

(2005) 09 GUJ CK 0023
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 1630 of 2002

Mrs. K.M. Vin Principal Judge, Family Court	APPELLANT
Vs	
Mr. Dashrath Devada President and Others	RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Bombay Police Act, 1951 — Section 131
Constitution of India, 1950 — Article 215, 31
Contempt of Courts Act, 1971 — Section 10, 15, 15(2), 2
Penal Code, 1860 (IPC) — Section 406, 420, 471

Citation : (2005) 09 GUJ CK 0023

Hon'ble Judges : Kshitij R. Vyas, J; Akshay H. Mehta, J

Bench : Division Bench

Advocate : Suo Motu and S.B. Vakil, No. 1, for the Appellant; J.R. Nanavati for Respondents 1 and 2, S.V. Raju, for Respondent 3, P.R. Nanavati, for Respondent 4 and P.R. Abichandani, Assistant Public Prosecutor for Respondent 5, for the Respondent

Final Decision : Allowed

Judgement

Kshitij R. Vyas, J.—Respondent No. 1 - Dashrath Devda is the President of Akhil Bharatiya Patni Attyachar Virodhi Sangh (for short, Sangh?) which is also known as All India Wives Cruelty Opposition Union. He is also impleaded as respondent No. 2 in the capacity as Editor of SCrime Pen?. According to respondent No. 1, the said Sangh is a Society registered under the Societies Registration Act, 1960 before the Asstt.Registrar, Registration of Societies, Ahmedabad on 23.6.1998. It was established by Memorandum of Association amongst other objects to assist the husband and his family from cruelty of his wife where the wife files cases against the husband and his family in respect of dowry, divorce and other disputes. The society was formed by the aforesaid memorandum of Association and it was found that the wife filing false cases against the husband and his family is indulging in cruelty and harassment to the husband and his family and the Authority are also harassing the husband and their family on account of the

complaint of the wife. According to him, there are 13700 members and the members have made a complaint against the cruelty from their wives as well as arbitrary orders passed by the Family Court against them. The Association has several times agitated their grievances against the Authority and they have held programme of dharna on various occasions, at various places including the family courts. According to respondent No. 1, the Sangh has been campaigning for the past 5 years to spread its creed that atrocities by wives on husbands are becoming a serious menace to the society. One of its main targets are women's organisations which according to respondent No. 1 are responsible for the growing instances of wives using laws weighed heavily in their favour to get even with their spouses. According to him, these women's organisations are home breakers rather than protectors of women/s rights.

2. Respondent No. 1 applied for and obtained a permit dated January 18, 2002 from the Addl. Police Commissioner, Ahmedabad City to enable the Sangh to implement the programme of dharna, demonstration, slogan shouting opposite Krishi Bhavan, Paldi, Ahmedabad in the City of Ahmedabad in which the family Courts are located, to protest against the alleged atrocities committed by the wives against their suffering husbands and carry out the said programme by erecting mandap and install mikes and loud speakers etc. Respondent No. 1 and the members of the Sangh thereafter indulged into shouting slogans like Shai hai family courts, of High Court, and of Supreme Court and which made it impossible for the family courts to work. The learned Principal Judge, Family Court, her letter dated January, 28, 2002 addressed to the Registrar of this Court, gave details about dharna, demonstrations and slogan shouting by respondent No. 1 and the members of the Sangh. She has also stated that on contacting the Registrar, the High Court of Gujarat, P.S. To the Hon''ble Chief Justice, Police Commissioner's Office and Ellisbridge police station and informed on phone about the incident to Mr. Chauhan, PSI of Ellisbridge police station who appeared before the Principal Judge and produced permission to use loudspeaker to arrange meeting in a public place issued on behalf of the Police Commissioner, Ahmedabad City dated 18.1.2002 between 10.30 am and 5.30 p.m. i.e. During the court hours. The place is shown as Family Court, Krishi Bhavan, Paldi, Ahmedabad. According to her, this permission, if perused, clearly appears as interference of administration of justice as it obstructed the functioning of the Courts. She has further stated that the police officer was not able to take necessary steps to stop the shouting. In her letter, it was mentioned that she could hear the following words from her Chamber:

i. S Family court hai hai,

ii. Supreme Court hai hai,

iii. Family Court bandh karo (close the family court)

iv. Ek kachhori do samosa, family court, tera kya bharosa

She also instructed the Registrar to bring it in writing to the police. Finally she

has stated that due to shouts on loud speaker and Shai hai? a contemptuous show for the working system and the institution of court is being made out which is totally interfered and disturbed the court working. It has, therefore, become very difficult to conduct the court and judicial work. She has requested to place the said letter before the court for information and necessary action.

3. On the basis of the aforesaid letter addressed by the Principal Judge, Family Court, this Court took suo motu proceedings and issued notice on 15.3.2002 and made it returnable on 20.3.2002. On 8.7.2002, respondent No. 1 expressed his inability to engage a counsel to defend his case. Mr. J R Nanavati, learned Advocate who was present in the court voluntarily expressed his willingness to assist the alleged contemner in the proceedings and while Mr. S B Vakil, learned Sr. Advocate was requested to assist the Court in the proceedings.

3. The Division Bench consisting of Hon''ble the Chief Justice and Hon''ble Mr. Justice J M Panchal, by their order dated 21.10.2002 decided to take action of criminal contempt against respondents No. 1 to 4. Since respondents No. 2 and 3 have not been referred to by their respective names office was directed to amend the cause title of the proceedings and by showing Mr. s K M Vin, Principal Judge, Family Court, Ahmedabad as SReferer? against respondents No. 1 to 5. As stated above, Mr. Dashrath Devda is shown to be the President of the sangh and also as the Editor of SCrime Pen?, respondents No. 1 and 2 respectively while Mr. Pramod Kumar, Erstwhile Addl.Commissioner of Police (Special Branch), Ahmedabad City and Mr. J K Vachhani, the then Police Inspector, Ellisbridge police station were shown as respondents No. 3 and 4 respectively.

4. On the same day, i.e. On 21.10.2002, the said Division Bench framed charge against the respondents as under :

"i. You, the respondent nos. 1 and 2, applied for and obtained from the Additional Police Commissioner a permit dated January 18, 2002 to enable Akhil Bharatiya Patni Atyachar Virodhi Sangh, of which you are the President, to implement the programme of Dharnas, demonstrations, meetings and slogans shouting, opposite Krishi Bhavan in which the Family Court is located, to protest against the alleged atrocities committed by wives against their suffering husbands, and carried out the said programme by erecting a mandap and installing loudspeakers through the workers. You, the respondent nos. 1 and 2 and the members of your Sangh indulged into shouting slogans like Shi, hi? (meaning death) of Family Court, the High Court and the Supreme Court, and made it impossible for the family court to work. Further, you, the respondent nos. 1 and 2, authored and published articles alleging that Sto the Judges only women appear innocent and several suffering husbands are sent to jail crying and screaming, and no arguments or facts of husbands are heard, and posed a rhetoric question as to whether the family court will give one sided decision in favour of women/wives,? and thereby, scandalized or tended to scandalize and/or lowered or tended to lower the authority of the family court, prejudiced and interfered and tended to interfere with the due course of judicial proceedings of

the family court, and interfered or tended to interfere with and/or obstructed or tended to obstruct the administration of justice.

ii. You, the respondent No. 3, issued to respondent No. 1, permit dated January 18, 2002 for using loudspeakers, and holding meetings in a Public place opposite Krishi Bhavan, where Family Court, Ahmedabad is located, for holding by Akhil Bharatiya Patni Atyachar Virodhi Sangh a programme of Dharna, demonstrations, slogans shouting to protest against atrocities allegedly committed by wives against their suffering husbands, pursuant to which, the respondent No. 1 did hold such programme resulting in scandalizing the family court and interfering with its judicial proceedings, and have thereby aided and abetted the respondent No. 1 in committing the acts of Contempt of Courts, and done so in failing to discharge your duty as an Additional Commissioner of Police.

iii. You, the respondent No. 4, submitted a report dated January 16, 2002 to the Additional Commissioner of Police (Special Branch), Ahmedabad city, recommending grant of permit for the programme of Dharna, demonstrations and slogans shouting to be held on January 28, 2002, and failed to make arrangements to maintain peace, law and order during 10.00 am to 6.00 p.m at the family court, and to prevent occurrence of any unwarranted incident, notwithstanding the application dated January 24, 2002 of the Principal Judge, Family Court addressed to you, and thus, abetted the respondent nos. 1 and 3 in the acts of Contempt of Court committed by them as aforesaid.

iv. You, the respondent No. 5, is liable for the acts committed by your Officers, namely, respondent nos. 3 and 4.?

After framing the charge, the Court issued notice making it returnable on 25.11.2002 to show cause as to why the High Court should not take action against the respondents under the Contempt of Courts Act, 1971 and punish them with simple imprisonment for a term which may extend upto six months or with fine which may extend upto Rs. 2,000/- or both.

5. In response to the notice issued by this Court, Mr. K R Kaushik, Police Commissioner filed affidavit on 7.7.2002. Respondent No. 1 also filed his first affidavit on 8.7.2002. It appears that he also filed affidavit-in-reply on 13.8.2002. One more affidavit has also been filed by him on 27.8.2002. Mr. Vachhani, respondent No. 4, Dy. Superintendent of Police, the then PSI of Ellisbridge police station filed affidavit-in-reply on 7.2.2002. While Mr. Pramod Kumar, Inspector General of Police, respondent No. 3 filed his reply on 20.2.22002. From the record, it appears that the Division Bench (Coram: D K Trivedi & D P Buch, JJ.) by their order dated 30.1.2004 accepted unconditional apology tendered by respondents No. 3 and 4 in the form of affidavit and purged them from the contempt by discharging the notice issued against them. Accordingly the court directed to proceed further from the stage against the rest of the respondents i.e. Respondents No. 1, 2 and 5.

6. From the charge framed against respondents No. 1 and 2, it appears that over

and above implementing the programmes of dharna, demonstration and slogan shouting in front of the Family court by erecting mandap and installing loudspeakers through workers, Mr. Dashrath Devda in the capacity as Editor of SCrime Pen?, as respondent No. 2, was also charged for authoring and publishing articles alleging that Sto the Judges only women appear innocent and several suffering husbands are sent to jail crying and screaming, and no arguments or facts of husbands are heard, and posed a rhetoric question as to whether the Family Court will give one sided decision in favour of women/wives?, and thereby scandalized or tended to scandalize and/or lowered or tended to lower the authority of the Family Court and interfered or tended to interfere with and/or obstructed or tended to obstruct the administration of justice.

7. We have heard Mr. S B Vakil, Sr.Advocate appearing for the Referer and Mr. J R Nanavati, learned Advocate appearing for respondents No. 1 and 2 at length. We have also perused the affidavits filed by respondent No. 1 and 2 as well as other materials produced on record.

Before we deal with the submissions advanced by the learned Advocates for the parties, we may refer to certain provisions of the Contempt of Courts Act, 1971 (for short, "the Act"). This being a criminal contempt, we may refer to the definitions of Scriminal contempt. Section 2(c) of the Act defines as under:

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

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or

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

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

7.1. Section 15 of the Act provides cognizance of criminal contempt in other cases. Sub-section (2) of section 15 authorises the High Court to take action on a reference made to it by the subordinate court in the case of any criminal contempt or any 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.

Section 17 provides the procedure after cognizance.

8. Mr. . S B Vakil, learned Sr. Advocate appearing for the Referer, after inviting our attention to the affidavits of Mr. Dashrath Devda submitted that in view of his admissions, he has committed criminal contempt by publishing various articles in his newspaper of which he is editor, making derogatory remarks against the family court and by holding dharnas and shouting slogans against the family

court using loudspeakers, scandalized the court and thereby lowered the authority of the said court. He, therefore, submitted that a strict view is required to be taken against Mr. Devda. To substantiate his argument, the learned counsel has cited certain decisions. We will refer to that at the appropriate stage.

9. Mr. J. R. Nanavati, learned Advocate appearing for Mr. Devda on the other hand submitted that it will not be open for this Court to consider any allegation dehors the charge framed by this Court. In the submission of the learned Advocate, the charge levelled is with respect to the allegations published in the newspaper at page 12. After inviting our attention to the charge framed by this Court on 21.10.2002, Mr. Nanavaty submitted that charge No. 1 is with respect to obtaining permission from the police authorities for the purpose of implementing the programme of dharna, demonstration, meetings and slogans shouting opposite Krishi Bhavan in which the the family court is located and in furtherance of the same, a meeting was organised on 28.1.2002 wherein the opponent No. 1 and other members of his Sangh shouted slogans like Shi hi? (death) of family court, High Court and Supreme Court. According to the learned Advocate, in the second part of the charge wherein it is alleged that opponent No. 1 and 2 authored and published articles alleging that to the Judges only women appear innocent and several suffering husbands are sent to jail crying and screaming, and no arguments or facts of husbands are heard, and posed a rhetoric question as to whether the family court will give one sided decision in favour of women/wives?, which according to the learned Advocate is vague and general in nature, inasmuch as there is no allegation that Mr. Devda has scandalized a particular Judge and the picture published in the newspaper is against the system and not against any particular Judge. In the submission of Mr. Nanavaty, scandalizing is subjective which differs from person to person. He also cited a number of authorities in support of his submissions. Therefore, in absence of any particulars or material publishing article, they cannot be relied upon. Mr. Nanavaty, while disputing the role of Mr. Devda as far as slogan shouting is concerned, submitted that there is no evidence on record to establish that Mr. Devda shouted slogans against the family court. In the submission of the learned Advocate, if the crowd is shouting, opponent No. 1 cannot be punished on vicarious liability. Alternatively, it was submitted that assuming that Mr. Devda was shouting Shai hai? of family court and other courts, the said act under no circumstance, be termed as scandalizing any of the court. According to him, the meaning of the word Shai hai? is not death and, therefore, the utterance of Shai hai? does not amount to lowering the image of a Court.

10. The Apex Court, taking cognizance of a letter addressed by a High Court Judge complaining of contempt committed in the face of his Court, observed in Re: In re: Vinay Chandra Mishra (the alleged contemner), as under:

The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a

written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz, to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society.

If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society.

It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalized, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

10.1. In Ref: In Re: Sanjiv Datta and Others, which was a case wherein a public official has filed affidavit in the Supreme Court and criticised its order and casting aspersions and accusations calculated to malign the Court and undermine its authority by holding that the said Act amounted to criminal contempt and observed as under:

The statements made in the affidavit, when they were so made, were to the knowledge of the contemner a malicious attempt to cast aspersions on and attribute motives to the court. They were not made in ignorance of their consequences nor were they innocent. A responsible officer of the Government like the contemner ought to have known and there is no doubt that he did know the serious implications of the said statements. If he did not know of their grave implications he does not deserve to hold the office he does. If such statements were made by a layman, the court might have probably ignored them and also accepted the apology. Coming as they do from a public functionary, the court will fail in its duty if it does not bring home to him his special obligations to respect the authority of the court. If such trends as are displayed in these proceedings by the contemner are allowed to go scot-free, there is a danger of the erosion of the deference to and confidence in the judicial system. Coming as it does from the executive branch of the State, it has all the potentiality of mischief and if not

curbed firmly, may in course of time assume a proportion grave enough to sabotage the rule of law from within. The draft of the affidavit which was settled by an advocate was not the one which was filed and the affidavit was filed without even the Advocate-on-Record having a sufficient opportunity to peruse the same. That makes the action of the contemner doubly suspect with regard to his intentions in filing the affidavit with the offending statements. He did not even take care to have the opinion of his advocates on the said statements. Probably, he did not want their opinion. This conduct of his speaks for itself and aggravates his offence. It is for this reason that it is not possible to accept his apology.? The Apex Court even refused to accept the unconditional apology tendered by the contemner by observing that the statements were intentional and deliberate and is a malicious attempt to cast aspersions on and attribute motives of the court being a responsible Government Officer.

10.2. In the case of *Dr. D.C. Saxena v. Chief Justice of India* (1996) 5 SC 216, the Apex Court observed as under:

Scandalizing the court would mean hostile criticism of judges as judges of judiciary. Any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalizing the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemner challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes their mind to obey them. If the people's allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice calling for urgent action. Action for contempt is not for the protection of the judge as private individual but because they are the channels by which justice is administered to the people without fear or favour. As per the Third Schedule to the Constitution oath or affirmation is taken by the Judge. In accordance therewith, judges must always remain impartial and should be known by all people to be impartial. Should they be imputed with improper motives, bias, corruption or partiality, people will lose faith in them. The judge requires a degree of detachment and objectivity which cannot be obtained if judges constantly are required to look over their shoulders for fear of harassment and

abuse and irresponsible demands for prosecution or resignation. The while administration of justice would suffer due to its rippling effect. It is for this reason that scandalizing the judges was considered by Parliament to be a contempt of court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.

10.3. In the case of High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others, , the Apex Court, after considering Article 215 of the Constitution of India, has held as under:

"that every High Court shall be a court of record-meaning thereby all the original record of the court will be preserved by the said court and it shall have all the powers of such a superior court of record including the power to punish for contempt of itself. As a superior court of record, the High Court is entitled to preserve its original record in perpetuity. Even apart from the aforesaid attribute of a superior court of record, the High Court as such has twofold powers. Being a court of record the High Court (i) has power to determine the question about its own jurisdiction and (ii) has inherent power to punish for its contempt summarily.

10.4. The reference of S K Sundaram (2001) 2 SCC 171, was a case where the Apex Court suo motu initiated proceedings against an advocate who has sent a telegram to the Chief Justice of India demanding his resignation contending that he has exceeded the age of superannuation and threatening to take legal action. Within three days of despatch of the said telegram the contemnor filed a criminal complaint against the Chief Justice of India under Sections 420, 406 and 471 of Indian Penal Code. In the complaint, it was stated that the Chief Justice of India is an usurper in the office of the Chief Justice of India even after attaining the age of superannuation and caused loss to the exchequer to the tune of not less than three crores of rupees apart from drawing salary and enjoying other perquisites and the same is estimated at not less than 1.50 crores which the accused is bound to indemnify to the Government of India. In the said decision, it was held that contempt of court jurisdiction is not to protect an individual judge, it is to protect the administration of justice from being maligned. Hence, when the contemnor's expectation that the Chief Justice of India himself would have personally filed a petition against the contemnor did not fructify, he cannot question the maintainability of the action which was initiated suo motu by the Supreme Court.

11. From the above decisions, it is clear that the judiciary being the guardian of the rule of law and for performing its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and

authority of the courts have to be respected and protected at all costs. It is for this purpose the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties without fear or favour. Whenever the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalized but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice which cannot be shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working.

12. Keeping these principles of law in mind, we have to decide the allegations levelled against Mr. . Devda and to decide whether the same tend to scandalize and has lowered the authority of the family court. As stated above, Mr. Devda filed three affidavits in the proceedings. In the affidavit dated 8.7.2002 in para 2, he has stated that for the programme of 28.1.2002, he has obtained necessary permission from the police. In para 3 he has stated that the programme arranged by him was within the limits of law. This statement, clearly amounts to admission on his part namely; that after obtaining permission from the police, dharna was arranged by him in the capacity as the President of the Sangh with his members. Not only that but in para 6 he has also admitted the fact of use of loudspeaker. However, he has stated that loudspeaker was fixed on the opposite direction to avoid any disturbance to the court. Likewise he has, in para 7 not denied shouting of derogatory slogans against the family court as well as the Supreme Court. However, he has explained the same by stating that the slogans were not uttered by the members of the Sangh. In para 8 he has justified that shouting of slogans by stating that it is the right of the public to bring to the notice of the High Court as well as to the Supreme Court about the illegality and of the unjust orders being passed by the lower courts. Explanation given by him is to the effect that the alleged slogans have been highlighted with a view to prejudice the High Court.

13. In para 9, by making fresh allegations and aggravating his admission that the contempt having been committed by him because the family court is not passing any order on the applications for engaging lawyers and keeping it pending for long time and in the meantime the parties are compelled to sign the writings in the Chamber which becomes the final order. In para 13, the allegations have been made against presiding Officer of the family court stating that false case has been made out for the purpose of initiating contempt proceedings to enable the court to carry out administration in a high-handed manner and according to whims.

14. Mr. Nanavaty has submitted that this affidavit of opponent No. 1 is made prior to the charges which are in the nature of previous statement and therefore,

it cannot be relied upon. It is not possible for us to accept these submissions for the simple reason that the provisions of Criminal Procedure Code are not strictly applicable in a contempt proceeding. Apart from that the statement is made on affidavit and not before police, which is part of the record and in that case, the statement made therein can be relied upon. Besides, the statement made therein are supported with other material on record. In the affidavit-in-reply filed by Mr. K R Kaushik, Police Commissioner, Ahmedabad City, in para 5 has stated that Akhil Bharatiya Patni Atyachar Virodhi Sangh has made an application on 1.1.2002 in the name of its President Mr. Dashrath Devda to organise dharna against atrocities committed by wives. The place of dharna was shown as family court, Krishi Bhavan at Paldi, Ahmedabad and it was also mentioned in the application that a memorandum will be presented to the Hon''ble Principal Judge of the family court during recess time. He has placed the said application as Annexure I. In para 7 he has further stated that the Police Inspector, Ellisbridge Police Station has given the opinion to grant the permit after due consultation made with the Assistant Commissioner of Police and Deputy Commissioner of Police. The said opinion given by the Police Inspector, Ellisbridge police station dated 16.1.2002 sent to Additional Commissioner of Police, Special Branch is annexed as Annexure II. The permit granted to Mr. Devda was also annexed as Annexure III. In para 10 he has also stated that the Hon''ble Principal Judge of the family court by way of letter dated 24.1.2002 wrote to the Police Inspector, Ellisbridge police station for arranging police bandobast on 28.1.2002 for preservation of law and order. The said letter is annexed as Annexure V. In para 12 of the affidavit it is further stated that on 28.1.2002, Registrar of the family court has made complaint to the Police Inspector Mr. Chauhan wherein it was stated that because of the slogan shouting, hindrance has been caused to the court proceedings by the member of the Akhil Bharatiya Patni Atyachar Virodhi Sangh, which amounts to contempt of court. In para 13 of the affidavit, he has stated that Hon''ble Principal Judge of the family court by way of letter dated 21.2.2002 called upon his office to render explanation within seven days. The said letter is annexed as annexure VI. In para 15 it is stated that Police Inspector of Ellisbridge police station has forwarded letter dated 27.5.2002 to Hon''ble Principal Judge, Family Court stating that N.C. Complaint u/s 131 of the Bombay Police Act has been lodged against Mr. Dashrath Devda, the President of the aforesaid Sangh. Not only this but the Principal Judge of Family Court, vide her communication dated 28.1.2002 addressed to the Registrar of High Court of Gujarat has given the entire episode dated 28.1.2002 at 10.15 am including the fact that number of persons gathered together near the compound wall of Krishi Bhavan and that it was due to a call given by All India Crime by Women Against Husband Sangh. She has stated that about the shouting of slogans using loudspeaker against the Family Court, High Court and against the Supreme court. She immediately informed the Registrar, High Court, Private Secretary to the Chief Justice. Police Commissioner''s office and Ellisbridge police station were also contacted and informed on phone about the incident. In another letter on even date, she has stated that the representation letter has been given to her

during recess hours by the representatives of the Sangh which appears to have been signed by its President Mr. Devda. The last paragraph reveals contemptuous writing that courts are making injustice to the unhappy husbands. In the said representation letter attached with a newspaper SCrime Pen? dated 28.1.2002, she has marked few of the portions of the said newspaper which shows that the courts are pictured in undue fashion revealing that courts are lower down in the sight of general public and dignity and docorum of the court suffer a lot. She requested that necessary and effective steps should be taken to prohibit such activities in the court premises which mislead and misrepresent the society.

15. In view of the above, it is an undisputed fact that to stage dharna and slogan shouting use of loudspeaker was arranged on 28.1.2002 after obtaining permission from the police by opponent No. 1. To implement the same, opponent No. 1 along with other members of the Sangh remained present and shouted derogatory slogans against the Family Court and the Supreme Court. Not only that but in the newspaper Scime pen? dated 28.1.2002, articles alleging that S to the judges, only women appear innocent and several suffering husbands are sent to jail crying and screaming and no arguments or facts of husbands are heard, and posed a rhetoric question as to whether the Family Court gives one sided decision in favour of women/wives?, thereby, as charged, the opponent, scandalized and lowered the authority of the Family Court by interfering and obstructing the administration of justice of the family court is duly established. Besides this, the article published in the newspaper dated 28.1.2002, there are other articles of different dates in the said newspaper wherein also opponent No. 1 has published derogatory statements against the Family Court. However, since those articles are not mentioned in the charge, we have decided not to make use of the same against opponent No. 1. In the subsequent affidavits filed by opponent No. 1 dated 13.8.2002, opponent No. 1 has given details about his Association which includes the object of forming the same, about its registration and the strength of the members and has given details about various programmes of holding dharnas at different places including family courts on three occasions.

16. Mr. Nanavaty, after inviting out attention to certain averments made in the said affidavit namely; the Sangh has been campaigning for the past 5 years to spread its creed that atrocities by waives on husbands are becoming a serious menace to our society, one of its main targets are women"s organisations which, they say, are responsible for the growing instances of wives using laws weighed heavily in their favour to get even with their spouses, and that these women"s organisations are home breakers rather than protectors of women"s rights etc, submitted that as part of the activities, opponent No. 1 and his members organised a programme of staging dharna and shouting slogans. According to Mr. Nanavaty, the said act has not affected the dignity of the court as the slogans were not against a particular Judge but the same was on the system. He further submitted that what is published in the newspaper is on the basis of the complaints given to opponent No. 1 by the aggrieved husbands. He, after inviting

our attention to various averments made in the subsequent affidavits that opponent No. 1 has denied his involvement on the day in question and submitted that it was a peaceful agitation to ventilate the grievance of husbands who suffered at the instance of the court. He submitted that assuming that the said act on the part of opponent No. 1 amounts to contempt having been committed by him, this court may take a lenient view in the matter by showing magnanimity. To substantiate the said submission he has relied on the following decisions:

17. In the ref: S Mulgaokar reported in AIR 1978 SC 727, the matter arose out of a publication in the Indian Express dated 13.12.1977 wherein comments about Judges of the Supreme Court suggesting that they lack of moral courage to the extent of having Sdisowned? what they had done, or, in other words, to the extent of uttering what was untrue, at least verge on contempt. In para 16 of the judgment, the Apex Court observed as under:

"Judiciary cannot be immune from criticism. But, when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect for the judiciary and destroy public confidence in it, it cannot be ignored. I am not one of those who think that an action for contempt of court, which is discretionary, should be frequently or lightly taken. But at the same time, I do not think that we should abstain from using this weapon even when its use is needed to correct standards of behaviour in a grossly and repeatedly erring quarter. It may be better in many cases for the judiciary to adopt a magnanimously charitable attitude even when utterly uncharitable and unfair criticism of its operations is made out of bona fide concern for improvement.?"

Considering the facts and circumstances of that case, the Apex Court dropped the proceedings.

17.1. In the case of P.N. Dua Vs. P. Shiv Shanker and Others, wherein a speech was made by the Law Minister Shiv Shanker before a meeting of the Bar Council of Hyderabad. The Law Minister examined the class composition of the Supreme Court. His view was that class composition of any instrument indicates its predisposition, its prejudices. It was stated that the Supreme Court was composed of the element from the allied class. The Minister went on to say that because the Judges had their "unconcealed sympathy for the haves" interpreted the expression Scompensation? in the manner they did, and that because of this the word Scompensation" in Article 31 was interpreted contrary to the spirit and the intendment of the Constitution. The Constitution therefore, had to be amended by the 1st, 14th and 17th amendments to remove this "oligarchic" approach of the Supreme Court with little or no help. The Apex Court, after considering the facts and circumstances of the case, did not initiate proceedings against P Shiv Shanker for contempt of court by holding as under:

"that there was no imminent danger of interference with the administration of

justice, nor of bringing administration of justice, nor of bringing administration into disrepute. In that view of the matter, the Minister was not guilty of contempt of Supreme Court. The speech of the Minister read in its proper perspective, did not bring the administration of justice into disrepute or impair administration of justice, though in some portions of the speech the language used could have been avoided by the Minister having the background of being a former Judge of the High Court. The Minister perhaps could have achieved his purpose by making his language mild but his facts deadly.?

At this stage we may also refer to the cases reported in the case of E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar, wherein the Apex Court had to deal with the case of Mr. Namboodiripad who, at the relevant time, was Chief Minister of Kerala. He had held a press conference in Nov. 1976 and made various critical remarks relating to the judiciary which inter alia was described by him as an instrument of oppression? and the Judges as dominated by class hatred, class prejudices? Sinstructively? favouring the rich against the poor. He also stated that as part of the ruling classes the judiciary works against workers, peasants and other sections of the working classes? and the law and the system of judiciary essentially served the exploiting classes (emphasis supplied). It was found that these remarks were reported in the newspapers and thereafter proceedings commenced in the High Court of Kerala. The appellant Namboodiripad was called upon to show cause why he should not be committed for contempt. By a majority judgment of the High Court the appellant was convicted for contempt of court and fined Rs. 1000/- or simple imprisonment for one month. The appellant moved the Apex Court challenging the said order. The Apex Court upheld the conviction of the appellant-Namboodiripad.

17.2. The judgment rendered by the Apex Court in the case of P.N. Dua Vs. P. Shiv Shanker and Others, (supra) have been considered by the Apex Court in the case of Rajendra Sail Vs. Madhya Pradesh High Court Bar Association and Others, It was a case wherein a news report was published in the newspaper under the caption Sail terms High Court decision in Niyogi murder case as rubbish. That report was based on the speech delivered by appellant Rajendra Sail in a rally organised to commemorate the death of Shankar Guja Niyogi and interview given by him soon after the speech to appellant Ravi Pandey, the correspondent of the newspaper. The High Court refused to accept the apology tendered by the appellant Rajendra Sail. The Apex Court also upheld the sentence imposed by the High Court. However, the Apex court reduced the imprisonment to simple imprisonment to one week simple imprisonment. It was held by the Apex Court that in the free marketplace of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act or the conduct of a judge, the institution of the judiciary and its functioning as contrary to law or public good, no court would treat criticism as a contempt of court. Undoubtedly,

judgment are open to criticism. No criticism of a judgment, however, vigorous, can amount to contempt of court, provided it is kept within the limits of reasonable courtesy and good faith. Fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts. However, if the criticism is likely to interfere with due administration of justice or undermine the confidence which the public reposes in the courts of law as courts of justice, the criticism would cease to be fair and reasonable criticism but would scandalize courts and substantially interfere with administration of justice.

(emphasis supplied).

It was further held that liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the judges or the courts in relation to judicial matters. No system of justice can tolerate such unbridled licence.

18. Bearing in mind the aforesaid settled principles of law, we considered the allegations levelled against opponent No. 1, who claims to be President of the Sangh in arranging meetings of its members by staging dharnas and shouting derogatory slogans against the family court as well as High Court and Supreme Court on the day in question. Not only that but published an article in the newspaper Scime pen? wherein he is the editor alleging that Sto the judges only women appear innocent and several suffering husbands are sent to jail crying and screaming, and no arguments or facts of husbands are heard, and posed a rhetoric question as to whether the family court will give one sided decision in favour of women/wives?. It is already held by us that the aforesaid acts are nothing but scandalizing and/or lowering the authority of the family court, prejudiced and interfered and tended to interfere with the due course of judicial proceedings of the family court and interfered or tended to interfere with and/or obstructed or tended to obstruct the administration of justice. In all the citations referred to above, it is clear that judiciary cannot be immune from criticism, but when that criticism is based on obvious distortion or gross mis-statement and made in a manner which seems designed to lower respect of the judiciary and destroy public confidence in it, it cannot be ignored. Opponent No. 1 in his capacity as President of the sangh and as editor of the newspaper "crime pen", has not only criticised the family court by publishing articles which is nothing but an obvious distortion and it is a deliberate attempt on his part to lower the respect for judiciary and destroy public confidence. Any order passed by the family court is subject to appeal/revision before the higher forum. Without resorting to the legal remedy available, the opponent and his associates have lowered the dignity of the court by shouting slogans with the use of loudspeaker in a mandap erected opposite to the family court and thereby disturbed the working of the court for the entire day. The said act of his is not only to draw the

attention of the public but also to lower the respect for the judiciary and to destroy public confidence in it which, in our opinion, cannot be tolerated and taken lightly. Therefore, the cases cited by Mr. Nanavaty will be of no assistance to him. In any of the cases cited before us the contemnors have shouted derogatory slogans in the public places by using loudspeaker staging dharnas. Those are the cases where a telegram was sent or a speech was delivered or report was published in the newspaper. In E M Namboodiripad's case (supra), he was, at the relevant time, Chief Minister of Kerala. The Apex Court heavily criticised the conduct of the contemnor by observing that the law punishes not only acts which do not in fact interfere with the courts and administration of justice but also those which have that tendency that is to say, are likely to produce a particular result. Judged from the angle of courts and administration of justice, there was no doubt that the appellant was guilty of contempt of court. It was further observed that whether the appellant misunderstood the teachings of Marx and Engels or deliberately distorted them was not to much purpose. The likely effect of his words must be seen and they clearly had the effect of lowering the prestige of judges and courts in the eyes of the people.

18. It is to be noted that the acts of opponent No. 1 against the family court which was created in the mind of the people a general dissatisfaction which weaken the authority and the family courts.

19. Likewise in the case of Shiv Shanker (supra) while dropping the proceedings against the contemnor Shiv Shanker, the Apex court borne in mind the fact that there was no imminent danger of interference with the administration of justice, nor of bringing administration into disrepute. While reading the speech of the Minister read in its proper perspective, according to the Apex Court, it did not bring the administration of justice into disrepute or impair administration of justice though in some portions of the speech the language used could have been avoided by the Minister having the background of being a former Judge of the High Court. It was also taken into consideration that the Minister perhaps could have achieved his purpose by making his language mild but his facts deadly. Thus, there are cases and cases which differ from facts to facts. Opponent No. 1 cannot be permitted to take advantage of leniency shown in the case of P Shiv Shanker (supra). The opponent, in the instant case, as the record reveals is literate being editor of the newspaper and knows the implication of law and is aware of its consequence of staging dharna, shouting slogans against the courts, had staged dharna at different places at different times, in all three occasions at the family court. Therefore, it is clear that he is out and out against the family courts. His endeavour is to lower the image of the said court in the eye of public. Merely because the Apex Court in S. Mulgaokar's case (supra) shown magnanimity to the contemnor by observing that the judiciary cannot be immune from criticism. While accepting the said principles, we would have given the similar treatment by showing magnanimity. However, before and during the course of hearing of the present proceedings, even though we have suggested learned Advocate Mr. Nanavaty to persuade the opponent to tender unconditional

apology, even though Mr. Nanavaty did try to persuade him, he has refused to do that. This is nothing but arrogance and prejudice against the family court. We may make it clear that his refusal to tender apology has not at all influence us to impose punishment but taking over all facts and circumstances of the case into consideration, we are convinced beyond any manner of doubt that the appellant is guilty of the charges levelled against him.

19. In the result, this application is allowed. Accordingly, we hold Mr. Dashrath Devda, opponent No. 1 and 2 guilty of the committing contempt of court u/s 2(c) of the Contempt of Court Act, 1971 and punish him u/s 12 read with Section 10 of the said Act and be sentenced to suffer simple imprisonment for one month and to pay a fine of Rupees One thousand. In default, to undergo further S.I. For 15 days . Office to send yadi of this order to Shahibaug police station forthwith to implement this order. ?

At this stage Mr. J R Nanavaty, learned Advocate for the opponent prays to stay this order for two months to enable the opponent to approach Hon"ble the Apex Court. The request appears to be reasonable. We accordingly suspend the order of sentence for two months from the date of transfer of this judgment to the department. The office to furnish the certified copy to the applicant forthwith. D.S. Permitted.

Before parting with the judgment, we appreciate the assistance rendered by Mr. S B Vakil, learned Senior Advocate for the Referer and Mr. J R Nanavaty, learned Senior Advocate for the contemnor in these proceedings.