
(2005) 03 CAL CK 0027
In the Calcutta High Court
Case No : C.P.A.N. No. 1535 of 2003

Kallol Guha Thakurata and Another

APPELLANT

Vs

Biman Basu, Chairman, Left Front and Others

RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(2), 215
Contempt of Courts (Calcutta High Court) Rules, 1975 — Rule 17
Contempt of Courts Act, 1971 — Section 14, 15, 15(1), 15(2), 15(3)
Evidence Act, 1872 — Section 1

Citation : (2005) 2 CALLT 1 : (2005) 2 CHN 330

Hon'ble Judges : S.P. Talukdar, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Anindya Mitra, Sudipto Sarkar and Siddhartha Mitra, Anjan Mukherjee, Bikash Ranjan Bhattacharyya, Sombuddha Chakraborty, Debabrata Roy and Nandini Mitra, Debasish Roy and Syed Samshed Ali, Party in Person for the petitioner No. 1 and Idris Ali, Sreemoyee Mitra and Kripa Sindhu Panja, for the petitioner No. 2, for the Appellant;

Judgement

Asok Kumar Ganguly, J.—A learned Judge of this Court by a judgment and order dated 29.09.2003 (hereinafter called the said order) initiated a suo motu proceeding against D. C. (Traffic), Kolkata and others and in the said proceeding passed certain orders for controlling the holding of public meetings within certain fixed hours on weekdays and also gave certain directions in connection therewith. The occasions for passing those orders arose as the learned Judge, while coming to High Court on 24.09.2003, felt obstructed by a procession as a result of which the traffic went haywire and the car of the learned Judge got stuck in the jam.

2. The correctness of the said order is not in issue in the instant proceeding. Since the said order contained several directions for controlling the holding of public meetings as also various directions on the public authorities in order to keep the streets of the Kolkata free from such meetings, obviously it touched

upon matters of public interest. The said order evoked varied response in public mind. Most of the newspapers lauded it and over it there was considerable media coverage. However, some political parties thought differently and felt that the said order curtails the right of the people to hold demonstration and public meetings on the streets of Kolkata.

3. There were various comments in respect of the said order and the comments, with which this Court is concerned in this proceeding, are the ones made by Shri Biman Basu, the alleged contemnor in this proceeding.

Facts:

4. Shri Biman Basu is a leading political figure in the country. He is the Chairman of the Left Front, which is the ruling combination in the State of West Bengal and also a member of the Polit Bureau of the Communist Party of India (Marxist).

5. Various newspapers published the comments of Shri Basu made by him on several days.

6. On a prima facie case of criminal contempt being made out on the comments of Shri Basu in respect of the said order, a Contempt Rule was issued on 17.10.2003 by this Bench. The Rule was made returnable on 07.11.2003. While issuing the Rule, this Bench considered the material furnished by the contempt petition and also the issue dated 05.10.03 of Bartaman, a Bengali newspaper. This Bench also directed that the records of the case may be placed before the Hon'ble Chief Justice for assignment of the matter of hearing before any Bench that the Hon'ble Chief Justice may deem fit and proper.

7. By an order dated 29.10.2003, the Hon'ble Chief Justice assigned the matter to this Bench. On 07.11.2003, on the returnable date of the Rule, Shri Basu personally appeared in Court and his personal appearance was recorded and further appearance was dispensed with. On that date various other newspapers, which contained the statement of Shri Basu, were handed over to this Court. Those newspapers are Hindustan Times dated 5th October, 2003, The Statesman dated 5th October, 2003, Ananda Bazar Patrika, a Bengali Daily dated 5th October, 2003, Aajkal dated 5th October, 2003 and Bartaman dated 5th October, 2003. This Court added the editors of various newspapers mentioned above as parties to the proceeding. Notices were directed to be served on those newspapers asking them to showcause why contempt rule should not be issued against them for publishing the statements of Shri Basu in respect of the said order of this Court. On that date, directions, as prayed for by Shri Basu to file affidavits, were given. Copies of the various newspapers, which were produced before this Court, were also made available to the learned counsel, representing Shri Basu.

8. On 7.11.03, Shri Bikash Ranjan Bhattacharya, the learned senior counsel, appearing for Shri Basu, raised the question of maintainability of the contempt petition, inter alia, on the ground that the same was filed without the written

permission or consent of the Advocate General, which according to Shri Bhattacharya, is required u/s 15(1)(b) of the Contempt of Courts Act and as such a prayer was made to discharge the rule. The Court heard the same argument and recorded in its order dated 7.11.03 that the question whether the Court had exercised its power suo motu or not in initiating the contempt proceeding is kept open.

Evidence in this case :

9. Affidavit was filed by Shri Basu clarifying his stand about his statements. Shri Basu was allowed to file another affidavit subsequently. The Court also by an order dated 22nd October, 2004 added various news channels as respondents to this proceeding like ETV Bangla, Tara TV Bangla and Khas Khabar and the Court on 22nd April, 2004 also passed an order upon those electronic news agencies to preserve the speeches made by Shri Basu on 4th October, 2003 and made it clear that the Court may direct them to produce the same before the Court.

10. Thereafter, out of those three TV Channels namely ETV Bangla, Tara TV Bangla and Khas Khabar, two of them sent their representatives to this Court and also with the clippings of the statements made by Shri Basu. The video clippings were played on television sets in the presence of the learned Counsel for the parties in our Chamber in this Court, as it was not possible to do so in open Court. In so far as the ETV Bangla is concerned, the said news channel took the stand that it had not preserved the video clipping containing the statement of Shri Basu.

11. The contempt petition has two petitioners, one Shri Kallol Guha Thakurata, an advocate of this Court and Shri Hareshnath Ballav, a citizen. In the said petition, the allegations against Shri Basu are that in respect of the said order an appeal has been filed before this Court and the said appeal was pending. Despite the fact that the appeal is pending, Mr. Basu, held an emergent meeting on 4th October, 2003 alongwith other Left Front partners and decided on a strategy to violate the said order and told the Press that on 8th October, 2003 which is a weekday, a mass convention will be held at Mahajati Sadan to protest against the said order. It was also stated that Shri Basu declared before the Press and the electronic media that he will flout the restrictions imposed by the said order and also asked all the important organisations which are showing allegiance to Left Front for holding processions and demonstrations and defy the said order of this Court. This statement of Shri Basu was reported in almost in all the leading newspapers of the city on 5th October, 2003 and also on subsequent dates. It was also stated that Shri Basu declared that he would organize procession from College Street to Rani Rashmoni Avenue on weekdays in violation of the said order and Shri Basu commented that the learned Judge who passed the said order did not understand the spirit of Calcutta and such people should quit the city. Shri Basu is stated to have drawn a parallel between the agitation over the Rowlatt Act during the Independence struggle and the agitation over the said order and also stated that "go-back" slogan can be raised against the learned

Judge. It is also alleged when Shri Basu was asked by the journalists whether such statement amounts to Contempt of Court, to that, Shri Basu replied that, let it be so, and if necessary he will go to jail.

12. Those statements of Sri Basu, it was stated, are not mere personal attacks on the Judge but it is an attack on the judiciary and, as such, amount to Contempt of Court. It was also stated that such attack lowered the dignity of a sitting Judge of this Court and also the judicial system in the country and a prayer was made to initiate contempt proceeding against Shri Basu under Sections 2(a)(b)(c) and (d) of the Act or under any other applicable sections under the Contempt of Courts Act and to suitably imprison him, otherwise people will lose the faith in the judiciary. An averment was also made in paragraph 10 that suo motu contempt proceeding may be initiated by this Court after going through the newspapers reports.

13. Since various newspapers mentioned hereinabove were noticed, they also entered appearance in this contempt proceeding and one of the said newspapers, Ananda Bazar Patrika (hereinafter referred to as "ABP") filed a detailed affidavit, which was affirmed by Shri Aveek Sarkar, Editor of ABP. The copy of all these affidavits filed on behalf of different newspapers were also served on Shri Basu.

14. In the affidavit filed on behalf of the ABP, Shri Sarkar stated that the reports, which were published in ABP on 5th October, 2003, attributing therein the statements made by Shri Basu, are true. But, the comments by Shri Basu are not shared by ABP and by publishing the statements and comments made by Shri Basu, the newspapers discharged its public duty of making such comments known to the members of the public as the comments made by Shri Basu are newsworthy and warranted publication. So, by publishing those two comments, ABP had just discharged its duty and it had no intention to scandalize or lower the prestige or dignity of this Court. It was also stated that the newspaper was not the originator of the statement and it has correctly reproduced the statement of Shri Basu. In this connection, an affidavit filed by ABP's Journalist, Shri Prasun Acharya, who attended the press conference convened by Shri Basu on 4th October, 2003 was also annexed and made part of ABP's affidavit.

15. In this affidavit, Mr. Acharya has stated that as Special Correspondent of ABP, he covered the press conference convened by Shri Basu at the office of the Communist Party of India (Marxist) at Alimuddin Street, Kolkata. Mr. Acharya also stated that the said conference was called in view of the said order.

16. In the affidavit filed by Mr. Acharya, the statements made by Shri Basu about the said order have been reproduced within quotation marks. This Court sets out hereinbefore the statements of Shri Basu as disclosed by Mr. Acharya in his affidavit within quotation mark. Those statements of Shri Basu as reproduced in the affidavit of Shri Acharya are:

"We are not going to obey Justice Lala's order. Never, we are ready to go to prison for this. To protest this, leftist students and youths will bring out a

procession from Calcutta University to Rani Rashmoni Road and will conduct a meeting. Because the order of Justice Lala is absolutely undesirable to the people of Calcutta. If necessary "Go Back" slogans will be shouted from the gathering."

"Justice Lala has said that Brigade, Sahid Minar or Rani Rashmoni Avenue are fixed places for conducting meetings. It is useless to say this because regarding this, the Chief Minister has already called a press conference. Government has already given a notice. Also, Justice Lala has said that no meeting or processions can be held from 8 in the morning till 8 in the evening. This means taking away the right or building up public opinion as well as the right to freedom of speech. If the order given by Justice Lala is obeyed then we have to conduct a meeting at 12 in the night. The people of West Bengal will never obey this order."

"We have today told all representatives of students, youths, women, artists -- literatures, teachers and all other public organizations to conduct as many processions and meetings they wish till 27th October -- the date on which the High Court is to be opened. After the meeting is over then submit a memorandum to the Chief Minister at the Writer's. During the British period many policies and law were illegal and very much against public interest. However, even then, such an order was never passed. Nowhere in the world such an order has been passed, Justice Lala has self-actuated himself to pass this order voluntarily. Nobody will obey him".

"People's reliance on the judiciary are decreasing day by day. Justice Lala has given such an order because his car was denied passage owing to a procession by the tribals. However, he has no idea regarding tribals. He doesn't, even know how many tribals are present in the State."

17. In the affidavit filed by Shri Asoke Basu, Publisher of Bartaman, another newspaper, it has been stated in paragraph 7 that what was said by Shri Basu in the press meeting on 4th October, 2003 was published.

18. In the affidavit filed by the Hindustan Times affirmed by one Shri Rajiv Bagchi, the Resident Editor, it has been stated that the contempt petition was filed without the consent of the Advocate General and as such the same is liable to be dismissed with costs in limini. It was also stated that no charge of contempt has been specified against the Hindustan Times. As such it is difficult for it to show cause. But, however, in paragraph 9 it has been stated that in the issue of Hindustan Times dated 4th October, 2003 two reports were published under the headlines "Left lines up rally raj, blasts Judge" and "Justice Lala unwanted in city". There is also another article by the legal correspondent of the said newspaper under the heading "Once-bitten, Basu in fresh contempt". Those reports were annexed to the affidavit filed by Hindustan Times.

19. In those reports in Hindustan Times, about the said order, the comments of Shri Basu were published within quotation marks as "He is anti-tribal and has no idea about the tradition of the State and this city. The fewer such people in Kolkata the better. Such orders (like the ban on rallies during work hours) had

not been passed even during British rule. He is unwanted here." It is clear from the report that by "He" Shri Basu meant the learned Judge. In the said report Shri Basu has also been quoted as saying "If necessary we shall launch a movement with the slogan Amitava Lala go back". Shri Basu has also been quoted as saying "We will go our way irrespective of what the police will do. If necessary top front leaders will lead the processions and go to jail". Shri Basu has also been quoted as saying "I am ready to go to jail if this statement of mine and our defiance of the Court order amount to Contempt of Court".

20. In the edition of Bartaman dated 5th October, 2003 it has been recorded that Shri Basu stated, "We do not want to obey this order". Shri Basu was also reported to have said that if necessary go back slogan may also be raised against the Judge.

21. As noted above Shri Basu has filed two affidavits in this proceeding.

22. In the affidavit which was affirmed by Shri Basu on 31st January, 2004 (hereinafter called the first affidavit) he has shown his respect to the Hon"ble High Court but has not offered any apology for his comments on the said order. The maintainability of the contempt petition was questioned by saying that since the consent of the Advocate General of West Bengal was not obtained, the contempt petition should be dismissed. He also stated that the statements made in the contempt petition are vague, incorrect and misleading and that the said order passed is bad in law and without jurisdiction,

23. In paragraph 9 of the first affidavit Shri Basu stated that the reports in the local newspapers about his statement are distorted, motivated and false. It has also been stated that the direction contained in the said order is against the democratic right of the people. The right of people to take processions peacefully and hold meeting is guaranteed as fundamental right and the city of Kolkata has long tradition of holding such protest meetings. The city has earned unique distinction in this regard. It was also stated that the said order has the effect of circumventing the inalienable right of the citizen.

24. In the first affidavit Shri Basu admits that on 4th October, 2003 at the headquarters of the office of the Communist Party of India (Marxist) he convened a Press conference and also admits that in the said Press conference he specifically stated that they do not feel inclined to obey the order and further stated that if any such order was sustained the people themselves from the meetings and processions might say that they would not abide by the same and people themselves might raise the slogan of "go back" to His Lordship and if such slogan is raised Shri Basu does not know what to do. But Shri Basu denied that he had raised any such slogans and also denied that he has used any words against the Judge and has made any disreputable comments about the Judge. Shri Basu also denied, that he had said that the said order passed by the learned Judge was draconian. Shri Basu relied on his interview with Bengali newspaper Aajkal and which was published on 10th October, 2003. According to Shri Basu,

the interview given to Aajkal will show that the allegations imputed to him in other newspapers were motivatedly untrue. Shri Basu annexed with his affidavit a copy of Aajkal dated 10th October, 2003, which published his interview. He also stated that other newspapers by altering his statement had tried to project him as one who is bent upon blasting the Hon"ble Judge and in particular the judiciary in general. Shri Basu repeated that he has highest respect towards the Court and also stated that the newspapers in order to malign him have in fact deprecated the institutions of judiciary. Shri Basu also stated the newspapers with the desire to promote and uphold the market economy published his statements motivatedly. Shri Basu also stated that even before the contempt proceeding could be finally heard and decided by the Court, he had been tried, fined and convicted by the Press.

25. As noted Shri Basu had filed another affidavit affirmed on 29th September, 2004 (hereinafter referred to as the "second affidavit"). In the second affidavit he dealt with the newspapers reports which appeared in ABP, Bartaman and Hindustan Times. In paragraph 4 of the second affidavit, Shri Basu stated that the newspaper reports about the Press conference held by him on 4th October, 2003 did not correctly represent what he had stated in the said Press conference. But in paragraph 4 of the second affidavit, he did not give any particulars how his statements in the Press conference were wrongly reported. He merely stated that he himself did not raise any go back slogan against the learned Judge but unfortunately this impression was conveyed to the readers from the newspaper report. In paragraph 4 of the second affidavit Shri Basu said that all he had said was if the said order is sustained people from the meetings and processions might say that they would not abide by the same and people themselves might raise the slogan of go back.

26. In paragraph 5 of the second affidavit, Shri Basu specifically dealt with the affidavit affirmed by ABP and he stated that the report in ABP on 5th October, 2003 was slightly different from what he had stated in the press conference. He had further stated that those who are overdoing with the said order are unwanted in the city and the report in ABP is the outcome of some misunderstanding.

27. In paragraph 6 of the second affidavit Shri Basu admits that Shri Acharya covered, on behalf of ABP, the press conference called by him. But Shri Basu stated, with due respect to Shri Acharya as a Journalist, that some alteration might have taken place and an impression has been inadvertently conveyed that the "deponent" (Shri Basu) will raise such a slogan. In paragraph 6 of the said second affidavit Shri Basu has admitted that there is not much of a difference between what he had stated and what had been reported by Shri Acharya. Since this part of the affidavit is very crucial, this Court sets out hereinbelow the exact averments made by Shri Basu in this part of paragraph 6 of the second affidavit:

"If reporting in Ananda Bazar Patrika is closely and minutely scrutinized it appears that there is not much of difference between what he had stated and

what had been reported. The only difference perhaps has been caused by the reporting made in the passive voice. The deponent further states that while quoting verbatim any digression, even if unintended, coupled with any misplaced emphasis on words stated to be quoted verbatim is prone to totally changing the character of deponent's speech alleged to contain the contumacious statement. The deponent further states that such alteration at times takes place in the reporting even if that is not intended by the newspapers."

28. Dealing with the affidavit filed by Bartaman, Shri Basu admitted that he expressed his disinclination to obey the order.

29. In so far as the affidavit filed on behalf of Hindustan Times is concerned, Shri Basu in his second affidavit expressed his agreement with the statements made in paragraphs 6,7 and 8 of that affidavit wherein an objection has been raised about the maintainability of the contempt petition without the consent of the Advocate General. But Shri Basu did not dispute the contents of the reports published in Hindustan Times dated 4th October, 2003 about his comments made on the said order. Those comments of Shri Basu as reported in Hindustan Times have been set out in the earlier part of this judgment.

30. In this proceeding the video clippings of the statements made by Shri Basu were produced before the Court from two Television Channels. From a perusal of the video clippings produced before the Court, it was clear that the entire statement of Shri Basu was not telecast or at least not shown in the video clippings produced before this Court. A rough English version of the statement which was shown to this Court as telecast in the news channel of Khas Khabar is as follows :

".....that the order of Justice Lala amounts to depriving persons of their freedom of speech and also amounts to depriving persons of their right to raise their grievances..... The Left Front is seriously opposing the said judgment and is raising its protest against the same. Mr. Biman Basu further stated that they do not want to obey this judgment. This is their simple stand. Mr. Basu further stated that they were organising a mass convention in respect of the said judgment on 8th October, 2003. He further stated that date has been fixed on 27th October, 2003 for hearing of the State's appeal against the said judgment. But that date was fixed after the vacation. Mr. Basu further stated that before 27th, people should hold meetings or processions in an organised manner and may submit deputation to the Chief Minister against that judgment.

31. Similarly the English version of the statements which was telecast in Tara Bangla is as follows:

".....if over this order any kind of excess is committed, then we are prepared to go to jail, we are not prepared to accept this. We shall participate in the processions and we want to say that this kind of people are unwanted in the city of Calcutta. No instruction on this order has yet come, but even if instructions

come, we, on behalf of the left front, shall violate this order."

32. From a perusal of the statements made by Shri Basu in his two affidavits and the affidavits filed on behalf of various newspapers the following facts emerge :

a) The said order in respect of which Shri Basu made his comments was not a final order and Shri Basu knew that in respect of the said order the State Government had filed an appeal.

b) Despite the pendency of an appeal against the said order, Shri Basu called a Press Conference on 4.10.03 and in which he specifically stated that he will not be inclined to obey the said order. (Page 8 of the first affidavit of Shri Basu).

c) In the said Press Conference Shri Basu, knowing that an appeal against the said order is pending said --"The deponent further said that if any such order was ultimately maintained, people themselves from the meetings and processions might say that they would not abide by the same and the Hon"ble Judge who had delivered this judgment should leave this place." (Pg. 8 of the first affidavit).

d) In the Press Conference Shri Basu said that the learned Judge who passed the said order seems to be unaware of the long democratic traditions of city of Kolkata.

e) In his first affidavit Shri Basu relied on his interview, published in the Bengali newspaper Aajkal on 10th November, 2003. He never stated that the report of his statement in Aajkal is motivated. Rather he relied on it and had annexed a copy of Aajkal dated 10th November, 2003. In the said issue of Aajkal apart from his interview, another article by one Shri Debesh Roy was published. In the said article Shri Basu was congratulated by Shri Roy for saying three things. They are :

(i) We shall not obey this order;

(ii) If for not obeying this order if there is contempt, we shall go to jail, if necessary;

(iii) Justice Lala should leave Kolkata.

The entire report which appeared in Aajkal dated 10th October, 2003 and which Shri Basu annexed in his first affidavit is a material before this Court and the said report of Aajkal was not contradicted by Shri Basu.

(f) In the affidavit affirmed by Shri Acharya, the statements of Shri Basu within quotation marks have been disclosed. While dealing with those statements, Shri Basu in paragraph 6 of his second affidavit stated that there is not much of difference between what he had stated and what had been reported. The only difference perhaps has been caused by the reporting made in the passive voice. Therefore the statement of Shri Basu as quoted in inverted commas in the affidavit of Shri Acharya must be treated to have been admitted by him.

(g) If we analyse the statements of Shri Basu as quoted in the affidavit of Shri

Acharya, the following position emerges :

(i) We are not going to obey the said order and if necessary we are prepared to go to prison for this.

(ii) To protest against the said order the leftist students and youths will bring out a procession from Calcutta University to Rani Rashmoni Road and will conduct a meeting.

(iii) The said order is absolutely undesirable to the people of Calcutta and if necessary "Go Back" slogans will be shouted from the gathering.

(iv) If the said order is obeyed then meeting will have to be conducted at 12 in the night. The people of West Bengal will never obey this order.

(v) We have today told all representatives of students, youth, women, artists -- litterateurs, teachers and all other public organizations to conduct as many processions and meetings they wish till 27th October -- the date on which the High Court is to be opened.

(vi) During the British period many policies and law were illegal and very much against public interest. However, even then, such an order was never passed,

(vii) Nowhere in the world such an order will be passed.

(viii) The order passed by Justice Lala has been self-actuated and nobody will obey him.

(ix) People's reliance on the judiciary is decreasing day by day. Justice Lala has given such an order because his car was denied passage owing to a procession by the tribals.

(x) He (Justice Lala) has no idea regarding tribals. He (Justice Lala) doesn't even know how many tribals are present in the State.

(h) With the affidavit filed by Hindustan Times also was annexed a report given by their correspondent in which the comments of Shri Basu about the said order are :

(i) He (Justice Lala) is anti-tribal and has no idea about the tradition of the city. The fewer such people in Kolkata the better. Such order was not passed even during the British rule. He (Justice Lala) is unwanted here.

(ii) If necessary we shall launch a movement with the slogan Amitava Lala go back.

As noted above there is no denial by Shri Basu in his second affidavit of newspaper report published in Hindustan Times.

Standard of Proof :

33. It is true that in a case of criminal contempt, the standard of proof is, as in a

criminal case, namely proof beyond reasonable doubt. The learned counsel for Shri Basu has cited a number of judgments on this point. They are:

- (i) Chhotu Ram Vs. Urvashi Gulati and Another, .
- (ii) Mrityunjay Das and Another Vs. Sayed Hasibur Rahaman and Others, .
- (iii) S. Abdul Karim and Others Vs. M.K. Prakash and Others, .

34. Reliance was also placed by the learned counsel on the judgment of the Supreme Court in the case of Baradakanta Misra v. Registrar of Orissa High Court, reported in 1974(1) SCC 107. The attention of the Court was drawn to paragraph 59 of the report, where Justice Krishna Iyer, a Member of the Bench, held that a contemnor is entitled to the benefit of the doubt.

35. Now what is meant by proof beyond reasonable doubt in the context of a proceeding of criminal contempt ? This concept of proof beyond reasonable doubt is a common law concept about standard of proof arising out of the law of evidence. It has been decided by a Full Bench of Patna High Court in the case of In Re: Basanta Chandra Ghosh, Advocate and Others, , that contempt proceedings are not governed by the provisions of Evidence Act even though the contempt proceedings are judicial proceedings within the meaning of Section 1 of Evidence Act. The Court held that in view of the summary nature of enquiry in contempt proceedings, the rules of evidence do not apply to such cases.

36. Therefore, the question of proof beyond reasonable doubt will have to be tested on the basis of affidavit evidence and other materials by way of video recording which are made available in this case. Shri Basu was given opportunity to file a second affidavit dealing with the affidavits filed by several newspapers. Despite such opportunity, Shri Basu did not specifically deny his statement within quotation marks, disclosed in the affidavit of Shri Acharya. On the other hand Mr. Basu stated there is not much difference between what he had said and what was reported by Shri Acharya. This Court therefore did not ask ABP to produce the tape-recorded version of the statement of Shri Basu.

37. So this Court holds that the statement of Shri Basu as discussed above stands proved.

Maintainability of the Proceeding :

38. Before this Court proceeds to decide whether on the basis of the aforesaid materials any finding can be entered that Shri Basu has committed criminal contempt, this Court has to deal with the objection raised by Shri Bhattacharya, learned counsel for Shri Basu, on the maintainability of this contempt petition.

39. The precise objection raised by Shri Bhattacharya, the learned Counsel for Shri Basu is that this contempt petition has not been filed after obtaining consent of the Advocate General and, as such, the instant petition is not maintainable and should be dismissed in limini without going into the merits.

40. Section 15 of the Contempt of Courts Act, 1971 (hereinafter called as the "said Act") has two parts. Under the first part, it has been provided that in cases of criminal contempt, other than a contempt u/s 14, the High Court may take action on its own motion or on a motion made by (a) the Advocate General, (b) any other person with the written consent of the Advocate General, and (c) in relation to the High Court for the Union Territory of Delhi, such Law Officer of the Central Government as may be specified by notification in the Official Gazette or by any other person with the consent in writing of such Law Officer. Sub-section (2) of Section 15 deals with cases of criminal contempt of a subordinate Court. In those cases, the High Court may take action on (i) a reference made to it by the subordinate Court, or on (ii) a motion made by the Advocate General, and (iii) 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. Sub-section (3) of Section 15 is not directly relevant in this case.

41. Before considering the purport of Section 15 and the nature of the objection raised in this case, the Court may remind itself of certain basic questions even though they may be oft repeated.

42. The prime purpose of the law of contempt is the protection of the machinery of justice and also the interest and confidence of the general public in the efficacy of such machinery. The High Courts in India as Superior Courts of Record were exercising this contempt jurisdiction even prior to the framing of the Constitution or codification of the law of contempt by relying on the old principles of English Common Law. It has been judicially recognized that this contempt power is a necessary attribute and a basic feature of a Superior Court of Record of plenary jurisdiction like High Courts in India.

43. In a Three-Judges' Bench of the Supreme Court in the case of *Sukdev Singh v. Hon'ble Chief Justice, Teja Singh* AIR 1954 SC 86, this was recognized by the Apex Court by holding that the power of High Court to initiate proceedings for contempt and punish wherever necessary is a special jurisdiction, which is inherent in all Courts of Record. Dealing with this question in paragraph 34 of the report, the learned Judges held that the High Courts could deal with the contempt allegations summarily and adopt its own procedure. All that is necessary is that the procedure should be fair and that the contemnor is made aware of the charge made against him and given a reasonable opportunity to defend himself. This principle has been repeated by the Hon'ble Supreme Court subsequently also in the case of *Mohd. Ikram Hussain Vs. State of U.P. and Others*, of the report, it has been reiterated that the High Court's power for punishment of contempt has been preserved by Constitution and they are also inherent in a Court of Records. The learned Judges held that the only curb on such power is the quantum of punishment fixed by law regarding the period for which a person can be imprisoned (See page 1630 of the Report).

44. It is, therefore, clear that there is no curb on High Courts to initiate contempt proceeding. There may be some statutory restrictions on High Court's power in

awarding the period of punishment. It may be noted when the decision in Mohammed Ikram Hussain was delivered the said Act was not in existence. The said Act came into existence on 24th December, 1971. A few months before that, in a judgment delivered by the Constitution Bench of the Supreme Court on 19th March, 1971 in the case of Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, , the learned Judges of the Supreme Court overruled the objection which was raised on behalf of the alleged contemnors that the contempt petition filed in the Supreme Court without the consent of the Attorney General was not maintainable. The Court held it can issue notice suo motu. (See paragraph 86 page 651 of the report). At paragraph 88, in the same page of the report, the learned Judges made it clear that there is nothing in law which can prevent the Apex Court from entertaining a petition at the instance of the President of the Supreme Court Bar Association and other Advocates of the Court.

45. After the said Act came into force, the Supreme Court delivered a judgment in the case of R.L. Kapur Vs. State of Madras, . Justice Shelat speaking for the Court, made it clear at page 654 of the report, that Article 215 of the Constitution declares that every High Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. The learned Judges further held whether Article 215 makes this position clear or not, the contempt jurisdiction in a Court of Record is a special one and is not arising or derived from the Contempt of Courts Act, 1952. In paragraph 5, the learned Judge made it absolutely clear by saying that in so far as the contempt of the High Court is concerned that "is distinguished from that of a Court subordinate to it". The learned Judges further held that the Constitution vests the contempt jurisdiction in every High Court and "no act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority".

46. In a subsequent judgment of the Supreme Court in the case of S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra, , Section 15 of the said Act was considered and a preliminary objection was raised that the High Court was not competent to take cognizance of the contempt alleged to have been committed on the petition moved by one Shri Misra without any reference from the Subordinate Court or without a motion by the Advocate General. The High Court rejected the said contention and an appeal was filed before the Supreme Court.

47. Rejecting the appeal, the Supreme Court upheld the High Court's action. The facts in S.K. Sarkar have some similarity with the facts of this case.

48. In paragraph 19 of the report, it was made clear that Section 15 does not specify the basis or the source of information on which the High Court can act on its own motion. It has been made clear that if the High Court acts on the information derived from its own source, such as on perusal of the record of a Subordinate Court, or by reading a newspaper or hearing the public speech, without any reference from the Subordinate Court or from the Advocate General,

it can take cognizance on its own motion. After saying this. Apex Court posed the question thus: If the High Court is directly moved by a private person, feeling aggrieved, and not by the Advocate General, can the High Court refuse to entertain the same on the ground that it has been moved without the written consent of the Advocate General ? The said question has been answered by the learned Judge in paragraph 19 itself by saying that the High Court has, in such a situation, a discretion to refuse to entertain the said petition. At the same time, it has also a discretion to take cognizance on its own motion on the basis of the information supplied to it in that petition. It was also made clear that if the petitioner is a responsible member of the profession, the High Court may act suo motu and moreover if the petitioner/Advocate prays that the Court should take action suo motu.

49. In the instant case one of the petitioners is an Advocate of this Court and there is also an averment in paragraph 10 of the petition that action may be taken suo motu. In view of these materials being produced before the Court, the question is whether the High Court acted suo motu. As noted above this question was kept open by this Bench in its order dated 7th November, 2003.

50. In *S.K. Sarkar (supra)*, the Supreme Court clarified that the object of prescribing procedural modes of taking cognizance u/s 15 of the said Act is to safeguard the valuable time of the High Court and Supreme Court from being wasted by the filing of frivolous contempt petitions. The learned Judges also made it clear if the High Court is prima facie satisfied that the information received by it even on the basis of a petition about the commission of contempt is not a frivolous one and the contempt alleged is not merely technical or trivial, it may in its discretion act suo motu and commence action against the contemnors. It has, however, been made clear that such mode of taking cognizance suo motu is to be resorted sparingly and frequent use of this may render the safeguard otiose. But it cannot be said that the High Court cannot take suo motu cognizance of criminal contempt just because a petition has been filed without the written consent of the Advocate General even if the petition discloses prima facie materials for taking cognizance.

51. In the instant case, having regard to the nature of the complaint made in the petition alongwith the newspapers reports which were also referred to in the High Court's order dated 17th October, 2003 while issuing the Rule coupled with the fact that one of the petitioners was an Advocate of this Court and the petition contained an averment to take action suo motu, this Court records that it took the action suo motu. Therefore, the objection about the maintainability of the proceedings is not sustainable.

52. This Court is also of the opinion that in matters relating to suo motu initiation of contempt, the mode and manner of such initiation cannot be kept confined within narrow limits. In fact, the Calcutta High Court Contempt Rules framed under the said Act do not limit the same. Rule 17 of the Contempt of Court Rules made by Calcutta High Court is clear. In this case. Rule 17 was followed as the

Chief Justice assigned the matter to this Bench. Therefore, the objection on this aspect is not well-founded. It may be noted that in the case of S.K. Sarkar (supra) the previous judgment of the Supreme Court in the case of Mohammed Ikram Hussain was also noted.

53. This question has been further clarified subsequently by a Three-Judge Bench of the Supreme Court in the case of Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, . In Delhi Judicial Service Association, the previous judgment of the Supreme Court in RL Kapur (supra) was affirmed. After setting out Section 15 of the said Act and discussing the law of contempt in detail with reference to the Contempt of Courts Act, 1926 and the Contempt of Court Act, 1952, the learned Judges in paragraph 27 of the judgment made it clear that Section 15 prescribes the mode for taking cognizance of criminal contempt by the High Courts and Supreme Courts. But the Court made it clear that the same is not a substantive provision conferring the power or jurisdiction on the High Court or on the Supreme Court. According to the learned Judges the whole object of prescribing the procedural modes of taking cognizance is to save the valuable time of the High Court and Supreme Court from being wasted by frivolous complaints. The learned Judges made it very clear that Section 15 does not restrict the power of High Courts to take cognizance of contempt of itself or of a Subordinate Court on its own motion "although apparently the section does not say so" (See para 27, page 444 of the report).

54. The learned Judges in Delhi Judicial Service Association also relied on the judgment of the Supreme Court in the case of 5. K. Sarkar discussed above.

55. In the background of these pronouncements of the Apex Court as also the facts of this case on the basis of which the Court has taken suo motu cognizance of criminal contempt in this case, most of the judgments cited on this aspect by the learned counsel for the respondents are not relevant. But since an interesting question of law has been discussed in them, the Court proceeds to consider them as well.

56. Reliance was placed on the judgment of the Supreme Court in the case of Bal Thackrey v. Harish Pimpalkhute and Ors., reported in 2004 (8) Sup 596. In that case, the main issue for determination was whether the contempt proceeding was initiated suo motu against Thackrey (Para 2) and the Court held it was not initiated suo motu (Para 23). That is not the issue here. In this case, the cognizance has been taken suo motu. In Bal Thackrey, the Court, by referring to various previous judgments, held that for taking suo motu cognizance, the Advocate General's consent is not necessary. (Para 23)

57. The learned Counsel for Shri Basu also relied on a judgment of Full Bench of Patna High Court in the case of Shri Harish Chandra Mishra and Others Vs. The Hon'ble Mr. Justice S. Ali Ahmed, . In that case, a contempt petition was filed by an Advocate against a sitting Judge of the Court after he was involved in a verbal

duel with the same Judge while arguing a case before the learned Judge. In the background of these facts, the Full Bench of Patna High Court held that the written consent in an application for initiating proceeding for criminal contempt by a private individual is a must. But unfortunately, the notice of the learned Judges was not drawn to anyone of the judgments discussed above. Of course, the judgment in Delhi Judicial Service case was delivered much later. However, the finding on which Shri Bhattacharya relied was diluted by the conclusion at paragraph 7 page 71 of the judgment where the learned Judges held that there cannot be any dispute that information supplied on the basis of an application filed by an individual or a citizen can form basis for initiating a proceeding for contempt suo motu. That being the finding of the Full Bench of the Patna High Court, it is clear that if that judgment is properly read it does not contradict the findings reached by this Court in this proceeding. Apart from that in Harish Chander, the contempt petition was dismissed as the Full Bench held contempt proceeding against a High Court Judge is not maintainable, as the expression "Judge" in Section 16 of the said Act does not include a High Court Judge.

58. The next case cited by the learned Counsel for the respondent on this point was rendered in the case of B.K. Misra Vs. Chief Justice, Orissa H.C., In that case, a contempt proceeding was initiated by a delinquent judicial officer against the Judges of the High Court in the background of pending proceeding against him. In the background of those facts, the compliance with Section 15 of the said Act was discussed in paragraph 14 of the judgment, wherein the learned Judges after setting out Section 15 of the said Act, held that the said contempt petition without the consent of the Advocate General is not maintainable. Immediately after that conclusion, the learned Judges held that if the petitioner wanted the Court to take action suo motu on the basis of his petition, the Court would decline to do so and the reason why the Court would so decline was also stated. The Court recorded that contempt application was the result of a counterblast to another contempt and not out of a citizen's genuine anxiety in maintaining the purity of the seat of justice. Therefore, the materials disclosed in that contempt petition were not sufficient to satisfy the Court about the genuineness of the grievance and the Court found that the contempt proceeding was motivated. Therefore the contempt petition was dismissed as no case for suo motu cognizance was made out in the facts of that case.

59. But on the facts of the present case Court cannot reach that conclusion. It cannot be said that the petition filed here is motivated or does not show any anxiety on the part of the petitioners, one of whom is an Advocate of this Court, to maintain the dignity of this Court from being lowered.

60. Another judgment which was cited on this point by the learned Counsel for the respondent was a judgment of the Hon'ble Supreme Court in the case of State of Kerala Vs. M.S. Mani and Others, . The allegations in the contempt petition were that the respondent published a news items in Kerala Kamudhi containing therein malicious, scandalizing and defamatory allegations against

Shri K.N. Bhat, a Senior Advocate of the Supreme Court and Mr. Damodharan, Advocate General of Kerala and also against Mr. Prakash, a Standing Counsel of the State of Kerala. In that case the petition was filed without the consent of the Attorney General. Thereafter it was brought to the notice of the Court that the consent under Sub-section (1) of Section 15 was obtained on a later date. The contempt petition was filed on 17th May, 1999 and consent of the Attorney General was obtained on 11th May, 2000. The Supreme Court held that since the motion to take action was not made without the consent of the Attorney General, subsequent consent does not cure the initial defect. The learned Judges held that compliance with Section 15 of the Act is mandatory. The question of suo motu cognizance was not discussed in that case.

61. In the case of M.S. Mani, the allegations were against the learned Advocates and not against any Judge or Judiciary. But as pointed out above, the facts in this case are totally different. In this case, the Court had taken suo motu cognizance on the basis of the information given to the Court on the petition and also on the basis of newspapers report. It has also been noticed that one of the petitioners is an Advocate and there is an averment in the petition urging the Court to take action suo motu. And above all the allegations on which this contempt petition is based prima facie made out a case for contempt for the Court to take suo motu cognizance.

Fair Comment and Contempt :

62. What is fair comment has not been defined under the said Act. In fact, it could not be defined. What is fair comment in a given situation would obviously depend on the facts of each case. Supreme Court also opined similarly by holding that the limit of fair comment being an integral part of the larger liberty of freedom of speech and expression it cannot be put in a strait-jacket formula and further held that "more or less it would depend upon the facts and circumstances of each case"-- Rama Dayal Markarha Vs. State of Madhya Pradesh, .

63. Comments which are outspoken, frank and candid may be fair but good faith must be writ large all over them. The reasons behind such comments should show whether they are in good faith. But when good faith and reasons disappear and any person of ordinary prudence reading the comments discerns in them an attempt to defy and denigrate the judicial process in a matter which is sub-judice, as in this case, the comments cease to be fair. This Court, however, does not say that fair criticism of a judgment is not permissible. This can always be done as justice is not a "cloistered virtue" and it is because of such fair criticism that justice delivery system will also improve. A person may not like an order of the Court and if he does not like an order of Court and he chooses to criticize the same he should give reasons in support of his criticism. In this instant case there is hardly any reason given by Shri Basu in support of his criticism of the said order of the Court.

64. Unfair criticism is likely to interfere with the due administration of justice by

undermining the confidence which the people repose in Courts of Law. If that confidence in the system is eroded, only the husk of the system remains, being drained of its life blood. Therefore the Court has a duty to prevent such erosion and that is why it is said that contempt jurisdiction inheres in every Court of Record as its inalienable attribute and has been recognized as such by the Constitution.

65. Now in order to constitute contempt it is not necessary that there should be an actual interference with the administration of justice, it is enough if the offending comments are or likely or tend, in any way, to interfere with the administration of justice. This was clearly laid down by the Constitution Bench of the Apex Court in *Hira Lal Dixit v. State of U.P.*, reported in AIR 1954 SC 743 , page 746 of the report). In making the aforesaid pronouncement the learned Judges of the Apex Court were merely reiterating what was laid down by another Constitution Bench of the Supreme Court in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, , of the report in *Brahma Prakash*, Justice B. K. Mukherjee (as His Lordship then was) held "It is well-established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement, it is enough if it is likely or tends in any way, to interfere with the proper administration of law".

66. These guidelines were formulated by the Apex Court on common law principles at a point of time when the present Contempt of Courts Act, 1971 was not there. Contempt of Court Act, 1952 did not define what is meant by criminal contempt. However, the definition of criminal contempt u/s 2(c) of the 1971 Act is modelled on the same lines which were formulated in *Brahma Prakash* (supra) and reiterated in *Hira Lal* (supra).

Section 2(c) of the Contempt Of Courts Act:

67. Looking at definition of criminal contempt u/s 2(c) of the said Act of 1971, it appears that the statutory definition has assimilated the common law principles expressed in Oswald's Treatise on Contempt of Court. The learned author said "to speak generally Contempt of Court may be said to be constituted by any conduct that tends to bring the authority or administration of law into disrespect or disregard." Same views have been expressed in *The Law of Contempt* by Anthony Abridge and David Eady, (1982 Edition) at p. 151 that "any conduct calculated to interfere with administration of justice was a contempt". The House of Lords echoed in 1973 in *Attorney General v. Times Newspaper* 1974 A C 273, what was laid down by the Apex Court in 1954 in *Brahma Prakash* (supra) and *Hiralal* (supra). The House of Lords held "any act which raised a real albeit small likelihood of interference with the administration of justice amounts to Contempt of Court."

68. Understandably the definition of Criminal Contempt u/s 2(c) has been worded in generic terms and very broadly with expressions like "tends to

scandalize", "tends to interfere" in Clauses (i), (ii) and (iii) of Section 2(c) and Clause (iii) concludes with the expression "in any other manner". Expressions of very wide import have thus been deliberately used to define what is criminal contempt as it may take various forms. Supreme Court also accepted the same in *Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others*, where it was laid down that the definition of criminal contempt is wide enough to include any act by any person which would tend to interfere with the administration of justice or would lower the authority of the Court (see para 42, page 456 of the report).

Freedom of Speech and Contempt of Court :

69. Even though it is the fundamental right of every citizen to exercise freedom of speech and expression under Article 19(1)(a), the said right has been subjected to certain reasonable restrictions under Article 19(2). One of such reasonable restriction is in relation to Contempt of Court. Other heads under which restrictions can be imposed on the freedom of speech and expression are (1) sovereignty and integrity of India (ii) security of the State (iii) friendly relations with foreign countries (iv) public order (v) decency (vi) morality (vii) defamation and (viii) incitement to an offence. Thus a scrutiny of these heads of reasonable restrictions demonstrates that they cover a very wide area and have local, national and international implications.

70. It is therefore clear that the framers of the Constitution, most of whom were denied freedom of speech and expression while they participated in the national freedom struggle, while recognising the importance of such freedom as a fundamental right of citizens, never believed in the absoluteness of this freedom. That is why this freedom has been regulated by such wide-ranging heads of restrictions. By placing Contempt of Court as a reasonable restriction on the same footing as sovereignty and integrity of India and the security of State, the Founding Fathers wanted to emphasize the importance of a free and independent judiciary.

71. It is very difficult to define what is meant by freedom of speech and expression. It is not an enclosed idea to fall within the confines of a strait-jacket. However, Professor Harold Laski, in "Grammar of Politics", attempted to describe it as to "allow a man to say what he thinks is to give his personality the only ultimate channel of full expression and his citizenship the only means of moral adequacy". Freedom in such absolute terms does not exist. The problem of any form of modern and civilized governance is a one of fusion between freedom and social control in the form of reasonable restrictions.

72. Any freedom which is absolute and unfettered is very fragile and vulnerable. Unless it is regulated, it will perish in no time. So the paradox is whatever may be the nature of freedom, it can be safeguarded only by surrendering a part of it.

73. We tend to forget that we can enjoy our freedom of speech and expression effectively only if there is an independent and strong judiciary to protect such

freedom and rejuvenate it with an interpretation which is in accord with the felt necessities of time.

74. Therefore two facets of public interests are at play. One is the public interest in ensuring fair and unimpeded administration of justice so that people's faith in the system is sustained and the other is the maintaining of public interest in effective exercise of the freedom of speech and expression. The Court's duty is to ensure that the conflict between the two does not become too acute. So a balance has to be struck and such balance must rest on a subtle understanding of and a mutual respect for each other's needs.

75. In the Constitutional scale of values under Article 19(1)(a), that, in my judgment, would be the correct approach. So when any one undermines people's faith in the judiciary by indulging in a wanton and reckless attack on the same, that person, unknowingly, slays, the proverbial goose that lays golden eggs.

76. In this context this Court wants to reiterate at the cost of repetition that those who criticize a Judge for passing an order should remember that the Judges have no means of defending themselves. By the very nature of things, the judiciary cannot engage itself in a verbal match with their critics much less can a Judge issue statements contradicting such comments. Since the remedy against any order passed by a Judge is available in law and since that remedy in this case was resorted to by the State by filing an appeal and which was within the knowledge of Shri Basu, the comments made by him to the Press as noted above, assume a slightly different proportion and his exercise of freedom of speech about the said order should have been tempered with these considerations.

77. It is well-known that in our system of judiciary, there is hardly a Judge about whom it can be said that he did not commit a mistake. In fact, legal system operating in this country acknowledges the fact that the Judges may commit mistake and, therefore, so many tiers of appeal have been provided. That is why we have the jurisprudence of precedents, the concept of open public hearings, reasoned judgments, right of appeals and in some cases, revision, reference and reviews. The law, therefore, provides an inbuilt mechanism to correct judicial errors.

78. In this country everyone has to live and function under certain Constitutional imperatives and one of such imperatives is to accept and submit to the authorities of Courts. Under a Constitutional Government such authority has to vest in some institution which are manned by Judges. In the absence of such Constitutional dispensation there will be chaos. Therefore, the verdict of the Court is to be respected and accepted as has been said "not necessarily by the authority of its reason but always by reason of its authority". [In Re: Sanjiv Datta and Others,].

Comments in this case :

79. Here most of the comments are uncalled for and are attributing to the Judge a way-ward bent of mind or a motive of being "anti-tribal" or ignorance of the democratic traditions of the city and a lack of objectivity. Coupled with that, the comments show an open and brazen defiance of the order with an assertion that no one will obey the order and is punctuated with the veiled threat of a "go back" slogan. Such comments obviously cross the limits of fairness and degenerate into the arena of scandalizing the judicial process. In order to further ridicule the said order, Shri Basu commented that during British Rule many orders were passed but even during British Rule nothing like the said order was passed.

80. Now the question is whether he actually raised the go back slogan against the learned Judge. From the statement of Shri Basu, as disclosed in the affidavit of Shri Acharya and which has not been contradicted, it is clear that such slogan was raised by Shri Basu, in the Press Conference. Apart from that, from the statement of Shri Basu as recorded in Alpha Bangla, it is clear that Shri Basu has stated that such a person (obviously meaning the learned Judge) is unwanted in the city. The newspaper's report in Hindustan Times also confirms that Shri Basu also raised go back slogan against the learned Judge. The newspaper report of Aajkal on which Mr. Basu relied on and which was disclosed in his affidavit, congratulates Shri Basu for raising such a go back slogan against the learned Judge. As against such overwhelming materials on record, Shri Basu has stated in his affidavits that he had not raised such slogan himself but he would feel helpless that if such a slogan was raised by the public and he did not know what to do. Even if we give him the benefit of the doubt on the basis of his statement in his affidavit that Shri Basu did not raise such a slogan himself, but it is clear that he suggested the raising of such a provocative slogan by the members of the public against the learned Judge for passing the said order and are inciting them to flout the order. Go back slogans normally are raised against political opponents and also by way of militant trade unionism by the workers against the management. A Judge cannot be equated with either of them. This very suggestion of raising of such a provocative slogan against a Judge, just because the said order passed by the learned Judge, according to Shri Basu is untenable, amounts to an interference with the due course of administration of justice.

81. The Judge's order may be illegal or may not be to the liking of a person, but for that reason if that person, who happens to be an important political figure in the State, with a very large following, suggests that people may raise slogans of go back against that learned Judge, the entire judicial system suffers an indelible dent.

82. Justice is always rooted in confidence of the people and it is the duty of everyone of us to see that the same confidence is not undermined by a wanton criticism of judicial order.

83. In my judgment, in this case, Shri Basu has crossed the level of fair criticism and also the parameters of reasonable restrictions imposed by the law of

contempt on his freedom of speech and expression given under the Constitution.

84. The learned Counsel for Shri Basu while defending him and urging that his comments do not amount to contempt relied on several judgments. Reliance was placed on the judgment of the Supreme Court in the case of P.N. Dua Vs. P. Shiv Shanker and Others, . In that case, the speech of the Law Minister in a meeting of the Bar Council of Hyderabad came up for scrutiny before Supreme Court on the question whether the speech amounted to contempt. There are certain basic factual differences between the two situations. In this case, the comments are directed against a particular order which is sub-judice and was passed by a particular learned Judge. The Apex Court in the case of P.N. Duda held that the Minister in his speech was making a study of accountability of the "class composition of the people manning the institution". The Court therefore held that the expression of view does not hamper the dignity of the Court nor does it impair the administration of justice. Even while saying so the learned Judges reiterated "Judgments can be criticized; the motives of the Judges need not be attributed, it brings the administration of justice into deep disrepute" (Para 8, Page 1214 of the report). In the instant case motives have been attributed to the learned Judge by Shri Basu. So his comments amount to a case of criminal contempt.

85. Reliance was also placed on the decision in In Re: In Re: S. Mulgaokar, . Similarly here also no particular order of the Court was criticised. In fact what came for comments in the newspaper report was not at all any judicial act by the Judges of the Hon"ble Supreme Court. The subject-matter of comment was a draft "Code of Ethics" for the Judges. On that there were some adverse comments in the newspaper. On a show-cause notice issued to the Editor of the newspaper, it was explained by the Counsel for the newspaper, that the intention of his client was not to injure the dignity or position of the Court but to draw public attention to certain matters of great importance. The contempt proceedings were dropped. While doing so, Justice Krishna Iyer formulated certain guidelines and one of them is :

"The sixth consideration is that, after evaluating the totality of factors, if the Court considers the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream."

86. The aforesaid dictum squarely applies here. In this case the remarks of Shri Basu are scurrilous, offensive and also intimidatory.

87. Now so far as the newspapers and T.V. Channels are concerned, this Court does not think that they are guilty of comment. They have reported what has been stated by Shri Basu. They have stated before the Court that they do not share the views of Shri Basu, but they report the same as the views of Shri Basu are newsworthy and concern matters of public interest. The Court holds that the

newspapers and the T. V. Channels have a right of reporting the statements of Shri Basu and by way of innocent reporting, no contempt has been committed by them.

88. For the reasons aforesaid, this Court holds that Shri Basu is guilty of contempt. Now the question is what should be quantum of punishment to be imposed on him.

89. It is true that the Court should be very circumspect in the exercise of its jurisdiction in matters of contempt and specially criminal contempt. The power should be sparingly exercised and especially when it is exercised suo motu, as in this case.

90. These matters have received anxious considerations of this Court. Now what the Court shall do ? Shall it bury its head like an ostrich in the sand and wait for the peril to pass or shall it discharge its duty to see that people's faith in the judiciary is sustained. In a situation like this, the choice is obvious, though it may be an unpleasant choice.

91. Therefore, considering the entire matter in its correct perspective, this Court holds that Shri Biman Basu, the contemner must be punished by simple imprisonment of three days and he also has to pay a fine of Rupees Ten thousand and in default to suffer further simple imprisonment of one day.

92. The contempt proceeding is thus disposed of.

93. No order as to costs.

S.P. Talukdar, J.

94. I had the privilege of going through the judgment passed by my learned brother. It was a pleasure to read it. I did so again and again.

95. All the issues raised in course of hearing of the matter have been dealt with in the said judgment -- leaving practically little scope to add anything further.

96. But in response to the call of my judicial conscience, I would just like to add a few things.

97. What prompted the Learned Judge to initiate a suo motu proceeding and then, give certain orders directing the authorities to regulate public meetings and processions is, strictly speaking, not within the scope of the present proceeding. On behalf of the alleged contemnor, Shri Biman Basu, it was submitted that such a right of holding meeting, procession and demonstration has been acquired by the people after long bitter struggle. It seemed to be the contention that such a hard earned democratic right cannot be compromised. It was submitted that such public meetings and processions are not necessarily confined to political issues and those are sometimes spontaneous manifestation of agony or even ecstasy of the people.

98. Those aspects, however, need not be dealt with here and now within the

scope of the present application.

99. Materials on record reveal that Shri Biman Basu, the Chairman of the ruling Left Front in West Bengal in a Press conference held on 4th October, 2003 made a statement that a mass convention would be held on 8th October, 2003 at Mahajati Sadan, located in the heart of the city of Kolkata. There was a call for holding processions and demonstrations on that day in defiance of the order of the Court. Shri Basu did not stop there. He remarked that the Learned Judge, who passed the order, could not appreciate the spirit of the city of Kolkata. By his statement he perhaps seems to have conveyed a message that those who could not appreciate the sentiment of the people of Kolkata should better leave the city. He commented that "go back" slogan may be raised against the Learned Judge.

100. Having regard to the stature of Shri Basu it is no wonder that such statement was published in various daily newspapers and telecast in different electronic media.

101. In order to appreciate the impact of such statements, it is necessary to bear in mind that Shri Basu is undoubtedly a prominent figure having important role to play in public life. It is not a stray statement of an unidentifiable person or a causal remark made by an ordinary citizen over a cup of tea as it usually happens over different matters of public importance.

102. In such background, the statements made by Shri Basu no doubt assume a different proportion and likely to have far reaching consequences.

103. Freedom of speech is, no doubt, our fundamental right. But it is subject to reasonable restrictions. What was said by Shri Basu cannot be said to be a fair comment nor it seems to be in the nature of constructive criticism which does not tend to interfere with the administration of justice.

104. Confidence of the people in the institution of judiciary is certainly not so fragile that it can be so easily shattered. But that is no consolation. It is important to keep in mind that nothing should be done which lowers the authority of the Court.

105. I do not intend to repeat what have already been said. I would just like to conclude by saying that contempt jurisdiction need not necessarily be used as a means to uphold the dignity of judiciary. It rests on surer foundations.

106. In the words of Lord Denning "we do not fear criticism, nor do we resent it..... 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 controversy. We must rely on our conduct itself to be its own vindication.

107. Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from

doing what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done."

108. In the background of the facts and circumstances of the present case, we cannot perhaps ignore. Interest of justice does not permit us to remain indifferent and in such backdrop I am entirely in agreement with the findings of my learned brother.

LATER:

109. After the judgment is pronounced, Mr. Bhattacharya, learned Counsel appearing for Sri Biman Basu, the contemnor, prays for stay of operation of the judgment.

110. Accordingly, we grant stay of operation of the judgment for a period of four weeks from today, as prayed for.

111. Xerox certified copy of the judgment and the order, if applied for, be supplied immediately.