
(2008) 09 AP CK 0073
In the Andhra Pradesh High Court
Case No : Contempt Case No. 575 of 2008

Pavan Talkies

APPELLANT

Vs

Sri Rajesh Kumar, IPS, Superintendent of Police and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Cinematograph Act, 1952 — Section 7
Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 2
Copyright Act, 1957 — Section 63
Criminal Procedure Code, 1973 (CrPC) — Section 100, 100(4), 100(5), 100(6), 158
Criminal Rules of Practice and Circular Orders, 1990 — Rule 220
Indecent Representation of Women (Prohibition) Act, 1986 — Section 6
Penal Code, 1860 (IPC) — Section 292, 294

Citation : (2008) 6 ALD 460 : (2008) 6 ALT 279

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : K. Durga Prasad, for the Appellant; GP for Home for Respondent No. 1 and A. Sudhershana Reddy, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—This contempt case is filed for punishing the respondents for the alleged violation of order dated 24.04.2008 passed in WPMP. No. 11914 of 2008 in WP. No. 8988 of 2008 under the provisions of the Contempt of Courts Act, 1971 (for short, "the Act").

2. The petitioner is a Cinema theatre in Nizamabad town. On 17.04.2008 at 8.00 p.m., the Sub Divisional Police Officer, Nizamabad (for short, "the SDPO") conducted a surprise check of the theatre. He seized some film reels and a cinema poster on the allegation that the theatre was exhibiting an obscene film and that the said film did not contain censor certificate, under a panchanama signed by two revenue officials, namely, Sri Gaddam Gayendhar Reddy, Revenue Inspector, Office of the Tahsildar, Nizamabad and Sri Ch. Buchanna, VRO, Nizamabad. On the basis of the complaint given by the SDPO, a criminal case was registered as FIR 88 of 2008 by the Station House Officer, I Town Police Station,

Nizamabad (for short, "the SHO") on the same day at 10.00 p.m. for the offences under Sections 292 and 294 IPC, Section 6 of Indecent Representation of Women (Prohibition) Act, 1986, Section 63 of the Copy Right Act, 1957 and Section 7 of Cinematograph Act, 1952. Two persons by name Chakati Ashok, Manager of the Theatre and Sardar Birender Singh, Projector operator were shown as A2 and A3 and produced before the Additional Judicial First Class Magistrate, Nizamabad, on 18.04.2008.

3. The petitioner filed WP. No. 8988 of 2008 in this Court on 21.04.2008 for a writ of Mandamus to declare the action of the Superintendent of Police, Nizamabad District (respondent No. 1 in this contempt case), the SDPO, Nizamabad and the SHO, I Town Police Station, Nizamabad in seizing the theatre. In his affidavit, the licensee of the petitioner specifically averred that on 17.04.2008 at about 10.00 p.m., the SDPO along with other police officials seized the theatre and took away the keys without depositing them anywhere and that they have no such power of seizure. In WPMP. No. 11914 of 2008, the petitioner sought for a direction to respondent Nos. 2 to 4 to remove the seals of the theatre for screening the films.

4. The writ petition along with the WPMP came for admission and hearing on 23.04.2008. In the wake of the specific plea raised in the writ petition by the petitioner about the alleged seizure and absence of any such power in the respondents, the learned Assistant Government Pleader for Home, who was present in the Court, at the hearing, sought for a day's time for getting instructions. Accordingly, the writ petition was adjourned to next day. On 24.04.2008, when the case was called, the learned Assistant Government Pleader for Home, on instructions, submitted that the police have not locked and sealed the petitioner theatre. This statement of the learned Assistant Government Pleader was strongly contradicted by the learned Counsel for the petitioner. He stated that after switching off the lights in the theatre on 23.04.2008, respondent Nos. 3 and 4 in the writ petition locked the theatre premises again and took away the keys with them. Having regard to the respective submissions of the learned Counsel appearing for the parties, this Court, while admitting the writ petition, passed the following order in WPMP. No. 11914 of 2008 on 24.04.2008.

Learned Assistant Government Pleader for Home, on instructions, submitted that the police have not locked and sealed the petitioner - theatre.

Sri K. Durga Prasad, learned Counsel for the petitioner, however, denied this statement and submitted that after switching off the lights on 23.04.2008, respondents 3 and 4 locked the premises again and took away the keys with them.

In view of the categorical statement of the learned Assistant Government Pleader for Home that respondents 3 and 4 have not locked the premises, the petitioner shall be free to use the premises, if necessary by breaking open the lock.

5. On 28.04.2008, the petitioner filed the present contempt case. In his affidavit, Sri B. Hanumanth Reddy, the licensee of the petitioner theatre averred that the interim order granted by this Court on 24.04.2008 on the representation made by the Government Pleader for Home that the police have not seized or sealed the theatre was published by all the newspapers on 25.04.2008, that on 25.04.2008, he sent the order copy to the respondents, but they refused to receive the copy and threatened him, his theatre staff and his Advocate Sri N. Gopinath by using filthy language and that the respondents have physically removed the machinery of the theatre, namely, two projectors with all its accessories on 25.04.2008 between 1.00 p.m. and 7.00 p.m. by engaging nearly 15 police constables and 10 private personnel. It is also averred that when he requested respondent No. 1 not to remove the equipment, he stated that he knows how to deal with these cases and the orders passed by the Court and that the Judge does not know about the rule of audi altem patrum as the Court passed the interim order without hearing the respondents and that he knows how to get the said order vacated. It is also alleged that respondent No. 1 further commented that this type of orders are being passed everyday by the Court and that respondent No. 1 threatened him that if he did not cooperate in the equipment being taken away, he will not only seize the equipment, but do away with him in the name of encounter. The petitioner also made similar allegations against respondent No. 1, who allegedly made disparaging remarks against the Judges and the interim order. He also stated that respondent No. 2 (mistakenly mentioned as first respondent) stated that he is bound by the order of the Superintendent of Police (respondent No. 1) and not the orders of the Court. The licensee further alleged that the theatre association committee member along with its President Sri Narayana Rao were present at the time of incident, that respondent No. 2 called all of them to the police station by saying that he will give a written endorsement and copy of panchanama and that when they approached respondent No. 2, he declined to give any receipt. The licensee also stated that respondent No. 3, who was allegedly deputed by respondent Nos. 1 and 2, also used filthy language and executed the work of removal of the projectors with the help of his subordinates and labour and used derogatory statement about the Court and its order. It is further stated that the press and electronic media of Nizamabad reported the incident on 26.04.2008. He alleged that respondent No. 1 sent the police constables and threatened him to withdraw the case in the High Court and that he behaved like an ordinary rowdy sheeter.

6. Respondent No. 1 filed a counter affidavit. In paragraph 2, he referred to the interim order passed by this Court on 24.04.2008 and in subsequent paras he stated as under:

That neither he nor the police officials entered the premises of the petitioner theatre and seized any equipment on 25.04.2008 as alleged by the petitioner. The theatre was neither locked nor seized by the police and therefore neither he nor the police officials disobeyed the order of this Court or willfully committed any contempt as alleged by the petitioner. On 17.04.2008, at 8.00 p.m. the

SDPO conducted a surprise check of the petitioner's theatre in the presence of the Revenue Inspector and VRO, Nizamabad, who acted as mediators. No censor certificate was displayed in the entire film. Sri C. Ashok, the Manager had shown a xerox copy of censor certificate with the name of the film "Cover Me" which does not match the posters exhibited as "Hot Girls" in the theatre. Five cinema reels and one poster were seized under the mediators report as the Management of the petitioner theatre contravened the provisions of IPC, Indecent Representation of Women (Prohibition) Act, 1986, Section 63 of the Copy Right Act, 1957 and Section 7 of the Cinematograph Act, 1952. The Manager and the Operator were apprehended and a criminal complaint was lodged with the SHO, I Town police station. The seized material was handed over to the SHO. CC. No. 88 of 2008 was registered by the SHO on the complaint of the SDPO. The Sub Inspector of Police arrested the accused and produced them before the Additional Judicial First Class Magistrate, Nizamabad on 18.04.2008 and they were remanded to judicial custody. Subsequently, he also seized two projectors on 18.04.2008 at 16.30 hours in the presence of mediators.

7. That except seizing the material on two different dates i.e., 17.04.2008 and 18.04.2008, the police never entered the premises of the theatre on other days and seized or sealed the same. Having lost his pride and prestige in the society for exhibiting porno films, the licensee is unable to digest this stigma and making bald and baseless allegations. The seized property was deposited before the Additional Judicial First Class Magistrate, Nizamabad on 19.04.2008 and the said Court received the same on 29.04.2008 and handed over the same to the SHO I Town police Station, Nizamabad for safe custody vide CPR. No. 219 of 2008 dated 29.04.2008 and the same was taken back by the petitioner on 15.05.2008 from the Court custody. The action of seizure was taken in good faith in order to see that women are not degraded and youth is not perverted by the films exhibited by the petitioner.

8. That the allegation of the petitioner that the answering respondent did not care for the orders of this Court and violated the same by entering the premises on 25.04.2008 and seizing and locking the theatre is not true. The allegation of the petitioner that the police refused to receive the copy of the order and threatened him, his staff and his Advocate by using filthy language is false. The further allegation that the machinery was physically removed from the theatre on 25.04.2008 is not true. The copy of the order dated 24.04.2008 was received by the answering respondent on 29.04.2008. He has the highest regard and respect for the order of this Court and he did not come to adverse notice of this Court for violation of any of its orders at any point of time and he tenders his unconditional apology.

9. The averments contained in the counter-affidavit filed by respondent No. 2 are identical to the averments in the counter-affidavit of respondent No. 1. Therefore, they need not be specifically traversed. It will suffice to note that he also maintained the same stand as of respondent No. 1 in asserting that the

projectors were seized on 18.04.2008 and no seizure has taken place on 25.04.2008.

10. The contents of counter-affidavit filed by respondent No. 3 are also identical. His affidavit discloses that he had knowledge of the entire case, which includes seizure of the material on 17.04.2008, registration of criminal case and seizure of the projectors allegedly on 18.04.2008. He also maintained that except on 17.04.2008 and 18.04.2008, the police never entered the premises of the theatre and that the same was neither seized nor sealed by the police. He also referred to and denied each one of the allegations as done by respondent Nos. 1 and 2.

11. The petitioner filed a reply affidavit to the counter-affidavit filed by respondent No. 1, wherein he denied the claim of the respondents that they seized the projectors on 18.04.2008. He alleged that the police fabricated even the panchanama, evidencing seizure of projectors. He stated that the property list was submitted by the respondents before the jurisdictional Magistrate on 29.04.2008 and not on 18.04.2008 and that the said facts are sufficient to establish the falsity of the claim of the respondents that they seized the projectors on 18.04.2008. The petitioner also questioned the respondents' claim that they have seized the projectors on 18.04.2008 by stating that if the same were seized, there was no reason why the respondents have not deposited the seized equipment on 19.04.2008 instead of on 29.04.2008 and that no explanation in that regard was forthcoming in the counter-affidavit. The petitioner reiterated the allegation that the respondents intentionally disobeyed the order of this Court by removing the equipment and shifting the same to the police station on 28.04.2008 and that only on realizing the consequences of such an action, they have deposited the seized equipment in the Court on 29.04.2008.

12. On 23-6-2008 while adjourning the case, at the request of the learned Counsel for the petitioner, for filing reply affidavit to the counter-affidavit filed by respondent No. 1, the Court observed that if the parties intend to adduce evidence, they are permitted to file appropriate applications for this purpose. On 7-7-2008 the learned Counsel for the petitioner made a request for permitting the petitioner to adduce oral evidence. While adjourning the case to 15-7-2008 the learned Counsel for the petitioner was asked to file a list of witnesses. On that day the Court also directed the learned Assistant Government Pleader for Home to produce the record pertaining the property reports sent by respondent No. 2 to the jurisdictional Magistrate under Sections 158 and 165(5) Cr.P.C.

13. On 1-8-2008 the petitioner adduced oral evidence by examining CWs.1 to 3 on its behalf. After completion of evidence on the petitioner's side, the respondents examined RWs.1 to 3 on 8-8-2008. On their behalf, Exs.R.1 to R.6 were marked.

14. CW.1-Sri B. Hanumanth Reddy, who is the licensee of the petitioner-theatre, deposed that the petitioner-theatre was inspected by the Police on 17-4-2008,

they seized the theatre with all the lights on, on 17-4-2008 respondent No. 1 along with the Circle Inspector of Police and the Sub-Inspector of Police came to the theatre, they have taken photographs of the posters at the theatre by saying that they are obscene, they have seized the print and carried it with them on that day, and they have also seized the theatre and locked the same. He further deposed that he filed Writ Petition No. 8988 of 2008, on 24-4-2008 an order was passed by this Court, on 25-4-2008 the above mentioned Police Officers again came to the theatre and started dismantling the projectors, at 3-00 PM CW.1 received a copy of the order of this Court passed on the previous day, he immediately showed it to the Circle Inspector of Police and Sub-Inspector of Police, who were present at the theatre at that time, by that time the Superintendent of Police left the theatre to inspect a place where a building has collapsed, and even though the petitioner had shown the order of the Court, the said two Police Officers did not care for the same and took away the projectors. He further stated that when he approached the said Police Officers, they said that he should get appropriate orders from the Court, and the petitioner was not even supplied a copy of the panchanama.

15. In his cross-examination, made on behalf of respondents 2 and 3, CW.1 stated that on 17-4-2008 a box containing the film was seized and that on 18-4-2008 nothing was seized. While denying that he applied for release of the seized film or that he has taken return of the same from the Court, he stated that he approached the Magistrate's Court for return of the projectors in the month of May, 2008 after this Court declined to release the projectors and directed him to approach the jurisdictional Magistrate for this purpose. While denying that CW.1 is not aware as to when the seized film was deposited in the Court, he, however, stated that since the Police have registered a criminal case against him, the film is lying with the Court in connection with the said case. He stated that in the first week of May, 2008 the seized projectors were deposited in the Court and he denied the suggestion that the projectors were seized on 18-4-2008 itself and that he was lying because his theatre's license was suspended. CW.1 reiterated that on 25-4-2008 all the three Police Officers, viz., Superintendent of Police, Circle Inspector of Police and Sub-Inspector of Police, came to the theatre for taking away the projectors. He clarified that while Sub-Inspector of Police, I Town Police Station has not come to the theatre, Sub-Inspector of Police, III Town Police Station came and was present at the theatre. He denied the suggestion that the purported panchanama dated 18-4-2008 was supplied to him. While denying the suggestion that CW.1 is aware of the fact that the seized film reels were produced on 21-4-2008, he also denied the suggestion that the projectors were seized on 18-4-2008 and deposited in the Magistrate's Court on 19-4-2008 (the date mentioned as 18.4.2008 is a type mistake). He also denied the suggestion that he was aware of depositing of the seized film by the Police on 21-4-2008 along with the report and the Magistrate taking the same on record on 29-4-2008. He denied the suggestion that he was aware of the Police producing the seized projectors on 19-4-2008 and the Magistrate

taking the same on record on 29-4-2008.

16. In the cross-examination made by the learned Assistant Government Pleader for Home on behalf of respondent No. 1, the petitioner denied the suggestion that the Superintendent of Police has nothing to do with the seizure of the projectors. He added that the entire seizure episode was covered by the electronic and print media. He also denied the suggestion that though the projectors were seized on 18-4-2008, he was falsely stating that they were seized on 25-4-2008.

17. Sri K. Bhoomanna, was examined as CW.2. He stated that he is a friend of CW.1. He deposed that on 25-4-2008 CW.1 informed him that the Police have come to the theatre and started removing the projectors, by the time he went there the Police have locked the gates and were removing the projectors, the Police removed the projectors and kept them on the floor, he informed the Police that the High Court passed an order, and without heeding to their request the Circle Inspector of Police and the Sub-Inspector of Police have taken away the projectors.

18. In his cross-examination made on behalf of respondents 2 and 3 he reiterated that projectors were seized on 25-4-2008 while saying that the film appeared to have been seized on 17-4-2008. He denied the suggestion that the projectors were seized on 18-4-2008 and that he was speaking falsehood.

19. In the cross-examination made on behalf of respondent No. 1 he denied the suggestion that the Superintendent of Police has not come to the theatre and emphasized that he was very much there at the theatre on 25-4-2008.

20. Sri N. Gopinadh, Advocate and resident of Nizamabad was examined as CW.3. He stated that he is a friend of CW.1, that on 25-4-2008 CW.1 telephoned and told him that Police were seizing the projectors, when he went to the theatre the Superintendent of Police, the Circle Inspector of Police and the Sub-Inspector of Police were present in the theatre, they have locked the theatre from outside and were removing the projectors, after giving instructions to the Circle Inspector of Police and the Sub-Inspector of Police, the Superintendent of Police left the theatre to inspect the site where a building has collapsed, and though he requested the Police not to take away the projectors in view of the order of this Court, they have taken away the projectors.

21. In his cross-examination made on behalf of respondents 2 and 3, he stated that he went to the theatre between 1-00 PM and 1-30 PM on 25-4-2008 and that he had seen all the three Police Officers, viz., the Superintendent of Police, the Circle Inspector of Police and the Sub-Inspector, at the theatre, that on that day only projectors were seized and not the film, that at the time when he went to the theatre, CW.1 was not there at the theatre, that he had shown the order of the High Court at 3-00 PM and not at 1-30 PM. He added that the order copy was brought by CW.2 and that he and CW.2 have shown the same to the Police Officers. He mentioned the names of the Circle Inspector and the Sub-Inspector

of Police, who removed the projectors as Lakshminarayana and Prakash Yadav respectively. He denied the suggestion that the projectors were seized on 18-4-2008 and not on 25-4-2008. He also denied the suggestion that he was speaking falsehood.

22. In the cross-examination made on behalf of the Superintendent of Police, he denied the suggestion that the former was not at the theatre on 25-4-2008 and that he was no way connected with the seizure of the projectors.

23. Sri Gaddam Jayendar Reddy, Revenue Inspector, Nizamabad, was examined as RW.1. He deposed that on 17-4-2008 the Deputy Superintendent of Police, Nizamabad (SDPO) telephoned the Mandal Revenue Officer, Nizamabad to send him to the cinema theatre, he went to the theatre between 7-00 and 7-30 PM, at that time the DSP, along with other Police Officers, was at the theatre checking the film reels in the projector, from the film reel the DSP, other Police and himself noticed an obscene film of a duration of six minutes, the film reels, four in number, were seized by the Police under a panchanama; and that he signed the panchanama. He further deposed that on 18.4.2008 the Sub-Inspector of I Town Police Station, Nizamabad sent a letter to him to be present at the theatre again, he along with the Mandal Revenue Officer (an obvious mistake for Village Revenue Officer, CW.3) went to the theatre between 4-00 and 4-30 PM; that by the time of their arrival at the theatre, the two projectors were removed; and that they were seized and taken away under a panchanama, which he had signed.

24. In his cross-examination made on behalf of the petitioner he stated that they have watched the English film, by name, "Hot Girl" on the screen, that the same was stopped and another reel was screened containing obscene film; that the inspection lasted till 9 PM on 17-4-2008; that he is having the letter addressed by the Sub-Inspector of Police, I Town Police Station on 18-4-2008 and that by the time of his arrival the projectors were already removed and lying at the third floor. He further stated that at the time of removal of the projectors the Sub-Inspector of Police-Lakshminarayana, among the Police Officers, was present at the theatre; and that he had not seen anyone connected with the management of the theatre at the time of removal of the equipment and no one from the management side signed he panchanama. He denied the suggestion that the projectors were not seized on 18-4-2008 but were seized only on 25-4-2008. The witness identified his signature on panchanama dated 18-4-2008.

25. Sri Ch. Buchanna, Village Revenue Officer of Nizamabad, was examined as RW.2. He also deposed that on receiving the notice from the Dy.Superintendent of Police, Nizamabad, he went to the theatre on 17-4-2008 and he was a signatory to the panchanama prepared evincing seizure of four reels of the film of seven minutes duration on 17-4-2008. He further deposed that on the next day viz., 18-4-2008 the Sub-Inspector of Police, I-Town Police Station, Nizamabad, summoned him to the theatre; and that he signed the panchanama evincing seizure of the projectors.

26. In his cross-examination made by the Counsel for the petitioner he, inter alia, stated that the Sub-Inspector of I Town Police Station sent a letter to the Mandal Revenue Officer on 18-4-2008 requiring his presence at the theatre on that day, he went to the theatre at 4 P.M. on 18-4-2008, no person connected with the management of the theatre was available there nor any resistance from their side had taken place on that day; only Sub-Inspector of Police, I Town Police Station, along with four of his Constables, was at the theatre; and that all the five persons have carried the projectors from third floor to the ground. He admitted that whenever a panchanama is executed, he puts the date below his signature, and he did not put the dates on both the panchanamas dated 17-4-2008 and 18-4-2008. He admitted that a building has collapsed on 25-4-2008 in Nizamabad Town, but he denied the suggestion that after he signed the panchanama conducted on 25-4-2008 he visited the place of building collapsed. He denied the suggestion that he was speaking falsehood on the directions of the Superintendent of Police, Joint Collector and the Mandal Revenue Officer. He admitted that newspapers carried the news of seizure of projectors and added that he did not have newspapers with him. The witness identified his signatures on both the panchanamas dated 17-4-2008 and 18-4-2008 and stated that he has not put the date below his signature.

27. Sri S. Lakshmi Narayana, Sub-Inspector of Police, I Town Police Station, Nizamabad, was examined as RW.3. He deposed that on 17-4-2008 the Dy. Superintendent of Police brought the case properties along with the confessional statements of the accused; thereupon he registered Crime No. 88 of 2008 on the same day; he examined the DSP as LW.1, a photographer and an independent witness as LWs.2 and 3 on the same day; on 18-4-2008 he sent A.1 and A.2 for remand, and on the same day he gave a requisition to the same panchas who attended the inspection and seizure on 17-4-2008. The requisition given by the Dy. Superintendent of Police to the Mandal Revenue Officer for inspection on 17-4-2008 is marked as Ex. R.1 and the requisition given by him for inspection dated 18-4-2008 was marked as Ex.R.2. He further deposed that on 19-4-2008 the case properties (projectors) were produced before the concerned Magistrate, on 29-4-2008 the case properties were taken on file by the Magistrate, the reels seized on 17-4-2008 were produced before the Magistrate on 21-4-2008 along with letter of advice and that the same was taken on file by the Magistrate on 3-5-2008. He further deposed that on 15-5-2008 the projectors were released on the orders of the Magistrate, on 5-7-2008 the analysis report sent by the Film Board was received, Ex.R.3 is Form-66 which pertains to deposit of film before the Magistrate and Ex.R.4 is Form-66, which pertains to deposit of projectors. He added that Exs.R.3 and R.4 contained the endorsement of the Magistrate taking the case properties on file on their reverse side.

28. In his cross-examination he stated that normally he produces the seized material before the jurisdictional Magistrate on the same day when the accused are produced before the Magistrate for remand, in this case he has not produced the seized film in the case along with the accused, but it was produced on

21-4-2008 along with letter of advice, he follows the procedure of giving letter of advice in all such seizure cases, as an investigating officer he went to the theatre on 18-4-2008 on his own, and he was not instructed by any of his superior officers in that regard. He also stated that as he felt that the projectors were used in the commission of the offence of exhibiting an obscene film, he seized the projectors, and that he, with the assistance of four Constables, removed the projectors. He also stated that he has not taken the help of any other persons for removing the projectors. He further deposed that preparation of panchanama was commenced at 4-30 P.M on 18-4-2008 and it lasted for two hours and on 19-4-2008 the seized projectors were deposited in the Court of the Magistrate. He explained that all the seized material was not produced on the same day because a letter of advice had to be prepared in respect of the film. He further stated that the general practice of the Magistrate's Court is not to give receipts immediately after production of the seized material but receipts will be given at a later date. The witness was shown the reverse of Ex.R.4 by the Counsel for the petitioner and he admitted that there is a correction of the date mentioned below the signature. To the Court's query, RW.3 stated that initially "25.4.2008" was written and it was corrected as "19.4.2008". He stated that when the projectors were seized no one connected with the management of the theatre was present or resisted their seizure. RW.3 was shown a news item published in Eenadu, Nizamabad Edition, on 26-4-2008, which carried a photograph and he identified the person in the Police uniform in the photograph as the Town Circle Inspector. RW.3 admitted that he was not in Nizamabad on 25-4-2008 as he went out of town in connection with an investigation. He stated that in his absence, generally the Assistant Sub- Inspector of Police attached to the Police Station will be in-charge of the Police Station. He denied the suggestion that he was deposing falsehood.

29. Before delving into the issue whether the respondents indulged in acts of contempt, it is appropriate to briefly refer to the Law of Contempt. As the Contempt of Courts Act, 1952 was found somewhat uncertain, undefined and unsatisfactory, the Ministry of Law set up a Committee under the Chairmanship of late Sri H.N. Sanyal, Additional Solicitor General of India at the time. The Sanyal Committee as it was popularly called submitted its report on 28-2-1963 after a comprehensive examination of the law relating to Contempt of Courts. The Parliament accepted the majority recommendations contained in the said report and passed the Contempt of Courts Act, 1971.

30. Section 2(a) of the Act defined "contempt of court" as civil contempt or criminal contempt. Section 2(b) defined "civil contempt" as willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court. As the present case is concerned with civil contempt, it is not necessary to refer to the definition of criminal contempt.

31. In Supreme Court Bar Association Vs. Union of India and Another, , a

Constitution Bench of the Supreme Court made a succinct exposition of the nature and purpose for which the contempt jurisdiction is exercised by the Constitutional Courts. I can do no better than reproducing the relevant portion of the judgment.

Para 42. THE contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemnor and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

32. In *Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others*, the Supreme Court, while dealing with the purpose of the Act, held that the Act, a powerful weapon in the hand of the Courts is introduced for the purpose of securing a feeling of confidence in the people in general and to ensure due and proper administration of Justice in the Country.

33. In *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, the Supreme Court held that contempt of Court signifies a willful disregard or disobedience of the Court by acting in opposition to the authority of Justice and dignity thereof. It further held that it signifies a willful disregard or disobedience of the Court order; it also signifies such conduct as tending to bring the authority and administration of law into disrepute.

34. In *Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others*, the Supreme Court held that before a contemnor is punished for non-compliance of the directions of a Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction or writ, but should also be satisfied that such disobedience was willful and intentional.

35. In *Chhotu Ram Vs. Urvashi Gulati and Another*, the Supreme Court held that a proceeding under the extraordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act is quasi-criminal in nature, and as such, the standard of proof required is that of a criminal proceeding and the breach

shall have to be established beyond all reasonable doubt. This view was reiterated in *Mrityunjoy Das v. Sayed Hasibur Rahaman* (2001) 3 SCC 739.

36. In *E.T. Sunup Vs. C.A.N.S.S. Employees Association and Another*, , the Supreme Court strongly deprecated the practice of the Government officials of circumventing and undermining Court orders. In para 16, the Court observed:

It has become a tendency with the Government Officers to somehow or the other circumvent the orders of court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the court. This tendency of undermining the Court's order cannot be countenanced. This Court time and again has emphasized that in a democracy the role of the court cannot be subservient to administrative fiat. The executive and legislature have to work within the Constitutional framework and the judiciary has been given a role of watchdog to keep the legislature and executive within check. In the present case, we fail to understand the counter filed by the appellant before the Court. On one hand they say that all the cases of GPF have been processed and on the other hand they are not prepared to revoke the administrative order. This only shows a deliberate attempt on the part of the bureaucracy to circumvent the order of the Court and stick to their stand. This is clear violation of Court's order and the appellant is guilty of flouting the Court's Order.

While referring to the plea of showing mercy regarding penalty, the Supreme Court observed:

But if the Court's orders are flouted like this, then people will loose faith in the courts. Therefore, it is necessary to deal with such type of violation of Court's order with strong hands and to convey to the authorities that the courts are not going to take things lightly.

37. In *Taylor v. Ribby Hall Leisure* (1997) 4 All E LR 760, the Court of Appeals described the contempt power as punitive power to promote the integrity of the orders, officers and process of the Court.

38. In *Smt. A. Santhi Kumari, I.A.S., Secretary, A.P. Social Welfare Residential Educational Institutions Society Vs. K. Ravi and Another*, a Division Bench of this Court held that in appropriate cases if the Court comes to the conclusion that the order passed by the authorities in purported compliance of the directions of the Court is not a bona fide one, but a deliberate attempt to overreach the Court's order and willfulness in the matter of disregard of an order of the Court is apparent on the face of it and there is no possibility to accept the same as defence of action for deliberate and willful disregard of an order of the Court, it shall always be open for the Court to proceed further under Article 215 of the Constitution of India and also under the provisions of the Contempt of Courts Act, 1971.

39. The case law discussed above reveals that the Courts are sensitive to the deliberate flouting or overreaching of its orders and whenever such instances are

brought to their notice, they are dealt with heavy hand. Such an approach is made in order to uphold the majesty of Courts of law and protect the public faith and confidence in the judicial system. The acts calculated at overreaching or circumventing the judicial orders passed by the Courts are viewed with all seriousness they deserve and the perpetrators of such acts are appropriately punished.

40. With this background in view, I shall now consider whether the respondents are guilty of violation of the order of this Court.

41. The petitioner filed Writ Petition No. 8988 of 2008 with the specific grievance that on 17-4-2008 the respondents seized and sealed the theatre. The petitioner specifically contended therein that even if the petitioner indulged in exhibiting an obscene film unauthorisedly, the respondents have no power of sealing the theatre under the Andhra Pradesh Cinemas (Regulation) Act, 1955 and the Rules made thereunder and that the Joint Collector is the competent authority to pass any order. Along with the Writ Petition, the petitioner filed copies of Remand Case Diary and Confessional Seizure Panchanama issued by the Sub-Inspector of Police, I Town Police Station, Nizamabad. The Remand Case Diary is dated 18.4.2008 and the Confessional and Seizure Panchanama contains the signature and stamp of the Sub-Inspector of Police, I Town Police Station, Nizamabad with date mentioned as 17-4-2008 under his signature. It is, inter alia, mentioned in the panchanama that five reels of English movie had obscene scenes and one reel of seven minutes duration was a blue film, which was videographed with the help of a videographer, by name, Babar, and seized four reels of the movie-Hot Girl, one reel of blue film, one colour poster of the film "Hot Girl", and the certificate of the film "Cover Me". The Manager and Operator of the theatre were arrested and produced before the jurisdictional Magistrate at Nizamabad on 18-4-2008.

42. The Writ Petition was filed on 21-4-2008 and came up for admission before this Court on 23-4-2008. In the face of the specific allegation made by the petitioner in the Writ Petition that respondent No. 1 and his subordinates seized and sealed the theatre on 17-4-2008 and that they have no such power under law, this Court called upon the learned Assistant Government Pleader for Home to get instructions in that regard and for that purpose the Writ Petition was adjourned to the next day. On 24-4-2008 the learned Assistant Government Pleader for Home, while conceding that the Police have no power of seizing and sealing the theatre, however, reported that the Police have not locked and sealed the theatre. This statement of the learned Assistant Government Pleader for Home was strongly denied by the learned Counsel for the petitioner, who stated that after switching off the lights on 23-4-2008 the SDPO (DSP) and the Sub-Inspector of Police, I Town Police Station locked the premises again and took away the keys with them. Having regard to the conflicting stands of the learned Counsel for the petitioner and the learned Assistant Government Pleader, this Court on 24-4- 2008 while admitting the Writ Petition, passed the following

interim order in WPMP No. 11914 of 2008:

In view of the categorical statement of the learned Assistant Government Pleader for Home that respondents 3 and 4 have not locked the premises, the petitioner shall be free to use the premises, if necessary by breaking open the lock.

43. On 28-4-2008 the petitioner filed WPMP No. 12626 of 2008 and moved the same as lunch motion. As the petitioner pleaded urgency on the ground that projectors were removed and taken away by the respondents on 25-4-2008, the Court took up the hearing of the case by granting lunch motion. A perusal of the affidavit filed in the said WPMP, shows that the same was prepared and signed by the petitioner on 27-4-2008 and filed on 28-4-2008. In the said affidavit, the petitioner stated that on 17-4-2008 (the petitioner evidently, by mistake, mentioned this date as 27-4-2008) respondent No. 1 and his subordinates inspected the theatre, seized and sealed the same by taking the film box along with the print and publicity material, the same was mentioned in FIR in Crime No. 88 of 2008 and the panchanama report and that after this Court passed the interim order they have forcibly taken away the equipment (two projectors with all its lenses) from the theatre. He stated that without that equipment he cannot run the theatre. He, therefore, sought for a direction to respondents 2 to 4 to re-fix the equipment removed from the petitioner's theatre to enable it to screen the films. After hearing the said application, this Court adjourned the same to 2-5-2008 for the respondents to file counter-affidavit. It is mentioned in the proceedings sheet that if the respondents failed to file the counter-affidavit, it will be presumed that the allegations mentioned in the affidavit are correct and orders will be passed accordingly. On the same day, the Contempt Case was also moved before this Court and this Court, having taken note of the serious allegations contained in the petitioner's affidavit, admitted the said Contempt Case and ordered notices to the respondents requiring their personal presence in the Court on 16-6-2008. Despite granting time, the respondents did not file counter-affidavit in WPMP No. 12626 of 2008. The application could not be taken up for hearing on 2-5-2008 on account of the Court's preoccupation in hearing other urgent cases. The petitioner moved the said application in the summer vacation court on 7-5-2008. On that day the learned Assistant Government Pleader for Home reported to the Court that due to certain administrative reasons the respondents were unable to file counter-affidavit; that two projectors were seized on 18-4-2008 and produced before the jurisdictional Magistrate on 19-4-2008; and that they were received by the learned Magistrate on 29-4-2008. She further stated that after receiving the seized projectors, the Magistrate returned the same to the Station House Officer for safe custody. In view of the said submission of the learned Assistant Government Pleader, this Court declined to direct release of the projectors as they were in the judicial custody in connection with the criminal case. The said application was disposed of by this Court with liberty to the petitioner to approach the jurisdictional Magistrate for release of the projectors with the direction to the Magistrate to dispose of the application, if filed by the petitioner, expeditiously in accordance

with law.

44. While it is the case of the petitioner that being aware of the order passed by this Court on 24-4-2008, which was published by all the news papers on 25-4-2008, the Police forcibly removed and took away the projectors on 25-4-2008, on the contrary, it is the case of the respondents that on 18-4-2008 RW.3, who registered the criminal case on 17-4-2008, removed the projectors and produced them before the jurisdictional Magistrate on 19-4-2008. In support of this stand, the respondents relied on the panchanama purportedly prepared on 18.04.2008, Ex.R4, the property report sent to the Magistrate and the oral evidence of RWs.1 to 3. I shall now analyze this evidence in order to find out whether the same is worthy of acceptance.

45. Section 165(5) of the Code of Criminal Procedure, 1973 mandates that copies of any record in respect of search made by the Police Officer u/s 165(1) or by his subordinates authorized by him u/s 165(3), shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence. In respect of seizure of the film made on 17-4-2008 by the SDPO, on the basis of which RW.3 registered the Crime, the same was reported on the next day viz., 18-4-2008 by producing panchanama evincing seizure before the jurisdictional Magistrate. However, no record is produced by the respondents except Ex.R4 to show that the purported seizure of projectors on 18-4-2008 was reported to the jurisdictional Magistrate prior to 29-4-2008. Here, it is relevant to note that if the projectors were seized on 18-4-2008, as pleaded by the respondents, there could be no reason, whatsoever, for the petitioner to suppress this fact in the Writ Petition filed by him on 21-4-2008, which was taken up for admission on 23-4-2008. By suppressing the said fact, the petitioner did not stand to gain. No motive was suggested to CW.1 in his cross-examination for his not disclosing the alleged seizure of projectors on 18-4-2008. The entire purpose of filing Writ Petition on 21-4-2008 by the petitioner was to enable him to run the theatre. Without the projectors, it would not have been possible for him to achieve that purpose. No person of ordinary prudence would have ventured to file a purposeless Writ Petition and obtain an interim order, which would be a mere exercise in futility without the projectors being available in the theatre. Such an act on the part of any person militates against natural human conduct. Thus, ex facie, the plea set up by the respondents that they removed and seized the projectors on 18-4-2008 is wholly incredible.

46. As if every offender leaves some traces, the respondents also left a very significant clue, which, in my view, clinches the whole issue and calls their bluff. In the list of property sent by RW.3 to the jurisdictional Magistrate, he signed at two places - one, at the bottom of the list on the front page and the other on the reverse of it with his stamp. The date mentioned under both his signatures contains corrections. In his cross-examination RW.3 admitted this fact when a question was put to him with reference to the date contained on the reverse side of Ex.R.4. In reply to the Court's query, RW.3 admitted that he had initially

written the date as "25", but corrected it as "19". This vital admission of RW.3 proves beyond any pale of doubt that the respondents fabricated Ex.R4, the crucial document through which the seized property was sent to the jurisdictional Magistrate. Though the Court repeatedly questioned the learned Assistant Government Pleader for Home, who appeared for respondent No. 1, and the learned Counsel for respondents 2 and 3 as to the significance of and reason for initially showing the date as 25-4-2008 in Ex.R4, not even a semblance of explanation is offered. Even as per the version of the respondents, 25th of April had no significance at all, because, according to them, the first search of the theatre and seizure of the film was made on 17-4-2008 and the second search and seizure of the projectors was made on 18-4-2008, on which date the accused were produced before the Magistrate and remanded to judicial custody. The seized projectors were said to have been produced on 19-4-2008, and the learned Magistrate has received the seized projectors on 29-4-2008. Therefore, there was no occasion for the Station House Officer, I Town Police Station, Nizamabad, to mention 25-4-2008 under his signature unless the seized projectors were sent to the Magistrate along with list of property on the said date. It is not the case of the respondents that though the projectors were seized on 18-4-2008 the list of property was prepared on 25-4-2008. Even if for any reason the date "25-4-2008" is mistakenly mentioned at one place, there can be no possibility of repeating such a mistake for the second time as could be seen from the correction of the date at both the places under the signature of RW.3 in the list of property. This fact conclusively proves that the projectors were not seized prior to 25-4-2008 and RW.3 obviously while signing the list of property on 25-4-2008 inadvertently put the correct date, viz., 25-4-2008, but on realizing this mistake he corrected the same as 19-4-2008 to make it appear that the projectors were seized on 18-4-2008 and sent on 19-4-2008 to the jurisdictional Magistrate along with the list of property. In the absence of any explanation offered by the respondents for mentioning the said date of 25-4-2008, no other conclusion is possible.

There is another angle from which the veracity of the respondents' stand can be tested. If the projectors were seized on 18-4-2008 and produced before the Magistrate on 19-4-2008, ordinarily there can be no reason for the Magistrate to accept the property with a delay of ten days. Even accepting the explanation sought to be offered in the pleadings of the respondents and the evidence of RW.3 that delay in accepting the properties is common in the Magistrate's Court, nothing prevented the respondents from producing a certificate from the Magistrate's Court that the seized property was produced on 19-4-2008 itself. Neither such a certificate has been obtained by the respondents nor the ministerial staff member connected with the Magistrate's Court, who is concerned with the receipt of case property is examined on their behalf to support their case. Here, a reference to Rule 220 of Criminal Rules of Practice and Circular Orders, 1990 framed by the High Court of Andhra Pradesh is useful. This Rule envisages that while presiding officers are personally responsible for

the safe custody of the case properties, only clerks, who have furnished the required security, should be placed in-charge of properties. If, really, the projectors were produced in the Court on 19-4-2008 along with the list of property, some one in the Magistrate's Court, concerned with receipt of case properties, would have received the property even if the Magistrate has not formally accepted the said property on that day. In such an event, it could not have been difficult for the respondents to examine the concerned employee of the Magistrate's Court. The respondents failed to examine any such person. Further more, the respondents have not produced a certified copy of the property register in which entries are made immediately after the property is received which would have contained the dates on which the property was produced by the respondents and received by the Courts. They have not even sought for summoning of the property register. It can therefore be safely presumed that the respondents deliberately failed to either produce the extract of the property register or seek summoning of the same fearing that the falsity of their claim that the projectors were produced on 19.04.2008 will get exposed.

47. I find another chink in the respondents' armory. Admittedly, the film was seized on 17-4-2008. It is the case of the respondents that the seized film was produced in the Magistrate's Court on 21-4-2008. If the projectors were seized on 18-4-2008 and produced on 19-4-2008, the respondents would have produced the film also along with the projectors instead of duplicating the process by producing the seized material at two different times. This was sought to be explained away by RW.3 by saying that a letter of advice was to be prepared in respect of the seized film and, hence, all the seized material were not produced on the same day. The letter of advice is marked as Ex.R.5. I have carefully perused the said document, which only contains nine columns. The entire contents of all these columns are, by and large, the reproduction of the contents of the confessional and seizure panchanama prepared by RW.3 on 17-4-2008. The requirement of preparation of such a simple letter of advice would have certainly not been the reason for holding back the seized film without producing the same along with the seized projectors on 19-4-2008. If the projectors were really seized on 18-4-2008 and produced before the Magistrate on 19-4-2008, there could be no reason for the respondents not to produce the seized film also on the same day along with the projectors. Their failure to produce the film on 19-4-2008 further fortifies the view of this Court that neither the projectors were seized on 18-4-2008 nor the same were produced before the jurisdictional Magistrate on 19-4-2008.

48. Coming to the oral evidence adduced on behalf of the respondents, it is necessary to note that RWs.1 and 2 are the common panchas to both the panchanamas dated 17th and 18th April, 2008. Section 165(4) Cr.P.C. makes general provision as to searches contained in Section 100 so far as may be apply to a search made under that Section. u/s 100(4), the officer making a search shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no

such inhabitant of the said locality is available or is willing to be a witness to the search to attend and witness the search and may issue an order in writing to them. Under Sub-section (5) search shall be made in their presence and a list of all things seized shall be prepared and signed by such witnesses. Under Sub-section (6) the occupant of the place searched or some person in his behalf shall in every instance be permitted to attend during the search and a copy of the list prepared and signed by the witnesses shall be delivered to such occupant or the person. It is significant to note that no independent person, who is an inhabitant of the locality, figured as a Panchayatdar. It is not the case of the respondents that they tried to secure the presence of an inhabitant of the locality, but they could not succeed in doing so. Both RWs.1 and 2 are the Revenue officials. Both of them narrated the events of 17-4-2008 and 18-4-2008 in one voice. It is worth noticing that for the panchanama conducted on 17.4.2008, it is the common case of RWs.1 to 3 that the SDPO, Nizamabad, requested the Mandal Revenue Officer, Nizamabad, to send RWs.1 and 2 to witness the inspection and seizure. Accordingly, the Mandal Revenue Officer deputed them and they have gone there and figured as witnesses to the seizure of the film. However, for the alleged seizure on 18-4-2008 there is material contradiction in the evidence of RW.1 and RW.2. While RW.1 stated that the Station House Officer himself gave notices to both RWs.1 and 2 to witness the seizure of the projectors, RW.2 deposed that RW.3 sent letter to the Mandal Revenue Officer on 18.04.2008. The purported copy of notice dated 18-4- 2008 containing the signatures of RWs.1 and 2 is marked as Ex.R.2 through RW.3. Unlike Ex.R.1, requisition sent by the SDPO for inspection on 17.04.2008, which was neatly typed on computer, Ex.R.2 is in manuscript. A look at this document shows that different pens were used for preparing notice and signing the same by RW.3. The respondents have not examined the Mandal Revenue Officer. Both RWs.1 and 2 work under the control of the Mandal Revenue Officer. Therefore, there would have been no possibility of RWs.1 and 2 figuring as witnesses to the seizure of projectors on 18-4-2008 without the knowledge of and information to the Mandal Revenue Officer more so when RW.2 specifically stated that RW.3 issued notice to the Mandal Revenue Officer. In such a case, there was no need for RW.3 to send Ex.R.2 notice to RWs.1 and 2. It is their admitted case that they attended the theatre and witnessed the seizure of the film on 17-4-2008 on the directions of the Mandal Revenue Officer. The respondents neither produced any certificate issued by the Mandal Revenue Officer nor examined him as a witness to speak to the fact that he deputed RWs.1 and 2 on 18-4-2008 also or that he had atleast knowledge of the said two persons going and figuring as witnesses to the seizure. These reasons convince me to hold that Ex.R2 is a self-serving document created to lend support to the respondents' theory of seizure of projectors on 18.04.2008.

49. Another aspect which exposes the fallacy in the respondents' case is the alleged non-presence of any person on behalf of the management when RW.3 along with his subordinates visited the theatre on 18.04.2008, dismantled the projectors and carried the same out of the theatre. According to RW.3,

preparation of panchanama was commenced at 4.30 p.m. on 18.04.2008 and lasted for two hours. Dismantelling of projectors could have certainly taken substantial time. It is incomprehensible that a running theatre from which only some film reels along with advertisement material were stated to have been seized on 17.04.2008 was totally abandoned by the theatre management with no one being present in the theatre on the following day. As per the version of the respondents, which was reported by the learned Assistant Government Pleader for Home and recorded by this Court on 24.04.2008, the police have neither locked nor sealed the petitioner theatre on 17.04.2008. If that were to be so, the theatre must have been running at 4.30 p.m. on 18.04.2008 and there was no possibility of seizure of projectors unless screening of film was stopped. In such an event, not only the persons connected with the management, but also the audience would have been present at the theatre. Even if, at the time of inspection, the theatre was not running, some one or the other connected with the management would have been present at the theatre. It is therefore impossible to believe that when RW-3 and his subordinates inspected the theatre on 18.04.2008, access into the theatre was available to them without anybody being present at the theatre. Thus, the theory put forth by the respondents that no one connected with the management was present at the theatre on 18.04.2008 is incredulous.

50. As noted earlier, the fact remains that except RWs. 1 and 2, who are the Revenue Officials and the panchayatdars, no independent witness was present and attested the panchanama. The respondents filed both the panchanamas along with their counter-affidavit. In his cross-examination, RW-2 stated that whenever a panchanama is executed by him, he will put the date below his signature and that he has not put the date in both the panchanamas dated 17.04.2008 and 18.04.2008. He identified his signatures on both the panchanamas. A perusal of panchanama dated 17.04.2008 shows that he mentioned the date as "17/4" under his signature. Therefore, his version that on both the panchanamas he did not put the date is incorrect. As regards panchanama dated 18.04.2008, he has not put any date under his signature. This also lends support to the petitioner's plea that the purported panchanama dated 18.04.2008 was fabricated at a later point of time.

51. It has come in the evidence of RWs. 1 to 3 that the projectors were at the third floor. RWs. 2 and 3 specifically stated in the cross-examination that RW. 3 and four constables alone were at the theatre and they have removed the projectors and carried them from the third floor to the ground. It is common knowledge that projectors are heavy not only in size, but also in weight. Dismantelling of the projectors requires technical experience and expertise. It is hard to believe that RW.3 and four constables, who do not claim such experience whatsoever in dismantelling and removing of the projectors would have accomplished such a job without anybody's assistance. In WPMP. No. 12626 of 2008, which was filed on the very day on which the projectors were allegedly seized i.e., 27.04.2008, the petitioner stated in his affidavit that respondent No.

1 and his subordinates engaged nearly ten private persons and ten to fifteen police constables to remove the projectors. As noted hereinbefore, no counter-affidavit has been filed denying the said averment.

52. It is the consistent plea of the petitioner that the local newspapers have been reporting the events concerning the alleged seizure of the theatre, film and projectors from time to time. In his affidavit filed in WPMP. No. 12626 of 2008, the petitioner categorically averred that the order copy was communicated to respondent No. 1, RW.3 and SDPO on 25.04.2008 and the fact of granting interim order was published in the newspapers on 25.04.2008. In the contempt case also it is specifically pleaded that the media published order, dated 24.04.2008 of this Court on 25.04.2008 in all newspapers. A similar averment was made by the petitioner in WPMP. No. 12626 of 2008 and also in the contempt case that seizure of the projectors was reported by all the newspapers on 26.04.2008. None of the respondents in their counter-affidavits denied these specific assertions. During the cross-examination of RW.3, learned Counsel for the petitioner had shown the news item published in Eenadu newspaper, Nizamabad edition on 26.04.2008, which carried a photograph. RW.3 without disputing the authenticity of the said newspaper identified the person in uniform shown in the photograph as the Town Circle Inspector (respondent No. 2). Thus, the respondents have not disputed the said press publication dated 26.04.2008. A reading of the news item published in Telugu along with the photo identified by RW.3 shows that on coming to know about the interim order passed by this Court permitting the petitioner to use the premises, if necessary, by breaking open the lock, the Town Circle Inspector, 2 constables and 4 mechanics together went to the theatre on Friday (25.04.2008) at 1.00 p.m. and removed and seized the projectors and that when the Manager of the theatre Ashok and other staff tried to resist, the police replied that the projectors were seized on the first inspection itself and that they will be produced before the Court. In the absence of any objection raised to the authenticity of the press report and in the face of RW.3 identifying the Circle Inspector of Police in the photograph published along with the news item in the newspaper, there is no reason to doubt the contents of the news report. This report further strengthens the view of this Court that the respondents seized the projectors on 25.04.2008 and have come out with a blatantly false version that they seized the projectors on 18.04.2008 itself.

53. On the analysis of the pleadings and evidence as discussed above, there can be no escape from the conclusion that the projectors were seized on 25.04.2008 - a day after passing of the interim order by this Court. It is further evident that the respondents have made a misleading statement before the Court through the learned Assistant Government Pleader for Home on 24.04.2008 that the police have not locked and sealed the petitioner theatre, that when the learned Counsel for the petitioner contradicted the said statement by saying that after switching off the lights on 23.04.2008, the police locked the premises again and took away the keys with them, this Court permitted the petitioner to use the premises, if necessary by breaking open the lock. The respondents have not disputed the

claim of the petitioner that on 25.04.2008 the said order of this Court was widely published in the local newspapers. Obviously with a view to frustrate order dated 24.04.2008 passed by this Court and to prevent the petitioner from running the theatre, the respondents seized the projectors on 25.04.2008.

54. Learned Assistant Government Pleader for Home and Sri A. Sudhershnan Reddy, learned Counsel for respondent Nos. 2 and 3 pointed out that there is material contradiction in the evidence of CWs.1 to 3 on the presence of CW.1 at the theatre on 25.04.2008 when the projectors were allegedly seized.

55. In his evidence, CW.1, stated that at 3.00 p.m. on 25.04.2008 he received a copy of the order of this Court passed on 24.04.2008 and he had shown the said order to respondent Nos. 2 and 3. He further stated that by that time respondent No. 1 left the theatre to inspect a place where a building has collapsed. CW.3, an Advocate and friend of CW.1, stated that he went to the theatre between 1.00 p.m. and 1.30 p.m. and saw all the three police officers (the respondents) and that they seized the projectors. He also stated that at the time when he went to the theatre, CW.1 was not at the theatre and he had shown the order of the High Court to the police only at 3.00 p.m. and not at 1.30 p.m.

56. No doubt, there is a contradiction in the evidence of CWs.1 to 3 regarding the presence of CW.1 when CW.3 arrived at the theatre between 1.00 p.m. and 1.30 p.m. and the person, who had shown the order of High Court. But this contradiction is not material at all. Irrespective of whether CW.1 was present at the theatre or not, the circumstances discussed above in detail proved beyond all reasonable doubt that the plea put-forth by the respondents that the projectors were seized on 18.04.2008 is an utter falsehood.

57. While it is the case of the respondents that the projectors were seized on 18.04.2008, the plea of the petitioner is that they were seized on 25.04.2008. When once the plea of the respondents is proved false, the only conclusion, which can be safely reached, is that the projectors were seized only on 25.04.2008 i.e., after this Court passed order on 24.04.2008, which was given wide publicity in the local newspapers on 25.04.2008. In this set of facts, the abovementioned contradiction is of no consequence.

58. The events preceding order dated 24.04.2008, as discussed above, show that the said order was passed by this Court to enable the licensee to run the petitioner theatre until such time as appropriate proceedings are initiated and orders passed by the competent authority for the alleged violation of the provisions of law governing exhibition of Cinemas and the conditions of license. In order to overreach, circumvent and frustrate the said order by preventing the licensee from running the theatre, the respondents removed the projectors on 25.04.2008, after they came to know about passing of order by this Court on 24.04.2008, which was widely published in the local newspapers. In this connection, it is significant to note that it has never been the case of respondent No. 1 that he had no knowledge of order dated 24.04.2008 passed by this Court

on 25.04.2008. In his counter-affidavit, he had merely stated that he received a copy of the said order on 29.04.2008.

59. It is the consistent version of CWs.1 to 3 that all the respondents came to the theatre on 25.04.2008. According to CW.1, by 3.00 p.m., respondent No. 1 left the theatre to inspect a place where a building collapsed and the Sub-Inspector of I-Town Police Station (RW.3) has not come to the theatre on 25.04.2008, but the Sub-Inspector of III-Town Police Station (respondent No. 3) was present at the theatre on that day. When a suggestion was put to CW.1 that respondent No. 1 has nothing to do with the seizure of projectors, he denied the said suggestion and added that the entire seizure episode was covered by the electronic and print media. No suggestion was put to CW.1 that the seizure episode on 25.04.2008 has not been covered by the media. When a similar suggestion about respondent No. 1 not being present at the theatre on 25.04.2008 was put to CWs.2 and 3, the same was empathetically denied and CW.2 specifically added that respondent No. 1 was very much present on 25.04.2008. Indeed, respondent Nos. 1 and 2 have not examined themselves in spite of an opportunity having been afforded to them.

60. From the discussion undertaken above, it is quite evident that respondent No. 1 was very much aware of this Court's order when the projectors were removed on 25.04.2008. The tenor of his counter affidavit which is in pari materia with the counter affidavit of respondent Nos. 2 and 3 clearly suggests that he had come out with the positive assertion that the projectors were seized on 18.04.2008 and he never attempted to disown the act of seizure of projectors by throwing the blame on respondent Nos. 1 and 2. Therefore, it can be safely concluded that respondent No. 1 was part and parcel of the entire scheme of events, which led to seizure of projectors on 25.04.2008.

61. Though respondent No. 3 was not a party to the writ petition, it is the specific case of the petitioner, as reflected from his oral evidence, that the SHO i.e., the Sub-Inspector of Police, I-Town Police Station, Nizamabad, was not in town on 25.04.2008 and therefore respondent No. 3 participated in the seizure process. This is lent ample support by no other than RW.3, the SHO of I-Town Police Station within whose jurisdiction the theatre falls by stating in his cross-examination that he went out of Nizamabad town on 25.04.2008 in connection with an investigation. Significantly respondent No. 3 has not chosen to examine himself to deny his presence and even in his counter-affidavit it is not his pleaded case that he has nothing to do with the seizure as the theatre does not fall within his jurisdiction. Indeed if he was not involved in the seizure and RW.3 seized the projectors, there could be no reason for the petitioner to implicate respondent No. 3 in this case. Therefore, respondent No. 3 is equally liable along with respondent Nos. 1 and 2 for the abhorrent act of seizing the projectors on 25.04.2008.

62. While no plea is raised by the respondents that respondent No. 3 not being a party is not liable for contempt, indeed the law is well settled that if a person,

who is not a party to the judicial proceedings, had knowledge of an order and if he violates the same, he is equally liable for punishment as those, who are parties to the proceedings.

63. The leading English case on this aspect is *Seaward v. Paterson* (1897) 1 Ch 545. The Court of appeal, while dealing with a case where a person by name Murray, who was not a party to the proceedings in which injunction order was granted, violated the order of injunction against holding of boxing matches, held as under:

There is no injunction against him - he is no more bound by the injunction granted against Paterson than any other member of the public. He is bound like other members of the public, not to interfere with, and not to obstruct, the course of justice; and the case, if any, made against him must be this - not that he has technically infringed the injunction, which was not granted against him in any sense of the word, but that he has been aiding and abetting others in setting the Court at defiance, and deliberately treating the order of the Court as unworthy of notice. If he has so conducted himself, it is perfectly idle to say that there is no jurisdiction to (punish) him for contempt as distinguished from the breach of the injunction, which has a technical meaning.

64. This view was reiterated by the House of Lords in *Attorney General v. Punch Limited* (2003) 1 All ER 289. The House held:

The purpose the Court seeks to achieve by granting the interlocutory injunction is that, pending a decision by the Court on the claims in the proceedings, the restrained acts shall not be done. Third parties are in contempt of Court if they willfully interfere with the administration of justice by thwarting the achievement of this purpose in those proceedings.

65. After a detailed analysis, a Full Bench of the Madras High Court in *Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another*, summed up the Indian position as under:

We can see this clearly that the Courts in India invariably accepted the law applied in England and found (1) a party to the suit if he had notice or knowledge of the order of the Court and (2) a third party or a stranger, if he had aided or abetted the violation with notice or knowledge of the order of injunction guilty of civil contempt and otherwise found a third party guilty of criminal contempt if he has been found knowingly obstructing implementation of its order or direction.

66. Thus, undoubtedly respondent Nos. 3 is equally liable for violation of the order of this Court.

67. For the reasons given above, I hold that the respondents have committed grave contempt of order dated 24.04.2008 passed in WPMP. No. 11914 of 2008 in WP. No. 8988 of 2008 and accordingly they are convicted for committing civil contempt within the definition of Section 2(b) of the Contempt of Courts Act,

1971.

68. As regards the punishment to be imposed on them, I have given my earnest consideration to it.

69. In *Anil Ratan Sarkar* (2 *supra*), the Supreme Court, while dealing with a case of brazen contempt, held:

In the contextual facts there cannot be any laxity, as otherwise the law courts would render themselves useless and their order to utter mockery. Feeling of confidence and proper administration of justice cannot but be the hallmark of Indian jurisprudence and contra-action by courts will lose its efficacy. Tolerance of law courts there is, but not without limits and only up to a certain point and not beyond the same.

70. In *Major Genl. B.M. Bhattacharjee (Retd.) and another Vs. Russel Estate Corporation and another*, , the Supreme Court observed that all the officers of the Government must be presumed to know that under the constitutional scheme obtaining in this country, orders of the Courts have to be obeyed implicitly and that orders of the Apex Court - for that matter any Court - should not be trifled with.

71. In *T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another*, , the Supreme Court, while finding a Minister and highly placed forest officers guilty of deliberately flouting its orders, held:

That apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness.

72. The Apex Court relied on a passage from its judgment in *L.D. Jaikwal Vs. State of U.P.*, , which is reproduced below:

We are sorry to say we cannot subscribe to the "slap-say sorry - and forget" school of thought in administration of contempt jurisprudence. Saying "sorry" does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to "say" sorry - it is another to "feel" sorry.

73. While refusing to accept the apologies, the Supreme Court held as under:

This is a case where not only right from the beginning attempt has been made to overreach the orders of this Court but also to draw red herrings. Still worse is the accepted position of inserting a note in the official file with oblique motives. That makes the situation worse. In this case the contemnors deserve severe punishment. This will set an example for those who have a propensity for disregarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month's simple imprisonment in each

case would meet the ends of justice.

74. Though each of the respondents, who filed identical counter-affidavits, tendered unconditional apology, I am absolutely unconvinced with their bona fides. Not only that the respondents are guilty of contumacious conduct of flouting this Court's order with the sole intention of preventing the licensee from running the theatre without there being any order passed by the competent authority in this regard, they have fabricated Ex.R2-notice, Ex.R4-the list of property sent to the Magistrate, and panchanama under which the projectors were seized and tried to mislead this Court into accepting their theory that the projectors were seized on 18.04.2008. Thus, far from mitigating their heinous act, they compounded their misdeed by coming out with a blatantly false version, which does not befit the status of the respondents as public servants in general and respondent No. 1, who is an IPS Officer, in particular. Their act has the undoubted effect of bringing down the majesty of law and creating lurking doubts in the society about the efficacy of the order of a constitutional Court.

75. After giving my earnest consideration, I am of the view that custodial sentence alone is appropriate which commensurates with the gravity of act committed by the respondents. Accordingly, each of the respondents is sentenced to simple imprisonment for a period of two weeks and to pay a fine of Rs. 2,000/- (Rupees Two thousand only) and in default of payment of fine, they shall undergo simple imprisonment for another period of two weeks.

76. As far as RW.3 is concerned, though he was a party to the writ petition, he is not made a party to the contempt case because he did not participate in the seizure of projectors on 25.04.2008, but he examined himself as RW.3 and went out of his way to support the respondents by trying to establish that the projectors were seized on 18.04.2008. He is also very much part of the concerted effort of the respondents to fabricate Exs.R2 and R4 and the purported panchanama dated 18-4-2008 and give false evidence. Similarly, RWs.1 and 2, who are Government servants, aided and abetted the respondents to set up a false plea by being parties to fabrication of Ex.R.2 and the purported panchanama and giving false evidence before this Court.

The Registrar (Vigilance) is hereby appointed u/s 340 of the Code of Criminal Procedure, 1973 to file a complaint against RWs.1 to 3 before the jurisdictional Magistrate to prosecute them for the offences committed by them. After taking action, he shall report to this Court within four weeks from today.

77. The contempt case is accordingly disposed of.