

(1998) 08 KAR CK 0077

In the Karnataka High Court

Case No : Contempt of Court Case (Cri.) No. 2 of 1998

High Court of Karnataka

APPELLANT

Vs

K. Sankaran Nayar and Others

RESPONDENT

Date of Decision : 14-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 122, 129
Constitution of India, 1950 — Article 214, 215, 216, 225, 226
States Reorganisation Act, 1956 — Section 54

Citation : (1999) 1 ALD(Cri) 638 : (1999) ILR (Kar) 674 : (1999) 6 KarLJ 645

Hon'ble Judges : Chidananda Ullal, J;B. Padmaraj, J

Bench : Division Bench

Advocate : Sri B.R. Nanjundaiah, State Public Prosecutor and Sri N.B. Viswanath, Government Pleader, for the Appellant; Sri Ashok Desai and Sri C.V. Nagesh, for the Respondent

Judgement

P. Padmaraj, J.—The respondents 1 to 5 are the printer and publisher, the Managing Director, the Chief Editor, the Resident Editor and the Journalist employed on the paper of a daily newspaper known as "The Indian Express". In the issue of the said newspaper dated 8-1-1998 of the Bangalore Edition, a leading article was published or appeared at the front page under the heading or under the caption "Sethi v Saldanha: Battle in High Court". The said news item also carried the photographs of the Hon'ble Chief Justice and the learned Single Judge of this Court with their names printed under each photograph as "Sethi", and "Saldanha". The news item that was published at the front page in the Bangalore Edition of the daily newspaper, "The Indian Express" dated 8-1-1998, with a caption, "Sethi v Saldanha: Battle in High Court", is reproduced hereunder:

"BY BOBY KURIAN

Bangalore, January 7: A direction from the Karnataka High Court Chief Justice to the High Court Judges asking them not to take up cases suo motu or otherwise, on matters outside their assignments has kicked up a row with Justice M.F.

Saldanha stating that "it will amount to the handcuffing of High Court Judges".

The message from Chief Justice R.P. Sethi came with the list of changed assignments for the 37 Judges in the Karnataka High Court after the 15 days winter vacation. Taking exception to Sethi's direction, Justice Saldanha told The Indian Express on Wednesday that "the stance of Sethi went against the powers vested in a High Court Judge by Article 226 of the Constitution".

The other High Court Judges whom this newspaper contacted said they would not be a party to the issue. On the contrary, some of them admitted that the direction from Sethi would help to streamline the functioning of the Court.

"After all, we can't claim to have authority in all areas. Moreover, Saldanha is wrong in saying that the decision by the Chief Justice is unique to Karnataka High Court. I can say with authority that it is practised in one way or the other in both Karnataka and Madras High Courts", one of the Judges said.

"Article 226 gives a High Court Judge the power to initiate suo motu action on any matter that he feels needs judicial intervention. And the Chief Justice, who is the Chief Administrator of the High Court, has no power to take away the powers given by the Constitution", Saldanha said.

"As far as I know, this is a situation peculiar to the Karnataka High Court and I don't know what purpose it will serve except handcuffing us".

He said such ban on taking action on any matter other than what is assigned to them first cropped up when former Karnataka High Court Judge S. Rajendra Babu was the Acting Chief Justice for a brief tenure. "At that time I wrote to him saying that a blanket rule will only undermine the powers of the High Court Judges. He did not bother to reply. When I brought the matter to the notice of the present Chief Justice, he said he will look into it. Though, I did not place the matter on record, I expected him to do something on the issue". On Wednesday evening, a High Court Advocate, A.V. Amarnathan, threatened to move a petition against the direction of Sethi. "It is unconstitutional and goes against the spirit of Article 226. The Constitution has given the Judges King's Power and the stance of the Karnataka High Court goes against it", he said".

2. The purport of the said article or the above said news item was that a direction from the Karnataka High Court Chief Justice to the High Court Judges asking them not to take up the cases suo motu or otherwise, on matters outside their assignments has kicked up a row with Justice M.F. Saldanha stating that it will amount to the handcuffing of High Court Judges. It is stated that taking exception to such a direction, the learned Single Judge told the newspaper that "stance of Sethi went against the powers vested in a High Court Judge by Article 226 of the Constitution". The said news item further states that the other High Court Judges whom this newspaper had contacted said they would not be a party to the issue and that on the contrary some of them admitted that the directions from Sethi would help to streamline the functioning of the Court. The article

concludes with the following paragraphs or the passage:

" As far as I know, this is a situation peculiar to the Karnataka High Court and I don't know what purpose it will serve except handcuffing us".

He said such ban on taking action on any matter other than what is assigned to them first cropped up when former Karnataka High Court Judge S. Rajendra Babu was the Acting Chief Justice for a brief tenure. "At that time I wrote to him saying that a blanket rule will only undermine the powers of the High Court Judges. He did not bother to reply. When I brought the matter to the notice of the present Chief Justice, he said he will look into it. Though I did not place the matter on record, I expected him to do something on the issue". On Wednesday evening, a High Court Advocate, A.V. Amarnathan, threatened to move a petition against the direction of Sethi. "It is unconstitutional and goes against the spirit of Article 226. The Constitution has given the Judges King's Power and the stance of the Karnataka High Court goes against it, "he said" ".

3. It would be of some relevance to mention here itself that this Court has with the previous approval of the Government of Karnataka, framed, in exercise of its powers conferred by Article 225 of the Constitution and Section 54 of the States Reorganization Act, 1956 (Central Act 37 of 1956), read with Sections 122 and 129 of the CPC and Section 19 of the Mysore High Court Act and all other powers thereunto enabling the High Court of Karnataka, the Rules with respect to practice and procedure to be followed at the High Court. Rule 6 of the High Court of Karnataka Rules appearing in Chapter III under the heading constitution of Benches, envisages or prescribes that the Benches shall be constituted and judicial work of the Court allotted or distributed to them by or in accordance with the directions of Chief Justice. In this context, it would now be useful to refer to the following observations made by the Hon'ble Supreme Court in the case of State of Rajasthan v Prakash Chand and Others, which reads thus:

"The administrative control of the High Court vests in the Chief Justice of the High Court alone and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore, in the scheme of things judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the Advocates of

the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the Counsel to make a mention before the Chief Justice and obtain appropriate order. This is essential for smooth functioning of the Court".

4. Now, referring to some of the relevant articles of the Constitution of India, Article 214 states that there shall be a High Court for each State and Article 216 which deals with the constitution of High Courts says that every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. It is to be seen therefore that a High Court which is an institution by itself would consist of a Chief Justice and other Judges who are appointed by the President from time to time. Now, Article 225 deals with the "Jurisdiction of the existing High Courts" meaning thereby which were in existence at the time when the Constitution came into force, and the High Court of Karnataka is one such High Court. Article 225 of the Constitution makes it clear that every High Court by its own rules can provide for exercise of its jurisdiction, original or appellate by one or more Judges or by Division Courts consisting of two or more Judges of the High Court and it is the Chief Justice of each High Court to determine what Judge in each case is to sit alone or what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts. In exercise of the powers conferred by Article 225 of the Constitution etc., the High Court of Karnataka has framed the rules called "The High Court of Karnataka Rules" in 1959 and Rule 6 of the said rules appearing in Chapter III under the heading Constitution of Benches would clearly say that the Benches shall be constituted and the judicial work of the Court allotted or distributed to them in accordance with the directions of the Chief Justice. It is thus clear from the said rule and the other rules framed by this High Court in exercise of its powers conferred by Article 225 of the Constitution that the Chief Justice has to assign the judicial work to the Benches which are to be constituted in accordance with the directions of the Chief Justice. Such a exercise is perfectly legal, valid and proper as could be seen from the above constitutional articles as well as the rules framed by this Court in exercise of its powers conferred by Article 225. It is only the order passed by a learned Single Judge or a Division Bench of two or more Judges becomes the order of the High Court, which have been assigned to them under the Rules by the order of the Chief Justice. That is to say the order passed by the learned Single Judge or the Division Bench would become an order of the High Court only when such order is passed by a Judge or the Bench to whom the said work has been specifically assigned or allotted under the directions of the Chief Justice as per Rule 6 and the other relevant rules framed by this High Court. The High Court under Article 226 read with Article 216 means the entire body of Judges appointed to the High Court (see *State of Uttar Pradesh v Batuk Deo Pati Tripathi and Another*), Article 225 empowers the High Court to issue writs, directions etc. and the term "High Court" appearing therein has got reference to Article 216 which means the entire body of Judges to be appointed to the High Court. It is in this context the power

conferred under Article 225 is to be read. With this prelude we shall now refer to the further facts which have given rise to the instant proceedings.

5. The Registry having found that the news item referred to above scandalizes the institution of judiciary, defamed the Hon"ble Judges and lowered the institution of the judiciary in the estimation of the common man and being of the view that the respondents have prima facie committed the offence of Criminal Contempt of Court punishable u/s 12 of the Contempt of Courts Act, submitted a note to the Hon"ble Chief Justice for his kind consideration as to whether a Contempt of Court Proceedings (Criminal) be registered against the respondents. The concluding paragraphs of the said note submitted to the Hon"ble Chief Justice reads as under:

"Keeping in view the facts stated hereinabove, the circumstances under which the news item has been published and the purpose for which it has been published, it is clearly established that the author and the publishers have scandalized the institution of judiciary, defamed the Hon"ble Judges and lowered the institution of judiciary in the estimation of the common man. The respondents have prima facie committed the offence of Criminal Contempt of Court punishable u/s 12 of the Contempt of Courts Act.

Under the above circumstance, submitted for kind consideration as to whether a Contempt of Court Proceedings (Criminal) be registered against the following persons for publishing the news item captioned "Sethi v Saldanha: Battle in High Court" in The Indian Express, Bangalore Edition dated 8th January, 1998.

1. Sri K. Sankaran Nayar, Publisher on behalf of Express Publications - Madurai Limited, at Express Press, No. 1, Queen"s Road, Bangalore 1.
2. Sri Vivek Goenka, Managing Director.
3. Sri Shekhar Gupta, Chief Editor.
4. Sri K.V. Ramesh, Resident Editor, and
5. Sri Bobby Kurian.

Submitted for kind orders on above",

6. The order passed by the Hon"ble Chief Justice on the above said note of the Registry is as under:

"Before initiating any action, the opinion of the Advocate-General be solicited".

7. Pursuant to such order made by the Hon"ble Chief Justice, the Registry appears to have addressed a letter dated 12-1-1998 to the learned Advocate-General Sri S. Vijayashankar seeking his opinion in the matter and the contents of the said letter reads as under:

"Sub: Opinion regarding initiation of Contempt of Court Proceedings against the Chief Editor and others of Indian Express - Bangalore Edition.

xxx xxx xxx The Indian Express, Bangalore Edition dated 8-1-1998 published a news item in its front page caption "Sethi v Saldanha: Battle in High Court". The contents of the news item are false, frivolous, mischievous, motivated and intended to lower the dignity of the Court and its Judges in the estimation of the common litigant and would also create a false impression that the relationship among the Judges is not cordial. Hon''ble Sri Justice M.F. Saldanha has addressed a letter dated 8th January, 1998 to the Editor of Indian Express which is culled out in the submission note and this would clearly show that the news published under the above said caption is false and motivated and is intended to bring down the image in the eyes of the litigant public. Wherefore, a note was submitted to Hon''ble the Chief Justice to consider as to whether Contempt of Court (Criminal) Proceedings be registered against the Publisher, Managing Editor, Chief Editor and Sri Bobby Kurian, Correspondent, Hon''ble the Chief Justice has passed the order to the effect that before initiation any action, the opinion of the Advocate-General be solicited.

Under the above circumstances, you are requested to kindly furnish your opinion regarding initiation of Contempt of Court (Criminal) Proceedings suo motu by the High Court.

Copy of the submission note, letter addressed by Hon''ble Shri Justice M.F. Saldanha to The Indian Express and the copy of the publication dated 8-1-1998 and publication of news regarding the letter of His Lordship Justice M.F. Saldanha in The Indian Express dated 9-1-1998, are enclosed for kind perusal".

8. The learned Advocate-General appears to have wrote back to the Registry a letter dated 13-1-1998, which contents reads as under:

"Sub: Opinion regarding initiation of Contempt of Court Proceedings against the Chief Editor and others of Indian Express - Bangalore Edition.

Ref: Your Letter of January 12, 1998.

XXX XXX XXX The report in Indian Express dated 8-1-1998 a copy of which is . enclosed to your letter, quotes statements said to have been made to the press by Hon''ble Mr. Justice M.F. Saldanha. The letter dated 8-1-1998 written by Hon''ble Mr. Justice M.F. Saldanha to the Editor, Indian Express does not say that the quotations in the publication under reference are factually incorrect.

I request you to inform me whether the statements in inverted commas published on 8-1-1998 said to have been made by the Hon''ble Mr. Justice M.F. Saldanha are in fact true or false".

9. Thereupon the Registry wrote another letter dated 13-1-1998 to the learned Advocate-General which reads thus:

"Sub: Opinion regarding initiation of Contempt of Court Proceedings against the Chief Editor and others of Indian Express - Bangalore Edition.

Ref: Your Letter No. DO. 222/AGP/97-98, dated 13-1-1998.

xxx xxxx xxx Hon"ble Shri Justice M.F. Saldanha, has clearly stated in His Lordship"s letter dated 8-1-1998 that the headline in particular and the report create the impression that a conflict has arisen between the Hon"ble the Chief Justice and himself and this is absolutely false and that it is extremely unfair to publish a report which creates the wrong impression that a battle is on in the High Court.

Wherefore, I am desired to state that the statements alleged to have been made by Hon"ble Shri Justice M.F. Saldanha are not true".

10. It appears from the case papers placed before us that the learned Single Judge of this Court had addressed a letter dated 8-1-1998 to the Hon"ble Chief Justice which reads thus:

"I was extremely annoyed by the mischievous news report in The Indian Express today and I have immediately written to the Editor asking him to rectify the situation. A copy of the letter in question is enclosed for your perusal. Please permit me to restate that my esteem and regard for you are as high as they always were - administrative matters are an entirely different issue and cannot affect personal relationship.

Please excuse my absence at the screening committee meeting this evening - I concur with the decisions of the committee. The Commissioner of Commercial Taxes has arranged a talk at 5 p.m. and I have to leave at 4.45".

11. It also appears from the case papers that the learned Single Judge had also addressed a letter dated 8-1-1998 to the Editor, Indian Express, Bangalore Edition, Bangalore, which contents reads as under:

"I take serious exception to the news report that has appeared in this morning"s edition of your newspaper under the heading "Sethi v Saldanha: Battle in High Court". The headline in particular and the report create the impression that a conflict has arisen between the Hon"ble the Chief Justice and myself. This is absolutely false and I would like to clarify that relationships between the Chief Justice and me are extremely cordial and it is one of the nice features of our High Court that the Chief Justice who is an extremely friendly and considerate person has the best of relationship with all his colleagues. I have much admiration for Chief Justice Sethi both as a person and as a Judge and in particular for the amount of effort that he has put in to improve every aspect of the functioning of the Courts. In this background, it is extremely unfair to publish a report which creates the wrong impression that a battle is on in the High Court.

The hallmark of the Indian Judiciary is its independence and in keeping with this principle, the Judges at different times do have occasion to express their individual views particularly with regard to important issues. However, there is also an equally binding principle of judicial discipline which characterises the working of the system and consequently, the superior views are the ones which prevail. Often times, in administrative matters, where different shades of opinion

are expressed, the matter is amicably resolved and in this background, there is no occasion to conclude that the expression on divergent views leads to any conflicts or disputes. I would request you to publish a corrigendum so that no wrong impressions are created in the public mind.

Thank you".

12. Now, advertng to the letter dated 13-1-1998 of the Registry of this Court to the learned Advocate-General, it appears that after receipt of such letter, the Advocate-General seems to have furnished his opinion in the form of a letter dated 15-1-1998 which reads thus:

"Query: Whether Contempt of Court (Criminal) Proceedings can be initiated suo motu by the High Court of Karnataka against the Chief Editor and others of Indian Express, Bangalore Edition for publication of the Article entitled "Sethi v Saldanha: Battle in High Court".

Opinion: The Constitution of India establishes a High Court for each State and declares that every High Court shall have all the powers of such a Court including the power to punish for contempt of itself (Articles 214 and 215 of the Constitution of India). The Constitution confers on High Courts complete autonomy in matters judicial and administrative. Respect by the public for judicial Courts and judgment given by them is the very foundation of the rule of law. The confidence which the public have in the integrity, independence and inviolability of the judiciary is what inspires regard for Courts of law. The exercise of the right to comment on or criticises the functioning of Courts is subject to the restrictions imposed by law. The Contempt of Courts Act, 1971 is law made by Parliament, which defines Criminal Contempt of Courts.

In Perspective Publications (Private) Limited and Another v State of Maharashtra, the Supreme Court has said that the test will be whether the wrong is done to the Judge personally or it is done to the public. Quoting from Brahma Prakash Sharma and Others v State of Uttar Pradesh, the judgment goes on to say that 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 official duties.

In Advocate-General, State of Bihar v M/s. Madhya Pradesh Khair Industries and Another, the Supreme Court had occasion to consider Section 2(c) of the Contempt of Courts Act, 1971 which defines criminal contempt. The Supreme Court has said 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. That the Court has the duty of protecting the interest of 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, but to protect and vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. Publication of untruthful statements casting aspersions on the unity and solidarity of a multi-Judge Court that a High Court is, shakes the confidence of the public in the institution of judiciary.

It is the prerogative of the Chief Justice of a High Court to assign judicial work to his brother Judges. That prerogative cannot be the subject-matter of comments by the press. The newspaper publication in question gives the impression to the public that there are differences between the Hon"ble Chief Justice and the other Hon"ble Judges of the High Court of Karnataka in the matter of assignment of judicial work. The publication paints a false picture of disharmony between the Hon"ble Chief Justice Mr. Ram Prakash Sethi and his companion Judge Hon"ble Mr. Justice M.F. Saldanha. The published article is opposed to the interest which the public have in the administrative of justice.

In my opinion there are prima facie grounds for initiation of Contempt of Court (Criminal) proceedings suo motu by Hon"ble High Court of Karnataka".

13. It is pertinent to note here itself that this Court in exercise of the powers conferred under Article 215 of the Constitution, Section 23 of the Contempt of Courts Act, 1971 and all other powers enabling in that behalf, has framed rules to regulate the proceedings for contempt of itself or of a Court subordinate to it. The said rules have come into force from 23-12-1980. Rule 7 of the said rules framed by this Court reads as under:

"7. Initiation of proceedings on information.--(i) Any information other than a petition or reference shall, in the first instance be placed before the Chief Justice on the administrative side.

(ii) If the Chief Justice or such other Judge as may be designated by him for the purpose, considers it expedient or proper to take action under the Act, he shall direct that the said information be placed for preliminary hearing.

(iii) On such direction the matter shall be dealt with in accordance with Rule 8 treating the information as a petition".

14. Article 215 of the Constitution declares that the High Court shall have all the powers of such a Court including the power to punish for contempt of itself. However, the powers of the High Court in this regard have been classified in the Contempt of Courts Act, 1971. This Act defines the Contempt of Court and classifies it into Civil Contempt and Criminal Contempt. In the instant case, the action is sought to be taken for a Criminal Contempt coming u/s 2(c)(i) of the Act. Sections 14 and 15 of the Contempt of Courts Act reads as under:

"14. Procedure where contempt is in the face of the Supreme Court or a High Court.--(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in

its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall-

- (a) cause him to be informed in writing of the contempt with which he is charged;
- (b) afford him an opportunity to make his defence to the charge;
- (c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and
- (d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify:

Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to do so attend until otherwise directed by the Court:

Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

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

(a) the Advocate-General, or

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

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

(2) In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation.--In this section, the expression "Advocate-General" means,--

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the Court of a Judicial Commissioner such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf".

15. Thus a conjoint reading of the Act and the Rules makes it clear that action for contempt may be taken by the Court on its own motion or on the motion of the Advocate-General or of any other person with his consent in writing. In the present case the Registry being of the view that the respondents have prima facie committed the offence of criminal contempt of Court punishable u/s 12 of the Contempt of Courts Act, submitted a note to the Hon'ble Chief Justice for his kind consideration whether under the circumstances narrated in the note, a contempt of Court Proceeding (Criminal) be registered against these respondents. The note submitted by the Registry at that stage constituted nothing more than a mode of laying the relevant information before the Hon'ble Chief Justice for taking such action as he may deem fit to take. Now, Rule 7 of the Rules framed by this Court would say that any information other than a petition or a reference shall in the first instance be placed before the Chief Justice on the administrative side and that if the Chief Justice or such other Judge as may be designated by him for the purpose considers it expedient or proper to take action under the Act, he shall direct that the said information be placed for preliminary hearing. The said rule does not however indicate any opinion of the Advocate General being obtained for the purpose of posting the matter before the Court for preliminary hearing. It has to be mentioned that if the High Court acts on information derived from its own sources such as from a

perusal of the records of a subordinate Court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate Court or the Advocate-General, it can take cognizance on its own motion. Be that as it may. After the Advocate-General furnished his opinion, the Registry placed a further note to the effect that the learned Advocate-General has furnished an information that there are prima facie grounds for initiation of Contempt of Court Proceedings (Crl.) suo motu by the High Court of Karnataka in respect of the article published in The Indian Express, Bangalore Edition under the caption, "Sethi v Saldanha: Battle in High Court". The opinion furnished by the learned Advocate-General was also placed before the Hon''ble Chief Justice. Whereupon the Hon''ble Chief Justice seems to have passed an order for listing the matter before the appropriate Bench. The appropriate Bench before whom the matter was placed by an order dated 21-1-1998 admitted the suo motu Contempt of Courts Case in CCC (Crl.) No. 2 of 1998 against the respondents and directed the respondents to appear in person on 4-2-1998. In response to the contempt notice, the respondents through their Advocate filed a memo stating thereunder as under:

"1. The first respondent who is the Printer and Publisher of the daily, has no say in the matter of selection of the matter, which is published in the daily. He is entirely innocent of the publication in question.

2. The respondents 2 and 3 who are the Chief Editor and Managing Editor of the Daily who are based in Delhi and Bombay respectively, in fact, have nothing to do either with the selection of the matter in question or its publication.

3. The 4th respondent is the Resident Editor of the Bangalore Edition of The Indian Express Daily, in which the article in question has appeared and the 5th respondent is its author.

4. The respondents 1 to 5 respectfully submit that the article in question is really not in good taste, The respondents 2 and 3 who have taken a serious note of the article in question, have been in touch with all the concerned, in the matter.

5. The respondents deeply regret for the edition, printing and publication of the article in question which is in a bad taste and which was unwarranted. Over enthusiasm on the part of the 5th respondent, who is the Reporter and a slip on the part of the 4th respondent, who is the Resident Editor, Bangalore Edition of the Daily, has resulted in the publication of the article in question. Had these persons exercised due care, caution, and diligence, the article which is in a bad taste would not have appeared in the Daily. The respondents once again deeply regret for the same.

6. Therefore, the respondents pray that this Hon''ble Court be pleased to read and record this memo, in the ends of justice".

16. There were two memos of the same kind and nature filed on behalf of the respondents, of which the first memo is purported to have been signed by

respondents 1, 4 and 5 and the second memo is purported to have been signed by respondents 2 and 3. However, the contents of both the memos makes one and the same reading and they are both identical. That is to say the contents of both the memos are one and the same except the fact that the first memo is signed by respondents 1, 4 and 5 while the second memo is signed by respondents 2 and 3.

17. Bobby Kurian, the fifth respondent herein in response to the contempt notice has also filed his affidavit dated 26-6-1998, wherein he has stated:

"1. I am the 5th respondent in the above proceedings and I am well acquainted with the facts of the case.

2. I am a journalist by profession. I was attached to the Bangalore Edition of The Indian Express Daily as one of its Reporters at the time when the report in question was published. In the course of my duties as a Reporter of the Bangalore Edition of The Indian Express Daily, I authored the report which is the subject-matter of the offence in the above case. Either before or after writing the story, I did not deliberate about it either with my Senior or with my Junior Colleagues. After writing the story, I placed the same before the Resident Editor for his approval and thereafter, for printing and publication, if so advised.

3. I respectfully submit that, being a beginner in the profession of journalism, I did not visualise the after-effects of my story including the consequences that would emanate therefrom. It is only after the receipt of the notice of the above proceedings from this Hon''ble Court, I was able to understand the situation which my report has created and the after-effects of the same. Over enthusiasm and lack of care, caution and diligence on my part has resulted in the publication of the report in question. My participation in the above proceedings as the respondent has made me learn a good lesson to be more careful and highly cautious in the discharge of my duties as a journalist.

4. I deeply regret the error on my part as the author of the report in question which was printed and published in the Bangalore Edition of The Indian Express daily.

5. Having clarified my role in the above impugned publication, I hasten to add the following facts.-

(i) That in fact His Lordship the Hon''ble Mr. Justice M.F. Saldanha had called me and spoken to me about the matters mentioned in the news item.

(ii) To a specific question that whether the same could be published the answer from the Hon''ble Justice that it could be done.

(iii) Even the clarification letter sent by Mr. Justice Saldanha dated 8-1-1998 and published by The Indian Express does not deny the basis contents of the news item relating to the jurisdiction of the Judges for taking up the matters. Equally the letter does not deny that Mr. Justice Saldanha gave a statement to me

concerning the matter published.

(iv) However, Mr. Justice Saldanha has objected to an implication which he feels is inherent in the presentation of the news item that there is a conflict between himself and His Lordship the Hon"ble Mr. Chief Justice. This, Mr. Justice Saldanha wanted to be clarified.

(v) As regards the use of the word "handcuffing" I beg to submit that it was certainly not meant in a literal sense as it would be ridiculous to construe it in that sense. It was merely a colourful expression to highlight the general tone and content of the article and certainly nothing derogatory either literal or figurative was intended. If it has given a cause for such interpretation I sincerely express my regret for the same.

6. As The Indian Express had never intended to give any wrong impression either deliberately or inadvertently in a serious matter, such as this, it proceeded straightaway to publish the letter of Mr. Justice Saldanha as requested by the Hon"ble Judge. This was done in view of the fact that The Indian Express as a responsible newspaper did not want to be instrumental even inadvertently in creating any wrong impression in the minds of the public about our esteemed judiciary.

7. The Indian Express uses the expression "esteemed judiciary" not as a "cliche" but rather with a deep sense of veneration and gratitude. The veneration for the independence of the judiciary stems from the fact that in the course of its long and distinguished history in the cause of bringing out the truth to the public and matters of public interest fearlessly The Indian Express had to incur the consequence of unjustified and unfair executive action against the group. Instances of such arbitrary executive action were during the period from 1975 to 1977 when a state of internal emergency was declared and subsequently, in 1987 to 1990. The executive action was so stern as to result in crushing the newspaper group itself financially through freezing of Bank limits unleashing of investigation, hundreds of prosecutions and proposal to demolish valuable property etc. Against all these unfair and arbitrary executive action, The Indian Express could only appeal to the impartial judiciary to redress its grievances. The group cherishes with gratitude the fact that it was the judiciary that came to its rescue on every occasion of injustice and ensured the continuity and the survival of the group itself.

8. The above has been set out not for any other reason but primarily to emphasise the genuine and deep regard for the judiciary of this country, which The Indian Express Group has and not merely a lip service. I respectfully state that in view of the genuine respect and regard for the judiciary, there has never been any intention to comment on Courts that could even be remotely construed as holding this Hon"ble Court in contempt. Consequently, I have no hesitation whatsoever in tendering an unconditional and sincere apology to this Hon"ble Court for the publication in question since this Hon"ble Court has construed the

publication to be unwarranted or not conducive towards maintaining respect for the judiciary.

9. I, therefore, submit that by accepting the unconditional apology which I have already submitted and which I am submitting here again for the lapse on my part, in getting the matter in question printed and published, all further proceedings against me in the above matter be dropped in the ends of justice".

18. The fourth respondent-K.V. Ramesh, the Resident Editor of The Indian Express has also filed his affidavit dated 27-7-1998 wherein it is stated as under:

"1. I have been attached to The Indian Express Daily for the last two years. On 8-1-1998, I was the Resident Editor of the Bangalore Edition of The Indian Express Daily. As the Resident Editor of the newspaper, I have a duty to go through the matters that are placed before me not only by the Reporters but also by the other Editorial Staff and thereafter, get the same printed and published in the newspaper.

2. The report of the 5th respondent which is published in the Bangalore Edition of The Indian Express Daily and which is the subject-matter of the above offence, must have passed through me before it was printed and published. It appears that I did not carefully go through the report with the concentration needed and this slip on my part has resulted in the report in question being printed and published in The Indian Express Daily dated 8-1- 1998. Be that as it may, the report of the 5th respondent should not have been edited, printed and published in The Indian Express Daily dated 8-1-1998 in the manner in which it appeared, The matte- ought to have been edited by me. As already stated above, a slip on my part has resulted in the matter being printed and published without the same being edited by me in my capacity as the Resident Editor of the Daily.

3. I deeply regret the lapse on my part and I tender an unconditional apology to this Hon"ble Court for having allowed the matter in question to be printed and published.

4. I respectfully submit that I have been in the field of Journalism for the last over 25 years and so far, I have not given any room whatsoever for any complaints against me in any capacity whatsoever.

5. I respectfully submit that the newspaper The Indian Express daily stands for certain values and principles. Not only as a Member of this organisation but also as an Individual, I have greatest respect for the Courts and its orders. I respectfully submit that I have already tendered my unconditional apologies to this Hon"ble Court for having allowed the matter in question for printing and publication without the same being edited by me. I once again tender an unconditional apology for having allowed the matter to be printed and published without editing the matter in question.

I therefore, request this Hon"ble Court to accept the unconditional apologies which I have already tendered and which I am herewith tendering for the

publication of the matter in question as the Resident Editor of the Bangalore Edition of The Indian Express Daily and pray that all further proceedings against me in the above behalf be dropped, in the ends of justice".

19. The first respondent-K. Sankaran Nayar, the Printer and Publisher of The Indian Express Daily, Bangalore City has filed his affidavit in response to the contempt notice which reads thus:

"1. I have been attached to the Bangalore Edition of The Indian Express Daily for the last over 45 years. Presently, I am its Printer and Publisher. In my capacity as the Printer and Publisher, I have been getting the Bangalore Edition of the Newspaper printed and published.

2. I respectfully submit that, as the Printer and Publisher, I have no option of selecting the matter for printing and publishing in the Daily. Whatever that is being passed to my branch by the Editorial Board, I am getting it printed and thereafter, getting the newspaper published. Whenever I get the matter printed and get the newspaper published, I only believe, that every item of the matter that is being printed in the newspaper has the approval of the Editorial Board.

3. I respectfully submit that before giving the matter for printing, I do not normally go through the matter which is to be printed. The matter which is the subject-matter of the proceedings in the above case has been got printed by me in the normal course of things without going through its contents.

4. Being one of the Senior-most member of the organisation i.e., The Indian Express Daily, which stands for certain values and principles, I regard it as a duty to respect the Law Courts and the orders Of the Courts of law. Accordingly, I have been respecting the Courts of law and its orders all through my career.

5. I respectfully submit that, printing of the report of the fifth respondent and its publication in The Indian Express daily dated 8-1-1998 and which is the subject-matter of the offence in the above case is only a slip on my part. If I had noticed the same before giving it for printing, I would not have definitely allowed the same for printing and thereafter for publication.

6. I deeply regret for the error on my part as the Printer and Publisher of the Bangalore Edition of The Indian Express Daily, in which, the matter in question has been printed and published.

7. I am tendering an unconditional apology as the Printer and Publisher of the Bangalore Edition of The Indian Express Daily for having got the matter in question printed and published.

I, therefore, submit that by accepting the unconditional apology which I have already submitted and which I am submitting here again for the lapse on my part, in getting the matter in question printed and published, all further proceedings against me in the above matter be dropped in the ends of justice".

20. This matter coming before us for hearing on 30-7-1998. We have heard the

arguments of the learned State Public Prosecutor and the learned Counsel for respondents at a considerable length.

21. Learned Counsel for respondents has also submitted the written arguments dated 7-8-1998 wherein it is contended as under:

"It is submitted that the notice issued on 21st January, 1998 to the respondent with respect to the report in The Indian Express dated 8th January, 1998 should be discharged and the further proceedings in the matter should be dropped. On well established principles of law the notice is not maintainable and in any event the Court should drop the matter in the light of the explanation and the apology tendered.

2. The notice alleges that the report in The Indian Express dated 8th January, 1998 has "scandalized the institution of judiciary, defamed the Hon'ble Judges and lowered the institution of judiciary in the estimation of the common man". A reading of the article dated 8th January, 1998 read with the letter of the Hon'ble Judge of the same date and the publication of the explanation on 9th January, 1998 shows that there is no case for proceeding further with the said notice.

3. The issues raised concern two very important constitutional values viz., a free and fearless press and an independent judiciary which have to be harmonised. Courts have taken the generous view that when the balance has to be struck the benefit of doubt should be given against the Judge (see in re S. Mulgaokar, at para 28; Regina v Commissioner of Police of the Metropolis, Ex parts Blackburn², at page 320 and P.N. Duda v P. Shiv Shanker and Others, at para 12).

4. The following approach of the Court is important in considering any issue of notice:

(1) The Court must act with great caution because a Court will not be too sensitive even to fierce criticism. Even if annoyed it must be kept in mind "that dogs may bark but the caravan will pass on". (See Mulgaokar, supra, para 27, Blackburn, supra, page 320 and Shiv Shanker, supra, para 12).

(2) The Court will recognise the importance of a free press and appreciate that to criticise the Judge fairly is not a crime but is a necessary right in a democratic set up (see Mulgaokar, supra, para 28, Blackburn, supra, page 320 and Shiv Shanker, supra, para 12). It is important to note that this principle is statutorily recognised by Section 13 of the Contempt of Courts Act.

(3) There is a great difference between a libel against Judge, and Contempt of Court. In Contempt, a Court as an institution is scandalized. Defamation affects the reputation of a particular Judge. The present notice, in fact misses this distinction alt together and alleges contempt, based on a part of the article. (See Mulgaokar, supra, para 29, Shiv Shanker, supra, para 12).

(4) The Court must look at the article as a whole and not at a sentence in isolation. This is particularly important in the present case, where the headline is

being assailed (See Mulgaokar, supra, para 29, Shiv Shanker, supra, para 12).

(5) In Contempt statement there must be statements which create apprehension in the public mind regarding the integrity, ability and fairness of the Judge or which will deter actual and prospective litigants from placing complete reliance upon the Courts' administration of justice or will be likely to cause embarrassment in the mind of Judge (see Shiv Shanker, supra, para 41). Such a case cannot be possibly be made out in the present matter.

Cases:

It may be submitted that the precedents regarding past cases shows that the Courts have exercised this power with great care. The following four cases are of particular importance.-

1. S. Mulgaokar AIR 1978 SC 727 - In this case, there was a fierce attack on the attitude of the Supreme Court during the emergency particularly in the detention case of ADM, Jabalpur. The learned Judges however, agreed that the matter should be dropped. The judgment of Mr. Justice Krishna Iyer analyses the law in considerable detail and in turn has been referred to subsequently in Shiv Shanker. The approach of the learned Judge is revealed in paragraph 25 where he says, "The existence of the contempt power, however, does not obligate its exercise on every occasion but triggers it only in special situations, not routinely".

2. P.N. Dua Vs. P. Shiv Shanker and Others, In this case, the Supreme Court was concerned with a speech made by the Law Minister in which the class composition of the Court was examined and a view was expressed that the Supreme Court favoured anti-social elements. The Supreme Court refused to initiate contempt proceedings, holding inter alia that the work of the Court is open to fair criticism and scrutiny of the public. Sabyasachi Mukharji, J. (at pages 1218-1219, para 20) quoted from the writing of Justice Benjamin N. Cardozo of the US Supreme Court to show that differences of approach between various Judges, is in the interest of the system.

"One Judge looks at problems from the point of view of history, another from that of philosophy, another from that of social utility, one is a formalist, another a latitudinarian, one is timorous of change, another dissatisfied with the present, out of the attrition of diverse minds there is beaten something which has a constancy and uniformity and average value greater than its component elements".

3. Vishwanath v E.S. Venkataramaiah - In this case, the Bombay High Court declined to take proceedings against a former Chief Justice of the Supreme Court or the Reporter Kuldeep Nayar, for his interview in which the learned Judge made very critical statements about judicial conduct.

4. Regina 1968(2) All ER 319 - In this case, the Court of appeal in England with three short judgments of Lord Denning M.R., Lord Justice Salmon and Lord Justice Edmund Davies rejected an application for contempt against Mr. Quintin

Hogg who had erroneously attributed a judgment to the Court of Appeal and attacked it. Lord Denning said that contempt can never be used to uphold the dignity of the Court which must rest on surer foundations than suppressing those who speak against it. Lord Justice Salmon said that the criticism here complained of, however rumbustious, however wide of the mark, whether expressed in good taste or in bad taste, cannot be subjected to contempt powers. Lord Justice Edmund Davies said that though it has its boundaries, the right to fair criticism covers a wide expanse and its curtailment must be jealously guarded against. This judgment has been adopted in India in many other case like Mulgaokar and Shiv Shanker.

On facts of the case:

It is clear from the facts that on 8-1-1998 a learned Judge gave an interview to a Press Reporter. In the interview he expressed his strong differences with a direction of the Chief Justice. In fact the press report gives the point of view of both the learned Judge as also other Judges who took a different view and regarded the direction of the Chief Justice, as the correct one. On the very day of the report i.e., 8-1-1998, two letters were written (which were produced by the learned Government Pleader) which did not controvert a single statement of fact in the interview. In fact, the letters accept that Judges may have different view including in administrative matters. The letters state that it should not be concluded from the expression of divergent view that there was a conflict. The substance of the letter including lengthy quotations were immediately reproduced in The Indian Express on the very next day i.e., 9-1-1998. It may be noted that after the notice was received immediately a memo was filed by the Advocate on behalf of the accused accepting that the article in question may not be in good taste and expressing regret for it. (This document dated 10-3-1998 seems to have been misplaced). Another document signed by three of the respondents was put in the Court in order to complete the record. The respondents are placing an identical document signed by all the five accused in the same form. The respondent have also expressed their apology. This apology has come immediately and the context clearly shows the sincerity of the accused (but it must be respectfully pointed out that as per the law the apology cannot be regarded as plea of guilt).

In conclusion it must be pointed out that this is an ideal case in which further proceedings should be dropped. The newspaper at the most can be charged with bad taste. There is no contumacious conduct on their part. In any event, the existence of power of contempt as stated by the Supreme Court does not obligate its exercise on every occasion. The present case is not a special situation where there is an attack on integrity, ability and fairness of a Judge. If interviews are given there is always a risk that the reporting may not be to the liking of all concerned. Further, the respondents have already expressed their sincere apology, immediately on receiving the notice and the principal respondents namely, the Writer, the Resident Editor and the Printer have expressed their

regret by detailed affidavit. On the basis of the judgments, it is clear that the article cannot be regarded as scandalizing the Court or being in contempt. In any view of the matter, the right course would be to drop the matter rather than launching into further detailed inquiry. It is also submitted that this is the proper course under Rule 13 of the Karnataka Contempt of Court Rules".

22. Learned State Public Prosecutor who argued the case in the absence of the learned Advocate-General, has contended as under.

"The respondents without exercise of due care and caution published the article in question which on the face of it scandalizes the judiciary. The respondents 2 and 3 though they have been served with the contempt notice have not filed their reply duly supported by facts. That being so, it may have to be taken that the respondents 2 and 3 have no explanation to offer on their behalf. The letter dated 8-1-1998 of the learned Judge Sri M.F. Saldanha would itself indicate that the article in question was mischievous and this being the reaction of the learned Judge himself, the only inference that can be drawn is that the article in question is contemptuous in nature necessitating action under the provisions of Contempt of Courts Act. The stage now is to find out whether there is prima facie case for framing the charge and it is not the stage where the Court could consider the defence put forth by the respondents. The standard of proof required at this stage is not the proof beyond reasonable doubt. At this stage, even a strong suspicion is sufficient to frame the charge. In the instant case, no attempt has been made by the press to cross-check the fact before publishing it in the newspaper with the Hon"ble Chief Justice of this Court. Thus due care and caution has not been exercised by the press in publishing the article in question. Even the letter of the learned Single Judge dated 8-1-1998 would make it clear that a wrong impression that battle is on in the High Court is created by the article in question. The article in question read as a whole would create a wrong impression in the minds of the public and thereby it tries to lower down the authority of this Court. The materials placed on record are more than sufficient to frame the charge against the respondents. The reporter himself accepts his error and even according to him it does disclose a prima facie case. No doubt, he also offered justification which has no legs to stand. Therefore, this is a fit case where this Court could frame a charge against the respondents and proceed further with the case.

Learned State Public Prosecutor has also relied upon a decision in Superintendent and Remembrancer of Legal Affairs, West Bengal v Anil Kumar Bhunja and Others".

23. Before we proceed to consider the real question in issue, we would like to place on record, the following observations of the Hon"ble Supreme Court in the case of Harijai Singh and Another, in paragraphs 9 and 10 which reads thus:

"9. It is thus needless to emphasise, that a free and healthy Press is indispensable to the functioning of a true democracy. In a democratic set up,

there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and view points on such matters and issues and select their further course of action. The primary function, therefore, of the Press is to provide comprehensive and objective information of all aspects of the country's political, social, economic and cultural life. It has an educative and mobilising role to play. It plays an important role in moulding public opinion and can be an instrument of social change. It may be pointed out here that Mahatma Gandhi in his autobiography has stated that one of objectives of the newspaper is to understand the proper feelings of the people and give expression to it; another is to arouse among the people certain desirable sentiments; and the third is to fearlessly express popular defects. It, therefore, turns out that the press should have the right to present anything which it thinks fit for publication.

10. But it has to be remembered that this freedom of Press is not absolute, unlimited and unfettered at all times and in all circumstances as giving an unrestricted freedom of the speech and expression would amount to an uncontrolled licence. If it were wholly free even from reasonable restraints it would lead to disorder and anarchy. The freedom is not to be misunderstood as to be a press free to disregard its duty to be responsible. In fact, the element of responsibility must be present in the conscience of the journalists. In an organised society, the rights of the Press have to be recognised with its duties and responsibilities towards the society. Public order, decency, morality and such other things must be safeguarded. The protective cover of Press freedom must not be thrown open for wrong doings. If a newspaper publishes what is improper, mischievously false or illegal and abuses its liberty it must be punished by Court of Law. The Editor of a Newspaper or a journal has a greater responsibility to guard against untruthful news and publications for the simple reason that his utterances have a far greater circulation and impact than the utterances of an individual and by reason of their appearing in print, they are likely to be believed by the ignorant. That being so, certain restrictions are essential even for preservation of the freedom of the Press itself. To quote from the report of Mons Lopez to the Economic and Social Council of the United Nations "If it is true that human progress is impossible without freedom, then it is no less true that ordinary human progress is impossible without a measure of regulation and discipline". It is the duty of a true and responsible journalist to strive to inform the people with accurate and impartial presentation of news and their views after dispassionate evaluation of the facts and information received by them and to be published as a news item. The presentation of the news should be truthful,

objective and comprehensive without any false and distorted expression".

24. It may be pointed out in this connection that no objection could have been taken to the article had it merely stated that it is the view of one of the learned Single Judges of this Court. But when it proceeded to attribute or state certain things to the Hon'ble Chief Justice of this Court and the other Judges under the caption "Sethi v Saldanha: Battle in High Court", it not only transgressed the limits of fair and bona fide criticism but had a clear tendency to affect the dignity and prestige of this Court. The said article to a certain extent is in the nature of making a scurrilous attack on the Chief Justice. It is obvious that if an impression is created in the minds of the public that the Judges of this Court are on warpath, the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined. Obviously it is for this reason that the rule was issued against the respondents. In the context of what we have noticed or stated above with regard to working or functioning of the High Court etc., we find that the respondents have not taken necessary care and caution in publishing such articles in their issue dated 8-1-1998. We are unable to accept the contentions of learned Counsel for respondents that the article in question does not fall within the ambit or purview of Section 2(c) of the Act. The article in question besides being incorrect and improper in the context of what we have stated above with regard to functioning of this Court, it would certainly undermine the confidence of the public in the administration of justice and bring the judiciary to disrepute. The publication in question did amount to Contempt of Court as it was calculated to lower the prestige and dignity of this Court and bring into disrepute the administration of justice. The respondent 5 has filed an affidavit taking the whole responsibility for the article in question, but the other respondents cannot escape their responsibility as they were also expected to exercise due care and responsibility in verifying the correctness or otherwise of the facts mentioned in article in question before publishing it in the newspaper. They cannot simply publish whatever that is passed on to them without verifying the correctness or otherwise of the material supplied to them. If they had taken due care and caution of verifying the correctness or otherwise of the matter, they would have certainly come to know of the real fact. It was incumbent upon the respondents to have verified the information they had received and ascertain as far as possible they could whether the facts were correct and proper. The minimum that they could have done was to have approached at least the Registry of this Court to know the correctness or otherwise of the information received. The respondents do not appear to have made any endeavour in this direction. As the respondents did not act with reasonable care and caution, they cannot be said to have acted bona fide. What is more is that they did not exercise that much care and caution which a newspaper is required to take before publishing any article in the newspaper. It has to be mentioned that the Editor is a person who controls the selection of the matter which is to be published in a particular issue of the paper. The Editor and Publisher are liable for such contemptuous matter which

was published in their newspaper. Such an irresponsible conduct and attitude on the part of the Editor, Publisher and Reporter cannot be said to be done in good faith, but it is certainly contrary to the high professional standards as even a slightest enquiry or a simple verification of the alleged statement about the directions issued by the Hon"ble Chief Justice with the Registry would have revealed the truth. But it appears that even the ordinary care was not taken by the respondents in publishing such a contemptuous news item. This cannot be regarded as a public service, but a disservice to the society, which misguides the members of the public with regard to functioning of this Court. Obviously therefore this cannot be regarded as done in good faith or public interest. On the other hand the said news item will undermine this institution in the minds of the public. That apart, as we have already stated it amounts scurrilous attack on the Chief Justice. This sort of attack has the inevitable effect of undermining the confidence of the public in the judiciary. If confidence of the judiciary goes, the due administration of justice definitely suffers. The article in question is a skillful attempt on the part of the writer of the said article to impute something to the Chief Justice and to the other Judges of this Court, creating a strong prejudicial impact on the mind of the reader about the functioning and administration of justice by this Court. It may be that the article suggests that the author of article had interviewed the learned Judge or Judges of this Court and collected their views in the matter, but that cannot detract from the obvious implication and imputations made in respect of functioning of this Court, which immediately create a very strong prejudicial impact on the mind of the reader about the functioning and administration of justice by this Court. It is certainly contemptuous in nature which brings down the High Court as well as the Hon"ble Chief Justice and the other Judges of this Court in the estimation of the general public. In this context, it may be mentioned that if the defamation of a Court amounts to Contempt of Court, proceedings can certainly be initiated under the Contempt of Courts Act, quite apart from the fact that other remedy may be open to the aggrieved persons under the provisions of IPC. Therefore, having given our anxious consideration to the matter in issue, we are of the clear view that the article in question was a gross Contempt of Court as it certainly creates an impression in the minds of the public that the Judges in this Court are at war. This would certainly undermine the administration of justice by this Court in the minds of the general public. The confidence of the whole community in the administration of justice and the functioning of this Court is bound to be undermined and as we have already stated no greater mischief than that can possibly be imagined. Therefore, for the foregoing reasons, we are of the clear view that news item published in The Indian Express Daily dated 8-1-1998 under the heading or caption "Sethi v Saldanha: Battle in High Court" was a gross Contempt of Court and all these respondents have acted without necessary care and caution in publishing the said article in their above said newspaper and they are thus individually and collectively responsible for publishing such a contemptuous article in their newspaper. They cannot escape their responsibility by offering such lame excuses. However, we are happy to find that the

respondents in general by means of their two memos dated 26-6-1998 and the respondents 1, 4 and 5 in particular by their affidavits filed in this proceeding have frankly stated that the article in question is really not in good taste and they deeply regret for the edition, printing and publication of the article in question which is in bad taste and which was unwarranted. It is further admitted by the respondents that had they exercised due care, caution and diligence, the article which is in a bad taste could not have appeared in their daily newspaper. The respondents have thus expressed their deep regret for the same and also tendered their apologies. It is to be seen therefore that the respondents herein have expressed sincere regret and have tendered unreserved or unconditional apologies for this lapse on their part. We would like to observe that it is not the practice of this Court to issue such rules except in very grave and serious cases and it is never over-sensitive to public criticism but when there is danger of grave mischief being done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity. As the respondents have sincerely regretted and tendered apologies to the Court through their Counsel by means of their memos and the affidavits, we think that no further action against the respondents is necessary. In this connection, we may respectfully refer to the observations made by the Hon''ble Supreme Court in the case of Harijai Singh, supra, wherein it is observed as under:

"12. But it may be pointed out that various judgments and pronouncements of this Court, bear testimony to the fact that this Court is not hypersensitive in matters relating to Contempt of Courts and has always shown magnanimity in accepting the apology on being satisfied that the error made in the publication was without any malice or without any intention of disrespect towards the Courts or towards any member of the judiciary. This Court always entertained fair criticism of the judgments and orders or about the person of a Judge. Fair criticism within the parameters of law is always welcome in a democratic system. But the news items with which we are concerned can neither be said to be fair or made in good faith but wholly false and the explanation given is far from satisfactory. Shri Hari Jaisingh, Editor of the Sunday Tribune and Lt. Col. H.L. Dheer, Publisher as well as Vijay Kumar Chopra, Editor and Publisher of daily Punjab Kesari have taken the stand that they had taken the news items to be correct on the basis of the information supplied by a very senior journalist of long standing Dina Nath Misra. But this cannot be accepted as a valid excuse. It may be stated that at common law, absence of intention or knowledge about the correctness of the contents of the matter published (for example, as in the present case, on the basis of information received from the journalist/reporter) will be of no avail for the Editors and Publishers for Contempt of Court but for determining the quantum of punishment which may be awarded. Thus they cannot escape the responsibility for being careless in publishing it without caring to verify the correctness. However, since they have not only expressed repentance on the incident but have expressed their sincere written unconditional apology, we accept the same with the warning that they should be

very careful in future. As regards the case of Dina Nath Misra, we find he acted in gross carelessness. Being a very experienced journalist of long standing it was his duty while publishing the news item relating to the members of the Apex Court, to have taken extra care to verify the correctness and if he had done so, we are sure there would not have been any difficulty in coming to know that the information supplied to him had absolutely no legs to stand and was patently false and the publication would have been avoided which not only caused great embarrassment to this Court but conveyed a wrong message to the public at large jeopardizing the faith of the illiterate masses in our judiciary. Shri Dina Nath Misra has no doubt committed a serious mistake but he has realised his mistake and expressed sincere repentance and has tendered unconditional apology for the same. He was present in the Court and virtually looked to be gloomy and felt repentant of what he had done. We think this sufferance itself is sufficient punishment for him. He being a senior journalist and an aged person and, therefore, taking a lenient view of the matter we accept his apology also. We, however, direct that the contemnors will publish in the front page of their respective newspapers within a box their respective apologies specifically mentioning that the said news items were absolutely incorrect and false. This may be done within two weeks. The Contempt Petition Nos. 206-207 of 1996 are disposed of accordingly".

25. In this matter we are of the opinion that the same procedure which has been followed by the Hon'ble Supreme Court in the above cited decision or case may be followed. In this view of the matter, we place on record the two memos submitted to the Court by the respondents as well as the affidavits filed by respondents 1, 4 and 5 and we accept the deep and sincere regret and the apologies tendered in this regard by the respondents. We however direct the respondents/contemnors to give wide publicity to their regret and unconditional apology tendered to this Court in the above matter by publishing in the front page of their newspaper within a box their sincere regret and apologies specifically mentioning that the said news item was improper and incorrect and had been published without due care, caution and diligence. This shall be done by the respondents within two weeks from the date of this order. The Contempt Case No. CCC (CrI.) 2 of 1998 is disposed of accordingly and we have decided to drop the further proceedings in this regard subject to the above condition.