**SUPREME COURT OF INDIA**

In re: Vinay Chandra Mishra (the alleged contemmer)

Vs.

Others.

Contempt Petn. (Criminal) No. 3 of 1994

(Kuldip Singh, J. S. Verma, P. B. Sawant JJ)

10.03.1995

**JUDGEMENT**

**Sawant, J.**

1. On 10th March, 1994, Justice S. K. Keshote of the Allahabad High Court addressed a letter to the Acting Chief Justice of that Court as follows :

> "NO. SKK/ALL/8/94 10-3-94
>
> Dear brother Actg. Chief Justice,
>
> Though on 9-3-94 itself I orally narrated about the misbehaviour of Sh. B. C. Mishra with me in the Court but I thought it advisable to give you same in writing also.
>
> On 9-3-94, I was sitting with Justice Anshuman Singh in Court No,. 38. In the list of fresh Cases of 9-3-94 at Sr. No. 5 FAFO Record No. 22793 M/s. Bansal Forgings Ltd. v. U. P. F. Corp. filed by Smt. S. V. Misra was listed. Sh. B. C. Misra appeared in this case when the case was called.
>
> Brief facts of that case
>
> M/s. Bansal Forgings Ltd. took loan from U. P. Financial Corporation and it made default in payment of instalment of the same. Corporation proceeded against the Company u/s. 29 of the U. P. Financial Corporation Act. The Company filed a Civil Suit against the Corporation and it has also filed an application for grant of temporary injunction. Counsel for the Corporation suo motu put appearance in the matter before Trial Court and prayed for time for filing of reply. The learned trial court passed an order on the said date that the Corporation will not seize the factory of the Company. The Company shall pay the amount of instalments and it will furnish also security for the disputed amount. The court directed to furnish security on 31-1-94 and case was fixed on 15-3-94.

Against said order of the trial court this appeal has been filed and arguments have been advanced that Court has no jurisdiction to pass the order for payment of instalment of loan and further no security could have been ordered.

I put a question to Shri Misra under which provision this order has been passed. On putting of question he started to shout and said that no question could have been put to him. He will get me transferred or see that impeachment motion is brought against me in Parliament. He further said that he has turned up many Judges. He created a good scene in the court. He asked me to follow the practice of this Court. In sum and substance it is a matter where except to abuse me of mother and sister he insulted me like anything. What he wanted to convey to me was that admission is as a course and no arguments are heard, at this stage.

It is not the question of insulting of a Judge of this institution but it is a matter of institution as a whole. In case dignity of Judiciary is not being maintained then where this institution will stand. In case a senior Advocate, President of Bar and Chairman of Bar Council of India behaves in Court in such manner what will happen to other advocates.

Since the day I have come here I am deciding the cases on merits. In case a case has merits it is admitted but not as a matter of course. In this court probably advocates do not like the consideration of cases on their merits at the stage of admission. In case dignity of Judiciary is not restored then it is very difficult for the Judges to discharge their Judicial function without fear and favour.

I am submitting this matter to you in writing to bring this mishappening in the Court with the hope that you will do something for restoration of dignity of Judiciary.

Thanking you,

Yours sincerely,

Sd/-

(Jus. S. K. Keshote)."

The Acting Chief Justice Shri V. K. Khanna forwarded the said letter to the then Chief Justice of India by his letter of 5th April, 1994. The learned Chief Justice of India constituted this Bench to hear the matter on 15th April, 1994. On 15th April, 1994, this Court took the view that there was a prima facie case of criminal contempt of court committed by Shri Vinay Chandra Mishra (hereinafter referred to as the "contemner") and issued a notice against him to show cause why contempt proceedings be not initiated against him. By the same order, Shri D. P. Gupta, the learned Solicitor General of India was requested to assist the Court in the matter. Pursuant to the notice, the contemner filed his reply by affidavit dated 10th May,

1994 and also an application seeking discharge of show cause notice, and in the alternative for an inquiry to be held into the incident referred to by Justice Keshote in his letter which had given rise to the contempt proceedings. It is necessary at this stage to refer to the material portions of both the affidavit and the application filed by the contemner. After referring to his status as a Senior Advocate of the Allahabad High Court and his connections with the various law organisations in different capacities to impress upon the Court that he had a deep involvement in the purity, integrity and solemnity of judicial process, he has submitted in the affidavit that but for his deep commitments to the norms of judicial processes as evidenced by his said status and connections, he would have adopted the usual expedient of submitting his unconditional regrets. But the facts and circumstances of this case were such which induced him to "state the facts and seek the verdict of the Court" whether he had committed the alleged contempt or whether it could be " a judge committing contempt of his own court". He has then stated the facts which according to him form the "genesis" of the present controversy. They are as follows :-

> "A. A Private Ltd. Co. had taken an instalment loan from U. P. Financial Corporation, which provides under its constituent Act (Sec.29) for some sort of self help in case of default of instalments.
>
> B. A controversy arose between the said Financial Corporation and the borrower as a result of which, the borrower had to file a civil suit seeking an injunction against the Corporation for not opting for the non-judicial sale of their assets.
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> C. The Civil Court granted the injunction against putting the assets to sale, but at the same time directed furnishing security for the amount due.
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> D. Being aggrieved by the condition of furnishing security, which in law would be tantamount to directing a mortgager to furnish security for payment of mortgage loan, even when he satisfies the Court that a stay is called for - the property mortgaged being a pre-existing security for its payment.
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> E. The Company filed an FAFO being No. 229793/94 against the portion of the order directing furnishing of security.
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> F. The said FAFO came for preliminary hearing before Hon'ble Justice Anshuman Singh and the Applicant of this petition on 9th March, 1994, in which I argued for the debtor Company.
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> G. When the matter was called on Board, the Applicant took charge of the court proceedings and virtually foreclosed attempts made by the senior Judge to intervene. The Applicant Judge inquired from me as to under what law the impugned order was passed to which I replied that it was under various rules of Order 39, CPC. That Applicant therefore conveyed to me that he was going to set aside the entire order, against a portion of which I had come in appeal,

because in his view the Lower Court was not competent to pass such an order as Order 39 did not apply to the facts.

H. I politely brought to the notice of the Applicant Judge that being the appellant I had the dominion over the case and it could not be made worse, just because I had come to High Court.

I. The Applicant Judge apparently lost his temper and told me in no unconcealed term that he would set aside the order in toto, disregarding what I had said.

J. Being upset over, what I felt was an arbitrary approach to judicial process I got emotionally perturbed and my professional and institutional sensitivity got deeply wounded and I told the Applicant Judge that it was not the practice in this Court to dismiss cases without hearing or to upset judgments or portions of judgments, which have not been appealed against. Unfortunately the Applicant judge took it unsportingly and apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order.

K. At this juncture, the Hon'ble Senior Judge intervened, whispered something to the Applicant Judge and directed the case to be listed before some other Bench. It was duly done and by an order of the other Court dated 18th March, 1994 Hon'ble Justice B. M. Lal and S. K. Verma, the points raised by me before the Applicant Judge were accepted. A copy of the said order is reproduced as Annexure 1 to this affidavit.

L. I find it necessary to mention that the exchange that took place between me and the Applicant Judge got a little heated up. In the moment of heat the Applicant Judge made the following observations :-

"I am from the Bar and if need be I can take to goondaism."

Adding the English -

"I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked."

Provoked by this I asked him whether he was creating a scene to create conditions for getting himself transferred as also talked earlier."

After narrating the above incident, the contemner has gone on to deny that he had referred to any impeachment, though according to him he did mention that "a judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence".The contemner has further denied the allegations made by Justice Keshote that as soon as the case was called out, he (i.e., Justice Keshote) asked him the provision under which the impugned order was passed and that he had replied that the Court had no jurisdiction to ask the same and should admit and grant the stay order. According to him, such a reply could only be

attributed to one who is "mad" and that considering his practice of thirty five years at the Bar and his responsible status as a member of the Bar, it is unbelievable that he would reply in such a "foolish manner". The contemner has further denied that he had abused the learned judge since according to him he had never indulged in abusing anybody. With regard to the said allegations against him, the contemner has stated that the same are vague and, therefore, "nothing definite is warranted to reply".He has further contended in his affidavit that if the learned Judge was to be believed that he had committed the contempt, the senior Judge who was to direct the court proceedings would have initiated proceedings under "Article 129 of the Constitution" for committing contempt in facie curiae. He has also stated that the learned Judge himself did not direct such proceedings against him which he could have. He has found fault that instead of doing so, the learned Judge had "deferred the matter for the next day and adopted a devious way of writing to the Acting Chief Justice for doing something about it". He has then expressed his "uncomprehension" with the learned Judge should have come to the Supreme Court when he had ample and sufficient legal and constitutional powers to arraign him at the Bar for what was attributed to him. The contemner has then gone on to complain that the "language used" by the learned Judge "in the Court extending a threat to resort to goondaism is acting in a way which is professionally perverse and approximating to creating an unfavourable public opinion about the awesomeness of judicial process, lowering or tending to lower the authority of any Court" which amounted to contempt by a Judge punishable under Section 16 of the Contempt of Courts Act, 1971. He has then gone on to submit "under compulsion of" his "institutional and professional conscience" and for upholding professional standards expected of both the Bench and the Bar of this court that this Court may order a thorough investigation into the incident in question to find out whether a contempt has been committed by him punishable under "Article 215" of the Constitution or by the Judge under Section 16 of the Contempt of Courts Act.He has further stated that the entire Bar at Allahabad knows that he was unjustly "roughed" by the Judge and was being punished for taking a "fearless and non-servile stand" and that he is being prosecuted for asserting the right of audience and using "the liberty to express his views" when a Judge takes a course "which in the opinion of the Bar is irregular". He has also contended that any punishment meted out to the "outspoken lawyer" will completely emasculate the freedom of the profession and make the Bar "a subservient tail wagging appendage to the judicial branch, which is an anathema to a healthy democratic judicial system."He has made a complaint that he was feeling handicapped in not being provided with the copy of the letter/report of the Acting Chief Justice of the Allahabad High Court and he has also been unable to guage the "rationale of the applicant in not having initiated proceedings" against him either immediately or a day following, when he chose to address a letter, to the Acting Chief Justice. He has

then contended that he wanted to make it clear that he was seeking a formal inquiry not for any vindication of any personal hurt but to make things safe for profession which in a small way by a quirk of destiny come to his keeping also. He has also stated that he would be untrue and faithless to his office if he subordinated the larger interests of the profession and dignity of the judicial process for a small thing of seeking his little safety. The contemner goes on to state that he did not opt for filing a contempt against the learned Judge as in normal course of arguments, sometimes, altercations take place between a Judge and the arguing advocate, which may technically be contempt on either side but there being no intention, provisions of contempt are not attracted. In support of his said case, he has reproduced an extract from Oswald's Contempt of Court, III Edition, by Robertson. The said extract is as follows :

> "An advocate is at liberty, when addressing the Court in regular course, to combat and contest strongly any adverse views of the Judge or Judges expressed on the case during its argument, to object to and protest against any course which the Judge may take and which the advocate thinks irregular or detrimental to the interests of his client, and to caution juries against any interference by the Judge with their functions, or with the Advocate when addressing them or against any strong view adverse to his client expressed by the presiding Judge upon the facts of a case before the verdict of the jury thereon. An advocate ought to be allowed freedom and latitude both in speech and in the conduct of his client's case. It is said that a Scothch advocate was arguing before a Court in Scotland, when one of the Judges, not liking his manner, said to him, "It seems to me, Mr. Blank, that you are endeavouring in every way to show your contempt for the Court." "No," was the quick rejoinder, "I am endeavouring in every way to conceal it."

In the end, he has stated that he had utmost respect and regard for the courts and he never intended nor intends not to pay due respect to the courts which under the law they are entitled to and it is for this reason that instead of defending himself through an advocate, he had left to the mercy of this court to judge and decide the right and wrong. He has also stated that it is for this reason that he had not relied upon the provisions of the Constitution under Articles 129 and 215 and Section 16 of the Contempt of Courts Act and to save himself on the technicality and jurisdictional competence. Lastly, he has reiterated that he had always paid due regard to the Courts and he was paying the same and will continue to pay the same and he "neither intended nor intends to commit contempt of any Court.".

2. Along with the aforesaid affidavit was forwarded by the contemner, a petition stating therein that he had not gone beyond the legitimate limits of fearless, honest and independent obligations of an advocate and it was Justice Keshote himself who had lost his temper and extended threats to him which was such as would be

punishable under Section 16 of the Contempt of Courts Act, 1971 (hereinafter referred to as the "Act"). He has prayed that the notice issued to him be discharged and if in any case, this Court does not feel inclined to discharge the notice, he "seeks his right to inquiry and production of evidence directly or by affidavits" as this Court may direct. He has further stated in that petition that he is moving an independent application for contempt proceedings to be drawn against the learned Judge and it would be in the interests of justice and fairplay if the two are heard together. It has to be noted that the contemner has throughout this affidavit as well as the petition referred to Justice Keshote as "applicant", although he knew very well that contempt proceedings had been initiated suo motu by this Court on the basis of the letter written by Justice Keshote to the Acting Chief Justice of the High Court, His manner of reference to the learned Judge also reveals the respect in which he holds the learned Judge. The contemner has also filed another petition on the same day as stated in the aforesaid petition wherein he has prayed that on the facts stated in the reply affidavit to the show cause notice for contempt proceedings against him, this Court be pleased to draw proceedings under Section 16 of the Act against the learned Judge for committing contempt of his own court and hold an inquiry. In this petition, he has stated that in his reply to the contempt notice, he has brought the whole truth before this Court which according to him was witnessed by the senior Judge of the Bench. Justice Anshuman Singh and a large number of advocates. Once again referring to Justice Keshote as the applicant, he has stated that the learned Judge in open court conveyed to him (i.e. the contemner) that he can take to goondaism if need arises, that he also talked disparagingly against the Chief Justice of India for not transferring him to the place for which he had opted and talked to the contemner scurrilously and in a manner unworthy of Judge and also attempted to gag the contemner from discharging his duties as an advocate. The contemner has further contended that as a common law principle relating to contempt of courts, a Judge is liable for contempt of his own Court as much as any other person associated with judicial proceedings and outside, and that the aforesaid principle has been given statutory recognition under Section 16 of the Act. He has further contended that the behavior of the learned Judge was so unworthy that the senior colleague on the Bench apart from "disregarding with the desire of the applicant to dismiss the entire order" against a part of which an appeal had been filed, released the case from the board and did not think of taking recourse to the obvious and well-known procedure of initiating contempt proceedings against him for the alleged contempt committed in the fact of the Court. He has further contended that "the adoption of devious ways of reaching the Acting Chief Justice by letter and reportedly coming to Delhi for meeting meaningful people" is "itself seeking about the infirmity of the case" of the Judge. He has in the end reiterated his prayer for an inquiry into the behavior of the learned Judge if the notice of contempt was not discharged against him in view of

the denial by him of the conduct alleged against him.
3. This Court gave four weeks' time as desired by the contemner to file an additional affidavit giving more facts and details. The Court also made clear that the cause title of the proceedings was misleading since Justice Keshote had not initiated the proceedings. The proceedings were initiated suo motu by this Court. A direction was given to the Registry to correct the cause title. On 30th June, 1994, the contemner filed his supplementary/additional counter affidavit. In this affidavit, he raised objections to the maintainability "of initiating contempt proceedings" against him. His first objection was to the assumption of jurisdiction by this Court to punish for an act of contempt committed in respect of another Court of record which is invested with identical and independent power for punishing for contempt of itself. According to him, this Court can take cognisance only of contempt committed in respect of itself. He has also demanded that in view of the point of law raised by him, the matter be placed before the Constitution Bench and that notice be issued to the Attorney General of India and all the Advocate Generals of the States. He has then gone on to deny the statements made by the learned Judge in the letter written to the Acting Chief Justice of the High Court and in view of the said denial by him, he has asked for the presence of the learned Judge in the court for being cross-examined by him, i.e., the contemner. He has further stated that if the contempt proceedings are taken against him, the statement of Justice Anshuman Singh who was the senior Judge on the Bench before which the incident took place, would also be necessary. He has also taken exception to Justice Keshote's speaking in the Court except through the senior Judge on the Bench which, according to him had been the practice in the Allahabad High Court, and has alleged that the learned Judge did not follow the said convention. In the end, he has reiterated that he has utmost respect and regard for the courts and he has never intended nor intends not to pay due regard to the Courts. On 15th July, 1994, this Court passed an order wherein it is recorded that on 15the April, 1994, the court had issued a notice to the contemner to show cause as to why criminal contempt proceedings be not initiated against him and notice was issued on its own motion. The Court heard the contemner in person as well as his learned counsel. The Court perused the counter affidavit and the additional affidavit of the contemner and was of the view that it was a fit case where criminal contempt proceedings be initiated against the contemner. Accordingly, the Court directed that the proceedings be initiated against him. The contemner was given an opportunity to file any material in reply or in defence within another eight weeks. He was also allowed to file the affidavit of any other person apart from himself in support of his defence. Shri Gupta, learned Solicitor General was appointed as the prosecutor to conduct the proceedings. The affidavits filed by the contemner were directed to be sent to Justice Keshote making it clear that he might offer his comments regarding the factual averments in the said affidavits.

4. In view of the said order, the Court dismissed the contemner's Application No. 2560/94 praying for discharge of the notice. The contemner thereafter desired to withdraw his Application No. 2561/94 seeking initiation of proceedings against the learned Judge for contempt of his own Court, by stating that he was doing so "at this stage reserving his right to file a similar application at a later stage". The Court without any comment on the statement made by the contemner, dismissed the said application as withdrawn.

5. Justice Keshote by a letter of 20th August, 1994 forwarded his comments on the counter affidavit and the supplementary/additional counter affidavit filed by the contemner. The learned Judge denied that he took charge of the court proceedings and virtually foreclosed the attempts made by the senior Judge to intervene, as was alleged by the contemner. He stated that being a member of the Bench, he put a question to the contemner as to under which provision, the order under appeal had been passed by the trial court, and upon that the contemner started shouting and said that he would get him transferred or see to it that impeachment motion was brought against him in Parliament. According to the learned Judge, the contemner said many more things as already mentioned by him in his letter dated 10th March, 1994. He further stated that the contemner created a scene which made it difficult to continue the court proceedings and ultimately when it became difficult to hear all the slogans, insulting words and threats, he requested his learned brother on the Bench to list that case before another Bench and to retire to the chamber. Accordingly, the order was made by the other learned member of the Bench and both of them retired to their chambers. The learned Judge also stated that the contemner has made wrong statement when he states "that applicant, therefore, conveyed to me that he was going to set aside the entire order, against portion of which I had come in appeal because in his view, the lower court was not competent to pass such order as Order 39 did not apply to the facts". The learned Judge stated that he neither made any such statement nor conveyed to the contemner as suggested by him. He reiterates that except one sentence, viz., "that under which provision this order had been made by the trial court" nothing was said by him. According to the learned Judge, it was a case where the contemner did not permit the court proceedings to be proceeded and both the Judges ultimately had to retire to the chambers. The learned Judge alleges that the counter-afidavit manufactures a defence. He has denied the contents of paragraph 6(H) and (I) of the counter affidavit by stating that nothing of the kind as alleged therein had happened. According to the learned Judge, it was a case where the contemner lost his temper on the question being put to him by him, i.e., the learned Judge. He has stated that instead of losing his temper and creating a scene and threatening and terrosising him, the contemner should have argued the matter and encouraged the new junior Judge. The learned Judge has further denied the following averment, viz., "unfortunately, the applicant Judge took it unsportingly and

apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order" made in paragraph 6(J) of the counter affidavit, as wrong. He has pointed out that in the Division Bench, it is the senior member who dictates order/judgments. He has also denied the statements attributed to him in other paragraphs of the affidavits and in particular, has stated that he did not make the following observations :

> "I am from the Bar and if need be I can take to goondaism" and has alleged that the said allegations are absolutely wrong. He has also denied that he ever made the statements as follows : "I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place which I never liked". According to him, the said allegations are manufactured with a view to create a defence. He has denied the allegations made against him in the additional/supplementary affidavits as wrong and has stated that what actually happened in the Court was stated in his letter of 10th March, 1994.

On 7th October, 1994, the contemner filed his unconditional written apology in the following words :

> "1. In deep and regretful realisation of the fact that a situation like the one which has given rise to the present proceedings, and which in an ideal condition should never have arisen, subjects me to deep anguish and remorse and a feeling of moral guilt. The feeling has been compounded by the fact of my modest association with the profession as the senior advocate for some time and also being the President of the High Court Bar Association for multiple terms, (from which I have resigned a week or ten days back), and also being the Chairman of the Bar Council of India for the third five-year term. The latter two being elective posts convey with its holding an element of trust by my professional fraternity which expectations of setting up an example of an ideal advocate, which includes generating an intra-professional culture between the Bar and the Bench, under which the first looks upon the second with respect and resignation, the second upon the first with courtesy and consideration. It also calls for cultivation of a professional attitude amongst the lawyers to learn to be good and sporting loser.
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> 2. Guilty realising my failure at approximating these standards resulting in the present proceedings, nolo contendre I submit my humble and unconditional apologies for the happenings in the Court of Justice S. K. Keshote at Allahabed High Court on March 9, 1994, and submit myself at the Hon. Courts sweet will.
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> 3. I hereby withdraw from record all my applications, petitions, counter affidavits, and prayers made to the court earlier to the presented (sic) of this statement. I, also, withdraw all submissions made at the bar earlier and rest

my matter with the present statement alone, and any submissions that may be made in support of or in connection with statement."

On that day, the matter was adjourned to 24th November, 1994 to enable the learned counsel for the parties to make further submission on the apology and to argue the case on all points, since the Court stated that it may not be inclined to accept the apology as tendered. The learned counsel for all the parties including the contemner, Bar Council of India and the State Bar Council of U. P. (who were allowed to intervene) were heard and the matter was reserved for judgment.

6. Thereafter, the State Bar Council of U. P. also submitted its written submissions on 26th November, 1994 along with an application for intervention. We have perused the said submissions.

7. We may first deal with the preliminary objection raised by the contemner and the State Bar Council, viz., that this Court cannot take cognisance of the contempt of the High Courts. The contention is based on two grounds. The first is that Article 129 vests this Court with the power to punish only for the contempt of itself and not of the High Courts. Secondly, the High Court is also another court of record vested with identical and independent power of punishing for contempt of itself. The contention ignores that the Supreme Court is not only the highest Court of record, but under various provisions of the Constitution, is also charged with the duties and responsibilities of correcting the lower courts and tribunals and of protecting them from those whose misconduct tends to prevent the due performance of their duties. The latter functions and powers of this Court are independent of Article 129 of the Constitution. When, therefore, Article 129 vests this Court with the powers of the court of record including the power to punish for contempt of itself, it vests such powers in this Court in its capacity as the highest court of record and also as a court charged with the appellate and superintending powers over the lower courts and tribunals as detailed in the Constitution. To discharge its obligations as the custodian of the administration of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, it is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour and for that purpose all the courts and tribunals are protected while discharging their legitimate duties. To discharge this obligation, this Court has to take cognisance of the deviation from the path of justice in the tribunals of the land, and also of attempts to cause such deviations and obstruct the course of justice. To hold otherwise would mean that although this Court is charged with the duties and responsibilities enumerated in the Constitution, it is not equipped with the power to discharge them.

This subject has been dealt with elaborately by this Court in Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat, (1991) 4 SCC 406 : (1991

AIR SCW 2419). We may do no better than quote from the said decision the relevant extracts :

> "18. There is, therefore, no room for any doubt that this Court has wide power to interfere and correct the judgment and orders passed by any court or tribunal in the country. In addition to the appellate power, the Court has special residuary power to entertain appeal against any order of any court in the country. The plenary jurisdiction of this Court to grant leave and hear appeals against any order of a court or tribunal, confers power of judicial superintendence over all the courts and tribunals in the territory of India including subordinate courts of Magistrate and District Judge. This Court has, therefore, supervisory jurisdiction over all courts in India.
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> 19. Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself. The Constitution does not define "Court of Record". This expression is well recognised in juridical world. In Jowitt's Dictionary of English Law, "Court of record" is defined as :
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> "A court whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and which has power to fine and imprison for contempt of its authority."
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> In Wharton's Law of Lexicon, Court of record is defined as :
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> "Courts are either of record where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony and they have power to fine and imprison; or not of record being courts of inferior dignity, and in a less proper sense the King's Courts and these are not entrusted by law with any power to fine or imprison the subject of the realm, unless by the express provision of some Act of Parliament. These proceedings are not enrolled or recorded."
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> In Words and Phrases (Permanent Edition Vol. 10 page, 429) "Court of Record" is defined as under:
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> "Court of Record is a court where acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony, which rolls are called the 'record' of the court, and are of such high and supereminent authority that their truth is not to be questioned."
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> Halsbury's Laws of England, 4th Edn., Vol. 10, para 709, page 319, states :
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> "Another manner of division is into courts of record and courts not of record. Certain courts are expressly declared by statute to be courts of record. In the case of courts not expressly declared to be courts of record, the answer to the

question whether a court is a court of record seems to depend in general upon whether it has power to fine or imprison, by statute or otherwise, for contempt of itself or other substantive offences; if it has such power, it seems that it is a court of record..... The proceedings of a court of record preserved in its archives are called records, and are conclusive evidence of that which is recorded therein."

x x x x x x

23. The question whether in the absence of any express provision a Court of Record has inherent power in respect of contempt of subordinate or inferior courts, has been considered by English and Indian courts.

x x x x x x

..... These authorities show that in England the power of the High Court to deal with the contempt of inferior court was based not so much on its historical foundation but on the High Court's inherent jurisdiction being a court of record having jurisdiction to correct the orders of those courts.

x x x x x x

24. In India prior to the enactment of the Contempt of Courts Act, 1926, High Court's jurisdiction in respect of contempt of subordinate and inferior courts was regulated by the principles of Common Law of England. The High Courts in the absence of statutory provision exercised power of contempt to protect the subordinate courts on the premise of inherent power of a Court of record.

26. The English and the Indian authorities are based on the basic foundation of inherent power of a Court of Record, having jurisdiction to correct the judicial orders of subordinate courts. The King's Bench in England and High Courts in India being superior Courts of Record and having judicial power to correct orders of subordinate courts enjoyed the inherent power of contempt to protect the subordinate courts. The Supreme Court being a Court of Record under Article 129 and having wide power of judicial supervision over all the courts in the country, must possess and exercise similar jurisdiction and power as the High Courts had prior to contempt Legislation in 1926. Inherent powers of a superior Court of Record have remained unaffected even after codification of Contempt Law."

x x x x x x

28. ..... The Parliament's power to legislate in relation to law of contempt relating to Supreme Court is limited, therefore, the Act does not impinge upon this Court's power with regard to the contempt of subordinate courts under Article 129 of the Constitution."

29. Article 129 declares the Supreme Court a court of record and it further provides that the Supreme Court shall have all the powers of such a court including the power to punish for contempt of itself. The expression used in

Article 129 is not restrictive instead it is extensive in nature. If the framers of the Constitution intended that the Supreme Court shall have power to punish for contempt of itself only, there was no necessity of inserting the expression "including the power to punish for contempt of itself". The Article confers power on the Supreme Court to punish for contempt of iteslef and in addition, it confers some additional power relating to contempt as would appear from the expression "including". The expression "including" has been interpreted by courts, to extend and widen the scope of power. The plain language of Article 129 clearly indicates that this Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. The courts ought not to accept any such construction. While construing Article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. Since the Supreme Court is designed by the Constitution as a court of record and as the Founding Fathers were aware that a superior court of record has inherent power to indict a person for the contempt of itself as well as of courts inferior to it, the expression "including" was deliberately inserted in the article. Article 129 recognised the existing inherent power of a court of record in its full plenitude including the power to punish for the contempt of inferior courts. If Article 129 is susceptible to two interpretations, we would prefer to accept the interpretation which would preserve the inherent jurisdection of this Court being the superior court of record, to safeguard and protect the subordinate judiciary, which forms the very backbone of administration of justice. The subordinate courts administer justice at the grassroot level, their protection is necessary to preserve the confidence of people in the efficacy of courts and to ensure unsullied flow of justice at its base level.

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31. We have already discussed a number of decisions holding that the High Court being a court of record has inherent power in respect of contempt of itself as well as of its subordinate courts even in the absence of any express provision in any Act. A fortiori the Supreme Court being the apex Court of the country and superior court of record should possess the same inherent jurisdiction and power for taking action for contempt of itself as well as for the contempt of subordinate and inferior courts. It was contended that since High Court has power of superintendence over the subordinate courts under Article 227 of the Constitution, therefore, High Court has power to punish for the contempt of subordinate courts. Since the Supreme Court has no supervisory jurisdiction over the High Court or other subordinate courts, it

does not possess powers which High Courts have under Article 215. This submission is misconceived. Article 227 confers supervisory jurisdiction on the High Court and in exercise of that power High Court may correct judicial orders of subordinate courts, in addition to that, the High Court has administrative control over the subordinate courts, Supreme Court's power to correct judicial orders of the subordinate courts under Article 136 is much wider and more effective that that contained under Article227. Absence of administrative power of superintendence over the High Court and subordinate court does not affect this Court's wide power of judicial superintendence of all courts in India. Once there is power of judicial superintendence, all the courts whose orders are amenable to correction by this Court would be subordinate courts, and therefore, this Court also possesses similar inherent power as the High Court has under Article 215 with regard to the contempt of subordinate courts. The jurisdiction and power of a superior Court of Record to punish contempt of subordinate courts was not founded on the Court's administrative power of superintendence, instead the inherent jurisdiction was conceded to superior Court of Record on the premise of its judicial power to correct the errors of subordinate courts.

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36. Advent of freedom, and promulgation of Constitution have made drastic changes in the administration of justice necessitating new judicial approach. The Constitution has assigned a new role to the Constitutional Courts to ensure rule of law in the country. These changes have brought new perceptions. In interpreting the Constitution, we must have regard to the social, economic and political changes, need of the community and the independence of judiciary. The court cannot be a helpless spectator, bound by precedents of colonial days which have lost relevance. Time has come to have a fresh look at the old precedents and to lay down law with the changed perceptions keeping in view the provisions of the Constitution. "Law", to use the words of Lord Coleridge, "grows; and though the principles of law remains unchanged, yet their application is to be changed with the changing circumstances of the time". The considerations which weighed with the Federal Court in rendering its decision in Gauba, (AIR 1942 FC 1) and Jaitly case (1944 FCR 364) are no more relevant in the context of the constitutional provisions.

37. Since this Court has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The subordinate and inferior courts do not have

adequate power under the law to protect themselves. therefore, it is necessary that this court should protect them. Under the constitutional scheme this court has a special role, in the administration of justice and the powers conferred on it under Articles 32, 136, 141 and 142 form part of basic structure of the Constitution. The amplitude of the power of this Court under these articles of the Constitution cannot be curtailed by law made by Central or State Legislature. If the contention raised on behalf of the contemners is accepted, the courts all over India will have no protection from this Court. No doubt High Courts have power to persist for the contempt of subordinate courts but that does not affect or abridge the inherent power of this Court under Article 129. The Supreme Court and the High Court both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Articles 32 and 226 of the Constitution, therefore this Court's jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. There may be occasions when attack on Judges and Magistrates of subordinate courts may have wide repercussions throughout the country, in that situation it may not be possible for a High Court to contain the same, as a result of which the administration of justice in the country may be paralysed, in that situation the Apex Court must intervene to ensure smooth functioning of courts. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice throughout the country, for that purpose it must wield the requisite power to take action for contempt of subordinate courts. Ordinarily, the High Court would protect the subordinate court from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, this Court may directly take cognisance of contempt of subordinate courts. We would like to strike a note of caution that this Court will sparingly exercise its inherent power in taking cognisance of the contempt of subordinate courts, as ordinarily matters relating to contempt of subordinate courts must be dealt with by the High Courts. The instant case is of exceptional nature, as the incident created a situation where functioning of the subordinate courts all over the country was adversely affected, and the administration of justice was paralysed, therefore, this Court took cognisance of the matter.

38. ...It is true that courts constituted under a law enacted by the Parliament or the State Legislature have limited jurisdiction and they cannot assume jurisdiction in a matter, not expressly assigned to them but that is not so in the case of a superior court of record constituted by the Constitution. Such a court does not have a limited jurisdiction instead it has power to determine its own

jurisdiction instead it has power to determine its own jurisdiction. No matter is beyond the jurisdiction of a superior court of record unless it is expressly shown to be so, under the provisions of the Constitution. In the absence of any express provision in the Constitution the Apex Court being a court of record has jurisdiction in every matter and if there be any doubt, the Court has power to determine its jurisdiction. If such determination is made by High Court, the same would be subject to appeal to this Court, but if the jurisdiction is determined by this Court it would be final.

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..... We, therefore, hold that this Court being the Apex Court and a superior court of record has power to determine its jurisdiction under Article 129 of the Constitution and as discussed earlier it has jurisdiction to initiate or entertain proceedings for contempt of subordinate courts. This view does not run counter to any provision of the Constitution."

The propositions of law laid down and the observations made in this decision conclusively negate the contention that this Court cannot take cognisance of the contempt committed of the High Court.

8. The contemner has also contended that notwithstanding the decision in Delhi Judicial Services Association case (1991 AIR SCW 2419)(supra), the matter should be referred to a larger Bench because according to him, the decision does not lay down the correct proposition of law when it gives this Court the jurisdiction under Article 129 of the Constitution to take cognisance of the contempt of the High Court. Neither the contemner nor the learned counsel appearing on his behalf has pointed out to us any specific infirmity in the said decision. We are not only in complete agreement with the law laid down on the point in the said decision but are also unable to see how the legal position to the contrary will be consistent with this Court's wide ranging jurisdiction and its duties and responsibilities as the highest Court of the land as pointed out above. Hence, we reject the said request.

9. The contemner has further contended that it will be necessary to hold an inquiry into the allegations made by the learned Judge by summoning the learned Judge for examination to verify the version of the incident given by him as against that given by the contemner. According to him, in view of the conflicting versions of the incident given by him and the learned Judge, it would be necessary for him to cross-examine the learned Judge. As the facts reveal, the contempt alleged is in the face of the Court. The learned Judge or the Bench could have itself taken action for the offence on the spot. Instead, the learned Judge probably thought that it would not be proper to be a prosecutor, a witness and the Judge himself in the matter and decided to report the incident to the learned Acting Chief Justice of his Court. There is nothing unusual in the course the learned Judge adopted, although the procedure adopted by the learned Judge has resulted in some delay in taking action for the

contempt (see Balogh v. Crown Court at St. Albans. (1975) QB 73 : (1974) 3 All ER 283. The criminal contempt of Court undoubtedly amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law even in this country has always been summary. However, the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the Judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. This procedure does not offend against the principle of natural justice, viz., Nemo judex in sua causa since the prosecution is not aimed at protecting the Judge personally but protecting the administration of justice. The threat of immediate punishment is the most effective deterrent against misconduct. The Judge has to remain in full control of the hearing of the case and he must be able to take steps to restore order as early and quickly as possible. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the Court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in Court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the Court is commended and not faulted.

10. In the present case, although the contempt is in the face of the Court, the procedure adopted is not only not summary but has adequately safeguarded the contemner's interests. The contemner was issued a notice intimating him the specific allegations against him. He was given an opportunity to counter the allegations by filing his counter affidavit and additional counter/supplementary affidavit as per his request, and he has filed the same. He was also given an opportunity to file an affidavit of any other person that he chose or to produce any other material in his defence, which he has not done. However, in the affidavit which he has filed, he has requested for an examination of the learned Judge, we have at length dealt with the nature of in facie curiae contempt and the justification for adopting summary procedure and punishing the offender on the sopt. In such procedure, there is no scope for examining the Judge or Judges of the Court before whom the contempt is

committed. To give such a right to the contemner is to destroy not only the raison d'etre for taking action for contempt committed in the face of the Court but also to destroy the very jurisdiction of the Court to adopt proceedings for such conduct. It is for these reasons that neither the common law nor the statute law countenances the claim of the offender for examination of the Judge or Judges before whom the contempt is committed. Section 14 of our Act, i.e., the Contempt of Courts Act, 1971 deals with the procedure when the action is taken for the contempt in the face of the Supreme Court and the High Court. Sub-section (3) of the said Section deals with a situation where in facie curiae contempt is tried by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed. The provision in specific terms and for obvious reasons, states that in such cases it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, to appear as a witness and the statement placed before the Chief Justice shall be treated as the evidence in the case. The statement of the learned Judge has already been furnished to the contemner and he has replied to the same. We have, therefore, to proceed by treating the statement of the learned Judge and the affidavits filed by the contemner and the reply given by the learned Judge to the said affidavits, as evidence in the case.

11. We may now refer to the matters in dispute to examine whether the contemner is guilty of the contempt of Court. Under the common law definition, "contempt of Court" is defined as an act or omission calculated to interfere with the due administration of justice. This covers criminal contempt (that is, acts which so threaten the administration of justice that they require punishment) and civil contempt (disobedience of an order made in a civil cause). Section 2(a) (b) and (c) of the Act defines the contempt of Court as follows :

> "2. Definitions. - In this Act, unless the context otherwise requires, -
>
> (a) "contempt of Court" means civil contempt or criminal contempt;
>
> (b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court;
>
> (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) scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court; or
>
> (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or
>
> (iii) interferes or tends to interfere with, or obstructs or tends to obstructs, the administration of justice in any other manner,"

From the facts which have been narrated above, it is clear that the allegations against the contemner, if true, would amount to criminal contempt as defined under Section 2 (c) of the Act. It is in the light of this definition of the "criminal contempt" that we have to examine the facts on record. The essence of the centents of Justice Keshote's letter is that when he put a question to the contemner as to under which provision the order was passed by the lower Court, the contemner "started to shout and said that no question could have been put to him". The contemner further said that he would get the learned Judge transferred or see that impeachment motion was brought against him in Parliament. He also said that he had "turned up many judges". He also created a scene in the Court. The learned Judge has further stated in his letter that in sum and substance it was a matter where "except to abuse him of mother and sister," he insulted him "like anything". The contemner, according to the learned Judge, wanted to convey to him that admission was a matter of course and no arguments were to be heard at that stage. The learned Judge has given his reaction to the entire episode by pointing out that this is not a question of insulting a Judge but the institution as a whole. In case the dignity of the judiciary was not maintained then he "did not" know where the institution would stand, particularly when contemner who is a senior advocate, President of the Bar and Chairman of the Bar Council of India behaved in the Court in such manner which will have its effect on other advocates as well". He has further stated that in case the dignity of the judiciary is not restored, it would be very difficult for the Judges to discharge the judicial function without fear or favour. At the end of his letter, he has appealed to the learned Acting Chief Justice for "restoration of dignity of the judiciary". The contemner, as pointed out above, by filing an affidavit has denied the version of the episode given by the learned Judge and has stated that when the matter was called on, the learned Judge (he has referred to him as the 'applicant') took charge of the Court proceedings and virtually foreclosed the attempts made by the senior Judge to intervene. The learned Judge enquired from the contemner as to under which law the impugned order was passed to which the latter replied that it was under various rules of Order 39, C.P.C. The learned Judge then conveyed to the contemner that he was going to set aside the entire order although against a portion of it only he had come in appeal. According to the contemner, he then politely brought to the notice of the learned Judge that being the appellant, he had dominion over the case and it could not be made worse just because he had come to High Court. According to the contemner, the learned Judge then apparently lost his temper and told him that he would set aside the order in toto disregarding what he had said. The contemner has then proceeded to state that "being upset over what" he felt was an arbitrary approach to judicial process he "got emotionally perturbed" and "his professional and institutional sensitivity got deeply wounded" and he told the applicant-Judge that "it was not the practice" of that Court to dismiss case without hearing or to upset

judgments or portions of judgments which have not been appealed against. According to the contemner, "unfortunately the applicant-Judge took it unsportingly and apparently lost his temper and directed the stenographer to take down the order for setting aside of the whole order. The contemner has then stated that he "found it necessary to mention that the exchange that took place between him and the applicant-Judge got a little heated up". In the moment of heat the applicant-Judge made the following observations : "I am from the Bar and if need be I can take to goondaism. I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked". According to the contemner, he was "provoked by this" and asked the learned Judge "whether he was creating a scene to create conditions for getting himself transferred as also talked earlier". The contemner has denied that he had referred to any impeachment although according to him, he did say that "a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence". He has also denied that when the learned Judge asked him as to under which provision the order was passed, he had replied that the Court had no jurisdiction to ask the same and should admit and grant the stay order. He has added that such a reply could only be attributed to one who is mad and it is unbelievable that "he would reply in such a foolish manner". He has also denied that he had abused the learned Judge and the allegations made against him in that behalf were vague. According to the contemner, if he had committed the contempt, the senior member of the Bench would have initiated proceedings under "article 129" of the Constitution for committing contempt in facie curiae. He has also stated that even the learned Judge himself could have done so but he did not do so and deferred the matter for the next day and "adopted a devious way of writing to the acting Chief Justice for doing something about it" which shows that the version of the episode was not correct. The contemner has also then expressed his "uncomprehension" why the learned Judge should have come to this Court when he had ample and sufficient legal and constitutional powers to arraign the contempt at the "Bar for what was attributed" to him.

12. Before we refer to the other contentions raised by the contemner, the question is which of the two versions has to be accepted as correct. The contemner has no doubt asked for an inquiry and an opportunity to produce evidence. For reasons stated earlier, we declined his request for such inquiry, but gave him ample opportunity to produce whatever material he desired to, including the affidavits of whomsoever he desired. Our order dated 15th July, 1994 is clear on the subject. Pursuant to the said order, the contemner has not filed his further affidavit or material or the affidavit of any other person. Instead he tendered a written apology dated 7th October, 1994 which will be considered at the proper place. In his earlier counter and additional

counter, he has stated that it is not he who had committed contempt but it is the learned Judge who had committed contempt of his own Court. According to him, the learned Judge had gagged him from discharging his duties as an advocate and the statement of senior member of the Bench concerned was necessary. He has taken exception to the learned Judge speaking in the Court except through the senior Judge of the Bench which according to him, had been the practice in the said High Court and has also alleged that the learned Judge did not follow the said convention.

13. Normally, no Judge takes action for in facie curiae contempt against the lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which it is expressed and the intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the Court and to threaten and obstruct the course of justice. After going through the report of the learned Judge and the affidavits and the additional affidavits filed by the contemner and after hearing the learned counsel appearing for the contemner, we have come to the conclusion that there is every reason to believe that notwithstanding his denials, and disclaimers, the contemner had undoubtedly tried to browbeat, threaten, insult and show disrespect personally to the learned Judge. This is evident from the manner in which even in the affidavits filed in this Court, the contemner has tried to justify his conduct. He has started narration of his version of the incident by taking exception to the learned Judge's taking charge of the Court proceedings. We are unable to understand what exactly he means thereby. Every member of the Bench is on par with the other member or members of the Bench and has a right to ask whatever questions he wants to, to appreciate the merits or demerits of the case. It is obvious that the contemner was incensed by the fact that the learned Judge was asking the questions to him. This is clear from his contention that the learned Judge being a junior member of the Bench, was not supposed to ask him any question and if any questions were to be asked, he had to ask them through the senior member of the Bench because that was the convention of the Court. We are not aware of any such convention in any Court at least in this country. Assuming that there is such a convention, it is for the learned Judges forming the Bench to observe it inter se. No lawyer or a third party can have any right or say in the matter and can make either an issue of it or refuse to answer the questions on that ground. The lawyer or the litigant concerned has to answer the questions put to him by any member of the Bench. The contemner has sought to rely or the so-called convention and to spell out his right from it not to have been questioned by the learned Judge. This contention coupled with his grievance that the learned Judge had taken charge of the proceedings, shows that the contemner was in all probability perturbed by the fact that the learned Judge was asking him questions. The learned Judge's version, therefore, appears to be correct when he states that the contemner lost his temper when he started asking him questions. The contemner has

further admitted that he got "emotionally perturbed" and his "professional and institutional sensitivity got deeply wounded" because the learned Judge, according to him, apparently lost his temper and told him in no unconcealed terms that he would set aside the order in toto disregarding what he had said. The learned Judge's statement that the contemner threatened him with transfer and impeachment proceedings also gets corroboration from the contemner's own statement in the additional affidavit that he did tell the learned Judge that a Judge got himself transferred earlier on account of his inability to command the goodwill of the Bar due to lack of mutual reverence. No one expects a lawyer to be subservient to the Court while presenting his case and not to put forward his arguments merely because the Court is against him. In fact, that is the moment when he is expected to put forth his best effort to persuade the Court. However, if, in spite of it, the lawyer finds that the Court is against him, he is not expected to be discourteous to the Court or to filing hot words or epithets or use disrespectful, derogatory or threatening language or exhibit temper which has the effect of overbearing the Court. Cases are won and lost in the Court daily. One or the other side is bound to lose. The remedy of the losing lawyer or the litigant is to prefer an appeal against the decision and not to indulge in a running battle of words with the Court. That is the least that is expected of a lawyer. Silence on some occasions is also an argument. The lawyer is not entitled to indulge in unbecoming conduct either by showing his temper or using unbecoming language. The incident had undoubtedly created a scene in the Court since even according to the contemner, the exchange between the learned Judge and him was "a little heated up" and the contemner asked the learned Judge "whether he was creating scene to create conditions for getting himself transferred as also talked earlier". He had also to remind the learned Judge that 'a Judge got himself transferred earlier on account of his inability to command to goodwill of the Bar due to lack of mutual reverence". He has further stated in his affidavit that "the entire Bar at Allahabad" knew that he was unjustly "roughed" by the Judge and was being punished for taking "a fearless and non-servile stand" and that he was being prosecuted for "asserting" a right of audience and "using the liberty to express his views when a Judge takes a course which in the opinion of the Bar is irregular". He has also stated that any punishment meted out to the "outspoken" lawyer will completely emasculate the freedom of the profession and make the Bar a subservient tail wagging appendage to the judicial branch which is an anathema to a healthy democratic judicial system. He has further stated in his petition for taking contempt action against the learned Judge that the incident was "witnessed by a large number of advocates".

We have reproduced the contents of the letter written by the learned Judge and his reply to the affidavits filed by the contemner. The learned Judge's version is that when he put the question to the contemner as to under which provision, the lower

Court had passed the order in question, the contemner started shouting and said that no question could have been put to him. The contemner also stated that he would get him transferred or see that impeachment motion was brought against him in Parliament. He further said that he had "turned up" many judges and created a gold scene in the Court. The contemner further asked him to follow the practice of the Court. The learned Judge has stated that in sum and substance, it was a matter where except "to abuse of his mother and sister", he had insulted him "like anything". The learned Judge has further stated that the contemner wanted to convey to him that admission of every matter was as a matter of course and no argument were heard at the admission stage. He has reiterated the said version in his reply to the affidavits and in particular, has denied the allegations made against him by the contemner. He has defended his asking the question to the contemner since he was a member of the Bench. The learned Judge has stated that the contemner took exception to his asking the said question as if he had committed some wrong and started shouting. He has further stated that he had asked only the question referred to above and the contemner had created the scene on account of his putting the said question to him, and made it difficult to continue the Court's proceedings. Ultimately, when it became impossible to hear all the slogans and insulting words and threats, he requested the senior learned member of the Bench to list that case before another Bench and to retire to the chamber. Accordingly, an order was made by the senior member of the Bench and both of them retired to the chamber. The learned Judge has denied that he had conveyed to the contemner that he was going to set aside the entire order against a portion of which the contemner had come in appeal. He has stated that it was a case where the contemner did not permit the Court proceedings to be proceeded and both the members of the Bench had ultimately to retire to the chambers. The learned Judge had stated that the defence of the conduct of the contemner in the counter affidavit "was a manufactured" one. He has then dealt with each paragraph of the contemner's counter affidavit. He has also stated that there was no question of his having directed the stenographer to take down the order for setting aside of the whole order since that function was performed by the senior member of the Bench. He has also stated that the contemner has made absolutely wrong allegations when he states that he had made the following remarks : "I am from the bar and if need be I can take to goondaism". He has also denied that he had said: " I never opted for Allahabad. I had opted for Gujarat and Himachal Pradesh. I do not know why the Chief Justice of India disregarded my options and transferred me to this place, which I never liked". He has stated that the contemner has made false allegations against him.

We have, by referring to the relevant portions of the affidavit and the counter affidavit filed by the contemner, pointed out the various statements made in the said affidavits which clearly point to the veracity of the version given by the learned

Judge and the attempted rationalisation of his conduct by the contemner. The said averments also lend force and truthfulness to the content of the learned Judge's letters. We are, taking into consideration all the circumstances on record, of the view that the version of the incident given by the learned Judge has to be accepted as against that of the contemner. To resent the question 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 scenes 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 over-awe 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. The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior Courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individual and institutions including the executive and the legislature act within the framework of not only the law also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will gave way and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the Courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the Courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and

obstructing them from discharging their duties without fear or favour. When the Court exercise this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of 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. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the Court by creating distrust in its working, the edifice of the judicial system gets eroded. It cannot be disputed and was not disputed before us that the acts indulged into by the contemner in the present case as stated by the learned Judge per se amount to criminal contempt of Court. What was disputed, was their occurrence. We have held above that we are satisfied that the contemner did indulge in the said acts. As held by this Court in the matter of Mr. 'G', a Senior Advocate of the Supreme Court [(1955) 1 SCR 490] : (AIR 1954 SC 557) :

> ".....the Court, in dealing with cases of professional misconduct is not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character..... He (a legal practitioner) is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action".

In L. M. Das v. Advocate General, Orissa, (1957) SCR 167 : (AIR 1957 SC 250), this Court observed (at p. 254 of AIR) :-

> "A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can fairly and reasonably be submitted 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 appellant before us grossly overstepped the limits of propriety when he made imputations of partiality and unfairness against the Munsif in open Court. In suggesting that the Munsif followed no principle in his orders, the appellant was adding insult to injury, because 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. Scandalising 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."

The contemner has obviously misunderstood his function both as a lawyer representing the interests of his client and as an officer of the Court. Indeed, he has not tried to defend the said acts in either of his capacities. On the other hand, he has tried to deny them. Hence, much need not be said on this subject to remind him of his duties in both the capacities. It is, however, necessary to observe that by indulging in the said acts, he has positively abused his position both as a lawyer and as an officer of the Court, and has done distinct dis-service to the litigants in general and to the profession of law and the administration of justice in particular. It pains us to note that the contemner is not only a senior member of the legal profession, but holds the high offices of the Chairman of the Bar Council of India, Member of the Bar Council of U. P., Chairman and Member, Executive Council and Academic Council of the National Law School University of India at Bangalore and President of the High Court Bar Association, Allahabad. Both as a senior member of the profession and as holder of the said high offices, special and additional duties were cast upon him to conduct himself as a model lawyer and officer of the Court and to help strengthen the administration of justice by upholding the dignity and the majesty of the Court. It was in fact expected of him to be zealous in maintaining the rule of law and in strengthening the people's confidence in the judicial institutions. To our dismay, we find that he has acted exactly contrary to his obligation and has in reality set a bad example to others while at the same time contributing to weakening of the confidence of the people in the Courts. The contemner has no doubt tendered an unconditional apology on 7th October, 1994 by withdrawing from record all his applications, petitions, counter affidavits, prayers and submissions made at the Bar and to the Court earlier. We have reproduced that apology verbatim earlier. In the apology he has pleaded that he has deeply and regretfully realised that the situation, meaning thereby the incident, should never have arisen and the fact that it arose has subjected him to anguish and remorse and a feeling of moral guilt. That feeling has been compounded with the fact that he was a senior advocate and was holding the elective posts of the President of the High Court Bar Association and the Chairman of the Bar Council of India which by their nature show that he was entrusted by his professional fraternity to set up an example of an ideal advocates. He has guiltily realised his failure to approximate to this standard resulting in the present proceedings and he was, therefore, submitting his unconditional apology for the incident in question. We have not accepted this apology, firstly because we find that the apology is not a free and frank admission of the misdemeanor he indulged in the incident in question. Nor is there a sincere regret for the disrespect he showed to the learned judge and the Court, and for the harm that he has done to the judiciary. On

the other hand, the apology is couched in a sophisticated and garbed language exhibiting more an attempt to justify his conduct by reference to the circumstances in which he had indulged in it and to exonerate himself from the offence by pleading that the condition in which the "situation" had developed was not an ideal one and were it ideal, the "situation" should not have arisen. It is a clever and disguised attempt to refurbish his image and get out of a tight situation by not only not exhibiting the least sincere remorse for his conduct but by trying to blame the so-called circumstances which led to it. At the same time, he has attempted to varnish and reestablish himself as a valiant defender of his "alleged duties" as a lawyer. Secondly, from the very inception his attitude has been defiant and belligerent. In his affidavit and application, not only he has not shown any respect for the learned Judge, but has made counter-allegations against him and has asked for initiation of contempt proceedings against him. He has even chosen to insinuate that the learned Judge by not taking contempt action on the spot and instead writing the letter to the Acting Chief Justice of the High Court, had adopted a devious way and that he had also come to Delhi to meet "meaningful" people. These allegations may themselves amount to contempt of Court. Lastly, to accept any apology for a conduct of this kind and to condone it, would tantamount to a failure on the part of this Court to uphold the majesty of the law, the dignity of the Court and to maintain the confidence of the people in the judiciary. The Court will be failing in its duty to protect the administration of justice from attempts to denigrate and lower the authority of the judicial officers entrusted with the sacred task of delivering justice. A failure on the part of this Court to punish the offender on an occasion such as this would thus be a failure to perform one of its essential duties solemnly entrusted to it by the Constitution and the people. For all these reasons, we unhesitatingly reject the said so-called apology tendered by the contemner.

14. The question now is what punishment should be meted out to the contemner. We have already discussed the contempt jurisdiction of this Court under Article 129 of the Constitution. That jurisdiction is independent of the statutory law of contempt enacted by the Parliament under Entry 77 of List I of VII Schedule of the Constitution. The jurisdiction of this Court under Article 129 is sui generis. The jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute. Neither, therefore, the Contempt of Courts Act, 1971 nor the Advocates Act, 1961 can be pressed into service to restrict the said jurisdiction. We had, during the course of the proceedings indicated that if we convict the contemner of the offence, we may also suspend his licence to practice as a lawyer. The learned counsel for the contemner and the interveners and also the learned Solicitor General appointed amicus curiae to assist the Court were requested to advance their arguments also in the said point. Pursuant to it, it was sought to be contended on behalf of the contemner and the U. P. Bar

Association and the U. P. Bar Council that the Court cannot suspend the licence which is a power entrusted by the Advocates Act, 1961 specially made for the purpose, to the disciplinary committees of the State Bar Councils and of the Bar Councils of India. The argument was that even the constitutional power under Articles 129 and 142 was circumscribed by the said statutory provisions and hence in the exercise of our power under the said provisions, the licence of an advocate was not liable either to be cancelled or suspended. A reference was made in this connection to the provisions of Sections 35 and 36 of the Advocates Act, which show that the power to punish the advocate is vested in the disciplinary committees of the State Bar Council and the Bar Council of India, under Section 37 of the Advocates Act, an appeal lies to the Bar Council of India, when the order is passed by the disciplinary committee of the State Bar Council. Under Section 38, the appeal lies to this Court when the order is made by the disciplinary committee of the Bar Council of India, either under Section 36 or in appeal under Section 37. The power to punish includes the power to suspend the Advocate from practice for such period as the disciplinary committee concerned may deem fit under Section 35(3)(c) and also to remove the name of the advocate from the State roll of the Advocates under Section 35 (3) (d). Relying on these provisions, it was contended that since the Act has vested the powers of suspending and removing the advocate from practice exclusively in the disciplinary committees of the State Bar Council and the Bar Council of India, as the case may be, the Supreme Court is denuded of its powers to impose such punishment both under Articles 129 and 142 of the Constitution. In support of this contention, reliance was placed on the observations of the majority of this Court in Prem Chand Garg v. Excise Commissioner, U. P., Allahabad ((1963) Supp (1) SCR 885 : AIR 1963 SC 996), relating to the powers of this Court under Article 142 which are as follows (at p. 1003 of AIR) :-

> "In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.
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> That takes us to the second argument by the Solicitor-General that Art. 142 and Art. 32 should be reconciled by the adoption of the rules of harmonious construction. In this connection, we ought to bear in mind that though the powers conferred on this Court by Art. 142 (1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Art. 142 (1) make an order plainly

inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions. There can therefore, be no conflict between Art. 142 (1) and Art. 32. In the case of K. M. Nanavati v. The State of Bombay, (1961) 1 SCR 497 : (AIR 1961 SC 112), on which the Solicitor-General relies, it was conceded, and rightly, that under Art. 142(1) this Court had the power to grant bail in cases brought before it, and so, there was obviously a conflict between the power vested in this Court under the said Article and that vested in the Governor of the State under Art. 161. The possibility of a conflict between these powers necessitated the application of the rule of harmonious construction. The said rule can have no application to the present case, because on a fair construction of Art. 142(1), this Court has no power to circumscribe the fundamental right guaranteed under Art. 32. The existence of the said power is itself in dispute, and so, the present case is clearly distinguishable from the case of K.M. Nanavati (AIR 1961 SC 112)".

15. Apart from the fact that these observations are made with reference to the powers of this Court under Article 142 which are in the nature of supplementary powers and not with reference to this Court's power under Article 129, the said observations have been explained by this Court in its latter decisions in Delhi Judicial Services Association v. State of Gujarat (1991 AIR SCW 2419) (supra) and Union Carbide Corporation v. Union of India, (1991) 4 SCC 584 : (AIR 1992 SC 248). In paragraph 51 of the former decision, it has been, with respect, rightly pointed out that the said observations were made with regard to the extent of this Court's power under Article 142 (1) in the context of fundamental rights. Those observations have no bearing on the present issue. No doubt, it was further observed there that those observations have no bearing on the question in issue in that case as there was no provision in any substantive law restricting this Court's power to quash proceedings pending before subordinate Courts. But it was also added there that this Court's power under Article 142 (1) to do complete justice was entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court is in seisin of a matter before it, it has power to issue any order or direction to do complete justice in the matter. A reference was made in that connection to the concurring opinion of Justice A. N. Sen in Harbans Singh v. State of U. P., (1982) 2 SCC 101 : (AIR 1982 SC 849), where the learned Judge observed as follows (at p. 853 of AIR) :-

"Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done.

This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice."

The Court has then gone on to observe there that no enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though the Court must take into consideration that statutory provisions regulating the matter in dispute. What would be the need of complete justice in a cause or matter, would depend upon the facts and circumstances of each case. In the latter case, i.e., the Union Carbide's Case. (AIR 1992 SC 248) (Supra), the Constitution Bench in paragraph 83 stated as follows (para 43, at p. 278 of AIR) :-

"It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Art. 142 (1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the apex Court under Art. 142(1) is unsound and erroneous. In both Garg (AIR 1963 SC 996), as well as Antulay cases (AIR 1988 SC 1531), the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Sections 320 or 321 or 482, Cr. P. C. or all or them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the Court on which conferment of powers - limited in some appropriate way - is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg Case (AIR 1963 SC 996), said that limitation on the powers under Article 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression 'prohibition' is read in place of 'provision' that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that

> powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."

In view of these observations of the latter Constitution Bench on the point, the observations made by the majority in Prem Chand Garg's case (AIR 1963 SC 996) (supra) are no longer a good law. This is also pointed out by this Court in the case of Mohammed Anis v. Union of India, (1994) Supp 1 SCC 145, by referring to the decisions of Delhi Judicial Services v. State of Gujarat (1991 AIR SCW 2419) (supra) and Union Carbide Corporation v. Union of India (AIR 1992 SC 248) (supra) by observing that statutory provisions cannot override the constitutional provisions and Article 142(1) being a constitutional power it cannot be limited or conditioned by any statutory provisions. The Court has then observed that it is, therefore, clear that the power of the apex Court under Article 142(1) of the Constitution cannot be diluted by statutory provisions and the said position in law is now well settled by the Constitution Bench decision in Union Carbide's case (supra).

16. The consequence of accepting the said contention advanced on behalf of the contemner and the other parties, will be two-fold. This Court while exercising its power under Article 142(1) would not even be entitled to reprimand the Advocate for his professional misconduct which includes exhibition of disrespect to the Court as per Rule 2 of Section I of Chapter II of Part VI of the Bar Council of India Rules made under the Advocates Act, which is also a contempt of Court, since the reprimand of the advocate is a punishment which the disciplinary committees of the State Bar Council and of the Bar Council of India are authorised to administer under Section 35 of the Advocates Act. Secondly, it would also mean that for any act of contempt of Court, if it also happens to be an act of professional misconduct under the Bar Council of India Rules, the Courts including this Court, will have no power to take action since the Advocates Act confers exclusive power for taking action for such conduct on the disciplinary committees of the State Bar Council and the Bar Council of India, as the case may be. Such a proposition of law on the face of it deserves rejection for the simple reason that the disciplinary jurisdiction of the State Bar Council and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the Courts to take action against the advocates for

the contempt of court. The said jurisdictions co-exist independently of each other. The action taken under one jurisdiction does not bar an action under the other jurisdiction.

17. The contention is also misplaced for yet another and equally, if not more, important reason. In the matter of disciplinary jurisdiction under the Advocates Act, this Court is constituted as the final Appellate authority under Section 38 of the Act as pointed out earlier. In that capacity this Court can impose any of the punishments mentioned in Section 35(3) of the Act including that of removal of the name of the Advocate from the State roll and of suspending him from practice. If that be so, there is no reason why this Court while exercising its contempt jurisdiction under Article 129 read with Article 142 cannot impose any of the said punishments. The punishment so imposed will not only be not against the provisions of any statute, but in conformity with the substantive provisions of the Advocates Act and for conduct which is both a professional misconduct as well as the contempt of Court. The argument has, therefore, to be rejected.

18. What is further, the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter, are independent of the jurisdiction and powers of this Court under Article 129 which cannot be trammeled in any way by any statutory provision including the provisions of the Advocates Act or the Contempt of Courts Act. As pointed out earlier, the Advocates Act has nothing to do with the contempt jurisdiction of the Court including of this Court and the Contempt of Courts Act, 1971 being a statute cannot denude, restrict or limit the powers of this Court to take action for contempt under Article 129. It is not disputed that suspension of the advocate from practice and his removal from the State roll of advocates are both punishments. There is no restriction or limitation on the nature of punishment that this Court may award while exercising the said jurisdiction. Shri P. P. Rao, learned counsel appearing for the High Court Bar Association of Allahabad contended that Articles 19(1)(a) and 19(2), and 19(1)(g) and 19(6) have to be read together and thus read the power to suspend a member of the legal profession from practice or to remove him from the roll of the State Bar Council is not available to this Court under Article 129. We have been unable to appreciate this contention. Article 19(1)(a) guarantees freedom of speech and expression which is subject to the provisions of Article 19(2) and, therefore, to the law in relation to the contempt of Court as well. Article 19(1)(g) guarantees the right to practice any profession or to carry on any occupation, trade or business and is subject to the provisions of Article 19(6) which empowers the State to make a law imposing reasonable restrictions, in the interests of general public, on the exercise of the said right and, in particular, is subject to a law prescribing technical or professional qualifications necessary for practicing the profession or carrying on the occupation, trade or business. On our part we are unable to see how these provisions

of Article 19 can be pressed into service to limit the power of this Court to take cognizance of and punish for the contempt of Court under Article 129. The contention that the power of this Court under Article 129 is subject to the provisions of Article 19(1)(a) and 19(1)(g), is unexceptional. However, it is not pointed out to us as to how the action taken under Article 129 would be violative of the said provisions, since the said provisions are subject to the law of contempt and the law laying down technical and professional qualifications necessary for practicing any profession, which includes the legal profession. The freedom of speech and expression cannot be used for committing contempt of Court nor can the legal profession be practiced by committing the contempt of Court. The right to continue to practice, is subject to the law of contempt. The law does not mean merely the statute law but also the constitutional provisions. The right, therefore, is subject to the restrictions placed by the law of contempt as contained in the statute - in the present case, the Contempt of Courts Act, 1971 as well as to the jurisdiction of this Court and of the High Court to take action under Articles 129 and 215 of the Constitution respectively. We, therefore, do not see any conflict between the provisions of Articles 129 and 215, and Article 19(1)(a) and Article 19(1)(g) read with Articles 19(2) and 19(6) respectively.

19. When the Constitution vests this Court with a special and specific power to take action for contempt not only of itself but of the lower Courts and tribunals, for discharging its constitutional obligations as the highest custodian of justice in the land, that power is obviously coupled with a duty to protect all the limbs of the administration of justice from those whose actions create interference with or obstruction to the course of justice. Failure to exercise the power on such occasions, when it is invested specifically for the purpose, is a failure to discharge the duty. In this connection, we may refer to the following extract from the decision of this Court in Chief Controlling Revenue Authority and Superintendent of Stamps v. Maharashtra Sugar Mills Ltd., 1950 SCR 536 : (AIR 1950 SC 218) :-

> ".....But when a capacity or power is given to a public authority there may be circumstances which couple with the power a duty to exercise it. To use the language of Lord Cairns in the case of Julius v. Bishop of Oxford, (1880) 5 AC 214 :'There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so'."

20. For the reasons discussed above, we find the contemner, Shri Vinay Chandra Mishra, guilty of the offence of the criminal contempt of the Court for having

interfered with and obstructed the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language, and convict him of the said offence. Since the contemner is a senior member of the Bar and also adorns the high offices such as those of the Chairman of the Bar Council of India, the President of the U. P. High Court Bar Association, Allahabad and others, his conduct is bound to infect the members of the Bar all over the country. We are, therefore, of the view that an exemplary punishment has to be meted out to him.

21. The facts and circumstances of the present case justify our invoking the power under Article 129 read with Article 142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of criminal contempt as under :-

(a) The contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of Court within the said period; and

(b) the contemner shall stand suspended from practicing as an advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an advocate, shall stand vacated by him forthwith. The contempt petition is disposed of in the above terms. Order accordingly.