

PETITIONER:  
IN RE

Vs.

RESPONDENT:  
AJAY KUMAR PANDEY,

DATE OF JUDGMENT: 25/09/1998

BENCH:  
A.S.ANAND, M.K.MUKHERJEE

ACT:

HEADNOTE:

JUDGMENT:  
JUDGMENT

DR. A.S.ANAND.J.

The alleged contemner-Ajay Kumar Pandey, a practising advocate, filed a criminal complaint against an Advocate Mr. Mahesh Gir and an Additional District Judge, Ms. Saroj Bala, then posted as VII Additional District Judge, Lucknow, under Sections 499 and 500 IPC, after first serving them with a notice demanding compensation for defaming him. The allegations made in that complaint are not relevant for our purpose. That complaint was dismissed on 16.11.1994. He thereafter filed a criminal Revision in the High Court which was also dismissed by a learned single Judge of the High Court (Virendra Saran, J) on 15.2.1995. While dismissing the revision petition, the learned single Judge inter alia observed :-

"It is well settled that if the veiled object of a lame prosecution is to disgrace, humiliate or cause harassment to the accused, the High Court must put an end to the mischief by quashing such criminal proceedings. The facts on the record of the instant case give a horrendous account of a framed-up case against a responsible member of the lower judiciary holding the post of an Additional Sessions Judge at Lucknow.....

It appears that the aim of the applicant is to malign the learned judge (Smt.Saroj Bala) and hold her at ransom. The applicant emphatically and repeatedly read out the lewd passages from his deposition while arguing the revision, but recitals are not worth reproduction in the judgment. Suffice it to observe that the arguments of the applicant, so vehement and pungent, marked with sarcasm and sneer, do not impart any strength to his case which is inherently unbelievable. They are submissions directed more towards vilification than substantiation of the pivotal points of the case. I was constrained to ask the applicant not to make savage additions to the evidence and show restraint in his colloquy."

The alleged contemner, thereafter, filed Special Leave Petition (Crl.) Nos.819-820 of 1996 against the judgment of Virendra Saran, J dated 15.2.1995.

It appears that the alleged contemner had filed

another complaint on 12.9.1994 under Sections 500 and 504 IPC against seven advocates namely (1) Shri Prakash Narayan Awasthi (2) Shri R.P.Misra (3) Shri Vishambhar Singh (4) Shri T.N.Misra (5) Shri Srikanth Verma (6) Shri Pankaj Sinha and (7) Shri N.C.Pradhan, in which it was alleged that those advocates had made defamatory imputations regarding the relationship between him and Ms.Saroj Bala, Addl. District Judge. In that complaint an application giving a list of 31 advocates for being summoned as witnesses was filed. That application was rejected by the Trial Court. He, therefore, filed Special Leave Petition (Cr1.) No. 4114 of 1995 against that order.

Ajay Kumar Pandey, the alleged contemner has also filed following Contempt Petitions (Cr1.) in this Court :

1. Contempt Petition (Cr1.) Dy. No.16199/95  
filed on 28th Oct. 1995

Against Mr. Justice Virendra saran, Judge, High Court of Allahabad, Lucknow Bench;

2. Contempt Petition (Cr1.) Dy. No.17021/95 filled on 8th Nov. 1995. The respondents in the petition are:

I Ms. Saroj Bala, IV Addl. District Judge, Lucknow.

II Shri Udai L Raj, V A C J, Lucknow.

III Shri R P Misra, VI Addl. C J M.

3. Contempt Petition (Cr1.) Dy.No.17922/95. filled on 9th Nov., 1995 against the following respondents:

I Shri J C Mishra, Distt. Judge, Lucknow.

II Shri K N Ojha, II A D J, Lucknow.

III Shri Shailendra Saxena, III A D J., Lucknow.

IV Shri B N Pandey, Special Judge, Lucknow.

When the SLPs and contempt petitions were listed before this bench, it was noticed that the language used in the memorandum of petitions was wholly objectionable, unparliamentary and abusive. By way of illustration, we may refer to the list of dates, at internal pages 2-3 of S.L.P.(Cr1.) No. 4114 of 1995. The language used by the petitioner is in the following terms:-

"It will not be out of place to mention here that an other then Magistrate Sh. Udai Raj had fraudulently, corruptly with the collusion of Ms.Saroj Bala and others dismissed the complaint which was filed on 12.9.94 by passing the order in complaint case No.451/94 the complaint which had been filed on 19.9.94.

The petitioner filed a criminal revision No. 289/94 in the Hon'ble High Court, Allahabad, Lucknow Bench, Lucknow on 14.12.94 and challenged the order dated 16.11.94 passed in complaint case No. 451/94. It is the most important to mention here that in complaint case No. 451/94 an application u/s 202 Cr. P.C. had also been moved and the same is still pending. The petitioner raised the law point regarding the summoning of witnesses in enquiry u/s 202 Cr.P.C. in Criminal REvision No. 289/94 but the Allahabad High Court never decided the revision on its merits and Mr.Virendra Saran, the Hon'ble Judge, who heard the arguments fraudulently, forgedly and maliciously dismissed the revision."

(underlined by us)

In the memo of the petitions, similar expressions in more intemperate language casting aspersions on the conduct of various judicial officers and attributing motives to them in the discharge of their judicial functions have been used. We refrain from reproducing all such passages, although we drew the pointed attention of the alleged contemner to the

same. He has attacked the impartiality of the named judges in most indecent and intemperate language. There is hardly any criticism of the "judgment" and all that the contemner seems to have done is to criticism and condemn the Judge by attributing motives and showering abuses on each one of the judges who dealt with his cases at one state or the other.

On 15th December, 1996 the following order was made by the Bench :-

"In all these petitions, we find that attack in indecent, wild, intemperate and even abusive language on the named Judges has been made at various places in each one of the petitions. The petitioner, who is an advocate, has permitted himself the liberty of using such expressions, which prima facie tend to scandalize the court in relation to judicial matters and thus have the tendency to interfere with the administration of justice. We are inclined to initiate contempt proceedings against the petitioner, but on his request grant him six weeks time to delete all the objectionable expressions used in the petitions and file fresh petitions. He shall also remove the other defects, as pointed out in the office report when he files the fresh petitions. If the fresh petitions are filed, the same shall be listed after eight weeks. Otherwise, these petitions shall be put up for drawing up contempt proceedings against the petitioner, after eight weeks.

It was hoped that he would realise the seriousness of the situation and remove all the objectionable expressions from the memorandum of petitions but instead of deleting those objectionable expressions, on the same day, he filled Cr1 M.P.No. 132 of 1996 in which inter alia he stated :-

"4. That today, the matter was listed in court No. 9 alongwith all petitions at S1.No. 28 and 42 and when the petitioner tried to start his argument the court openly harassed him and compelled him to withdraw the petition or remove all the facts but the petitioner refused to do so in view of the fact that he has only written the facts according to Section 167, 219, 480 and 463 alongwith 120-B the IPC and section 44 and 165 of the Evidence Act alongwith Section 2-C and Section 16 and 12 and 15 of the Contempt of Court Act and the Indian Constitution.

5. That the Court is not allowed the petitioner to submit his argument and passed an order to remove the all facts from the petition and file the fresh petitions and also ordered for listing the matter after 8 weeks. Thereafter, the petitioner mentioned and also tried to give in writing that he is not in a position to remove anything and file fresh petitions in view of the fact that he wrote only truth and the court is bound to hear the petitions and decide the same according to the constitution and contempt of Court Acts and other laws as challenged by the petitioner but the court without saying anything retired to its chamber.

6. That the petitioner is not in position to remove anything and the deliberate in Justice, fraud, cheating etc. had been done by the contemnors for concealing their nefarious acts and even they had gone to this extent to destroy the judicial records and fabricated some judicial papers.

( under lined by us)

Thus it is seen that instead of removing the objectionable expressions, which prima facie have the tendency to scandalize the court/courts in relation to judicial matters and have the tendency to interfere with the due administration of justice and which expressions per-se are an attack on various judges, who had dealt with the complaint filed by him at the original or the revisional stage, in most indecent, wild, intemperate and abusive language, he asserted that he was not obliged to remove any of these passages and that this court was 'bound' to hear him on merits. He declined to remove the objectionable expressions and insisted on being heard.

Noticing this adamant and defiant attitude of Ajay Kumar Pandey, on 20th February, 1996 the Bench directed that a Rule be issued against him asking him to show cause why he should not be punished for committing criminal contempt of Court for the use of intemperate language and casting unwarranted aspersions on various judicial officers and attributing motives to them while discharging their judicial functions. He was directed to file his reply within 8 weeks. That is how the contempt proceeding (Contempt Petition Cr1. No.2/96) came to registered against the alleged contemner in this Court.

The Special Leave Petition (Cr1.) No. 4114 of 1995 and the two other Special Leave Petitions alongwith some misc. Petitions were dismissed by the Bench both on account of the objectionable language used in the memorandum of those petitions as also on merits.

The alleged contemner did not file his objections or reply to the Rule in the Contempt proceedings and instead filed two applications seeking recall/review of the order dated 20th February, 1996 (supra). dismissing S.L.P.(Cr1.) No. 4114/95, Criminal Miscellaneous Petitions Nos. 6242-6243/95, and S.L.P. (Cr1.) 819-820 of 1996 as also against the Rule issued to him to show cause why he should not be punished for committing contempt of court. We considered the two applications for recall/review and by our order dated 9th August, 1996 found that there was no merit in those applications and felt pained to notice that even those application bristled with scandalous remarks and were couched in objectionable language and that the alleged contemner, was persistent in his attitude to undermine the majesty of law and bring the administration of justice into disrepute. The alleged contemner appearing in person on that date made a request that his cases may be transferred to another Bench as he did not "wish to appear before this Bench". His prayer was rejected by us not only on the ground that the prayer itself was contumacious in character but also because a litigant can not be permitted to choose his forum since the case stood assigned to this Bench and we found no justification to withdraw from the Bench either. Since, the alleged contemner had not filed his reply to the show case notice, the Bench as a matter of indulgence, granted him yet another opportunity to file his reply, if any, within six weeks and adjourned the proceedings to 27th September, 1996. The Bench also requested the Solicitor General of India to assist the Court in the contempt proceedings either himself or by nominating any other law officer.

Despite the fact that on 9th Aug. 1996 Ajay Kumar Pandey had been informed of the date of hearing and was directed to remain present on 27.9.1996 and file his reply by that date, he instead of appearing in person on 27.9.1996, filed yet another application alongwith copies of certain documents seeking recall of the order dated 9th Aug., 1996. On

27.9.1996, Mr. K.N.Bhatt, learned A.S.G. appeared to assist the Court and asserted that the application was misconceived and the alleged contemner was trying to browbeat the court and misconstruing the indulgence being shown to him. He emphasised that not only has the attitude of alleged contemner been totally defiant but that he had lost all sense of propriety in filing the applications and Special Leave Petitions couched in most objectionable language and creating an impression that he considered the law as 'subservient' to him. Mr.Bhat submitted that various applications filed by the contemner in this court also had, as a matter of fact, aggravated the contempt committed by him and he needed to be suitably punished.

On 27.9.1996 while dealing with the applications filed by the contemner, the following order was made :-

We have examined the application and find

that the prayer for recall of the order is misconceived for more than one reasons. The order dated 9th Aug., 1996 is an order in continuation of the order dated 20th February, 1996, the prayer to recall which has already been rejected. By the order dated 9th Aug., 1996 the review petitions filed by the respondent were also dismissed. The prayer for recall of the order dated 9th Aug., 1996 under the circumstances has no merit and is rejected.

Since the respondent, Ajay Kumar Pandey, despite directions is not present we direct that his presence be secured by issuance of bailable warrants in the sum of Rs. 5,000/- with one surety of the like amount for a date to be fixed by the registry, to the satisfaction of the Chief Judicial Magistrate, Lucknow."

The alleged contemner as already noticed had not appeared in the Court on 27th September, 1996, but it appears that he was present in the Court premises as soon after the above order was made, he filed an application on that very day explaining the reasons for his absence and praying for recall of the bailable warrants. The application was supported by an affidavit. Since on the next date he appeared in the Court, the bailable warrants were recalled.

The case was, thereafter, posted to 2nd December, 1996 but it appears that the alleged contemner who was appearing in person had no notice of that date and the Bench therefore directed that fresh notice be issued to him for his personal appearance as well as for filing his reply, if any. It was also directed that in the notice it shall be indicated that the alleged contemner should file reply to the show cause notice within six weeks and that it was to be considered as the final opportunity granted to him for that purpose. The case was adjourned to 22.1.1997. In the meantime, it transpires from the record that the contemner, filed an application addressed to the Hon'ble Chief Justice of India, seeking transfer of the case from this Bench to some other Bench. According to the Office Report dated 22.1.1997, that application was rejected by the learned Chief Justice of India. The alleged contemner however, despite notice did not appear in the Court on 22.1.1997. The Bench was, therefore, left with no other option except to secure his presence by issuance of non-bailable warrants and accordingly non-bailable warrants returnable on 27.2.1997 were directed to be issued. When the case came up for consideration on 3rd March, 1997, the respondent was produced in custody in Court. The order dated 3rd March, 1997 inter alia records :

"Mr. Pandey was asked if he was making any prayer for release on bail and he submitted that he cannot provide any surety at Delhi. We, therefore, consider it appropriate, in the interest of justice to direct that respondent, Shri Ajay Kumar Pandey shall be released on bail on his furnishing personal bail bond in the sum of Rs.5,000/- to the satisfaction of the Chief Judicial Magistrate, Lucknow, where he may be produced for the said purpose. The learned Chief Judicial Magistrate, Lucknow shall release him on bail on his personal bond of Rs. 5,000/- after obtaining an undertaking from him for his appearance in this court on the next date of hearing which is fixed as 25.4.1997, on which date final arguments in this contempt case shall be heard in this case.

The respondent Ajay Kumar Pandey was asked if he required the assistance of a counsel, so that the services of the counsel could be provided to him but he has stated that he does not need the assistance of any counsel. He further stated that he does not wish to argue the matter before this bench. He was apprised that his prayer for transfer of the case to some other bench has been rejected by the learned Chief Justice.

The case, was thereafter, adjourned from time to time and on 22nd August, 1997, following order was made when the alleged contemner once again remained absent despite service :

"Despite service respondent, Sh. Ajay Kumar Pandey, is not present. On 3rd March, 1997 we had granted him final opportunity, in the hope that better sense may prevail, to file his reply to the notice to show cause why he should not be punished for contempt of Court and to argue the matter either in person or through any counsel in the contempt matter. He has neither filed the reply nor is represent in Court personally or through counsel. Mr. K.N.Bhat, learned Additional Solicitor General submits that this action on the part of Shri Ajay Kumar Pandey aggravates his contumacious behaviour.

Learned Additional Solicitor General further by reference to the record, submits that the respondent has been granted ample opportunities is required to be given to him to appear either in person or through counsel or to file a reply. We find considerable force in the submission of learned Additional Solicitor General.

We have heard the learned Additional Solicitor General on merits in the contempt matter. Orders reserved."

At the outset, we wish to emphasise that this Court being the Supreme Court of the country, has not only the right to protect itself from being scandalized or denigrated but it also has the right, jurisdiction and the obligation to protect the High Courts and the Subordinate Courts in the country from being insulted, abused or in any other was denigrated. Any action on the part of a litigant-be he a lawyer appearing in person - which has the tendency to interfere with or obstruct the due course of justice has to be dealt with sternly and firmly to uphold the majesty of law. No one can be permitted to intimidate or terrorise judges by making scandalous unwarranted and baseless imputations against them in the discharge of their judicial functions so as to secure orders which the litigant 'wants'. The subordinate judiciary forms the very backbone of administration of justice. This Court would come down with a heavy hand for preventing the judges of the subordinate

judiciary or the High Court from being subjected to scurrilous and indecent attacks, which scandalise or have the tendency to scandalise, or lower or have the tendency to lower the authority of any court as also all such actions which interfere or then to interfere with the due course of any judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the courts to enable them to discharge their judicial functions without fear.

The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law and if the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts has to be respected and protected at all costs. It is for this reason that the courts are entrusted with the extraordinary power of punishing those for contempt of court who indulge in acts whether inside or outside the courts, which tend to undermine the authority of the courts and bring them in disrepute and disrespect thereby obstructing them from discharging their judicial duties without fear or favour. This power is exercised by the courts not to vindicate the dignity and honour of any individual Judge who is personally attacked or scandalised but with a view to uphold the majesty of law and the administration of justice. The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice and as such no action can be permitted which may shake the very foundation itself.

'Criminal Contempt' is defined in Section 2(c) of the Contempt of Courts Act, 1971 and reads :

"2(c) "criminal contempt" means the 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 -

- i) Scandalizes or tends to scandalize, 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 proceeding; or
- iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

The definition is self explanatory. Scandalising the Judges or the Courts tends to bring the authority and administration or law into disrepute and is an affront to the majesty of law. Such acts constitute criminal contempt of court. No one can be permitted to foul the fountain of justice. If the authority of the court is undermined or impeded by acts or publications, the fountain of justice would get sullied creating distrust and disbelief in the minds of the litigant public and the right thinking public at large. Indeed everybody is entitled to express his honest opinion about the correctness or legality of a judgment or sentence or an order of a Court. Objective criticism is permissible provided it is made with detachment in a dignified language and respectful tone. The liberty of expression cannot be treated as a licence to scandalise the court and instead of criticising the judgment to criticise

the judge who delivered it.

In Delhi Judicial Service Association Vs. State of Gujarat & Ors. (1991) 4 SCC 406, this Court opined :

"The definition of criminal contempt is wide

enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the court against insult or injury, but, to protect that to vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with.

"

That the "publication" contemplated by Section 2 (c) of Contempt of Courts Act, 1971 (supra) includes pleadings affidavits etc. which are filed in the Court, is no longer in doubt.

In L.D.Jaikwal Vs. State of U.P., (1984) 3 SCC 405, an advocate whose client had been convicted by the learned judge of the Special Court at Dehradun, was required to appear before the learned Judge to make his submissions on the question of 'sentence' to be imposed on the accused upon his being found guilty of an offence under Section 5(2) of the Prevention of Corruption Act by the Court. The learned advocate appeared in a shirt-and-trouser-outfit in disregard of the rule requiring him to appear only in court attire when appearing in his professional capacity. The learned Judge asked him to appear in the prescribed formal attire for being heard in his professional capacity. The advocate apparently took exception and left the Court. Some other advocate appeared on behalf of the accused. The learned Judge of the Special Court imposed a sentence of 4 years' RI on the accused. So far as the Court of the learned Special Judge was concerned, as the judgment had been pronounced, nothing more remained to be done by that Court. The appellant, a senior advocate of long standing, however, made a written application before the learned Judge of the Special Court couched in scurrilous language making imputation that the Judge was a "corrupt Judge" and adding that he was "contaminating the seat of justice". A threat was held out that a complaint was being lodged to higher authorities that he was corrupt and did not deserve to be retained in service. The offending portion of the application inter alia read :

"I am making a complaint against you to the highest authorities in the country, that you are corrupt and do not deserve to be retained in service. The earlier people like you are bundled

As for quantum of sentence, I will never bow

down before you. You may award the maximum sentence. Anyway, you should feel ashamed of yourself that you are contaminating the seat of justice."

On Rule being issued in suo motu contempt proceedings, the contemner was punished and sentenced under the contempt of Courts Act. Before this court, questioning his conviction and sentence, the contemner advocate filed an appeal and at the same time tendered his apology. Rejecting the apology, this Court observed :

"We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If Such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a 'licence' to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalized and persecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the docorum of courts" and such course cannot be permitted. (Emphasis ours)

Again, in Re: Shri Sanjiv Dutta JT (1995) 3 SC 538, a three Judge Bench of this Court, while dealing with an affidavit filed by a public functionary causing aspersions on the Court, which (affidavit) had the tendency to malign the Court, while assailing the correctness of an order made in a writ petition filed in this Court, held the contemner guilty of criminal contempt of court and observed:

"Abuses, attribution of motives, vituperative terrorism and defiance are no methods to correct the errors of the courts. In the discharge of their functions the courts have to be allowed to impartial adjudication will be an impossibility. Ours is a Constitutional government based on the rule of law. The Constitution entrusts the task of interpreting and administering the law to the judiciary whose view on the subject is made legally final and binding on all till it is changed by a higher court or by a permissible legislative measure. Those living and functioning under the Constitution have to accept and submit to this obligation of respecting the constitutional authority of the courts. Under a Constitutional government, such final authority has to vest in some institution. Otherwise, there will be a chaos. The court's verdict has to be respected not necessarily by the authority of its reason but always by reason of its authority. Any conduct designed to or suggestive of challenging this crucial balance of power advised by the Constitution is an attempt to subvert the rule of law and an invitation to anarchy.

The contemner, for reasons which can only be attributed to his misconception of his role and over-Zealousness to assert himself and his side of the matter intentionally overstepped his

limits and conveniently ignored the above legal position, and adrogated to himself, in substance, the role of a judge in his own cause. He has thus in effect not only challenged the jurisdiction of the Court to discharge its functions but also its authority to do so."

In Re:R.L.Ahuja : 1993 Supp.(4) SCC 446, the respondent-contemner cast unfounded and unwarranted aspersions and made scurrilous and indecent attacks against some of the Judges of this Court who had earlier dealt with his case in wild, intemperate and even abusive language in the memorandum of writ petition and in a representation sent to the President of India. This Court while convicting and sentencing the contemner for committing criminal contempt of court observed :

"The passages in the memorandum of the writ petition and the letter addressed to the President of India attack the integrity and fairness of the Judges. The remarks made by the contemner are disparaging in character and derogatory to the dignity of the Court and besides scandalizing the Court in relation to judicial matters have the tendency to shake the confidence of the public in the apex court."

The tendency of maligning the reputation of judicial officers by disgruntled elements who the increase and it is high me that serious note is taken of the same. No latitude can be given to a litigant to browbeat the court. Merely because a party chooses to appear in person, it does not give him a licence to indulge in making such aspersions as have the tendency to scandalise the court in relation to judicial matters.

( Emphasis ours )

The contemner in the present case let alone showing any remorse or regret has adopted an arrogant and contemptuous attitude..... of course, the dignity of the court is not so brittle as to be shattered by a stone thrown by a mad man, but when the court finds that the contemner has been reckless, persistent and guilty of undermining the dignity of the court and his action is, motivated, deliberate and designed, the law of contempt of court must be activated."

Thus, it is now settled that abuses, attribution of motives, vituperative terrorism and scurrilous and indecent attacks on the impartiality of the judges in the pleadings, applications or other documents filed in the Court or otherwise published which have the tendency to scandalise and undermine the dignity of the court and the majesty of law amounts to criminal contempt of court.

While a litigant as also his lawyer have the freedom of expression and liberty to project their case forcefully, it must be remembered that they must while exercising that liberty maintain dignity, decorum and order in the court proceeding. Liberty of free expression cannot be permitted to be treated as a licence to make reckless imputations against the impartiality of the judges deciding the case. Even criticism of the judgment has to be in a dignified and temperate language and without any malice.

In D.C.Saxena vs. Hon'ble the Chief Justice of India, (1996) 5 SCC 216 this court observed :-

...."Advocacy touches and asserts the primary value of freedom of expression. It is a practical

manifestation of the principle of 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 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, they equally owe countervailing duty to maintain 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 other words, imputing partiality, corruption, bias, improper motives to a judge is of the court. Even imputation of lack of 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 the majesty of justice. When the contemner 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 of judiciary into contempt." (Emphasis supplied)

Does the law give a lawyer, unsatisfied with the result of a case, any licence to permit himself the liberty of scandalising a court by casting unwarranted imputations against the judge in discharge of his judicial functions? Does the lawyer enjoy any special immunity under the Contempt of Court Act, where he is found to have committed a gross contempt of court? The answer has to be an emphatic NO:

In Lalit Mohan Das vs. Advocate General. Orissa, 1957 SCR 167, this court observed :

"A member of the Bar undoubtedly owes a duty to his client and must place before the Court on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time, a member of the Bar is an officer of the Court and owes a duty to the Court in which he is appearing. He must uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute. The limits of propriety when he made imputations of open Court. In suggesting that the Munsif followed no principle in his orders, the Munsif had merely upheld an order of his predecessor on the preliminary point of jurisdiction and Court fees, which order had been upheld by the High Court in revision. Scandalizing the Court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; it brought into disrepute the whole administration of justice. From that point of view, the conduct of the appellant was highly reprehensible."

In M.B.Sanghi, Advocate vs. High Court of Punjab & Haryana, (1991) 3 SCC 600, this Court took notice of the

growing tendency amongst some of the Advocates of adopting a defiant attitude and casting aspersions having failed to persuade the Court to grant an order in the terms they expect. Holding the Advocate guilty of contempt, Ahmadi, J observed:

"The tendency of maligning the reputation of Judicial Officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system the damage caused is not only to the reputation of the concerned Judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned Judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding Judicial Officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system."

( Emphasis supplied )

Again, in *Re: Vinay Chandra Mishra* (1995) 2 SCC 548, this Court observed:

"To resent the questions asked by a Judge, to be disrespectful to him, to question his authority to ask the questions, to shout at him, to threaten him with transfer and impeachment, to use insulting language and abuse him, to dictate the order that he should pass, to create scene in the court, to address him by losing temper are all acts calculated to interfere with and obstruct the course of justice. Such acts tend to overawe the court and to prevent it from performing its duty to administer justice. Such conduct brings the authority of the court and the administration of justice into disrespect and disrepute and undermines and erodes the very foundation of the judiciary by shaking the confidence of the people in the ability of the court to deliver free and fair justice.

The stance taken by the contemner is that he was performing his duty as an outspoken and fearless member of the Bar. He seems to be labouring under a grave misunderstanding. Brazenness is not outspokenness and arrogance is not fearlessness. Use of intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity. Self-restraint and respectful attitude towards the court, presentation of correct facts and law with a

balanced mind and without overstatement, suppression, distortion or embellishment are requisites of good advocacy. A lawyer has to be a gentleman first. His most valuable asset is the respect and goodwill he enjoys among his colleagues and in the Court."

In the instant case, from a perusal of the memorandum of various petitions filed by the contemner in this court and the language used therein, it is apparent that he has cast aspersions on each and every learned Judge who in the discharge of his judicial functions decided the matter not liked to by the alleged contemner at one stage or the other. The aspersions cast by him undoubtedly have the tendency to scandalise the Court. The alleged contemner has been attempting to brow beat the learned subordinate Judges as well as the learned Judge of the High Court and cause interference in the administration of justice. Even in this Court, after the Rule was issued to him, he tried to browbeat the court. He filed an application stating that since he had file a contempt petition against the Judges constituting the Division Bench which had issued Rule against him, this Bench should transfer the case. It was an obviously motivated action on his part to intimidate the Bench. He did file the contempt petitions again both the Judges constituting the Bench. Those petitions were dismissed by a Bench comprising of Hon'ble Mr. Justice J.S.Verma (as the Hon'ble Chief Justice then was) and Hon'ble Mr. Justice B.N.Kirpal by the following order :-

"We regret to find that the petitioner who is a practising lawyer of some standing has chosen to resort to such a proceeding which, in our view, is misconceived. We find no merit in the same, but before dictating this order, we have tried to explain this position to the petitioner with the hope that he will appreciate that as a member of the Bar, he is expected to utilise his time in a better manner to assist in the administration of justice. The contempt petition is dismissed."

The alleged contemner in this case has been making continuous attempts to subvert the course of justice in whichever court his case was. He has been acting not only as if he is above the law but as if he is law unto himself. Notwithstanding his own assessment of his 'merit and 'competence' as stated by him in the memo of petitions, the alleged contemner appears to be blissfully ignorant of the role of a lawyer and the law relating to grafting of pleadings - which must be precise and not scandalous or abusive. It is sad that by filing the applications, and the petition, as a party in person, couched in very objectionable language, he has permitted himself the liberty of indulging in an action, which does little credit to the noble profession to which he belongs. An advocate has no wider protection than a layman when he commits an act which amounts to contempt of court. It is most undefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. Only because a lawyer appears as a party in person, he does not get a licence to commit contempt of the court by intimidating the Judges or scandalising the courts. He cannot use language, either in the pleadings or during arguments, which is either intemperate or unparliamentary and which has the tendency to interfere in the administration of justice and undermine the dignity of the court and the majesty of law. These safeguards are not for the protection of any Judge individually but are essential for maintaining the dignity and decorum of the

Courts and for upholding the majesty of law. Judges and courts are not unduly sensitive or touchy to fair and reasonable criticism of their judgments. Fair comments, even if, out-spoken, but made without any malice and without attempting to impair the administration of justice and made in good faith in proper language do not attract any punishment for contempt of court. However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bicker themselves to uphold their dignity and the majesty of law. The alleged contemner, has undoubtedly committed contempt of the Court by the use of the objectionable and intemperate language. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising the Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions, as it undoubtedly amounts to an interference with the due course of administration of justice. No litigant, even a lawyer appearing in person in his own cause, can be permitted to overstep the limits of fair, bona fide and reasonable criticism of the judgment and bring the courts generally into disrepute or attribute motives to the Judges rendering the judgment. Perversity, calculated to undermine the judicial system and the prestige of the court, cannot be permitted for otherwise the very foundation of the judicial system is bound to be undermined and weakened. Liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the Judges or the Courts in relation to judicial matters. In the established facts of this case, we hold that the alleged contemner has committed gross contempt of court and convict him accordingly.

The next question before us is with regard to the punishment to be imposed upon the contemner.

The tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire or which they expect is no the increase. It is unfortunate that even some disgruntled lawyers also indulge in the same objectionable activities. No latitude can be given to a litigant who attempts to browbeat the court. In the instant case, the contemner, let alone showing any remorse or regret adopted an arrogant, defiant and contemptuous attitude. The contemner has been reckless, persistent and guilty of undermining the dignity of the courts and his action are motivated, deliberate and designed. Sympathy in a case like this would be totally misplaced. Mercy has no meaning. The action of the contemner calls for a deterrent punishment so that it also serves as an example to others and there is no repetition of such a contempt by anyone else. We, therefore, having found the contemner guilty of committing contempt of court, sentence him to undergo simple imprisonment for a period of four months and to pay a fine, to further undergo simple imprisonment for a period of four months and to pay a fine of Rs. 1000 (one thousand) and in default of payment of fine, to further undergo simple imprisonment for a period of 15 days.

In Supreme Court Bar Association Vs. Union of India & Anr. JT 1998 (3) SC 184, a Constitution Bench of this Court opined :-

"An Advocate who is found guilty of contempt of

court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that Advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and taken appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". the Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever, facts warrant rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever it is drawn by this Court to the contum and undecoming conduct of an advocate whose tendency to interfere with due administration of justice.....

The Bench went on to say :-

"There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record, records its findings about the conduct of an Advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the concerned Bar Council, appropriate action should be initiated by the concerned Bar Council in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette."

Looking to the established facts of this Court, it is apparent that the conduct of the contemner was highly contumacious and even atrocious. He has abused professional privileges while practising as an Advocate. We, therefore, deem it appropriate, in view of the observations made in Supreme Court Bar Association vs. Union of India & Anr. (supra), to direct that the copy of this judgment together with the relevant record be forwarded to the Chairman, Bar Council of India, who may refer the case to the concerned committee of appropriate action as is considered fit and proper.

Since, the contemner absented himself after furnishing bail bonds to the satisfaction of the Chief Judicial

Magistrate, Lucknow pursuant to our order dated 3rd March, 1997, his bail bonds are cancelled. The contemner shall be taken into custody to undergo the sentence.

JUDIS