

(1988) 05 AHC CK 0002

In the Allahabad High Court

Case No : Criminal Misc. Case No. 149 (C) of 1988, Cr. Misc. Contempt Applications No's. 426C, 459C, 626C and 730C of 1988 and Review and Transfer Applications Cr. Misc. Contempt Application No's. 149C, 426Cm 4259C, 626C and 730C of 1988

Satish Chandra Shukla

APPELLANT

Vs

Mr. Ganga Bux Singh

RESPONDENT

Date of Decision : 19-05-1988

Acts Referred:

Constitution of India, 1950 — Article 124(4), 141, 215, 216
Contempt of Courts Act, 1971 — Section 12, 14, 16, 2
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1989) 2 AWC 958

Hon'ble Judges : S.K. Mookerji, J;R.M. Sahai, J;B.L. Loomba, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—A member of legal profession known for its dignity and culture has it appears in complete disregard of his responsibility and obligations as an officer of the court has filed these applications u/s 16 of Contempt of Courts Act read with Article 215 of the Constitution of India and has indicated as many as five judges of this Court for having interfered with due course of the Judicial proceedings and administration of justice while discharging their duties in violation of their oath administered to them under Schedule III of the Constitution. That such applications have been filed is not as astonishing as individuals can go wary as absolute rather abstruse silence of august body like Bar Association which has high traditions and is looked upon as Champion of Judiciary and on whose shoulder lies the responsibility of vindicating honour of its two constituents, the Bar and Bench.

2. Legal issue, if any, that can be said mainly to arise out of these applications is if a Judge while deciding a case does not notice each and every case cited by the learned Counsel or does not advert to various submission advanced during

arguments or makes observation in course of discussion which may be at variance in the judgment or distinguishes a Supreme Court decision does he interfere with administration of justice and his conduct becomes contumacious within meaning of Section 2 of the Contempt of Courts Act. But before narrating the facts of each application which shall expose its frivolity and high light the misconception raging in mind of applicant, a responsible member of society, on the majesty of law and the solemn and pious responsibility of a member of bar to maintain it, we consider it necessary to dispose of two applications, one filed for recall of our order dated 2nd May, 1988 and other for granting time to move a transfer application in the Hon''ble Supreme Court.

3. Taking up the review application directed against order dated 2nd May rejecting the objection raised on behalf of applicant, by Sri Satya Deo Singh, Advocate, appearing on that date in person, that the Chief Justice could not refer the case to Full Bench without any reference by a Division Bench on a question of law it was urged that since case was adjourned due to illness of applicant the bench should not have passed the order without hearing him. Although we did not find any justification for it yet we permitted applicant to argue on validity of constitution of the Bench, in our anxiety, that some aspect of Rule 6 of Chapter V, or any decision construing it or any other provisions in the Rules of Court, might have escaped our notice. But to our utter surprise we found that the application was yet another misguided effort of the applicant of making unwarranted allegations this time, against the Hon''ble The Chief Justice of this Court without any necessity or justification as it was not only uncalled for but based on misconception and misapprehension. More shocking than this was the casualness of the applicant, who probably thought that the application containing accusations against the Chief Justice having been made his responsibility as an Advocate was over as he could not place any decision or rule which could indicate that the order rejecting the objections against constitution of Bench was erroneous. For convenience the rule is extracted below:

Rule 6. The Chief Justice may constitute a Bench of two or more judges to decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein.

It empowers the Chief Justice to constitute a Full Bench in any case, either on his own or on a reference made on a question of law by the Division Bench. Since the power was exercised and the larger bench was constituted under first part of the rule it was in accordance with law. No exception could be taken to it. Moreover, the applicant had been filing contempt applications one after the other not only against the Judges who rejected bail application etc. but even against those Judges who decided Contempt Applications against such order. The Hon''ble Chief Justice must have in the circumstances thought it proper that

these applications may be heard by a Bench of three Judges. In doing so he not only acted in accordance with rules but also with propriety and seriousness called for by the situation. It was urged that the rule should be construed in light of its heading. The submission appears to be devoid of any substance. Heading of a Section or rule is resorted to understand its meaning in case of doubt. But where there is no ambiguity and the rule is clear and the two, namely, the heading and the rule are in conformity then the question of interpretation or construction does not arise. But what appeared strange that when applicant was asked if he was supported in his submission by any authority then he kept mum. That left us in no doubt that the applicant was taking matters not with that seriousness as could be expected except that he was relishing in hurling unjustified accusation against Judges. For either of reasons, therefore, namely absence of any error in earlier order and even on merits the application is liable to be rejected.

4. After hearing of review application was over and we declined to pass any order immediately the applicant moved another application for grant of time to move an application in Hon"ble Supreme Court for transfer of these applications to that Hon"ble Court. It was another instance which convinced us that the applicant who claims to be an officer of this Court having put in ten years practice and vitally concerned in the maintenance of dignity of court and rule of law is a victim of self opinionated obsession without the least desire or care to look into the law. Article 215 empowers this Court to punish for its contempt. This constitutional power cannot be exercised by any other Court. The controversy was settled as far back as 1954 by the Hon"ble Supreme Court in Sukhdeo Singh v. Chief Justice AIR 1954 SC 186.

5. Reverting to the contempt applications we propose to take up Criminal Misc. No. 149 and 626 together as the former arises out of order dated 15th Oct., 1987 passed by Judge "G" rejecting second bail application filed by applicant and latter out of observations made by a Division Bench of "P and D" while directing Contempt Application No. 149 to be listed before another bench on request of applicant.

Criminal Case No. 149 (C) of 1988:

6. This application was filed in January, 1988 as the Judge while rejecting second bail application on 15th October, 1987 violated his sacred oath and interfered with administration of justice in not following Supreme Court decision or "tilting" them or ignoring them as they were binding on him under Article 141 of the Constitution. It was urged that arguments advanced by the applicant were not considered. It was submitted that even though bail had been granted to other accused with similar allegations but it was refused to applicant's client. Principle of parity and uniformity were also invoked. Attempt was made to establish that if facts and circumstances would have been appreciated in correct perspective then the applicant's client would have been released on bail. The applicant submitted that the Supreme Court in Hussain Ara Khatoon's case had granted bail as a matter of law and if the facts of the two cases were compared then they being

similar the law laid down by Hon''ble Court applied squarely. It was urged that the Judge committed mistake on facts as well as he erroneously mentioned that only two additional grounds were put forward when each and every ground was pressed. The applicant submitted that the order-sheet of lower court was perused by the Judge who passed it on to the Government counsel who conceded yet it was mentioned in the order that no ordersheet was produced. It was submitted that some of the witnesses had filed affidavit before the lower court and even though the same was relied before the Judge but he while rejecting the application did not advert to it. The applicant submitted that veracity of prosecution case was attacked by placing various facts and yet the Judge ignored it. Reliance was also placed on Annexure 8 to the application which was an application filed after the argument had concluded in the bail application praying that the cases mentioned in the application may be considered before passing the order. It was submitted that either some of the cases were not adverted to at all or if examined then they were "tilted" on irrelevant considerations. It was also urged that the Judge was wrong in rejecting the bail to the accused who was in jail for more than a year.

7. Although in proceedings for contempt this Court is not required to examine the merits or otherwise of the order granting or refusing bail yet on insistence of the applicant he was permitted to place the facts in brief which have already been referred to above. A perusal of the order indicates that the judge considered each and every aspect of the case which was relevant for deciding if the bail could have been granted or not. The Judge no doubt referred in his order that "The Second application has been moved on two additional grounds" but a perusal of his order indicates that each and every aspect which was pointed out by the applicant during arguments was not only dealt by him but was decided on adequate reasons. For instance claim of release because co-accused was enlarged on bail was rejected because the prosecutrix failed to identify the co-accused who was not only of different village but had claimed identification whereas the accused for whom applicant appeared was of same village and he had not claimed identification. The Judge did not place reliance on affidavits of witnesses filed in lower court as they appeared to be tampered. In respect of delay in trial the Judge noticed Hussian Ara Khatoon's case and a Full Bench decision of Patna High Court but observed that period of one year mentioned by Hon''ble Court was not an absolute rule. It was a guideline only. As regards mention about non production of order-sheet even if it was erroneously mentioned it did not effect the merits as the Judge observed "there is no allegation that there has been delay in committing the accused." Argument of applicant further stands answered by Hon''ble Supreme Court in *Empire Industries Ltd. v. Union of India* AIR 1980 SC 679. It was held:

An argument is being built up now-a-days that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matter on more or less similar fact, there should not be a different order passed nor should there be any variation with that kind of interim order passed. It is

submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every Bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders.

8. Assuming each and every argument advanced on behalf of applicant to be correct does it make out a case in which an action can be taken against a Judge of this Court for Contempt of Court within the meaning of Sub-clause (c) of Section 2 of the Contempt of Courts Act which reads as under;

Section 2(c): Criminal Contempt means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which-

(i) Scandalizes or tends to scandalize, 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;

Even though Law of Contempt is not a law for the protection of Judges or to place them above law or beyond criticism yet a judge hearing a case must not be exposed to threat or apprehension. The purpose of Contempt Jurisdiction is to infuse confidence in dignity of court and protect the seat of justice, The sum and substance of the argument of the applicant was that the Judge committed a mistake in rejecting the bail application and if he would have adverted to certain facts which were mentioned by the applicant or which were on record he probably could have been persuaded to grant the bail. Assuming it to be so does his conduct or does any error or mistakes in judgment result in interference with judicial process or interferes with the administration of justice so as to be contumacious. In Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, , the Hon"ble Court while considering the use of word "dishonest Judgment" in an application filed by the applicant of that case for impeachment of a sitting Judge of the Hon"ble Court observed that the words were used to bring it within meaning of the expression misbehaviour in Article 124(4) of the Constitution because the error committed by the Judge howsoever gross could not amount to misbehaviour. If mistake in giving judgment or gross error could not amount to misbehaviour within meaning of Article 124(4), the rejection of a bail application could not amount to contempt within meaning of Section 2(c) of Contempt of Courts Act. A bonafide or honest judgment given in due discharge of his duties cannot be said to be contumacious otherwise it shall impair the independence and impartiality which is expected of a Judge while discharging its duties and it shall result in eroding of very concept on which the rule of law is founded.

Criminal Case No. 626C of 1988:

9. Criminal Case No. 49C of 1988 was listed before a Bench consisting of "P" and "R". When, it was taken up the applicant appears to have objected to its hearing as the applicant had filed a contempt application against one of the members of the Bench namely "P" (retired since then) The bench consequently directed it to be listed before another bench. But it observed "a doubt arises whether this High Court can punish only its contempt and contempt of subordinate courts or whether it can punish its contempt or of Supreme Court as well. The bench further observed that since the Court is constituted under Article 216 of a Chief Justice and other Judges it was arguable if one Judge of the High Court could punish another Judge for contempt. The Bench also took judicial notice of the fact that the applicant was moving contempt application against sitting Judges in past mostly if the bail or Stay orders were refused or any order adverse to him was passed. Therefore, it required examination if the conduct of the applicant was bonafide or just or to pressurise the Court. According to the applicant these observations were made by the Bench to take advantage of their position as a constituent member of the bench by passing such an order which could be their defence, [t was urged that the applicant did not argue the application and yet these observations were made by the Bench. According to him this conduct of the Judges was in violation of their oath and was apt to create confusion causing obstruction in administering the justice. The applicant submitted that no exception could be made in favour of Judges nor was any contemplated under Article 215 of the Constitution of India. Therefore, the question posed by the Hon'ble Judges was "grossly inappropriate" and the reference to the conduct of applicant was suggestion on their part which amounted to undue interference with administration of justice as it was a threat and was grossly contumacious. He has summarised the reasons for which he seeks to invoke the proceedings under contempt of Courts Act in Clause (A), (B), (C), (D), (E) and (F) of paragraph 19 of the application. Learned Counsel urged that he relied in support of his submission on the decision mentioned in paragraph 21 of the application-- Punjab National Bank Ltd., Amritsar Vs. Raj Mal Pahar Chand and Others, , East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, , B. Misra v. B. Dixit 1973 (1) SC Cases 446 , Bar Association and Library, Moradabad v. L.S. Kothari S.D.M. Amroha 1966 AWR 197 and Sanjay Gandhi v. V.D. Keshari 1980 AWC 704.

10. Ration and impact of these decisions which had been the basis for submitting that the Judges in not following the decisions of Supreme Court which was binding under Article 141 violated their sacred oath and committed gross contempt of Court shall be adverted to latter as it had been relied in every case. But noticing of arguments or points of law arising out of a petition or appeal or revision without recording any finding cannot either be obstruction to judicial process or interference with administration of justice. How misconcieved is the application can better be understood if ratio of Sukhdeo Singh's case reported in AIR 1954 SC 186, is properly appreciated. In this case a transfer application was

filed for transferring contempt application pending before a bench of the High Court to some another High Court. The Hon"ble Court dismissed the application as incompetent as,

In our opinion the power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of Records....We wish, however, to add that we have no power to order a transfer in an original petition of this kind we consider it desirable on general principle of justice that a Judge who has been personally attacked should not as far as possible hear a contempt, which to that extent, concerns him personally.

If a Judge is competent to decide an application for contempt filed against him he was certainly competent to decide a contempt application filed against another Judge. He was not personally involved. Even if he would have he could have decided. But the bench in keeping with high traditions of this Court acted not only with propriety but with fairness and directed the applications to be listed before another bench. If the argument of applicant is accepted it shall erode the sanctity of Article 215 and dent the independence and impartial functioning of a Judge so necessary for administration of Justice Such construction or interpretation could not be conducive either to the sense of justice or to law of contempt which primarily is concerned with not only maintaining the dignity of the Court but of the independence and security of Judges to create an atmosphere in which they can discharge their responsibility fearlessly and independently.

Criminal Misc. Case No. 426 of 1988 :

11. On 25th February, 1987 an incident took place in court No. 5 of the Lucknow Bench. The applicant admittedly was neither party nor a counsel but according to him he was present in the court and was an eye witness of the whole incident, which led him to approach Hon"ble Chief Justice of India. But when no action was taken by him he filed a contempt application No. 242 as according to him the conduct of the Hon"ble Judge was grossly contumacious which lowered or tended to lower the Constitutional authority of the Hon"ble Supreme Court as the Hon"ble Judge without affording opportunity to the counsel to perform his duty towards his client and in complete disregard to the decisions reported in 1985 SCC (Cri.) 98 and 1986 LCD 37 , passed the order which not only lowered the constitutional authority of the Supreme Court but his illegal conduct created confusion in the administration of law. And the observations by the Hon"ble Judge on the conduct of the counsel was threat extended to him which amounted to obstruction in the administration of justice. This application came up for hearing before a bench consisting of "K" and "R" which dismissed it on 29th January, 1988. The bench observed that in a petition filed u Section 482 Code of Criminal Procedure against proceedings arising out of 145 Code of Criminal Procedure The Hon"ble Judge admitted the petition but refused to grant stay order. When Sri Chauhan pressed for passing the stay order the opposite party refused to grant stay order and observed that he had already passed the order.

An unpleasant exchange is said to have followed between the learned Advocate and learned Judge. Ultimately certain Advocates present in the Court observed that Sri Chauhan was mistaken and ask to be pardoned. Sri Chauhan said, "I am sorry, My lord". The bench in the circumstances held that as the counsel did not press the matter no case for contempt, in their opinion was made out. It was also observed that the applicant admitted that no action had been taken by Supreme Court on the Petition sent by him. The bench observed "there is no doubt as emphasised by the learned Counsel that the pronouncements of the Supreme Court are the law of land and have to be acted by all the Courts. But the question is whether a particular decision of the Supreme Court could apply to a particular case on the facts of that particular case. We do not think that any contempt proceedings on that account could be taken. There are provisions of the Judicial Officers Protection Act and the spirit of law so to discharge a judicial function by Court are clear enough in favour of protection." It was urged by the applicant that the Division Bench while deciding the Criminal Misc. Case No 242 C of 1987 acted in a grossly contumacious way as it disregarded the decision of Hon"ble Supreme Court in Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit, . It did not consider the earlier decisions cited by the applicant which amounted to violation of sacred oath taken by Hon"ble Judges and created confusion in the Administration of Justice. According to him none of the reasons on which the application was rejected were sound and it having been established by numerous authorities which have been mentioned in nearly every contempt application that a decision given by a Court of law was binding it was fit case in which proceedings for contempt may be drawn against the members of the Bench. Reference was made to the cases referred to by the applicant in paragraph 17 of the application-- Smt. Tara Vs. The State, , 1971, 81 ITR 409 : Allahabad :1968 Allahabad 88: 89-90 DB: AIR 1962 SC 1893 1980 AWC 704 and 1966 AWR 197.

Criminal Misc. Case No. 459-C of 1988:

12. The indictment of a senior member of the bench by applicant was that the Judge while hearing contempt application No. 659-C/87 against "S" and "O" (since retired) remarked on the submission advanced by Sri Satya Deo Singh, Advocate that the Hon"ble Judges in view of the Supreme Court decision in Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh, were not immune from contempt and conceded that it was also not disputable that the averment in the application did make out a case of contempt against opposite party, namely, "S" and "O" and yet the bench dismissed the application which was in variance with the observations made by it. It was also suggested that after the arguments were over on 20th November, 1987 a detailed judgment was pronounced on 4th December, 1987 dismissing the petition which came to the knowledge of the applicant only when it was published in the Newspapers. In para 11 of the application it is stated that the observations of the learned Judge that the counsel conceded that incident as narrated by him did not amount to criminal contempt and was civil contempt was incorrect, as the counsel did not

concede anything. It was further stated that the bench went on to make counter attack on the applicant in his judgment. It did not cite the cases relied on his behalf and mentioned only three incidents whereas the number of incidents were mentioned in the application. According to the applicant specific points were not dealt by the bench therefore it also amounted to the violation of the sacred oath by the members of the bench. Personal aspersions were also cast on the senior member of the bench and it was urged that in the circumstances mentioned in paragraph 15-A and B of the application he should not have heard the petition. It was vehemently argued that conduct of the bench was grossly contumacious by observing something in open Court and saying something contrary to it in the judgment and by flouting the previous decisions of the Supreme Court cited by the counsel which caused confusion in the administration of justice.

13 The applicant was not a counsel in the case which was argued before the bench. Yet he claims to have been present in the Court and has vouched on basis of facts which took place during hearing. Assuming it to be so does the averment made in the application amounted to Contempt of Court. Before advertng to it it may be pointed out that the applicant has behaved irresponsibly in making the allegations against a Judge in paragraph 15 of the application. It is not necessary to mention them. The applicant did not take responsibility of disclosing the basis on which he swore the affidavit. The falseness of the averments is demonstrated by one fact which does not need verification that the senior Judge who constituted the bench has only one son who is an I.A.S. Officer and is posted in Madhya Pradesh. The averments, therefore, that his son posted at Lucknow goes to the house of "S" is palpably incorrect. Even the other averment about the relationship between the wife of "S" and "K" the applicant being an advocate and responsible officer of the court should have taken care atleast to verify it and bring on record material from which the Court could have satisfied that it could be taken notice of. The mere bald allegations because the two belonged to the same community has to be rejected as imaginary.

14. Coming to the merits of the matter it is not unusual that during course of arguments observations are made to clarify various aspects raised by the learned Counsel. It is also well known that a Judge making observations in favour of or against the arguments decides at the last moment just to the contrary. In Legal jargon it is known as, "open to conviction". Discourses between bar and bench are respected and appreciated. But for the application it must be unparalleled in judicial history where a Judge is being indicted for making observations during hearing not against the counsel or touching the dignity of court, but for being involved in dialogue on question of law or fact which was being argued for better appreciation of continuous. To say the least the applicant has attempted to abuse his position as an officer of the Court. He has not taken the courage to say that the judgment was not reserved. From the order-sheet it is clear that after the arguments were over the bench dictated operative portion of the order same day in open Court. Indeed it needed the ingenuity of applicant to move such misconceived applications.

Criminal Misc. Case No. 730 of 1988:

15. This application was filed against the bench which had decided Contempt Application No. 242 (C) after one month for passing an interim order in Civil Misc Writ No. 537 of 1988. On 13th October, 1987 Civil Misc. Writ No. 6646 of 1987 was filed. Another petition No. 573 of 1988 was filed by another person. Third petition was filed by yet another person and in it an interim order directing that elections be held but result may not be declared was passed on 4th February, 1988. Subsequently Civil Misc Writ No 537 of 1988 was taken by the bench of "KN" and "R" The bench directed that "the operation of the interim order dated 4-2-1988 shall remain in abeyance. The petitions are likely to be disposed of finally on the date fixed." The order stood automatically vacated on 16th March, 1988. When the petitions were listed request for extension of interim order dated 28th February, 1988 was turned down. But the action of bench in putting the order in abeyance, according to Petitioner, was against judicial propriety, hindered the administration of justice and was contumacious.

16. Despite our best effort we could not make out head and tail of this application. What could be the purpose of such frivolous application. We do not desire to comment but leave it to be speculated. But we are certain that the grant of interim order by the bench staying order of another bench could not amount, even remotely, any sort of contempt.

17. We may now take up various decisions which are mentioned in various applications as the applicant during arguments stated that he relied on these decisions in support of his submissions. Broadly they can be classified in three categories, one, dealing with the binding effect of decisions given by Supreme Court under Article 141, second duty of courts and tribunals to obey the decision of higher courts otherwise it would result in confusion of law and third to support the submissions on individual issues. Decision of first category were Smt. Tara Vs. The State, Rameshwar Prasad Bagla Vs. The Commissioner of Income Tax, U.P., Lucknow, Sharda Prasad Srivastava Vs. Accountant General, Uttar Pradesh, Allahabad, and COMMISSIONER OF Income Tax, U. P. and Vs. P. V. MAN MAL UTTAM CHAND., . Discussion or examination of these, decisions appear to be unnecessary as the effect and extent of a decision rendered under Article 141 has been considered by the Hon"ble Supreme Court itself which shall be adverted to a little latter.

18. Next category of cases on which reliance " was placed of course not by citing but by referring were, East India Commercial Co. Ltd. Calcutta v. Collector of Customs AIR 1962 SC 1983 , Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit, , Sanjay Gandhi v. D. Kesari 1980 AWC 704, and Bar Association v. L.S. Kothari 1966 AWR 197. The decision in East India Commercial Co. emphasised that a decision given by High Court was binding on subordinate courts and tribunals as they were under supervisory jurisdiction of High Court. It was not concerned, with High Courts. Nor was the decision in Badra Kanta Misra concerned with conduct of a High Court Judge. As regards

Sanjay Gandhi's case the learned Judge observed that if a Magistrate did not follow a decision of High Court it would amount to criminal and not civil contempt. The learned Single Judge did not decide if the action of the Magistrate amounted to contempt and the decision in Bar Association's case laid down that the Presiding Officer could commit contempt of his own court. The two decisions of the Supreme Court shall be adverted when we shall deal with the general argument of contempt. As regards the two Single Judge decisions, the law having been settled by the Supreme Court it appears unnecessary to examine or deal with them. The last category of decisions were *Ninun Sangma v. The Govt. of Maharashtra* 1979 Cri.L.J. 941 (SC), *Bhagirath Singh v. State of Gujarat* 1984 Cri.L.J. 160 (SC), *Hussain Ara Khatoon v. State of Bihar* 1979 Cri.L.J. 1036 (SC), *The State Vs. Maksudan Singh and Others*, a Full Bench decision of Patna High Court and *Sita Ram Vs. State of U.P.*, a single Judge decision of Allahabad High Court. All these decisions laid down either the well established principles that where there was delay in decision normally the accused should be enlarged on bail or they discussed the principle on which the bail should be granted. The learned Single Judge "G" who decided the deacons bail application adverted to the decisions in *Sita Ram's* case, *Hussain Ara's* case and Patna Full Bench. He was, however, of the opinion that these decisions only lay down the guidelines in which an application for bail should be allowed or rejected. In doing so he did not commit any error of law muchless any contempt. Further his omission to refer to other cases which deal with the same aspect cannot be said to have either vitiated his order or rendered his conduct contumacious. Nor did he commit any error in relying on a decision, which even though not cited either by the applicant or by the Government counsel reported in *Virendra Singh v. Awadesh Kumar* 1983 AWC 809 that bail application should be decided in the light of the facts and circumstances of the case. No law either of this Court or any other court or judicial propriety demands that a Judge is precluded from referring a decision in his judgment which was not cited by either counsel. Reference to *Tck Chand v. Superintendent of Police* 1987 Crimes . 102 appears to have been mentioned without verifying if it had any relevance. Other decision deal with same aspect which has been dealt with by Hon'ble Supreme Court in *Hussain Ara Khatoon's* case (supra) and the Full Bench of Patna High Court in 1986. The impression of applicant appears to be that if more than one decision is cited on same point and the Judge with only few and that also of the highest Court then his conduct is contumacious. There is no rule or authority or even propriety that a Judge deciding a case is bound to refer every decision on same aspect.

19. Before proceeding further we may deal with the two decisions in *East India Commercial Co.'s* case (supra) and *Baradakanta Misra* case (supra). In the first case the Hon'ble Court emphasised that a law declared by the High Court was binding on all subordinate courts and Tribunals just as in the case of Supreme Court, a law declared under Article 141 is binding on the High Court and subordinate courts. The decision is recognition of the superiority which under the Constitution vests in the High Court and Supreme Court. Its objective obviously

is not only to maintain finality of a decision given by the highest Court but also to avoid confusion and chaos which may otherwise arise if every subordinate court and tribunal is left with the option to deviate from it. But the decision does not lay down that any court or tribunal is not entitled to apply it logically to the facts of the case. Whether the ratio descend given by the highest Court apply to a particular setup of circumstances or not may be erroneous or right but it is certainly not contumacious nor does it interfere with the administration of justice. It shall further stand clarified when we shall discuss latter the impact of the decision given by the Supreme Court explaining the binding effect of Article 141. In Baradakanta Misra's case (supra) the contemnor was a member of Higher Judicial Service. He at relevant time was functioning as Commissioner of Hindu Religious Endowments, (sic) did not follow a decision given by the High Court because the matter was sub-judice before the Supreme Court that was his defence also in contempt proceedings. The Hon''ble Court taking it to be a wilful disregard or disobedience of the Court's order observed as follows:

The conduct of the Appellant in not following the previous decision of the High Court is calculated to create confusion in administration of law. It will undermine respect for law laid down by High Court and impair the con situational authority of the High Court. His conduct, is, therefore, comprehended by the principles underlying of law of Contempt.

What was emphasised by the Hon''ble Court was that a decision should not be disregarded or disobeyed by creating an excuse for not following it. Can it be said that the learned single Judge who decided the bail application or any other Judge against whom the applications had been filed has attempted in any manner to disregard or disobey the decision of the highest Court, expressly or impliedly. The applicant appears to be labouring under division about applying the ratio laid down in a case and its application to the facts. In our opinion none of the decisions by even stretching, supports the Petitioner's submission that the Judges either disregarded the law declared by Supreme Court or they attempted even to bye-pass it.

20. Factual base having been cleared and individual cases having been examined in light of submissions and decisions referred to in the applications we may now turn to the common and basic attack pleaded vigorously and argued vehemently that the Judges of this Court in discharge of their judicial function having acted in disregard of Article 141, violated their sacred oath, obstructed the judicial proceedings and interfered with administration of justice, law on these aspects is fairly settled. One of them being that Judge is not above law. He is not Kings projected personality but peoples Judge who derives his power and authority from them, the real sovereign in democracy. In Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh, , it was observed:

The object of contempt proceedings is not to afford protection to Judges personally from imputation to which they may be exposed as individual.

It was very forcefully expressed by Justice Krishna Iyer in *Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another*, ,

This shift in legal philosophy will broaden the base of the citizen's right to criticise and render the judicial power more socially valid. We are not subjects of a King but citizens of a republic and blanket ban through the contempt power, stifling criticism of a strategic institution, namely, Administration of Justice, thus forbidding the right to argue for reform of the judicial process and to comment on the performance of the judicial personnel through outspoken or marginally excessive criticism of the instrumentalities of law and justice, may be a tall order. For, change through criticism is to petrify the organs of democratic government. The judicial instrument is no exception...

But on facts which have been narrated it cannot be suggested even that the Judges were guilty of obstructing the judicial proceedings or deintegrating the exalted office held by them. In fact the unfortunate impression created on our mind is that the foundation for these applications was not directed knowledge and sladey about these decisions. Otherwise even a superficial reading would have convinced the applicant that such applications were liable to be thrown in dustbin. In *Baradakanta's* case, Palekar, J. summarised the scope of Clause (2) of Section 2 thus,

In other words, all the three Sub-clauses referred to above define contempt in terms of obstruction of or interference with administration of justice.

The soul of democracy is fair comment and healthy criticism. "If judges have frailities--after all they are human--they need be corrected by independent criticism." Is that the effort of applicant? We are sorry to say not. It was an attempt to deter them in discharging their duties enjoined on them by Constitution. In *E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar*, , the broad spectrum of law of Contempt was stated thus:

The law of Contempt stems from the right of the Courts to punish by imprisonment or fines persons guilty of words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all Courts when contempt is committed in *facie curiae* and by the superior Courts on their own behalf or on behalf of Courts subordinate to them even if committed outside the Courts. Formerly, it was regarded as inherent in the powers of a Court of Record and now the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of Contempts. The Chief forms of contempt are insult to Judge attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to Officers of Courts, witnesses or the parties, abusing the process of the Court, breach of duty by officers connected with the Court and scandalising the Judges or the Courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the Court into

disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority, such contempt may be committed in respect of a single Judge or a single Court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system. The question is whether in the circumstances of this case the offence was committed.

To our dismay the applicant apart from reiterating that the Judges were guilty of contempt and violation of oath could not substantiate it by any authority, textual or judicial. In the light of law of Contempt laid bare in numerous decisions of Hon"ble Supreme Court, the action of applicant was what is impermissible and apply described by Krishna Iyer, J. in Baradakanta's case (supra), "functionally, historically and jurisprudentially the value which deserves to to be cordoned off from few public molestation is judicial." The applicant appears to have perverted impression of judicial functioning. In misconceived motion of law of Contempt and its implications and objective he either missed very clear and marked difference between propriety and illegality or purposely feigned to ignore it. Otherwise any commentary on Article 141 would have cleared the haze from his mind about the distinction and its application between binding effect of Article 141. Expression "law declared" used in Article 141 has been explained in decision after decision by the Hon"ble Court. In Amritsar Municipality v. Hazar Singh AIR 1975 SC 1037, where the Sessions Court was not right in distinguishing a Supreme Court decision of which grievance was made in Hon"ble Court, the passage from the Kerala High Court was approved which runs that,

Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141. Statements on matters other than law have no binding force. Several decisions of the Supreme Court are on facts and that Court itself has pointed out in Gurcharan Singh v. State of Punjab 1972 FAC 549 and Prakash Chandra Pathak Vs. State of Uttar Pradesh, that as on facts no two cases could be similar, its own decision which were essentially on questions of fact could not be relied upon as precedents for decisions of other cases.

In Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, , the Hon"ble Court observed,

Moreover, it must be remembered that when we are considering the observations of a high judicial authority like this Court, the greatest possible care must be taken to relate the observations of a Judge to the precise issues before him and to confine such observations, in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit.

Recently the Hon"ble Court in Ambica Quarry Word v. State of Gujrat (1987) 1 SCC 218, again emphasised that,

the ratio of any decision must be understood in the background of the facts of that case. It has been said long ago that a case is only an authority for what it actually decides and not what logically follows from it (See Lord Halsbury's in *Queens v. Leathen*).

In *D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others*, , the argument that,

the bench of two Judges of this Court in the subsequent decision had cut down the effect of the decision of this Court dated April (?) 1985 in the case of *Union of India v. Rajni Kant*

was repelled by Hon"ble Court on principle,

In our opinion the subsequent decision referred to herein before do not take any difference or contrary view. Indeed it gives effect to the letter and spirit of the said decisions. (underlined by us)

The Hon"ble Court further observed.

It is a presumption of law that the Courts act lawfully.

These pronouncements by the highest Court on Article 141 demonstrate the erroneous understanding of the applicant. In our opinion the applicant did not even care to look into them carefully otherwise it would have become crystal clear him that no court has held that the binding effect of a decision goes to the extent as has been attempted to be made out.

21. Allegations about violation of sacred oath taken by the Judge to perform the duties of "office without fear or favour" "affection or ill-will" and to "uphold the Constitution" have been made, with constraint, we have to say, irresponsibly. Such serious aspersions have been cast without even the least justification for it. A member of the bar is an officer of the Court. The trust and confidence which is reposed in him by the client for whom he acts and pleads requires a high standard of responsibility and duty not only towards his clients, his profession but also to the Courts and public. He is as much bound by traditions and conventions to uphold the dignity of law as the Judge by their oath the nature of duties and onerous responsibility of assisting in upholding the rule of law mandates him to honour his commitment honestly and faithfully. With boldness and fearlessly but with dignity and court say. The right should not appear to be used as, guide to depart from their honoured practice and rules of profession to avoid any action or behaviour which may impinge on sanctity, dignity and (sic) friend of the Court as such cooperation between the bench and bar is necessary. It is the duty of an Advocate to maintain honour and dignity of the Court and not to lower public confidence in administration of Justice. Errors in passing the order or arriving at conclusions in discharge of judicial capacity have never been taken as contempt by any Court or law either in India or England or America. Courts have been so zealous and law so definite and clear that error even grossest in discharge of duties has not been defined or held to be contumacious.

22. To argue, therefore, that the Judge violated his sacred oath because he did not grant bail or he did not notice all the decision or he distinguished them or he made observations in the order which may affect its hearing by another bench or the judgment was at variance with observations made during arguments does not and cannot amount to contempt. If it be held so then the entire institution of judiciary shall stand shaken. We have already mentioned that in O.P. Gupta's case (supra), the Hon'ble Supreme Court held that even grossest error of law by a Judge deciding a case did not amount to contempt. Consequently we are of opinion that a Judge cannot be indicted for even erroneously applying the ratio of a Supreme Court's decision. The applicant could not establish that any of the Judges against whom these applications have been filed has disregarded any decision of Supreme Court, "deliberately" and avoided to follow decision of Supreme Court or its own court, "by giving wrong and illegitimate reasons". The applicant failed to establish any disregard muchless wilful disregard or disobedience of any Courts higher to it or even of coordinate jurisdiction. It cannot, therefore, be said even prima-facie that the conduct of any of the Judge tended to bring the authority of the Court and the administration of law in disrepute. We are of firm opinion that on facts of the cases enumerated in the applications and on arguments advanced none of the Judges in discharge of their duties violated their sacred oath or prejudiced or interfered or tended to interfere with the due course of any judicial proceeding or interfered or tended to interfere with or obstructed or tended to obstruct the administration of justice in any other manner.

23. For the reasons stated above we are of opinion that no prima-facie case is made out against any of the Judges for having committed any contempt either under Article 215 of the Constitution of India or Under Sections 12, 14 or 16 of the Contempt of Courts Act, therefore, dismiss these applications.

24. We also dismiss the review applications and transfer applications filed on 9th May, 1988.