

(1994) 05 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.C.C. No. 370 of 1992

D.K. Paliwal and Others

APPELLANT

Vs

Editor, Dainik Bhaskar News Paper and Others

RESPONDENT

Date of Decision : 12-05-1994

Acts Referred:

Contempt of Courts Act, 1971 — Section 2, 3, 4, 5, 6
Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 294, 323, 499, 506
Press and Registration of Books Act, 1867 — Section 3
Railways Act, 1989 — Section 145

Citation : (1994) CriLJ 2933

Hon'ble Judges : T.S. Doabia, J; S.K. Dubey, J

Bench : Division Bench

Advocate : J.P. Gupta and K.B. Chaturvedi, for the Appellant; N.K. Modi and U.P.S. Chouhan, for the Respondent

Judgement

T.S. Doabia, J.—Pen may be mightier than sword but its wielder cannot be permitted to cause ripples in the serene and smooth flow of the stream of justice. The goodness of the motive to expose an evil is not the criterion in cases of contempt committed by members of Fourth Estate. Law in its wisdom considers it of greater consequence that the stream of justice be kept clear and pure and it must in the name of public interest and public justice strike a blow on him who challenges its supremacy. Before we proceed to notice the factual and legal position with a view to determine whether the respondents have in fact fouled the very source and the stream we would like to quote what Davis, C.J. said in the leading judgment of Full Bench in *Emperor v. P.C. Tarapore* AIR 1940 Sind, 239 : (1941 (42) Cri LJ 1).

It is immaterial whether the attack on the Judge is with reference to a case about to be tried or actually under trial or recently adjudged : in each instance the tendency is to poison the fountain of justice, to create distrust and destroy the confidence of the people in the Courts which are of prime importance to the

public in the protection of their rights and liberties. And the offence is in no way mitigated when the attack is not upon a particular Judge but upon the Court as a whole, indeed, upon all the judges." The facts are given hereinafter :

2. One R.K. Mishra filed, a complaint before the Railway Magistrate, Gwalior. In this complaint he submitted that on 16th October, 1992 he was standing outside window No. 4 of the railway booking office, Gwalior. He wanted a seat to be reserved. He found that the booking clerk was accommodating persons out of turn and those who were standing in the que were being ignored. According to him he waited for an hour and half. Having lost his patience he lodged his protest with the booking clerk to the effect that the procedure of giving tickets to persons who were not in que is not proper. Shri R.K, Mishra in his complaint goes on to say that this enraged the booking clerk who rushed out and hurled dirty abuses involving his mother and sister. He also gave fist blows and threatened to kill him. It is stated in the complaint that but for the intervention of Railway Protection Force the consequences would have been serious. This complaint is Annexure R XV with the written statement filed by Editor of Dainik Bhaskar. This when rendered in English reads as under:-

To The Railway Magistrate, Railway Station, Gwalior.

Sir, The applicant submits the following application.

On 16th of October, 1992, with a view to get the reservation I came to the Reservation Office, Gwalior at about 12.30 and gave money to the reservation clerk at window No. 4, namely Shri S.S. Sharma accused. He told me to wait. I waited for an hour and half. Shri Sharma continued to talk with persons who were standing inside and was making the reservation from inside for those persons.

(2) That, I made a complaint to the effect that I have been standing in the que for quite sometime and that "you are making reservations from inside the window and that you are not attending me" eventhough I have been standing for more than an hour and half outside the window. He started misbehaving with me and when I protested he hurled abuses involving my mother and sister and told me that he can set me right with one fist blow. So saying he rushed towards me. He gave a fist blow and abused me and told me that he would kill me.

(3) That, I started shouting out of fear. I was rescued by a constable of Railway Protection Force namely; Shri B.C. Sharma. A homeguard Shri Diwansingh also came there. Several other persons collected there and there was a commotion. I was shaken and left the place out of fear. The aforementioned clerk Shri Sharma gave me a threat that he would, eliminate me.

(4) That, I wanted to lodge a complaint with the police post, Railway Protection force but I was told by the Head Clerk that the Daroga has gone out. For this reasons I have come to seek protection of this Court.

It is, therefore, prayed that the accused may be punished and appropriate action

may be taken.

3. On the above complaint the procedure applicable to complaint cases was followed by the Railway Magistrate. The Railway Magistrate formed a view that offences under Sections 294, 323 and 506 of the Indian Penal Code read with 145 of the Railway Act were prima facie made out. Accordingly he issued bailable warrants for a sum of Rs. 1,000/- for securing the presence of Shri S.S. Sharma, Booking Clerk on 16th of October, 1992. This order was passed u/s 200 of the Code of Criminal Procedure, 1973.

4. The further factual position is that at about 5.45 p.m. Shri Benjamin Jacob, Station Superintendent, Gwalior presented an application before the Railway Magistrate. In this application a prayer was made that bailable warrant issued against Shri S.S. Sharma may be stayed. It was stated that the issuance of warrants against the booking clerk has given rise to a law and order situation. It was pointed out that the movement of certain incoming and outgoing trains is being obstructed. Even though the Railway Magistrate was of the view that it was hardly a ground to postpone the execution of the warrant yet keeping in view the situation he deferred the execution of the warrant for a period of eight days. The aforementioned events led to a news item being published in the Dainik Lokgatha on 17th October, 1992. The heading was printed in bold letters. It was mentioned that trains were stopped on account of high handedness of the Railway Magistrate. The news item in Hindi reads as under:

(Matter in vernacular omitted.... Ed.)

5. The English translation of News published Dainik Lokgatha dated 17th October, 1992 is as under:-

Chakka jam for 3 hrs by railway employees in protest against "(ZAIADTEE) high-handedness of railway Magistrate

(Town Correspondent)

Railway traffic at Gwalior remained standstill for 3 hours on account of railway employees having suddenly gone on leave on Friday evening. Railway employees were demonstrating to protest against high-handedness (ZAIADTEE) of railway Magistrate. Railway Magistrate had issued a warrant against the booking clerk because he had told the peon (Chaprasi) of the Magistrate that if he wants a ticket he should stand in the queue.

According to the information received peon (Chaprasi) of Railway Magistrate A.K. Shrivastava reached the booking window at about noon for obtaining a ticket. Noticing a crowd on the window, the peon (Chaprasi) went inside the booking office and asked for a ticket. Railway booking clerk S.S. Sharma told him to stand in the queue for getting the ticket. The peon (chaprasi) came back and narrated this to the Magistrate Shri Shrivastava who treating this as a personal affront issued warrant against the booking clerk. When police reached to arrest Mr. S.S. Sharma with a view to execute the warrants, railway employees became

agitated and they stopped the work. To support this, booking clerks and other employees of the railway station resorted to lightening strike and locked offices and lay on railway tracks in front of Taj Express which was to go to Delhi.

On receipt of information, leaders of the railway labour union reached the spot and stopped trains going to Delhi and Bombay. Agitated railway employees were shouting slogans against the Magistrate to the effect "HAI HAI MURDABAD AND RAILWAY MAGISTRATE KAISA HAI KATH KAI ULLU JAISA HAI" Besides Taj Express which was to go to Delhi, Shuttle train going to Agra and Utkal Express were also stopped. Not only this, during this period, none of the goods trains were allowed to move and as a result all the routes were closed.

On coming to know the real facts, railway passengers sided with the railway employees and resorted to raising slogans. Railway employees demanded cancellation of warrant. After complete dislocation of transport for 3 hours, at 7 p.m. Area Railway Manager, M.P. Mehta and Station Superintendent Benjamin Jacob reached the Court of Railway Magistrate along with union leaders. The traffic could be resumed only after the Magistrate had suspended the execution of the warrant. The first train to leave the station was Taj Express. It left after 3 hours.

During Chakka jam, Shri B.I. Jwardar of National Railway Mazdoor Union levelled a charge against the Railway Magistrate that this is not the first incident of his high-handedness. Earlier also, he got a railway employee arrested. So much so that he has forcibly occupied a bungalow earmarked for Station Superintendent.

On the other hand Magistrate A.K. Shrivastava conveyed to the correspondent that as a complaint was filed before him he has issued bailable warrant against Mr. S.S. Sharma. But in public interest on the prayer of railway officers he has suspended the issuance of the warrant. If both the parties do not compromise then booking clerk Mr. S.S. Sharma would be arrested and would be prosecuted.

Despite compromise entered by leaders of National Rail Mazdoor Union, railway employees were seen dissatisfied. According to them, there was no justification in suspending the issuance of the warrant, the only proper compromise was to set aside the warrant. According to the employees, the innocent booking clerk can again be arrested next day.

Chakkajam was headed by K.M. Narayan, B.I. Jwardar, A.S. Shan, Attarsingh, T.C. Sharma, R.C. Pathak, Chaman Rajja and M.R.K. S.K. Ashok Mishra, Shabbir Khan, Umesh Agarwal and others.

6. Though the incident at the railway station took place on 16th October, 1992 and was published in certain other newspapers issued on 17th October, 1992, the editor of local daily, published from Gwalior namely Dainik Bhaskar brought out an editorial on 20th October, 1992. The heading given to the editorial was "Beza Harkat" (unbecoming action). The purport of this editorial was to point out that the action of the Railway Magistrate in taking cognizance of the complaint on the

very date it was filed was an unnatural event and that the fact that thousands of other cases are pending all over the country and that no action is being taken on them was also highlighted to show that the Railway Magistrate did act with ulterior motive. An impression was conveyed that the fault lay with Railway Magistrate.

7. Before noticing the contents of the editorial it would be apt to note the news item which appeared in Dainik Bhaskar in the issue of 17th October, 1992. The copy of this in Hindi has been placed on the record as Annexure R/14. This news item is milder in tone and gives a story which is entirely different from that given in the news columns of Dainik Lokgatha. When translated in English it reads as under:-

On account of the behaviour of the Railway angry railway employees stopped rail traffic (Town Correspondent).

Gwalior 16th October, 1992.

On the local railway station as a result of a dispute the railway employees put a blockade on rail traffic. On account of this for almost 3 hours rail traffic came to a standstill. No work was transacted at the railway booking office, parcel, goods and stores and in enquiry office.

According to informed sources a dispute had arisen between the booking clerk S.S. Sharma and D.C. Sharma, Inspector of Central Reserve Police Force with regard to getting some reservation done. It is disclosed that Shri D.C. Sharma with a view to get reservation in Andhra Pradesh Express entered into the cabin of the booking clerk and the booking clerk asked him to seek reservation from outside. For this small matter the concerned Inspector lodged a complaint with Shri Shrivastava, Railway Magistrate, on this complaint the Railway Magistrate issued warrants of arrest against the booking clerk. When the jawans of Railway Protection Force came to arrest the booking clerk the railway employees exhibiting their resentment stopped the work and collected themselves on the Rail tracks. On account of the railway employees coming on the rail tracks the Taj Express which was to leave Gwalior to Delhi remained detained at platform No. 3 Shatabdi Express which was to leave Bhopal for Delhi was also delayed by 2 hours. Janata Express was detained at Shitoli and Utkal Express remained standing at the outer signal. Morena passenger train as well remained standing at platform No. 2. When the rail traffic remained suspended for 3 hours there was a discussion between the leaders of Railway Employees Mazdoor Union and the superior hierarchy of the Railways Officers. After receiving an assurance that action would be taken against the guilty, the railway employees withdrew their agitation. According to another report on the previous day, the dead body of an old man was recovered from Karnataka Express.

8 The Hindi version is as under :-

(Matter in Vernacular, omitted.... Ed.)

9. The Editorial which was published in the issue of 20th October, 1992 may now be examined. This was published after four days of matured deliberation. When rendered in English it reads as under;-

Unbecoming action (BEZA HARKAT)

On the basis of a complaint a Railway Magistrate demonstrating unusual and unnecessary alertness issued a warrant against a railway Babu. Against Um improper action (Avanachint) of the Railway Magistrate the Railway Employees got enraged and stopped all railway traffic. They resorted to dharna at the railway track and shouted slogans. The matter subsided when the concerned Magistrate expressed regret for this uncalled for smartness. Consequences of this dispute between the Magistrate and the employees had to be borne by Thousands of innocent railway passenger who had nothing to do with this incident. Their only fault was that they were travelling in the unfortunate trains passing through Gwalior.

This is not a big incident in itself. The tragedy of this unfortunate country is that the public property worth crores is destroyed just for nothing and thousands of people are put in trouble. Can an explanation be had from the said Magistrate and hundreds of railway employees as to, for what fault the (reason) innocent rail passengers were subjected to punishment. Crores of cases are pending in the courts for decades and countless people have gone to God in Waiting endlessly in vain for justice. In the jails, lacs of people are confined waiting for decision in their cases. In this atmosphere of injustice it is astonishing that a Magistrate had issued warrant against a railway employee within half an hour of filing of the complaint. In reply the railway employees took out their anger not against the Magistrate but against the helpless passengers. The reasons are clear: There are several unions of the employees who are ready to agitate the moment some "issue arises" but how could the travelling public form a union. The organised sector has a right of doing injustice simply because unorganised innocent persons do not have any organised body. Strong action should be taken against the said Magistrate who has used his power to satisfy his ego and Fines should be realised from every railway employee who stopped the trains on the same parity which becomes due against a person who stopped the train by pulling the chain. The said Magistrate and the employees should realise as to what is the consequential punishment of improper use of powers and organised strength."

(Emphasis supplied)

10. The Hindi version as printed is as under:-

(Matter in vernacular, omitted.... Ed.)

11. The above publication in the news papers led the judicial officers stationed at Gwalior to submit a petition in the Registry of this Court. It was mentioned therein that the act of the reporting news by the editors and in bringing out editorials involving the Railway Magistrate falls within the ambit of criminal

contempt and, therefore, such action as may be deemed proper be taken against the editors of Dainik Lokgatha and Dainik Bhaskar.

12. A Division Bench of this Court felt satisfied that a case was made out and the respondents had prima facie committed a criminal contempt. The Division Bench accordingly passed the following order on 23rd October, 1992.

Thirteen Judicial Officers, posted at Gwalior have moved an application addressed to the Registrar, M.P. High Court, Jabalpur with a copy to the Administrative Judge of this Bench Registry along with cutting of the publications made in "Dainik Lokgatha" dated 17th October, 1992 and "Dainik Bhaskar" dated 20th October, 1992 and also in other news papers. On that application, the Administrative Judge has directed the matter to be placed before appropriate Bench and that is how the matter has been placed before us.

Some of the Judicial Officers, namely, I.S. Shrivastava, D.K. Paliwal, H.U. Ahmad, Rajiv Sharma, Alok Verma, C.P. Kulshreshtha, including the Railway Magistrate, A.K. Shrivastava, who are on half a day leave and are present in Court, submitted that the publications made are grossly contemptuous. Their application may be treated as information placed before this Court to take "suo motu" action.

We have gone through the publications and are satisfied that "suo motu" cognizance for taking action for criminal contempt is warranted against two news papers, namely Dainik Lokgatha and Dainik Bhaskar. Notices be issued to the Advocate General at Jabalpur as well as State of Madhya Pradesh. Notices will be issued in Form No. 1 under the Contempt of Courts Act, to the contemnors, i.e., the Editors of "Dainik Lokgatha" and "Dainik Bhaskar" with a direction to remain present personally in this Court. Along with the notice copy of this order, application addressed to the Registrar at Main Seat and two publications, i.e., one of "Dainik Lokgatha" and another of "Dainik Bhaskar" be sent.

List the matter on. 12th November, 1993.

13. The contemnors put in appearance and filed their replies:

14. Pratibha Singh Rathore filed the reply on behalf of Dainik Lokgatha on 11th of February, 1994. The stand taken by her was that whatever events had taken place were truthfully reported. A plea has been taken that Ramesh Singh Rajput was the local correspondent and whatever happened at the scene was reported by this correspondent and it was printed and published by the newspaper. A plea has been taken that the Editor is not personally responsible because she is not present at the scene of occurrence. According to her whatever transpired was reported by the correspondent and that was duly published by the newspaper. She further took the plea that in case it is found that the publication made is incorrect then the person who reported the matter may be asked to put forward his plea. It was further pointed out that so far as the contemnor No. 2 is concerned, she is a lady. It was stated that in addition to looking after the

editorial work, she is a house wife and it is not possible for her to supervise and screen each and every item which is published in the news. The responsibility for this falls on the printer and publisher namely Santosh Singh Rathore who is said to be the person supervising the publication side. It was further pointed out that it is not the duty of the printer or publisher to probe into the truth or otherwise of the information and in any case it was stated that the action of the Railway Magistrate was not in furtherance of his judicial function and if some act is committed by the Railway Magistrate in his personal capacity then the Railway Magistrate is definitely answerable for this. An affidavit of Ramesh Singh Rajput was also made part of the reply. In this affidavit, he has stated that a situation had arisen on account of the warrant issued by the Railway Magistrate and he has testified to the effect that at the railway station whatever happened was truthfully reported by him.

15. A further reply has been filed by Smt. Pratibha Singh Rathore, Editor of Dainik Lokgatha. This is dated 1st March, 1994. In this it has been stated that the then Railway Magistrate was in the habit of obtaining reservations from various persons from time to time by using his influence on out of turn basis. Reliance has also been placed on newstems which appeared in other newspapers. Inter se communications between the railway officials has also been placed on the record. The communication addressed to the High Court of Jabalpur on the administrative side has also been made part of the record. It is ultimately stated that the incident as actually happened was truthfully reported.

16. So far as the Editor of Dainik Bhaskar is concerned, in his reply dated 14th December, 1992, he has stated that he has a high regard for the judiciary and that he has written articles earlier also dealing with the judiciary and the judicial system. He has made reference to number of editorials written by him in para 2 of his reply. Some of these are as under:-

- (i) The question is of the respect of the High Court.
- (ii) Temple of justice and communalism.
- (iii) Nyay Mandir v. Vote Mandir.
- (iv) Supreme Court ke Sarabniyaa Kadam.
- (v) Nyay Mandiron ki Garima Rahe.
- (vi) Fasivadi Soch.
- (vii) Insaf ke Mandir ki Pavitrata.
- (viii) Insaf ki Kursi Khatra Main; and
- (ix) Sarvochha to Adalat Hi Rahe.

17. He has further stated that on 16th of October, 1992, railway traffic at Gwalior came to a stand still. Various trains such as Taj Express, Gwalior-Agra Passenger, Utkal Express, Shatabdi Express and various goods trains were stopped at the

Gwalior station. Enquiries were made in this regard and it transpired that Presiding Officer of the Railway Court Shri A.K. Shrivastava had sent one. D.C. Sharma for getting a reservation in the Andhra Pradesh Express. It was further pointed out that Shri D.C. Sharma wanted to get the reservation of the ticket out of turn but the booking clerk did not accommodate him. It was this reason which prompted the filing of the complaint by Shri D.C. Sharma and the Warrants were issued. This contemner further goes on to say that this newsitem was published in several other newspapers such as Dainik Acharan, Dainik Aaj, Dainik Lokgatha and Dainik Swadesh. Cuttings from newspapers are Annexure Rule 10 to Rule 14. It is stated that as the authenticity of these newsitems was not contradicted these were taken as gospel truth. According to this contemner, the editorials are always based on newsitems. As the matter related to judiciary and as there was no contradiction regarding the news published in various newspapers, he, after giving complete thought published the editorial regarding the conduct of Shri A.K. Shrivastava after four days. The plea taken by this contemner is that the editorial regarding the conduct of Shri A.K. Shrivastava is with regard to his personal behaviour and whatever was published was based on true facts and was without any mala fide intention. In para 6 of the reply it is stated that the editorial published is supported from the fact that a complaint was filed on 16th October, 1992. The statement of the complainant was recorded on that very day and the warrant was issued on the same day. From this, an inference was drawn that everything was not above board and the quick step taken by the Magistrate in entertaining the complaint and issuing the warrant seemed unnatural, to the editor of Dainik Bhaskar. In the reply he took a positive stand that whatever was stated in the editorial was true. The fact that the Railway Magistrate had shown restraint and had postponed the execution of the warrant was misunderstood by the contemner and the thought that this is a weak point and tried to highlight the same. Even though it was not part of the defence to be taken, he has touched the issue regarding the accountability of the judiciary and has stated that the administration of justice and Judges are open to public criticism and public scrutiny. According to him, the judges are accountable to the society and the judiciary cannot be immune from criticism.

18. Another fact which requires to be noticed is that the Editor of Dainik Bhaskar has placed on record the copies of newsitem which appeared in different papers. In "Acharan" of 17th of October, 1992 the heading given is "The railway employees stopped the trains." In this newsitem there is no mention of the fact that any peon of the Railway Magistrate went to the booking clerk to get the reservation done. Again Annexure R/ 11 is a newsitem published in daily "Aaj. The heading given in this is "Railway employees resorted to war like protest against the action of men of Railway Protection Force". Again the story given in this is entirely different. A newsitem was also published in Dainik "Swadesh" wherein a different story has been printed. The above facts have been mentioned as these would be relevant for the purpose of examining as to whether the reports published in the daily "Lokgatha" and "Dainik Bhaskar" editorials are a

fair and accurate version of the incident which took place and whether it falls within the exceptions carved out under the Contempt Courts Act, 1971.

19. An additional affidavit dated 25th March, 1994 was also filed by Editor of Dainik Bhaskar in which the plea taken is that whatever was mentioned in the editorial was not in regard to any pending proceedings but it was a reflection which was personal to Shri A. K. Shrivastava, Railway Magistrate. In the additional affidavit it has been stated :-

Moreover, the published matter is not a news but the view which is published in the editorial. Most of the part of it is fair and accurate report of the judicial proceeding and the allegations which has been argued to be contemptuous is against Shri A.K. Shrivastava, personally. After the incidence, Shri A.K. Shrivastava the then Railway Magistrate was transferred.

20. It may be mentioned that the stand taken is that the Railway Magistrate was transferred because of this incident is not correct. He was transferred in normal course and was sent on promotion.

21. From the narration of facts given above it becomes apparent:

(i) That, the news item in "Lokgatha" gives a version which does not tally with the version given in Dainik Bhaskar or any other news paper;

(ii) that, the news item in Dainik Bhaskar is in milder tone and places the blame on an Inspector of Central Reserve Police Force but the editorial gives an entirely different stance to the entire episode; and

(iii) that, the reporting in other news papers is different and it has been published under different headings.

22. It further becomes apparent:

(i) that, railway magistrate had taken cognizance of a complaint filed by one R.K. Mishra;

(ii) that, after following procedure given in Section 200 of the Code of Criminal Procedure, 1973, bailable warrants were issued with a view to secure the presence of the booking clerk for 6th of Novemebr, 1992;

(iii) that, a situation had arisen on 16th of October, 1992 which led to the blockade of rail traffic;

(iv) that, the railway magistrate stayed execution of warrant till 24th of October, 1992;

(v) that, news item was published in "Lokgatha" by which an impression was created that the author of the complaint was in fact the railway magistrate and this has been persued with a view to seek his personal vendetta against the booking clerk;

(vi) that, news items appeared in Dainik Bhaskar and other news papers giving different versions;

(vii) that, an editorial was published by the editor of Dainik Bhaskar on 20th of October, 1992; and

(viii) that, it has been indicated in the news item that the railway magistrate had expressed regrets;

23. Shri J. P. Gupta, Senior Advocate has canvassed the proposition that the respondents are guilty of having committed contempt of Court. He has taken us through the news item and the editorial. He has also referred to the various provisions of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act"). The provisions on which Shri J. P. Gupta has placed reliance may be noticed. These are Section 2(c) which deals with the definition of "Criminal Contempt". Reference has also been made to Section 3 which deals with certain innocent publication and distribution of matter which may not be contempt. As to when a judicial proceeding can be said to be pending has also been pointed out by reading out the explanation appearing towards the end of Section 3 of the Act. He has also brought to our notice Section 4 which is to the effect that fair and accurate report of judicial proceedings is permissible. Reference has again been made to Section 5 which is to the effect that fair criticism of any judicial act is not contempt. Reference has also been made to Section 6 with a view to emphasise that if a complaint is made to the authorities mentioned in Section 6 then this complaint would not fall within the definition of term contempt".

24. The provisions of the Act which are relevant for the purpose of this case may be noticed as under:-

2(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

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

3. Innocent publication and distribution of matter not contempt; - (1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words spoken or written or by signs or by visible representation or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceedings have pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in subsection (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

(3) A person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in Sub-section (1), if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid

Provided that this Sub-section shall not apply in respect of the distribution of-

(i) any publication which is a book or paper printed or published otherwise than in conformity with the rules contained in Section 3 of the Press and Registration of Books Act, 1867;

(ii) any publication which is a newspaper published otherwise than in conformity with the rules contained in Section 5 of the said Act.

Explanation. - For the purposes of this Section, a judicial proceeding - (a) is said to be pending -

(A) in the case of a civil proceeding, when it is instituted by the filing of a plaint or otherwise;

(B) in the case of a criminal proceeding under the Code of Criminal Procedure, 1898, or any other law -

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceeding, shall be deemed to continue to be pending until it is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired;

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

4. Fair and accurate report of judicial proceeding not contempt. - Subject to the provisions contained in Section 7, a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.

5. Fair criticism of judicial act is not contempt. - A person shall not be guilty of

contempt of Court for publishing any fair comment on the merits of any case which has been heard and finally decided.

6. Complaint against presiding officers of subordinate courts when not contempt.
- A person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court to -

(a) any other subordinate court, or

(b) the High Court,

to which it is subordinate.

Explanation. - In this section, "subordinate court" means any court subordinate to a High Court.

25. The counsel for the contemnors have submitted that by publishing the newsitem the editors of the two newspapers or by bringing out an editorial they have not committed any act which may fall within the ambit of the term "criminal contempt". It is their stand that they have only brought out the real state of affairs and nothing has been stated with a view to scandalise the court or the system of administration of justice. It has been highlighted that whatever has been stated is a criticism of the Railways Magistrate in his personal capacity. It has also been stressed that the contemnors possess such a right and this right has been exercised by them in accordance with law. They are thus taking shelter behind a constitutional immunity visa-vis freedom of speech which includes freedom of press also.

26. It would not be out of place to mention that after the arguments were concluded, the counsel appearing for Editor of Dainik Bhaskar made a request that his client also want to address the Court. We allowed him to do so. He read out a prepared speech, the purport whereof was that the publication of the newsitem or the editorial did not in any way violate any norm but was done in the exercise of the right of freedom of speech and expression.

27. Question which require to be determined are:

(i) What is the scope and content of the freedom of press and whether the action of the respondents is protected by any constitutional immunity?

(ii) Whether the publication in the newspaper in form of news and the editorials are with regard to a matters pending in a Court of law?

(iii) Whether the publication in the newspaper in the form of news or editorials scandalises or tend to scandalise the Court and whether these interfere and obstruct the administration of justice?

(iv) Whether the publications in the newspaper of the news or editorial is personal to the Railway Magistrate and as such are immune from action under the Contempt of Courts Act ?

(v) Whether the defence taken by the contemnors that the publication is a fair and accurate report is valid defence ?

(vi) Whether the plea taken that responsibility lies on the printer and on the news correspondent is a plausible defence?

28. As the contemnors have raised an argument that they enjoy a right to freedom of speech and expression and their action is protected by this constitutional guarantee it would be relevant to find out the content and scope of this right.

29. The privileges which the press in India enjoys are the same as in England. In England freedom of speech and liberty of the press were secured after a bitter struggle between the public and the Crown. May's Constitutional History of England Vol. II page 240-41 makes a vivid reference to this struggle and a reference from this books is illustrative and reads as under :-

Nothing marked more deeply the tyrannical spirit of the first two Stuarts than their barbarous persecutions of authority, printers and the importers of prohibited books": nothing illustrated more signally the love of freedom than the heroic courage and constancy with which those persecutions were borne.

30. It may be seen that liberty of press in England was interdicted and even news could not be published without licence. It was in 1865 when the House of Commons refused to renew the Licensing Act and the lapse of that Act marked the triumph of the press, for thenceforth the liberty of press was recognised, although it was at the peril of rigorous application of the law of libel. William Blackstone in his 4th Book of Commentaries published in 1769 at page 145 says :

The liberty of the press is indeed essential to the nature of a free State; but this consists in laying no previous restraints upon publication, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to say what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the Press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity.

31. The contents of freedom of press is the same even in the United States of America. Thus: In Toledo Newspaper Com. v. United States of America (1918) 247 US 402 (B), Chief Justice White delivering the opinion of the Court, observed at page 410 :

The safeguarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests, and that freedom, therefore, does not and cannot be held to include the right virtually to destroy such institutions. It suffices to say that, however complete is the right of the press to state public things and discuss them, that right as every other right enjoyed in human society, is subject to the restraining which separates right from wrong doing.

It will also be instructive to refer to the observations of Frankfurter, J. of United States of America in *Pennekamp v. State of Florida* (1946) 90 Law Ed 1295

The press does have the right which is its professional function, to criticise and to advocate. The whole gamut of public affairs is the domain for fearless and critical comment, and not least the administration of justice. But the public function which belongs to the press makes it an obligation of honour to exercise this function only with the fullest sense of responsibility. Without such a lively sense of responsibility a free press may readily become a powerful instrument of injustice. It should not and may not attempt to influence Judges or juries before they have made up their minds on pending controversies. Such a restriction, which merely bars the operation of extraneous influence specifically directed to a concrete case, in no wise curtails the fullest discussion of public issues generally.

31A. In short, as regards citizens running a newspaper the position under the Indian Constitution is the same as it was when the Judicial Committee decided the case of *Arnold v. Emperor* AIR 1914 PC 116 : (1914 (15) Cri LJ 309). this was a case of an appeal by the editor of a newspaper against the conviction for criminal libel u/s 499 of the Indian Penal Code. Lord Shaw of Dunfermline in delivering the judgment of the Privy Council made the following observations p. 169 (of AIR) : (at p. 322 of Cri LJ).

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

Article 19(1)(a) guarantees all citizens freedom of speech and expression. Our Constitution does not specifically or separately provide liberty of the press. Thus the press enjoys the same freedom under the Constitution which it enjoyed earlier on 26th of January, 1950. The Supreme Court in the case of *Romesh Thappar Vs. The State of Madras*, observed that:

Freedom of speech and expression includes the freedom of propagation of ideas and that freedom is ensured by freedom of circulation.

32. See also *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, wherein it was held that "the liberty of the press in India stands on no higher footing than the freedom of speech of citizens."

33. The press as such can claim no special privilege. The Courts have negated the claim of special privilege of the press as often as it has been asserted. What

was said by Lord Mansfield in *R. v. Dean of St. Asaph* (1784) 3 TR 431 (AL) holds good even today. He said

The liberty of the press consists in printing without any previous licence subject to the consequences of law.

34. Thus it is appertent that the content and scope of the freedom, which the contemnors possess is no better than the right possessed by a citizen of this Republic. If something is printed which is contrary to any provisions of the law then its author must face the consequences.

35. When a case can be said to be pending in a Court of law? Explanation appended to Section 3 of the Act provides the answer. On a reading the explanation the conclusion is unescapable that a criminal case was pending on 17th of October, 1992. As noticed earlier this was on the basis of a complaint filed on 16th October, 1992. The Railway Magistrate took cognisance of the same and issued bailable warrants for 6th November, 1992, Even though the operation of the warrant was suspended till 24th of October, 1992, the fact remains that criminal proceedings were pending on the date the news item and an editorial were published. If such a publication is neither innocent nor a fair comment but is an attempt to scandalise the Court then a case for taking action under the Act would be made out. Only a fair and accurate report can be published with regard to a judicial proceeding. Any act done or any publication which is neither innocent nor fair comment with regard to a pending judicial proceedings would attract provisions of the Act.

35A. In case of a criminal trial proceedings will be deemed to be pending when cognisance is taken by the Court. As a matter of fact, the Full Bench decisions of Madras and Lahore High Courts go a step further and are to the effect that even when proceedings are imminent but have not yet been launched, even in those cases a publication may attract an action under Contempt jurisdiction. See: *Tuljaram Rao v. Governor of Reserve Bank of India* AIR 1939 Mad 257 : (1939 (40) Cri LJ 533) and *In re: Subrahmanyam, Editor, Tribune* AIR 1943 Lah. 329. The decision in both the cases rested on the two English cases, *R. v. Parke* (1903) 2 KB 432 and *R. v. Daily Mirror, Ex parte Smith*, (1927) 1 KB 845.

36. The same view was expressed in *Superintendent and Remembrancer of Legal Affairs Vs. Murali Manohar Prasad*,

37. The case with which we are concerned here is worse still inasmuch as a proceeding was actually pending in the Court of the Railway Magistrate when the publication of the offending article took place.

38. Can a newspaper man hold a parallel trial? The judicial view is settled that no; newspaperman can assume the role of an investigator in a pending case, as any such attempt,, would tend to influence the mind of the Court regarding the merits of this case. A trial by newspaper cannot be permitted as it would endanger the rights of all parties who, appear before the Courts. The power of

the Courts to punish the author or any publication calculated to obstruct and pervert the due course of justice and law is not restricted by, the constitutional guarantee of liberty of the press. Liberty of the press is subordinate to the independence of the judiciary and the proper administration of justice. We are conscious of the fact that liberty of the press is equally important but this cannot be permitted to subvert usefulness and efficiency of the Courts. Lord Denning, M.R. in *Morris v. The Crown Office* (1970) 1 All ER 1079, 1081, said that "the course of justice must not be deflected or interfered with. Those who strike at it, strike at the very foundation of our society." Thus, the liberty of the press would cease where a further exercise thereof would impede, embarrass or obstruct the court in discharge of its duties. A publisher cannot be permitted to usurp the functions of the Court or to take shelter behind the plea of the liberty of the press to express his opinion on the merits of the cases which are at trial. Parties have a constitutional right to have their cases tried fairly in Court by an impartial tribunal uninfluenced by newspaper dictation or popular clamour. It is contempt of court to publish during the pendency of a cause matters which may obstruct the due course of justice. It may further be seen that the liberty of citizens facing a criminal charge run risk of being jeopardised by a parallel trial which may be conducted by newsmen of a newspaper. The duty of a journalist is to report and not adjudicate upon the cause. The press cannot be permitted to corrode or influence the decision of a particular case.

39. In the present case it is apparent that the Editor of Dainik Lokgatha held a parallel trial. He came to the conclusion that the person at fault was the Magistrate as his peon was denied reservation out of turn. From where he got this material cannot be deciphered but the fact remains that the story given in the shape of a parallel version was incorrect. The version given in the newspaper of the editorial of Dainik Bhaskar is again based on fiction rather than reality. From where he got the idea that Magistrate had offered regrets is again not clear. He has also come to the conclusion that the Magistrate's action in issuing warrants of arrest was not called for. This parallel trial cannot be permitted.

40. One of the defences taken by the contemners is that the publication is fair and accurate report. A fair statement of what takes place in a Court of justice is privileged and "it is a most beneficial law that it should be so, as the public have a great interest in knowing what occurs there and the inconveniences which can arise from such a publication are infinitesimally small in comparison with the benefits which result from it".

41. Lord Fitz. Gerald in *Macdougall v. Thomas Knight* (1889) 14 AC 194 observed : -

The privilege which attaches to the publication of the proceedings of Courts of justice rests on the foundation that the law of this land is administered publicly and openly, and its administration is at once subject to and protected by, the full and searching light of public opinion and public criticism. Openness and publicity of our Courts forms one of the excellences of our practice of the law, and admits

of exception only in rare cases of such character that public morality requires that the proceedings should be in camera wholly or in part.

A publication in newspapers of reports of proceedings before a Court of law must be true and accurate and that it must be without malice. This is made amply clear by the decision in the Court of Appeal in *Kimber v. The Press Association Ltd.* (1893) 1 QB 65 : 62 LJ QB 152, which expressly deals with publication of proceedings in a pending case. The privilege quite obviously does not extend to the publication of false opinion on the facts of the case which may operate prejudicially to a party to the proceedings before the Court. Indeed, the law attaches the utmost importance to ensure a fair trial of a cause before a Court of law. The aim of the law relating to contempt is to secure this. Indeed, Courts of law exist for the purpose of adjudicating upon the rights of litigants and it is important that nothing should be allowed to be said or done which would obstruct a litigant in prosecuting his claim or defence. It would, therefore, seem that the right of a newspaper even to publish a faithful account of the proceeding before the Court of law is subject to the condition that the publication does not tend to prejudice materially the fair trial of a case before a Court of law.

42. Let us examine the facts of this case. The very fact that different versions have been given by different newspapers is in itself an indication of the fact that what has been published is not a fair and accurate report. As a matter of fact what was accurate was that a complaint was filed by one. R.K. Mishra and on the basis of that complaint action was taken by the Railway Magistrate. This real fact has neither been adverted to in the news item nor in the editorial. What has been sought to be highlighted is that the Railway Magistrate took cognizance of a matter when his peon was slighted. This is not based on facts but is purely a figment of imagination and as such this will not be a fair and accurate report. It has again been said that this is a fair criticism of a judicial act. We fail to see as to how this can be said to be a fair criticism. In the newspaper it has again been suggested that the Magistrate has been acting in such a manner earlier also. It is stated that this is not the first instance where the Magistrate acted in this manner. It has again been highlighted that this Magistrate had occupied the house which, was not meant for his residence. A reading of the newsitem makes no reference to the complaint made by Shri R.K. Mishra and the story put forward is that action was taken because the peon of the Railway Magistrate was not accommodated from inside the cabin. By publishing the newsitem and bringing the editorial, the contemnors have not only scandalised the Court but have also held a paralled enquiry and thus interfered with the due course of administration of justice.

43. Newsitem in Dainik Lokgatha also interferes- with the due administration of justice. In the newsitem a positive fact has been recorded which is to the effect that the Railway Magistrate issued warrants against the booking clerk for the simple reason that he had asked the peon of the Magistrate to come and stand in the queue for getting a ticket. The defence that this is a fair criticism is again

not borne out. Serious insinuations have been made in the news as well as in the editorial. The language used in the newsitem by Editor of Dainik Lokgatha by comparing the Magistrate to KATH KA ULLU JAISA HAI cannot by any stretch of imagination be said to be a fair criticism. Again commenting upon the action of the Magistrate in taking action on the complaint on the very day it was filed with him is again not a fair criticism.

44. Let us examine the editorial. The very title of the editorial published in Dainik Bhaskar suggests that the intention of the editor was to make a sensational and scandalising comment. The title is "Basa Harkat" (Unbecoming action). The editorial makes a comment against the Magistrate the purpose whereof is that in an ordinary matter emergent steps were taken by him. It is suggested that this was done to satisfy his ego (SANAK). It is expressly mentioned that the Railway Magistrate expressed his regrets on the action taken by him. The working used are "MA MLA TAB SHANT HUA JAB SAMHANDIT MAGISTRATE NE APANI BEGARURI CHUSTI PURI KHED VYAKTH KIYA" (Peace was resorted when the concerned Magistrate expressed his regrets for his uncalled for smartness). These comments are neither fair nor accurate. The record of the case does not indicate that the concerned Magistrate had expressed regrets in this matter. The impression given is that the complaint was without any substance and the editor of the newspaper chose to hold a parallel trial much before the trial could be completed by a Court of law. The editorial further goes on to say that it is unfortunate that such things are being faced by this nation. The editorial questions the concerned Magistrate in issuing the warrants and holds him responsible for loss and inconvenience caused to the railway passengers. Again the action of the Court in taking steps for proceeding on the very day when the complaint was filed has again been questioned. The editorial goes on to say that stringent action should be taken against the Magistrate who set the process of issuing bailable, warrants in motion. A suggestion has again been made that the Magistrate should be made aware of the fact that the consequences could be grave if the public decide to act in unison.

45. A reading of this article makes it apparent that the editor of Dainik Bhaskar has given a verdict to the effect that the complaint lodged by R.K. Mishra is without any substance and the entire action has been taken without any basis. Thus, without there being any judicial verdict on the complaint, the editor of the newspaper has given his own verdict indicting the railway Magistrate. This has certainly resulted not only in scandalising the Court but would also prejudice the cause of R.K. Mishra. He has yet to establish the grievance made in his complaint, but the editor held a parallel enquiry and recorded his conclusion that the complaint was motivated.

46. If anybody felt that a judicial officer has transgressed the limits of propriety then the proper course was to take resort to the provisions of Section 6 of the Act. A petition could have been filed and it could have been highlighted that the concerned judicial officer is personally interested in the matters and such action

as may be deemed proper to be taken. It would have been then for the superior Courts to see as to what remedial action was required to be taken in the matter. But contemnors did not take recourse to any of these remedies. They condemned the railway magistrate in a language by using similes which are most inappropriate. They based their story on imaginary facts, the real version was not adverted to. As a matter of fact, the editor of Dainik Bhaskar has gone to the extent that the concerned magistrate should be taken to task. The tone and tenor of the editorial has all the attributes to bring their writing within the term scandalising the Court as well.

47. The counsel for the contemnors have argued that this is a publication which deals with the persona! conduct of the railway magistrate and has got nothing to do with proceedings which are pending in the Court. We are conscious of the observations made by the Supreme Court In Re: S. Mulgaokar, AIR 1978 SC 727 to the effect that in the branch of contempt, economy is to be exercised in the matter of exercising this jurisdiction and the Court is to act with seriousness and severity where justice is jeopardized by a gross and unfounded attack on the judges.

48. We are also conscious of what Lord Atkin said in *Andre Paul Terence Amabrd v. Attorney-General for Trinidad*, AIR 1936 PC 141 and it would be useful to quote what was said therein.

But where the authority and position of an individual judge, or the due administration of justice, is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way : the wrong headed are permitted to err therein : provided that members of the public abstain from imputing improper motives of those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.

48A. The observations made by Lord Denning's in *Regina v. Metropolitan Police Commr. Ex. p. Blackburn* (1968) 2 WLR 1204 have also been noticed by us wherein he said :

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

It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in

court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political. We must rely on our conduct itself to be its own vindication.

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

49. As a matter of fact it is the case of counsel for the contemnors that nothing has been said which may affect the administration of justice and they have relied upon the decision given by the Supreme Court in *Perspective Publications (P) Ltd. and Another Vs. State of Maharashtra*, Justice A.N. Grover summarised the principles dealing with contempt and it would be useful to quote them. (Para 17)

There can be no manner of doubt that in this country the principles which should govern cases of the present kind are now fully settled by the previous decisions of this court. We may restate the result of the discussion of the above cases on this head of contempt which is by no means exhaustive.

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

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

(3) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him.

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

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

(5) Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. To borrow from the language of Mukherjee, J. (as he then was) *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, the publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the

discharge of his judicial duties.

50. We have also taken note of the decision given by the Supreme Court in Sammbhu Nath Jha Vs. Kedar Prasad Sinha and Others, where it was observed :-

It would follow from the above that the courts have power to take action against a person who does an act or publishes a writing which is calculated to bring a court or judge into contempt or to lower his authority or to obstruct the due course of justice or due administration of law...in such cases, the Court would exercise circumspection and judicial restraint in the matter of taking action for contempt of court. The court has to take into account the surrounding circumstances and the material facts of the case and on conspectus of them to come to a conclusion whether because of some contumacious conduct or other sufficient reason the person proceeded against should be punished for contempt of Court.

51. We are however of the view that this is not a case which comes within the exceptions carved out in the aforementioned judicial pronouncements. In this regard, we would refer to the decision given in Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, wherein Supreme Court observed as under (Para 7) :-

...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 the 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.

52. The editor of Dainik Lokgatha has taken a further stand that whatever was reported by the local correspondent was printed in the newspaper. It may be seen that a printer and publisher of an article amounting to contempt is liable for contempt of court even if the article is written by another person and even if he has disassociated from it and has disproved it. This view was expressed by Full Bench of the Sind High Court in Emperor v. P. C. Tarapore, AIR 1940 Sind 239 : (1941 (42) Cri LJ 1). Similarly Derbyshire, C.J. of Calcutta High Court in the matter of Tushar Kanti Ghose, AIR 1935 Cal 419 : (1935 (36) Cri LJ 1053) (FB) held "a printer is liable even though he claimed that he had an imperfect knowledge of the English language".

53. Accordingly, the contemnors must be adjudged guilty of contempt of court as

the publication was under their protection and authority.

54. We are conscious of the fact that the press and the members of the Fourth Estate are representing a crucially balancing democratic force. It is the pivot of all the freedoms and constitutional values proclaimed by the Constitution. We are also mindful of the fact that seamy and unseemly aberrations here and there may not be given undue importance. However, in this case we have come to a definite conclusion that the publications read as a whole in the manner in which they were published are not covered by any of the exceptions noticed above. Even though the entire matter published in the two papers come within the mischief of criminal contempt, we would like to point certain portions which are patently untrue, far from reality and denote a deliberate effort to malign the magistrate. These are as under:-

From the columns of Dainik Lokgatha

(1) Railway employees in protest against (ZAIDTEE) high-handedness of railway Magistrate:

(2) Railway employees were demonstrating to protest against high-handedness (ZAIADTEE) of Railway Magistrate. Railway Magistrate had issued a warrant against the booking clerk because he had told the peon (chaprasi) of the Magistrate that if he wants a ticket he should stand in the queue;

(3) Peon (chaprasi) of Railway Magistrate A.K. Shrivastava reached the booking window at about noon for obtaining a ticket. Noticing a crowd on the window, the peon (chaprasi) went inside the booking office and asked for a ticket.

(4) Who treating this as a personal affront issued warrant against the booking clerk.

(5) HAI HAI MURDABAD AND RAILWAY MAGISTRATE KAISA HAI KATH KA1 ULLU JAISA HAI.

(6) Railway employees demanded cancellation of warrant.

(7) First incident of this highhandedness. Earlier also, he got a Railway Employee arrested.

(8) So much so that he has forcibly occupied a bungalow earmarked for Station Superintendent.

(9) According to them, there was no justification in suspending the issuance of the warrant, the only proper compromise was to set aside the warrant.

Similarly the following portions in the editorial of Dainik Bhaskar are also being highlighted.

(1) Unbecoming action (BEZA HARKAT).

(2) Railway Magistrate demonstrating unusual and unnecessary alertness issued

a warrant against a railway Badu.

(3) Against this improper action (Avan chint) of the Railway Magistrate the Railway Employees got enraged and stopped all railway traffic.

(4) The matter subsided when the concerned Magistrate expressed regret for his uncalled for smartness.

(5) Consequences of this dispute between the Magistrate and the employees.

(6) Can an explanation be had from the said Magistrate.

(7) In this atmosphere of injustice it is astonishing that a Magistrate had issued warrant against a railway employee within half an hour of filing of the complaint.

(8) Strong action should be taken against the said Magistrate who has used his power to satisfy his ego.

(9) The said Magistrate and the employees should realise as to what is the consequential punishment of improper use of powers and organised strength.

55. We are thus of the view that the authors of the offending articles are guilty of having committed criminal contempt inasmuch as

(i) they have scandalised and lowered the authority of the Court. Their action is prejudicial to the administration of justice. It amounts to interference with the due course of judicial proceedings. Their attack against the judicial officer was scurrilous;

(ii) the comments in the newsitem and the editorials are neither innocent nor fair as by no stretch of imagination these can be called a fair criticism of judicial proceedings;

(iii) in a pending case they have held a parallel trial. They have given a version which is not based on facts;

(iv) the editorial goes to the extent of demanding public punishment and is in the nature of an appeal to the public at large that people should unite against such high handedness. This has a definite tendency to lower the authority of the court; and

(v) the similes given are highly inappropriate and improper.

Under these circumstances, we have come to a firm conclusion that the contemnors have committed a criminal contempt as defined in Section 2(c) of the Act. We are of the firm opinion that the publication in question is a flagrant onslaught on the system of administration of justice which is administered in this Republic. It is a challenge to the supremacy of the rule of law.

56. In the matter of awarding punishment, we are mindful of what Frankfurter J. said in *Offutt v. U.S.* (1954) 348 US 11. He said that "it is a mode of vindicating the majesty of law, in its active manifestation against obstruction

and outrage". Again in *Jennison v. Baker*, (1972) 1 All ER 997 at page 1006 it was said that "the law should not be seen to sit by simply, while those who defy it go free, and those who seek its protection lose hope". It would again be useful to quote what Lord Salmon said in *Morris v. The Crown Office*, (1970) 1 All ER 1079. According to him "the sole purpose of proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented."

57. To punish the editor of a newspaper must be regarded as an extreme measure but to preserve the proceedings of the Court from the deflected or interfered with, we have to take this extreme action and we are again guided by what Supreme Court said in *Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar*, It was observed that (Para 62):

Punishment is essential to preserve the proceedings of the Courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the Court, though painful to punish the contemner in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt, of this act or conduct in relation to Court or Court proceedings interferes with or is calculated to obstruct the due course of justice.

58. To purge the contempt, having regard to the sentencing policy of the punishment so that it is commensurate with the gravity of the offence, we hold that the sentence of fine of Rs. 1,500/- to each of the contemner would serve the interest, of justice and in default they would undergo one months simple imprisonment. The fine to be deposited within a period of fifteen days.