Rama Dayal Markarha vs State Of Madhya Pradesh on 14 March, 1978

Equivalent citations: 1978 AIR 921, 1978 SCR (3) 497, AIR 1978 SUPREME COURT 921, (1978) 2 SCC 630, 1978 CRI APP R (SC) 159, 1978 SCC(CRI) 327, 1978 MAH LJ 579, 1978 MPLJ 613, 1978 JABLJ 550, (1978) 3 SCR 497, 1978 SC CRI R 308

Author: D.A. Desai

Bench: D.A. Desai, Syed Murtaza Fazalali

PETITIONER:
RAMA DAYAL MARKARHA

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT14/03/1978

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
FAZALALI, SYED MURTAZA

CITATION:
1978 AIR 921 1978 SCR (3) 497
1978 SCC (2) 630
CITATOR INFO :
R 1988 SC1208 (17)

ACT:
Contempt of Courts Act 1977, Sections 5, 13-Fair comments-Publication of pamphlet by an Advocate imputing motives to a Magistrate-Tests to judge if comment is fair.

HEADNOTE:
The appellant a Senior Practicing Advocate in Umaria District Sahdol, Madhya Pradesh was convicted and sentenced to pay a fine Rs. 1,000/- under s. 19 of the Contempt of Courts Act 1971, by the High Court. The appellant appeared on behalf of some accused persons in a criminal trial before the Additional District Magistrate. The accused were

convicted by the Magistrate. They filed an appeal which, was allowed by the Additional Sessions Judge. Before the date for challenging the said judgment of Addl. Sessions Judge by way of revision in the High Court expired, the appellant published a pamphlet. In the pamphlet imputations of improper motive to the learned Magistrate in deciding the case were made. The appellant did not question the authorship and publication of the pamphlet. However, his defence was that what he did was merely publishing a fair comment on the merits of a criminal case which was beard and finally decided and that therefore he was entitled to the benefit of S. 5 of the Act. Alternatively it was contended that even if the Court came to the conclusion that he was guilty of contempt of court no sentence should be imposed upon him because the publication is not likely to substantially interfere or would tend substantially to interfere with the due course of justice and therefore, is entitled to benefit of s. 13.

Partially allowing the appeal

HELD : 1. The statement in the pamphlet "should the judge with his wayward bend of mind go on using wayward pen" 'is nothing short of imputing a deliberate motivated approach on the part of the Judge. Similarly to say that the judgment proceeded in one direction but thereafter it took a somersault because the Magistrate had resolved to convict the accused in spite of there being no evidence would clearly insinuate that the issues were prejudged by the Judge. [502 C-D]

2. Even prior to the enactment of the Contempt of Courts Act 1971 a fair and reasonable criticism of judicial act did not constitute contempt and this cherished and noble facet of the larger liberty of freedom of speech and expression enshrined in Art. 19(1)(a) of the Constitution has found its echo in s. 5 of the Act. The limit of fair comment being an integral part of the larger liberty of freedom of speech and expression it could not be put in a straight-jacket formula or converted into a master key which will open any lock. More or less it would depend upon the facts and circumstances of each case, the situation and circumstances in which the act was done, the language employed the context in which the criticism was offered and the people for whose benefit the exercise was undertaken and the effect which it will produce on the litigants and society in relation to courts and administration of justice. [502 G-H, 503 A-R]

3. Contempt jurisdiction is a special and to some extent an unusual type of jurisdiction wherein the prosecutor and the Judge are combined in one. To some extent it trenches upon the fundamental Tight of free speech and expression and stifles criticism of a public officer concerned with the administration of public justice in discharge of his public duty. Therefore, the contempt jurisdiction has to be sparingly exercised with utmost restraint and considerable circumspection. [503 H, 504 A, C]

Baradakanta v. Registrar, Orissa High Court, AIR 1974 SC 710 at 735; Queen v. Gray, (1900) 2 Q.B. 36 at 40; Regina v. Commissioner of Police of the Metropolis,ex-parte Blackburn, (1968) 2 Weekly Law Reports 1204 at 1207; referred to.

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Perspective Publications Pvt. Ltd. & Anr. v. State of Maharashtra, [1969] 2 SCR 779 at 791-792 applied.

4. 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. In fact such fair and reasonable criticism must be encouraged because after all no one, much less Judges, can claim infallibility. 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. But when it is said that the Judge had a predisposition to convict or deliberately took a turn in discussion of evidence because he had already resolved to convict the accused, or has a wayward bend of mind, is attributing motives, lack of dispassionate and objective approach and analysis and prejudging of the issues which would bring administration of justice into ridicule. One has to bear in mind the setting in which the court is functioning and the attack on the administration of justice. In this country justice at grass-root level is administered by courts set up in rural backward areas largely inhabitated by illiterate persons. Their susceptibility is of a different type than the urban elite reading newspapers and exposed to wind of change or even wind of criticism. Again the condemner is a lawyer belonging to the fraternity of noble and liberal profession. A criticism by him would attract greater attention than by others because of his day to day concern with the administration of justice. Such criticism is bound to substantially interfere with due course of justice. High Court rightly held that the pamphlet published by the condemner was highly mischievous. [505 H, 506 A-H, 507 A-D 508 C]

5. In the present case a token punishment would serve the ends of justice, because if the contemner while pursuing his object zealously is required to be kept to the path of rectitude, a token fine will also consciously remind the contemner that he is not a gentleman at large. A fine of Rs. 1,000/- was therefore reduced to Re.1/-, while maintaining the conviction. [508 E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 100 of 1975 .

From the Judgment and Order dated 14-2-1975 of the Madhya Pradesh High Court in Misc. Criminal Case No. 127/74). In Person for the Appellant.

I. N. Shroff for the Respondent The Judgment of the Court was delivered by DESAI, J. An Advocate, the appellant in this appeal under S. 19 of the Contempt of Courts Act, 1971, was convicted and sentenced to pay a fine of Rs. 1000/-, in default to suffer simple imprisonment for one month, by a Bench of the Madhya Pradesh High Court for committing criminal contempt by scandalising or tending to scandalise, or lowering or tending to lower the authority of the Court of Additional District Magistrate (J), Umaria, then presided over by Shri A. N. Thakur, by publishing a pamphlet on 1st January 1974 commenting upon a judgment rendered, by Shri Thakur in a criminal case of which he had taken cognizance on a challan filed by the police upon a, report made by one Lal Chand 'against Betai Lal and. his Servant Abdul Majid. The High Court, took cognizance of the criminal contempt alleged to have been committed by the appellant upon a reference made to it by the Presiding Officer of the Court of Additional District Magistrate (J) under section'15(2) of the Contempt of Courts Act A resume of the events leading to the reference may be briefly noticed. One Lalchand, a tenant, reported at the police station that his landlord Betai Lal and landlord's servant Abdul Majid committed criminal trespass into the premises in his occupation and removed iron sheets which he had placed in the terrace to arrest leaking of rain water in the premises and that as the water leaked through the terrace the goods stored in the premises were damaged and accordingly Betai Lal and Abdul Majid committed offenses under section s 451 and 427 of the Indian Penal Code. After completing, investigation a charge, sheet was submitted in the Court of Addl. District Magistrate (J). The accused were represented by the present appellant who is a senior practicing advocate in Urnaria, District Sahdol (M.P.). The learned Magistrate upon appreciation of evidence concluded that both the charges were brought home to the accused aid passed sentence ,considered appropriate by him. The conviction and sentence were questioned in an appeal preferred by the accused in the Court of Additional Sessions Judge, Umaria, who by his judgment and order dated 21st December 1973 allowed the appeal and set aside the con- viction and sentence. Soon thereafter, the offending pamphlet was published by the appellant. Shri Takur having come to know of the publication made a reference to the High Court for initiating action for contempt of court against the appellant. That is how the matter came before the High Court.

In the reference made by the Court of Additional District Magistrate (J), certain passages were extracted from the pamphlet as indicating the attitude of the appellant towards the Presiding Officer and the Court and further stated that "the publication tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge and it also deters actual and prospective litigants from placing complete reliance upon the court's administration of justice" and thus scandalised the court and the presiding officer as well as lowered the authority of the court. The original pamphlet is in Hindi. The High Court had before it the translation which but for minor variation as suggested by the appellant, has been accepted by both sides as correctly reproducing what has been stated in Hindi. These passages posed as questions may be reproduced in extenso :

> "(a) Was Shri Thakur authorised to overlook the arguments, of counsel ? More so, when two citizens were to be sentenced to imprisonment?

(b) Has not Shri Thakur's conduct been an open insult to the Advocate concerned. as also to the Advocates in general ?

(c) Has not Shri Thakur's conduct damaged the prestige of the sacred. post of the Judge ?

(d) Was this witness (a resident of Jaithari) according to wisdom of Shri Thakur, competent to give information after seven months from 21st June 197T that on this date at Chandia it was raining, or that damage was caused to particular person

(e) When the nation's entire might, police army etc., is ready to enforce obedience from every person of the orders of a Judge, is it proper that the Judge himself should in this manner with his wayward bent of mind go on using his wayward pen ?

(f) Why did Shri Thakur, after suddenly twisting his own finding, write in the next sentence that the accused entered in the house of Lalchand and that they entered in such a manner that for an offence under section 451 it became necessary to impose such a 'severe sentence ?

(h) Did Shri Thakur knowingly took (sic) this turn, because, be had resolved to convict the accused in spite of there being no evidence ?

Otherwise there is no understandable reason for this turn."

Some more questions are also posed by the appellant in the pamphlet of which the High Court has not taken any note of. On am analysis of the questions posed with necessary innuendos and insinuations contained therein, the High Court concluded that "the imputation of improper motive to a judicial officer in deciding a case by an Advocate who has lost, is a very serious matter, more so when the Court is concerned with a mofussil place where there are one or two courts and a few lawyers and the litigating public is mostly illiterate or poorly educated" and, therefore, the criticism as contained in the booklet is highly mischievous and it is bound to undermine the confidence of litigant public in the administration of justice. They are likely to feel that justice administered by subordinate judicial officers is not fair and impartial, and, therefore, the appellant is guilty of criminal contempt and if it goes unpunished, it will substantially) obstruct the due course of justice. The appellant does not question the authorship and publication of' the pamphlet by him. In fact, his attempt is to justify the course of action taken by him. Broadly stated, his defence is that what he his done is merely publishing a fair comment on the merits of a criminal' case which has been heard and finally decided and, therefore, he is. entitled to the benefit of s. 5 of the Contempt of Courts Act. Alternatively, it was suggested that even if the Court comes to the conclusion that the appellant is guilty of contempt of court, no sentence should be imposed upon him because the publication is not likely to, substantially interfere or would tend substantially to interfere with the due course of justice and, therefore, he is entitled to the benefit of. s. 13.

Even though the Addl. District Magistrate (J) while making the reference extracted the passages from the pamphlet which were considered as constituting contempt of the Court, it also annexed to the reference a copy of the pamphlet and the High Court issued notice in respect of passages extracted by it kind reproduced in extenso hereinabove. However, while holding the contemner of contempt of court, the High Court appears to have been mainly influenced by passages marked 'R' and 'H' by it in the judgment. In this background, the contemner made a sort of a preliminary submission that while dealing with the appeal this Court should confine itself to only those passages noticed by the High Court in holding him guilty of contempt and the other passages, even if they find a place in the judgment, should be ignored. Ordinarily, it is true that this Court while hearing an appeal against a conviction for contempt of Court would confine its attention to the material' which hag received consideration of the High Court while adjudging the contemner guilty. However, there would be no lack of jurisdiction to take into consideration the passages in respect of which notice for contempt was issued and served upon the contemner. But the wider question of law apart, we propose to confine ourselves only to the material which has received the consideration of the High Court. The question marked 'E' is a composite statement, the first being an innocuous one expostulating the power and authority behind the judicial pronouncement, but in the latter part the contemner proceeds to state that though there is tremendous sanction behind the judicial pronouncement, 'should the judge with his wayward bend of mind go on using his wayward pen'. In question marked 'H' it is insinuated that Shri Thakur knowingly took the turn at some stage in the judgment 'because he had resolved to convict the accused in spite of there being no evidence. Otherwise there is no understandable reason for this turn.

The High Court was of the opinion that it was not possible to say that the conclusions reached by Shri Thakur even if erroneous, could not have been reached judicially by him and the reversal of his judgment could not give rise to an inference that in convicting the accused he was unfair or that he was actuated by an improper motive. The High Court further observed that a reading of the criticism contained in the booklet goes to show that the author wanted to convey that the judgment delivered by Shri Thakur was entirely unfair and that be knowingly delivered such a judgment and convicted the accused in spite of there being no evidence and that he twisted big findings to that end. Do the questions posed with implied insinuates convey to a lay reader that the judge lacks judicial equipoise, fairness, open mind and is guilty of prejudging issues which apart from scandalising the court, would interfere with administration of justice in that the litigant would be scared away on the apprehension that the judge lacks fairness, objectivity, impartiality and judicial approach ? The contemner, arguing his appeal in person, submitted that the High Court was in error in infusing into record the judgment of the Addl. Sessions Judge in appeal against the judgment of Shri Thakur on which the contemner had not relied but which, was called form by the High Court while hearing the contempt action, and that averments of facts in the appellate judgment of the Addl. Sessions Judge could not have been utilised to hold that even if the. conclusions of Shri Thakur were erroneous they were not such as could not have been reached judicially by him. The offending pamphlet was published after the appeal preferred against the judgment of Shri Thakur was allowed by the learned Addl. Sessions Judge and the conviction and sentence of the accused were set aside. As the judgment of Shri Thakur was the focal point of attack by the contemner, it was imperative for the High Court to take into consideration the appellate judgment against the judgment under attack so as to satisfy itself whether the judgment was so manifestly incorrect or perverse as to merit a

scurrilous attack on it. The submission of-the contemner that the appellate judgment should not have been taken into consideration has no merit. If the two questions extracted above are read by consumers of judicial service what effect is likely, to., be caused on their minds ? On reading a judgment if it appears that the judgment read as a whole discloses a wayward bend of mind of a judge which forces a wayward pen even if it is a contempt it could be ignored because it is a conclusion reached on a fair reading of the judgment which consumers of judicial service have a right to comment upon. But to say that the judge with a wayward bend of mind has wielded at wayward pen is nothing short of imputing a deliberate motivated approach on the part of the judge which is other than judicial indicating lack of dispassionate analysis and judicial objectivity. Similarly to say that the judgment proceeded in one direction but thereafter the judgment took a somersault because be bad resolved to convict the accused in spite of there being no evidence would clearly insinuate that the issues were prejudged by the judge. There is no greater calumny or infamy for a judge bound by the oath or duties) of his office not to decide a matter on record placed before him judicially which imply dispassionately and objectively. Prejudging an issue is the very anti-thesis of a judicial process. To accuse a judge that he proceeded to reach a conclusion because of his preconceived notion or prior resolution is to accuse him of an entirely injudicious approach. The conclusion, therefore, reached by the High Court that the criticism of the judgment made by the contemner was wholly unjustified, is unexceptional. The contemner strenuously contended that actuated by the most laudable object of contributing to the establishment of rule of law in our democratic polity, an ideal cherished by our Constitution and established for the benefit-of the rural backward population, the very fact which has appealed to the High Court in convicting the appellant a member of the legal fraternity for contempt, he published the pamphlet fairly commenting on the merits of a case already decided so that people's faith in administration of justice is vindicated. Even prior to the enactment of the Contempt of Courts Act, 1971, a fair and reasonable comment of a judicial act did not constitute contempt and this cherished and noble facet of the larger liberty of freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution has found its echo in s. 5 of the Contempt of Courts Act which provides that a person shall not be guilty of contempt of court.for publishing any fair comment on the merits of any case which has been heard and finally decided. What constitutes fair comment and what are its peripheral limits beyond which the comment ceases to be fair and strays into the forbidden field inviting penalty, has been the subject-matter of a catena of decisions. The limit of fair comment being an integral part of the larger liberty of freedom of speech and expression it could not be put in a straight-jacket formula or converted into a master-key which will open any lock. More or less it would depend upon the facts and circumstances of each case, the situation and circumstances in which the comment was made, the language employed, the context in which the criticism was offered and the people for whose benefit the exercise was undertaken, and the effect it will produce on the litigants and society in relation to courts and administration of justice. Before we examine the most important submission in this case , that the contemner had merely published a fair comment on the merits of a case which had been heard and finally decided, a submission made by Mr. Shroff on behalf of the respondent may be briefly disposed of. It was submitted that in order to attract s. 5 it must be affirmatively shown that the case in respect of which comments were offered Was heard and finally decided and that the expression heard and finally decided, would comprehend that the limitation for appeal had also expired and the judgment had become final inter partes. Proceeding from this angle it was said that the judgment in appeal was rendered by the Addl. Sessions Judge on 23rd December 1973 and

the offending publication saw the light of the day on 1st January 1974 and that the limitation for appeal by the State against the order of acquittal being 90 days, the limitation had not expired and, therefore, it could not be said that the case was finally decided. Mr. Shroff submitted with due deference to the contemner who is an advocate that the timing of the publication was deliberately chosen with a view to forestalling the appeal that the State might contemplate. There is considerable force in this submission of Mr. Shroff but we do not propose to deny to the contemner the benefit of s. 5 if in fact he is entitled to it on the short ground that the case was not finally de- cided. Explanation appended to s. 3 would clearly show that the, proceeding either civil or criminal shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired. Obviously, on 1st January 1974 the limitation for preferring an appeal by the State against the order of acquittal had not expired and, therefore, Explanation to s. 3 would be clearly :attracted and the proceeding could be said to be pending and could not be said to be heard and finally decided. However,, as the High ',Court has not shut out the defence of fair comment on the short ground that the proceeding was pending, we would not refuse to ,examine the defence of fair comment if the appellant is in a position to substantiate the same. The High Court has held the contemner guilty of criminal contempt in that by the offending publication the contemner has scandalised or tended to scandalise or lowered or tended to lower the authority of the Court and it substantially interferes the due course of justice. Contempt jurisdiction is a special and to some extend an unusual type of jurisdiction where in the prosecutor and, the judge are combined in one. To some extent it trenches upon the fundamental right of free speech and expression and stifles criticism. of a public officer concerned with administration of public justice in discharge of his public duty. In the words of Krishna Iyer, J : "the cornerstone of the contempt law is the accommodation of two constitutional values, the right of free speech. and the right to independent justice. The ignition of contempt action should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial process and personnel" (vide Baradakanta v. Registrar, Orissa High Court).(1) Therefore, the contempt jurisdiction has to be sparingly exercised with utmost restraint and considerable circumspection. Undoubtedly, 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, vide Queen v. Gray.(2) No criticism of a judgment, however vigorous, can amount to contempt of court, providing it keeps within the limits of reasonable courtesy and good faith, vide Regina v. Commissioner of Police of the Metropolis, exparte Blackburn.(3) Lord' Denning, M.R. in the same case further observed that "those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions effoneous, whether they are subject to appeal or not." After referring to these, cases, the contemner drew our attention to the celebrated passage ofLord Atkin in Andre Paul v. Attorney-General(4), which has almost become a classic. It reads as under

> "But where 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 choistered virtue : she must be allowed to 'suffer the scrutiny and respectful, even though outspoken, comments of ordinary men".

In Perspective Publications Pvt. Ltd. & Anr. v. State of Maharashtra,(5) a Bench of three judges of this Court, after referring to (1) A.I.R. 1974 S.C. 7 10 at 7 3 (2) (1900) 2 Q.B. 36 at 40.

(3) (1968) 2 Weekly Law Reports 1204 at 1207. (4) A.I.R. 1936 P.C. 141 at 145-146.

(5) [1969] 2 S.C.R. 779 at 791, 792.

the leading cases on the subject, formulated the principles which ,would govern cases of this kind. They read as under:

> "(1) It will not be right to say that committals for contempt for sacndalizing the court have become obsolete.
>
> (2) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.
>
> (3) It is open to anyone to express fair, reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men".

(4) A distinction must be made between a mere libel or defamation of a judge and what amounts to a Contempt of the court.

The test in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the administration of justice or the proper administration of law by his part. It is only in the latter case that it will be punishable as contempt.

(5) Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. To borrow from the language of Mukherjea, J. (as he then was) (Braluma Prakash Sharma's case, (1953) SCR 1169, the publication of a disparaging statement 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".

Applying the aforementioned formulated tests to the facts of this case, could it be said that the extracted offending passages with a tinge of sarcasm offer reasonable and legitimate criticism of a case which was heard and finally decided ? 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. In fact, such fair and reasonable criticism must be encouraged because after all no one, much less Judges, can claim infallibility. A fair and reasonable comment would even be helpful to the judge concerned because he will be able to see his own shortcomings, limitations or imperfection in his work. The society at large is interested in the administration of public justice because in the words of Benjamin Cardozo, "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by" (Benjamin N. Cardozo- The Nature of the Judicial Process, p. 168). Such permissible. criticism would itself provide a sensible answer to sometimes ill-informed criticism of judges as living in ivory towers. But then the criticism has to be fair and reasonable. 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. It is one thing to say that a judgment on facts as disclosed is not in consonance with evidence or the law has not been correctly applied. Ordinarily, the judgment itself will be the subject-matter of criticism and not the judge. But when it is said that the judge had a pre-disposition to convict or deliberately took a turn in discussion of evidence because he had already resolved to convict the accused, or he has a wayward bend of mind, is attributing motives, lack of dispassionate and, objective approach and analysis and pre-judging of the, issues, which would bring administration of justice into ridicule if not infamy. 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 rightly repose in the courts of law as courts of justice, the criticism would cease to, be fair and reasonable criticism as contemplated by s. 5 but would scandalise courts and substantially interfere with administration of justice. As said in Gray's case, (supra) any act done or writing published calculated to bring the court or judge of the court into contempt or to lower his authority is a contempt of the court, because nothing is more pernicious in its consequences than to prejudice the mind of the public against judges of the Court responsible for dispensing justice.

it is also to be borne in mind the setting in which the court is functioning and the attack on the administration of justice. In this country justice at grass-root level is administered by courts set up in rural backward areas largely inhabitated by illiterate, persons. It is they who bring their problems to the court for resolution and they are the litigants, or consumers of justice service. Their susceptibility is of a different ,-type than the urban elite reading newspaper and exposed to wind ofchange or even wind of criticism. The people in rural backward areas unfortunately illiterate have different kinds of susceptibilities. A slight suspicion that the judge is predisposed or approaches the case with a closed mind or has no judicial disposition would immediately affect their susceptibilities and they would lose confidence in the administration of justice. There is no greater harm than infusing or instilling in the minds of such people a lack of confidence in the character and integrity of the judge. Conversely, it makes the task of the judge extremely difficult when operating in such area. In this case the setting is in a small backward rural area in the, State of Madhya Pradesh and which aspect has especially appealed to the High Court in adjudging the appellant guilty of contempt. Again, the contemner is a lawyer belonging to the fraternity of noble and liberal

profession. A criticism by him would attract greater attention than by others because of his day-to-day concern with the administration of justice, in that area and his belief about the judge's judicial disposition would adversely affect a large number of persons. Therefore, when in such a back-round it is said that the judge has a wayward bend of mind and wields a wayward pen and that he took a deliberate turn in the discussion of evidence because he had resolved to convict the accused would indicate that the judge has no judicial disposition and that he pre-judges the issues and there cannot be a greater infamy and calumny apart from the, judge of the Court. People around would lose all confidence in him and in the ultimate analysis the administration of justice would considerably suffer, and, therefore, would constitute contempt.

The contemner further submitted that prosecution for contempt for scandalising the court has become obsolete. We need not examine this submission in detail. In Perspective Publications' case (supra) after examining this argument and considering the leading decisions it has been said that prosecutions for scandalising court have not become obsolete and we are in respectful agreement with it.

It was next contended that even if the comments made by the appellant appear in bad taste or that they are outspoken or blunt, in view of s. 13 no sentence can be imposed upon him for contempt unless the court is satisfied that the contempt is of such a nature that it substantially interferes or tends substantially to interfere with the due course of justice. After drawing our attention to Bridges v. California(1), in which it is said that the judges must be kept mindful of their limitations and their ultimate public responsibility by vigorous stream of criticism expressed with candor however blunt, it was said that we should bear in mind the most laudable object with which the contemner published the comments and in his enthusiasm for a public cause, viz., establishment of rule of law in backward area, and, therefore, even if he had strayed slightly from the path of rectitude, the case does not call for sentence as contemplated by s. 13 of the Contempt of Courts Act. This submission cannot be fully answered unless we refer to one aspect of the matter which the High Court has taken into consideration and which we were keen to avoid. The appellant is a practicing advocate and is a mature old nips having had the experience of long, practice at the Bar. If he was dissatisfied with the judgment a s he was appearing for the accused who were convicted by the learned Magistrate, the proper course was to prefer an appeal which he did adopt. After the appeal was allowed, the appellate judgment was bound to be sent to the trial court and the error of the Magistrate must have been pointed out. If be was still not satisfied, it was open to the contemner to submit a petition to the High Court as envisaged by s. 6. of the Contempt of Courts Act, 1971. Assuming that this course, was (1) [1941] 334 U.S. 252.

an optional one and in the words of Lord Denning, silence is not an option when things are ill-done, he, actuated by a desire to serve the public cause, came out with a pamphlet criticising the judgment, looking to the language used, could he be said to have slightly erred or strayed marginally from the path of rectitude Conceding that judges.must suffer criticism willingly, it is not the ques- tion of their personal villifficafion but the effect it has on the administration of public justice which is the cornerstone of contempt action. The judge villified relevant to his judgment would always shudder at the idea of writing a judgment which cannot meet the high standard of the present contemner. in fact the vituperative language was the outcome of a defeated advocate which appeared to be a very

serious matter to the High Court more so when concerned with a mofussil place where there are one or two courts and a few lawyers, and the litigating public, is mostly illiterate or poorly educated, and it is such a thing which could not be ignored or allowed to pass by. Such criticism is bound to substantially interfere with due course of justice because in the opinion of the High Court, with which we are in agreements the pamphlet published by the contemner was highly mischievous. Therefore, this is not a fit case for giving benefit of S. 1 8 to the contemner.

The contemner did not recant either before the High Court or eve before us. Even then the question is whether the sentence of fine of Rs. 1000/ is called for in this case. The contemner also 'showed some other pamphlets which he had published. Either he is trying to impose himself upon courts or in his mistaken zeal he is publishing pamphlets criticising judgments of the courts. We are mindful of the fact that the judges must be feeling extremely inconvenient whenever the contemner must be appearing before them but we must not be oblivious to the fact that the path of justice is not strewn with roses and justice being not a cloistered virtue, it must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men, more so, by lawyers who are directly involved in administration of justice. While, therefore, not exonerating the contemner, we think a token punishment would serve the ends of justice because if the contemner while pursuing his object zealously is required to be kept to the path of rectitude, a token fine will also consciously remind the contemner that he is not a gentle map at large. We, therefore, modify the sentence of fine awarded by the High Court and impose a token fine of Re. 1/- on the contemner, in default to suffer simple imprisonment for a week. Accordingly, this appeal is partly allowed. We, confirm the conviction of the appellant contemner for contempt of court, but modify the sentence directing him to pay a fine of Re. 1 /-, in default to suffer simple imprisonment for a week. The fine, if already paid, balance shall be refunded to him. In the circumstances of the case, there shall be no order as to costs Appeal partly allowed.

P.H.P.