of the F. I. R. while dealing with the matter of police remand you have rightly observed that no injury was attributed against the accused that may be punishable u/s 307 I. P. C. You with a mala fide intention observed in the matter of bail application that an offence u/s 307 was exclusively triable by the court of Session, therefore, the bail was declined. In fact only label of Section 307 I.P. C. was put on the F. I. R. and in fact no allegations spelling out the offence were mentioned. Now after the chalan was put up in your court against my client and others the learned A. P. P. candidly admitted that there was no case u/s 307 I.P.C and then you took up the proceedings further for trial in your court.

9. That the accused Gurdial Singh was entitled to be released on bail u/s 436 Cr. P.C. as soon as he was produced before the Court on 27-4-83. He was also entitled to his fundamental right of personal liberty guaranteed under Article 21 of the Constitution of India, of which he was deprived by your illegally refusing him to be released on bail.

10. That you had no jurisdiction, authority or power to refuse him bail in a clearly bailable offence as incorporated in the F. I. R. Knowing it fully well you with malafide intention and not to displease the local police, illegally and dishonestly refused the right of bail to my client. On 27-4-83 and illegally and without jurisdiction ordered him to be kept in judicial custody till 10-5-83.

11. That an application for his bail was moved in the court of learned Sessions

Judge, Rupnagar, which was allowed on 2-5-83 and the learned Sessions Judge observed that there was no case u/s 307 I. P. C. in the matter. Gurdial Singh thus obtained his release from Sub-Jail Rupnagar on the evening of 3-5-83. So as a result of your order of judicial remand passed on 27-4-83 Gurdial Singh remained in illegal confinement from 27-4-83 to 3-5-83.

12. That instead of showing your judicial independence and passing a bail order In conformity with the mandatory provisions of law you tried to help the local police in their nefarious designs and activities to keep Sarpanch Gurdial Singh in custody as long as possible in order to humiliate him and to put pressure upon him that no complaint should be filed against him.

13. That due to your mala fide illegal order passed without jurisdiction my client has suffered damages for his being detained in jail judicial custody at Roper and had to undergo the humiliation, indignity and discomforts. So he demands Rs. 5,000/- from you as damages. In case you do not pay this amount within a period of two months from the service of this notice, he will be obliged to realise this amount by filing a civil suit against you in a competent court.

(The portions of the notice, which are contemptuous, have been underlined by me.)

3. Shri N.C. Prashar in the meantime was transferred from Anandpur Sahib to Samrala in District Ludhiana, where the notice was served upon him. Shri Prashar, through the District and Sessions Judge, Ludhiana, referred the matter to this Court for initiating proceeding under the Contempt of Courts Act, 1971. A notice was issued to Gurdial Singh and Shri Shamsheer Singh, Advocate Kharar.

4. Gurdial Singh filed a reply, from which the facts in para 1 have been taken. It is as under:

I, the above-named deponent do hereby solemnly affirm and declare as under:

1. That the deponent has the highest respect for the Court of Sub-Divisional Judicial Magistrate Anandpur Sahib, and all other courts in India.

2. That the deponent was arrested in a case F. I. R. No. 25 Dt/- 24-4-1983, Police Station Anandpur Sahib, under Sections 307/353/342/148/149/392/394/332 I. P. C. When the deponent was produced before the Sub-Divisional Judicial Magistrate, Anandpur Sahib, the police prayed for police remand of the deponent. The Learned Magistrate on hearing the counsel of the answering respondent declined the request for police remand and the answering respondent was sent to judicial custody till 10-5-1983. It was further observed that no injury is attributed to the answering respondent which may be punishable u/s 307 I. P. C. All other offences were declared to be bailable. The copy of the order is Annexed as Annexure Rule 2/1.

3. That on the same day i.e. 27-4-1983, an application for bail was moved by the answering respondent through his Advocate, The learned Sub-Divisional Judicial

Magistrate, Anandpur Sahib, declined the request of the deponent for bail holding that the answering respondent has alleged to have committed the offence punishable u/s 307 I. P. C. this act of the learned Sub-Divisional Judicial Magistrate in holding that the answering respondent has committed an offence u/s 307 I. P. C. is not only mala fide but is also without jurisdiction as the same Sub-Divisional Judicial Magistrate expressed earlier that no injury is attributed to the answering respondent u/s 307 I. P. C. The act of the Sub-Divisional Judicial Magistrate in declining the bail in bailable offence is without jurisdiction as such is not covered under the Judicial Officers Protection Act. The order of Sub-Divisional Judicial Magistrate dt. 27-4-1983 in declining the bail is annexed as Annexure Rule 2/2.

4. That the learned Sessions Judge Ropar, while ordering that the deponent be released on bail as per order dt. 3-5-1983 (R2/2A) had observed that offences allegedly committed are bailable. It is further mentioned that at the time of framing of the charge against the answering respondent, the learned A. P.P. conceded that no case u/s 307 I. P. C. is made out against the answering respondent. The copy of the order dated 25-10-1983 is annexed as Annexure R2/3.

5. That the conduct of the learned Sub-Divisional Judicial Magistrate, towards the answering respondent was mala fide as borne out from the facts submitted as under:

(i) That on the date, the case was fixed for supply of challan report, along with copies of documents, the Magistrate observed in the order that the documents have been supplied though only 8/10 documents out of 50 documents were supplied. An application was filed on the same date by the answering respondent for supply of documents mentioned in the application which were not supplied earlier. The copy of the application is annexed as Annexure R2/4. The learned Sub-Divisional Judicial Magistrate, recorded order on the application on 15-9-1983, that the copies have been supplied and the case was adjourned to 1-10-1983. In fact no copies were supplied to the answering respondent; so another application on 29-9-1983, was moved A copy of the said application is annexed as Annexure R2/5. The application when presented to the Sub-Divisional Judicial Magistrate, was dismissed on the plea that the copies have already been supplied. The copy of the order dt. 29-9-83 is annexed as Annexure R2/6.

6. That the deponent filed another application for supply of copies of documents mentioned therein is annexed as Annexure R2/7, along with Affidavit of all accused as well as two Advocates. Notice of this application was given to the A.P.P. as per his orders dt. 1-10-1983. Copy of the said order is annexed as Annexure R2/8. The copies were supplied to the deponent on 11-10-83, as per orders of the court. A copy of the order is annexed as Annexure R2/9. All this shows that the Magistrate was not fair to the answering respondent.

7. That the Sub-Divisional Judicial Magistrate Anandpur Sahib, vide order dt. 18-10-1983, has observed that the complete copies were to be supplied. A copy of the order dt. 18-10-1983 is annexed as Annexure R2/10. From the above conduct of the Sub-Divisional Judicial Magistrate, Anandpur Sahib, it is clear that the deponent was not getting fair and impartial treatment from the said Sub-Divisional Judicial Magistrate. The deponent has been kept in judicial custody, though offences were bailable.

8. That the deponent approached Shri Shamsher Singh Bedi, Advocate, Anandpur Sahib and sought his advice if the Sub-Divisional Magistrate was liable in civil action for illegally detaining the deponent. Shri Shamsher Singh Bedi, Advocate, advised the deponent affirmatively and drafted the notice u/s 80, C.P.C. now in question. Shri Shamsher Singh Bedi told that deponent that he (Shri Bedi) has personal difficulty to serve the notice on the Sub-Divisional Judicial Magistrate. So the deponent was asked to approach Shri Shamsher Singh, Advocate, Kharar, for serving this notice.

9. That Shri Shamsher Singh, Advocate, Kharar is personally known to the deponent and the deponent approached him for serving the notice. Shri Shamsher Singh, Advocate, Kharar, declined saying that it amounts to contempt. The deponent was asked to approach Shri Shamsher Singh Bedi again.

10. That the deponent again approached Shri Shamsher Singh Bedi and told him about the objection of Shri Shamsher Singh, Advocate, Kharar. On this Shri Shamsher Singh Bedi asserted that there is no question of contempt and he would talk about the matter to Shri Shamsher Singh, Advocate.

11. That the deponent again approached Shri Shamsher Singh, Advocate, Kharar, and informed him what was stated by Shri Shamsher Singh Bedi. On this Shri Shamsher Singh, Advocate, Kharar, signed the draft notice and asked the deponent to take it to Shri Bedi, and tell him that he should despatch it if he is satisfied that no contempt of court was involved.

12. That the notice was served on expert legal advice bona fide believing that no contempt has been committed.

13. That the right of personal liberty of the answering respondent has been affected by keeping in confinement though the offences were bailable as such action of the Magistrate was without jurisdiction.

5. Shri Shamsher Singh, Advocate, Kharar, in his affidavit by way of reply stated that Gurdial Singh contemner approached him with a draft of notice u/s 80, Civil Procedure Code, drafted by Shri Shamsher Singh Bedi, Advocate, Anandpur Sahib. (As two Advocates with the same name, one practising at Kharar and the other at Anandpur Sahib appear in this case, for reference, one is referred as "Shamsher Singh, Advocate, Kharar" and the other as "Shamsher Singh Bedi, Advocate".) Gurdial Singh represented to him that Shri Shamsher Singh Bedi, Advocate, had some personal difficulty in serving the notice and wanted him to

serve the notice on Shri N.C. Prashar. After going through the notice, he declined to serve it as it might attract proceedings for contempt of court. He advised Gurdial Singh contemner to approach Shri Shamsher Singh Bedi, Advocate, and convey his opinion. He after some time met Shri Shamsher Singh Bedi, Advocate, in Civil Courts at Ropar and mentioned about the draft of the notice. Shri Shamsher Singh Bedi, Advocate, told him that the notice had been drafted on the basis of judgment reported in Sailajanand Pande Vs. Suresh Chandra Gupta and Another, and there was no question of any contempt of court, He (Shri Shamsher Singh, Advocate, Kharar) went through the judgment of the Patna High Court and found that the opinion of Shri Shamsher Singh Bedi, Advocate, was not wrong, Gurdial Singh again approached him with the draft notice. He then reluctantly signed and handed that over to Gurdial Singh for taking to Shri Shamsher Singh Bedi Advocate for service. He did not know, who despatched the notice. He did not know the judicial officer and had never appeared before him. The notice was signed by him in bona fide professional duties, free from any ill-will or malice against the presiding officer. It was added that the service of the notice does not amount to contempt of court against a lawyer, who acted in discharge of his professional duties in the administration of justice. In the last para of the affidavit, he recorded:

It is submitted that to discharge his duties as an Advocate, the deponent has acted bona fide as in the opinion of the deponent the judgment of a Division Bench of Patna High Court reported in Sailajanand Pande Vs. Suresh Chandra Gupta and Another, clearly lays down that for a tort of false imprisonment, Judicial Officers Protection Act does not come to the rescue of a Magistrate, who has acted without jurisdiction and mala fide. It is submitted that to discharge his duties as a member of Bar, the deponent has acted bona fide and is not guilty of any contempt of court.

6. Notice was also issued on 13th Mar. 1985 to Shri Shamsher Singh Bedi, Advocate of Anandpur Sahib for committing the contempt of the Court

7. Shri Shamsher Singh Bedi, Advocate, in his affidavit filed by way of reply stated that he was not served with any notice or precise statement of facts amounting to contempt of Court. He admitted the drafting of the notice u/s 80, Civil Procedure Code, at the instance of Gurdial Singh addressed to Shri N.C. Prashar, Judicial Magistrate. He neither despatched the notice nor took any responsibility with respect to the facts stated therein. He never advised Shri Shamsher Singh Advocate, Kharar, to serve the notice. He had no personal difficulty in serving the notice. He was never approached to serve it. He stated: "That the deponent drafted the said notice, which was his professional duty. Judicial Officer is not protected for malicious and mala fide acts. The act done by the deponent was bona fide and in the interest of justice. He during the 50 years of professional career has never shown any disrespect to any court." The last para of his affidavit is:

That if this Hon"ble Court comes to conclusion that the deponent has even

committed semblance of Contempt, the deponent tenders an unconditional apology and throws himself at the mercy of this Hon"ble Court.

8. No evidence was led in this case by any of the contemnors.

9. At the outset Mr. M.S. Liberhan, learned Counsel for Shri Shamsheer Singh Bedi, Advocate, raised an objection about the non-supply, of the precise statement of facts amounting to contempt of Court. On examination of the record, this objection raised by Shri Shamsheer Singh Bedi, Advocate, was found to be unfounded, and was given up by Shri Liberhan.

10. The provision of Contempt of Courts Act, 1971, hereinafter referred as the Act, which is attracted in this case is Section 2(c)(i) which is as under:

2. In this Act, unless the context otherwise requires.-

(a) & (b)....

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

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

The passages from the notice, which, according to Shri G.S. Bains, Assistant Advocate General, assisting the Court, occur in paras 8, 9, 10, 12 and 13, which tantamount to contempt of Court, have been underlined in the reproduction of the notice in para 2 of the judgment. The question is whether these allegations couched in the language as they are, scandalise or tend to scandalise the Court to fall within the ambit of Section 2(c)(i) of the Act. The question as to what scandalisation means came up for consideration in Cr. O.C.P.C. No. 7 of 1979. The observations in that case were quoted in Cr. O.C.P. No. 4 of 1983, which are:

The word, "scandalise" as used in the Act does not have any special or technical meaning. Its ordinary meanings which are commonly understood, have to be taken into account in the context of Section 2(c)(i) of the Act. We see a reason for it also because a man indulging in the scandalising of court may plead that he understood only the ordinary dictionary meanings of the word and was not conversant with the technical meanings given to it in a special context by the statute. We have to see whether the act of Ram Piara respondent falls within the ambit of scandalising the court in the meaning of that word, which is commonly understood, and also whether it comes within the ambit of Section 2(c). The meaning of the word, "scandalise" as given in Shorter Oxford English Dictionary, Vol. II, 1959 Edition are: "To utter false or malicious reports of (a person's) conduct; to slander, to talk scandal, to bring shame or discredit upon; to disgrace. "In Webster's World New International Dictionary, Vol. III, the meanings of the word "scandalize" given are: "to speak falsely or maliciously of; defame; malign, to bring into reproach; dishonour, disgrace; to offend the

feelings, conscience or propriety of by an action considered immoral, criminal or unseemly.

Ordinarily, the word "scandal" is something said, which is false and injurious to reputation; disgrace, opprobrious, censure; "Scandalise" is to give scandal or offence; to shock, to reproach, to libel; and scandalisation suggests and connotes defamation. Unwarranted attack on a Judge or a contempt by means of speech or writing is characterised as "scandalisation", and is actionable under the law of contempt.

11. In this notice Shri N.C. Prashar was attributed "dishonesty" "Malice" and "help to the police to detain Gurdial Singh in custody". The observations of Shri N.C. Prashar in order for bail have been described as motivated for mala fide considerations. No effort was made to substantiate these allegations. No one can impute dishonesty to any judicial officer in the discharge of his functions as a Judge and accuse him of helping the police for malicious intentions to detain some one in custody in a particular case. There has to be some matter to base the allegations. A word of mouth may not justify the calling of the passing of the order by a judicial officer on the judicial side as dishonest or malicious. No one tried to justify the accusations of dishonesty and malice levelled against Shri N.C. Prashar in the notice. In this case, the contemnors remained content only by saying that since Gurdial Singh is likely to file a suit against Shri N.C. Prashar, he did not want to disclose his evidence at that stage. This is hardly an argument for justification with Gurdial Singh and the two Advocates arrayed on his side, who had drafted the notice and served it. Justification of contempt does not, in every case, lead to the aggravation of the contempt. It is to be seen what did the two Advocates do to satisfy themselves, before putting the allegations into black and white and despatching the notice, whether there was any justification to make these allegations. We will notice the role of the lawyers in such matters a little later. Here we are only concerned with the justification for making the accusations. In the face of complete lack of evidence, it has to be held that the remarks were uncalled for and not borne out from any fact or circumstance. The mere fact that a Magistrate refused police remand of a person accused of an offence, but dismissed his bail application, in the absence of evidence, cannot besaid to have passed the orders with dishonest or mala fide intentions. Copies of the applications and orders have also been attached by Gurdial Singh, as Annexures to his reply, to show that the copies of the documents were not got supplied to him by Shri N.C. Prashar at the earlier stage and those were supplied to him when applications were moved later on. Some orders have been placed on the file, which show that the copies had been correctly supplied; may be that order was recorded by Shri N.C. Prashar on the representation of the counsel, but when later on this matter was brought to his notice and he was satisfied that actually the copies were not supplied to the accused, he made the police supply those copies to the accused. That can hardly be taken as a ground of malice or bias in the mind of the presiding officer against the accused and in favour of the police. Moreover, the stage of the copies arose after the passage of sufficient

time after the passing of the bail order. We do not want to go into further details on the merits as any observations by us may not in any manner prejudice the case of the parties in case Gurdial Singh files a suit against Shri N.C. Prashar on the basis of the notice. The passages in the notice underlined above in para 2 are per se scandalous and scurrilous and the notice was undoubtedly a deliberate and determined attempt on the part of the contemnors to scandalise the Judge and the Court for having refused bail to Gurdial Singh by imputing bias, mala fides and dishonesty to Shri N.C. Prashar in the discharge of his official duties. This was done only to malign him in his judicial capacity. In Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh, R. Subba Rao after losing in litigation during the pendency of the execution proceedings served notice to the presiding officer. The notice was as:

3. In the said judgment (O.S. Nos. 101/73 and 275/72) your honour created new facts by making third version without evidence as detailed below among others.

4. Your honour has intentionally, with bad faith and maliciously, disordered the existing oral and documentary evidence with a view to help the plaintiff in O.S. No. 275/72 causing damage and injury to me.

5.. Your honour has maintained different standards in the same judgment with regard to Exhibits B-9, B-10, B-13 and A-15 to A-19 and A-20 to A-22 and B-11, B-12 in para No. 25.

6. Your honour has maintained different standards even with regard to self-serving statements.

16. Your honour has sidetracked the binding direct decisions of the High Courts and the Supreme Court disordering the contents of the said decisions.

18. So under these circumstances, it cannot be said that these acts were done by your goodself in the discharge of your honour's judicial duty within the limits of your honour's jurisdiction in good faith; for, the abovesaid acts themselves prove that your honour has done these acts with mala fide exercise of powers without jurisdiction.

4. In the concluding paras of the notice, he stated:

Your honour has done these acts in excess of jurisdiction knowing the law regarding your own powers and duties. So, your honour is liable in tort to pay damages for the heavy monetary loss incurred by me and for the injury.

Hence I request your honour to pay a sum of Rs. 30,000/- by way of damages for the heavy monetary loss incurred by me and for the injury within a reasonable time, or else I will be compelled to seek legal redress for the same. I hereby reserve my right to take available legal actions against your honour under the other enactments.

Upholding the conviction for contempt of court for making these allegations, the Supreme Court observed:

We agree with the High Court that the tone, temper and contents of the notice, particularly of the passages extracted earlier, which impute malice, partiality and dishonesty to the Subordinate Judge in the judicial adjudication of the aforesaid suits against the appellant, constitute a deliberate attempt to scandalise the Judge, to terribly embarrass him and to lower the authority of his office and the Court. The act and conduct of the appellant in issuing this notice, therefore, fell squarely within Sub-clauses (i) and (ii) of the definition of "criminal contempt" given in Section 2(c) of the Act.

In *Asharam M. Jain Vs. A.T. Gupta and Others*, , Asharam M. Jain filed a SLP before the Supreme Court making scurrilous attack on the Judges of the High Court in the following language:

The petitioner says that having found that they would no longer be justified in continuing to hear the Notice of Motion and appeal for the several true facts set out in the Transfer Application and the affidavits made by the petitioner and briefly hereinabove set about the learned Chief Justice tried by the said order to harm the petitioner as much as he could and made totally false and wrong observations quite unworthy of the head of the judiciary of the State of Maharashtra, and His Lordship Mr. Justice Pendse supported the learned Chief Justice. The said order, it is clear, has been made with the sole and dishonest object of causing prejudice in the minds of the Judges of the new Bench against the petitioner and depriving the Judges of the new Bench of their right to independently judicially decide the Notice of Motion on merits and which is proved by subsequent events.

The Supreme Court observed:

There is never any risk of judicial hypersensitivity. The very nature of the judicial function makes Judges sympathetic and responsive. Their very training blesses them with "insensitivity", as opposed to hypersensitivity. Judges are always seeking good reasons to explain wrong conduct. They know there are always two sides to a coin. They neither give nor take offence because they deal with persons and situations impersonally, though with understanding Judges more than others realise the foibles, the frustrations, the undercurrents and the tensions of litigants and litigation. But as elsewhere, lines have to be drawn. The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. It is not that Judges need be protected; Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected. We had occasion to point this out in *Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another*, , where we said:

But, on the other hand it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which, thus extends its pernicious influence beyond the parties to the action and affects

the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage." "The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.

So we approach the question not from the point of view of the Judge, whose honour and dignity require to be vindicated, but from the point of view of the public who have entrusted to us the task of due administration of justice. Having given out utmost consideration we have come to the conclusion that it is not open to us to accept the easy and ready solution suggested by Mr. R.K. Garg of accepting the apology and imposing a fine. We think that a contumacious disregard of all decencies, such as, that exhibited by the contemner in this case can only lead to a serious disturbance of the system of administration of justice, unless duly repaired at once by inflicting an appropriate punishment on the contemner which must be to send him to jail to atone for his misconduct and thereafter to come out of prison a chastened but a better citizen.

12. The false accusations against Shri N.C. Prashar are an attack made on him when he passed the orders in his judicial capacity and these have been made with a motive to malign him in his judicial capacity. These have an effect of scandalising the court and amount to contempt of Court.

13. A plea is taken on behalf of both the Advocates, that is, Sarvshri Shamsheer Singh, Advocate, of Kharar and Shamsheer Singh Bedi, Advocate that they had consulted Sailajanand Pande Vs. Suresh Chandra Gupta and Another, and formed an opinion that such a notice could be given. They have relied upon the observations in S. Pande's case to the following effect:

The protection under the Judicial Officers' Protection Act is not an absolute protection but it is only a qualified protection and where a Magistrate acts illegally, mala fide and without jurisdiction in the matter of arrest he would be liable in tort to pay damages.

Section 1 of the Judicial Officers' Protection Act, 1850 is as; -

No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

The question of filing a suit against a Judge is "altogether a different matter than the contempt committed by the use of undignified and contumacious language in the notice. Notice can be taken for contempt of Court even in case of contumacious language used in the pleadings in the civil suit filed against a judicial Officer. The right to file a suit, if not restrained by the Judicial Officers' Protection Act, 1850, does not give the party a right to malign an officer, who passed the orders, by urging that it is only the malicious act of such an officer, which can be the basis of the suit. On this pretext libellous language cannot be used to malign the officer. *Sailajanand Pande Vs. Suresh Chandra Gupta and Another*, only deals with the right to sue a Judge and does not say anything about the contempt arising from the language used. In *Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh*, a similar argument as advanced before us was raised:

In the written arguments he reiterates the imputation that the Subordinate Judge had deliberately delivered "a dishonest judgment" against him and the Judge was "guilty of serious" misbehaviour in the performance of his duties", that the allegations of "bad faith" "malice" etc. in the notice were facts constituting the cause of action, which were essential to be stated u/s 80, C.P.C. for the suit for damages, which the appellant proposed to file against the Subordinate Judge; that the giving of the notice containing such statements of material facts being a mandatory requirement of Section 80 of the Civil P.C. the issuance of such notice to the Subordinate Judge could not be characterised "scandalous" so as to constitute Contempt of Court.

It was held by the Supreme Court:

As pointed out by this Court in (sic) the Section affords protection to two broad categories of acts done or ordered to be done by a judicial Officer in his judicial capacity. In the first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those acts which may not be within the jurisdiction of the judicial Officer, but are, nevertheless, done or ordered to be done by him, believing in good faith that he had jurisdiction to do them or order them to be done.

In the case of acts of the first category committed in the discharge of his judicial duties, the protection afforded by the statute is absolute, and no enquiry will be entertained as to whether the act done or ordered to be done was erroneous, or even illegal, or was done or ordered without believing in good faith.

On similar facts, on the basis of notice, the conviction of R. Subba Rao for committing the contempt of Court for the accusations contained in the notice was upheld. It was observed:

We agree with the High Court that the tone, temper and contents of the notice, particularly of the passages extracted earlier, which impute malice, partiality and dishonesty to the Subordinate Judge in the judicial adjudication of the aforesaid suits against the appellant, constitute a deliberate attempt to scandalise the Judge, to terribly embarrass him and to lower the authority of his office and the Court. The act and conduct of the appellant in issuing this notice, therefore, fell squarely within Sub-clauses (i) and (ii) of the definition of criminal contempt" given in Section 2(c) of the Act.

The case in hand is covered by R. Subba Rao's case 1981 Cri LJ 315 (supra). Sarvshri Shamsher Singh, Advocate, Kharar and Shamsher Singh Bedi, Advocate, cannot take the shelter of Sailajanand Pande Vs. Suresh Chandra Gupta and Another, to justify their action, as that case does not deal with the contempt matter. They being lawyers of good standing; as Shri Shamsher Singh Bedi, Advocate, has standing of more than 50 years at the Bar, should have known Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh, before drafting, signing and issuing the notice.

14. It was urged by Shri M.S. Liberhan on behalf of Shri Shamsher Singh Bedi, Advocate, that he simply drafted the notice and handed that over to Gurdial Singh. He was not in any way concerned with its sending, that is, publication. A notice after preparation when it is given to the litigant, on whose behalf it is to be issued, is meant for publication. Shri Shamsher Singh, Advocate, Kharar and Gurdial Singh contemner in their affidavits stated that Shri Shamsher Singh Bedi Advocate, met Shri Shamsher Singh, Advocate, of Kharar and insisted for the sending of the notice. The fact that both these advocates depended on Sailajanand Pande Vs. Suresh Chandra Gupta and Another, suggests that they had discussions among themselves about the sending of the notice drafted by Shri Shamsher Singh Bedi, Advocate. Shri Shamsher Singh Bedi, Advocate, is also thus responsible for publication. He wanted to create a ground for his safety and it was for that reason that he himself avoided to despatch it.

15. It was argued that both Sarvshri Shamsher Singh Bedi and Shamsher Singh Advocate of Kharar had acted in the discharge of their professional duties in drafting and issuing of a notice and for that reason their act being bona fide professional activity does not fall within the ambit of Section 2(c)(i) of the Act. They also relied on Rule 15 of the Bar Council of India Rules. This rule is as:

15. It shall be the duty of an Advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused bearing in mind that his loyalty is to the law which requires that no man should be

convicted without adequate evidence.

This Rule, which is advisory, does not permit a lawyer to transgress the rules of ethics, propriety and decency to commit Contempt of Court by making derogatory, malicious, vilificatory and contumacious allegations against the conduct of a Judge and then claim that he was defending his client in accordance with the advice given by this rule. Even this rule emphasises that the loyalty of the lawyer is to the law. It cautions the lawyer to be alive to the law of contempt, as is enacted by the Parliament and laid down by the Supreme Court and the High Courts of the country. Allegiance to the interest of the client for overstepping the provisions of the contempt of Court and the judgments of the highest Court of the country is no defence.

16. A lawyer is a person educated and trained in law. The choice of words by him in the matter of drafting the legal documents and arguments has to be careful. Lawyers, because of their profession, advise people in making agreements, contracts, wills etc., also prepare pleadings, applications, arguments etc. The use of language has to be balanced and in fitness of things within the framework of the law of the land. He cannot and should not be reckless in use of language. There are barriers, which are known to a lawyer and those have not to be crossed. Lawyers have not to overstep the limits of decency and ethics in the matter of their behaviour towards the Judges and their decisions.

17. In this case, Gurdial Singh had signed the notice. It was drafted by Shri Shamsher Singh Bedi, Advocate. Anandpur Sahib. It was served under the signatures of Shri Shamsher Singh, Advocate of Kharar. All these three contemnors, namely, Gurdial Singh, Shamsher Singh Bedi, and Shamsher Singh of Kharar, contemnors, by their individual and joint acts, have committed contempt of the court by making allegations of bias, malice and dishonesty against Shri N.C. Prashar in relation to an order on the judicial side in rejecting the bail application of Gurdial Singh. Their acts amount to scandalising the Court of Shri N.C. Prashar. They are convicted u/s 2(c)(i) of the Contempt of Courts Act, 1971. Each of them is sentenced to pay a fine of Rs. 1,000/-. In default of payment of fine, Sarvshri Gurdial Singh, Shamsher Singh Bedi, Advocate, Anandpur Sahib and Shamsher Singh, Advocate of Kharar, shall undergo simple imprisonment for a period of fifteen days. The fine shall be paid within three weeks from today.