SUPREME COURT OF INDIA

Perspective Publications (P.) Ltd.

Vs.

State of Maharashtra

Crl.A.No.159 of 1966

(J. C. Shah, V. Ramaswami and A. N. Grover, JJ.)

19.11.1968

JUDGEMENT

GROVER, J.-

1. This is an appeal from the judgment of the Bombay High Court passed in exercise of ordinary original civil jurisdiction by which the appellants were found guilty of having committed contempt of Mr.Justice Tarkunde in his judicial capacity and of the Court. Appellant No.2 D. R. Goel, who is the Editor, Printer and Publisher of Perspective Publications (P) Ltd.,-appellant No. 1, was sentenced to simple imprisonment for one month together with fine amount ing to Rs. 1,000/-, in default of payment of fine he was to undergo further simple imprisonment for the same period. The appellants were also directed to pay the costs incurred by the State. On behalf of the first appellant it has been stated at the bar that the appeal is not being pressed.

2. The background in which the impugned article was published on April 24, 1965, in a weekly periodical called "Mainstream" which is a publication brought out by the first appellant may be set out. In the year 1960 a suit was filed by one Krishnaraj Thackersey against the weekly newspaper

"Blitz" and its Editor and others claiming Rs. 3 lacs as damages for libel. The hearing in that suit commenced on the original side of the Bombay High Court on June 24, 1964 The delivery of the judgment commenced on January 19, 1965 and continued till February 12, 1965. After the June 24, 1964, that suit was heard from day to day by Mr. Justice Tar. kunde. The suit was decreed in the sum of Rs. 3 lacs. An appeal is pending before a Division Bench of the High Court against that judgment

3. The impugned article is stated to have been contributed by a person under the name of "Scribbler" but appellant No. 2 has taken full responsibility for its publication. Its heading was "Story of a Loan and Blitz Thackersey Libel Case". It is unnecessary to reproduce the whole article which appears verbatim in the judgment of the High Court. The article has been ingeniously and cleverly worded. The salient matters mentioned in that article are these: After paying a tribute to the Indian judiciary the writer says that according to the report in "Prajatantra" a Gujarati paper, architects Khare-Tarkunde Private Limited of Nagpur, hereinafter called "Khare Tarkunde" (which is described a Firm in the article) got a loan facility of Rs. 10 lacs from the Bank of India on December 7, 1964. The partners of Khare-Tarkunde included the father, two brothers and some other relations of Justice Tarkunde who awarded a decree for Rs. 3 lacs as damages against Blitz and in favour of Thackersey. It is pointed out that the date on which Rs. 10 lacs loan facility was granted by the Bank of India was about five and a half months after the Thackersey-Blitz libel suit had begun and just over six weeks before Justice Tarkunde began delivering his "marathon judgment" on January 19, 1965. It is then said that for Rs. 10 lacs loan facility granted to Khare-Tarkunde, the New India Assurance Co. stood guarantee and that the two Directors of the Bank of India who voted in favour of the credit of Rs. 10 lacs being granted to Khare-Tarkunde were Thackersey and Jaisinh Vithaldas (believed to be a relative of Thackersey). Next it is stated that one of the Directors of the New India Assurance that stood guarantee for the loan facility was N. K Petigara, who was also a senior partner of M/s. Mulla and Mulla Craigie Blunt and Caroe, Solicitors of Thackersey in the Blitz Thackersey Libel Case before Justice Tarkunde. Emphasis is laid on the fact that Khare-Tarkunde had a capital of Rs. 5 lacs only and the balance sheet of the firm of June 1964 revealed indebtedness to various financiers to the tune of Rs. 14 lacs. Thus Khare-Tarkunde is stated to be "lucky to get against all this a handsome loan of Rs. 10 lacs from the Bank of India". The writer refers to the Code among college teachers and university professors of not examining papers when their own children end near relatives sit for examination and adds that Justice Tarkunde himself will recognize the rightness of such a Code. Referring to the unimpeachable integrity and reputation of judges of the Bombay High Court, the writer proceeds to say "there must not be allowed to be raised even the faintest whisper of any missing on that score." Paragraph 24 deserves to be produced :-

"If Sri Krishna Thackersey did not lay it bare at the time of the suit that he was one of the sponsors of a contract of which the judge's relations were the beneficiaries. it is up to the Chief Justice of the Supreme Court and the Bombay High Court including Justice Tarkunde as also the ever vigilant members of the Bar to consider all the implications of these disclosures which have distressed a common citizen like me, so that the finest traditions of our judiciary may be preserved intact."

4. A petition was filed before the Bombay High Court by the State of Maharashtra pointing out that the aforesaid article contained scandalous allegations and was calculated to obstruct the administration of justice and constituted gross contempt of court. The article purported to state certain facts relating to the transaction between Khare-Tarkunde and the Bank which were false and there were several misstatements and suppression of facts some of which were:

(a) The article wrongly stated that the father of Mr. Justice Tarkunde was a partner in Khare-Tarkunde; and

(b) The article falsely described the transaction as a 'loan by the Bank to Khare Tarkunde. In fact the said transaction was only a guarantee given by the Bank which undertook to pay to the Government any amount not exceeding Rs. 10 lacs in the event of Khare-Tarkunde being unable to perform its obligations. The Bank was secured by a further guarantee given by the New India Assurance Co. Ltd. undertaking to secure the Bank in the event of the Bank having to pay the said amount or any part thereof.

5. Appellant No. 2 who also happens to be a Director and Principal Officer of the first appellant filed a reply raising some objections of a legal and technical nature and took up the position that the impugned article was based on a report published in "Prajatantra" from which all the facts stated in the article were incorporated. It was asserted that certain 'major facts' had been verified by the appellant and found to be true. It was admitted that upon reading the petition for taking contempt proceedings it was found by appellant No. 2 that there were certain incorrect statements in the article. It was claimed that the article had been published in a bona fide belief that whatever was stated in the article in "Prajatantra" was true. The intention was to convey to the public at large that it was incumbent on the plaintiff Thackersey and Petigara, one of the partners of Mulla and Mulla etc. his attorney to inform Justice Tarkunde that the plaintiffs had voted for a resolution of the Board of Directors of the Bank of India which, without reasonable doubt, would help Khare-Tarkunde in which Tarkunde happened to be a brother of the Judge.

6. The High Court analysed the implications of the facts stated in each paragraph of the impugned article in great detail and observed:-

".....reading the article as a whole, taking care not to read into it anything more than its plain language implies and making every allowance for literary style and rhetorical flourish expressions which were often used in the arguments for the respondents it is impossible to avoid the conclusions that this article exceeds the bounds of fair and reasonable criticism. In so far as it suggests that there is some sort of casual connection between the granting of the loan to M/s. Khare Tarkunde Pvt. Ltd., and the judgment of Mr. Justice Tarkunde In the Blitz-Thackersey case, it clearly attempts to lower the learned judge in his judicial capacity not to mention the fact that it would also tend to shake the confidence of the lay public in the High Court and impair the due administration of justice in that

Court. In so far as there is a suggestion made be it ever so faint, that Mr. Justice Tarkunde knew or must have known of the loan to his brother's firm before he delivered the judgment in the case, the article is malicious and not in good faith."

The High Court also examined the misstatements and inaccuracies in the impugned article and held that there was no foundation for suggestion that Khare-Tarkunde was an impecunious concern and therefore was "lucky" to get the handsome loan nor for the suggestion that either Thackersey and his Co-Directors in the Bank of India or Thackersey's solicitor and his Co Directors in the New India Assurance Co went out of their way to grant accommodation of Khare Tarkunde. The High Court found no basis for the insinuation that there was any connection between the loan and the judgment in the Blitz-Thackersey case or that Justice Tarkunde knew or might have known about any loan having been granted to his brother's firm No attempt was made to justify these suggestions in the return or in the argument before the High Court and all that was urged was that the words used by the contemner did not give rise to the said imputations or innuendos and that the contemner was only trying to communicate to the public at large what has been stated before. It is needless to refer to the other points raised before and decided by the High Court because none off them has been argued before us.

7. In this appeal, counsel for appellant No. 2 has made some attempt to establish that no aspersion was case on the integrity of Justice Tarkunde in the article nor was any imputation of dishonesty made. His second contention is that proceedings for contempt for scandalising a judge have become obsolete and the proper remedy in such a situation is for the Judge to institute action for libel. Thirdly, it is said there was no evidence before the High Court that Justice Tarkunde did not know about the transaction or the dealings between the firm in which his brother was a partner and the bank of which Thackersey was a director. If, it is submitted, the allegations made in the article were truthful or had been made bona fide in the belief that they were truthful the High Court ought not to have found appellant No. 2 guilty of contempt. At any rate, according to counsel, the statements contained in the article only made out a charge of bias against the Judge and if such a charge is made it cannot be regarded as contempt.

8. On the first point our attention has been invited to the paragraphs in the article containing expression of high opinion held by the writer of the judiciary in India. It is suggested that his attempt was only to make a fair and legitimate criticism of the proceedings in the Thackersey suit against the "Blitz" weekly. It has been emphasised in the article that the damages which were awarded to the tune of Rs. 3 lakhs were almost punitive and that it was a rare phenomenon that the plaintiff (Thackersey) did not step into the witness box and also a permanent injunction had been granted preventing Blitz from printing anything based on the subject matter of litigation. The law involving freedom of press fully warranted such criticism of a judgment or of the proceedings in a suit in a court of law.

9. It is true that the writer of the article could exercise his right of fair and reasonable criticism and

the matters which have been mentioned in some of the paragraphs may not justify any proceedings being taken for contempt but the article read as a whole leaves no doubt that the conclusions of the High Court were unexceptionable. It was a skilful attempt on the part of the writer to impute dishonesty and lack of integrity to Justice Tarkunde in the matter of Thackersey Blitz suit, the imputation being indirect and mostly by innuendo that it was on account of the transaction and the dealings mentioned in the article that the suit of Thackersey was decreed in the sum of Rs. 3 lakhs which was the full amount of damages claimed by Thackersey. It may be that the article also suggests that Thackersey and his attorneys were to blame inasmuch as they did not inform the Judge about the transactions of Khare-Tarkunde with the Bank of India with which Thackersey was associated in his capacity as a director but that cannot detract from the obvious implications and insinuations made in various paragraphs of the article which immediately create a strong prejudicial impact on the mind of the reader about the lack of honesty, integrity and impartiality on the part of Justice Tarkunde in deciding the Thackersey Blitz suit

10. On the second point counsel for appellant No. 2 has relied a great deal on certain decisions of the Privy Council and the Australian and American courts. In the matter of a Special Reference from the Bahama Islands, 1893 AC 133 a letter was published in a colonial newspaper containing sarcastic allusions to a refusal by the Chief Justice to accept a gift of pineapples. No judgment was given by the Privy Council but their Lordships made a report to Her Majesty that the impugned letter though it might have been made subject of proceedings for libel was not, in the circumstances, calculated to obstruct or interfere with the course of justice or the due administration of law and, therefore, did not constitute contempt of court. In that case there was no question of scandalising the court nor had any imputation been made against the Chief .Justice in respect of any judicial proceedings pending before him or disposed of in his court It is the next decision of the Privy Council in McLeod v. St. Aubyn 1899 AC 549 on which a great deal of argument has been built up before us that the courts, at least in England, have stopped committing any one for contempt for publication of scandalising matter respecting the court after adjudication as well as pending a case before it. That case came by way of an appeal from an order of the Acting Chief Justice St. Aubyn of the Supreme Court of St. Vincent committing one McLeod to prison for 14 days for alleged contempt of court. It was said inter alia in the impugned publication that in Mr. Trifford the public had no confidence and his locum tenens, Mr. St. Aubyn was reducing the judicial character to the level of a clown There were several other sarcastic and libellous remarks made about the Acting Chief Justice. While recognizing publication of scandalous matter of the court itself as a head of contempt of court as laid down by Lord Hardwicke in re Read and Huggonson, (1742) 2 Atk 469 (471) Lord Morris proceeded to make the oftquoted observation "committals for contempt of Court by itself have become obsolete in this country even though in small colonies consisting principally of coloured population committals might be necessary in proper cases. Only a year later Lord Russell of Killowen C. J., in The Queen v. Gray, (1900) 2 Q. B. 36 reaffirmed that any act done or writing published calculated to bring a court or a judge of the court in contempt, or to lower his authority was a contempt of court. The learned Chief Justice made it clear that judges and courts were alike open to criticism and if reasonable argument or expostulation was offered against any judicial act as contrary to law or the public good no court could or would treat that as contempt of court but it was to be remembered that the liberty of the press was not greater and no less than the liberty of every subject. In that case it was held that there was personal scurrilous abuse of a judge and it constituted contempt. All the three cases which have been discussed above were noticed by the Privy Council in Debi Prasad Sharma v. King Emperor, 70 Ind App 216 = (AIR 1943 PC 202) where contempt proceedings had been taken in respect of editorial comments published in a

newspaper based on a news item that the Chief Justice of Allahabad High Court in his administrative capacity had issued a circular to judicial officers enjoining on them to raise contributions to the war fund and it was suggested that he had done a thing which would lower the prestige of the court in the eyes of the public. This is what was said at p 224 (of Ind App) = (at p. 204 of AIR).

"In (1893) A. C. 138, the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law. In (19100) 2 QB 36 it was shown that the offence of scandalising the court itself was not obsolete in this country. A very scandalous attack had been made on a judge for his judicial utterances while sitting in a criminal case on circuit, and it was with the foregoing opinions on record that Lord Russell of Killowen C. J. adopting the expression of Wilmot C. J. in his opinion in Rex v. Almon (1765) Wilmot's Notes of Opinions 243, which is the source of much of the present law on the subject, spoke of the article complained of as calculated to lower the authority of the judge."

11. It is significant that their Lordships made distinction between a case where there had been criticism of the administrative act of a Chief Justice and an imputation on him for having done or omitted to have done something in the administration of justice. It is further noteworthy that the law laid down in 1899 AC 549 was not followed and it was emphasised that 1900-2 QB. 36 showed that the offence of scandalising the Court itself was not obsolete in England. In Rex v. Editor of the New Statesman, (1928) 44 T.L R. 301, an article had been published in the New Statesman regarding the verdict by Mr. Justice Avory given in a libel action brought by the Editor of the "Morning Post" against Dr. Marie Stopes (the well-known advocate of birth control) in which it was said, inter alia. "the serious point in this case however, is that an individual owning such views as those of Dr. Marie Stopes cannot apparently hope for a fair hearing in a Court presided over by Mr. Justice Avory-and there are so many Avorys". On behalf of the contemner 1899 AC 549 was sought to be pressed into service. The Lord Chief Justice in delivering the judgment of the Court said that the principle applicable to such cases was the one stated in (1900) 2 Q. B. 36- and relied on the observations of Lord Russell at p. 40. It was observed that the article imputed unfairness and lack of impartiality to judge in the discharge of his judicial duties. The gravamen of the offence was that by lowering his authority it interfered with the performance of his judicial functions. Again in Ambard v. Attorney General for Trinidad and Tobago 1936 AC 322 the law enunciated in (1900) 2 QB 36 by Lord Russell of Killowen was applied and it was said at page 335:

"But whether the authority and position of an individual judge, or the due administration of justice, is concerned no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way; the wrong headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

It was, however, held that there was no evidence upon which the court could find that the alleged contemner had exceeded fair and temperate criticism and that he had acted with untruth or malice and with the direct object of bringing the administration of justice into disrepute.

12. Lord Denning M. R. in Reg v Commr. of Police of the Metropolis, Ex parse Blacburn (No. 2) (1968) 2 WLR 1204 made some pertinent observations about the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair and even outspoken comment, on matters of public interest. In the words of the Master of Rolls,

"those who comment can deal faithfully with all that is done in a Court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticism. We cannot enter into public Controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication."

In that case Mr. Quintin Hogg had written an article in "Punch" in which he had been critical of the Court of Appeal and had even made some erroneous statements. But reading of the article the salient passage of which is set out in the judgment of the Master of the Rolls makes it quite clear that there was no attempt to scandalise the Court and impute any dishonourable or dishonest motives or to suggest any lack of integrity in any particular Judge.

13. Oswald in his book on the Contempt of Court has expressed the view that it would be going a great deal too far to say that commitments for contempt of Court by scandalising the Court itself have become obsolete, and that there does not seem to be any good reason for ignoring the principles which govern the numerous early cases on the subject.

14. The American and the Australian cases viz.. Johan D. Pennekamp and the Miami Herald Publishing Co. v. State of Florida, (1946) 328 US 331 and Bell v. Stewart, 28 CLR 419, to which reference has been made on behalf of appellant No. 2 can hardly be of much assistance because in this country principles have become crystallized by the decision of the High Courts and of this court in which the principles followed by English Courts have been mostly adopted.

15. We would now advert to the decisions of this court. It was held in Bathina Ramakrishna Reddy v. State of Madras, 1952 SCR 425 = (AIR 1952 SC 149) that the fact that the defamation of a Judge of a subordinate Court constitutes an offence under S. 499 of the Indian Penal Code did not oust the jurisdiction of the High Court to take cognizance of the act as a contempt of court. In that case in an

article in a Telugu weekly it was alleged that the Stationary Sub-Magistrate of Kovvur was known to the people of the locality for harassing litigants in various ways etc. Mukherjee J., (as he then was) who delivered the judgment described the article as a scurrilous attack on the integrity and honesty of a judicial officer. It was observed that if the allegations were false, they could not but undermine the confidence of the public in the administration of justice and bring the judiciary into disrepute. The appellant there had taken the sole responsibility regarding the publication of the article and was not in a position to substantiate by evidence any of the allegations made therein. It was held that he could not be said to have acted bona fide, "even if good faith can be held to be a defence at all in a proceeding for contempt". The decision in re The Editor, Printer and Publisher of "The Times of India", 1953 SCR 215 c (AIR 1953 SC 75) and Aswini Kumar Ghose v. Arabinda Bose, 1953 SCR 1 = (AIR 1952 SC 369), is very apposite and may be next referred to. In a leading article in "The Times of India" on the judgment of this Court in 1953 SCR 1 = (AIR 1952 SC 369) the burden was that if in a singularly oblique and infelicitous manner the Supreme Court had by a majority decision tolled the knell of the much maligned dual system prevailing in the Calcutta and Bombay High Courts by holding that the right to practice in any High Court conferred on advocates of the Supreme Court had made the rules in force in those High Courts requiring advocates appearing on the original side. to be instructed by attorneys inapplicable to them. This is what was said by Mahajan J., (as he then was) speaking for the court:

"No objection could have been taken to the article had it merely preached to the courts of law the sermon of divine detachment But when it proceeded to attribute improper motives to the Judges, it not only transgressed the limits of fair and bona fide criticism but had a clear tendency to affect the dignity and prestige of this court. The article in question was thus a gross contempt of court. It is obvious that if an impression is created in the minds of the public that the judges in the highest court in the land act on extraneous considerations in deciding cases the confidence of the whole community in the administration of justice is bound to be undermined and no greater mischief than that can possibly be imagined".

The Editor, Printer and Publisher of the newspaper rendered an apology which was accepted, but this court concurred in the expression of view in 1936 AC 322 a passage from which has already been extracted. The guiding principles to be followed by court in contempt proceedings were enunciated in Brahma Prakash Sharma v State of Uttar Pradesh, 1953 SCR 1169 = (AIR 1954 SC 10). The judgment again was delivered by Mukherjee J. (as he then was) and the English decisions including those of the Privy Council were discussed. It is necessary to refer only to the principle' laid down for cases of the present kind i.e. scandalising the court. It has been observed administration of law by such court, it can be punished summarily as contempt.

"It will be an injury that there are two primary considerations which should weigh with the court when it is called upon to exercise summary power i' cases of contempt committed by "scandalising" the court itself. In the first place the reflection on the conduct or character of a Judge in reference to the discharge of his Judicial duties would not be contempt, if such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done in the seat of justice. Secondly when attacks or comments are made on a Judge or Judges

disparaging in character and derogatory to their dignity, care should be taken to distinguish between what is a libel on a judge and what really amounts to contempt of court. If, however, the publication of the disparaging statement is calculated to interfere with the due course of justice or proper to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice, or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties. It is well established that it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice by reason of such defamatory statement; it is enough if it is likely, or tends in any way, to interfere-with the proper administration of law."

In that case it was held that the contempt was of a technical nature. This was based apparently on the reason that the Members of the Bar who had passed a resolution attributing incompetency, lack of courtesy etc. and had referred to complaints against two officers, one a Judicial Magistrate and the other a Revenue Officer and had sent those complaints to the District Magistrate, Commissioner and the Chief Secretary in the State and secondly because very little publicity had been given to the statement.

16. In re Hira Lal Dixit, (1955) 1 SCR 677 = (AIR 1954 SC 743) the above principles were applied and reaffirmed. In that case words which had been used in a poster which was published had the necessary implication that the judges who decided in favour of the Government were rewarded by the Government with appointments to this Court. Although the case was not one of scandalizing of the court but the question that was posed was whether the offending passage was of such character and import or made in such circumstances as would tend to hinder or obstruct or interfere with the due course of administration of justice by this court and it was answered in the affirmative and the contemner was held guilty of contempt of Court. In State of Madhya Pradesh v. Revashankar, 1959 SCR 1367 = (AIR 1959 SC 102) an application was made under Section 528 of the Code of Criminal Procedure in certain criminal proceedings containing serious aspersions against a Magistrate, Mr. N. K. Acharya. Reliance was once again placed on Brahma Prakash Sharma's case, 1953 SCR 1169 = (AIR 1954 SC 10) and the principles laid therein. It was held that the aspersions which had been made amounted to something more than a mere intentional personal insult to the Magistrate: they scandalised the court itself and impaired the administration of justice and that proceedings under the contempt of court could be taken against the contemner.

17. There can be no manner of doubt that in this country the principles which should govern cases of the present kind are now fully settled by the previous decisions of this court.

We may restate the result of the discussion of the above cases on this head of contempt which is by no means exhaustive.

(1) It will not be right to say that committals for contempt scandalizing the court have become obsolete.

(2) The summary jurisdiction by way of contempt must be exercised with great care and caution and only when its exercise is necessary for the proper administration of law and justice.

(3) It is open to anyone to express fair. reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity or even to make a proper and fair comment on any decision given by him because "justice is not a cloistered virtue and she must be allowed to suffer the scrutiny and respectful, even though outspoken. comments of ordinary men"

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

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

(5) Alternatively the test will be whether the wrong is done to the judge personally or it is done to the public. To borrow from the language of Mukherjee J. (as he then was) (Brahma Prakash Sharma's case, 1953 SCR 1169 - (AIR 1954 SC 10)), the publication of a disparaging statement will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to cause embarrassment in the mind of the judge himself in the discharge of his judicial duties.

18. As regards the third contention no attempt was made before the High Court to substantiate that the facts stated in the article were true or were founded on correct data. It may be that truthfulness or factual correctness is a good defence in an action for libel, but in the law of contempt there are hardly any English or Indian cases in which such defence has been recognized. It is true that in the case of, Bathina Ramakrishna Reddy, 1952 SCR 425 = (AIR 1952 SC 149) there was some discussion about the bona fides of the person responsible for the publication but that was apparently done to dispose of the contention which had been raised on the point. It is quite clear that the submission made was considered on the assumption that good faith can be held to be a defence in a proceeding for contempt. The words "even if good faith can be held to be a defence at all in a proceeding for contempt" show that this Court did not lay down affirmatively that good faith can be set up as a defence in contempt proceedings. At any rate, this point is merely of academic interest because no attempt was made before the High Court to establish the truthfulness of the facts stated in the article. On the other hand it was established that some of the material allegations were altogether wrong and incorrect.

19. Lastly the submission that the statements contained in the article made out only a charge of bias against the judge and this cannot constitute contempt has to be stated to be rejected. It is a new point and was never raised before the High Court. Moreover the suggestion that the charge in the article was of legal bias which meant that Justice Tarkunde had some sort of pecuniary interest in Khare-Tarkunde which had the transactions with the bank of which Thackersey was a Director is wholly baseless Counsel had to agree that Justice Tarkunde was neither a shareholder nor was there anything to show that he had any other interest in Khare-Tarkunde. The mere fact that his brother happens to have a holding in it cannot per se establish that Justice Tarkunde would also have some financial or pecuniary interest therein. It is not possible to accept nor has such extreme position been taken by the counsel for appellant No. 2 that there was any bar to a brother or a near relation of a judge from carrying on any business, profession or avocation. The entire argument on this point is wholly without substance.

20. The appellant No. 2 showed no contrition in the matter of publication of the impugned article. He never even tendered an unqualified apology. The High Court, in these circumstances, was fully justified in punishing him for contempt of court and in awarding the sentence which was imposed. In the impugned article there was a clear imputation of impropriety, lack of integrity and oblique motives to Justice Tarkunde in the matter of deciding the Thackersey Blitz suit which. on the principles already stated, undoubtedly constituted contempt of court.

21. The appeal fails and is hereby dismissed.

Appeal dismissed.