

(1964) 09 BOM CK 0006
In the Bombay High Court
Case No : Misc Civil Application No. 21 of 1963

Damayanti G. Chandiramani

APPELLANT

Vs

S. Vaney

RESPONDENT

Date of Decision : 16-09-1964

Acts Referred:

Contempt of Courts Act, 1971 — Section 1, 3, 3(2), 4
Penal Code, 1860 (IPC) — Section 228

Citation : AIR 1966 Bom 19 : (1965) 67 BOMLR 380 : (1966) CriLJ 9 : (1965) ILR (Bom) 619

Hon'ble Judges : Tambe, J;Naik, J

Bench : Division Bench

Advocate : V.K. Punwani, V.S. Deshpande, Asst. Govt. Pleader, for the Appellant;
Party in person, for the Respondent

Judgement

Naik, J.

(1) This proceeding for contempt of court been initiated by the High Court of the report submitted by Mr. Vimadala, judge city civil court, Bombay (as he then was) in respect of the an incident which took place in his court on 4th March 1963. The facts leading unto the incident on the 4th March 1963 may be briefly outlined as follows: The plaintiff Mrs. Damayanti G. Chandiramani, filed a suit a against the defendants S. Vanvey, for recovery of possession and arrears of compensation on the basis that the defendants was a licenses and that the license was revoked. That suit was filed on 26th October 1962. After the service the summons, the defendants attended the office of Advocates punwani, who appeared on behalf of the plaintiff in the suit for inspections of the documents,. This was on 10th November 1962. On 10th January 1963 the defendants stared prosecution u/s 24 of the Rent control Act a against the plaintiff her parents and Advocates punwani on the basis in that the plaintiff. The presidency Magistrate, before him the whom the prosecution was launched, issued process only a against the plaintiff the took out a notice for motion in the suit for possession asking the for temporary injection restraining the defendants from proceedings

with the prosecution launched by him under of section 24 of the Rent Control Act. The mother of the plaintiff who held and affidavit in support of notice of Motion. The notice came up for hearing on 4th March 1963, and it is in the course of the arguments on the Notice of motion and incident from which this proceedings has arisen took place. Before dealing with the happening of 4th March 1963 in the court in Judge Vimadlal it is necessary to set out a few more facts.

(2) On 10th January 1963 the defendants launched a prosecution against advocate punwani for determination. This complaint arose in the following circumstances the defendants had started a criminal case (No 588/S of 1962) on 23rd October 1962 against the member of the managing committee of Bela Housing society for defamation. It may be mentioned that the flat in possession in the suit in the city civil courts was which belonged to Bela co = operative Housing, society. In criminal case No. 588/S of 1962 Advocate punwani appeared for the accused, i.e., the member of the managing committee. Mr. Punwani argued that the defendants who complained of libel against himself had no reputation to defend. It was the case for the Defendants that the statement made by Mr. Punwani in the course of the argument amounted to defamation and that is why he stated prosecution against advocate punwani on 10th January 1963 u/s 500 Indian Penal Code, On 26th February 1963 the defendants started a criminal case against the plaintiff father, her mother members of the managing committee and advocate punwani for intimations and insult and advocate punwani of abatement of the said offense. It may be mentioned at this stage that the Advocate punwani happened to be the legal adviser of the Bela co = operative housing society. The defendant had refused to become a member of the said Housing Society. Because of his refusal to become a member of the said society, the managing committee passed a resolution that the use of the lift should be refused the occupants who were not members of the Housing Society. A notice was put up in that occupants who weren't members of housing society. A notice was put-up in that regard. The defendants alleged that the two lift - man and advocate punwani actually prevented him from using the lift and in that way insulted him. It is on that basis that he lodged the complaint on 26th February 1963 of the insult and intimation. It would thus be seen that that two cases launched by the defendants against Advocates punwani were pending on the day where notice that the motion came up for hearing before Judge Vimadlal on 4th March 1963. It appears that criminal case launched by the defendants on 26th February 1963 was dismissed on 13th March 1963 without issuing process against any of the accused.

(3) Let us now turn to the happenings of the 4th March 1963. Advocate Punwani in the course of his arguments, referred to the contents of paragraph (6) of the affidavit put in by the plaintiff attorney in support of the Notice of Motion Paragraph (6) of the affidavit runs thus.

"I say that the defendants seem to be notorious litigant. He has been convicted

fourth times for offence under the Indian Penal Code, the last of which was for assaulting a lady [case No. 135/P of 1951] for which he was sentenced to rigorous imprisonments for three months, as recorded in the judgment dated 3rd October 1952 of the 8th Court, Explanade, Bombay. He has filed many cases against the owners of the Guest Houses or Hotels where he was used to reside before shifting to the suit premises."

The apparent object of advocate Punwani in referring to the contents of paragraphs (6) of the said affidavit was to show that the defendants was in the habit of the launching upon vexatious by the him under S 24 of the Rent control act against the plaintiff stood in the same category. It may be recalled that by notice of Motion, the plaintiff had asked for a temporary injunction restraining the defendants from proceedings with the criminal complaint lodged by him u/s 24 of the Rent Control act. The learned City Civil judge asked the defendants as to whether he had to say any things with regard to the allegations contained in the paragraph (6) of the affidavit. The defendants stated that he would be see to it that the plaintiff advocate, Mr. Punwani would go to jail, that two criminal case had already been filed by the defendants himself against the plaintiff advocate the said Mr. Punwani and that he was would give two more criminal cases against the shortly. It appears that judge Vimadalal made a note of the these statement on the docket sheet and asked the defendants to explain as to why he should not be proceeded with for contempt of court. The defendants did with for contempt explanation and on the 12th March 1963, judge vimadalal submitted a report to the High court requesting that action for contempt of court should day he disposed of the Notice of Motion, and made the rule, which was already granted restraining the defendants from proceedings with criminal case u/s 24 of the rent control act. Absolute.

(4) it is also necessary to refer to certain events, which took place after the 4th March 1963, because one of the contentions raised by Mr. Punwani in the threat given by the defendant was not just a piece of bravado but he actually carried that the threat into action. We will consider the question as to whether and how far these happenings are relevant for deciding the present case, at a later stage on this judgment. For the bring we will proceed to narrate the events as have taken place after 4th March 1963. On 6th March 1963 the defendants started prosecution against the plaintiff father, members or the managing committee. Two lift man and advocate punwani for insult and intimidation in respect on an committee intimidations in respect of an incident which took place on the 5th March 1963, in which according to other defendants he was refused the use of the lift. On 7th March 1963 in which took place on 5th March 1962, in which refused has already been made was taken up for hearing advocate punwani was appearing on behalf of the accrued in the case the defendants made an application in requesting that advocate punwani should be instigated the managing committee to pass the resolution refuting the the services of the lift the defendant. Notice showing cause. Mr. Punwani was discharged on 26th June 1963. He obtained an interim stay order on 30th March 1963 On 3rd April 1963

he launched a second prosecution u/s 24 of the Rent control act against the plaintiff her parents members of the managing committee, the two lift men and advocate punwani the plaintiff appeared in the appeal before the High court and eventually the stay was vacated. The High Court passed an order restraining the defendant from starting fresh proceedings u/s 24 of the Rent control Act pending the hearing of the appeal. The High Court however refused of the appeal. The High Court however refused to pass any stay order in respect of the prosecution already launched by the defendants on 3rd April 1963 and suggested that the plaintiff may approach the Magistrate for the such relief on 9th May 1963 the defendants started another prosecution for defamation against the plaintiff mother and advocate punwani in regard to the contents of paragraphs (6) of the affidavit put in by plaintiff mother in support of the Notice of Motion.

(5)The defendant has appeared in answer to the notice and put in his affidavit showing cause as to why he should not be punished for contempt of court. He has given in his own version as to what transpired on 4th March 1963 and denied some of the statements attributed to him by judge Vimadalal in his report . The defendant has complained that Judge Vimadalal did not allow him to read his affidavit. At paragraph (8) of the affidavit the defendant has set out a lengthy conversation which according to him took place between him and Judge Vimadalal . He has suggested that only after the Judge asked him as to what was his occupation that he told him that he was engaged in writing a book about the administration of justice and when the judge further asked him as to what he was doing prior to his engagement of writing the book , the defendant told him that he could have become a judge if he wanted to . When further asked as to what Government posts were offered to him the defendant told him that he was offered a nomination to the Indian Civil Service, and if he had accepted the same , he would have started as an assistant judge and in that case he would have become senior to the present Chief Justice of Bombay in the Civil Service Cadre . At paragraph (11) , he has explained as to how Advocate Mr. Punwani has gone on making defamatory statements about him wherever he appeared against the defendant . According to him, Mr. Punwani made some defamatory statements on 10th December ,1962 at the hearing of the notice of motion before Judge Walavalkar; that again he made the same statements before the court of the Sixteenth Presidency Magistrate on 10th January 1963 and that he repeated the same statements on 4th March 1963 . He has admitted that he had filed a criminal case for defamation against Advocate Punwani (No.101/S of 1963) , which is pending in the 28th Presidency Magistrates Court in regard to the defamatory statements made by Mr. Punwani on 10th January 1963 in the court of the 16th Presidency Magistrate . He has then referred to the incident which took place in the court of Judge Vimadalal and according to the defendant ,this is what has happened :

" In this Court the learned judge Vimadalal himself asked me , if I had anything to say regarding the allegations made against me . I replied "yes , a good deal Sir". Then the learned judge asked "Have you suffered imprisonment for three

months ?" I replied , " these are false allegations .I have never suffered any sentence of imprisonment at any time .But apart from that your Honour would appreciate that even if it were true that I had spent a number of years in prison , there is no occasion or justification for the plaintiff's advocate to make that fact known here as it has no bearing on the issues before the court .I respectfully submit that the purpose of this advocate making there statements is to defame me and create an atmosphere of prejudice and provoke me to make a brawl in court or indulge in violence and therefore, he is guilty of contempt of court , and I request the court will be pleased to take action a against him" I thereupon continued, if the certificate granted to the society is cancelled , this advocate stands to lose his job. he therefore bears me great malice and everywhere he goes, he makes defamatory statements about me. Already I have filed a complaint of defamation a against him which is case No. 101/S of 1963 in the 28th Presidency Magistrate Court. Also he is an accused in an other criminal case in his capacity of an employee of the said Housing Society. And in a day or two, I'd intend to file two more criminal cases in which this advocate will be one of the acute for his wrong doing. I'd have also made and application to the bar council for suspending him on account of this professional misconduct on five counts, 1 being that he has been an employee of the Housing Society for more than two years and do president of the bar council informed me tax my application would be kept pending and action will be taken when the chapter V of the advocates Act ounce into force. I'm hoping that there would be a conviction in each of the 4 cases in which he well appeared as an accused, and that there will be a jail sentence."

The defendant had denied that he gave any threat or intimidated the advocate. He has also denied that he uttered the words "I'd would see to it back the plaintiff advocates would go to jail". He has argued that he has no power of sending anybody to jail and therefore it is unlikely that he word uttered any such words towards the advocate. In short his contention is that he warned the advocate of the consequences of his own wrong doing and what he contemplated was to take action a against the advocate to vindicate his own legal rights.

(6) It is also necessary to refer to certain stages through which the contempt proceedings have gone on in this court. The proceedings came up for hearing before a division bench comprises Patel and Kantawala JJ on 7th August 1963. It appears that the defendant was then represented by Mr. k.l.gaubha a senior advocate of this court. Arthur some brief discussion, the division bench adjourned the case and gave a direction to the city Civil Court judge to expedient the suit filed by the latest a against the defendant. It appears that thereafter the suit was third and disposed of in March 1954. On 15th April 1964 this case came up for hearing before another division bench comprising the chief Justice and Gokhale.j it was adjourned and then it was placed before the division bench comprising Kotwal and Palekar. This was on 25th June 1964. Act that time, the defendant put in a written affidavits stating that Patel J had expressed the view that the statements attributed to the defendant, even if true, would not amount

to contempt. The division bench felt that in view of the various allegations contained in the affidavit put in by the defendant against Judge Vimadalal, it would be more appropriate if a report was called for from Judge Vimadalal. Accordingly, a report was called for from Judge Vimadalal, who submitted the report on 26 August 1964. In May 1964 the defendant launched another prosecution against the plaintiff, her parents, advocate Punwani and certain lift men.

(7) In the affidavit put in by the defendant, in order to show that the case was part heard and that certain views were expressed by the division bench comprising Patel and Kantawala the defendant has formulated Four propositions as follows:

"(a) whether the report against me which is made by a senior judge of the Bombay City Civil Court bears a semblance of correctness?

(B) Whether the alleged vague statement amounts to contempt?

(c) Whether if the statement amounts to contempt they fall within the mischief of s. 228, Indian Penal Code and the jurisdiction of this court is excluded by section 3 [2] of the Contempt of Courts Act?

(d) Whether section 3 [1] of the Contempt of Courts Act is an offense against article 14 of the Constitution and is invalid."

The defendant, who has himself argued his case in detail has battered his arguments on the basis of the 4 propositions formulated by him in his affidavit, dated 22nd June 1964.

(8) The defendant has strenuously contended that the version set out by Judge Vimadalal as to what transpired on 4 March 1963 is not correct. He has argued that there is intrinsic evidence in the report to show that some of the statements attributed to him or not possibly be true. In that connection, he pointed out that he is a man of good education; that he knows English very well and that he has also considerable experience about the working of courts. In these circumstances, it is unimaginable that he would make a statement to the effect that he would see to it that advocate Punwani would go to jail. He has pointed out that he has no power to send even a thief or a murderer to jail and all that he can do is to make a report in regard to the offense of theft or murder. That being the case, it is unlikely that he would utter the said words as regards advocate Punwani. It is necessary to note that Judge Vimadalal has made the following note on the docket sheet regularly on the day of the argument on 4 March 1963:

" the defendant states that the advocate would go to jail. To cases already filed and two more proceedings."

the defendant has argued that assuming that the learned judge made the said note at the time of the argument in his court, even so, the note does not say

that he defendant uttered the words "he would see to it that advocate Punwani would go to Jail". There is undoubtedly slight difference in the wording of the report on this point and the wording in the note made on the docket sheet. But the distinction is without different and no importance can be attached to the small hair splitting distinction which the defendant has immediately pointed out to as. The version that the defendant has set out in great detail at paragraph 11 of his affidavit is not also materially different from the one which the learned judge has set out in his report. The defendant has admitted in the affidavit and paragraph 11 that he has lodged a complaint for defamation a against advocate Punwani and has gone a step further and stated that advocate Punwani bears malice towards him. This complaint of defamation relates to the statement made by advocate Punwani in the course of this argument in criminal case No. 588/s of 1962. The statement may buy Mr. Punwani that similar to the statements which he made in the course of the argument in support of the notice of motion in the city Civil Court. The defendant has also admitted that advocate Punwani is and accused in another case, which was filed a against the members of the managing committee of the Housing Society. He has also admitted that he stated that he intended to file two more criminal cases in which advocate Punwani would be an accused. He has been proceeded to say "I'm hoping that there would be a conviction in each of the 4 cases in which he will appear as an accused and that there will be a Jail sentence". This is worth he stated before Judge Vimadalal on his own admission in this affidavit. Therefore, whether the version set out by Judge Vimadalal is accepted as through in its entirety and we see no reason as to why should not accept the same-or not , on his own admission contains in the affidavit, it is quite clear that the defendant did say in the goes of him his arguments in respect of the notice of motion that he had already launched a criminal case for defamation a against advocate Punwani in respect of the statement may buy the advocate to the effect that the defendant is a notorious litigation monger and that he has been convicted four times. On his own admission, the defendant also gave a threat that he intended to file two more criminal cases for what he calls the advocate wrong doing. Of course, in this affidavit, he does not admit that he told the Court that he would launch a prosecution for defamation a against advocate Punwani for the defamatory words uttered by him on 4th March 1963. At the same time taking the context into account it is clear what the defendant hinted was that he would launch such a prosecution and that too in respect of the statement made by the advocate in the course of the arguments . according to the defendant the statements made by him do not amount to threat and what he stated was that he would take such legal action as he would be entitled to take on the basis of the wrong deeds committed by Advocate Punwani . The question as to whether the statements made by defendant amounted to threat or not would be considered by us at a later stage of discussion. We will also consider the question as to whether, assuming the statements does not amount to threat , they amounted to a conduct , which would interfere or subvert the administration of justice. For the time we are only considering the two rival versions that are being placed before

us and on a due consideration of the two versions , we have no hesitation in preferring the version put forward by the learned judge , Vimadalal, particularly, when the admissions contained in the affidavit of the defendant support the version of the learned judge in its broad outline. It may be pointed out that advocate Punwani also has put in his affidavit fully supporting the version set out by judge Vimadalal.

(9) the next point that was urged by the defendant was that he has sufficient justification to make the comments which he made . According to him the statements made by Advocate Punwani were entirely irrelevant and beside the point which was considered by the City Civil Court . The defendant suggested that Advocate Punwani went out of his way to make these defamatory statements so that he would be provoked into engaging himself into a brawl with the advocate . In the course of his arguments, he went so far as to say that he had been a little younger, he would perhaps engaged himself in a brawl with the advocate on account of the highly provocative statements made by him. We are unable to accept that advocate Punwani Statements were beside the point or that they were provocative. Advocate Punwani was within his rights in referring to the past history of the defendant , and in particular his conduct in launching upon unwarranted prosecutions and indulging in frivolous litigation. Mr. Punwani wanted to suggest that the defendants action in launching the prosecution u/s 24 of the Rent Control Act was a piece of his general conduct . In other words , his argument was that the defendant in going to the Criminal Court u/s 24 of the Rent Control Act was utterly vexatious and made with a view to bring pressure upon the plaintiff to withdraw the suit . Nor do we think that the reference made by the Advocate Punwani in regard to the previous convictions of the defendant was beside the point . In the first place , these statements were based on the contents of the affidavit sworn to by the attorney of the plaintiff . In the second place , Mr. Punwani says that not only he was instructed by his client but that he tried to ascertain the truth of these statements and that he was supplied with a copy of the judgment in criminal case No. 135/P of 1951 , which was pronounced on 3rd October 1952. that was a prosecution u/s 323 Indian Penal Code a against the defendant initiated by the colaba police station of in which the defendant was sentenced to undergo three months rigorous imprisonment and to pay a fine of Rs 150 or in default to undergo further 3 months rigorous imprisonment. The defendant admitted in the above case that he had three previous convictions to his credit. In view of these circumstances of advocates punwani was fully justified as enjoyed a privilege in making the statement, which he had made in the course of his argument. It is significant to note that in his affidavit the defendant has not denied the fact of any of these four. Conviction. He has only stated that these statements where defamatory. In the course of his argument before us, the defendant asserted with considerable vehemence that he had preferred an appeal all a revision he said, he did not remember which from the conviction and sentence in criminal case No. 135/p of 1951 and backed the conviction and sentence where quashed by the higher authorities. He has

gone to the length of adding that the higher authorities had passed strictures against the magistrate, who recorded the conviction. He repeatedly asked the defendant to give us the number of the appeal or revision or at least the year in which these proceedings were instituted. He told us frankly that he did not know either the number of the year when he preferred the appeal or revision. He has however advanced a somewhat ingenious argument before us in this respect. He quoted the maxim "every saint has a past and every sinner a future". He pointed out that the convictions to which reference was made are a matter of past history and that many developments had taken place since 1952 and there has been no conviction against them since then. It is not necessary for us to pursue this line of reasoning any further. It is sufficient for us to observe that it is implicit in the argument advanced by the defendant himself that he does not dispute the factum of previous convictions. If that is so, advocate Punwani would be within his rights to make that statement.

(10) In the course of this argument the defendant also made reference to the fact that he had made applications to the Bar Council for starting proceedings for misconduct against advocate Punwani. It is not disputed that the defendant has made an application on 20th April 1963 to the High Court for starting proceedings for misconduct in respect of certain acts committed by advocate Punwani between April 1963 and April 1964. It is not necessary for us to enter into the details of this question. The defendant has contended that this was not the first application made by him but that he had made applications earlier, one in December 1962 and another in February 1963. Whatever that may be it is quite clear that he has made these applications against advocate Punwani after the institution of the suit by the plaintiff against the defendant for libel. We have referred to the multiplicity of the proceedings, which the defendant had started against advocate Punwani. We have to see in perspective as to whether the object of the defendant in launching these cases was to deter advocate Punwani from appearing on behalf of the plaintiff in the said suit or if at least preventing him from discharging his duties fearlessly and impartially towards his client. The answer to this question will depend upon the answer to another question namely whether the statements attributed to the defendant by Judge Vimaldas amount to threat of at any rate, amount to a course of conduct motivated with the object of frightening the advocate from discharging his duties towards his client. One of the arguments advanced by the defendant is that, assuming that all the statements attributed to them are true, still they do not amount to any kind of threat.

(11) We will first consider the effect, in law, of the words uttered to the defendant. In the present case, the defendant has not been accused of having committed any act of contempt, disregard or defiance or disobedience to the judge. He has been accused of having made statements in respect of an advocate of the opposite party, and the point for consideration is, whether the statements amount to interference with the administration of justice. As stated in his book on Contempt of Court, 3rd Edition, page 6, says: "to speak generally, contempt of

Court may be said to be constituted by any conduct that tends to bring the authority and administration of Law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation".

At p. 91 of Contempt , Committal and Attachment by Oswald , occurs the following passage:

"An insult to counsel may be punished as contempt . All publications which offend a against the dignity of court or calculated to prejudice the course of justice will constitute contempt". It is settled law 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. The decision very much point to was given by Niyogi J in AIR 1940 110 (Nagpur) . In that case, the defendant had addressed a notice to the advocate of the plaintiff demanding that certain allegations in the written statement of his client should be withdrawn unconditionally and an apology tendered on pain of legal proceedings being taken a against him . Another letter was sent by the defendant or somebody interested in him to the plaintiff complaining a against the counsel for his refusal to withdraw the allegations described as foolish . It was held :

"In sending the notice containing threats to the counsel , the defendant made a clear invasion of the counsels right to represent his client's case loyally and properly and further interfered with the due performance of his duty towards his client . The addressing of notice and the letter was calculated to interfere with and to obstruct or divert the course of justice . Hence , he was guilty of contempt of court".

In the course of the judgment Niyogi J observed :

" The law of contempt covers the whole field of litigation itself. The feared end of a judicial proceedings, Civil or criminal , is to asserting the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfillment of that task. They are necessarily the judges of the magistrate, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons and well be described as the limbs of the judicial proceedings. For proper administration of justice, it is essential that all these persons are in the performance of their respective duties, ensure such fulfillment of freedom as is fair and legitimate. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceedings must of necessity result in hampering the view administration of Law and a interfering with the course of justice. It must therefore be held to constitute contempt of Court."

The view taken by Nagpur High Court has been endorsed by the Allahabad, Madras and Lahore High courts, in Ch. Rajender Singh Vs. Uma Prasad, during the pendency of the suit a notice was sent on behalf of the plaintiff through his advocate to the defendant, threatening him that unless he withdrew the plea and paid a sum as damages he would be criminally prosecuted for defamation of the

plaintiff deceased father. Proceedings for contempt were taken out on this notice. It was held: "interference with the administration of justice is one of the well recognized hence of contempt of Court. In the present case, the notice was undoubtedly intended to vote extra pressure on the defendant in order to compel him under threat of drastic action been taken against him, to withdraw the plea which had been taken by him specifically in the written statement. It amounted to a bad interference with the administration of justice in printing or attempting to prevent the defendant from pressing the plea, which might prove to be of very substantial and legitimate defense; and in that may and indirect attempt was made to exclude that the from the consideration of the Court".

In the course of the judgment, the learned judge relied upon the position in *Smith v. Lakeman*, 1856 26 LJC 305 in which an unsigned letter had been sent by the plaintiff to the defendant with a view to it him in the conduct of his defense. The letter warned the defendant that he had a suit pending in Chancery and should it go up for judgment he would at once be evicted for swindling, perjury and forgery and thus bring disgrace on his family. It was not mention who would start such prosecution but the threatened was that certain legal action in Port would be taken if the matter was pressed to final conclusion. *Stuart. V. C*, in committing the plaintiff for contempt remarked that the letter amounted to a threat for the purpose of intimidating him as a suitor. And therefore whether it had that effect or not, was unquestionably a contempt of Court. It would be clear from the above decisions that a piece of conduct intended or calculated to bring pressure upon a party, which must necessarily include this advocate, not to pursue the matter according to his choice, would amount to an attempt to interfere with the administration of justice. Secondly the threat need not be direct, in the sense that the contempt specialty asserted that he would take such action. It is sufficient if the context showed that the action contemplated was the action of the contender himself. Of similar question arose in *Thirumalaiappa v. Kumaraswami* AIR 1956 Mad 621 . the Madras High Court referred to the leading case of *French v. French* [1824] 1Hog. 134 which formed the basis of the statement on this subject contained in *Oswald* contempt of Court. The passage in *Oswald* part of which has already been quoted runs thus:

"an insult to counsel may be punished as a contempt. All publication which offend against the beginnings of the Court, or are calculated to prejudice the pools of justice, will constitute contempt. Offenses of this nature are of three kinds namely, those which [1] scandalize the Court, or [2] abused the parties concerned in causes there or [3] prejudices mankind against persons before the cause is her. Under the first head fall libels all the integrity of the Court, its judges, officers or proceedings; under the second and third heads anything which ends to excite prejudice against the parties or their litigation, while it is pending. for example, attacks on or abuse calls a party, not amounting to an interference with the course of justice, does not amount to contempt the party being left to his remedy by action". In [1824] 1 Hog 134 an insult was given to a

counsel while he was attending in the masters office, which was situated within the precincts of the Court. It was held : (p.623)

" advocates who appeared for the parties being officers of Court, any abuse or insult or aspirations cast on them, which would interfere with the course of administration of justice must necessarily be held to amount to contempt of Court."

Reference was made by the Madras High Court to the Nagpur case and the observations of Niyogi.. Had been cited with approval. At the same time, the Madras High Court did not take any action in regard to the insult levelled against the counsel, because the incidence took place two days after the termination of the case.

(12) In *Nandlal Bhalla v Kishori Lal* 48 Cri LJ 757 [1925] the inspector of police issue threat and used insulting language towards an advocates. It more held that the advocate threatened in the performance of his duties and though there was no contempt of the Court directly, there was contempt in as much as an officer of the Court such as an advocate appearing in his professional capacity was threatened and insulted while in the performance of his professional duties in the Court.

(13) In this background, let us now examine some of the arguments that were advanced by the defendant contender. The defendant referred to the meaning of the word "threat" contained in the concise oxford dictionary. Several meanings of that word are mentioned. The defendant wanted to rely on the first and second meaning namely "declaration of intention to punish or hurt"; "such menace of bodily hurt or injury to litigation or property as name restraint persons Freedom of action". The third meaning of that word as given is "indication of coming evil" and the fourth meaning is "threat of calamity). Even under the second meaning, it is quite clear that the language in order to amount to a threat need not necessarily be aimed at causing bodily injury or hurt. It is enough if it is calculated to cause injury to the reputation so as to restrain the freedom of action of that person. On examining the words used by the defendant, we feel no hesitation in holding that in effect the words amounted to a threat. As stated above, the question as to whether the words amounted to a threat is not of the essence of the matter. What is of the essence of the matter is the course of conduct adopted by the contemner and is on the whole the conduct has a tendency to interfere with the course of administration of justice or support the course of justice, it would amount to contempt of Court. The defendant also argued that unless the threat is accompanied by a demand that the party or the counsel should not proceed with his action, the threat does not amount to contempt of Court. we do not think that the nexus between the threat and the demand for doing something or missing from doing something need be express or need be expressly stated. It is enough if from the context the line between the two is apparent. In the present case, it is necessary to note that the threat was issued in the presence of the Court and in the course of the arguments before the judge.

It is quite geared that the object of the defendant walk to bring undue pressure upon the advocates not to perform his duties in a fearless and proper manner. As he had already mentioned, the defendant had started a prosecution for defamation against advocate punwani on account of similar statement made by him in the course of his argument in criminal case No.588/S of 1962. he also expressly stated that he would start two or prosecution against the advocate an actually he did start a prosecution on the 9th May 1963 in connection with the arguments advanced by Mr. punwani on 4th March 1963. The applicant conduct of the defendant in so far as it relates to the prosecution having been started against advocate punwani is concerned, would, in our view, be relevant, and taking an overall view of the matter and having regard to the encounter conduct of the defendant and further taking into account the circumstances that the threat was uttered in the course of the argument and in the essence of the judge, we feel no hesitation in holding that the threat or intended to operate upon the mind of the counsel so that he should flinch from performing his duties toward his client.

(14) The defendant relied upon a decision of the Allahabad High Court in Kamta Prasad v, Ram Agyan IL R 1950 All 530 : AIR 1 All 674 . in that case the party to the dispute had made an offer for settlement of the dispute between the parties of off Court and as part of the settlement he suggested that the pending litigation should be withdrawn. He suggested that failing this, he would take legal proceeding open to him under the law. It or held that the party could not be said to be interfering with the course of justice, because all that he suggested was that if the suggested terms where not accepted, he would take such proceedings as where open to them to take in the matter. We are unable to understand how the decision of the Allahabad fide Court, which proceeded on the peculiar facts of that case would in any way held the defendant in the argument which he is advancing. We notice that the Allahabad High Court referred to its earlier decision in Ch. Rajender Singh Vs. Uma Prasad, and expressed is approval of the view taken in that case. It also referred to the decision in [1856] 26 LJ Ch 305 and pointed out that in the circumstances of that case, the threat issued by the party amounted to contend of Court. The Allahabad High Court explained that in the notice merely and offer for compromise off a pending dispute was made and that offeror was coupled with a warning that proceedings which were open in law to the opposite parties would be taken in case the offer was rejected. At pages 541 and 542 of ILR All : at p. 678 of AIR) the learned judge have set out 5 propositions, and it was the contention of the defendant in the present case that these propositions assist in in the argument, which he is advancing. No, the first proposition was based on the decision of [1856] 26 LJ Ch 305 and in our view, the present case would fall within the ambit of the first proposition laid down in the said case. The other propositions enunciated in that case have no relation to the facts of the present case. some of the propositions where not necessary, even for the decision of the case and therefore, will have to be treated as obiter dicta. The facts of the present case are particularly strong, as we have

repeatedly pointed out, because unlike in most of the cases referred to above wherein the threats were given outside the Court in the present case, the threat more given in the presence of the Court and in the course of the hearing of the case and one prosecution for defamation was launched before the threat more administered and attain a second prosecution for defamation against the advocates punwani, for the argument advanced by him in the present case, was actually started by the defendant and in that way the threat was carried out.

(15) It may be pointed out that just as the statement made by advocate punwani namely that the defendant was an ex-convict, was supported by the judgment, a certified copy of which was with him, in the same way, his statement that the defendant was a notorious litigant was also supported from the observation made by Stone C. J in *Emperor v. Jehangir M. Jassawala*, Bom Bom LR 393 : AIR 1948 Bom 6 . it is not necessary to refer to the facts of that case and it is enough to point out that the defendant had started as many as twenty prosecutions against one Jasavalla who'd in his turn had also started some prosecutions against the defendant restraining him from starting subsequent prosecutions against the same party and it went in that collection that the learned Chief Justice observed:

" in him Mr. Vaney case there is no doubt that he is a vexatious litigant". Now to give a threat to an advocate suggesting that prosecution for defamation would be launched against him in respect of the statement made by him against the defendant which there supported by unimpeached evidence, is certainly to pride to bring pressure on the advocate with the object of deterring him from performing his duties towards his client. It is established law that a statement made by an advocate on the basis of instructions taken from the client and after verifying that it is well founded is privileged statement that the defendant had taken the extra ordinary step of launching prosecution for defamation. Again it is in respect of a similar statement made in support of the notice of motion that the defendant brandished a threat of prosecution. Later on he has implemented that and started a second prosecutions. And in his affidavit in this Court, he had repeatedly stated that the statement of the advocate are per se between defamatory. The Court of conduct on which the defendant had launched himself will have to be taken into account for the purpose of finding out whether it was the object of the defendant to pressurize advocate punwani into withdrawing from the case so as to avoid further harassment or, at any rate, to deter him from discharging his duties to his client, honestly, efficiently fearlessly by keeping the sword of prosecution hanging over his head.

(16) The law on this question has been clarified in a recent judgment of the Supreme Court in *Pratap Singh and Another Vs. Gurbaksh Singh*, . in that case, after citing the passage from *Oswald contempt of Court*, which has already been quoted by our above their lordship referred to the facts of the case and observe that although departmental proceeding where target is against the officer in accordance with the direction contained in the Circular still the launching of these

proceedings would have a deterring effect from the officer, who had already filed a suit to ventilate his grievances. And page 1177 there lordship observed: " what would be the effect of these proceedings on the suit which was tending in the Court of the senior subordinate judge, amritsar? from the practical point of view the institution of the proceeding at a time when the suit in the Court of the senior subordinate judge, amritsar, was pending could only be to put pressure on the respondent to withdraw his suit or face the consequences of disciplinary action. His in our opinion undoubtedly amounted to contempt of Court. There are meeting way of obstructing the Court and any conduct by which the course of justice is perverted either by a party or a standard is a contempt, either by a party or thus the use of threats by letter or advise, to a party while his suit is pending; or appearing a party in letters to persons likely to be witnesses in the cause had been held to be contempt." The question is not whether the action in fact interfered, but whether it had a tendency to interfere with the view course of justice. The action taken in his case against the respondent by way of a proceeding against him can in our opinion have only one tendency namely the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that we see the clear and unmistakable tendency of the proceeding taken against the respondent, then there can be no doubt that in law the appellant have been guilty of contempt of Court even though they were merely carrying out the instructions conveyed in the circular letter".

It may be noted that in the above case there where no threats issued by the government. What the government did was that it started department disciplinary action against the respondent, and it was this action which was taken by the government in accordance with a circular issued by it which raised the question as to whether it amounted to contempt. There lordship held that launching of departmental proceeding itself amounted to contempt of Court, because it would exert pressure upon the respondent either to withdraw some the case or at any rate not to press it. There lordship have considered the question from the practical point of view and have considered the possible effect of the institution of the proceedings upon the respondent. In the present case also advocate punwani would be placed on the horns of dilemma either withdraw from the case or face the consequences of multiplicity of criminal proceeding and of these in respect of the statement made by him in the discharge of his duties as a counsel. We therefore seen no hesitation in holding that Judge as her whole the words issued by the defendant and his conduct amounted to contempt of Court.

(17) These may consider one more argument that was urged by the defendant. The defendant contended that since the words which according to the judge amount to contempt were uttered in his presence the matter should be dealt with u/s 228, Indian penal Code, and therefore the High Court cannot take cognizance of that matter in view of the provisions of section 3 [2] of the Contempt of Courts act. Sub section [2] of section 3 of the said act runs thus: " no High Court shall take cognizance of a contempt alleged to have been committed in respect of a

Court subordinate to it where such contempt is an offense punishable under the Indians penal Code". Section 228 Indian penal Code runs thus: "whoever intentionally offered any insult or causes any induction to any public servant while such public servant is sitting in any stage of a judicial proceedings shall be punishment with simple imprisonment for a term which may extend to 6 months or with fine which may extend to 1000 Rs or with both". The offense u/s 228 Indian penal Code can arise only in the case of a public servant while he is sitting in a judicial proceeding. In the present case the threat has not been addressed to the judge but it has been addressed to the advocate. Although the advocate is a part of the machinery of the administration of justice he is not a public servant within the meaning of that expression in section 228. Indian penal Code. It is on this ground that the argument advanced by the defendant should be disposed of. But the matter thus does not rest dead. In order that the proceedings are barred u/s 3 [2] of the Contempt of Courts Act, it is further necessary to establish that the offense committed by the contemner in the presence of the Court is such as to be punished as contempt. It is not enough that the offense is punishable under any other law. This position is clear from the wording of section 3 [2] of the Contempt of Court Act. There is also ample authority in support of the said propositions vide *Bathina Ramakrishna Reddy Vs. The State of Madras*, and *State of Madhya Pradesh Vs. Revashankar*, as against this defendant relied upon a decision of the Allahabad High Court in *Allu v. Emperor* ILR 45 All 272: AIR 1923 All 193. We however notice that the learned judge it was a sufficient of a single judge has not discussed the question at all and since the conclusion is stated without any discussion or reasoning we do not think that conclusion is entitled to much weight. Although the defendant had urged as one of the points in the affidavit that section 3 of the Contempt of Court Act was ultra vires the Constitution in the course of his argument cover he fairly conceded that would not be the position and did not press the matter further.

(18) Before concluding we may refer to 1 more circumstance and it is this. We are told that the bar that when this matter came up before the division bench comprising the Chief Justice and Gokhale J and when it was suggested that the defendant should offer an apology the defendant told the Court that he would offer an apology if he was convinced that he had committed a wrong. The defendant accepted the above statement made by advocate Punwani at the bar. When the matter came out before the division bench comprising Patel and Kantawala JJ the defendant told that he did offer an apology, but he added back the government pleaders as also the plaintiff advocates objected to accepting his apology and requested that the matter should be proceeded with. When the defendant appeared his argument before us he began by saying that as to what would happen if he went to tender an apology. We told him that if he talked it proper he may tender an unconditional apology because after all the apology should be born of repentance or remorse. He also pointed out to them that he could not enter into any kind of statement with the Court. The matter rested at that.

(19) We have now to consider the order of punishment to be imposed on the defendant. We are the learned Assistant Government Pleader act also the defendant as to what would be the punishable punishment for his offense. The learned Assistant Government leader pointed out back his is a third contempt committed by the defendant. The first contempt committed by the defendant appears to have taken place before 1947. Reference to the same is to be had art 395 Bom LR 393 : AIR 1948 Bom 6 where Stone during the course of the narration of the anticipated of the defendant observe: "Mr. Vaney was fined for his contempt of Court". The learned Assistant Government pleader also drew our attention to a recent case, therein the defendant was charged with the same offense by his Court. That was in Misc Civil apply No,188 of 1960 (Bom) that matter came out before the Chief Justice and one of us namely Tambe J on 9th January 1961. The defendant having tendered an unconditional apology the proceedings were dropped. It therefore appears that the defendant has been in the Harvard of making reckless allegations against the Court of the officers of the Court. Ordinary we would have awarded a sentence midst would have deterred him from taking similar action in future. Then we art the defendant as to what he has to say about the punishment he stated that the matter is left in our hands. In the course of his argument the defendant told us that he was suffering from low blood pressure and he found it difficult to argue the matter beyond the first part of the day on the 14th. He therefore requested that the matter should be adjudged to the next day. The defendant also appears to be an old man. In view of his age and the condition of his health we feel averse to sending him to jail. In our view the end of justice would be met if we direct him to pay a fine of Rs thousands. We hope that the imposition of the said punishment which err on the fide of leniency, would have a sobering effect upon the defendant. We also direct that the defendant should pay the costs of these proceedings. We grant two months time from today to the defendant to pay the amount of fine.

(20) Order accordingly.