Supreme Court of India
Dr. D.C. Saxena vs Hon'Ble The Chief Justice Of India on 19 July, 1997
Author: K Ramaswamy
Bench: K. Ramaswamy

PETITIONER:
DR. D.C. SAXENA

Vs.

RESPONDENT:
HON'BLE THE CHIEF JUSTICE OF INDIA

DATE OF JUDGMENT: 19/07/1997

BENCH:
K. RAMASWAMY

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Ramaswamy, J.

In a clash of competing interests in constitutional contours, this case calls to strike a balance between the freedom of speech and expression, a salutary right in a liberal democratic society and paramount countervailing duty to maintain public confidence in the administration of justice. The petitioner has initiated public interest litigation under Article 32 of the Constitution to direct Sri P.V. Narasimha Rao, the President of Indian National Congress and the former Prime Minister of the country to pay a sum of Rs.8.29 lakhs and odd said to be due to the union of Indian for use of Indian Air Force aircraft or helicopters from October 1, 1993 to November 30, 1993. When writ Petition No. 432/95 was posted for hearing on July 17,1995 before the learned Chief Justice of India and brother Justice S.C. Sen the solicitor General for India, Shri Dipankar P. Gupta was sent for and the Court directed him to have the averments verified to be correct and directed the petition to be listed after two weeks. On August 7,1995, the writ petition came before the Bench comprising the learned CJI, Justice S.C. Sen and Justice K.S. Paripoornan. It is not in dispute that the Solicitor General had placed the record before the Court and upon perusal thereof and after hearing the petitioner-in-person, the Bench summarily "dismissed"" the writ petition which had triggered the petitioner to file yet another writ petition, this time against the learned Chief Justice of India, Justice A.M. Ahmadi. The Registry raised objections for its maintainability but, at eh insistence of

the petitioner, it was posted, with office objections, for hearing, as unregistered Writ petition (c) NO. -17209/95 on January 13,1996 before a Bench of three learned Judges, viz. Justice J.S. Bharuchal. The petitioner, again appearing in person, persisted to justify the averments made against the learned CJI, Justice A.M. Ahmadi in the writ petition. In spite of the Court having pointed out that the averments were scandalous, the proceeding of the Court did indicate that the petitioner reiterated that he "stood by the averments made therein" and sought for declaration [1] that Justice A.M. Ahmadi is unfit to hold the office as Chief Justice of India; [2] that he should be tripped of his citizenship; [3] to direct registration of an FIR against him under various provisions of Indian penal Code for committing forgery and fraud and under the prevention of Corruption Act; (4) to direct prosecution of him under the prevention of Corruption Act; (5) to direct him to defray from his personal pocket the expenses incurred by the petitioner in filing the two writ petitions, i.e., W.P. No. 432/95 and the second writ petition; (6) to direct justice A.M. Ahmadi to reimburse from his pocket to the public exchequer the entire loss caused to the State,. as a consequence of non-payment of the dues by Sri P.V. Narasimha Rao with interest at 18% per annum and (7) other consequential directions.

After hearing the petitioner, the Bench dismissed the second writ petition with the order as under:

> "The several averments in the writ petition are scandalous and it is surprising that the petitioner, who is said to be a Professor in a University, has chosen to draft and file such a writ petition. His understanding of the meaning of Article 32 of the Constitution, is to say the least, preposterous. The allegations made are reckless and disclose irresponsibility on the part of the petitioner. This writ petition is wholly misconceived and is an abuse of the process of the Court. The writ petition has no merit.
>
> The writ petition is, therefore, dismissed.
>
> In view of the attitude of the petitioner even at the hearing, when the persisted in this stand and, on our asking him, reiterated that he stood by the scandalous averment made therein, we consider it our duty to issue to the petitioner a notice to show cause why proceedings to punish him for contempt of this Court should not be initiated against him. The Registry to take the necessary steps for registering the matter as a contempt petition. The petitioner who is present-in-person is given notice of the contempt petition. He is required to file his reply within four wheels to show cause why proceedings for contempt should not be initiated against him. We request the learned Solicitor General to assist the Court in this contempt matter.
>
> List the matter after notice of the date fixed by Registry is given to Dr. D.C. Saxena and the Solicitor General."

While dismissing the petition, this Court observed in the later part of the order the petitioner's conduct in his persistence to stand by the scandalous averments made against the learned Chief Justice of India. This Court was constrained to initiate contempt proceedings and enlisted 14

instances which would prima facie constitute contumacious conduct of the petitioner to scandalise the Court. In the meanwhile, the petitioner wrote in a newspaper criticising Justice J.S. Verma. Resultantly, Justice J.S. Verma reclused himself from the Bench. Thus the matter was posted before this Bench.

On April 12,1996, the petitioner filed his reply to the show cause notice styling the same as "preliminary submissions" and reiterated his averments, which, as pointed by this Court, would constitute scandalisation of the Court and yet he had given his justification for accusing the chief Justice of India. However, at the end, as a foot-note, he has written in his own hand-writing as under:

> "N.B. If some passages seem strindent or pungent, the defendant is willing to suitably modify them."
>
> On April 14,1996, this court passed the order as under; "Pursuant to the notice issued by this Court the Contemnor Dr. D.C. Saxena is present today in person. He has stated that he would modify the offending portions noted in the show cause notice in Item (ii),(iv)
>
> (vi), (vii), (viii),
>
> (x),(xii),(xiii) and wishes to withdraw unconditionally item
>
> (xiv), paras B and C.
>
> The learned Solicitor General has pointed out that even if the Contemnor withdraws or files statement in the modified form what the Court required to do is whether his statements made in the writ petition originally filed constitute contempt of the Court or not statements would not be of material relevance for consideration. Since the contemnor seeks time to submit the show contemnor seeks time to submit the show cause in the modified language which he wishes to place before the court, at his request the matter is adjourned to may 2,1996 at 2.00 p.m. The Registry is directed to supply complete set of papers to learned solicitor General."

When the case came up for hearing on May 2, 1996, the petitioner filed amended portions to substitute the averments made, at proper places, in the second unnumbered writ petition. We have heard learned Solicitor General as amicus curiae and the petitioner-in-person. Before opening the case, the solicitor General, in view of the seriousness of the averments made by the petitioner in the petition filed against the chief Justice of India, and in view of his stand in both the preliminary submissions to the contempt notice and the revised averments made in the writ petition, suggested that it would be advantageous for the petitioner to have consultation and legal assistance of any counsel of his choice and to revise his stand, but the petitioner remained silent and got along with the case.

The learned solicitor General stated that on July 17, 1995, the Court had sent for and called upon him to have the allegations made in the first writ petition, verified and to place the factual position before the Court. Pursuant thereto, on August 7,1995, he had placed the record before the Court which are confidential in nature. After their perusal and hearings the petitioner, the Court did not think it necessary to issue the directions as sought for. At this stage, we would point out that when Sri P.V. Narasimha Rao, as president of Indian National Congress or as the former prime Minister, was alleged to have used the defence aircrafts, this Court obviously was of the view that the relationship between the two wings of the Government or the political party, i.e., the Indian national Congress is of debtor and creditor and that, therefore, prerogative writ under Article 32 of the Constitution would not lie to enforce contractual dues adjustable as per their practice. The exercise of the power under Article 32 was, therefore, obviously thought to be uncalled for. Supreme Court being the highest Judicial forum, the need to record reasons is obviated since there is no further appeal against the order of this Court. Recording reasons is not, therefore, necessary nor is called for.

The learned solicitor General, therefore, contended that when the Court dismissed the writ petition, the petitioner, being a professor of English in Chandigarh University, should have exercised restraint and felt duty- bound not to proceed further in the matter. Instead, he filed the second writ petition with allegations which are ex-facie contumacious. The petitioner reiterated the same in his preliminary submissions to the notice of the contempt. His modified statement filed on April 24,1996 itself is not relevant. What would be material and relevant for consideration is whether the allegations made against the learned Chief Justice of India in the Second Writ petition do constitute contempt of the Court. The modified stand, therefore, is not relevant to adjudge whether the petitioner has committed contempt of this Court. The Court, therefore, has to consider the totality of the averments and their effect on the judicial process to adjudge the conduct of the petitioner to be contumacious. The petitioner contended that he did not seek any personal gain for himself. As a duty- bound citizen, he was actuated to see that the public dues are recovered from any person how-so-high he may be. To the best of his understanding, the petitioner made the averments for public good and he has no intention to scandalise the Court. He had approached this Court earlier more than 12 times to vindicate public justice. As a human being, he is fallible but he has no intention to denigrate the Court to which he has highest respect. His modified language in the statement filed on April 24,1996 does indicate his intention.

In the proceedings of the Court dated July, 17,1995, it was recorded that the Solicitor General had appeared for Sri P.V. Narasimha Rao who was impleaded in his personal capacity. It is the petitioner's contention that the solicitor General cannot appear for him. He was not assisting the Court as amicus. When the Chief justice called for the records from the Government through solicitor General, it is Court's duty to give him copies of those documents but the same were denied to him. It is his

xiv) Page 9 prayer

(a) Declare the respondent unfit to hold office as chief Justice of India;

(b) Strip the respondent of his citizenship;

(c) Direct the registration of an F.I.R. against the respondent under the Indian penal Code for committing forgery and fraud;

(d) Direct the respondent's prosecution under the prevention of corruption Act.

The alleged contemnor filed written submissions in reply to the contempt notice. His first submission was that the Bench which had heard and dismissed the second writ petition had been constituted by the respondent, who had thereby become a judge in his own cause. The second writ petition was, accordingly, not listed before a court, competent to dispose it of, so that the order of its dismissal was non est, and it was still deemed to be pending. The contempt notice was, therefore, premature. The written submissions then dealt with the portions of the second writ petition which had been indicated in the contempt notice and reiterated the same, except only that it was submitted that the allegation about fabrication of the court proceedings of 7th August, 1995, was "somewhat unhappily would". It was submitted thereafter that the contempt of Courts Act was a legacy of British imperialism and, while appropriate to a "banana republic", was imcompatible with a democratic, people's polity; it was a law-less law because it fused the offices of the prosecutor and the judge and "belongs with the infamous Spanish inquisition". After his signature at the foot of the written submissions, the alleged contemnor added in hand, "N.B. If some passages seem strident or pungent, the defendant is willing to suitably modify them."

The contempt notice came up before this Bench on 15th April, 1996. The following order was then passed;

> "Pursuant to the notice issued by this court the Contemnor Dr. D.C.. Saxena is present today in person. He has stated that he would modify the offending portions noted in the show cause notice in Item
>
> (ii),(iv),(vi), (vii),(viii),(x),
>
> (xi),(xii),(xiii) and wishes to withdrew unconditionally item xiv, paras B and C.
>
> The learned Solicitor General has pointed out that even if the Contemnor withdraws or files statement in the modified form what the Court required to do is whether originally filed constitute contempt of the statements would not be of material reliance time to submit the show cause in the modified Court, at his request eh matter is adjourned to may 2,1996 at 2.00 P.M. The Registry is directed to supply complete set of papers to learned Solicitor General."

extract the relevant portions supplied to him by show cause and his reply thereto and of preliminary submissions and his modified statement as a substitution to the averments made in the second writ petition and the effect thereof. In respect of the averments made in the offending portions of item 1,3, 5,9,13 and 14(a) and (d), the petitioner stood by them. He submitted his modified statement on

April 24,1996 only for the rest of the statements. Let us first consider the unmodified averments before examining the original and the modified averments.

The first averment made at page 4 in paragraph 9 is that "it was improper for justice Ahmadi to hear it". Item 3 at page 6 in paragraph 14 is: "To this Justice Ahmadi responded that he (the solicitor General) was there to assist the Court, contrary to the evidence of the court proceedings". Item 5 relating to the averments made in page 6 in paragraph 17 is; "the subsequent course of action by Justice Ahmadi, in dealing with the grouse of the petitioner and dismissing his petition is totally unjust, unfair, arbitrary and unlawful. It is in flagrant violation of the mandates of Article 14 of the constitution, which "runs like a golden thread" through it ad is the foundation of justice and fair play". Item 9 relating to the averments made at page 8 in paragraph 18(f) is: "what are the legal consequences of the violation of the sacred oath of office by justice Ahmadi?" Item 14(a) relating to the prayer portion is: "declare the respondent (justice A.M. Ahmadi) unfit to hold office as Chief Justice of India" and item 14(d) is: "Direct the respondent's (Justice A.M. Ahmadi's) prosecution under the prevention of Corruption Act." The petitioner in his affidavit filed in support of the second writ petition has stated in para 2 thereof thus: "I am actuated purely by national interests and no personal gains and have truthfully and carefully stated the facts (emphasis supplied), in pursuance of my fundamental duties, which can be effectively performed only through the fundamental rights enjoyed as a citizen of India." In his preliminary submissions, he has stated that the writ petition under Article 32 shall be heard by a Division Court of not less than 5 Judges. Emphasis was added by the petitioner himself. Since the writ petition was not listed before a Court components to dispose of the same, it made the order of dismissal non est and it should be deemed to be pending and is "not yet decided and disposed of constitutionally". No contempt proceedings can, therefore, be initiated. The notice is , therefore, pre-mature. Constitution of the Bench by the chief Justice is in violation of the principles of natural justice as no one can be a judge of his own cause. Justice "should not only be done but should manifestly and undoubtedly seem to be done. nothing is to be done which creates even a suspicion that there has been an improper interference of the course of justice.", he quoted the above statement of Lord Heward, C.J. Regarding Item 1 referred to hereinbefore; he justified the imputation stating that no person can be a Judge in his own cause directly or indirectly. In spite of his objection, the respondent (CJI) chose to constitute the bench himself as a presiding judge. According to the petitioner the word " improper", therefore was used in that perspective, with regard to the averments made in Item 3, his reply was that the Court proceedings dated July 17,1995 recording that the solicitor General, Shri Dipankar Gupta appeared in his official capacity to Sri P.V. Narasimha Rao, a private party. He had stated that even assuming, though not conceding, that he (Solicitor General was acting as amicus curiae also was not recorded in the Court proceedings. Therefore, his comment that CJI had Fabricated false record is fair and an accurate report of the court proceedings protected under section 4 of the Act.

With regard to Item 5, he states thus: " This is a reaffirmation of an unimpeachable legal proposition in the most widely-prevalent legal phraseology, to which no umbrage can be taken, for by this logic all petitions containing this phrase would be deemed contemptuous. Even the part of the quotation is from a leading decision of this Hon'ble Court in Maneka Gandhi's case."

With regard to averments made in item 9, he justified it stating that "this again is an unresolved question of great legal significance and he cited as analogy of Mr. Fazlul Huq, then Chief Minister of Bengal and quoted a passage from a special Bench decision of the Calcutta High Court in R.C. Pollard v. Satya Gopal Majumdar [A.I.R. 1943 Cal. 594 (605)]. He added special emphasis to the words "the clear violation of it brands a man as unfit for public office" and stated that it is a legal question of substantial importance relating to the violation of oath of office, contained in the Third Scheduled of the Constitution and it cannot be disposed of by a three judge Bench. It cannot be considered as personal imputation against the judge. With regard to imputation and prayer (a) in item 14, he says that the analogy he had taken from the Calcutta High Court decision. It was natural corollary to the legal proposition considered by a constitution Bench. with regard to prayer (d) in Item 14, he states that this is only a prayer for relief sought. The defence taken in relation to

(xiv)(b) and (c) would equally be applicable and so he has reaffirmed them to be correct. The allegations, therefore, are neither "reckless" nor do they "disclose irresponsibility" (put within inverted comma by the petitioner himself) and is not "an abuse of the process of the Court."

He reiterated that "several averments in the writ petition" being truthful, factual, and made without rancour or malice and for no personal, gain, should not be construed "scandalous" (inverted commas were put by the petitioner himself).

Let us now consider other imputations, in the language of petitioner himself with regard to the "truthfully and carefully" stated facts. At page 5 in para 10, the petitioner has stated that "Justice Ahmadi's utmost reluctance to perform his fundamental duties and constitutional obligations was apparent. when after failing to browbeat the petitioner, he stated that it would be taken up at the end of the cause list." in his preliminary submissions he has stated that "this is a fair and accurate submission of the Court proceedings on matter which had already been "heard and finally decided"."(inverted commas were put by the petitioner himself). He sought protection to it, as a fair comment, under Section 4 of the Act. He further justified it stating that even the use of the would "browbeat" by the petitioner is a "fair criticism of judicial act" (inverted comma was put by the petitioner himself) to imply that proper hearing was not being granted to the petitioner who had approached the highest Court of the land to 'Protect and safeguard public property". he justified them as a "statement of truthful facts", for public good should not be construed as disrespect to the Hon'ble Court. After offering justification in his modified statement, he reiterates thus: "The petitioner discerned reluctance on the part of the presiding judge to allow the relief claimed, which was in public interest, and actuated by the desire to "Preserve and protect public property," without any personal malice." It would, thus, indicate that the petitioner imputed motives to Justice A.M. Ahmadi, chief justice India, in the discharge of his constitutional duty and that by not admitting the writ petition or dismissing the petition, the CJI was reluctant to perform his constitutional duty. He knew that the word "browbeat" is a strident imputation to the Court and, therefore, in his modified reluctance". Even in the modified statement, he attributed motives to CJI in the performance of his constitutional duty while the Bench that dismissed the first writ petition consisted of three judges. By inference, he suggested the other brother Judges to be mere non-entity.

With regard to item 4 at page 6 in para 15, he imputed to the CJI that "and without recording the reasons for dismissing the petition. So much for the vaunted adherence to the twin principles of transparency and accountability." In his preliminary submissions, he has given justification for his attributed motives to CJI stating that the Solicitor General handed over some documents to the bench, without supplying the copy thereof to the bench, without supplying the copy thereof to the petitioner. When he had objected to it in his own language, he avers that "justice Ahmadi asked him to argue on the supposition that nothing had been given to the bench. In view of this, reference has been made to the "twin principles of transparency and accountability which", according to the petitioner, "is a fair and accurate report of court proceedings, which is also for the "public good"." (inverted commas were put by the petitioner himself). In the modified statement he stated thus: "That justice Ahmadi ultimately dismissed the petition, observing that the Government of India was capable to realise the dues from Shri Rao (which it had no to done in two years) and without recording the reasons for dismissing the petition, for which lapse it has often berated High Courts, in pursuance of the twin principles of transparency and accountability". It would, thus be seen that as regards this imputation, the petitioner gives justification that there was omission to record reasons for dismissal of the writ petition; he imputed to CJI that the CJI facilitated Sri Narasimha Rao to avoid payment of public dues. The act of the Court was not transparent. According to the petitioner, it is a lapse on the part of the Court for which the Court conduct, by implication, was not transparent and the Court must be accountable.

Item 6 at page 7 in paragraph 18(c) reads thus: "For causing fabrication of courts proceedings of 7th August, 1995, and not mentioning the fact of appearance of the solicitor General, would justice Ahmadi not be liable to prosecution under the relevant provisions of the Indian penal code in consonance with the time-honoured maxim, `Be you ever so high, the law is above you"?" (inverted commas were put by the petitioner himself). In his preliminary submissions he stated that "Although somewhat unhappily worded, it is one of the substantial questions of law, which needed to be determined by a constitution Bench of the apex court". According to him, above maxim is one to which this court has repeatedly stated to have avowed allegiance. In his modified version, he stated thus: "For inaccurate recording of the court proceedings of 7 August, 1995, and not mentioning even the fact of appearance of the solicitor General for the respondent, what responsibility would ensue on the presiding judge, who dictated them?" It would, therefore, in the language of the petitioner, be "discernible" difference of the imputation as originally made in the writ petition and reiterated in his preliminary submissions and its impact was understood by the petitioner. Therefore, he made the amended version imputing responsibility to justice Ahmadi personally for the so called inaccurate recording of the Court proceedings and stated that the CJI should be prosecuted for the record said to be falsely recorded by CJI after fabrication and it is a fraud and CJI is liable for prosecution for fraud etc. Item 7 at page 6 in paragraph 18(d) reads thus; "can justice Ahmadi be allowed to take shelter behind the cloak of the judicial immunity, in the facts and circumstances of the instance case, particularly when unlike the president of India, who cannot be impleaded in Civil or criminal proceedings "during his term of office," CJI enjoys no such constitutional protection?" In his preliminary submissions, he stated that this is yet another constitutional conundrum which needed to be resolved by a constitution Bench of the Hon'ble Court under Article 145(3) read with Supreme Court Rules. According to the petitioner "Crucial to it are "the facts and circumstances" (inverted commas were put by the petitioner himself) spelled out

earlier". implicitly conferring immunity on the congress president, Sri P.V. Narasimha Rao, from laws of the land do not apply. Is this not a negation of all that the constitution holds sacred?" In the modified version, he stated thus "when under the Constitution Judges of superior courts do not, unlade the president of India, enjoy total immunity during their term of office, can the presiding judge, be allowed to make such a claim for wrong doing?" (Emphasis supplied). He, thus, imputed to the chief justice of India, Justice Ahmadi motives that CJI allowed Sri Narasimha Rao, Congress president, to avoid payment of dues causing loss to the national exchequer treating him as a class by himself and the CJI neglected to perform the constitutional duty which he holds sacred which is a wrong-doing. therefore, chief Justice of India should not be allowed to take judicial immunity and is liable to criminal prosecution even during his term of office as CJI.

Item 8 of the imputation at page 7 in para 18(e) reads thus; "for willfully and advertently violating (emphasis supplied) the fundamental rights of not only the petitioner as an individual, but that of the people of India, who are ultimately sovereign, as stated in the preamble to the Constitution, has not justice Ahmadi forfeited any legal protection, even if it were available to him?" In his preliminary submissions, he has stated that "The first part of the sentence is based on the implicit constitutional provisions and in fact shows that the petitioner/defendant looks upon the apex court as the guardian of his fundamental rights and those of the voiceless millions. The second part raises a constitutional question, which needed determination by an appropriate bench." In the amended version, he reiterated that "for violating the fundamental rights of not only the petitioner, as an individual, but also that of the people of India, who are the ultimate sovereign, as stated in the preamble to the Constitution, has not justice Ahmadi sent wrong signals tot he entire judiciary of which he is the head". In this paragraph, it is clear that the petitioner knew the distinction between the imputation as originally attributed to the Chief justice of India as Head of the Institution, i.e., Judiciary and reiterated in his preliminary submissions that CJI "willfully" and "advertently" violated the petitioner's and people's fundamental right to redressal by wrongful dismissal of the writ petition. He knew its indelible effect on the public confidence in the efficacy of judicial dispensation and propriety of the judicial process. When they read the imputation, he attributed to the Chief Justice that CJI willfully and advertently violated the fundamental rights of the petitioner and other people in dismissing the writ petition. Thereby, justice Ahmadi forfeited legal protection of law, if it were available to him and he stated in his modified version that the action of Chief Justice of India sent wrong signals to the entire judiciary of which he is the head. In other words, it would imply that CJI as judge and as head of the institution committed misconduct.

Imputation 10 made at page 8 in paragraph 18(g) reads thus: "For deliberate and willful failure to perform his fundamental duties and stultifying their performance by the petitioner, should not justice Ahmadi be stripped of his citizenship, because duties alone can confer the corresponding legal and constitutional rights?. In his preliminary submissions, he has stated that this is also a constitutional question needed to be interpreted on the ambit and enforceability of fundamental duties in Article 51-A; it should not be considered by a Division bench. "Moreover, this is a logical corollary of the foregoing question of law. It is respectfully reiterated that a question of law is not a personal imputation or insinuation." In his modified version, he has stated thus: "For failure to perform his fundamental duties and impeding their performance by the petitioner, should not justice Ahmadi be regarded as accountable to the people of India, because duties alone can confer

the corresponding legal and constitutional rights?" In this behalf, it is clear that the petitioner is well conversant with the effect of "a personal imputation and the negation". He attributed that Justice Ahmadi, Chief Justice of India deliberately and willfully failed to perform his fundamental duties by dismissing the first writ petition and stultified the performance of the duty by the petition and stultified the performance of the duty by the petitioner. Thereby Justice Ahmadi "be stripped of his citizenship". He also knew that for exercise of legal or constitutional rights one owes corresponding duties. The person who fails to perform the duty is accountable to the people. CJI willfully, in other words, deliberately with supine indifference dismissed the writ petition. CJI does not get legal protection but also forfeits his citizenship.

Imputation 11 at page 8 in paragraph 18(h) reads thus: "For allowing his son who is a practising in the Supreme Court, to stay with him in his official residence, and presumably in the supreme Court, to stay with him in his official residence, and presumably misusing official facilities and prestige of office of chief Justice of India, is not Justice Ahmadi liable to be prosecuted under the prevention of corruption act, in view of the ratio decidendi of Veeraswami's case?" In his preliminary submissions, he reiterated that this is a question law based on information he had received from "public documents"(inverted commas were put by the petitioner himself) from an Article which was said to have appeared in "India Today", with Justice Ahmadi's photograph and yet another one said to have been published in "The Times of India", authored by a woman senior Advocate of this Court. He states that "It is widely talked in legal circles that apart from being favoured in appointment on local commissions (by the Delhi High Court) Justice Ahmadi's son (and daughter also) are very often assigned government briefs". In support of his imputation, he seeks justification from the observation made by this Court in C. Ravichandran Iyer V. Justice A.M. Bhattacjarkee & Ors. [(1995) 5 SCC 457] of transparency of the conduct of the Judge on and off the bench. He further added that "the criminal contempt application of one M.P. Shorewala against the petitioner/defendant was got filed and in gross violation of statutory provision (mentioned in the office report) was got listed next to the petitioner's civil writ petition on the same day. i.e., 30th January, 1996, for reasons which need no dilation'. The petitioner had not modified in his modified version, though he undertook to do so. He stood by the above imputation and reiteration with further justification in that behalf made in his preliminary submissions. we may observe here itself that personal imputation against the chief Justice of India, Justice Ahmadi of allowing his son to practise in the supreme court is false. His permitting his son to reside in his official residence said to be in abuse of his official position has no relevance to the first writ petition relating to the recovery of the alleged arrears said to be due from Sri P.V. Narasimha Rao. During the course of hearing, when it was pointed out to the petitioner that as a fact the son of justice Ahmadi is not practising in the Supreme Court and that the above imputation has no rational connection to the first writ petition and of the necessity to allege them in the second one, no answer was given by the petition and of the necessity to allege them in the second one, no answer was given by the petitioner. He sought to justify it on the basis of the reports said to have been published in the newspapers. When we further inquired from him whether he made any independent inquiry in the matter or on the accuracy of the newspaper publications, he stated that he relied upon the above statements as an accurate statement of fact reported therein. We may mention that this imputation has no relevance to the first proceedings. As a fact, the son of Justice Ahmadi is not practising in the Supreme Court. The alleged facility of permitting his son to stay in his official residence bears no relevance to the

proceedings. The imputations were obviously off the cup.

Imputation 12 made at page 8 in paragraph 18(i) reads thus: " Is Justice Ahmadi not liable to pay from his pocket not only the legitimate costs incurred by the petitioners in C.W.P. No. 432 of 1995 and the present petition, but also the loss caused to the public exchequer by non-payment of dues with 18% interest by Shri P.V.N. Rao?" In his preliminary submissions he reiterated it giving further justification thus: "This is the law laid down by this Hon'ble Court in relation to public servants. Whether it is also applicable to holders of constitutional office or not is a substantial question of law, which should have been answered by a constitution bench." In his modified version he has stated thus: "who would be liable to reimburse the legitimate costs incurred by the petitioner by filing C.W.P. No.432 of 1995, and the present petition and the huge loss caused to the public exchequer because of the persistent default in paying them by P.V. Narasimha Rao, with 18% interest?" it would, thus, be apparent that for dismissal of the writ petition filed by a party, by a judicial act, the presiding judge of the Court is liable to pay costs to the litigant and also the resultant loss to the public exchequer for non-payment of the dues by the defaulter with interest. He justified it stating that when a public servant causes loss to the State and the same is sought to be recovered from him, why not the constitutional functionary for judicial act is also liable to pay over the same. In other words, if the Court dismisses a petition filed by a litigant, the resultant costs must be born by the presiding officer of the Court. Equally, the loss caused to the State should also be recoverable from the presiding judge from his personal pocket .

Regarding imputation 13, though he stated that he wished to make modification to it, in his amended version, he did not touch upon the same.

Imputation 13 at page 8 reads thus: "since no person can be a judge in his own cause, the senior-most judge of the Hon'ble Court may be permitted to constitute a constitution bench, for expeditious hearing of the petition excluding any judge who owes his elevation to the apex court to justice Ahmadi. Further during its pendency, Justice Ahmadi may be advised to proceed on leave, so that he may not directly or indirectly influence any of the judges hearing the matter." In his preliminary submissions, he reiterates that " The prayer is in strict conformity with the maxim cited earlier in the words of lord Heward, C.J." He justified it on the basis of Justice P.N. Bhagwati (as he then was), the senior-most judge's presiding over P.S. Gupta's case, i.e., First judges case when justice Chandrachud was imputed with some allegations. He also justified his quoting the advice given to Justice V. Ramaswami to proceed on leave when enquiry was pending against him under the Judges [Inquiry] Act. It would be seen that in this imputation, he categorically asserts and relies that justice Ahmadi, Chief justice of India would bring about influence directly or indirectly upon his colleagues when the matter was to be heard. While he is in the office, he also should not function as Chief Justice pending his second writ petition. CJI also should not constitute any benches. That should be done by the senior-most puisne Judge. Any Judge appointed to this Court during his tenure as CJI should not hear ht e case as CJI directly or indirectly would influence them when the case relating to his was dealt with. In other words, his imputation is that Judges appointed to the Supreme Court during the tenure of Justice A.M. Ahmadi as CJI amenable to influence in deciding the cases at the behest of the CJI as they owe their appointments to him. In other words, as soon as a writ petition under Article 32 or petition under Article 136 was filed attributing motives or bias to

the CJI [it would equally apply to any Judge he should desist to perform judicial and administrative work. He should proceed on leave till that case is decided. The senior-most puisne Judge should assume the work of the CJI.

Imputations in Prayer (b) and (c) read as under: "(b) strip the respondent (Justice A.M. Ahmadi) of his citizenship";

and (c) Direct the registration of an FIR against he respondent (Justice A.M. Ahmadi) under the Indian Penal Code for committing forgery and fraud."

In his preliminary submissions, he has stated with regard to stripping of citizenship of CJI that "this may have been the consequence of the constitution bench affirming the view taken by the Calcutta High Court cited earlier. Moreover, this is only a prayer for relief sought, which does not fall within the mischief of the Contempt of Courts Act." With regard to prayer (c) he states thus: "the plea taken in relation to (xiv (b). Now, in the modified statement, he seeks to withdraw them and states "May kindly be treated as deleted". It would, thus, be clear that his asking for stripping of the citizenship of the Chief Justice of India is for dismissing his writ petition and prosecution is the consequence of a decision of this Court which had affirmed the judgment of the Calcutta High Court in Fazalul Haq's, Chief Minister, Bengal's case.

At this stage, it may be relevant to mention that the petitioner, either in his preliminary submissions or modified version filed on April 24, 1996, during the course of hearing, did not tender any unconditional apology for the imputations made against CJI. On the other hand, it is clear that being a professor of English. he knew the consequences of the language used, its purpose and effect and pressed for consideration. At the time of dismissing the second writ petition to a pointed reference of the allegations to be scandalous, it was recorded in the order and there was no demur from the petition to the contra, that the petitioner stood by them. In other words, he would bear the consequences that would flow therefrom. According to the petitioner, many an imputation bearing constitutional contour require interpretation by a bench of five Judges under Article 145(3). We need not refer the case to the constitution Bench merely because the petitioner has raised that contention in the petition; nor the same requires decision unless the Court finds that the petition cannot be disposed of without the questions being decided by the constitution Bench.

When imputations were made against the Chief Justice, the petitioner assumed, in our view, "wrongly" that CJI cannot constitute benches nor he should discharge the functions of Chief Justice until the matter is decided. On appointment by the president by a warrant and on his taking oath of office, the CJI becomes entitled to discharge the functions and duties of that office including constitution of benches and assignment of judicial work to judges as per procedure. This responsibility flows from the office and none including a litigant has right to demand for contra position. As regards his personal disposition to hear a case by a bench of which he is a member, it is his own personal volition. The Chief Justice's prerogative to constitute benches and assignment of judicial business would no hinge at the whim of a litigant.

The decisions of different benches are the decisions of the Court. For the convenient transaction of business, the senior judge among the members composing the Bench gets the privilege to preside over the Bench but the decision is that of the Court. The members composing the Bench collectively speak for the Court and would bear collective responsibility for the decision unless separate opinions are expressed by individual members composing the Bench. Majority opinion is the law as envisage under Article 145(5) of the constitution. Their opinion or order thus is the opinion or order of the Court. The minority opinion also would form part of the judgment or order but remains the minority view. The Chief justice is first among the colleagues.

The question, therefore, arises: whether the afore- enumerated imputations constitute contempt of this court? Though the petitioner contended that the provisions of the Act are ultra vires Article 19 [1] (a) of the constitution, it is not necessary for the purpose of this case to twelve upon that contention. This court has taken suo motu cognizance of contempt of this Court under Article 129 of the Constitution of India which reiterates as a court of record, its power to punish for contempt of itself. As pointed out in the proceedings of this Court dated January 13, 1996, in spite of the fact that this Court brought to his attention the gravity of the imputations, the petitioner insisted and reiterated that he stood by the scandalous averments made therein. This Court being duty bound, was, therefore, constrained to issue notice of contempt. The question, therefore, is: whether the aforesaid imputations are scurrilous attack intended to scandalise the Court and do they not impede due administration of Justice? Words are the skin of the language. Language in which the words are couched is media to convey the thoughts of the author. Its effect would be discernible from the language couched proprio vigore. The petitioner, a professor of English language in clear and unequivocal language emphasised and reaffirmed that the averments were "truthfully and carefully" worded. The question is: to what extent the petitioner is entitled to the freedom of those expressions guaranteed under Article 19[1](a) of the Constitution? If they are found scandalous, whether he would get absolved by operation of Article 19[1] (a) ?. As this Court has taken suo motu action under article 129 of the Constitution and the word `contempt' has not been defined by making rules, it would be enought to been defined by making rules, it would be enought to fall back upon the definition of 'criminal contempt" defined under section 2(c) of the act which reads thus:

> "Criminal Contempt" means the publication (whether by words, spoken or written, or by signs, or buy visible representations, or otherwise of any other act whatsoever which--
>
> (i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of any court: or
>
> (ii) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings;
>
> or
> (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any

other manner."
(emphasis supplied)

It is doubtless that freedom of speech and of expression guaranteed by Article 19[1] (a) is one of the most precious liberties in our secular, socialist republic.

Freedom of expression is a prized privilege to speak one's open mind although not always in perfect good taste of all institutions. Since it opens up channels of open discussion, the opportunity of speech and expression should be afforded for vigorous advocacy, no less than abstract discussion. This liberty may be regarded as an autonomous and fundamental good and its value gets support from the need to develop our evolving society from unequal pas t to a vigorous homogeneous egalitarian order in which each gets equality of status and of opportunity; social, economic and political justice with dignity of person so as to build an integrated and united Bharat. Transformation for that strong social restructure would be secured when channels for free discussion are wide opinion and secular mores are not frozen. All truths are relative and they can be judged only in the competition of market. Liberty is not to be equated with certainty. Freedom of expression equally generates and disseminates ideas and opinions, information of political and social importance in a free market place for peaceful social transformation under rule of law. The doctrine of discovery of truth does require free exchange of ideas and use of appropriate language. words are the skin of the language which manifests the intention of its maker or the speaker. The right to free speech is, therefore, an integral aspect of right to self-development and fulfillment of person's duties some of which are proselytised in part IVA of the Constitution as Fundamental Duties. The end of the State is to secure to the citizens freedom to develop his faculties, freedom to think as he will, to speak as he thinks and read as indispensable tools to the discovery of truth and realisation of human knowledge and human rights. Public discussion is political liberty. The purpose of freedom of speech is to understand political issues so as to protect the citizens and to enable them to participate effectively in the working of the democracy in a representative form of Government. Freedom of expression would play crucial role in the formation of public opinion on social, political and economic questions. Therefore, political speeches are given greater degree of protection and special and higher status than other types of speeches and expressions. The importance of speaker's potential development on political and social questions is also relevant to encourage human development for effective functioning of democratic institutions.

Equally, debate on public issues would be uninhibited, robust and wide open. It may well include vehement, sarcastic and sometimes unpleasant sharp criticism of Government and public officials. Absence of restraint in this area encourages a well informed and politically sophisticated electoral debate to conform the Government in tune with the constitutional mandates to return a political party to power. Prohibition of freedom of speech and expression on public issues prevents and stifles the debate on social, political and economic questions which in long term endangers the stability of the community and maximises the source and breeds for more likely revolution.

If maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expressions should be looked at not only from the perspective of the

speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The state has legitimate interest, therefore, to regulate the freedom of speech and expression. The state has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libelous speech or expression. There is a co-relative duty not to interfere with the liberty of others. each is entitled to dignity of person and of reputation. No body has a right to denigrate other's right to person or reputation. Therefore, freedom of speech and expression is tolerated so long as it is not malicious or libelous so that all attempts to foster and ensue orderly and peaceful public discussion or public good should result from free speech in the market place. If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right.

Freedom of speech and expression, therefore, would be subject to Articles 19 [2],129 and 215 of the Constitution, in relation to contempt of court, defamation or incitement to an offence etc. Article 3 read with Article 19 of the Universal Declaration of Human Rights grants to everyone liberty and right to freedom of opinion and expression. Article 19 of the International Covenant on Civil and political Rights, 1966 to which India is a signatory and had ratified, provides that everyone shall have the right to freedom of expression, to receive and impart information and ideas of all kinds but clause [3] thereof imposes corresponding duty on the exercise of the right and responsibilities. It may therefore, be subject to certain restrictions but these shall only be such as are provided by law and are necessary for the respect of life and reputations of others for the protection of national security or public order or of public health or moral. it would thus be seen that liberty of speech and expression guaranteed by Article 19[1] (a) brings within its ambit, the corresponding duty and responsibility and puts limitations on the exercise of that liberty.

A citizen is entitled to bring to the notice of the public at large the infirmities from which any institution including judiciary suffers from. Indeed , the right to offer healthy and constructive criticism which is fair in spirit must be left unimpaired in the interest of the institution itself. Critics are instruments of reform but not those actuated by malice but those who are inspired by public weal. Bona fide criticism of any system or institution including judiciary is aimed at inducing the administration of the system or institution to look inward and improve its public image. Courts, the instrumentalities of the state are subject to the Constitution and the laws and are not above criticism. Healthy and constructive criticism are tools to augment its forensic tools for improving its functions. A harmonious blend and balanced existence of free speech and fearless justice counsel that law ought to be astute to criticism. Healthy and constructive criticism are tools to augment its forensic tools for improving its functions. A harmonious blend and balanced existence of free speech and fearless justice counsel that law ought to be astute to criticism. Constructive public criticism even if it slightly oversteps its limits thus has fruitful play in preserving democratic health of public institutions. Section 5 of the Act accords protection to such fair criticism and saves from contempt of court. The best way to sustain the dignity and respect for the office of judge is to deserve respect from the public at large by fearlessness and objectivity of the approach to the issues arising for decision, quality of the judgment, restraint, dignity and decorum a judge observes in judicial conduct off and on the bench and rectitude.

In P.N. Duda vs. P. Shiv Shankar [AIR 1988 SC 1208] this court had held that administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office, i.e., to defend and uphold the Constitution and the laws without fear and favour. Thus the judges must do, in the light given to them to determine, what is right. Any criticism about judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticised. Motives to the judges need not be attributed. It brings the administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or judges should be welcome so long as such criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and judges to punish a person for an alleged contempt by taking notice of the contempt suo motu or at the behest of the litigant or a lawyer. In that case the speech of the Law Minister in a Seminar organised by the Bar Council and the offending portions therein were held not contemptuous and punishable under the Act. In a democracy judges and courts alike are, therefore, subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good no court would treat criticism as a contempt of court.

Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech which holds so dear in a democracy of ability to express freely. Freedom of expression produces the benefit of the truth to emerge. It aids the revelation of the mistakes or bias or at times even corruption it assists stability by tempered articulation of grievances and by promoting peaceful resolution of conflicts. Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity., equality and justice. It plays its part in helping to secure the protection of other fundamental human rights. Legal procedure illuminates how free speech of expression constitutes one of the most essential foundations of democratic society. Freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the Citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. As stated hereinbefore, they equally owe countervailing duty to maintain dignity, decorum and order in the court proceedings or judicial process. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary.

In E.M.S. Namboodiripad v. T. Narayanan Nambiar [1971) 1 SCR 697] a Bench of three judges had held that the law of contempt stems from the right of a held that the law of contempt stems from the right of a court to punish, by imprisonment or fine, persons guilty of words or acts which obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in facie curiae by the superior courts on their own behalf or on behalf or

courts subordinate to them, even if committed outside the Courts.

Scandalising the judges or courts tends to bring the authority and administration o flaw into disrespect and disregard and tantamounts to contempt. All acts which bring the court into disrepute or disrespect or which offend its dignity or its majesty or challenge its authority, constitute contempt committed in respect of single judge or single court or in certain circumstances committed in respect of the whole of the judiciary or judicial system. Therein the criticism by the chief Minister who described judiciary as an instrument of oppression an d the judges as guided and dominated by class hatred, class interest and class prejudices etc. was held to be an attack upon judges calculated to give rise to a sense of disrespect an distrust of all judicial decisions. It was held that such criticism of authority of the law and law courts constituted contempt court and the Chief Minister was found guilty thereof.

The contempt of court evolved in common law jurisprudence was codified in the form of the Act. Section 2 [c] defines " criminal contempt" which has been extracted earlier. In A.M. Bhattacjarkee's case [supra] relied on by the petitioner himself, a Bench of the two judges considered the said definition and held that scandalising the court would mean any act done or writing published which is calculated to bring the court or judges into contempt or to lower its authority or to interfere with the due course of justice or the legal process of the court. In para 30, it was stated that scandalising the court is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific judge, is a scurrilous attack on the judiciary as a whole, which although it does not relate to any specific case either past or pending or any specific judge, is a calculated to undermine the authority of the courts and public confidence in the administration of justice. Contempt of court is to keep the blaze of glory around the judiciary and to deter people from attempting to render justice contemptible in the eyes of the public. A liable upon a court is a reflection upon the sovereign people themselves. The contemnor conveys to the people that the administration of justice is weak or in corrupt hands. The fountain of justice is tainted. Secondly, the judgments that stream out of that foul fountain is impure and contaminated. In Halsbury's Laws of England [4th Edn.] Vol. 9 para 27 at page 21 on the topic "Scandalising the Court " it is stated that scurrilous abuse of a judge or court, or attacks on t he personal character of a judge, are punishable contempts. The punishment is inflicted, not for the purpose of protecting either the court as a whole or the individual judge of the court from a repetition of the attack, but of protecting the public, and especially those who either voluntarily or by compulsion are subject subject to the jurisdiction of the court, from the mischief they will incur if the authority of the tribunal is undermined or impaired. In consequence, the court has regarded with particular seriousness allegations of partiality or bias on the part of a judge or a court. On the other hand, criticism of a judge's conduct or of the conduct of a court, even if strongly worded, is not a contempt provided that the criticism is fair, temperate and made in good faith, and is not directed to the personal character of a judge or to the impartiality of a judge or court.

Therefore, it is of necessity to regulate the judicial process free from fouling the fountain of justice to ward off the people from undermining the confidence of the public in the purity of fountain of justice and due administration. Justice thereby remains pure, untainted and unimpeded. The punishment for contempt, therefore, is not for the purpose of protecting or vindicating either the

dignity of the court as a whole or an individual judge of the court from attack on his personal reputation but it was intended to protect the public who are subject to the jurisdiction of the court and to prevent under interference with the administration of justice. If the authority of the court remains undermined or impeded the fountain of justice gets sullied creating distrust and disbelief in the mind of the litigant public or the right-thinking public at large for the benefit of the people. Independence of the judiciary for due course of administration of justice must be protected and remain unimpaired. Scandalising the court, therefore, is a convenient expression of scurrilous attack on the majesty of justice calculated to undermine its authority and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes in their mind to obey them. If the people's allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice calling for urgent action. Action for contempt is not for the protection of the judge as private individual but because they are the channels by which justice is administered to the people without fear or favor. As per the Third Schedule to the Constitution oath or affirmation is taken by the judge that he will duly and faithfully perform the duties of the office to the best of his ability, knowledge and judgment without fear or favour, affection or ill-will and will so uphold the Constitution and the laws In accordance therewith, judges must always remain impartial and should be known by all people to be impartial. Should they be imputed with improper motives, bias, corruption or partiality, people will lose faith in them. The judge requires a degree of detachment and objectivity which cannot be obtained, if judges constantly are required to look over their shoulders for fear of harassment and abuse and irresponsible demands for prosecution or resignation. The whole administration of justice would suffer due to its rippling effect. It is for this reason that scandalising the judges was considered by the parliament to be contempt of a court punishable with imprisonment or fine.

Scandalising the court, therefore, would mean hostile criticism of judges as judges or judiciary. Any personal attack upon a judge in connection with office he holds is dealt with under law of libel or slender. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on majesty of justice. Any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or majesty of justice. It would therefore, be scandalising the judge as a judge, in other words, imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the court and would be contempt of the court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to majesty of justice. When the contemnor challenges the authority of the court, he interferes with the performance of duties of judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt. Section 2 (c) of the Act, therefore, defines criminal contempt the wider articulation that any publication, whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, is a criminal contempt. Therefore, a tendency to

scandalise the Court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the court is a criminal contempt. Any conduct of the contemnor which has the tendency or produces a tendency to bring the judge or court into contempt or tends to lower the authority of the court would also be contempt of the court.

It is true that in an indictable offence generally mens rea is an essential ingredient and requires to be proved for convicting the offender but for a criminal contempt as defined in Section 2 (c] any enumerated or any other act apart, to create disaffection disbelief in the efficacy of judicial dispensation or tendency to obstruct administration of justice or tendency to lower the authority or majesty of law by any act of the parties, constitutes criminal contempt. Thereby it excludes the proof of mens rea. What is relevant is that the offending or affront act produces interference with or tendency to interfere with the courses of justice. At this stage, we would dispose of one of the serious contentions repeatedly emphasised by the petitioner that he had no personal gain to seek in the lies except said to have been fired by public duty and has professed respect for the Court. Those are neither relevant nor a defence for the offence of contempt. What is material is the effect of the offending act and not the act per se. In E.M.S. Namboodiripad's case this court had held in paragraph 33 that a law punishes not only acts which had in fact interfered with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. It was held that the likely effect of the words must be seen and they clearly have effect of lowering the prestige of the judges and courts in the eyes of people. Same view was reiterated in Sambu Nath Jha vs. Kedar Prasad Sinha [(1992(1) SCC 573 at 577]. As stated earlier, imputation of corrupt or improper motives in judicial conduct would impair the efficacy of judicial dispensation and due protection of the liberties of the citizen or due administration of justice. This paramount public interest is protected by the definition in Section 2 [c] of the Act. It is, therefore, not necessary to establish actual intention on the part of the contemnor to interfere with the administration of justice. making reckless allegations or vilification of the conduct of the court or the judge would be contempt.

The question, therefore, to be considered is: whether the imputations referred to hereinbefore have necessary tendency to impinge or tendency to impede the public confidence in the administration of justice or would create disbelief in the efficacy of judicial administration or lower the authority or interferes with majesty of Court? The court, therefore, is required to consider whether the imputations made by a contemnor are calculated to bring or have the effect of bringing the court into contempt or casting aspersions on the administration of justice tends to impede justice etc. The court has to consider the nature of the imputations, the occasion of making the imputations and whether the contemnor foresees the possibility of his act and whether he was reckless as to either the result or had foresight like any other fact in issue to be inferred from the facts and circumstances emerging in the case. The reason is obviously that the court does not sit to try the conduct of a judge to whom the imputations are made. It would not be open to the contemnor to bring forward evidence or circumstances to justify or to show whether and how fairly imputations were justified because the judge is not before the Court. The defence justification to an imputation would not, therefore, be available to the contemnor. The imputation of improper motives or bias cannot be

justified on the principle of fair contempt.

In Ambard v. Attorney-General for Trinidad and Tobago [1936 AC 322 at 335] Lord Atkin in his oft-quoted judgment held that justice is not a cloistered virtue and must be allowed to suffer the secutiny and respectfully, have been, though outspoken comments of ordinary man". But in the same judgment it was further pointed out that provided that members of the public should 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. That was a case of criticism of the Court proceedings as is saved by Section 5 of the Act.

Law is not in any doubt that in a free democracy everybody is entitled to express his honest opinion about the correctness or legality of a judgment or sentence or an order of a court but he should not overstep the bounds. Though he is entitled to express that criticism objectively and with detachment in a language dignified and respectful tone with moderation, the liberty of expression should not be a licence to violently make personal attack on a judge. Subject to that, an honest criticism of the administration of justice is welcome since justice is not a cloistered virtue and is entitled to respectful scrutiny. Any citizen is entitled to express his honest opinion about the correctness of the judgment, order or sentence with dignified and moderate language pointing out the error or defect or illegality in the judgment, order or sentence. That is after the event as post-mortem.

In Shri Baradakanta Mishra etc. v. The Registrar of Orissa High Court & Anr. etc. [1974) 1 SCC 374], the appellant, a District judge was suspended and a spate of litigation in that behalf had ensued. When an order of suspension was set aside by the Government, in exercise of his power under Article 235, the High Court further ordered suspension of him pending enquiry of the allegations made against judges in a memorandum and letters sent to the Governor in a vilificatory criticism of the judges in their function on the administration side. When contempt action was initiated, he challenged the jurisdiction of the court and the competency to initiate action for contempt on the specious plea that the acts done by the High Court were on the administration side and were not judicial actions. A three-Judge Bench had negatived the plea and convicted the appellant under section 12 of the Act. When the matter had come up before this court, a constitution Bench considered the gravamen of the imputations and had held that the allegations made against the court in the memo submitted to the Governor constituted scurrilous allegations against the High Court. Again some of the allegations made in the memo of appeal and various communications to the Supreme Court were held to constitute contempt of the Court and the conviction was confirmed though sentence was reduced. This Court held that imputation of improper motives, bias and prejudice constitutes contempt under Section 2[c] of the Act.

In Special Reference No. 1 of 1964, popularly known as U.P. Legislature's Warrant of Arrest of the Judges of the Allahabad High Court and Keshav Singh Reference, a Bench of seven judges of this Court observed that the power to punish for contempt alleged must always be exercised cautiously, wisely and with circumspection. The best way to sustain the dignity and status of their [judges] office is to deserve respect from the public at large by the quality of their judgments, fearlessness and objectivity of their approach and buy the restraint, dignity and decorum which they observe in

their judicial conduct. It would equally apply to the legislature. Keeping the above perspective in view, the question emerges; whether the imputations itemised hereinbefore constitute contempt of the Court. At the cost for petition, we any reiterate that in a democracy though every one is entitled to express his honest opinion about the correctness or legality of a judgment or an order or sentence, judges do require degree of detachment and objectivity in judicial dispensation, they being duty bound with the oath of office taken by them in adjudicating the disputes brought before the court. The objectivity or detachment cannot be obtained if the judges have constantly to look over their shoulders for fear of harassment and abuse and irresponsible demands for prosecution, resignation or to refrain from discharging their duties pending further action. Cognisant to this tendency;, the founding fathers of the Constitution engrafted Articles 121 and 211 of the constitution and prohibited the parliament and the legislatures to discuss on the floor of the House the conduct of any judge of the Supreme Court or the High Court in the discharge of his duties except upon a motion for presenting address to the president praying for the removal of a judge under Article 124[4] of the Constitution in accordance with the procedure prescribed under the judges [Inquiry] Act, 1968 and the Rules made thereunder. In A.M. Bhattacharjee's case on which great reliance was placed by the petitioner emphasising the rectitude on the part of a judge, this Court laid the rule for the advocates to adhere to a code of conduct in seeking redressal on the perceived aberration of the conduct of a judge otherwise than in accordance with the procedure prescribed in Article 124 [4] of the Constitution. The respect for and the dignity of the court thereby was protected from scurrilous attack on the judge or the court. if the forum of the judicial process is allowed to mount scurrilous attack on a judge, the question arises whether the forum of the judicial process of vilification of the judges or imputations to the judges in the pleadings presented to the court would give liberty of freedom of expression to an advocate or a light of the above discussion, we have little doubt to conclude that when an advocate or a party appearing before the court requires to conduct himself in a manner befitting to the dignity and decorum of the court, he cannot have a free licence to indulge in writing in the pleadings the scurrilous accusations or scandalisation against the judge or the court. If the reputation and dignity of the judge, who decides the case are allowed to be prescribed in the pleadings, the respect for the court would quickly disappear and independence of the of the judiciary would be a thing of the past.

In Re: Roshan Lal Ahuja [(1993) Supp. 4 SCC 446] when the contemnor-petitioner's countless unsuccessful attempts against his order of removal from service became abortive and in spite of this Court granting at one stage compensation of a sum of Rs.30,000/- he had indulged in the pleadings with scurrilous accusations on judges who granted compensation and not reinstatement. It was held by a three- judge Bench that the contemnor had permitted himself the liberty of using language in the documents and pleadings which not only had the effect of scandalising and lowering the authority of the court in relation to judicial matters but also had the effect of substantial interference with an obstructing the administration of justice. The unfounded and unwarranted aspersions on the judges of this Court had the tendency to undermine the authority of the court and would create distrust in the public mind as to the capacity of the judges of this Court to met out fearless justice. Accordingly, he was convicted and sentenced to under go imprisonment for a period of four months and to pay a fine of Rs.1,000/- and in default, to undergo sentence for a further period of 15 days.

In L.D. Jaikwal v. State of U.P. [1984) 3 SCC 405], the conduct of an advocate in using abusive language in pleadings and vilification of a judge was held to constitute contempt under Section 2 [c] (i) of the Act and his sentence under Section 12 of the Act was upheld. In Re: Shri S. Mulgaokar [(1978) 3 SCC 497] the conduct of a senior advocate in publishing a pamphlet imputing improper motives to the Magistrate who decided his case was held to constitute substantial interference with the due administration of justice. His conviction was accordingly upheld though sentence was reduced. In K.A. Mohammed Ali v. C.N. Prasannan [(1994) Supp. 3 SCC 509] while arguing the case, the counsel raised his voice unusually high to the annoyance of the Magistrate and used derogatory language against the Magistrate before whom he conducted the trial of an accused. His conviction and sentence for contempt was accordingly upheld.

In Gillers "Regulation of Lawyers - Problems of Law and Ethics" [Third Edition - 1992] at page 747 it was pointed out that in spite of first Amendment protection of free speech, lawyers who committed contempt of the court were punished by American court even if they were advocating their clients interest at that time. The lawyer's behavior threatens the dignity and authority of the Courts was held to constitute contempt of the court.

In Charan Lal Sahu v. Union of India & Anr. [(1988) 3 SCC 255], in a petition under Article 32 of the Constitution the advocate indulged in mud-slinging against advocates and this Court. It was held that those allegations were likely to lower the prestige of this Court. This Court accordingly held that he committed contempt in drawing up the petition and directed to initiate proceedings against him for overstepping the limits in particular of self-restraint.

It would, thus, be seen that when the first writ petition was dismissed by this Court, as a responsible citizen, the petitioner would have kept quite. When the result animated by the petitioner was not achieved, he embittered to foul at the process of this Court and emboldened to file the second writ petition with imputation made against this Court, in particular targeting the Chief justice of India, Justice A.M. Ahmadi. As stated hereinbefore and need not be reiterated once over that it is the duty of the Court to hear and decide any matter posted for admission. Therefore, there is nothing improper for the first Court presided over by the Chief Justice of India to hear and decide the matter. When it came up for admission, the Court appears to have been persuaded to ascertain the correctness of the allegations made in the writ petition. This Court obviously before issuing notice had sent for and directed the solicitor General to obtain the information from the Government as to the correctness of the allegations made before deciding whether the Court would exercise its prerogative power under Article 32 to issue directions as sought for. In furtherance thereof, the Solicitor General admittedly placed before the Court the record. On perusal thereof, the first Court the record. On perusal thereof, the first Court had declined to exercise the power as enumerated and obviously stated by the petitioner that the exercise of the power under Article 32 was not appropriate since the Government in the Defence Department could recover from the Prime Minister's Secretariat or from the Congress Party, as the case may be, all the arrears, if any, due and payable by the respective entities. It is not obligatory for this court to give reasons for dismissing the writ petition. Day in and day out in countless cases, while refusing to interfere with the orders this Court dismisses the petitions be it filed under Article 32 or 136 of the Constitution in limine. It is also seen that though the case was adjourned for two weeks, no doubt, it was not posted on that day

but it was listed some time thereafter. In the proceedings of the Court recorded by the staff, it was recorded that the Solicitor General or in personal capacity obviously acted as amicus on behalf of the court. Being the Solicitor General for India, he was directed to have consultation with Government Departments and to obtain needed information. In appropriate cases this procedure is usually adopted by the Court. Recording of the proceedings by the court generally is not noted by the Court. Is it improper for the Chief justice to hear the case? Was the dismissal totally unjust and unfair for not recording the reasons? The petitioner obviously with half-baked knowledge in law mixed up the language as "improper for Chief justice of India to hear it". "Dismissal of the "grouse" of the petitioner was totally unjust, unfair, arbitrary and unlawful flagrant violation of mandate of Article 14" "Violation of the sacred oath of office " and to "declare justice A.M. Ahmadi unfit to hold the office as Chief Justice of India". When these imputations were pointed out to the petitioner by three-Judge Bench presided over by brother Verma, J. while dismissing the second writ petition, to be scandalous and reckless, he had stated that he "stood by" those allegations. He reiterated the same with justification in his preliminary submissions. He has stated that the accusations made were truthful and "carefully" worded. In this backdrop scenario, the effect of these imputations is obviously reckless apart from scandalising this Court, in particular the Chief Justice of India and was intended to foul the process of the Court or lower or at any rate tends to lower the authority of the Court in the estimate of the public and tends to undermine the efficacy of he judicial process. It would, therefore, be clear that the accusations are gross contempt. At the height of it, he stated that since the first writ petition was not disposed of by a bench of not less than five judges, the writ petition was not dismissed in the eye of law and the order of dismissal is non est and it is "not decided and disposed of constitutionally". This assertion of the petitioner flies in the face of the judicial finality of the order of this Court and the assertion tends to question the authority of the court. It creates tendency to obstruct the administration of justice and, therefore, it would be an outrageous criminal contempt.

Omission to record reasons, according to the petitioner, is violative of the principles of natural justice. The Chief justice of India has committed impropriety in deciding the matter. As stated earlier, the decision is that of the Bench on behalf of the Court and the Chief justice, being the senior-most among the members constituting the bench, had spoken on behalf of the Bench. Therefore, the attribution of improper motives scandalises the efficacy of judicial adjudication and per se contumaciously lowers or at any rate tends to lower the dignity or authority of the Court. The prayer for prosecution of the Chief justice, though sought in Item 14

(a) and (d) to be withdrawn, which would be of no consequence, is, therefore, unbelievably outrageous contempt.

These findings dispose of Items 1,3,5,9 and 14(a) which remain not even amended by the contemnor.

As regards other imputations, it may be stated at this stage, as rightly pointed out by the learned solicitor general, that what we are required to consider is the effect of the imputations made by the contemnor in the second writ petition and not what he sought to amend some of he averments attributing imputations to this Court and the effect thereof. By his own admission, they are

"strindent" and "pungent". They are "truthful" and were "carefully" stated by him. Even the amended averments did not advance the contemnor's stand. On the other hand, they compound perpetration of contumacious conduct recklessly made by the contemnor in the second writ petition. It item 4, the contemnor attributed that "justice Ahmadi "ultimately" dismissed the petition observing that the Government of India was capable of realising the dues from Shri Rao (which it had not done in two years) and without recording reasons for dismissing the petition. So much for the vaunted adherence to the twin principles of the "transparency and accountability". It would be seen that insinuations that emerge from these words in writ petitions together with the phrase that CJI browbeated him ex facie scandalise the Court and tend to lower the authority of the Court. As seen, the insinuations tend to bring the court into contempt in the estimate of the general public and that the court lacked fairness, objectivity and dismissed the writ petition for known reasons. it also tends to interfere with the administration of justice and that the court should give reasons last the order be believed to be shrouded with suspicion. Therefore, it is ex facie contumacious. The contemnor seeks to justify his averments under Section 4 of the Act as fair and accurate report of the judicial proceedings and that, therefore, they are not contempt. Even in his modified statement, for his statement that the chief justice of India browbeated him in dismissing the writ petition, he stated the "discerned reluctance" on the part of the presiding judge. In other words, his revised imputation compounds the commission of flagrant contempt by substituting the word "discerned reluctance" on the part of the presiding judge. In other words, his revised imputation compounds the commission of flagrant contempt by substituting the word "browbeat" with the words "discerned reluctance". In other words, he attributed motives to the Court for dismissal of the first writ petition. It would, thus, be clear that the contemnor animated to impute motives to the chief Justice of India in the discharge of his constitutional duty of deciding a case. When his grouse stated by the petitioner emphasis supplied] against sri P.V. Narasimha Rao was not redressed exercising the power under Article 32 a result which he wanted, the petitioner contumaciously attributed motives to the Court, in particular to the presiding officer of the Court, the Chief Justice of India and thereby he scandalised the court in the estimate of the general public. We fail to appreciate the stand of the petitioner that Section 4 bails him out and purges from contempt. It would be applicable only to publication of the report of a judicial proceedings fairly and with accuracy to outside the world. There is a distinction between expression in pleading and publication of he report of the judicial proceedings or an order without malice as fair and constrictive criticism to the readers. As stated earlier, fair criticism of the judicial proceedings outside the pleadings of the Court is a democratic feature so as to enable the court to look inward into the correctness of the proceedings fn the legality of the orders of the orders of the Court by the Court itself for introspection. But a party has a duty and responsibility to plead as a part of the averments or the prayer in the relevant portion with language befitting with the dignity of the Court and the judicial process and not in self-abuse of the freedom of expression given under Article 19 [1] (a). abuse of the process of the court is a self-evidence. As such Article 19(2) creates an embargo on the freedom of the expression and excludes from its operation the power of contempt of Court under the Act. This Court being court of record, power of this Court under Article 129 is independent and is not subject to Article 19[1] (a), Ex abundanti cautela, Article 19[2] excludes the operation of Articles 19 [1] when speech or expression is trapped in contempt of court or tends to trench into it. When the contempt of court is committed by a litigant, the freedom of expression being contemptuous becomes punishable under Article 129 of eh Constitution de horse the power under Section 12 of the Act.

Item 7 relates to the imputation that the Chief justice of India gets no judicial protection unlike the president of India for being prosecuted even while Chief justice A.M. Ahmadi holds office as Chief justice of India and is accordingly liable to prosecution. This bravado not only impinges upon the protection given by Article 124[4] of the Constitution and under relevant provisions of the protection of officials Act ex facie it is an outrageous tendency to lower the authority of the Court and interference with judicial administration. The assertion of the petitioner that this is a constitutional conundrum required to be decided by a constitution Bench of this Court highlights contumacious conduct of the contemnor.

In item 8 he attributes that this Court "willfully" and "advertently" [emphasis supplied] violated fundamental rights of the contemnor and of other people in not granting relief of direction to Sri P.V. Narasimha Rao to pay the alleged dues. The word "advertently" was carefully used by the petitioner and the word "willfully" was employed for refusal of the relief. They do emphasise the emphatic tone of he language and the motive of he contemnor and attribute motives to this court that the relief sought for in the first writ petition "advertently" was not granted and was "wilfully" declined and thereby the Chief Justice Ahmadi lost constitutional protection of not being prosecuted. This accusation is a culmination of the contumacious conduct of wanton scandalisation of the Court and reckless denigration. In his amended petition, her further aggravates the contempt stating that the dismissal of the petition by the first court sent wrong signals to the entire judiciary of which justice Ahmadi is the head as chief justice of India. The scurrilous attack, therefore, is not only on Justice Ahmadi as a judge but also as the Chief Justice of India and also as head of the institution of the whole country. Thereby he designedly and deliberately allowed himself being brought within ex facie criminal contempt.

Item 9 relates to the accusation "what are the legal consequences of the violation of oath of office by justice Ahmadi". He states in his preliminary submissions that it a constitutional question required to be decided by a constitution Bench. As stated earlier, every question raised need not necessarily be decided unless the case cannot be disposed of without deciding the question for granting or refusing to grant the relief. The oath of office taken by a judge of this Court is not that he should allow every case or dismiss every case but only to uphold the constitution and the laws and to administer justice in accordance therewith in tune with the oath of his office. The protection of Articles 124 [4], 121,211, the judicial officers protection act and the judges (protection) Act is to ensure independence to the judiciary. Threat to judicial process is a challenge to the authority of the court or majesty of justice. It would be ex-facie contumacious conduct.

In item 10 again, the petitioner attributes that justice Ahmadi as Chief justice of India and as a judge of this court deliberately and willfully failed to perform his duties and stultified the performance of fundamental duties by the petitioner. This imputation is the consequence of the dismissal of he first writ petition. Thereby, he seeks stripping of citizenship of justice Ahmadi. It is an unbelievable outrageous affront to the majesty of justice on the part of the contemnor and scandalisation of this Court. It tends to lower the dignity and authority of the Court and also sows seeds for persons with similar propensity to undermine the authority of the Court or the judiciary as a whole; he crossed all boundaries of recklessness and indulged in wild accusations. He sought justification in his preliminary submissions that it being a question of law, it does not amount to personal imputation

or insinuation. In spite of this Court pointing it out to be scandalous, when the second writ petition was dismissed and his persistence that he stood by those allegations, it does not lie in his mouth to contend either in his preliminary submissions or his modified form that the dismissal of the first writ petition amounts to failure to perform fundamental duties by the CJI and, therefore, it would further compound the contempt.

In imputation 11, the petitioner attributed to the chief Justice of India that he had allowed his so to practise in the supreme Court and to stay with him in his official residence etc. The petitioner sought justification to the said imputation from reports said to have been published in the "India Today" and "The Times of India" by a lady senior advocate of this Court. But he petitioner has not placed on record the said material. Therefore, we do not have the advantage to verify their contents or correctness or otherwise of the statements said to have been published therein. When we pointed out to the petitioner whether he had made any independent enquiry, he had reiterated that he relied upon those statements. In other words, by implication, he admitted that he did not make any independent enquiry into the alleged misuse of official facility by the Chief Justice of India in permitting his son to practise in this Court or to reside in his official residence along with him. For the said imputation he said that Justice Ahmadi, the Chief justice of India is liable to be prosecuted under the prevention of Corruption Act and he seeks as a justification the ratio decidendi of Veeraswami's case. it is seen that Veeraswami's case has no application whatsoever. As stated earlier, Article 124 (4) of he constitution read with the Judges [Inquiry] Act prescribes the procedure to take action against a judge of the Supreme Court or of the High Court for proved misbehavior or incapacity. As laid down in Bhattacharjee's case, Bar Association of the concerned Court was given liberty to place any material of the aberration of the conduct of a judge before the CJI for redressal as per the "in-house" procedure laid down therein. For proved misbehavior, the address by each house of parliament to the president for removal of a Judge pursuant to a finding of proved misbehavior or incapacity under the judges (Inquiry) Act by a resolution of not less than two-third of the members of the House and voting by two-third of the House present and an order of removal therein by the president of India is culmination. In Bhattacharjee's case, this Court also laid down that no other authority or person has power to conduct any enquiry against the conduct of a judge. Articles 121 and 211 prohibit discussion, in the parliament or in the Legislature of a State, or the conduct of judge of the Supreme Court or High Court respectively. Therefore, when the constitution prohibits the discussion of the conduct of a Judge, by implication, no one has power to accuse a judge of his misbehavior or incapacity except and in accordance with the procedure prescribed in the Constitution and the Judges [Inquiry] act or as per the procedure laid down in Bhattacharjee's case. Irrelevancy of the accusations apart, the prayer for prosecution of the Chief Justice of India under the prevention of Corruption Act is an assault on majesty of justice, affront to authority of law, the gravest contumacious conduct and scurrilous scandalisation of the Court.

Item 12 of the accusation relates to the payment of litigation cost incurred by the contemnor in both The writ petitions and the loss said to have been caused to the public exchequer by non-payment by Sri P.V. Narasimha Rao, from personal pocket of Justice Ahmadi as a Chief Justice for dismissal of the Writ petition. He stated in his preliminary submission that when loss was caused by a public servant in his official capacity to the public exchequer due to his dereliction of duty and under the law it was recoverable from pay or pension of the public servant, on the same analogy Chief justice

of India should be liable to make good the loss incurred by him and by the State due to non-payment by Sri P.V. Narasimha Rao. The implication is that by judicial act, if a presiding Judge dismisses a petition, he is liable to bear personally not only the costs incurred by the litigant but also the resultant loss to the state with interest payable thereon. This imputation is a deliberate interference with the judicial process and tends to lower the authority of the Court spreading the virus to repeat by drum beats of similar reckless imputations against the judiciary at every forum down to the lower rank of the judiciary spreading rippling effect on independence of the judiciary, authority of the Court and wanton interference with judicial process. It must be held to he a depraved contumacious conduct.

Item 13 relates to the interference with the judicial management of the Court and the duty of a Judge. When an accusation is made against the presiding judge, by implication, until the matter is decided, the presiding officer has to desist from discharging the judicial duties by his proceeding on leave and the senior-most puisne judge would assume the office of the Chief Justice. This is a deliberate interference in the judicial management tending to son disaffecting in the efficacy of dispensation of justice. The further accusation that the Chief Justice of India should not constitute a Bench of the Judges appointed during his tenure so that "he (CJI)" "may not directly or indirectly or indirectly influence any of the Judges hearing the matter". It would, thus, be in unequivocal loud expression that the contemnor attributed motives to the CJI that the judges appointed during his tenure as Chief Justice are amenable to his influence in judicial adjudication and would decide the causes by pressure or influence directly or indirectly brought by the Chief Justice of India. Equally, it is a corollary that these judges are amenable to influence and thereby they do not decide the cases posted before them legally and objectively. The Court is subject to pressures and decides cases under influence. These accusations are flagrantly outrageous to scandalise the Court. Though the contemnor has sought leave to modify this statement, ultimately, in his amended statement, he did not touch upon this aspect of the matter. In other words, as stated earlier, he stood by his averments calculatedly made. His justification that justification that justice P.N.Bhagwati (as he then was) decided first S.P. Gupta's case when allegations against CJI Chandrachud were made has no application. In a judicial proceedings taken by this Court, the office of the chief Justice of India was directly involved in appointment of additional judges or extension of their tenure as additional Judges or their transfer. The Chief Justice of India reclused himself from the Bench; resultantly, the senior-most puisne judge came to preside over that Bench. Thus, the contemnor has committed the contempt of this Court under Article 129 of the Constitution.

The question then is: what punishment is to be awarded to the contemnor? As pointed out earlier, the repeated assertions of the petitioner that he has no personal gain in the litigation and was actuated by the public duty and laid the petitions, bear no relevance or a defence. It is already held that in a contempt proceedings, the motive, in other words, the mens rea is not relevant. What would be the effect of the act or conduct or imputation is the relevant question for decision? It is true that in an indictable offence under penal law generally mens rea is an essential ingredient and the burden lies on the prosecution to prove it affirmatively. In a contempt proceedings of summary nature, the proof of mens rea is absolutely unnecessary. What is material is the effect or the tendency of the act, conduct or the publication of the words, written, spoken or by signs or by visible representation or otherwise and whether it scandalises or tends to scandalise or lowers or tends to

lower the authority of the court or prejudices or tends to prejudice or interfere or tends to interfere with the due course of any judicial proceedings or interferes or tends to interfere with or obstruct the administration of justice in any other manner. The tendency due to the publication, whether by words written or spoken or by signs or by visible representation or otherwise, of any matter or the doing of any other act whatsoever is relevant and material.

It is already noted that while dismissing the second writ petition, this Court has pointed out the scandalous nature of accusations which found place in the second writ petition and when the petitioner persisted for consideration of scandalous accusations to lay proceedings against the Chief Justice of India for prosecution and other reliefs referred to hereinbefore, he reiterated that he would stand by those accusations. Resultantly this Court was constrained to be into merits and dismissed the petition and initiated suo motu contempt proceedings and got the notice issued to him pointing out specifically 14 items which constituted scandalous and reckless litigations pleaded with irresponsibility. He reiterated them in his preliminary submissions with further justifications. He admitted that many of them are strident and pungent. He modified some but, as has been pointed out, by compounding further contempt. In spite of the solicitor General pointing out the seriousness of the accusations and the need for the petitioner to have further consultation with a counsel of his choice the contemnor remained unmoved. On April 15, 1996, when the matter came up before this Bench for the first time after the service of notice of the contempt and his filing the preliminary submissions, the petitioner had orally stated that some legal counsels in the Bar suggested to him that he should modify the offending portions noted in the contempt notice. It would, thus, be seen that he appears to have had consultation with some advocates at the Bar and that he did not retract his steps. He did not tender any unconditional apology, though this Court is not bound to accept such an unconditional apology for consideration. Considered from the totality of the facts and circumstances, the gravest magnitude of the contumacious conduct of the contemnor, we are left with no opinion but to convict and sentence him to undergo simple imprisonment for a period of three moths with a fine or Rs. 2,000/- payable in a period of months and in case of defaulted, to undergo further imprisonment for a period of one month.

The contempt petition is accordingly disposed of.