

A **BAL KISHAN GIRI v. STATE OF UTTAR PRADESH**

SUPREME COURT, INDIA
 (2014) 7 SUPREME COURT CASES 24
 DR BS CHAUHAN J
 DR AK SIKRI J

B [CRIMINAL APPEALS NO: 555 OF 2010[†] & 686 OF 2010[‡]]
 28 MAY 2014

C **CRIMINAL LAW:** Contempt of court – Criminal contempt – Scandalising or lowering authority of court – Allegations that accused in a triple murder case had links with three Judges of High Court including one J who would favour accused in getting bail since he had granted bail to two other accused illegally and with ulterior motive – Held, such baseless allegations are too serious, scandalous, and admittedly, sufficient to undermine majesty of law and dignity of court amounting to contempt – Plea by appellant contemnor, a practising lawyer that he was misguided by other advocates, is an afterthought since he must have been fully aware of consequences of allegations made by him – Hence, sentence of simple imprisonment for one month imposed by High Court, confirmed – Contempt of Courts Act, 1971 – S. 2(c) – Advocates Act, 1961, ss. 35 and 36

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E **CRIMINAL PROCEDURE:** Contempt of court – Particular statutes and rules – Allahabad High Court Rules, 1952 – Ch. XXXV-E R. 6 – Non-conformity with R. 6 alleged – Effect – Held, in absence of anything to show as to what material was not considered by High Court that was put up as defence by appellant contemnor, strict non-compliance with R. 6 inconsequential

F **CRIMINAL PROCEDURE:** Contempt of court – Defences – Apology – Connotation – Held, ‘apology’ means regretful acknowledgement or an excuse for failure – It is an explanation offered to a person affected by one’s action that no offence was intended – Further held, ‘apology’ should be unquestionable in sincerity and tempered with sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment – Words and Phrases – ‘Apology’

G **CRIMINAL PROCEDURE:** Contempt of court – Defences – Apology – Punishment for contempt – Remission of, on tendering apology – Nature of apology required for – Held, apology cannot be a defence, justification, or a calculated strategy to avoid punishment for act which tantamount to contempt of court, and is not to be accepted as matter of course – However, apology can be accepted where conduct for which apology is given is such that it can be ignored without compromising dignity of court, or evidences real contrition, and is sincere – Apology

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I [†] From the Judgment and Order dated 5-2-2010 passed by the High Court of Judicature of Allahabad in Contempt Application (Crl.) No. 15 of 2009

[‡] From the Judgment and Order dated 5-2-2010 passed by the High Court of Judicature of Allahabad in Contempt Application (Crl.) No. 16 of 2009

cannot be accepted where it is hollow, there is no remorse, no regret, no repentance, or if it is only a device to escape rigour of law ie, it is merely "paper apology" – On facts held, High Court was justified in not accepting appellant's apology which was not bona fide – Possibility that there might have been inner impulse of outburst since his nephew had been murdered, but that cannot be excuse for a practising lawyer to raise fingers at court by insinuating bias and predetermination against Judges of High Court – Such casting of bald, oblique, unsubstantiated aspersions not only causes agony and anguish to Judges concerned but also shakes confidence of public in judiciary – Hence, sentence of simple imprisonment for one month confirmed – Contempt of Courts Act, 1971 – S. 12(1) & Explan – Advocates Act, 1961, Ss. 35 and 36

CRIMINAL PROCEDURE: Contempt of court – Defences – Apology – Punishment for contempt – Remission of, on tendering apology – Belated apology – Effect – Held, apology for criminal contempt of court must be offered at the earliest since belated apology hardly shows contrition which is essence of purging of contempt – However, an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage if the accused contemnors make it bona fide – Present case was not such a case – Apology rightly not accepted by High Court – Contempt of Courts Act, 1971, S. 12(1) & Explan.

CRIMINAL LAW: Contempt of Court Act, 1971 – S. 12 – Punishment for contempt – Nature and exercise of power – Held, power to punish for contempt is rare species of judicial power which by very nature calls for exercise with great care and caution – Further held, such power ought to be exercised only where silence is no longer an option – Power to punish for contempt is to secure public respect and confidence in judicial process

CRIMINAL PROCEDURE: Contempt of Court Act, 1971 – S. 12(1) and (2) – Power to punish for contempt – Statutory limitation – Held, power to punish for contempt is subject to limitations prescribed in S. 12(2) – Hence, fine of Rs 20,000 imposed on appellant reduced to Rs 2000

The appellant advocate, during the pendency of the bail applications of the accused in triple-murder case, where one of the victims was the nephew of the appellant, filed an application before the Chief Justice of the High Court alleging that the accused were closely related to a local MLA and ex MP, and had links with three Judges of the High Court including one J who had earlier served as a judicial officer in the District Court. He expressed his apprehension that J would favour the accused persons to get bail since he had granted bail to two other accused illegally and with ulterior motive.

The High Court examined the complaint and placed the matter on the judicial side. A show-cause notice was issued to the appellant as to why the criminal contempt proceedings should not be initiated against him. The appellant presented an unconditional apology submitting that the application was made by him as he had been misguided by the advocates of the District Court and he was in great mental tension as his nephew had been murdered.

- A The High Court convicted the appellant by the impugned judgment sentencing him to undergo simple imprisonment for one month and to pay a fine of Rs 20,000 with default stipulation. Hence, the instant appeal.

Dismissing the appeal, the Supreme Court

- B Held:

The allegations made by the appellant against the three Judges of the High Court are too serious, scandalous and, admittedly, sufficient to undermine the majesty of law and dignity of court and that too without any basis. The appellant is a practising advocate. The plea taken by him that he had been misguided by other advocates is an afterthought. He must have been fully aware of the consequences of what he has written. (Para 11)

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M.B. Sanghi v. High Court of Punjab and Haryana, (1991) 3 SCC 600 : 1991 SCC (Cri) 897

Asharam M. Jain v. A.T. Gupta, (1983) 4 SCC 125 : 1983 SCC (Cri) 771

- D *Debabrata Bandopadhyay v. State of W.B.*, AIR 1969 SC 189 : 1969 Cri LJ 401

Mulk Raj v. State of Punjab, (1972) 3 SCC 839 : 1973 SCC (Cri) 24

Hailakandi Bar Assn. v. State of Assam, (1996) 9 SCC 74 : 1996 SCC (Cri) 921

C. Elumalai v. A.G.L. Irudayaraj, (2009) 4 SCC 213

Ranveer Yadav v. State of Bihar, (2010) 11 SCC 493 : (2011) 1 SCC (Cri) 200

Baradakanta Mishra v. Registrar of Orissa High Court, (1974) 1 SCC 374 : 1974 SCC (Cri) 128

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Bar Council of Maharashtra v. M.V. Dabholkar, (1976) 2 SCC 291

Mohd. Zahir Khan v. Vijai Singh, 1992 Supp (2) SCC 72 : 1992 SCC (Cri) 526

Ministry of Information & Broadcasting, In re, (1995) 3 SCC 619

Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai, (2008) 14 SCC 561

Vishram Singh Raghubanshi v. State of U.P., (2011) 7 SCC 776 : (2011) 3 SCC (Cri) 298

- F

S. Mulgaokar, In re, (1978) 3 SCC 339 : 1978 SCC (Cri) 402

H.G. Rangangoud v. State Trading Corpn. of India Ltd., (2012) 1 SCC 297 : (2012) 1 SCC (Cri) 539

Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273 : (2012) 1 SCC (Civ) 88 : (2012) 1 SCC (Cri) 528 : (2012) 1 SCC (L&S) 83

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T.C. Gupta v. Hari Om Prakash, (2013) 10 SCC 658 : (2014) 1 SCC (Cri) 18

Arun Kumar Yadav v. State of U.P., (2013) 14 SCC 127 : (2014) 2 SCC (Civ) 412 : (2014) 4 SCC (Cri) 124

L.D. Jaikwal v. State of U.P., (1984) 3 SCC 405 : 1984 SCC (Cri) 421; *T.N. Godavarman Thirumulpad (102) v. Ashok Khot*, (2006) 5 SCC 1, relied on

- H *Jennison v. Baker*, (1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA), approved

M.B. Sanghi v. High Court of Punjab and Haryana, (1991) 3 SCC 600 : 1991 SCC (Cri) 897

Asharam M. Jain v. A.T. Gupta, (1983) 4 SCC 125 : 1983 SCC (Cri) 771, relied on *Jennison v. Baker*, (1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA), approved

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Being a member of the Bar, it was the appellant's duty not to demean and disgrace the majesty of justice dispensed by a court of law. It is a case where insinuation of bias and predetermined mind has been levelled by a practising lawyer against three Judges of the High Court. Such casting of bald, oblique, unsubstantiated aspersions against the Judges of the High Court not only causes agony and anguish to the Judges concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice. The judicial process is based on probity, fairness and impartiality which is unimpeachable. Such an act especially by the members of the Bar who are another cog in the wheel of justice is highly reprehensible and deeply regretted. Absence of motivation is no excuse. (Para 21)

The High Court has not committed any error in not accepting the appellant's apology since the same is not *bona fide*. There might have been an inner impulse of outburst as the appellant alleges that his nephew had been murdered, but that is no excuse for a practising lawyer to raise fingers against the Court. However, in view of Sections 12(1) and (2) of the Contempt of Courts Act, 1971 the fine of Rs 20,000 imposed on the appellant by the High Court is reduced to Rs 2000. (Paras 22 and 24)

Bal Kishan Giri, In re, (2010) 69 ACC 31 sub nom Anil Kumar, In re, Contempt Application (Cri) No. 16 of 2009, modified
Rizwan v. State of U.P., Criminal Misc. Bail Application No. 924 of 2009, order dated 17-7-2009 (All), cited

P-D/53378/CR

Advocates who appeared in this case:

For the appellant - Jitendra Mohan Sharma, Ms Shikha Bani, Sameer Singh and Pahlad Singh Sharma, Advocates
For the respondent - Irshad Ahmad, Additional Advocate General (Abhishth Kumar and Ms Archana Singh, Advocates)

Chronological list of cases cited on page(s):

Arun Kumar Yadav v. State of U.P. (2013) 14 SCC 127 : (2014) 2 SCC (Civ) 412 : (2014) 4 SCC (Cri) 124
T.C. Gupta v. Hari Om Prakash (2013) 10 SCC 658 : (2014) 1 SCC (Cri) 18
H.G. Rangangoud v. State Trading Corpn. of India Ltd. (2012) 1 SCC 297 : (2012) 1 SCC (Cri) 539
Maninderjit Singh Bitta v. Union of India (2012) 1 SCC 273 : (2012) 1 SCC (Civ) 88 : (2012) 1 SCC (Cri) 528 : (2012) 1 SCC (L&S) 83
Vishram Singh Raghubanshi v. State of U.P. (2011) 7 SCC 776 : (2011) 3 SCC (Cri) 298
Ranveer Yadav v. State of Bihar (2010) 11 SCC 493 : (2011) 1 SCC (Cri) 200
Bal Kishan Giri, In re sub nom Anil Kumar, In re, Contempt Application (Cri) No. 16 of 2009 (2010) 69 ACC 31
C. Elumalai v. A.G.L. Irudayaraj (2009) 4 SCC 213
Rizwan v. State of U.P. Criminal Misc. Bail Application No. 924 of 2009, order dated 17-7-2009 (All)
Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai (2008) 14 SCC 561
T.N. Godavarman Thirumulpad (102) v. Ashok Khot (2006) 5 SCC 1

- A *Hailakandi Bar Assn. v. State of Assam* (1996) 9 SCC 74 : 1996 SCC (Cri) 921
Ministry of Information & Broadcasting, In re (1995) 3 SCC 619
Mohd. Zahir Khan v. Vijai Singh 1992 Supp (2) SCC 72 : 1992 SCC (Cri) 526
M.B. Sanghi v. High Court of Punjab and Haryana (1991) 3 SCC 600 : 1991 SCC (Cri) 897
L.D. Jaikwal v. State of U.P. (1984) 3 SCC 405 : 1984 SCC (Cri) 421
- B *Asharam M. Jain v. A.T. Gupta* (1983) 4 SCC 125 : 1983 SCC (Cri) 771
S. Mulgaokar, In re (1978) 3 SCC 339 : 1978 SCC (Cri) 402
Bar Council of Maharashtra v. M.V. Dabholkar (1976) 2 SCC 291
Baradakanta Mishra v. Registrar of Orissa High Court (1974) 1 SCC 374 : 1974 SCC (Cri) 128
- C *Mulk Raj v. State of Punjab* (1972) 3 SCC 839 : 1973 SCC (Cri) 24
Jennison v. Baker (1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA)
Debabrata Bandopadhyay v. State of W.B. AIR 1969 SC 189 : 1969 Cri LJ 401

JUDGMENT

D **Dr BS Chauhan J:**

[1] In this appeal, the impugned judgment and order dated 5-2-2010 passed by the High Court of Judicature of Allahabad in *Bal Kishan Giri, In re*¹, by which the appellant stood convicted for committing criminal contempt under the provisions of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”) and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs 20,000 and in default to undergo simple imprisonment for two weeks, has been assailed.

[2] The facts and circumstances giving rise to this appeal are that: an FIR was lodged in Police Station Baleni, District Baghpat on 23-5-2008 by Anil Kumar, appellant in connected Criminal Appeal No. 686 of 2010 alleging that his younger brother Sunil Kumar along with Puneet Kumar Giri, who were residing in Sitaram Hostel of the Meerut College, were not traceable and went missing the previous evening. Another inmate of the same hostel Sudhir Kumar was also reported untraceable. The very next day, three dead bodies of the said missing persons were found on the banks of River Hindon. A criminal case was therefore registered. During investigation, it came to the notice of the police authorities that the place of occurrence fell within the territorial jurisdiction of Police Station Kotwali, Meerut, and thus investigation on being transferred to Police Station Kotwali, Meerut, the case was registered as Case Crime No. 190 of 2008.

[3] During investigation, many accused persons including one Haji Izlal were arrested. They moved bail applications before the Meerut District Court which stood rejected. Aggrieved, all the accused persons filed bail applications before the High Court of Allahabad. It was on 14-8-2009 during the pendency of the said applications that the appellant submitted an

1 (2010) 69 ACC 31 *sub nom Anil Kumar, In re*, Contempt Application (Cri) No. 16 of 2009

application to the Hon'ble Chief Justice of the Allahabad High Court alleging that the accused therein were gangsters and had accumulated assets worth crores of rupees by their criminal activities. The accused persons were closely related to a local MLA and ex MP and they had links with the Judges of the High Court including Mr Justice S.K. Jain who had earlier served as a judicial officer in Meerut Court. The appellant expressed his apprehension that Mr Justice S.K. Jain would favour the accused persons to get bail. A copy of the said complaint was also sent to the Chairman, Bar Council of U.P.

[4] The High Court examined the complaint and placed the matter on the judicial side on 12-11-2009. The Court issued a show-cause notice dated 14-8-2009 to the appellant as to why the criminal contempt proceedings be not initiated against him under the provisions of the Act. The appellant submitted an unconditional apology dated 21-11-2009 submitting that the application was sent by him as he had been misguided by the advocates of District Meerut and he was in great mental tension as his nephew had been murdered.

[5] The High Court after completing the trial convicted the appellant *vide* impugned judgment and order dated 5-2-2010¹ and awarded the sentence as referred to hereinabove. Hence, this appeal.

[6] Mr J.M. Sharma, learned Senior Counsel appearing for the appellant has submitted that the show-cause notice was not in consonance with the provisions of Chapter XXXV-E, Rule 6 of the Allahabad High Court Rules, 1952 (hereinafter referred to as "the Rules"). Thus, all subsequent proceedings stood vitiated. More so, the appellant is a practising advocate and had written the said complaint under a mental tension as his nephew had been murdered, and on being misguided by the advocates of the Meerut Court. Once the appellant has tendered an absolute and unconditional apology, punishment was not warranted and fine imposed therein is contrary to the statutory provisions of the Act. Thus, the appeal deserves to be allowed.

[7] Per contra, Mr Irshad Ahmad, learned counsel appearing for the State has opposed the appeal contending that very wild and scandalous allegations had been made by the appellant not only against one Judge but against various judicial officers and merely tendering an apology is not enough. As the appellant had accepted that he had written the letter and also owned its contents, and filed the reply to the show-cause notice issued to him, even if, the statutory rules have not been complied with, the order would not stand vitiated. The appeal lacks merit and is liable to be dismissed.

¹ *Bal Kishan Giri, In re*, (2010) 69 ACC 31 *sub nom Anil Kumar, In re*, Contempt Application (Cri) No. 16 of 2009

A [8] We have considered the rival submissions made by the learned counsel for the parties and perused the record.

[9] The relevant part of the complaint filed by the appellant reads as under:

B 4. That Akhalakh family have good connection with all the Judges posted at Meerut. Hon'ble Mr Justice S.C. Nigam was posted in Meerut in the year 1981 to 1984 and 2002-2003 on the posts of Additional Civil Judge/ACJM and Additional District and Sessions Judge respectively. Hon'ble Justice Mr S.K. Jain was also posted at Meerut as Additional District and Sessions Judge in 2002-2003.

C 5. That all the Hon'ble Justices V.K. Verma, S.K. Jain and S.C. Nigam have been promoted as High Court Judges from the cadre of District Judges. Hon'ble Justice Mr S.K. Jain and Hon'ble Justice S.C. Nigam remained posted in Civil Court, Meerut as Additional District Judge together in the year 2002-2003 and have been promoted from Meerut Judgeship to the cadre of District Judge. They are very good friends. D Hon'ble Mr Justice V.K. Verma also has very good intimacy with them. They have made a caucus with V.P. Srivastava, Senior Advocate of Allahabad High Court for granting major bails to known accused in criminal cases illegally and with ulterior motives.

E Hon'ble Justice V.K. Verma has granted bails to two accused, namely, Rizwan and Wassim in aforesaid famous triple murder case of Meerut in Bail Applications Nos. 924 and 1238 of 2009 on 17-7-2009² illegally and with ulterior motives.

F [10] The appellant complainant further expressed his apprehension of having no confidence and faith in any of the three Judges of the Allahabad High Court as they could pass any order at the behest of Shri V.P. Srivastava, Senior Advocate. In sum and substance, the offending part of the allegation had been as under:

G (1) Akhlaq had good relations with Mr Justice S.C. Nigam from the date since he was posted at Meerut on three terms, (2) that Justice V.K. Verma had good intimacy with the family of the accused and the accused have made a clique along with one V.P. Srivastava, Senior Advocate of the Allahabad High Court for procuring major bails illegally and with ulterior motives. Mr Justice V.K. Verma has admitted bail to two accused, namely, Rizwan and Wasim illegally and with ulterior motives. The three Judges (V.K. Verma, S.K. Jain and S.C. Nigam) may pass any order at the behest H of V.P. Srivastava, Senior Advocate.

I [11] The allegations made by the appellant against the three Judges of the High Court are too serious, scandalous and, admittedly, sufficient to undermine the majesty of law and dignity of court and that too without any basis. The appellant is a practising advocate. The plea taken by him that he

² *Rizwan v. State of U.P.*, Criminal Misc. Bail Application No. 924 of 2009, order dated 17/7/2009 (All)

had been misguided by other advocates is an afterthought. He must have been fully aware of the consequences of what he has written. The averment to the effect that provisions of Chapter XXXV-E of the Rules had not been strictly observed remains insignificant as the appellant had not only admitted transcribing the complaint but also its contents. The appellant had submitted the reply to the show-cause notice issued by the High Court of Allahabad on the judicial side. In such a fact situation, even if, for the sake of argument it is accepted that the aforesaid Rules have not been complied with strictly, we are not willing to accept the case of the appellant for the reason that Mr J.M. Sharma, learned Senior Counsel for the appellant could not show as to what was that material which was not considered by the High Court that had been put up as a defence by the appellant resulting in any miscarriage of justice.

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[12] This Court in *M.B. Sanghi v. High Court of Punjab and Haryana*³, while examining a similar case observed: (SCC p. 602, para 2)

2. ... The foundation of [judicial] system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society.

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[13] In *Asharam M. Jain v. A.T. Gupta*⁴, while dealing with the issue, this Court observed as under: (SCC p. 127, para 3)

3. ... The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. It is not that Judges need be protected; Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected.

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[14] In *Jennison v. Baker*⁵, All ER p. 1006d, it was observed: (QB p. 66 H)

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... 'The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.'

[15] The appellant has tendered an absolute and unconditional apology which has not been accepted by the High Court. The apology means a regretful acknowledgement or an excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionable in sincerity. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment.

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3 (1991) 3 SCC 600 : 1991 SCC (Cri) 897

4 (1983) 4 SCC 125 : 1983 SCC (Cri) 771

5 (1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA)

- A [16] Sub-section (1) of Section 12 of the Act and the Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on an apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage if the accused makes it *bona fide*. A
- B conduct which abuses and makes a mockery of the judicial process of the court is to be dealt with iron hands and no person can tinker with it to prevent, prejudice, obstruct or interfere with the administration of justice. There can be cases where the wisdom of rendering an apology dawns upon only at a later stage. Undoubtedly, an apology cannot be a defence, a
- C justification, or an appropriate punishment for an act which tantamounts to contempt of court. An apology can be accepted in case where the conduct for which the apology is given is such that it can be “ignored without compromising the dignity of the court”, or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a
- D device to escape the rigour of the law. Such an apology can merely be termed as “paper apology”.

- E [17] In *L.D. Jaikwal v. State of U.P.*⁶, this Court noted that it cannot subscribe to the “slap-say sorry-and forget” school of thought in administration of contempt jurisprudence. Saying “sorry” does not make the slapper poorer. [See also *T.N. Godavarman Thirumulpad (102) v. Ashok Khot*⁷.] So an apology should not be “paper apology” and expression of sorrow should come from the heart and not from the pen; for it is one thing to “say” sorry, it is another to “feel” sorry.

- F [18] An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the “contrition which is the essence of the purging of contempt”. Of course, an apology must be offered and that too clearly and at the earliest opportunity. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence,
- G the court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward. (*Vide Debabrata Bandopadhyay v. State of W.B.*⁸, *Mulk Raj v. State of Punjab*⁹, *Hailakandi Bar Assn. v. State of Assam*¹⁰, *C. Elumalai v. A.G.L. Irudayaraj*¹¹ and
- H *Ranveer Yadav v. State of Bihar*¹².)

6 (1984) 3 SCC 405 : 1984 SCC (Cri) 421

7 (2006) 5 SCC 1 : AIR 2006 SC 2007

8 AIR 1969 SC 189: 1969 Cri LJ 401

I 9 (1972) 3 SCC 839 : 1973 SCC (Cri) 24

10 (1996) 9 SCC 74 : 1996 SCC (Cri) 921

11 (2009) 4 SCC 213

12 (2010) 11 SCC 493 : (2011) 1 SCC (Cri) 200

[19] This Court has clearly laid down that an apology tendered is not to be accepted as a matter of course and the court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same. The use of insulting language (*sic* and later on tendering an apology) does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted. (*Vide Baradakanta Mishra v. Registrar of Orissa High Court*¹³, *Bar Council of Maharashtra v. M.V. Dabholkar*¹⁴, *Asharam M. Jain v. A.T. Gupta*¹⁵, *Mohd. Zahir Khan v. Vijai Singh*¹⁶, *Ministry of Information & Broadcasting, In re*¹⁷, *Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai*¹⁷ and *Vishram Singh Raghubanshi v. State of U.P.*¹⁸)

[20] That the power to punish for contempt is a rare species of judicial power which by the very nature calls for exercise with great care and caution. Such power ought to be exercised only where “silence is no longer an option.” (See *S. Mulgaokar, In re*¹⁹, *H.G. Rangangoud v. State Trading Corpn. of India Ltd.*²⁰, *Maninderjit Singh Bitta v. Union of India*²¹, *T.C. Gupta v. Hari Om Prakash*²² and *Arun Kumar Yadav v. State of U.P.*²³). Power of courts to punish for contempt is to secure public respect and confidence in judicial process. Thus, it is a necessary incident to every court of justice.

[21] Being a member of the Bar, it was the appellant’s duty not to demean and disgrace the majesty of justice dispensed by a court of law. It is a case where insinuation of bias and predetermined mind has been levelled by a practising lawyer against three Judges of the High Court. Such casting of bald, oblique, unsubstantiated aspersions against the Judges of the High Court not only causes agony and anguish to the Judges concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice. The judicial process is based on probity, fairness and impartiality which is unimpeachable. Such an act especially by the members of the Bar who are another cog in the wheel of justice is highly reprehensible and deeply regretted. Absence of motivation is no excuse.

13 (1974) 1 SCC 374 : 1974 SCC (Cri) 128

14 (1976) 2 SCC 291 : AIR 1976 SC 242

4 (1983) 4 SCC 125 : 1983 SCC (Cri) 771

15 1992 Supp (2) SCC 72 : 1992 SCC (Cri) 526

16 (1995) 3 SCC 619

17 (2008) 14 SCC 561

18 (2011) 7 SCC 776 : (2011) 3 SCC (Cri) 298

19 (1978) 3 SCC 339 : 1978 SCC (Cri) 402

20 (2012) 1 SCC 297 : (2012) 1 SCC (Cri) 539

21 (2012) 1 SCC 273 : (2012) 1 SCC (Civ) 88 : (2012) 1 SCC (Cri) 528 : (2012) 1 SCC (L&S) 83

22 (2013) 10 SCC 658 : (2014) 1 SCC (Cri) 18

23 (2013) 14 SCC 127 : (2014) 2 SCC (Civ) 412 : (2014) 4 SCC (Cri) 124

A [22] In view of the above, we are of the considered opinion that the High Court has not committed any error in not accepting the appellant's apology since the same is not *bona fide*. There might have been an inner impulse of outburst as the appellant alleges that his nephew had been murdered, but that is no excuse for a practising lawyer to raise fingers against the Court.

B [23] Section 12(1) of the Act provides that if the court is satisfied that contempt of court has been committed, it may punish the contemnor with simple imprisonment for a term which may extend to six months, or with fine which may extend to Rs 2000, or with both. Section 12(2) further provides that:

C 12. (2) Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

D Thus, the power to punish for contempt of court is subject to limitations prescribed in sub-section (2) of the Act.

[24] Hence, in view of the above, the fine of Rs 20,000 imposed on the appellant by the High Court by way of the impugned judgment and order¹ is reduced to Rs 2000 and is directed to deposit the said fine forthwith.

E [25] We find no force in the appeal which is accordingly dismissed. The appellant must surrender to serve out the sentence forthwith, failing which, the learned Chief Judicial Magistrate, Meerut, would secure his custody and send him to jail to serve out the sentence. A copy of the order be sent to the learned Chief Judicial Magistrate, Meerut, for information and compliance.

F *Criminal Appeal No. 686 of 2010*

G [26] In view of the judgment passed today in *Bal Kishan Giri v. State of U.P.*²⁴, this appeal is dismissed. However, the fine of Rs 20,000 imposed on the appellant by the High Court by way of the impugned judgment and order, is reduced to Rs 2000 and is directed to deposit the said fine forthwith.

H [27] The appellant must surrender to serve out the sentence forthwith, failing which, the learned Chief Judicial Magistrate, Meerut, would secure his custody and send him to jail to serve out the sentence. A copy of the order be sent to the learned Chief Judicial Magistrate, Meerut, for information and compliance.

1 *Bal Kishan Giri, In re*, (2010) 69 ACC 31 *sub nom Anil Kumar, In re*, Contempt Application (Cri) No. 16 of 2009

24 Set out in paras 1 to 25, above.