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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on : 21st February, 2017

Date of decision : 9th March, 2017

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CCP(REF)No.3/2016

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr. Darpan Wadhwa, *Amicus Curiae* with Ms. Aditi Mohan, Adv.

versus

DSP JAYANT KASHMIRI & ORS

..... Respondents

Through: Mr. Maninder Singh, ASG with Mr. Sanjeev Bhandari, Spl.PP for the Central Bureau of Investigation.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

GITA MITTAL, J.

“ ... We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it

adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct...”

(Ref: Powers, Privileges and Immunities of State Legislatures, Re.

*Special Reference No.1 of 1964
(1965) 1 SCR 413 : AIR 1965 SC 745)*

1. By this judgment, we propose to decide the criminal contempt reference, made by the Special Judge-01(CBI), Patiala House Courts, New Delhi, which has its genesis in the case entitled '*CBI v. M/s Endeavour Systems Pvt. Ltd & Ors.*' pending before him arising out of FIR No. RC-DAI-2015-A-0042 under Section 120B of the Indian Penal Code ("*IPC*" hereafter) and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.
2. During the course of investigation in the case, the Central Bureau of Investigation ("*CBI*" hereafter) seized seven accounts held by one of the companies being investigated i.e M/s Endeavour Systems Pvt. Ltd. with the Oriental Bank of Commerce. An application dated 27th February, 2016 came to be filed seeking defreezing of seven of these bank accounts.
3. In opposition, the CBI filed a written reply dated 11th of March 2016 making a detailed factual assertion and finally summing up its

submissions in para 10 of the reply (*wherein it was replying to para 16 of the application*). Inasmuch as one sub-para of para 10 of the CBI's reply dated 11th March, 2016 is the basis of the reference made by the Id. Special Judge CBI which is being considered by us herein under the Contempt of Courts Act, 1971, we deem it appropriate to extract hereunder this portion of para 10 of the CBI reply which reads thus :

“...It is humbly submitted that while assessing the previous order dated 20.01.2016 passed by this Court, the Hon'ble High Court of Delhi vide its order dated 10.02.2016, passed in Criminal Revision no. 251/2016 filed by CBI has held that “the impugned order is full of either exceeding of jurisdiction or failure to exercise the jurisdiction. The issuance of directions to return the documents at the time of initial investigation despite having consistent stand of the CBI to retain the documents for the purpose of investigation to reach to a logical conclusion; making the unnecessary observations in para 55 with regard to conducting the proceedings by the petitioner; having contradictory views in paras 58-59 and 44; directing to return the documents in original selected by the respondent no. 1 in para 8 of the application and having failed to exercise the jurisdiction to consider the application for retention of documents by the CBI, culminates into the impugned order not sustainable in the eyes of law”.”

(Emphasis by us)

4. The extract of the reply resulted in the passing of an order dated 5th April, 2016 by the Id. Special Judge objecting to the insertion of the above in the reply. In the order dated 5th April, 2016, the Id. Trial

Judge has found above sub-para objectionable for reasons which can be summed up as under :

- (i) *The paragraph has no bearing whatsoever on the issue to be adjudicated i.e. defreezement of bank accounts of the applicant.*
- (ii) *It contains no reasons in support of the opposition of the application which is intended.*
- (iii) *It has been placed as warning and intended to vilify a judicial office. It is wanting altogether in fearness and justification and not only interferes in the legal process but has clear tendency to scandalize.*
- (iv) *The paragraph contains no principle of laws; observations therein relate to different issue altogether and reproduction thereof was unnecessary and unwarranted.*
- (v) *The reproduction was a “calculated psychological offence and mind game to intimidate the judge” to seek orders in their favour.*
- (vi) *Intended to pre-empt a decision on the application.*
- (vii) *In the absence of any justification for the incorporation, it is clearly without good faith.*
- (viii) *It was a friendly assault on the independence, impartiality and integrity of the judicial process.*
- (ix) *The paragraph does not fall in the category of fair criticism in good faith.*

5. The reference was accompanied by a previous order dated 20th January, 2016 passed by the Id. Special Judge, CBI-01 allowing an application dated 21st December, 2015 filed by the Government of NCT of Delhi for release of documents seized during investigation. It appears that this order of the trial court was challenged by the CBI by way of Crl.M.C.No.257/2016 before this court. The Id. Single Judge had accepted CBI's challenge to the order dated 21st December, 2015 of the Id. Special Judge, CBI-01 and set it aside by an order dated 10th February, 2016 with the observations which were extracted in para 10 of CBI's reply dated 11th of March 2016. The Id. Special Judge CBI-01 has also forwarded the copy of the order dated 10th February, 2016 passed in Crl.M.C.No.257/2016 with the reference.

6. The order of reference dated 5th of April 2016 also makes reference to the pronouncements of the Supreme Court in *Brahma Parkash Sharma & Ors. v. The State of UP*, AIR 1954 SC 10; *Dr. DC Saxena v. Hon'ble the Chief Justice of India*, 1996 (5) SCC 216; *In Re Vinay Chandra Mishra*, 1995 (2) SCC 584; *Arundhati Roy, In Re*, 2002 (3) SCC 343; *Subrata Roy Sahara v. Union of India*, 2014 (8) SCC 470.

7. It has been observed in order of reference that the above portion of the order in the reply dated 11th March, 2016 was published by the investigating officer DSP Jayant Kashmiri which stood approved by the competent authority in the CBI who were to be implicated as contemnors. The Public Prosecutor was absolved of liability for

contempt for the reason that, though the reply was submitted by him, however, he did not appear to have applied his mind when preparing a reply.

8. In view of these observations, the Id. Judge by the reference dated 5th of April 2016 has sought initiation of contempt of court proceedings against the investigating officer DSP Jayant Kashmiri and other officials of competent authority of CBI who had approved the reply dated 11th March, 2016 containing the aforementioned reproduction of the Id. Single Judge's order in para 10 of its reply. In view of Section 15 of the Contempt of Courts Act, 1971, this reference was forwarded by the District and Sessions Judge, Patiala House Courts on 6th of April 2016 to this court.

9. The matter was treated as a civil contempt reference by the Registry of this court and therefore, pursuant to the orders of Hon'ble the Chief Justice, on the Administrative Side, directed to be placed before the roster Bench. Consequently, it came to be registered as CCP (Ref) No. 3/2016 and listed before the Id. Single Judge on the 18th of May 2016. An advance copy of the reference had been directed to be served by the Registry upon the Standing Counsel for the CBI. CBI was therefore represented before the court.

10. The record shows that though notice was not issued by the Id. Single Judge, however, the respondent filed a parawise reply dated 26th September, 2016 to the reference as well as written submissions dated 15th November, 2016.

11. The Id. Single Judge appointed Mr. Darpan Wadhwa, Advocate as *amicus curiae* in the matter. On the 17th of November 2016, on a consideration of the reference, the learned Single Judge was of the view that the matter was to be treated as Criminal Contempt. It was observed that Section 18 of the Contempt of Courts Act, 1971 provides that a criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges. Consequently, the Id. Single Judge directed the Registry to seek appropriate orders from Hon'ble the Chief Justice for placing the matter before the Division Bench. Pursuant to these orders, the matter has been placed before us.

12. The issuance of notice to show cause for appropriate action for criminal contempt under the Contempt of Courts Act, 1971 is a serious matter and hence we are required to consider as to whether the conduct of the respondent *prima facie* warranted initiation of proceedings under the Contempt of Courts Act against them.

We, consequently, have first heard arguments on this aspect of the matter.

13. Mr. Darpan Wadhwa, Id. *amicus curiae* and Mr. Maninder Singh, Id. ASG on behalf of the respondents have taken us through the application dated 27th February, 2016 before the Id. Special Judge as well as CBI's reply dated 11th March, 2016, placed the legal provisions as well as the judicial precedents on the issue and made oral submissions at great length.

Statutory provisions

14. Before examining the factual position in the light of the legal principles as brought out in the several judgments on the issue, it may be useful to extract the relevant provisions of the statute defining the expressions “*civil contempt*” and “*criminal contempt*”.

15. So far as Civil Contempt is concerned, it is defined in Section 2(b) of the Contempt of Courts Act, 1971 thus :

“2(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;”

16. Criminal Contempt is defined in Section 2(c) of the Contempt of Courts Act, 1971 thus :

“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) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or*
- (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or*
- (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”*

Contentions

17. It is submitted at length by both Mr. Maninder Singh, Id. ASG and Mr. Darpan Wadhwa, Id. *amicus curiae* that the trial court has taken offence to the reproduction of an extract of a judgment of the High Court by the CBI which would not be covered within the meaning of the expression “*criminal contempt*”. It is further submitted that the CBI and its officials have no intention to and have not done any act which could scandalize or tend to scandalize or tend to or lower the authority of the court so as to invite proceedings under the Contempt of Courts Act, 1971 against them. Id. ASG would submit that objected portion of para 10 of the CBI’s reply dated 11th March, 2016 would not be covered under any of the acts specified in Section 2(c)(ii) or (iii) as well and that the reference is completely unjustified.

18. It is contended that the action of the CBI, pointing out in para 10 of the reply dated 11th March, 2016, CBI has merely attempted to emphase the critical stage of investigation pointing out that the accounts ought not to be released at this stage pending further investigation and in support thereof placing reliance on the order dated 10th February, 2016 of the Id. Single Judge which could not constitute criminal contempt under Section 2(c) of the Contempt of Courts Act.

19. Mr. Darpan Wadhwa, ld. *amicus curiae* has urged at length that the extract of the judgment dated 10th February, 2016 in Crl.M.C.No.257/2016 was in support of the CBI's basic contention regarding the inappropriateness of defreezing bank accounts at that juncture.

20. It is submitted by Mr. Darpan Wadhwa, ld. *amicus curiae* that it is every party's right to assail an order of a trial court by way of the statutory remedy of appeal or revision. The contention is that no trial court can take offence to correction of its previous order by the appellate or revisional court or to a reference to the order of the High Court setting aside the trial court's order. Placing reliance on the pronouncements in *AIR 1969 Del 304, Banarsi Lal v. Smt. Neelam & Ors.*, (1978) 3 SCC 339, *In Re: S. Mulgaokar*, (1999) 8 SCC 308, *Narmada Bachao Andolan v. Union of India & Ors.* it is urged before us that courts should not react hypersensitively.

Whether a case for proceeding for civil contempt made out?

21. So far as the present case is concerned, there is no willful disobedience of any order of the court or any undertaking alleged against the respondents. The present case was therefore, clearly not covered under the definition of civil contempt or within the meaning of the expression as contained in Section 2(b) of the Contempt of Courts Act. The registration of the reference as civil contempt proceedings was clearly misconceived.

Whether citation or reproduction of an order of the appellate court by a litigant before the trial court constitutes criminal contempt under Section 2(c)(ii) of the Contempt of Courts Act?

22. We find that in the order of reference dated 5th April, 2016, apart from the observation that the assertions of the CBI regarding order dated 10th February, 2016 passed by the Id. Single Judge in Crl.M.C.No.257/2016 (wrongly referred to as Crl.Ref.No.251/2016), were irrelevant, the Id. trial judge has perceived the same as intended to intimidate and overawe him and thereby intimidated him from passing orders in accordance with law.

23. The question which is thus posed for consideration in the present reference is as to whether reproduction of a portion of a judgment of the High Court in the CBI reply or its placing reliance on a judgment of the High Court, could constitute criminal contempt as defined under Section 2(c) of the Contempt of Courts Act and render the person citing and reproducing the judgment as liable for criminal contempt?

24. So far as criminal contempt as defined under Section 2(c) of the statute is concerned, it requires publication of any matter or doing of any other act which scandalizes or tends to scandalize or lower authority of any court, prejudices, interferes, or tends to interfere with judicial proceedings or administration of justice.

25. On this aspect, so far as unnecessary and objectionable pleadings in civil proceedings are concerned, the Legislature has provided Rule 16 of the Order VI of the C.P.C. which states thus :

“Rule 16. Striking out pleadings.- The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court.”

Therefore, unnecessary, scandalous, frivolous or vexatious pleadings which may tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise an abuse of the process of the civil court, can be ordered to be struck down of the record either *suo motu* or by an application by the party taking objection in civil proceedings. The legislature has thus anticipated the possibility of such pleadings so far as cases tried in accordance with the Code of Civil Procedure are concerned.

26. It is to be remembered that pleadings are really the foundation of a civil case whereas it may not necessarily be so in criminal law given the protections afforded to the accused regarding confidentiality

attached to his defence. However, the Code of Criminal Procedure does envisage making of complaints, applications and objections thereto before the appropriate court by the parties. Therefore, the issue of maintenance of propriety by a party in its pleadings, though not formally structured by legislative mandate, would remain relevant even while considering them in criminal law.

27. Let us, in this context, examine the jurisdiction and role of an appellate court. The same has been succinctly described by the Supreme Court in *(2015) 6 SCC 158, K. Anbazhagan v. State of Karnataka*. Speaking for the Bench, *Dipak Misra, J.* has clearly laid down the parameters of the examination which has to be conducted by the appellate court in the following terms :

*“36. It needs no special emphasis that the **appellate court** has the **sacrosanct duty** to evaluate, appreciate and consider each material aspect brought on record before rendering the judgment. That is sacred duty of a Judge; and the same gets more accentuated when the matter is in appeal assailing the defensibility of the conviction in a corruption case.*

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39. ...The appellate court has a duty to make a complete and comprehensive appreciation of all vital features of the case. The evidence brought on record in entirety has to be scrutinised with care and caution. It is the duty of the Judge to see that justice is appropriately administered, for that is the paramount consideration of a Judge. ...”

(Emphasis by us)

Thus, while referring to the scrutiny of an impugned order by an appellate court, the appellate court conducts an “*evaluation*” or “*consideration*” of the record, the appellate court effects a “*comprehensive appreciation*” of all aspects of the case.

28. In this regard, reference may usefully be made to the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. What is the nature of the scrutiny by the High Court? We may usefully refer to the pronouncement of the Supreme Court in **(2003) 6 SCC 675, *Surya Dev Rai v. Ram Chander Rai*** wherein the court held thus :

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

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<i>(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.</i>		

xxx	xxx	xxx
<i>(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India</i>		

unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

(Emphasis by us)

29. The exercise of power of superintendence of the High Court over trial courts under Article 227 and the jurisdiction of the High Court is circumscribed by the limits which have been authoritatively summed up in para 49 of the judgment of the Supreme Court reported at **(2010) 8 SCC 329, Shalini Shyam Shetty v. Rajendra Shankar Patel**, the relevant portion whereof reads thus :

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

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(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh [AIR

1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) **In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.**

(g) **Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.**

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

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(l) **On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.**

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(Emphasis by us)

30. It is to be noted that while referring to the orders of the trial court which are impugned before the High Court in the grounds of appeal, parties are known to refer to the trial court having erred on facts and law and having ignored statutory provisions. There are several precedents setting aside and interfering with the trial court orders on these very grounds.

31. The judgments of the High Court would bind the trial courts. If an unnecessary reference to a judicial precedent or erroneous submission in law is made, the judge considering the matter would reject the reliance thereon or the submission made. However, certainly reference to a judicial precedent cannot be termed a contumacious act.

Distinction between libel and contempt of court

32. Mr. Darpan Wadhwa, Id. *amicus curiae* has urged that courts have often erred in mistakenly initiating contempt action whereas the correct legal action was that of libel by the respondent. We may briefly examine the submissions in this regard also.

33. In the judgment of the Supreme Court reported at ***AIR 1954 SC 10, Brahma Prakash Sharma & Ors. v. The State of Uttar Pradesh***, the six appellants were members of the Executive Committee of the District Bar Association at Muzaffar Nagar who passed certain

resolutions in April, 1949 relating to the conduct of two judicial officers functioning at Muzaffar Nagar stating that several complaints had been received by the Bar Association regarding the manner of disposal of cases by the two judicial officers and their behavior towards the litigant public as well as lawyers, stating the opinion of the Committee with regard to the incompetence of the officers as well as their working. It was resolved to send a copy of the resolution to several government authorities as well as the District Magistrate. The District Magistrate wrote a letter dated 20th July, 1949 to the Registry of High Court of Allahabad drawing attention of the court to the resolution made by the committee. On 16th November, 1949, the High Court directed issuance of show cause notices to the members of the Committee of the Bar Association. The case was heard by the Bench of three judges and by the order dated 5th May, 1950, it was concluded that with the exception of two of the opposite parties who were not members of the executive committee at the relevant date, the remaining six were guilty of contempt of court. The statement of the two of the appellants that they were not actuated by any personal or improper motives; their object was not to interfere with but to improve the administration of justice was accepted by the Court. However, it was observed that the terms used in the resolution were little removed from personal abuse and whatever be the motive, they were clearly likely to bring the Magistrate into contempt and lower their authority. As the appellants had tendered their unqualified

apology, the court accepted the same but still directed them to pay costs to the government advocate. This judgment was assailed before the Supreme Court. The observations of the Supreme Court are important and we therefore, extract them in some detail :

*“9. There are indeed innumerable ways by which attempts can be made to hinder or obstruct the due administration of justice in courts. One type of such interference is found in cases where there is an **act or publication which** “amounts to scandalising the court itself” an expression which is familiar to English lawyers since the days of Lord Hardwicke [Vide In re Read and Huggonson (1742) 2 Atk. 469, 471] . This **scandalising might manifest itself in various ways but, in substance, it is an attack on individual Judges or the court as a whole with or without reference to particular cases casting unwarranted and defamatory aspersions** upon the character or ability of the Judges. Such conduct is punished as contempt for this reason that it tends to create distrust in the popular mind and impair confidence of people in the courts which are of prime importance to the litigants in the protection of their rights and liberties.*

*10. There are decisions of English courts from early time where the courts assumed jurisdiction in taking committal proceedings against persons who were guilty of publishing any scandalous matter in respect of the court itself. In the year 1899, Lord Morris in delivering the judgment of the Judicial Committee in **MacLeod v. St. Aubin** [(1899) **Appeal Cases 549**] observed that “Committals for contempt by scandalising the court itself have become obsolete in this country. Courts are satisfied to leave to public opinion attacks or comments derogatory or scandalous to them.” His Lordship said further: “**The power summarily to commit for contempt is considered***

necessary for the proper administration of justice. It is not to be used for the vindication of a Judge as a person. He must resort to action for libel or criminal information.”

*11. The observation of Lord Morris that contempt proceedings for scandalising the courts have become obsolete in England is not, strictly speaking, correct; for, in the very next year, such proceedings were taken in **Reg. v. Gray** [(1900) 2 QB 36] . In that case, there was a scandalous attack of a rather atrocious type on Darling, J. who was sitting at that time in Birmingham Assizes and was trying a man named Wells who was indicted inter alia for selling and publishing obscene literature. The Judge, in the course of the trial, gave a warning to the newspaper press that in reporting the proceeding of the court, it was not proper for them to give publicity to indecent matters that were revealed during trial. Upon this, the **defendant published an article** in the Birmingham Daily Argus, under the heading “An advocate of Decency”, where **Darling, J. was abused in scurrilous language**. The case of Wells was then over but the Assizes were still sitting. There can be no doubt that the publication amounted to contempt of court and such attack was calculated to interfere directly with proper administration of justice. **Lord Russell** in the course of his judgment, however, took care to observe that the **summary jurisdiction by way of contempt proceedings in such cases where the court itself was attacked, has to be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt**. “Because”, as His Lordship said, “If it is not a case beyond reasonable doubt, the court should and ought to leave the Attorney-General to proceed by criminal information.” In 1943, Lord Atkin, while delivering the judgment of the Privy Council in *Devi Prashad v. King Emperor* [70 IA 216] observed that cases of contempt,*

*which consist of scandalising the court itself, are fortunately rare and require to be treated with much discretion. Proceedings for this species of contempt should be used sparingly and always with reference to the administration of justice. **“If a Judge is defamed in such a way as not to affect the administration of justice, he has the ordinary remedies for defamation if he should feel impelled to use them.”***

*12. It seems, therefore, that there are two primary considerations which should weigh with the court when it is called upon to exercise the **summary powers** in cases of contempt committed by “scandalising” the court itself. In the first place, **the reflection on the conduct or character of a judge in reference to the discharge of his judicial duties, would not be contempt if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. It is not by stifling criticism that confidence in courts can be created.** “The path of criticism”, said Lord Atkin [*Ambard v. Attorney-General for Trinidad & Tobago*, (1936) AC 322, at p. 335] “is a public way. The wrong-headed are permitted to err therein; provided that members of the public abstain from imputing motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice, or attempt to impair the administration of justice, they are immune.”*

*13. In the second place, when attacks or comments are made on a Judge or Judges, disparaging in character and derogatory to their dignity, care should be taken to **distinguish between what is a libel on the Judge and what amounts really to contempt of court.** The fact that a statement is defamatory so far as the Judge is concerned does not necessarily make it a contempt. The distinction between a libel and a contempt was pointed out by a*

*Committee of the Privy Council, to which a reference was made by the Secretary of State in 1892 [In the matter of a special reference from the Bahama Islands, 1893 App. Cases, p. 138] . A man in the Bahama Islands, in a letter published in a colonial newspaper criticised the Chief Justice of the Colony in an extremely ill-chosen language which was sarcastic and pungent. There was a veiled insinuation that he was an incompetent Judge and a shirker of work and the writer suggested in a way that it would be a providential thing if he were to die. A strong Board constituting of 11 members reported that the letter complained of, though it might have been made the subject of proceedings for libel, was not, in the circumstances, calculated to obstruct or interfere with the course of justice or the due administration of the law and therefore did not constitute a contempt of court. The same principle was reiterated by Lord Atkin in the case of *Devi Prashad v. King* Emperor referred to above. It was followed and approved of by the High Court of Australia in *King v. Nicholls* [12 Commonwealth Law Reports, p. 280] , and has been accepted as sound by this Court in *Reddy v. State of Madras* [1952 Supreme Court Reports, p. 452] . The position therefore is that a defamatory attack on a Judge may be a libel so far as the judge is concerned and it would be open to him to proceed against the libellor in a proper action if he so chooses. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court, it can be punished summarily as contempt. One is a wrong done to the Judge personally while the other is a wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge or to deter actual and prospective litigants from*

placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the Judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere with the proper administration of law [Mr Mookerjee, J. In re Motilal Ghosh and others, ILR 45 Cal 269, at 283] .

19. *The only portion of the resolution to which prima facie objection can be taken is that which describes these officers as thoroughly incompetent in law and whose judicial work does not inspire confidence. These remarks are certainly of a sweeping nature and can scarcely be justified. Assuming, however, that this portion of the resolution is defamatory, the question arises whether it can be held to amount to contempt of court. To answer this question, we have to see whether it is in any way calculated to interfere with the due administration of justice in these courts, or, in other words, whether such statement is likely to give rise to an apprehension in the minds of litigants as to the ability of the two judicial officers to deal properly with cases coming before them, or even to embarrass the officers themselves in the discharge of their duties.*

20. *We are unable to agree with the learned counsel for the respondent that whether or not the representation made by the appellants in the present case is calculated to produce these results, is to be determined solely and exclusively with reference to the language or contents of the resolutions themselves; and that no other fact or circumstance can be looked into for this purpose, except perhaps as matters which would aggravate or mitigate the offence of contempt, if such offence is found to have been*

committed. It may be that pleas of justification or privilege are not strictly speaking available to the defendant in contempt proceedings. The question of publication also in the technical sense in which it is relevant in a libel action may be inappropriate to the law of contempt. But, leaving out cases of ex facie contempt, where the question arises as to whether a defamatory statement directed against a Judge is calculated to undermine the confidence of the public in the capacity or integrity of the Judge, or is likely to deflect the court itself from a strict and unhesitant performance of its duties, all the surrounding facts and circumstances under which the statement was made and the degree of publicity that was given to it would undoubtedly be relevant circumstances . xxx xxx xxx

What is material is the nature and extent of the publication and whether or not it was likely to have an injurious effect on the minds of the public or of the judiciary itself and thereby lead to interference with the administration of justice. ...”

(Emphasis by us)

34. On the facts of the case and consideration of the Bar resolution, the court held thus :

“20. ... On the materials before us, it is difficult to say that the circumstances under which the representation was made by the appellants was calculated to have such effect. There might have been some remote possibility but that cannot be taken note of. We are clearly of the opinion that the contempt, if any, was only of a technical character, and that after the affidavits were filed on behalf of the appellants before the High Court, the proceedings against them should have been dropped. The result,

therefore, is that the appeal is allowed and the judgment of the High Court is set aside. There will be no order for costs either here or in the court below in favour of either party.”

(Emphasis by us)

35. It would therefore, appear that it is not the language of the contents of the publication alone which would be determinative of the issue as to whether the same was effected to interfere with the due administration of justice but surrounding facts and circumstances under which the publication or the representation was made are required to be considered. The remote possibility of the impact thereof would not invite action under the Contempt of Courts Act, 1971. It has further been clearly laid down that a defamatory attack on a judge may be libel qua the judge and so actionable at his instance but may not be contumacious. However, publication of a disparaging statement calculated to interfere with due course of justice or proper administration of law by the court would render the person liable for summary proceedings under the Contempt of Courts Act, 1971.

Comment on the judgments of the court - permissibility and parameters

36. In the judgment reported at ***JT 2005 (4) SC 548, Rajendra Sail v. Madhya Pradesh High Court Bar Association & Ors.***, the Supreme Court was concerned with a newspaper report dated 4th July, 1998 in the newspaper Hitavada about the decision of the High Court

reversing the trial court judgment whereby in the murder trial of Shankar Guha Niyogi, a trade union leader, the accused were found guilty and sentenced to imprisonment for life except one who was awarded death sentence. The judgment was criticized in the said article. This newspaper article led to initiation of contempt action on an application filed by Madhya Pradesh Bar Association, with the consent of the Advocate General, against the Editor, Printer and Publisher, Chief Sub-Editor and Desk In-charge of the newspaper at Bhilai. So far as the principles and parameters within which judgments could be commented upon or criticized, the Supreme Court observed as follows:

*"32. The reach of the media, in the present times of 24-hour channels, is to almost every nook and corner of the world. Further, large number of people believe as correct that which appears in media, print or electronic. It is also necessary to always bear in mind that the judiciary is the last resort of redressal for resolution of disputes between State and the subject, and high and low. The confidence of the people in the institution of judiciary is necessary to be preserved at any cost. That is its main asset. Loss of confidence in institution of judiciary would be end of rule of law. Therefore, any act which has such tendency deserves to be firmly curbed. **For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected.***

33. The judgments of courts are public documents and can be commented upon, analysed and criticised, but it has to be in dignified manner without attributing motives...

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43. ... Undoubtedly, judgments are open to criticism. No criticism of a judgment, however vigorous, can amount to contempt of court, provided it is kept within the limits of reasonable courtesy and good faith. Fair and reasonable criticism of a judgment which is a public document or which is a public act of a judge concerned with administration of justice would not constitute contempt. Such a criticism may fairly assert that the judgment is incorrect or an error has been committed both with regard to law or established facts."

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45. When there is danger of grave mischief being done in the matter of administration of justice, the animadversion cannot be ignored and viewed with placid equanimity. If the criticism is likely to interfere with due administration of justice or undermine the confidence which the public reposes in the courts of law as courts of justice, the criticism would cease to be fair and reasonable criticism but would scandalise courts and substantially interfere with administration of justice. ... "

(Emphasis by us)

37. So far as the facts of the case in ***Rajendra Sail*** are concerned, the court held thus :

"43. The issue as to whether the alleged statements amount to contempt or not does not present any difficulty in the present case. If the conclusions reached by the High Court are correct, there can be little doubt that it is serious case of scandalising the Court and not a case of fair criticism of a judgment...."

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45. ...Having perused the record, we are unable to accept the contention urged on behalf of Mr Rajendra Sail that on facts the conclusions arrived at by the High Court are not sustainable. Once this conclusion is reached, clearly the **publication amounts to a gross contempt of court. It has serious tendency to undermine the confidence of the society in the administration.**"

(Emphasis by us)

38. It needs no further elaboration that the judgments of courts are public documents which are open to comment, analysis and criticism in a dignified manner without attributing motives and that no criticism of the judgment, however, vigorous, could amount to contempt of court provided it is fair, kept within the limits of reasonable courtesy and good faith. Therefore, citation of a judgment in the same case, certainly would not invite contempt of court action.

39. An editorial in the issue of the Excise Law Times dated 1st June, 2009 by the editor of the law journal resulted in a contempt petition being filed by the Indirect Tax Practitioners' Association against him in the case reported at **(2010) 8 SCC 281, Indirect Tax Practitioners' Association v. R.K. Jain** alleging that it amounted to criminal contempt under Section 2(c) of the Contempt of Courts Act. The respondent had made a detailed reference to orders by a member of CESTAT which had been set aside by the High Courts of Karnataka and Kerala with scathing criticism (paras 35 and 36 of the judgment). The petitioners had projected the editorial as a piece of

writing intended to demean CESTAT as an institution and scandalize its functioning. In para 37 of the judgment, the Supreme Court however, noted that there was nothing in the editorial which could be described as an attempt to lower the authority of CESTAT or to ridicule it in the eyes of public, rather the object of the editorial was to highlight the irregularities of the appointment, posting and transfer of the members of CESTAT and instances of abuse of quasi-judicial powers. No oblique motive on the part of the respondent was pointed out nor were the orders of Karnataka and Kerala High Courts referred to were reversed by the Supreme Court. As such, the court rejected the submission that by writing the editorial in question, the respondent had tried to scandalize the functioning of CESTAT or made an attempt to interfere with the administration of justice.

40. The Supreme Court has thus, rejected the prayer for invocation of contempt action also premised on the finding that there was no oblique motive on the part of the respondents.

Hypersensitivity of courts – ought not lead to initiation of contempt

41. Several judicial precedents are brought to our notice wherein the Supreme Court and the High Courts have commented upon unwarranted hypersensitivity and undue peevishness of courts leading to initiation of contempt of court action against parties. These judicial precedents shed valuable light on the manner in which courts ought to

proceed. We feel compelled to note the important judicial precedents on this aspect so that the contours of contempt jurisdiction are appreciated in their true spirit, purpose and intendment.

42. We may usefully also refer to a pronouncement of Division Bench of this court reported at *ILR (1968) Del 493, A.N. Jindal v. P.L. Chhabra* on this aspect. In this case, Shri A.N. Jindal, Magistrate First Class, Delhi made a reference under Section 3 of Contempt of Courts Act for taking action against Shri P.L. Chhabra, Provincial Transport Controller, Haryana Government, at Chandigarh on the basis of a D.O. letter dated 4th April 1968 written by him to Shri C.G. Suri, District & Sessions Judge, Delhi requesting the superior court to see and verify as to what is the real position on the facts and circumstances disclosed in the letter. The Id. Sessions Judge did not consider anything objectionable in the letter addressed to him and took no action against the author of the letter. Instead, the letter was forwarded to the District Magistrate in due course so that this officer may go into the matter. The officer Incharge (Judicial) acting on behalf of the District Magistrate, Delhi, on 25th April, 1968, forwarded it to Shri A.N. Jindal, Magistrate First Class with a request to seek his comments thereon immediately. Instead of offering his comments thereon to the District Magistrate, Shri Jindal forwarded to the Registry of this court an application dated 31st May, 1968 under Section 3 of Contempt of Courts Act with a covering letter dated 3rd

June, 1968 suggesting action to be taken against Shri P.L. Chhabra for having written the letter. The observations of the court on the issue as to whether writing of the letter was contumacious shed valuable light on the present consideration and are extracted hereunder :

*“Contempt of Court can be said to be constituted by any conduct that tends to bring the authority and the administration of law into disrespect and disregard, or to interfere with or prejudices parties, litigants or their witnesses during the litigation. Proceedings by way of contempt being summary, and the Court being both the accuser and the Judge of the accusation, such proceedings have to be initiated in exceptional cases where there is a serious interference with the proceedings of the Court. The jurisdiction for committing for contempt being practically arbitrary and unlimited, must be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of the Judges. We are confining ourselves to the category of contempt of Court which unduly interferes with the judicial process because we are only concerned with such category in the case in hand. Administration of justice by an impartial and independent judiciary, which is trained to administer justice objectively, is the basis of our system of jurisprudence, as it is the basis of the jurisprudence of all the civilised societies. Any undue interference with pending proceeding is, therefore, looked at with disfavour and is treated as contempt of the Court. **But at the same time, the concept of contempt does not imply that Courts should get unduly touchy and take action in respect of anything that may appear as ignoring their authority.***

Judicial function is no doubt one of the most ancient and most persistent functions of Government and the methods employed to fulfil these functions are of central

importance in any political system. In our system, there is hierarchy of Courts of law and justice and they are enjoined to function in accordance with and under the law. ***Illegalities and errors of judgment are subject to supervision by the higher Courts. In certain cases, in the larger interests of justice, the superior Courts can also act suo motu in exercise of the power of superintendence and revision to see that the subordinate Courts keep themselves within the bounds of law.*** It is in this background that we propose to examine the present problem facing the Court. In the case in hand, all that the letter written by Shri Chhabra to the learned Sessions Judge purports, broadly speaking, to do is to request the superior Court to see and verify as to what is the real situation on the facts and circumstances as disclosed in the letter. It is noteworthy that the learned Sessions Judge did not consider anything objectionable in the letter addressed to him and took no action on the lines on which the learned Magistrate has proceeded. The letter was forwarded to the District Magistrate in due course so that the latter officer may go into it. The learned District Magistrate also, it is worth-noting did not consider that the letter amounted to any interference with the judicial duties of the learned Magistrate. He urgently asked for comments from the learned Magistrate as he was fully empowered to do. In these circumstances, one would have expected the learned Magistrate to forward his comments to the learned District Magistrate and leave it to that officer or to the learned Sessions Judge to take whatever steps they considered proper and necessary for the purpose of maintaining and preserving the dignity of the Courts of justice subordinate to them. This important aspect seems to have been ignored by the learned Magistrate. ***The present application by him to this Court direct, may suggest that he is anxious to discourage***

approach to his superior Courts with request to scrutinise the proceedings of cases pending and dealt with by his Court, which, if true, seems to us to be somewhat difficult to commend or encourage. An impression of this kind should have been avoided at all costs by the learned Magistrate in the larger interests of our judicial process.

*The learned Magistrate has perhaps, in his official zeal, adopted too doctrinaire an approach to the matter ignoring the essential and basic purpose of the law of contempt. He seems to have been led away by excessive sensitiveness and he did not deal with the problem in a cool manner behoving experienced judicial officers. Assuming Shri Chhabra, who is a very senior I.A.S. Officer of Haryana, had done something improper in approaching the learned Sessions Judge by means of a letter, it was by no means a fit case for starting contempt of Court proceedings on its peculiar facts and circumstances. The Court in contempt proceedings, has to act with great circumspection, making all allowances for errors of judgment, keeping in view the recognised and known difficulties arising from inveterate practices in Courts, particularly in traffic cases. The facts of the various cases, as disclosed on the record, quite clearly justify the anxiety felt by Shri Chhabra in the interest of proper functioning of his department in approaching the learned Sessions Judge, though it would have been better if the matter had been brought to the notice of the learned Sessions Judge by a formal judicial application. **There was, quite clearly, no contumacious conduct** on the part of Shri Chhabra, **nor could it be said that he tried unduly to interfere with the normal course of judicial process which called for invoking the drastic machinery of proceedings for contempt of Court.** It would have been a matter of great satisfaction to us if the learned Magistrate had, instead of approaching this Court for contempt of Court proceedings,*

looked at the record of the proceedings before him and tried to set right whatever was found wrong or unjust with those proceedings. ...”

(Emphasis by us)

43. On the question of whether pleadings could invite contempt action, our attention is drawn to pronouncement of the Id. Single Judge of this court reported at ***AIR 1969 Del 304, Banarsi Lal v. Smt. Neelam & Ors.*** wherein the Id. Additional Sessions Judge had forwarded a petition moved by the petitioner Banarsi Lal against the respondent and her counsels for action for contempt of court on the ground that in the grounds of revision filed before the Id. Additional Sessions Judge from the order of the SDM, paras 4 and 5 were couched in language which amounted to contempt of court. Paras 4 and 5 of the revision stand extracted in para 4 of the judgment which reads thus :

*“4. It is noteworthy that when the revision application was presented in the Court of the learned Additional Sessions Judge, the office did not find anything objectionable with the grounds of revision and the revision was duly entertained without any objection. The **two paragraphs in the grounds of revision**, which formed the basis of the application for contempt of Court, read as under:—*

“4. That the whole conduct of the learned Magistrate previously in issuing search warrants for the recovery and production of a minor child from the mother and the present proceedings smacks of the partisanship to the utter disregard of the judicial considerations of the case.

5. That these proceedings are a result of evident misuse of the process of the Criminal Court and are in contraventions to the provisions of the law as laid down in Chapter VIII of the Cri PC motivated to harass and coerce the petitioner to come to terms with the respondent who claims to be a Community and Caste fellow of the learned Magistrate.”

44. In the reference order, the Id. Additional Sessions Judge strongly disapproved the conduct of the two lawyers. On a consideration of the matter, the Id. Single Judge of this court *inter alia* observed thus :

*“8. ... I consider it appropriate to point out once again that **committal for contempt of Court is a weapon to be used sparingly and it is intended to be used with scrupulous care with reference to the interests of the administration of justice only**, must not be allowed to be used by the litigants as a lever for putting pressure on their opponents. That is a misuse of this power and the **Courts have a duty to be vigilant in guarding against it**. It is unnecessary to add that a deliberate or reckless Contempt of Court, which is actionable, would not go unnoticed. I have emphasised this caution because it is not infrequently that this aspect is not given the importance it deserves.*

*9. Adverting to the recommendation of the learned Additional Sessions Judge for taking action against the two learned Advocates, I should like to point out that **forceful advocacy and even use of strong language in criticising on appeal or revision the impugned decisions of subordinate Courts is no contempt, but forceful advocacy and use of strong language does not mean that an Advocate can scandalise the Court or impute to it***

unjudicial motives for which there is no reasonable basis on the circumstances of the case. It is undeniable that no judiciary can function with the requisite efficiency in a set up like ours unless there is strong, efficient, conscientious and independent Bar and a weak, inefficient and unconscientious Bar is a somewhat ineffective corrective to an erring Court. The practice of law is not a business which is open to all those who desire to engage in it. It is a personal right and privilege of an Advocate to represent his client, and claim audience, in Court in order to plead for him. An advocate's is an exalted and a learned profession in which privilege and duty coincide: the professional lawyer's privilege being also his duty and his duty being also his privilege. This indeed is essential if the quality of justice in our country is to be of the expected high order as contemplated by our Constitution.

10. An Advocate in our set-up practices not only law, but also the science of the correct use of language. The words are indeed his tools with which he works. His is accordingly a word-bound profession. The language he uses must, therefore, be precise, dignified, respectful and persuasive, free from injudicious annoyance or offence. Being entrusted with the duty and privilege of securing for his client justice according to law an Advocate is entitled to appropriate freedom and scope in criticising the impugned judgments and orders and in addressing arguments and making submissions on behalf of his client Oral arguments by an Advocate, from their very nature, are relatively speaking, accorded greater latitude than written memorandum of appeal or revision. But this privilege, which is also his duty, does not extend to imputing extraneous unsjudicial motives to the subordinate Courts which cannot be substantiated or held to be reasonably justified on the record. If, however, they can be so substantiated, then I am unable to accede

that such a submission or pleading would amount to actionable contempt of Court. Being an officer of the Court, it seems to be an Advocate's duty to uphold the dignity and prestige of the Courts in which he practices as also of the Courts, the orders of which it is his professional privilege and duty to criticise, consistently with his loyalty to his client's cause, which he is engaged to plead in accordance with law. The administration of justice cannot be impaired by clothing the professional Advocate with the freedom to fairly and temperately criticise in good faith the impugned judgments and orders.

(Emphasis by us)

45. Mr. Maninder Singh, ld. ASG has placed before us the pronouncement of a ld. Single Judge of the Allahabad High Court reported at ***AIR 1919 All 46, Kadhory & Anr. v. Emperor*** with regard to an objection having been taken by the Munsif to an application for restoration of a plaint contending that the application had been utilized as a vehicle for criticising and threatening him and, having rightly remarked that if he, the Judge had neglected his duty he must be dealt with elsewhere, he proceeded to stigmatize the remarks and so called threats as “*contempt of court*” and gave notice to the minor plaintiffs to show cause as to why they should not be committed for contempt of court. This application was considered by the High Court in a criminal revision matter. The observations of the High Court in paras 2 and 3 of the pronouncement shed valuable light on the consideration before us and read as follows :

"2. I am inclined to think that whatever the contents of the application, the Munsif could not have made the order he did but except that an expression is used in the application which is somewhat cumbersome and forcible for describing the order dismissing the suit which was objected to but which is not unusual or unfamiliar in style having regard to the language frequently used in pleadings in the mofussil, there is nothing in the application to which exception can possibly be taken. The expression to which I have referred is to the following effect, that the order which had been made the day before and which was objected to, was "against rules and against law." I really do not know what the Munsif meant by what he said.

3. It is one of the commonest grounds adopted in a memorandum of appeal objecting to a decree or an order to say that it is contrary to rule or that the decision is contrary to law, and the codes in this country in more than one place speak of matters being contrary to some rule having the force of law and how as application based upon the ground that the previous order of the Court had been contrary to rule, or contrary to law, can be regarded as a threat or as improper, I am at a loss to understand. People sitting to administer justice and to hear the complaints of contending parties and alleged grievances of all sorts and kinds which come into Courts of law, and liable to have their own decisions challenged, and sometimes severely criticized, in the Courts of appeal, must not be too thin skinned. If the Munsif really thought that the vakil had said anything in the application beyond what the occasion demanded, the proper course was for him to deal with the application on the merits, and to communicate privately with the vakil as to any personal matter which, he thought arose. As a matter of fact I cannot see that there was anything personal in the application from first to last, and it is extremely unfortunate that the Munsif should from time to time somewhat

impetuously jump to the conclusion that some offence is meant where none is intended. The order is a perfectly childish one and must be quashed."

(Emphasis by us)

46. On this aspect, our attention has been drawn by Mr. Darpan Wadhwa, Id. *amicus curiae* to the pronouncement of the Supreme Court reported at (1978) 3 SCC 339, *In Re: S. Mulgaokar* wherein Krishna Iyer, J. laid down judicial norms for exercising contempt jurisdiction by a court. Six principles were laid down from paras 27 to 33 of the pronouncement. However, the rules laid down by the court as first, second, third, fifth and sixth principles provided the contours within which the courts would act as well as the necessary guidelines for the court considering action under the Contempt of Courts Act. We extract hereunder paras 27 to 30, 32 and 33 :

"27. The first rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardised by a gross and/or unfounded attack on the Judges, where the attack is calculated to obstruct or destroy the judicial process. The Court is willing to ignore, by a majestic liberalism, trifling and venial offences — the dogs may bark, the caravan will pass. The Court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of contempt.

28. The second principle must be to harmonise the constitutional values of free criticism, the Fourth Estate included, and the need for a fearless curial process and its presiding functionary, the Judge. **A happy balance has to be struck, the benefit of the doubt being given generously against the Judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant contemnors, be they the powerful press, gang-up of vested interests, veteran columnists of Olympian establishmentarians.** Not because the Judge, the human symbol of a high value, is personally armoured by a regal privilege but because “be you — the contemner — ever so high, the law — the People's expression of justice — is above you”. Curial courage overpowers arrogant might even as judicial benignity forgives errant or exaggerated critics. Indeed, to criticise the Judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy For, it blesseth him that gives and him that takes. Where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it, constitutionally speaking A free people are the ultimate guarantors of fearless justice. Such is the cornerstone of our Constitution; such is the touchstone of our Contempt Power, oriented on the confluence of free speech and fair justice which is the scriptural essence of our Fundamental Law. Speaking of the social philosophy and philosophy of law in an integrated manner as applicable to contempt of court, there is no conceptual polarity but a delicate balance, and judicial “sapience” draws the line. As it happens, our Constitution-makers foresaw the need for balancing all these competing interests. **Section 2(1)(c) of the Contempt of Courts Act, 1971 provides:**

“‘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) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court”

This is an extremely wide definition But, it cannot be read apart from the conspectus of the constitutional provisions within which the Founding Fathers of the Constitution intended all past and future statutes to have meaning. All laws relating to contempt of court had, according to the provisions of Article 19(2), to be “reasonable restrictions” on the exercise of the right of free speech. The courts were given the power—and, indeed, the responsibility— to harmonise conflicting aims, interests and values. This is in sharp contrast to the Phillimore Committee Report on Contempt of Court in the United Kingdom [(1974) bund. S. 794. paras 143-5, pp. 61-2] which did not recommend the defence of public interest in contempt cases.

29. The third principle is to avoid confusion between personal protection of a libelled Judge and prevention of obstruction of public justice and the community's confidence in that great process. The former is not contempt, the latter is, although overlapping spaces abound.

30. Because the law of contempt exists to protect public confidence in the administration of justice, the offence will not be committed by attacks upon the personal reputation of individual Judges as such. As Professor Goodhart has put it [See Newspapers on Contempt of Court, (1935) 48 Harv LR 885, 898] :

“Scandalising the court means any hostile criticism of the Judge as Judge; any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel”

Similarly, Griffith, C.J. has said in the Australian case of *Nicholls* [(1911) 12 CLR 280, 285] that:

“In one sense, no doubt, every defamatory publication concerning a Judge may be said to bring him into contempt as that term is used in the law of libel, but it does not follow that everything said of a Judge calculated to bring him into contempt in that sense amounts to contempt of court”.

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32. The *fifth* normative guideline for the Judges to observe in this jurisdiction is *not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation by judicial rectitude.*

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

(Emphasis by us)

47. Mr. Wadhwa, Id. *amicus curiae* has also drawn our attention to the judgment reported at (1999) 8 SCC 308, *Narmada Bachao Andolan v. Union of India & Ors.*, the extract whereof, relevant for the present consideration reads thus :

“6. While hypersensitivity and peevishness have no place in judicial proceedings — vicious stultification and

*vulgar debunking cannot be permitted to pollute the stream of justice. Indeed under our Constitution there are positive values like right to life, freedom of speech and expression, but **freedom of speech and expression does not include freedom to distort orders of the court and present incomplete and a one-sided picture deliberately, which has the tendency to scandalise the court.** Whatever may be the motive of Ms Arundhati Roy, it is quite obvious that she decided to use her literary fame by misinforming the public and projecting in a totally incorrect manner, how the proceedings relating to resettlement and rehabilitation had shaped in this Court and distorting various directions given by the Court during the last about 5 years. The writings referred to above have the tendency to create prejudice against this Court. She seems to be wholly ignorant of the task of the Court. The manner in which she has given a twist to the proceedings and orders of the Court is in bad taste and not expected from any citizen, to say the least.*

*7. We wish to emphasise that under the cover of freedom of speech and expression **no party can be given a licence to misrepresent the proceedings and orders of the court and deliberately paint an absolutely wrong and incomplete picture** which has the tendency to scandalise the court and bring it into disrepute or ridicule. ...”*

(Emphasis by us)

The court expressed displeasure but refrained from initiating proceedings of contempt of court in this case.

48. The observations by *S.P. Bharucha, J.* in the above judgment while recording disapproval of the statements complained of and not initiating action for contempt because “*the Court's shoulders are*

broad enough to shrug off their comments”, have been cited before us in support of the basic submission that the order of reference dated 5th April, 2016 in fact reflects hypersensitivity of the Id. Judge which had no basis in fact or in law.

49. The observations on this aspect in ***AIR 1969 Del 304, Banarsi Lal v. Smt. Neelam & Ors.*** are topical and deserve to be considered in extenso and read as follows :

“11. When the judicial impartiality and prestige of Courts has solid foundations in their traditional judicious objectivity and efficiency, as illustrated by their day-to-day functioning in the public gaze, the mere strong language in criticising their orders, cannot mar their image. Such Courts should not be hyper-sensitive in this matter. Examined according to this test, I am disinclined to hold that the paragraphs reproduced above constitute any actionable contempt of Court on the part of the Advocates. A fortiori there can be no actionable contempt by the petitioner. It was of course possible for the Advocates concerned to use more sober and restrained, though equally effective and persuasive, language, but then that is a question more of propriety than of contempt of Court. In this connection, it would not be right for this Court to be completely unmindful of the progressively decreasing standard of the teaching of English language in our country. I do not consider it proper to say anything more on this subject on this occasion except to emphasise once again that the summary power of punishing for contempt has to be used sparingly and only in serious cases. This Court must of necessity possess this power in the larger interest of sustaining the authority and impartiality of our judicial process, but its usefulness

depends on the wisdom and restraint with which it is exercised. To use it against professional lawyers, when there is no malice and no attempt to impair or obstruct the administration of justice, but when they seem to have genuinely exercised their professional right of criticism (may be in somewhat ill-advised language) in seeking justice for their clients, is to use it for a purpose for which it does not seem to have been intended. ...”

(Emphasis by us)

50. Our attention has been drawn to the Privy Council decision reported at *AIR 1936 PC 141, Andre Paul Terence Ambard v. The Attorney-General of Trinidad and Tobago*. In this case, the appellant had taken as a theme for his writing, the inequality of punishments under the caption “*The Human Element*” using as the basis for his article, two punitive sentences that were imposed by the two Judges of a particular Court, pointing out that the sentences in apparently similar circumstances did vary with the habit of mind of the particular Judge and that human element entered into the awarding of punishments. The writer had expressly disclaimed the suggestion that one of the said Judges was habitually severe or the other habitually lenient? It was held by the Privy Council that in the published article, it was mentioned that “*statements and comments which tend to bring the authority and administration of the law into disrepute and disregard*”. For these actions, the appellant was punished for contempt of court to pay a fine of 25 pounds or in default for an imprisonment of one month.

In appeal, the Privy Council considered the matter and held thus:

*“Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court. That is one class of contempt. Further any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful purpose of the Courts is a contempt of Court. The former class belongs to the category which Lord Hardwicke, L.C. characterised as ‘scandalising a Court or a Judge’ In re Read and Huggonson⁽¹⁾. That description of that class of contempt is to be taken subject to one and an important qualification. **Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act, as contrary to law or the public good, no Court could or would treat that as contempt of Court. In other words, whether the authority and position of an individual Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way: the wrong-headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, though outspoken, comments of ordinary men.***

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That the writer was perfectly justified in pointing out what was obvious and inevitable, namely, the part which the human element in a particular Judge plays in the award of sentences by him and that the writer therefore was not guilty of any contempt of Court in respect of what he wrote. Some very conscientious Judges have thought it their duty to visit particular crimes with exemplary sentences and others equally conscientious have thought it their duty to view the same crimes with leniency, and if to say that the human element enters into the awarding of sentence be contempt of Court, few in or out of the profession would escape.”

(Emphasis by us)

51. On the issue of when is jurisdiction under the contempt to punish for criminal contempt to be exercised, in ***AIR 1969 Delhi 6, Uma Dutt v. R.K. Sardana***, the Division Bench of this court best summed up the boundaries of exercise of the jurisdiction thus :

“3. Contempt of Court, it must never be forgotten, is a summary and a drastic process which this Court is very slow to resort to, except in cases of gross affront to the dignity of the Court or in cases where the judicial process has been sought intentionally to be seriously interfered with illegally It is resorted to only in the interest of the sanctity of the judicial process and the dignity and majesty of the Court of justice and not merely because a private party to a litigation, feeling aggrieved, seems to be inspired by a desire to settle his own scores with his opponent through contempt proceedings. ...”

52. It is therefore, trite that contempt jurisdiction has to be carefully invoked upon a deep consideration of *inter alia* the impact of the act

complained of on the dignity and majesty of the court, its tendency to or interference and obstruction in the judicial process and not merely for gratification of the desire of an individual to settle scores or on account of undue sensitivity of an individual judge.

The present reference has to be considered in the light of the above statutory and binding principles.

Factual analysis

53. Let us examine the present case in the light of the above principles.

54. It is trite that the averments made in CBI's reply especially para 10 thereof, in which the objected sub-para is contained, has to be seen in the context of the entire reply as well as the case set out by the parties.

55. We find that the above extract relied upon by the ld. trial judge is only the last part of the paragraph and has to be considered in the light of the other assertions made in the remaining portion of the para of the reply. We therefore, extract hereunder the remaining portion of para 10 of the CBI's reply :

“10. That, the averments made in para no. 16 are general in nature and hence require no comments. However, it is submitted that the investigation conducted so far has revealed that the present applicant received huge amounts from various Govt. Departments, for which the said company was not legally

entitled as the works were awarded either without calling the tender/quotations or by manipulating the tender conditions just to favour the applicant company. Moreover, the questioned account of the applicant company has been used for collecting the commission amounts from various firms/companies by the accused persons.

It is further submitted that day-to-day investigation is in progress and at a very crucial stage and as such the present request of the applicant company cannot be accepted at this stage. It is further submitted that there is enough evidence to establish that the huge amount emanating from M/s Endeavour Systems Pvt. Ltd. were siphoned out by accused persons. It is necessary to preserve and protect the property from dissemination, depletion or destruction by any mode. It is not only in the interest of investigation of the case but also in the interest of public at large that money obtained by fraudulent means is not permitted to be siphoned off or allowed to be used by accused persons for their benefit. The Hon'ble High Court of Bombay in the matter of Adarsh Co-operative Housing Society Ltd. vs UOI (Criminal Writ No. 570/2011, decided on 27.07.2011) in similar set of facts while disallowing to interfere with freezing of accounts interalia has observed:-

“We are unable to accept the submission that retention of money in the accounts is not necessary for investigation into the source of funds or to determine whether any account is benami. It is improper at this stage to draw such conclusions. Investigating agency must be given a free hand to determine the course of its investigation. We cannot trench upon its domain”.

This Hon'ble court would appreciate that once the investigating agency has prima facie reasons to suspect that money lying in the bank account of applicant company may have connection with the alleged offence then the same needs to be protected during investigation until it comes to a final

conclusion. The provision of Section 102 Cr.P.C. is wide enough and gives such power of seizure to investigating agency during investigation. The provision cannot be given a restricted meaning by ordering release of property especially when investigation is in progress and at a crucial stage.

It is humbly submitted that the transaction of money is suspected to be the proceeds of crime, which may have been shared by the accused persons in the subject matter of further probe to nail the perpetrator of crime and statutory provisions for dealing with such aspects of corruption as provided under PC Act. Even the Hon'ble Supreme Court in Mirza Iqbal Hussain Vs. State of UP has held that the proceeds of crime should be confiscated by the Court at the appropriate time. Keeping in view the facts and circumstances of this case, it would not be appropriate to pass any order order to defreeze the accounts in question at this crucial stage."

(Underlining by us)

56. The CBI has made extensive factual assertions premised on its investigations in paras 2 to 9 of the reply wherein CBI has replied to (the paras 3 to 15 of the application) with regard to the manner in which the amounts which were under investigation had been deposited in the seized bank accounts and the operation of the accounts was under investigation. Finally, in para 10 of the reply (wherein the CBI was replying to para 16 of the application), the CBI's has summed up its stand and it was specifically objected that the "*day-to-day investigation is in progress and at a very crucial stage and as such the present request of the applicant company cannot be accepted at this stage*". Reference was made to the pronouncement of the Bombay High Court dated 27th July, 2011 in

Crl. Writ No.570/2011 in the matter of *Adarsh Co-Operative Housing Society Ltd. v. UOI* to support the CBI's primary submission that it must be given a free hand to determine the course of its investigation and that the court could not trench upon its domain. The CBI specifically submitted that once it had *prima facie* reasons to suspect that money lying in the bank account of the applicant company may have a connection with the alleged offence, the amount needed to be protected till investigation comes to a final conclusion. In other words, the CBI was asserting that it was legally entitled to proceed with its investigation in accordance with law and preservation of status quo of the bank accounts was essential.

57. It appears that the ld. Special Judge (CBI) had passed a previous order dated 20th of January 2016 permitting return of documents to the alleged offenders at the stage of initial investigation itself, without the CBI having reached a logical conclusion thereon. This order was challenged by the CBI before this court by way of Crl.M.C.No.257/2016 which petition had been allowed by this court by the order dated 10th February, 2016.

58. We have scrutinized the entire reply dated 11th March, 2016 passed by the CBI very closely. While referring to the order dated 10th February, 2016 of the ld. Single Judge (in Crl. M.C. No. 257/2016), the CBI has averred that the ld. Single Judge has made observations in

the order while examining the previous order dated 20th January, 2016 passed by the trial court.

59. Read as a whole, the reply shows that it was because of this primary submission of CBI regarding inappropriateness of release of accounts, before a final view was taken by the CBI and the stage of its investigation, that reliance was placed in para 10 on the judgment of this court dated 10th of February 2016 whereby the Id. Single Judge had allowed Crl.MC.No.257/2016 setting aside the trial court order of 20th January, 2016.

60. In the perception of the CBI, the order of the Id. Single Judge dated 10th of February 2016 was thus to support the stand that the investigation by the CBI was still underway and that it would not be appropriate to defreeze the bank accounts at this critical juncture of the investigation inasmuch as this very argument had been accepted so far as return of seized documents pending investigation.

61. There is even an instance of the court considering the question as to whether citing overruled precedent would amount to contempt was considered by a Id. Single Judge of the Punjab & Haryana High Court in the pronouncement reported at ***AIR 2001 P&H 49 Balbir Singh Wasu v. Parbhandak Committee Gurudwara Sahib*** . It was held thus:

"25. It was further submitted that the plaintiff's counsel committed contempt of the trial Court as well as that of the appellate Court and he committed contempt of this court also by relying on AIR 1954 Pb. 125 which was overruled in AIR 1984 P&H 439. I do not think any contempt was committed by the plaintiff if he cited AIR 1954 Pb. 125. After going through both the judgments, the court could come to know that AIR 1954 Pb. 125 had been over-ruled in AIR 1984 P&H 439. Even otherwise no contempt is made out if the plaintiff did not intend duping the court. He had relied upon 1990 Civil Court Cases 406 in which AIR 1984 P&H 439 had been relied upon. By going through AIR 1984 P&H 439, the court would have known that AIR 1954 Pb. 125 had been overruled. No contempt was thus committed by the plaintiff/counsel."

Therefore, unless the intention was to mislead the court, erroneous citing of an overruled judgment may not *ipso facto* and *per se* be considered contumacious.

62. Let us also examine as to whether the extracted para of the CBI's reply dated 11th March, 2016 could be held to scandalize the court within the meaning of the expression in Section 2(c)(i) of the Contempt of Courts Act. In the pronouncement reported at ***(1981) 1 All ER 244 : Chokolingo v. Attorney General of Trinidad & Tobago***, Lord Diplock held thus:

"'Scandalising the court' is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific judge, is a scurrilous attack on the judiciary as a whole, which is

calculated to undermine the authority of the courts and public confidence in the administration of justice"

63. Can it be said that mere reliance on a paragraph of the judgment passed by a Single Judge of this Court, a court exercising superintendence over the court of the learned Trial Judge, tantamounts to scandalizing the court or lower its authority or tends to interfere with judicial proceedings or administration of justice? In our considered view, it certainly cannot.

64. As it has rightly been pointed out by Mr. Maninder Singh, learned ASG that our judicial system is one of strict hierarchy and the consideration of a lower court, is indubitably, bound by the law and dicta laid down by a higher court. The referral letter discloses that the learned Trial Judge felt that his authority was undermined by reference to the order passed by a learned Single Judge of this court and its reproduction.

65. The authority of the learned Special Judge, cannot be said to be so undermined, primarily for two reasons; the first being that placing reliance on judicial pronouncements is the very essence of the doctrine of precedent (*stare decisis*) and it is certainly open to the learned Trial Judge to accept or reject misconceived reliance on any precedent giving reasons in his own wisdom as to the applicability (or non-applicability) of such precedent to the facts of the case. The other reason is that it cannot be said that the reliance by the Central Bureau

of Investigation on the order passed by the learned Single Judge was perverse or irrelevant for the simple reason that the learned Single Judge of this court had, in fact, adjudicated on an application made under Section 482 of the CrPC pertaining to the same case at a stage in the investigation. Even then, there was no impediment or obstruction to the examination by the Id. Trial Judge who was bound to consider the relevance and applicability thereof and, if not appropriate, to reject such reliance and rule otherwise. The reproduction of an extract of the judgment of this court cannot “*scandalize or tends to scandalize, or lowers or tends to lower the authority of any court*”.

66. We also fail to see as to how the reference to the court order could intimidate a judge from discharge of judicial functions or obstruct him from proceeding in a case in accordance with law.

67. The other objections of the Id. trial judge (as summed in para 4 above) was that the extracted portion of the reply had been placed as a warning intended to vilify judicial office; wanting in fearness and justification, had a clear tendency to scandalize; was calculated psychological offence and mind game to intimidate the judge to seek orders in their favour or intended to pre-empt the decision on the application or that it was a friendly assault on the independence, impartiality and integrity of the judicial process. These observations are unsupported by the record, as discussed above. Certainly

reference to a judgment of a higher court setting aside a previous judgment in the same case could not be criticized on any of these counts.

68. So far as the objection of the Id. Special Judge-01(CBI) that the objected para had no bearing whatsoever on the issue to be adjudicated; contains no reasons in support of the opposition of the application; contains no principle of laws or that the observations therein related to the different issue altogether and reproduction thereof was unnecessary and unwarranted are concerned or that there is lack of justification for incorporating of the same, these relate to the discussion of the applicability of the judgment on the merits of the case. These observations could have only been made if the court had considered the application on its merits and the parties had the opportunity to make submissions thereon. This stage has not arisen

69. Given the stand of CBI, the observation by the Id. Special Judge-01(CBI) that the reference to the judgment dated 10th February, 2016 was irrelevant without considering the other submissions of the parties is premature and made without application of mind. A party has a right to place reliance on as well as cite any judicial pronouncement during the course of proceedings. It is thereafter upon the judge to opine on their relevancy after considering the context in which the judgment has been cited.

In the present case, as a matter of abundant caution, instead of merely orally citing the judgment, CBI has extracted a portion thereof in the reply dated 11th of March 2016 filed on court record.

70. Clearly, the learned trial judge has proceeded in the matter oblivious of the aforenoticed legal position regarding initiation of contempt proceedings against litigants and has misdirected himself in making the reference by the order dated 5th November, 2016 for initiation of proceedings under Section 15 of the Contempt of Courts Act, 1971.

71. In the case in hand, CBI has not criticized any order of the Id. trial judge. The reproduction of an extract of a judgment of the higher court, even if irrelevant, would not *per se* be treated as contumacious.

72. The above case also highlights the strong need to undertake judicial education on the procedural aspects as well as nuances of Contempt of Courts Act, 1971 as well as the fine and clear distinction between libelous and contumacious conduct. We are of the view that this aspect deserves to be brought to the notice of the Delhi Judicial Academy for initiating an intensive programme in this area of law.

73. Before parting with the case, we would like to record our deep appreciation with the in-depth research conducted by both Mr. Maninder Singh, Id. ASG as well as Mr. Darpan Wadhwa, Id. *amicus*

curiae and the meticulous assistance rendered by them to us in the present case.

Result

74. In view of the above discussion, clearly the reference was misconceived and untenable. No proceedings under the Contempt of Courts Act, 1971 against the officials of the CBI as recommended by the reference order dated 5th April, 2016 are warranted.

The reference is answered accordingly.

Additionally, the Registry shall forward a copy of this judgment to the Delhi Judicial Academy which would consider designing and implementing a programme on the procedural aspects as well as nuances of the Contempt of Courts Act, 1971 for judicial officers at all levels.

GITA MITTAL, J

ANU MALHOTRA, J

MARCH 09, 2017

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