E. M. Sankaran Namboodripad

Vs

T. Narayanan Nambiar

Criminal Appeal No. 56 of 1968

(CJI M. Hidayatullah, G. K. Mitter, A. N. Ray JJ)

31.07.1970

JUDGMENT

HIDAYATULLAH, C.J. -

1. Mr. E. M. S. Namboodiripad (former Chief Minister of Kerala) has filed this appeal against his conviction and sentence of Rs. 1,000/- fine or simple imprisonment for one month by the High Court of Kerala for contempt of Court. The judgment, February 9, 1968, was by majority - Mr. Justice Raman Nair (now Chief Justice) and Mr. Justice Krishnamoorthy Iyer formed the majority. Mr. Justice Mathew dissented. The case has been certified by them as fit for appeal to this Court under Article 134(1)(c) of the Constitution.

2. The conviction is based on certain utterances of the appellant, when he was Chief Minister, at a Press Conference held by him at Trivandrum, on November 9, 1967. The report of the Press Conference was published the following day in some Indian newspapers. The proceedings were commenced in the High Court on the sworn information of an Advocate of the High Court, based mainly on the report in the Indian Express. The appellant showed cause against the notice sent to him and in a elaborate affidavit stated that the report 'was substantially correct, though it was incomplete in some respects.

3. The offending parts of the Press Conference will be referred to in this judgment, but we may begin by reading is as a whole. This is what was reported :

> "Marx and Engels considered the judiciary as an instrument of oppression and even today when the State set up his (sic) not undergone any change it continues to be so, Mr. Namboodiripad told a news conference this morning. He further said that judges are guided and dominated by class hatred, class interests and class prejudices and where the evidence is balanced between a well-dressed pot-bellied rich man and a poor ill-dressed and it illiterate person the judge instinctively favours the former, the Chief Minister alleged.
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> The Chief Minister said that election of Judges would be a better arrangement, but unless the basic State set up is changed, it could not solve the problem.
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> Referring to the Constitution the Chief Minister said the oath he had taken was limited only to see that the constitutional provisions are practised. 'I have not taken any oath' the Chief Minister said "that every word and every clause in the Constitution is sacred."

Before that he had also taken an oath, Mr. Namboodiripad said, holding aloft a copy of the Marxist party's programme and read out extracts from it to say that the oath had always held that nothing much could be done under the limitations of the Constitution.

Raising this subject of Constitution and judiciary suo motu at the fag end of his news conference the Chief Minister said to many reports have appeared in the press that Marxists like himself, Mr. A. K. Gopalan, and Mr. Imbichi Baba (Transport Minister) were making statements critical of the judiciary "presumably with the idea that anything spoken about the court is contempt of Court."

His party had always taken the view, the Chief Minister said that judiciary is part of the class rule of the ruling classes. And there are limits to the sanctity of the judiciary. The judiciary is weighted against workers, peasants and other sections of the working classes and the law and the system of judiciary essentially serve the exploiting classes. Even where the judiciary is separated from the executive is still subject to the influence and pressure of the executive. To say this is not wrong. The judiciary he argued was only an institution like the President or Parliament or the Public Service Commission. Even the President is subject to impeachment. After all, sovereignty rested not with any one of them but with the people. Even with regard to Judges confidential records are being kept why ? The Judge is subject to his own idiosyncracies and prejudices." We hold the view that they are guided by individual idiosyncracies, guided and dominated by class interests, class hatred, and class prejudices. In these conditions we have not pledged ourselves not to criticise the judiciary or even individual judgments."

This did not mean, he explained that they could challenge the integrity of the individual judge or cast reflections on individual judgments, the Chief Minister contended.

He did not subscribe to the view that it was an aspersion on integrity when he said that judges are guided and dominated by class hatred and class prejudices. The High Court and the Supreme Court can haul me up, it they want' he said."

4. The affidavit which he filed later in the High Court explained his observations at the press conference, supplied some omissions and pleaded want of intention to show disrespect and justification on the ground that the offence charged could not be held to be committed, in view of guarantee of freedom of speech and expression under the Constitution. He stated that his observations at the press conference did not more than give expression to the Marxist philosophy and what was contained in Chapters 5 of the Programme of the Communist Party of India (Marxist) adopted in November 1964. His pleas in defence were accepted by Justice Mathew who found nothing objectionable which could be termed contempt of court. The other two learned Judges took the opposite view. Judgment was entered on the basis of the majority view.

5. In explaining his press conference the appellant added that it did not offend the majesty of law, undermine 'the dignity of courts' or obstruct the administration of justice. Nor did it have any such tendency. He claimed that it contained a fair criticism of the system of judicial administration in an effort to make it conform to the peoples objective of a democratic and agalitarian society based on socialism. He considered that it was not only his right but also his duty to educate public opinion. He claimed that the statement read as a whole amounted to a fair and reasonable criticism of the present judicial system in our country, that it was not intended to be a criticism of any particular judge, his judgment or his conduct, and that it could not be construed as contempt of court. He added that he had always enforced the judgments of the courts and shown respect to the judiciary and had advocated the independence of the judiciary and decried all attempt to make encroachments

upon it. Criticism of the judiciary, according to him, was his right and it was being exercised by other parties in India. He denied that it was for the courts to tell the people what the law was and asserted that the voice of the Legislatures should be supreme. He, however, found his party at variance with the other parties in that according to the political ideology of his party the State (including all the three limbs - The Legislature, the Executive and the Judiciary) was the instrument of the dominant class or classes, so long as society was divided into exploiting and exploited classes, and parliamentary democracy was an organ of class oppression. He concluded that his approach to the judiciary was :

(a) the verdicts of the courts must be respected and enforced;

(b) no aspersions should be cast on individual judges or judgments by attributing motives to judges;

(c) criticism of the judicial system or of judges going against the spirit of legislation should be permissible; and

(d) education of the people that the State (including the judiciary) was an instrument of exploitation of the majority by the ruling and exploiting classes, was legitimate.

These principles he submitted, were not transgressed by him and also summed up his observations and the press conference.

6. The law of contempt stems from the right of the courts to punish by imprisonment or fines persons guilty or words or acts which either obstruct or tend to obstruct the administration of justice. This right is exercised in India by all courts when contempt is committed in facie curaie and by the superior courts on their own behalf or on behalf of courts subordinate to them even if committed outside the courts. Formerly, it was regarded as inherent in the powers of a Court of Record and now by the Constitution of India, it is a part of the powers of the Supreme Court and the High Courts. There are many kinds of contempts. The chief forms of contempt are insult to judges, attacks upon them, comment on pending proceedings with a tendency to prejudice fair trial, obstruction to officers of courts, witnesses or the parties, abusing the process of the court, breach of duty by officers connected with the court and scandalising the judges or the courts. The last form occurs, generally speaking, when the conduct of a person tends to bring the authority and administration of the law into disrespect or disregard. In this conduct are included all acts which bring the court into disrepute or disrespect or which offend its dignity, affront its majesty or challenge its authority. Such contempt may be committed in respect of a single judge or a single court but may, in certain circumstances, be committed in respect of the whole of the judiciary or judicial system. The question is whether in the circumstances of this case the offence was committed.

7. In arguing the case of the appellant Mr. V. K. Krishna Menon contended that the law of contempt must be read without encroaching upon the guaranteed freedom of speech and expression in Article 19(1)(a) of the Constitution that the intention of the contemner in making his statement at the press conference should be examined in the light of his political views as he was at liberty to put them before the people and lastly the harm done to the courts by his statements must be apparent. He admitted that it might be possible to say that the speech constituted contempt of court but submitted that it would be inexpedient to do so. He stated further that the species of contempt called 'scandalising the court' had fallen in desuetude and was no longer enforced in England and relied

upon McLeod v. St. Aubyn. (LR 1899 AC 549) He further submitted that the freedom of speech and expression gave immunity to the appellant as all he did was to give expression to the teachings of Marx, Engels and Lenin. Lastly, he contended that general remark regarding courts in general did not constitute contempt of court and relied upon The Government Pleader, High Court, Bombay v. Tulsidas Subbanrao Jadhav (ILR 1938 Bom 179) and the observations of Lord Denning M. R. in R. v. Metropolitan Police Commissioner. ((1968) 2 WLR 1204)

8. It is no doubt true that Lord Morris in 1899 A.C. 549 at p. 561 observed that the contempt of court known from the days of the Star Chamber as Scandalum Justiciae Curiae or Scandalising the judges, had fallen into disuse in England. But as pointed out by Lord Atkin in Andre Paul Terence Ambard v. The Attorney-General of Trinidad and Tobago (AIR 1936 PC 141 at 143) the observations of Lord Morris were disproved within a year in The Queen v. Gray. ((1900) 2 QB 36 at 40) Since then many convictions have taken place in which offence was held to be committed when the act constituted scandalizing a judge.

9. We may dispose of the Bombay case above cited. The contemner in that case had expressed contempt for all courts. Beaumont, C.J. (Wasoodew, J., concurring) held that it was not a case in which action should be taken. The case did not lay down that there could never be contempt of court even though the court attacked was not one but all the courts together. All it said was that action should not be taken in such a case. If the Chief Justice intended laying down the broad proposition contended for we must overrule his dictum as an incorrect statement of law. But we think that the Chief Justice did not say anything like that. He was also influenced by the unconditional apology and therefore discharged the rule.

10. Another case cited in this connection may be considered here. In Criminal Appeal No. 110 of 1960 (In Re Basudeo Prasad, Advocate, Patna High Court) decided on May 3, 1962, the offending statement was that many lawyers without practice get appointed as judges of the High Courts. The remark was held by this court not to constitute contempt of court. The remark was made after the report of the Law Commission was published and this Court held that the person concerned, who was then the Secretary of the Indian Council of Public Affairs and an advocate, was entitled to comment on the choice of judges and that the remarks were within the proper limits of public criticism on a question on which there might be differences of opinion. In our judgment that case furnishes no parallel to the case we have here. Each case must be examined on its own facts and the decision must be reached in the context of what was done or said.

11. The appellant has contended before us that the law of contempt should be so applied that the freedom of speech and expression are not whittled down. This is true. The spirit underlying Article 19(1)(a) must have due play but we cannot overlook the provisions of the second clause of the article. While it is intended that there should be freedom of speech and expression, it is also intended that in the exercise of the right, contempt of court shall not be committed. The words of the clause are :

> "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the sub-clause ..... in relation to contempt of court, defamation or incitement to an offence."

These provisions are to be read with Articles 129 and 215 which specially confer on this Court and the High Courts the power to punish for contempt of themselves. Article 19(1)(a) guarantees

complete freedom of speech and expression but it also makes an exception in respect of contempt of court. The guaranteed right on which the functioning of our democracy rests, is intended to give protection to expression of free opinions to change political and social conditions and to advance human knowledge. While the right is essential to a free society, the Constitution has itself imposed restrictions in relation to contempt of court and it cannot therefore be said that the right abolishes the law of contempt or that attacks upon judges and courts will be condoned.

12. Mr. V. K. Krishna Menon read to us observations from Samuel Roth v. United States of America (1 L ED 2d 1489 at 1506), Arthur Terminiello v. City of Chicago (93 L ED 1131 at 1134), Charlotte Anita Whitney v. People of the State of California (71 L ED 1095) and New York Times Company v. L. B. Sullivan (11 L ED 2d 686), on the high-toned objective in guaranteeing freedom of speech. We agree with the observations and can only say that freedom of speech and expression will always prevail except where contempt is manifest, mischievous or substantial. The question always is on which side of the line the case falls. The observations of this Court in Kedar Nath Singh v. State of Bihar ((1962) 2 Supp SCR 769) in connection with sedition do not lend any assistance because the topic there discussed was different. Freedom of speech goes far but not far enough to condone a case of real contempt of court. We shall, therefore, see whether there was any justification for the appellant which gives him the benefit of the guaranteed right.

13. The appellant has maintained that his philosophy is based upon that of Marx and Engels. Indeed he claims to be descended from the last philosopher and seeks to educate the exploited peoples on the reality behind class oppression. As a Marxist-Leninist he advocates the radical and revolutionary transformation of the State from the coercive instrument of exploiting classes to an instrument which the exploited majority can use against these classes. In this transformation he wishes to make the state wither away and with the state is organs, namely, the Legislature, the Executive and the Judiciary also to change. He has justified the press conference as an exposition of his ideology and claims protection of the first clause of Article 19(1) which guarantees freedom of speech and expression. The law of contempt, he says, cannot be used to deprive him of his rights.

14. All this is general but the appellant attacked the judiciary directly as "an instrument of oppression" and the judges as "dominated by class hatred, class interests and class prejudices", "instinctively" favouring the rich against the poor. He said that as part of the ruling classes the judiciary "works against workers, peasants and other sections of the working classes" and "the law and the system of judiciary essentially serve the exploiting classes." Even these statements, he claims, are the teachings of Marx, Engels and Lenin whose follower he is. This was also the submission of his counsel to us.

15. The appellant is only partly right. He and his counsel may be said to have distorted the approach of Marx, Engels and Lenin, and we proceed to explain how. Marx believed in man's inherent rationalism and virtue and depended upon them to create a better society where there would be no injustice and oppression and everyone would be able to share the fruits of man's labour and genius. He attacked all forms of social evils. Hence his sympathy for the neglected and the 'injured and insulted' labouring masses. Marx was neither first nor alone in this. Before him the Judeo-Christians demanded social justice. Others who preached social equality and denounced social injustice were the Utopian Socialists and the Christian Socialists. They had all pointed out inequalities of civilization based on urban industrial development. We had thus Auguste Comte's Courts de philosophie positive, Feuerbach's History of New Philosophy and the writings of Hegel.

16. Marx's contribution was to create a scientific and ethical approach to the problem of inequality.

He adopted the Hegelian dialectical form to explain how the capitalist society had arisen and showed how it would meet its fall. His view was that it nursed within itself the germ of its own destruction. In his classic book Das Kapital he disclosed the clues for the transition from capitalism to socialism. His labour theory was that the capitalist did not give to labour a due share from the value of the goods produced by labour because of the iron law of wages and this left the surplus labour value thereby saved in the hands of the capitalist. In this way the capitalist became an exploiter who grew rich on the exploited labour surplus and could indulge in what he called 'capitalist luxuries'. The introduction of machinery further cut down labour value and increased unemployment leading to reduction of wages. In this way the means of production passed into the hands of a few. Marx saw that this led to tensions which Marx thought would ultimately destroy the capitalist system. He saw the Revolution drawing nearer which would destroy 'classes' and the exploitation of man by man. There was in his view one obstruction to the truimph of the working classes and that was government established by the capitalists who could frame law to enforce the differences. From stemmed his hostility to the State, its government and its laws.

17. The Communist Manifesto, which spoke of class struggle, particularly between the bourgeoisie and the proletarians, gave a history of the domination of the ruling classes converting everyone not belonging to itself into paid wage-labourers. He said that these reactionaries were gearing all production to their own benefit and power. Describing the communists in this context, the Manifesto said that they had no separate interests but represented the proletariat as a whole, irrespective of nationalities and that the class struggle was universal. The communists were to settle the lines of action and their aim was abolition of property - not property of the common man but the bourgeois property of the capitalist created by surplus from wage-labour and resulting in accumulation of capital in the hands of the capitalist. According to the communists, this capital became not a personal but social power and the fight visualized in the Manifesto was the termination of its class character. Wage-labour would thus leave no surplus, nor would it lead to accumulation of more wage-labour yielding still greater surplus but the gains of production would go to enrich labour in the communist society. Freedom according to the Manifesto never meant the abolition of property in toto but the abolition of the bourgeois individuality. What was done away with was not property but the means of subjugating labour of others to one's own use. This in short is the communist thesis of social equality as one gathers from the Manifesto.

18. Next follow the steps for achieving the betterment of what Saint-Simon described as the largest and poorest class. Engels in his Analysis of Socialism explained the different types but we are not concerned with them here. The radicals' appeal followed the forces of reaction released in the 1880 by Tzar Alaxendar III. The Populists of Plekhanov were routed and driven out. Then in 1890s the young intellectuals took up the cause of socialism and Marxism provided the answer where the moderation and escapism of the Populists had failed. The former was based on a scientific approach while Populism was empiric and tended to make Russia, as Bulgakov wrote, 'a peasant and crude country'. The Populists based themselves on the Peasant Communes. The rise of Vladimir Lenin at this time determined the future of Marxism and his classic "the State And Revolution", appears to be in the mind of the appellant when he made his pronouncements. We are doubtful if he has fully appreciated the literature, if he has read it.

19. Lenin's teaching on the State had removed the distortions of Marxism from the minds of the people. He quoted long extracts from Marx and Engels to establish his points. Lenin first took up Engel's Origin of the Family, Private Property and the State. The State, according to Engels, was not the image and reality of Reason as Hegel has maintained before. It was the product of society, a power standing above society like the Leviathan of Hobbes. According to Lenin the State was the

product and manifestation of the irreconcilability of class antagonism. The State emerged when class antagonisms could not objectively be reconciled. The distortion which had crept into Marxism was that the State was regarded as an organ for the reconciliation of the classes. Lenin reinterpreted Marx and, according to him, the State could neither arise nor maintain itself if it were possible to reconcile classes. Marx had thought of the State as an organ of class rule and an organ of oppression. The view of the Menshiviks and other Socialist revolutionaries were exactly the converse.

20. The disputes which have arisen in our country over the inviolability of property as a fundamental right have the same foundations. One side views that the chapter on Fundamental Rights reconciles, through itself, the basic and fundamental class antagonisms and the State is no longer required to play any part. The other side would give to one of the organ of the State, namely, the Legislature, a continual power of readjustment through laws and amendments of the Constitution. Both views do not accord with the Communist Manifesto and hence the distrust of the Constitution by the communists disclosed by the appellant.

21. Lenin, however, thought that the State degenerated into an instrument for the exploitation of the oppressed classes and wielded special public powers to tax and maintain armies. Engels thought that this made the State stand above society and the officers of the State were specially protected as they had the protection of the laws. From this sprung his hostility to the State. Engels summed it up thus :

> "The State is by no means a power forced on society, from without. Neither as little is it 'the reality of the ethical idea', 'the image and reality of reason' as Hegel maintains. The state is a product of society at certain stage of development; it is admission that this society has become entangled in an insoluble contradiction with itself, that it is cleft into irreconcilable antagonisms which it is powerless to dispel. But in order that these antagonisms, classes with conflicting economic interests, might not consume themselves and society in sterile struggle, a power seemingly standing above society becomes necessary for the purpose of moderating the conflict, of keeping it within the bounds of 'order'. And this power, arisen out of society, but placing itself above it, and increasingly alienating itself from it, is the State."

Lenin resummed this thought further thus :

> "This expresses with perfect clarity the basis idea of Marxism on the question of the historical role and meaning of the State. The State is the product and the manifestation of the irreconcilability of class antagonisms. The State arises when, where and to the extent that class antagonisms objectively cannot be reconciled. And, conversely, the existence of the State proves that the class antagonisms are irreconcilable."

22. Having viewed the state in this way these writers from Marx to Lenin viewed it as the instrument for the exploitation of the oppressed classes. The Paris Commune of 1871 had stated its conclusions how the state gets above society but it was blurred in a reactionary manner later by Kautsky in 1912. Lenin cleared the misconception in an exposition of Engel's philosophy :

> "..... As the state arose from the need to hold class antagonisms in check, but as it arose, at the same time, in the midst of the conflict of these classes, it is, as a

> rule, the state of the most powerful economically dominant class, which through the medium of the state, becomes also the politically dominant class and thus acquires means of holding down and exploiting the oppressed classes ..... the modern representative state is an instrument of exploitation of wage labour by capital."

Engels added further :

> "In a democratic republic wealth exercises its power indirectly, but all the more surely 'first by means of the direct corruption of officials' and the second, by means of 'an alliance between the Government and Stock Exchange."

Lenin gave the example that "at the present time, imperialism and the domination of the banks have 'developed' both these methods of upholding and giving effect to the omnipotence of wealth in democratic republics of all descriptions into an unusually fine art." He concluded that "a democratic republic is the best possible political shell for capitalism" and that "it establishes its power so securely, so firmly, that no change whether of persons, of institutions, or of parties in the bourgeois-democratic republic can shake it."

23. Therefore, Marx, Engels and Lenin thought in terms of 'withering away of the state'. Although Lenin thought that Engel's doctrines were an adulteration of Marxism, he was not right. Marx himself believed in this. In his Poverty of Philosophy, Marx says :

> "..... The working class, in the course of development, will substitute for the old bourgeois society an association which will exclude classes and their antagonism, and there will be no more political power properly so-called, since political power is precisely the official expression of antagonism in bourgeois society."

Marx and Engels in the Manifesto had considered the true state to be 'the proletariat organised as the ruling class. It was the Kautskyites (the Dictatorship of the Proletariat) who, misunderstanding the doctrines of Marx, taught that the proletariat needed the state. According to Marx the proletariat needed a state which must whether away leading to the dictatorship of the proletariat.

24. In this fight for power the Communist Manifesto gave a purely abstract solution. It was the substitution of the Commune for the bourgeois State machinery and a fuller democracy. The Army was to be replaced by armed people, the officials were to be elected and also the judges. The Commune was not to be 'a talking parliament' but a 'working body'. It was to be the executive and the Legislature at the same time. The principles were formulated by Engels thus :

> "The necessity of political action by the proletariat and of its dictatorship as the transition to the abolition of classes and with them the State ....."

25. The thesis on the withering away of the State was to be accompanied by a restatement of the functions of the law. Law made by the bourgeois rulers was castigated as involving class supremacy. The Hegelian doctrine of the apotheosis of reason was replaced by the invocation of economic necessity as the only foundation for laws. The laws which preserved privileges were to go, laws which kept the power of the bourgeois above the people were to go, only laws creating equality and preserving society from internal decay and disruption were to be tolerated.

26. In all the writings there is no direct attack on the judiciary selected as the target of people's wrath. Nor are the judges condemned personally. Engels regarded the courts as one of the means

adopted by the law for effectuating itself. It was thus that he wrote :

> "The centralised State power, with its ubiquitous organs, standing army, police, bureaucracy, clergy and judicature organs wrought after the plan of a systematic and hierarchic division of labour - originates from the days of absolute monarchy, serving nascent middle-class society as mighty weapons in its struggles against feudalism."

27. This is not a castigation of the judiciary as being dishonestly ranged against the people but only a recital of a historic fact in feudal societies. He only said that the judicial functionaries must be divested of 'sham independence' which marked their subservience to succeeding governments, and, therefore, be elected. In one of his letters to the Spanish Federal Council of the International Workingmen's Association, London, February 13, 1871, he talked of the power of the possessing classes - The landed aristocracy and the bourgeoisie - And said that they kept the working people in servitude not only by their wealth got by the exploitation of labour but also by the power of the State, by the army, the bureaucracy, and the courts. He was not charging the judiciary with taking sides but only as an evil adjunct of the administration of class legislation. The fault was with the State and the laws and not with the judiciary. Indeed in no writing which we have seen or which has been brought to our notice, Marx or Engels has said what the appellant quotes them as saying.

28. We have summarized into a very small compass, many thousands of words in which these doctrines have been debated from Plekhanov to Lenin through the thoughts of Kautsky, Kerensky, Lasalle, Belinsky and others who attempted a middle line between the revisionism of Bernstein and the Bolshevik views of Lenin. We have done so because Mr. V. K. Krishna Menon sneered that many people learn about communism through Middleton Murray !

29. It will be noticed that in all these writings there is not that mention of judges which the appellant has made. Either he does not know or has deliberately distorted the writings of Marx, Engels and Lenin for his own purpose. We do not know which will be the more charitable view to take. Marx and Engels knew that the administration of justice must change with laws and changes in society, there was thus no need to castigate the judges as such beyond saying that the judicial system is the prop of the State.

30. The courts in India are not sui generis. They owe their existence, form, powers, and jurisdiction to the Constitution and the laws. The Constitution is the supreme law and the other laws are made by Parliament. It is they that give the courts their obligatory duties, one such being the settlement of disputes in which the State (by which we mean those in authority) are ranged against citizens. Again they decide disputes in which class interests are apparent. The action of the courts when exercised against the State proves irksome to the state and equally when it is between two classes, to the class which loses. It is not easily realised that one of the main functions of courts under Constitution is to declare actions, repugnant to the Constitution or the laws (as the case may be), to be invalid. The courts as well as all the other organs and institutions are equally bound by the Constitution and the laws. Although the courts in such cases imply the Widest powers in the other jurisdictions and also give credit where it belongs they cannot always decide either in favour of State or any particular class. There are innumerable cases in which the decisions have gone against what may be described in the language of communism as the exploiting classes.

31. For those who think that the laws are defective, the path of reform is open but in a democracy such as ours to weaken the judiciary is to weaken democracy itself. Where the law is silent the courts have discretion. The existence of law containing its own guiding principles, reduces the

discretion of courts to a minimum. The courts must do their duty according to their own understanding of the laws and the obligations of the Constitution. They cannot take their cue from sentiments of politicians nor even indirectly give support to something which they consider to be wrong or against the Constitution and the laws. The good faith of the judges is the firm bed-rock on which any system of administration securely rests and an attempt to shake the people's confidence in the courts is to strike at the very root of our system of democracy. The oft-quoted anger of the Executive in the United States at the time of the New Deal and the threat to the Supreme Court (which the United States had the good sense not to pursue) should really point the other way and it should be noted that today security of the United States rests upon its dependence on Constitution for nearly 200 years that is mainly due to the Supreme Court.

32. The question thus in this case is whether the appellant has said anything which brings him out of the protection of Article 19(1)(a) and exposes him to a charge of contempt of court. It is obvious that the appellant has misguided himself about the true teachings of Marx, Engels and Lenin. He has misunderstood the attack by them on State and the laws involving an attack on the judiciary. No doubt the courts, while upholding the laws and enforcing them, do give support to the State but they do not do so out of any impure motives. They do not range themselves on the side of the exploiting classes and indeed resist them when the law does not warrant an encroachment. To charge the judiciary as an instrument of oppression the judges as guided and dominated by class-hatred, class interests and class-prejudices, instinctively favouring the rich against the poor is to draw a very distorted and poor picture of the judiciary. It is clear that it is an attack upon judges which is calculated to raise in the minds of the people a general dissatisfaction with, and distrust of all judicial decisions. It weakens the authority of law and law courts.

33. Mr. V. K. Krishna Menon tried to support the action of the appellant by saying that judges are products of their environment and reflect the influences upon them of the society in which they move. He contended that these subtle influences enter into decision making and drew our attention to the writings of Prof. Laski, Justice Cordozo, Holmes and others where the subtle influences of one's upbringing are described. This is only to say that judges are as human as others. But judges do not consciously take a view against the conscience or their oaths. What the appellant wishes to say is that they do. In this he has been guilty of a great calumny. We do not find it necessary to refer to these writings because in our judgment they do not afford any justification for the contempt which has patently been committed. We agree with Justice Raman Nair that some of them have the exaggerations of the confessional. Others came from persons like the appellant, who have no faith in institutions hallowed age and respected by the people.

34. Mr. V. K. Krishna Menon exhorted us to give consideration to the purpose for which the statement was made, the position of the appellant as the head of a State, his sacrifices, his background and his integrity. On the other hand, we cannot ignore the occasion (a press conference), the belief of the people in his word as a Chief Minister and the ready ear which many in his party and outside would give to him. The mischief that his words would cause need not be assessed to find him guilty. The law punishes not only acts which do in fact interfere with the courts and administration of justice but also those which have that tendency, that is to say, are likely to produce a particular result. Judged from the angle of courts and administration of justice, there is not a semblance of doubt in our minds that the appellant was guilty of contempt of court. Whether he misunderstood the teachings of Marx and Engels or deliberately distorted them is not to much purpose. The likely effect of his words must be seen and they have clearly the effect of lowering the prestige of judges and courts in the eyes of the people. That he did not intend any such result may be a matter for consideration in the sentence to be imposed on him but cannot serve as a

justification. We uphold the conviction.

35. As regards sentences we think that it was hardly necessary to impose a heavy sentence. The ends of justice in this case are amply served by exposing the appellant's error about the true teachings of Marx and Engels (behind whom he shelters) and by sentencing him to a nominal fine. We accordingly reduce the sentence of fine to Rs. 50/-. In default of payment of fine he will undergo simple imprisonment for one week. With this modification the appeal will be dismissed.

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