Sh. H. Syama Sundara Rao vs Union Of India (Uoi) And Ors. on 14 November, 2006

Equivalent citations: 2007CRILJ2626

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Bench: Mukundakam Sharma, Hima Kohli

JUDGMENT

Hima Kohli, J.

1. The present proceedings for contempt have been initiated against the petitioner, who appears in person, pursuant to our orders dated 5th October, 2006. In the course of proceedings held on the said date, Mr. B.L. Wali, learned Counsel appearing for respondent Nos. 3 and 4 drew our attention to a notice dated 28th April, 2006 issued by the petitioner, Mr. H. Syama Sundara Rao to Mr. Wali. In the said notice, the petitioner levelled a series of allegations against the counsel for the respondent and cast aspersions on him. The notice issued by the petitioner states that the counsel has made a mockery of the judiciary and the High Court; has indulged in grave professional misconduct and has deliberately misled the High Court. In the last para of the notice, the petitioner has stated that he gives three days' time to the counsel to take corrective steps, failing which the petitioner shall initiate appropriate action against the counsel before the High Court or before the Bar Council of Delhi. On perusal of the aforementioned notice issued by the petitioner, this Court issued a notice to the petitioner to show cause as to why he should not be punished for contempt of court proceedings for violation of and obstruction of the Courts of Justice. The petitioner was called upon to file his reply within one week and the matter was adjourned to 16th October, 2006.

2. As the court has taken action on its own motion in the present case, the nature of contempt of which the petitioner was prima facie found guilty, was specifically put to him to enable him to make his submissions and file his reply to show cause in the said context.

3. On 16th October, 2006, the petitioner justified his action of issuing notice to Mr. B.L. Wali, Advocate and stated that he had filed his reply to the show cause notice and at the same time claimed that he had already apologized to the Advocate. A perusal of the reply filed by the petitioner makes it apparent that the apology, if any, tendered by him was far from unqualified and in fact in the reply to the notice to show cause, he has not only justified his action referred to hereinabove, but has further elaborated some of the statements made against the Advocate for the respondent, which as culled out from his reply, are in the following manner:

> As petitioners life is ruined by false proposition of law by counsel Shri B.L. Wali.

...Petitioner in person gave a bonafied speaking notice dated 28.05.2006 to correct false proposition of law and subsequently after four months filed CRLM 9269/06. (Pending) invoking Section 35 of Advocates Act, and Bar Council Rules of professional conduct requesting High Court to direct Bar Council for appropriate action....

...The petitioner in person stands ruined by the professional misconduct of blatant false proposition of law Shri B.L. Wali and hence issued said notice dated 28.04.2003....

...The petitioner is a victim of fraud committed on judiciary by the counsels who have acted like parliament and also deliberately mislead the courts....

...Shri B.L. Wali, counsel of Super Bazar respondent No. 3 and of law officer of Super Bazar respondent No. 4 has pleaded wrong proposition of law deliberately, and has delayed/denied justice to me. They have acted like parliament. UOU has not filed reply. counsel Shri B.L. Wali has acted like parliament. He has made following shockingly false proposition of law in brief as under....

...Hence it is clear that Shri B.L. Wali is deliberately misleading the Hon'ble High Court, which is professional misconduct as per Hon'ble Supreme Court in (2001) 2 Supreme Court 221. Thus Shri B.L. Wali has violated of professional conduct and etiquette and professional ethics, and duty to court enshrined in the Section 49c of Advocates Act 1961....

...As advocates are liable for misconduct Under Section 35 of the advocates act 1961, giving notice to advocate Shri B.L. Wali and consequently filing an application in High Court CM 9269/06, (pending in High Court) cannot be construed as obstruction of justice. It is in fact respondent No. 3 & 4, Super Bazar and their law officer, and their counsel Shri B.L. Wali has indulged in obstruction of justice by filing false affidavits and blatant false proposition of law....

...Hence giving notice to advocate regarding professional misconduct of blatantly making false proposition of law and misleading statements and deliberately misleading the courts and consequently the filing the application before Hon'ble High Court should not amount to obstruction of justice as every citizen has a fundamental right to issue a notice and to file case before court. It is in fact making deliberate false proposition of law by Sh. B.L. Wali should amount to obstruction of justice. There is no law or rule that counsels of high court cannot be served with notice for professional misconduct. Counsels are not above law and are liable for legal proceedings for professional misconduct....

As per Advocates Act and bar council rules an advocate has duty toward court and client and the opponent. Shri B.L. Wali has violated the duty to the opponent

petitioner by making false proposition of law and deliberate misleading statements. Hence Shri B.L. Wali has violated bar council rules.

Bar council rules clearly says that the advocate should not act mouth piece of the client. Shri B.L. Wali has acted as mouth piece of his client by violating the duty to the opponent petitioner by making false proposition of law and deliberate misleading statements. Hence Shri B.L. Wali has violated bar council rules and professional ethics....

Even if there is any obstruction in justice caused by the said notice it is far much lesser than that of counsel Shri B.L. Wali....

4. In view of the aforesaid stand adopted by the petitioner, the matter was posted for 2nd November, 2006 on which date, both the petitioner and counsel for the respondents advanced their arguments in support of their respective cases. The petitioner has categorically stated that he is not guilty of any contempt of this Court by making allegations against an Advocate and that making any such allegation against an Advocate does not amount to interference with or obstruction of administration of justice. In support of his case, the petitioner has relied upon various decisions including the following:

(i) Pratap Singh and Anr. v. Gurbaksh Singh .

(ii) D.P. Chadha v. Triyugi Narain Mishra and Ors. (2001) 2 SCC 221.

(iii) Mahant Hakumat Rai v. Emperor AIR 1943 Lahore 14.

(iv) Kamta Prasad and Anr. v. Ram Agyan and Anr. .

(v) Bhagwan Giri Goswamy, President Dhamtari Co-op. Marketing Society Ltd., Raipur v. R.P. Nayak .

5. The learned Counsel for the respondent has also made his submissions while relying upon certain judgments. He has stated that the petitioner is in the habit of making reckless allegations against the advocates for the respondents as also the law officer of the respondent Nos. 3 and 4 and this is not the first time, that the petitioner has done so. It is further stated that even the previous two counsels engaged by the respondents took discharge from the matter only in view of the threats extended by the petitioner to them. Counsel for the respondent has referred to the tenor of the notices issued by the petitioner to him and his clients and stated that such acts on the part of the petitioner is not only causing him immense harassment but amounts to preventing him from discharging his professional duties. Thus, he has stated that action ought to be taken against the petitioner for contempt of Court.

6. We have heard both the parties and have also perused the relevant records. From the records, we find that vide order dated 18th February, 2005, it was noted that as the petitioner was appearing in

person and the issue raised in the writ petition was of legal nature, it may not be possible for him to deal with it or render any assistance to the court in the matter. He was, therefore, advised to seek legal assistance and in case it was beyond his means to engage a counsel, he was given liberty to approach the Delhi Legal Services Authority and seek free legal services of an Advocate. However, on the next date of hearing, the petitioner submitted that he was not interested in engaging a counsel and wanted to argue his case himself. While perusing the records, we find that apart from the notice dated 28th April, 2006 issued by the petitioner to Mr. B.L. Wali, as referred to hereinabove, even earlier, the petitioner had issued a similar notice dated 17th March, 2005 addressed to Sh. B.L. Wali, Advocate for the respondent, as also to two others. In the said notice, annexed as Annexure-C/2 to the application filed by the petitioner under Section 340 of Code of Criminal Procedure (Cr.P.C.), wherein the petitioner has sought initiation of criminal contempt proceedings not only against the respondent but also the counsel for the respondents on the allegations that false and misleading affidavits have been filed and that the counsel for the respondents has indulged in grave professional misconduct for which the Bar Council of Delhi should be directed to take action against him under the Advocates Act and Rules, in the last para, the petitioner has stated as below:

> Further you have made several false and misleading statements knowing it as false.
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> Hence this notice is given to you why not a. CRPC 340 proceedings.
>
> b. Proceedings to stop you appearance in High Court.
>
> c. Contempt of court proceedings be initiated.
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> Reply in 7 days.

7. It has also transpired from the records that the petitioner has filed two applications invoking the provisions of Sections 340 Cr.P.C. being Crl. Misc. No. 6686/2005 and Crl. Misc. No. 9269/2006 for prosecuting the respondents for filing false affidavits and for initiating criminal contempt proceedings against them. After the first application referred to hereinabove was withdrawn by the petitioner, he filed the second one on the same lines, again levelling allegations against the Advocate for respondent Nos. 3 and 4 and further, enclosing therewith, the notice dated 28th April, 2006, issued to the Advocate.

8. Hence, here's a case where contention of the petitioner that issuing notice to the Advocate for the opposite party as also the party, in a pending case and casting aspersions on the Advocate does not amount to contempt of Court, has to be examined in the light of the provisions of Section 2 of the Contempt of Courts Act, 1971 (hereinafter referred to as `the Act'). Section 2(c)(iii) is relevant for purposes of the present proceedings and is reproduced hereinbelow:

> 2(c)(iii). Criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

9. Next in order is the need to examine the law in the context as to whether issuing threatening notices to an Advocate for the opposite side in a pending litigation amounts to contempt of court. There are a plethora of cases that fall under well recognized heads of contempt in which an offence may be committed. It is neither possible nor necessary for us to lay down an exhaustive catalogue of such cases which would amount to contempt. However, one of the well recognized principles of jurisprudential vintage is interference with or obstruction to or tendency to obstruct the administration of justice. We have no manner of doubt in our mind that it is the right of every litigant to take before the court every legitimate plea available to him in his defense. If the pleas are found to be patently false, contrary to law, an attempt to mislead the court, irrelevant, immaterial, scandalous or extraneous, the courts are not powerless. The courts have sufficient power not only to reject such false pleadings, but also to have such irrelevant, immaterial, scandalous or extraneous pleas struck out from the record either on an application being made to the court or even on its own. However, any attempt made by a party to pressurize the opposite party or its advocate to withdraw a plea taken in the course of proceedings pending in court, amounts to direct interference with the administration of justice. Such an attempt, in our opinion, also takes in its fold, issuance of notices and filing of applications, etc., containing scurrilous, disparaging and derogatory remarks against the opposite party and its advocate. In preventing the respondent from putting forward its defense and pleas as may be deemed by it to be relevant for the purposes of adjudicating the case in hand, it cannot be a defense to state that any party, even if he is a party in person, enjoys a privilege to pressurize the opposite party, much less his/her advocate. In our opinion, such an act amounts to creating impediments in the free flow of administration of justice. Any such attempt has to be treated as an attempt to interfere with and obstruct the administration of justice. In this context, we may refer to the following judgments:

(i) Ananta Lal Singh and Ors. v. Alfred Henry Watson and Ors. .

(ii) Ch. Rajender Singh v. Uma Prasad

(iii) Telhara Cotton Ginning Co.Ltd. v. Kashinath Gangadhar Namjoshi .

(iv) Nand Lal Bhalla v. Malik Kishori Lal 48 Cr.L.J.1947 757

(v) Medai Dalavoi K. Thirumalaiappa and Ors. v. Medai Dalavoi T.Kumaraswami AIR 1956 Madras 621

(vi) In the matter of Bhola Nath Chaudhary .

(vii) Mrs. Damayanti G. Chandiramani v. S. Vaney

(viii) Arun Kumar Krishnarao Balpande v. Wasudeorao Kondbaji Ganar and Ors.

(ix) Charan Lal Sahu v. UOI

10. In all the aforementioned judgments, the Courts have interpreted the jurisdiction of Courts in contempt proceedings in relation to the allegations levelled and/or aspersions cast upon an Advocate of a party and held that making comments upon the advocate in the course of discharge of his professional duties, amounts to interference with the due course of justice.

11. In Ananta Lal Singh (supra), it has been held as below:

> If aspersions are cast upon a particular advocates party, by reason of the fact that the advocate had undertaken to defend certain clients, these aspersions have certainly an effect in tending to deter the advocate from continuing with his clients, and in certain circumstances in embarrassing him in the discharge of his duties. The courts jurisdiction in contempt is not exercised out of any mere notion of the dignity of judicial office, but is exercised for the purpose of preventing interference with the due course of justice, and it is quite possible to interfere with the due course of justice by making comments upon an advocate in the way of his profession.
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> Unlike a Judge, an advocate is quite entitled to be engaged in politics as much as he likes, and comment upon an advocates political opinions and activities would in no way be contempt of Court; but comment upon an advocate which has reference to the conduct of his cases may amount to contempt of court on exactly the same principle, that while criticism of a Judge and even of a Judges judgment in Court is permissible, criticism is not permissible if it is made at the time and in such circumstances or is of such a character that it tends to interfere with the due course of justice.

12. In Telhara Cotton Ginning Co.Ltd. (supra), while holding the contemnor guilty of contempt for the reason that the contemnor sent a letter containing threats to the applicant's counsel thus making clear invasion on the counsel's right to represent his client's case loyally and properly and further interfered with the due performance of his duty towards his clients, it was observed that the said action was calculated to interfere with and to obstruct or divert the course of justice. The Court while holding so, observed as below:

> The law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilllment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceedings. For proper administration of justice, it is essential that all these persons are, in the performance of their respective duties, ensured such fullness of freedom as is fair and legitimate. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course

of justice. It must therefore be held to constitute contempt of Court.

13. In Nand Lal Bhalla (supra), the court held as under:

> Where on the allegations of gist of the contempt is not that the Court was insulted or interrupted but that an Advocate was threatened in the performance of his duties, there is no contempt of the Court directly, but there is contempt inasmuch as an officer of the Court such as an Advocate appearing in his professional capacity was threatened and insulted while in the performance of his professional duties in that Court. In this view of the matter, even if Section 228, I.P.C. is not applicable, a contempt of Court is committed if the allegations are established. In such a case it is not strictly necessary even though it is desirable for the Advocate to move the Court.

14. In the case of Medai Dalavoi K. Thirumalaiappa (supra) it was observed as below:

> Para 9: But the more important point that requires examination is as to whether, assuming that the respondent abused and threatened Gopalakrishna Aiyar in the terms spoken to by him at Chingleput and Maniyachi, such conduct on the part of the respondent would amount to contempt of Court; in other words, whether an insult to a counsel in the circumstances of this case would amount to contempt and whether such contempt could be punished.
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> Para 10: In considering the question the following passage from Oswald on Contempt, Committal and Attachment, page 91, may be relevant:
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> An insult to counsel may be punished as a contempt. All publications which offend against the dignity of the Court, or are calculated to prejudice the course of justice, will constitute contempts. Offences of this nature are of three kinds, namely, those which (1) scandalise the Court, or (2) abuse the parties concerned in causes there, or (3) prejudices mankind against persons before the cause is heard. Under the first head fall libels on the integrity of the Court, its Judges, officers or proceedings; under the second and third heads anything which tends to excite prejudice against the parties, or their litigation, while it is pending. For example, attacks on or abuse of a party, not amounting to an interference with the course of justice, does not amount to contempt, the party being left to his remedy by action.
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> Para 11: This decision relied on by Oswald is-`French v. French' (1824) 1 Hog 138 (A), which appears to be a case of an insult to a counsel while he was attending in the Master's office, the insult therefore having been offered within the precincts of the Court. Advocates who appear for the parties being officers of the Court, any abuse or insult or aspersions cast on them, which would interfere with the course of administration of justice, must necessarily be held to amount to contempt of court. A learned Judge of the Nagpur High Court in -Telhara Cotton Ginning Co. Ltd. v. Kasinath Gangadhar' , has observed:

> The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Various persons have their respective contributions to make in the proper fulfilllment of that task. They are necessarily the Judges or the Magistrates, the parties to the proceedings, or their agents or pleaders or advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceedings.
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> For proper administration of justice, it is essential that all these persons are, in the performance of their respective duties, ensured such fullness of freedom as is fair and legitimate. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the course of justice. It must, therefore, be held to constitute contempt of Court.
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> Para 12: The learned Judge took the view that all those including clerks and ministerial and menial staff of the Court are necessary limbs of the judicial proceeding and that any act or conduct which affects the free and unhampered discharge of their respective duties would amount to a hampering of the due administration of law and interfering with the course of justice and would, therefore, amount to contempt of Court.
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> Whether protection should be extended to each and every one who is employed in a Court, including the members of the staff, is a matter, however, on which we do not want to express any opinion; but counsel do form an integral part of the machinery for the administration of the justice and any abuse, insult or aspersions cast on them in the course of the discharge of their duties and which might tend to hamper or interfere with the administration of justice by deterring them from doing their duty can reasonably be held as amounting to contempt of Court....

15. In Arun Kumar Krishnarao Balpande (supra), it was held as under:

> 20... In the decision in the case of Mrs. Damayanti G. Chandiramani v. S. Vaney , the division bench of this Court held that disrespect or disregard to an advocate in certain circumstances so as to deter him from discharging his duties would amount to contempt of Court, and that would amount to a direct interference with the administration of justice. But what we hasten to add, in a given case, when a threat is offered to an advocate which would pressurize him from appearing in a Court of law on behalf of his client, under law, would amount to interference of administration of justice.

16. In Bhola Nath Chaudhary (supra), it was held as under:

> If aspersions were cast upon an advocate of a party it might be that some of them had an effect intending to deter the advocate from continuing his duties for his client and

> in certain circumstances in embarrassing him in the discharge of those duties. Therefore comment upon an advocate which had reference to the conduct of his cases might amount to contempt of court on exactly the same principle which was applicable with regard to the criticism of a judge or the judgment: Ananta Lal Singh and ors. v. Alfred Henry Watson and Ors. and , Parashuram Detaram Shamdasani v. Emperor.

17. In Mrs. Damayanti G. Chandiramani v. S. Vaney reported as , in the presence of the court, the defendant threatened to prosecute the plaintiff's advocate for defamation in respect of statements made against him and it was found that the defendant had already started one prosecution for defamation against the advocate on account of similar statements in another case. While holding that considered as a whole, the words used by the defendant and his conduct amounted to contempt of court as a threat was intended to operate upon the mind of the advocate so that he should flinch from performing his duties towards his client, it was observed as below:

> Contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation. Disrespect or disregard to an advocate in certain circumstances so as to deter him from discharging his duties would amount to contempt of Court. Conduct which is intended or calculated to bring pressure upon a party, and his advocate, not to pursue the matter according to his choice, amounts to interference with the administration of justice, even though such threat is not direct in the sense that the contemner specifically asserted that he would take such action. If the context showed that the action contemplated was the action of the contemner himself, it is sufficient.
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> In order to amount to a threat, the language used need not necessarily be aimed at causing bodily injury or hurt. If it is calculated to injure the reputation so as to restrain the freedom of action of that person, it is sufficient. The essence of the matter is the course of conduct adopted by the contemner and not that the words amounted to a threat. It is enough if the conduct on the whole has a tendency to interfere with the course of administration of justice or to subvert the court of justice. The nexus between the threat and the demand for doing something or refraining from doing something need not be express or need not be expressly stated. It is enough if from the context the link between the two is apparent. The subsequent conduct of the contemner in so far as it relates to the carrying out of the threat would, also be relevant....

18. In Charan Lal Sahu (supra) while hearing a petition stated to be a Public Interest Litigation filed by the petitioner couched in unsavoury language, the Supreme Court observed that the petitioner therein had made intentional attempt to indulge in mudslinging against the advocates, the Court itself and also other constitutional institutions which clearly gave the impression that the petitioner intended to denigrate the Supreme Court in the esteem of the people of India and thus the Court directed drawing up of appropriate proceedings for contempt against the petitioner.

19. Thus, it is crystal clear that casting aspersions and extending threats by issuing notices to the Advocate for the opposite side containing disparaging and derogatory remarks has the effect of deterring an Advocate from conducting his duties towards his client and embarrassing him in the discharge of his duties and thus amounts to contempt of court on the very same principles which are applicable with regard to the criticism of a judge or a judgment as in each such instance, the tendency is to poison the fountain of justice, sully the stream of judicial administration, by creating distrust, and pressurizing the advocates as officers of the court from discharging their professional duties as enjoined upon them towards their clients for protecting their rights and liberties.

20. The Courts are under an obligation not only to protect the dignity of the Court and uphold its majesty, but also to extend the umbrella of protection to all the limbs of administration of justice and advocates, while discharging their professional duties, also play a pivotal role in the administration and dispensation of justice. It is thus the duty of the courts to protect the advocate from being cowed down into submission and under pressure of threat of menace from any quarter and thus abandon their clients by withdrawing pleas taken on their behalf or by withdrawing from the brief itself, which may prove fatal not only to the legal proceeding in question but also permit an impression to gain ground that adoption of such tactics are permissible or even acceptable. Failure to deal with such conduct and nip it in the bud shall result in the justice system itself taking a severe knocking, which tendency must be put down as it amounts to direct interference with the administration of justice and is, therefore, a contempt of a serious nature.

21. Coming to the cases referred to and relied upon by the petitioner, in our opinion, the same are not relevant to the facts of the present case. The judgments in the said cases are with respect to act or omission by an advocate which interrupts the flow of justice or renders a professional unworthy of exercising the privileges of his profession, as also the duty of the members of the bar towards the bench so as to maintain dignity of the court etc. By relying on the said judgments, the petitioner is trying to state that as the reply filed by the respondents contains falsehoods allegedly made at the instance of and legal advise rendered by the counsel, therefore, it is not the petitioner, but the counsel who is guilty of contempt of this Court. We are unable to appreciate the arguments made by the petitioner. Even assuming that false averments were made in the reply by the respondents, the petitioner has the liberty to point out the same to the Court in the course of arguments or by filing appropriate proceedings and the Court would have taken appropriate action, if deemed necessary and proper. However, the Court cannot permit the petitioner to don the mantle of a Judge, level accusations against the counsel for the other side, hold him guilty and threaten him with various consequences during the pendency of the case, as done by the petitioner in the present case.

22. In fact, one of the judgments relied upon by the petitioner, namely, Pratap Singh (supra) only reiterates what has been stated hereinabove with regard to obstructing the court and perverting the course of justice amounting to contempt. In the said judgment, the Supreme Court while holding that initiation of departmental proceedings in terms of circular issued by the Government to the effect that it is improper for Government servant to take recourse to court of law before exhausting normal official channels of redress, amounts to contempt of Court, observed below:

> Para 10: ...There are many ways of obstructing the Court and any conduct by which the course justice is perverted, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while his suit is pending; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts.
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> (Oswald's Contempt of Court, 3rd Edn. p.87). the Question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him can, in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent, then there can be no doubt that in law the appellants have been guilty of contempt of Court, even though they were merely carrying out the instructions contained in the circular letter.

23. In the light of the aforementioned judgments and upon perusing the allegations levelled by the petitioner against the advocate for the respondent Nos. 3 & 4, there is no manner of doubt in our mind that the acts of the petitioner in issuing threatening notices to the advocate in the present pending litigation amounts to contempt of court as it is an attempt to pressurize the counsel to withdraw from the legal proceedings or seek discharge from his professional duties in view of the pressure. The said act is nothing but an attempt to thwart and hamper the free flow of the administration of justice, thus amounts to direct interference with the course of justice.

24. We may now deal with the question of apology. In the course of arguments, the petitioner did apologize to the advocate for the respondents. However, immediately thereafter, the petitioner pressed his arguments in reply to the notice to show cause and stated that he had in fact not committed any contempt. Even in the written submissions handed over by the petitioner in the course of arguments on 2nd November, 2006, the petitioner starts by saying he has not committed any contempt and in fact it is the advocate for the respondents who has committed professional misconduct, criminal contempt and fraud on judiciary. Thereafter, the petitioner has reiterated all the averments that he made against the advocate in the notices served upon the advocate as also in the earlier reply to the notice to show cause issued by us. The petitioner was informed by the court that if he thought it proper he may tender an unconditional apology and that he could not add any riders or stipulations to his apology. The petitioner thereafter continued to address us on the contempt and sought to justify his acts. Therefore, the question of dropping the proceedings was ruled out.

25. The conduct of the petitioner shows that the apology tendered by him was only paying a lip service and was a mere device adopted to escape the punishment of his conduct. He is not feeling repentant or remorseful for his conduct. In any case, such an apology which has been tendered by the petitioner in one breath while in other breath, it is coupled with fresh allegations against the counsel for the respondents, cannot be accepted or taken note of. It is beyond any cavil that, an apology by a contemner does not entitle him to an order of discharge and it merely mitigates the

offence in certain circumstances and indeed, the court has to consider the matter only from the point of view of administration of justice. A Full Bench of this Court in the case of State v. Bhavani Singh reported as observed as below:

> ...In order to be a mitigating factor, the apology must be tendered at the earliest opportunity and it must be outpouring of a penitent heart moved by a genuine feeling of remorse and overcome by a sense of one's guilt. It should not be merely an apology for an apology or a convenient device to escape punishment. Belated apology as an after-thought thus serves no purpose. It must be indicative of repentant regret and contrition tendered at the earliest opportunity, exhibiting realisation of wrong having been done by the contemner and it must be free and frank expressions of his feelings.

26. Same is the opinion expressed by the Supreme Court in the cases of Shri C.K. Daphtary Sr. Advocate and Ors. v. Shri O.P. Gupta and Ors. reported as and National Textile Workers' Union v. P.R. Ramakrishnan and Ors. reported as .

27. In Sub-Judge First Class Hoshangabad v. Jawaharlal Ramchand, it was held that:

> An apology is not a weapon of defense forged to purged the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong doer's power. Only then is it of any avail in a court of justice....
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> Apology must, in order to dilute the gravity of the offence, be voluntary, unconditional and indicative of the remorse and contrition and it must be tendered at the earliest opportunity.

28. In M. Shareef v. Hon'ble Judges of Nagpur Court, it was observed as below:

> There cannot be both justification and an apology. The two things are incompatible.

29. Where the stand taken by the contemner in the show cause petition was that if the court considered that contempt had been committed then he tendered an unqualified apology and the proceeding was hotly contested, the apology offered by counsel was held to have been robbed of all grace and the show of regret was held to be unworthy of consideration, and a Division Bench of the Patna High Court in the matter of Bholanath Chaudhary reported as noted that:

> The question as to whether the court should or should not accept the apology would depend upon the circumstances of each particular case and a court can refuse to accept an apology if it is not believed to be genuine and even if it is accepted, it can commit the offender to prison or otherwise punish him.

30. In a recent judgment delivered by a Division bench of this Court on 19th October, 2006, in the case, Court on its own motion v. Mr. Gulshan Bajwa (Crl. Cont. Case Nos. 16 and 17/2006) in relation to the law of tendering and accepting an apology, it has been observed as below:

> It is a settled principle of law that an apology besides being expressed in words literally should be bona fide and a real repentance of the offending acts. Normally, offer of an apology should be right at the initial stages besides being bona fide and upon complete realisation of the mistakes done, should also be unequivocal declaration of genuine concern for due course of administration of justice and upholding of the dignity. If any of these ingredients are missing, the apology may not be accepted by the Court as it lacks real intent of bona fide.

31. To the same effect are the judgments of the Supreme Court in the cases of Jaikwal v. State of UP reported as and M.V. Shareef and Ors. v. the Hon'ble Judges of the High Court of Nagpur and Ors. reported as AIR 1995 SC 19.

32. In view of the aforesaid discussion, we are of the view that the petitioner has brought himself within the ambit of contempt of Court and he is accordingly found guilty of criminal contempt of the court. As regards the quantum of punishment, we have taken into consideration certain relevant factors. As stated above, the apology tendered by the petitioner is not unconditional nor is it supported by bona fide. In fact, it appears to be a sheer afterthought and such an apology from which the petitioner resoled during the course of arguments, is a clear indication of the trend of his mind. As the petitioner is neither penitent nor sincere in tendering the apology, such a hollow apology serves no useful purpose. However, in view of the fact that the petitioner has pleaded that his wife is a heart patient and needs medical care, by erring on the side of leniency, we award the contemner punishment of simple imprisonment for a period of three days and impose a fine of Rs. 1,000/- on him. We hope that the imposition of the aforesaid punishment shall have a sobering effect on the contemner. This order shall take effect immediately. The contemner, who is present in the court, shall be taken into custody immediately and he shall be sent to the Tihar Jail to undergo the sentence.

With these directions, the contempt petition stands disposed of. dusty.