Pritam Pal vs High Court Of Madhya Pradesh,Jabalpur ... on 19 February, 1992

Equivalent citations: 1992 AIR 904, 1992 SCR (2) 864, AIR 1992 SUPREME COURT 904, 1992 AIR SCW 681, (1992) 1 SCR 864 (SC), (1992) 2 JT 41 (SC), (1992) 1 APLJ 53.1, 1992 APLJ(CRI) 22, 1992 CRILR(SC MAH GUJ) 244, 1993 (1) SCC(SUPP) 529, 1993 SCC(CRI) 356, 1992 (2) JT 41, 1992 (1) SCR 864, (1993) MADLW(CRI) 18, (1992) SC CR R 353, (1993) EASTCRIC 614, (1992) JAB LJ 253, (1992) 1 SCJ 524, (1992) 1 CURCRIR 810, (1992) 2 SERVLR 16, (1992) 2 CRILC 161, (1992) 2 BLJ 295, (1992) 2 CHANDCRIC 98, (1992) 1 CIVLJ 746, (1992) 1 CRIMES 1012

Author: S.R. Pandian

Bench: S.R. Pandian

PETITIONER:
PRITAM PAL

Vs.

RESPONDENT:
HIGH COURT OF MADHYA PRADESH,JABALPUR THROUGH REGISTRAR

DATE OF JUDGMENT19/02/1992

BENCH:
PANDIAN, S.R. (J)
BENCH:
PANDIAN, S.R. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1992 AIR 904 1992 SCR (2) 864
1993 SCC Supl. (1) 529 JT 1992 (2) 41
1992 SCALE (1)416

ACT:
Constitution of India, 1950:
Articles 129 and 215-Contempt Jurisdiction-Power of Supreme Court/High Court to punish for Contempt of itself-Whether could be curtailed or abridged by ordinary legislation or Rules-Procedure for contempt proceedings being summary, power to be used sparingly-Procedure to be fair and contemner to be given an opportunity of defending himself.

Contempt of Courts Act, 1971:

Sections 2(b), 17 and 20-Criminal Contempt-Advocate, practising at High Court making libellous allegations against sitting High Court Judges-Whether amounts to interference with administration of justice and affects the image, dignity and high esteem of office of judge of High Court-Sentence of two months' simple imprisonment awarded by High Court-Whether justified.

HEADNOTE:

The appellant, an Advocate practising in the High Court was earlier working in the Defence Accounts Department, on re-employment, after retiring from the Army. He had filed a Writ Petition before the High Court, claiming certain benefits like pension, gratuity, pay and allowances etc., pertaining to the service rendered by him in the Defence Accounts Department and the Army. The High Court dismissed the Writ Petition. It also dismissed the appellant's review application. This Court also dismissed his Special Leave Petition against the High Court's order.

Thereafter, the appellant, moved a Contempt Petition under Section 16 of the Contempt of Courts Act, 1971 making some serious allegations against the two Judges of the High Court, who dismissed his Writ Petition and also the Review Petition. A Division Bench of the High Court summarily dismissed the contempt petition.

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Meanwhile, the Registry of the High Court examined the allegations made in the affidavit filed by the appellant under Rule 5 of the Rules regarding contempts framed by the High Court. A Division Bench of the High Court, before which the matter was placed on the order of the Chief Justice, took cognizance of the criminal contempt and directed issue of notice to the appellant directing him to show cause as to why he should not be punished for contempt of Court. The appellant filed his reply raising certain preliminary objections, contending that the notice was bad for the reasons that (1) the Section of the Act under which cognizance had been taken was not specifically mentioned; (2) the notice did not show sufficient cause as to why the words and expressions used in the offending portions marked had been construed as contemptuous (3) the procedure followed by the High Court was contrary to the rules framed by it; and (4) no consent of the Advocate General had been obtained, and prayed for discharge of the rule of contempt.

Meanwhile, on the basis of the High Court's Order, the appellant inspected the Court records relating to this matter, and thereafter, he was also informed that the proceedings were under the provisions of Article 215 of the Constitution of India.

After examining the remarks made by the appellant in his

contempt petition the High Court rejected the objections of the appellant/contemner and held that the contemner was guilty of criminal contempt of not only scandalising the Court and lowering its authority but also substantially interfering with the due course of justice. Taking note of the defiant attitude of the contemner who even did not think it necessary to apologise but tried to justify the aspersions, the High Court sentenced the contemner to suffer simple imprisonment for two months.

In the appeal before this Court, the contemner who appeared before the Court in person, contended that the order of the High Court should be set aside on the ground of procedural irregularities in that (1) that the offending remarks had not been communicated to him as per Rules 5 and 9 framed by the High Court; (2) that the cognizance of the criminal contempt had not been taken in conformity with Section 15 of the Act; (3) that the procedure, after cognizance as prescribed under Section 17 of the Act had not been followed; and (4) that Article 215 of the Constitution of India did not prescribe any procedure to be followed. He

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also contended that he had not been given a fair and full hearing and that the Judges had browbeaten and unjustly convicted him ignoring the well settled principle that every person had an inalienable right of making fair criticism, and that the order in question was pre-conceived and pre-judged one. In his written statement also he made certain remarks about the Judges of the High Court, in attempting to justify his action which had led to the initiation of proceedings for contempt of Court before the High Court.

Dismissing the appeal, this Court,

HELD: 1.1 The power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively, is an inherent power and the jurisdiction vested is a special one not derived from any other statute, but derived only from Articles 129 and215 of the Constitution of India. Therefore, the constitutionally vested right cannot be either abridged by any legislation including Contempt of Courts Act or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The special feature of the procedure to be followed in a contempt proceeding being summary procedure, which is recognised not only in India but also abroad, the caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself. [883B-D]

Sukhdev Singh Sodhi v. The Chief Justice and Judges of the PEPSU High Court, [1954] SCR 454; R.L. Kapur v. State of Madras, [1972] 1 SCC 651; Delhi Judicial Service Association

v. State of Gujarat, [1991] 4 SCC 406; S. Mulgaokar, [1978] 3 SCC 339; Brahma Prakash Sharma and Others v. The State of Uttar Pradesh, [1953] SCR 1169; and D.N. Taneja v. Bhajan Lal, [1988] 3 SCC 26 relied on.

Hira Lal Dixit v. State of U.P., AIR 1954 SC 743; Advocate General, Bihar v. M.P. Khair Industries, [1980] 3 SCC 311; Ashram M. Jain v. A.T. Gupta, [1983] 4 SCC 125 and M.B. Sanghi v. High Court of Punjab and

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Haryana, [1991] 3 SCC 600, referred to.

State of Bombay v. P. 1958 Bom. Law Reporter, (60) Page 873, referred to.

Clements and the Republic Costa Rica v. Erlanger, [1877] 46 L.J. Ch. 375 page 383, Ex parte Terry, 128 U.S. 289, 307, 9 S.Ct. 77 80 (1888); Matsusow v. United Sates, 229 F.2d 335, 339 (5th Cir.) 1956; Sukhdev Singh Sodhi, C.K. Daphtary; Re Abdool v. Mahtab, (1867) 8 WR Cr. 32 page 33; 1900 (2) Q.B. 36 at 40; Andre Paul v. Attorney General, AIR 1936 PC 141, Attorney General v. Butterworth, (1963) 1 Q.B. 696; Reg. v. Odham's Press Ltd. Ex parte A.G., (1957) 1 Q.B. 73; Morris, v. The Crown Office, (1970) 1 All.E.R. 1079, 1081, Offutt v. U.S., (1954) 348 US 11 Jennison v. Baker, [1972] 1 All ER 997 1006, referred to.

Belchamber's Practice of the Civil Court, 1884 Ed. P. 241; Contempt of Court. By Oswald and Halbury's Law of England (4th Edition) by Lord Hailsham page 3, referred to.

1.2. In the instant case, the offending criticism and the scandalising allegations made by the appellant/contemner are most fatal and dangerous obstruction of justice shaking the confidence of the public in the administration of justice and calling for a more rapid and immediate punitive action. These calculated contemptuous remarks and the sweeping allegations are derogatory in character, not only to the dignity of the Judges and casting aspersions on their conduct in the discharge of their judicial functions but also wounds the dignity of the Court. It is highly painful to note that the appellant/contemner who is none other than an Advocate practising in the same highest Court of the State after having failed to wrench a decision in his favour in his own cause which he prosecuted as party in person has escalatingly scandalised the Court by making libellous allegations which are scurrilous, highly offensive, vicious, intimidatory, malacious and beyond condonable limit. Even a cursory reading of the remarks made against the Judge of the High Court unambiguously show that the potentially prejudicial utterances and the outrageous allegations rumbustiously and invectively made by the contemner with malicious design of attempting to impair the administration of justice have struck a blow on the judiciary and also seriously sullied the image, dignity and high esteem which the office of the Judge of the High Court carried with it and thus impeded the course of justice by fouling its source

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and stream. The incident in question is a flagrant onslaught on the independence of the judiciary, destructive of the orderly administration of justice and a challenge to the supremacy of the Rule of Law. The maxim "Salus populi suprema lex", that is, "the welfare of the people is the supreme law" adequately enunciates the idea of law. This can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted, and this cannot be effective unless respect for it is fostered and maintained. [888E-H,889A-C]

1.3.To punish an Advocate for Contempt of Court, no doubt, must be regarded as an extreme measure, but to preserve the proceedings of the Courts from the being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the Court, though painful, to punish the contemner in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt, if his act or conduct in relation to Court or Court proceedings interferes with or is calculated to obstruct the due course of justice. In view of the heinous type of scandalising the Court, the finding of the High Court that the appellant/contemner has made himself guilty of criminal contempt is confirmed. [889D-E]

1.4 As regards the sentence, it is clear from the order of the High Court that the appellant had adopted a defiant attitude and tried to justify the aspersions made by him even without thinking it necessary to apologise. Before this Court also, the appellant has neither expressed any contrition nor has he any repentance for the vicious allegations made against the Judges of the High Court. But, on the other hand, he has exhibited a dogged determination to pursue the matter, come what may. A reading of his memorandum of grounds and the written and signed arguments show that he was ventured into another bout of allegations against the High Court Judges and persisted in his campaign of vilification. His conduct in this Court has aggravated rather than mitigating his offence. [889F-H]

1.5. Therefore, having regard to the sentencing policy that punishment should be commensurate with the gravity of the offence, the sentence of 2 months' imprisonment in no way calls for interference and is accordingly confirmed. [890A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 258 of 1981.

From the Judgment and Order dated 12th Feb. 1981 of the Madhya Pradesh High Court in Misc. Criminal Case No. 617 of 1980.

Appellant in person.

Uma Nath Singh for the Respondent.

The Judgment of the Court was delivered by S. RATNAVEL PANDIAN,J. The appellant, Mr. Pritam Pal Dhingra is a practising Advocate in the High Court of Madhya Pradesh at Jabalpur, having joined the Bar on 4.2.1979. Earlier to joining the Bar, he was serving in the Army and retired on 23.12.65. Thereafter, he was re-employed in the Defence Accounts Department on 7.2.1966 as U.D.C. (Auditor). On 29.2.76, the appellant served three months' notice of resignation upon the departmental authorities for the reasons mentioned in the said notice and also requested to pay him the contributory provident fund benefits for his 10 years service though the date of his superannuation in the said post was 30.9.1986. The Department not only refused to accept his resignation but also did not relieve him even after the expiry of three months. According to the appellant, there was neither any departmental enquiry pending nor contemplated against him during those three months i.e. between 29.2.76 and 31.5.76. However, a charge sheet dated 21.12.76 for imposing a major penalty on a complaint by Jt. C.D.A. Vehicle Factory was served on him to which he submitted his written statement. Then he served a final quit notice w.e.f. 8.1.77. Though on the basis of the show cause notice, an enquiry was started, nothing came out of it. Therefore, the appellant moved the High Court of Madhya Pradesh at Jabalpur by filing Writ Petition M.P. No. 786 of 1978 under Article 226 of the Constitution of India sworn on 27.11.78 requesting several prayers inclusive of issuance of directions to the respondent therein (the departmental authorities) to accept his resignation so as to enable him to take any other profession of his liking and to declare the retention of his service against his will after 31.5.1976 as illegal and malafide and to re-imburse pay and allowances for the period of his enforced absence after the expiry of three months notice period etc. The High Court issued show cause notice to the respondents 1 to 3 in the Writ Petition. The respondent No. 3 thereafter accepted the resignation dated 29.2.76 of the appellant w.e.f. 15.1.79 by which time the appellant claims to have completed 31 years of combined military and civil service i.e. from 29.11.47 to 15.1.79. Meanwhile, the departmental enquiry initiated against him was dropped. Then the appellant submitted supplemental applications praying that his resignation should be converted into one of voluntary retirement and that his military services should be counted with civil service and that he should be given all service benefits like pension, gratuity etc. as well as consequential benefits on account of the delay in acceptance of his resignation. Two applications being I.A.No. 908/79 and I.A. No. 4246/78 were filed by the appellant, they being one for amendment of the petition and the other for taking some additional grounds. Both applications were allowed by a Division Bench of the High Court comprising of Mr. Justice J.S. Verma (as he then was) and Mr. Justice U.N. Bachawat, as the counsel for the respondents had no objection and granted one week time for incorporating the amendments in the petition. At the request of the counsel for the respondent, Shri R.P. Sinha, the Court granted two weeks time to file the additional return by order dated 16.3.79. The case was listed for further hearing on 2.4.79 on which date the writ petition was dismissed. The appellant then on 16.4.79 moved an application to review the order dated 2.4.79. The application was registered as M.C.C. No. 209 of 1979. This application was too dismissed on 23.4.79 with the following observation:

"The grievance of the petitioner in this review petition is that the writ petition (M.P. No. 786/78) was dismissed in motion hearing without hearing the petitioner. The substance of the order dismissing the Writ Petition in motion hearing as stated earlier indicates that this averment made by the petitioner is not correct. We also distinctly recollect that the petitioner was heard fully on the question of admission and it was only thereafter that the petition was dismissed by dictating that order in the Court in the presence of the petitioner. We would, therefore, reiterate that this grievance of the petitioner that he was not heard at the time of motion hearing is wholly incorrect.

The submissions made by the petitioner in support of this review application are (1) that there is error apparent on the face of the record because the writ petition was dismissed in motion hearing without hearing the petitioner; (2) that, sum-

marily dismissal of the writ petition was arbitrary because after notice had been issued to the respondents 1 to 3 show cause why the petition be not admitted, it was incumbent on the Court to admit the writ petition and hear both sides at length before passing any order; and (3) that, on account of above position, the petitioner was not given a fair deal before dismissing the writ petition in motion hearing.

As earlier stated, the petitioner was heard fully at the end of motion hearing and so also the counsel for respondents Nos. 1 to 3, Shri R.P. Sinha. The main averment on the basis of which all the aforesaid submissions are based, i.e. lack of full opportunity to the petitioner is, therefore, wholly non-existent. We are constrained to observe that in making these submissions, the petitioner who is now enrolled as an Advocate, has not been fair to the Court. The petitioner who is now enrolled as a lawyer was expected to exhibit at least the minimum decorum and sense of responsibility which is expected from a members of this noble profession. We are pained to observe that the petitioner took a very unreasonable attitude and exhibited a behaviour which could not be appreciated even by the member of the Bar who were present when this order was being dictated in the Court room after the hearing. However, taking into account the fact that the petitioner is a new entrant in the Bar, we have chosen not to take serious notice of the conduct of the petitioner in the hope that the petitioner having now become a member of the Bar will try to follow the high traditions of the Bar which he has chosen to join. There is no merit in this Review application. It is summarily dismissed."

On being aggrieved by the above order of dismissal dated 2.4.79, the appellant filed Special Leave Petition No. 570 of 1979 before this Court but was not successful as the SLP was dismissed on 25.7.79.

The appellant on being disturbed by the dismissal of his Writ Petition moved a Contempt Petition on 16.4.80 under Section 16 of the Contempt of Courts Act, 1971 (hereinafter referred to as `the Act') making some serious allegations against the two Hon'ble Judges of the High Court who dismissed

his Writ Petition on 2.4.79 and thereafter the Review Petition on 23.4.79 and also impleaded Shri R.P. Sinha as the third respondent in that petition. According to the appellant, the contempt petition was registered as M.C.C. No. 136 of 1980 and placed before a Division Bench on 29.4.1980 which after hearing the appellant summarily dismissed contempt petition. While it was so, the Registry of the High Court examined the allegations made in the affidavit filed by the appellant in M.C.C. No. 136/80 under Rule 5 of Rules regarding contempts framed by the High Court (Notification No. 8958 - Nagpur dated the 24th October, 1953) and placed the matter before the learned Chief Justice of the said High Court who on that motion/reference passed an order on 2.5.1980 to place the matter before a Division for further action. The Division Bench before which the matter was placed took cognizance of criminal contempt and directed issue of notice on 13.5.80 to the appellant directing to show cause as to why he should not be punished for contempt of Court to which the appellant filed his reply raising certain preliminary objections stating that the notice was bad for the reasons, namely, (1) The Section of the Act under which cognizance had been taken was not specifically mentioned; (2) Though the offending portions are marked the notice does not show sufficient cause as to why the words and expressions used therein have been construed as contemptuous; (3) The procedure followed by the High Court was contrary to the rules framed by it; and (4) No consent of the Advocate General has been obtained. The appellant, on the basis of the above objections prayed to discharge the rule of contempt.

On 11.7.80 when the case came up for hearing, the learned Advocate General filed his reply to the preliminary objection and served a copy of the same to the appellant. On the same day, the High Court passed an order reading thus:

> ".....The Government Advocate further gives notice to the respondent that the contempt proceedings are under Art. 215 of the Constitution. Let the respondent take inspection of the original record in case he would like to know the offending portions marked both underlined and side marked and let him file his reply on merits within 15 days."

Admittedly, the appellant inspected the Court records relating to this matter. Even thereafter when the appellant persistently requested as under what Section of the Act he has been charged, he was informed that the proceedings were under the provisions of Article 215 of the Constitution of India.

For the proper understanding of the issue in question, we feel that it would be necessary to reproduce the offending words and passages as appearing in the contempt petition. They are as follows:

> "7. That on 2.4.79, when the case came up for hearing, the judicial process required that it was the non-applicant, Shri R.P.Sinha who should have been heard in the first instance and he should have been asked by the Court whether he has filed the addition return but on account of misfortune of the petitioner and misconduct of the Presiding Judge, Justice Shri J.S. Verma that he while coming out of the chamber and occupying the seat in the temple of justice called out the petitioner and told him that after the acceptance of the resignation, the petition had become infructuous as

such he was dismissing it summarily. The petitioner was shocked to witness the most illegal and unconstitutional legal process adopted by the Hon'ble Judge..... ..... When the petitioner started arguing his case that his Fundamental Rights were infringed, the Hon'ble Presiding Judge not only stopped the petitioner from arguing his case but threatened him for dire consequences in case the petitioner argued any more. This amounts to desacrilege the sanctity of his own Court by the Judges.

8. .....

9. ..... The Review Petition was heard by the same Bench in utter disregard of judicial cannon since no person against whom serious allegations have been levelled (against) can be a Judge in his own case. The Review Petition was also rejected summarily repeating the false averments more in explicit terms that they heard the petitioner as well as the counsel for the respondents thus super-imposing the seal of truth over the falsehood.

GROUNDS

1. The petitioner charges the Hon'ble Court especially Justice J.S. Verma for adopting a most illegal and unconstitutional judicial process in utter disregard of cannons and principles of adjudication, for showing rude behaviour towards the petitioner. The amounts to desacrilege the sanctity of his Court.

2. That when the attention of Justice Verma was drawn on 2.4.79, that he was violating the legal process, he misbehaved with the petitioner without any valid reason which amounts to misconduct of the Judges.

3. That again on 23.4.1979 when the Review Petition was being argued, he threatened the applicant/petitioner for dire consequences for no valid reasons.

4. That the High Court is a Temple of Justice and the Judges who occupy the seat of justice are just like Dharamraj. Dharamraj's are not supposed to utter falsehood atleast while occupying this sacred seat of Justice. The Hon'ble Judges have not only uttered falsehood in their order dated 2.4.79 (Annexure `B') but super - imposed their false averments in their order dated 23.4.79 in which they stated that they distinctly recollect that the petitioner as well as the counsel for the respondents were heard. The petitioner's charge that they do not remember as to what they heard.....

5. .....

6. The charge against Justice U.N. Bachawat (the associate Judge) is that he silently witnessed the proceedings throughout. He never uttered a single word or intervened

when his senior faltered out and succumbed to the false averments of the Presiding Judge as if was not an independent Judge but serving faithfully and obediently to his master.

7. .....

8. That the petitioner avers that both the contemner Judges have acted and bad faith and have fouled the seat of justice by clear malafides act of theirs and as such no protection can be extended to them under cover a bonafide act done in good faith as Judges.

9. That both the Judges have violated the sanctity attached to the seat of Justice and have committed a Contempt of their own Court. Both have acted malafidely in bad faith.

PRAYER It is, therefore, prayed that Contempt Proceedings under Section 16 of the Contempt of Court Act, 1971, may be initiated against Justice J.S. Verma and Justice U.N. Bachawat of the Madhya Pradesh High Court on the aforesaid grounds."

The High Court after examining the above scandalising remarks made by the appellant in his contempt petition rejected the objections of the appellant/contemner holding that the cognizance of the criminal contempt was taken by it on suo moto, that the contemner was informed that the Court was invoking its jurisdiction under Article 215 of Constitution of India to punish him for contempt, that the Contempt of Courts Act, 1971 does not confer any new jurisdiction by its authority, that in a suo moto action by the High Court, consent of the Advocate General was not necessary, that non quoting of the provisions Section in the notice is immaterial and that the contemner had full notice of the charge of contempt levelled against him and concluded, "We see no defect in the notice served upon the contemner, nor do we find defect in the procedure followed." Then after referring to certain decisions of this Court in Perspective Publications v. State of Maharashtra, [1969] 2 SCR 779; C.K. Daphtary v. O.P. Gupta, [1971] 1 SCC 626 and Baradakanta Mishra v. Registrar of Orissa High Court, [1974] 1 SCC 374, the High Court made the following observation with reference to the facts of the case:

"16. The offending portions in paras 7 and 9, and repeated in grounds 1,2,3 and 4,8 and 9 attribute to Mr. Justice J.S. Verma (a) improper motive, (b) unfairness and undue basis in dealing with the case, (c) being a Judge who administers justice in a cursory manner without giving thought to the points involved, (d) of being intemperate in language, impatient and unjust, (e) who would arise false proceedings and when falsity has been brought his notice, would have the audacity to stick to the falsehood.

17. If the words have this import, the inevitable effect is undermining the confidence of the public in the judiciary. The person who has indulged in scurrilous abuse of the Judge, must suffer in punishment."

On the basis of the above observations, the High Court recorded its finding thus:

> "20. In our reading of the offending portions duly marked in paras 7,9 and grounds 1,2,3 and 4,8 and 9 of the application dated 16.4.1980 in the context in which they have been written, there are imputations of malafides, bias and prejudice against Mr. Justice J.S. Verma. The contempt involved in these passages is grossly scandalous.
>
> relating to Mr. Justice Bachawat, it was said that "he silently witnessed the proceedings. He never uttered a single word or intervened when his senior faltered and succumbed to false averments of the Presiding Judge as if he was not an independent Judge but serving faithfully and obediently his master."

Finally, the High Court held that the contemner, Mr. Pritam Lal is guilty of criminal contempt of not only scandalising the Court and lowering its authority but also substantially interfering with the due course of justice. Coming to the question of sentence, the High Court taking note of the defiant attitude of the contemner who even did not think it necessary to apologise but tried to justify the aspersions, sentenced the contemner to suffer simple imprisonment for two months. Hence the present appeal.

The Contemner, Mr. Pritam Lal appeared before us in person and advanced his arguments which are similar to the submissions made before the High Court, inter alia contending that the impugned order of the High Court should be set aside with costs and suitable compensation on the ground of procedural irregularities in that (1) that the offending remarks have not been communicated to him as per Rules 5 and 9 framed by the High Court; (2) that the cognizance of the criminal cotmpt has not been taken in conformity with Section 15 of the Act; (3) that the procedure after cognizance as prescribed under Section 17 of the Act has not been followed; and (4) that Article 215 of the Constitution of India does not prescribe any procedure to be followed. According to him he has not been given a fair and full hearing but on the other hand, the learned Judges have browbeaten and unjustly convicted him ignoring the well settled principle that every person has got an inalienable right of making fair criticism. He has further added that the impugned order was pre-conceived and pre- judged one. In addition to the oral arguments, he has filed detailed written arguments, signed on 15.11.88 citing a number of decisions which in our view, do not have any relevance to the facts of the case. In the written submissions also, he has again made certain outrageous and contemptuous remarks about the Judges of the High Court, in attempting to justify his action which has led to the initiation of the proceedings of contempt of Court before the High Court.

As rightly pointed out by the High Court, these contentions in our opinion do not merit any consideration since every High Court which is a Court of Record is vested with `all powers' of such Court including the power to punish for contempt of itself and has inherent jurisdiction and inalienable right to uphold its dignity and authority. Whilst Article 129 deals with the power of the Supreme Court as Court of Record, Article 215 which is analogous to Article 129 speaks of the power of the High Court in that respect.

Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemner to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate Legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be `Courts of Record' under Articles 129 and 215 of the constitution and, therefore, the inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment. In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971. The above position of law has been well settled by this Court in Sukhdev Singh Sodhi v. The Chief Justice and Judges and Judges of the PEPSU High Court, [1954] SCR 454 holding thus:

> "In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate Court, the Constitution vests these rights in every High Court, so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority."

It has been further observed:

> "The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that, the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself."

In R.L. Kapur v. State of Madras, [1972] 1 SCC 651 a question arose did the power of the High Court of Madras to punish contempt of itself arise under the Contempt of Courts Act, 1952 so that under Section 25 of the General Clauses Act, 1897, Sections 63 to 70 of the Penal Code and the relevant provisions of the Code of Criminal Procedure would apply. This question was answered by this Court in the following words:

> "The answer to such a question is furnished by Article 215 of the Constitution and the provisions of the Contempt of Courts Act, 1952 themselves. Article 215 declares that every High Court shall be a court of record and shall have all powers of such a court including the power to punish for contempt of itself. Whether Article 215 declares the power of the High Court already existing in it by reason of its being a court of record, or whether the article confers the power as inherent in a court of record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of either the Penal Code or the Code of Criminal Procedure."

After giving the above answer to the query raised, this Court has reiterated the view held in the case of Sukhdev Singh Sodhi (referred supra).

The view expressed in Sukhdev Singh Sodhi and followed in R.L. Kapur been referred with approval in a recent decision in Delhi Judicial Service Association v. State of Gujarat, [1991] 4 SCC 406, holding that the view of this Court in Sukhdev Singh Sodhi is "that even after the codification of the law of contempt in India, the High Court's jurisdiction as a Court of Record to initiate proceedings and take seisin of the matter remained unaffected by the contempts of Courts Act, 1926." Beg, C.J. in Re S. Mulgaokar, [1978] 3 SCC 339 has explained the special power of the Supreme Court under Article 129 stating. "This Court is armed, by Article 129 of the Constitution, with very wide and special powers, as a Court of Record, to punish its contempts." In Delhi Judicial Service Association case (supra), it has been pointed out as follows:

> "Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 contains similar provisions in respect of a High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself."

Yet another question whether the provisions of the Code of Criminal Procedure are applicable to such Proceedings, has been negatively answered by this Court in Sukhdev Singh Sodhi case (supra) stating thus:

> "We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself."

See also Brahma Prakash Sharma and Others v. The State of Uttar Pradesh, [1953] SCR 1169.

From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit. It would be appropriate, in this connection, to refer certain English authorities dealing with the power of the superior Courts as Courts of Record.

The 1884 edition of Belchamber's Practice of the Civil Court says at page 241 that -

> "Every superior court of record, whether in the United Kingdom, or in the colonial possessions or dependencies of the Crown has inherent power to punish contempts, without its precincts, as well as in facie curiae....."

In 9 Halsbury's Law of England (4th Edition) by Lord Hailsham at page 3 under the caption "Criminal Contempt", the following passage is found:

> "The superior courts have an inherent jurisdiction to punish criminal contempt....."

It is further stated at page 3 itself that the power to commit by summary process is arbitrary and unlimited, but that power should be exercised with the greatest caution. In Re Clements and the Republic of Costa Rica v. Erlanger, [1877] 46 L.J.Ch. 375 at page 383, Lord Jessel, M.R. said:

> "......this jurisdiction of committing for contempt being practically arbitrary and unlimited should be most jealously and carefully watched, and exercised....,"

Reference also may be bad to a decision of the Division Bench of the Bombay High Court in State of Bombay v. P., 1958 Bom. Law Reporter, (60) Page 873 wherein it has been held that the jurisdiction which each Judge of the High Court possesses and uses as constituting a Court of Record is a jurisdiction which is inherent in the Court itself for punishment for contempt of Court, whether it is ex facie the Court or otherwise and that for the exercise of that jurisdiction it is not necessary to refer either to the Letters Patent or the Rules framed by the Court thereunder and that it is a jurisdiction which is being exercised in the same manner as was exercised in the Court of King's Bench Division in England.

In special feature of the procedure to be followed in a contempt proceeding is the summary procedure which is recognised not only in India but also abroad. It is an outstanding characteristic of the law of contempt both in England and Scotland that it makes use of a particular and summary procedure which is unknown to any other branch of those countries. In England, this summary procedure began to be adopted by the common law Courts inspite of trial by jury and that the trial by jury for contempt has steadily declined and has now fallen entirely into disuse. In other words, consequent upon the use of the summary procedure in England, a person alleged to be in contempt does not enjoy the benefit of some of the safeguards of the ordinary criminal law such as those provided by the Judges' Rules in England and Wales and the right to trial by jury.

Rule 42 of the Federal Rules of Criminal Procedure of United States reads that ``A criminal contempt may be punished summarily if the Judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court."

In Ex parte Terry, 128 U.S. 289, 307, 9 S.Ct. 77, 80 (1888) and in Matsusow v. United States, 229 F.2d 335, 339 (5th Cir. 1956), it has been ruled that "If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned at the discretion of the judges, without any further proof or examination." In the Contempt of Court by Oswald, the following passage relating to the summary power of punishment is found:

> "The summary power of punishment for contempt has been conferred on the courts to keep a blaze of glory around them, to deter people from attempting to render them contemptible in the eyes of the public. These powers are necessary to keep the course

> of justice free, as it is of great importance to society."

In the year 1899, Lord Moriss in delivering the judgment of the Judicial Committee in Mc Leod v. St. Aubin 1899 AC 549 (C) said:

> "The power summarily to commit for contempt is considered for the proper administration of justice."

This has long been the practice in India also. The power under Articles 129 and 215 is a summary power as held in the cases of Sukhdev Singh Sodhi, C.K. Daphtary (referred to above) and in Hira Lal Dixit v. State of U.P., AIR 1954 SC 743.

Peacock, C.J.laid down the rule quite broadly in the following words in Re Abdool v. Mahtab, 1867 (8 WR) Cr. 32 at page 33:

> "there can be no doubt that every court of record has the power of summarily punishing for contempt."

The above view is re-stated in a number of decisions of this Court.

In the case of Sukhdev Singh Sodhi it has been observed:

> ".....the power of a High Court to institute proceedings for contempt and punish where necessary is special jurisdiction which is inherent in all courts of record and section 1 (2) of the Code expressly excludes special jurisdiction from its scope."

The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See D.N. Taneja v. Bhajan Lal, [1988] 3 SCC 26) and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemner should be made aware of the charge against him and given a reasonable opportunity to defend himself.

If we examine the facts of the present case in the backdrop of the proposition of law, the contentions raised by the appellant challenging the procedure followed by the High Court do not merit any consideration since the appellant has been served with a notice of contempt and thereafter permitted to go through the records and finally has been afforded a fair opportunity of putting forth his explanation for the charge levelled against him. Incidently, we may say that the submission of the contemner that the impugned order is vitiated on the ground of procedural irregularities and

that Article 215 of the Constitution of India is to be read in conjunction with the provisions of Sections 15 and 17 of the Act of 1971, cannot be countenanced and it has to be summarily rejected as being devoid of any merit.

The remaining important question for consideration are whether the statements which we have extracted in the preceding part of this judgment, made by the contemner amount to a scurrilous attack on the integrity, honesty and judicial impartiality of the learned Judges of the High Court and whether the contemner by his conduct as well as by making such written scandalising statements and invective remarks have interfered and seriously disturbed the system of administration of justice by bringing it down to disrespect and disrepute.

There is an abundance of empirical decisions upon particular instances of conduct which has been held to constitute contempt of Court. We shall now refer to a few. Lord Russel of Killowen, L.C.J. has laid down the law of Contempt in 1900 (2) Q.B. 36 at 40 as follows:

> "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."

The above proposition has been approved and followed by Lord Atkin in Andre Paul v. Attorney General, AIR 1936 PC

141. Lord Justice Donovan in Attorney General v. Butterworth, 1963 (1) Q.B 696, after making reference to Reg. v. Odham's Press Ltd., ex parte A.G. 1957 (1) Q.B. 73 said, "Whether or not there was an intention to interfere with the administration of justice is relevant to penalty, not to guilt." This makes it clear that an intention to interfere with the proper administration of justice is an essential ingredient of the offence of contempt of court and it is enough if the action complained of is inherently likely so to interfere.

In Morris v. The Crown Office, (1970) 1 All.E.R. 1079 at page 1081, Lord Denning M.R. said:

> "The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society."

In the same case, Lord Justice Salmon spoke:

> "The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented."

Frank Further, J in Offutt v. U.S., [1954] 348 US 11 expressed his view as follows:

> "It is a mode of vindicating the magesty of law, in its active manifestation against obstruction and outrage."

In Jennison v. Baker, [1972] 2 All ER 997 at page 1006, it is stated:

> "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."

Chinnappa Reddy, J. Speaking for the Bench in Advocate General, Bihar v. M.P. Khair Industries, [1980] 3 SCC 311 citing those two decisions in the ases of Offut and Jennison (supra) stated thus:

> "……it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of Justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so it is entrusted with the power to commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression "Contempt of Court" may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with."

Krishna Iyer, J. in his separate Judgment in re S. Mulgaokar (supra) while giving the broad guidelines in taking punitive action in the matter of Contempt of Court has stated:

> "…….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."

In the case of Brahma Prakash (supra), this Court after referring to various decisions of the foreign countries as well as of the Privy Council stated thus:

> "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 trends in any way, to interfere with the proper administration of law."

In Ashram M.Jain v. A.T. Gupta, [1983] 4 SCC 125 the facts were thus:

> The petitioner who filed a special leave petition accompanying by an affidavit affirming the statement made in the said SLP indulged in wild and vicious diatribe against the then Chief Justice of the High Court of Maharashtra. When the SLP was heard, this Court directed notice to be issued to the petitioner as to why he should not be committed for contempt under the Contempt of Courts Act, 1971. After hearing the parties and then not accepting the unconditional apology of the petitioner, this Court convicted the petitioner for contempt and sentenced him to suffer simple imprisonment for a period of two months. In that case, Chinnappa Reddy, J. speaking for the Bench said:
>
> "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."

Reference may be made to a recent decision of this Court in M.B. Sanghi v. High Court of Punjab and Haryana, [1991] 3 SCC 600. In that case, the appellant, a practising advocate having failed to persuade the learned Subordinate Judge to grant an ad-interim injunction pending filing of a counter by the opposite party, made certain derogatory remarks against the learned Judge who instead of succumbing to such unprofessional conduct made a record of the derogatory remarks and forwarded the same to the High Court through the District Judge to initiate proceedings for Contempt of Court against the appellant. The High Court holding that the remarks made on the learned Sub Judge are disparaging in character and derogatory to the dignity of the judiciary found the appellant guilty of Section 2 (c) (i) of the Contempt of Courts Act. The appellant therein though denied to have made the remarks, however, offered an unqualified apology. But the High Court without accepting the apology punished the appellant therein with a fine of Rs. 1,000. Ahmadi, J. of this Court in his separate judgment has observed:

> "The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a number of the profession resorts to such cheap gimmiks with a view to browbeating the judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned judge but the entire institution. The foundation of our 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."

After having made the above observation, the learned judge concerned with the conclusion of Agarwal, J. dismissing the appeal and while doing so, he expressed his painful thought as follows:

> "When a member of the bar is required to be punished for use of contemptuous language it is highly painful - it pleases none - but painful duties have to be performed to uphold the honour and dignity of the individual judge and his office and the prestige of the institution. Courts are generally slow in using their contempt jurisdiction against erring members of the profession in the hope that the concerned Bar Council will chasten its member for failure to maintain proper ethical norms. If timely action is taken by the Bar Councils, the decline in the ethical values can be easily arrested."

We are in full agreement with the above view. Reverting to the facts of the case, the offending criticism and the scandalising allegations made by the appellant/contemner are most fatal and dangerous obstruction of justice shaking the confidence of the public in the administration of justice and calling for a more rapid and immediate punitive action. These calculated contemptuous remarks and the sweeping allegations which we have extracted above are derogatory in character not only to the dignity of the learned Judges casting aspersions on their conduct in the discharge of their judicial functions but also wounds the dignity of the Court. It is highly painful to note that the appellant/contemner who is none other than an Advocate practising in the same highest Court of the state after having failed to wrench a decision in his favour in his own cause which he prosecuted as party in person has escalatingly scandalised the Court by making libellous allegations which are scurrilous, highly offensive, vicious, intimidatory, malacious and beyond condonable limit. Even a cursory reading of the remarks made against the learned Judge of the High Court unambiguously show that the potentially prejudicial utterances and the outrageous allegations rumbustiously and invectively made by the contemner with malacious design of attempting to impair the administration of justice have struck a blow on the judiciary and also seriously sullied the image, dignity and high esteem which the office of the Judge of the High Court carries with it and thus impeded the course of justice by fouling its source and steam. In our opinion, the incident in question is a flagrant onslaught on the independence of the judiciary, destructive of the orderly administration of justice and a challenge to the supremacy of the Rule of Law. The maxim "Salus populi suprema lex", that is "the welfare of the people is the supreme law" adequately enunciates the idea of law. This can be achieved only when justice is administered lawfully, judicially, without fear or favour and without being hampered and thwarted, and this cannot be effective unless respect for it is fostered and maintained.

To punish an Advocate for Contempt of court, no doubt, must be regarded as an extreme measure, but to preserve the proceedings of the Courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the Court, though painful, to punish the contemner in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt, if his act or conduct in relation to Court or Court proceedings

interferes with or is calculated to obstruct the due course of justice.

In view of the above heinous type of scandalising the Court, we unhesitatingly confirm the finding of the High Court that the appellant/contemner has made himself guilty of criminal contempt.

Coming to the question of sentence, it appears from order of the High Court that the appellant had adopted a defiant attitude and tried to justify the aspersions made by him even without thinking it necessary to apologise. Before this Court also, the appellant has neither expressed any contrition nor has he any repentance for the vicious allegations made against the learned Judges of the High Court. But on the other hand, he has exhibited a dogged determination to pursue the matter, come what may. A reading of his memorandum of grounds and the written and signed arguments show that he was ventured into another bout of allegations against the High Court Judges and persisted in his campaign of vilification. His present conduct has aggravated rather than mitigating his offence.

Therefore, having regard to the sentencing policy that punishment should be commensurate with the gravity of the offence, we hold that the sentence of 2 months, imprisonment in no way calls for interference and accordingly the sentence is confirmed.

For the reasons aforementioned, the Criminal Appeal is dismissed.

N.P.V. Appeal dismissed.