

SUPREME COURT OF INDIA

In Re. Ajay Kumar Pandey, Contemner

Contempt Petn. (Cri.) Nos. 55 with 56 of 1996

(Kuldip Singh and S. Saghir Ahmad JJ.)

05.11.1996

ORDER

1. The contemner is a practising advocate, He filed Complaint Case No. 451 of 1994 in the Court of VI Additional Chief Judicial Magistrate, Lucknow against Shri Mahesh Giri, Advocate and Ms. Saroj Bala, VII Additional District Judge, Lucknow for offences under Section 499/500, IPC. Mr. Mahesh Giri, at the relevant time, was the Govt. counsel deputed to work for the prosecution in criminal cases in the Court of VII Additional District Judge, Lucknow, It was alleged in the complaint (read with notice which preceded it as also contemner's statement recorded under Section 200, Cr. P.C.) that the accused namely, Mahesh Giri, Advocate and Ms. Saroj Bala, VII Additional District Judge, Lucknow had imputed sexual relations between the contemner and Ms. Saroj Bala which had defamed the contemner and, therefore, he prayed that the accused be tried for the said offences. the statement of the contemner was recorded under Section 200, Cr. P.C. on 21-9-94 but it remained inconclusive, The statement was finally recorded on 26-10-94 and, thereafter, the case was adjourned for enquiry under Section 202, Cr. P.C. It was stated the petitioner moved an application that witnesses whom the contemner wanted to examine under Section 202, Cr. P.C. may be summoned by the Court as almost all of them were practising advocates and influential persons but the complaint itself was dismissed by the Magistrate on 16-11-94. The petitioner, thereafter, filed a Criminal Revision against the aforesaid order in High Court but it was dismissed on 15-2-95. Hon'ble Virendra Saran, J. of the Allahabad High Court who disposed of the Revision observed, inter alia, as under:-

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

Additional Sessions Judge at Lucknow and hence, even if the order of the learned Magistrate dismissing the complaint under S. 203 of the code be not wholly justified in law, it is not a fit case for the exercise of the discretionary revisional jurisdiction. There can be no doubt that the prosecution case unfolded in the complaint and the statement of the applicant is nothing but an intricate web of perfidious fabric. It appears that the aim of the applicant is to malign the learned judge (Smt. Saroj Bala) and hold her at reason. the applicant emphatically and repeatedly read out the lewd passages from his deposition while arguing the revision, but the palpably scurrilous, indecent and abominable recitals are not worth reproduction in the judgment. Suffice it to observe that the arguments of the applicant, so vehement and pungent, marked with sarcasm and sneer, do not impart any strength to his case which is inherently unbelievable. They are submissions directed more towards vilification than substantiation of the pivotal points of the case. I was constrained to ask the applicant not to make savage additions to the evidence and show restraint in his colloquy."

2. the contemner, thereafter filed SLP (Crl.) Nos. 819-20 of 1996 against the aforesaid Judgment and Order dated 15-2-95 of Hon'ble Virendra Saran, J. in this Court in which he impleaded only State of U. P. as a proforma respondent.

3. A similar complaint under Sections 500 and 504, IPC was also filed by the contemner against (1) Shri Prakash Narayan Awasthi, Advocate (2) Shri R. P. Misra, Advocate (3) Shri Vishambhar Singh Advocate (4) Shri T. N. Misra, Advocate (5) Shri Srikant Verma, Advocate (6) Shri Pankaj Sinha, Advocate and (7) Shri N. C. Pradhan, Advocate in which again it was alleged that similar imputations were made by the aforesaid advocates between contemner and Ms. Saroj Bala. This was registered as Complaint Case No. 101 of 1995 in which petitioner's statement was recorded under Section 200, Cr. P. C. In order to produce witnesses under Section 202, Cr. P. C., the contemner gave a list of 21 advocates, practising at Lucknow, for being summoned by the Court as witnesses but the application was rejected. It was against this Order that the petitioner filed SLP (Cr. 1.) No. 4114 of 1995 directly in this Court. The contemner also, in the meantime, filed Contempt Petition (Crl.) Dy. No. 16199/95 against Hon'ble Mr. Justice Virendra Saran of the Allahabad High Court, Contempt Petition (Crl.) Dy. No. 1702/95 against Ms. Saroj Bala. IV Addl. District Judge, Lucknow, Shri Uday Raj, V A.C.J.M., Lucknow, Shri R. P. Misra, VI Addl. C. J.M., Lucknow and Contempt Petition (Crl.) Dy. No. 17022/95 against Shri J. C. Mishra, District Judge, Lucknow (now Judge of the Allahabad High Court), Shri K. N. Ojha, II Addl. District Judge, Lucknow, Shri Shailendra Saxena, III Addl. District Judge, Lucknow and Shri B. N. Pandey, Special Judge, Lucknow. All the above matters were listed in Court No. 9 before Hon'ble Dr. Justice A. S. Anand and Hon'ble Mr. Justice M. K. Mukherjee on 15th December, 1995 when the following Order was passed:-

"In all these petitions, we find that attack is indecent, wild, intemperate and even abusive language on the named Judges has been made at various places in each one of the petitions. the petitioner, who is an Advocate, has permitted himself the liberty of using such expression, which prima facie tend to scandalize the Court in relation to judicial matters and thus have the tendency to interfere with the administration of Justice. We are inclined to initiate contempt proceedings against the petitioner, but, on his request grant him six weeks time to delete all the objectionable expressions

used in the petitions and file fresh petitions. He shall also remove the other defects, as pointed out in the office report when he files the fresh petitions. If the fresh petitions are filed, the same shall be listed after eight weeks. Otherwise, these petitions shall be put up for drawing up contempt proceedings against the petitioner, after eight weeks."

4. The contemner, however, did not avail of the above opportunity and filed Criminal Miscellaneous Petition No. 132/95 in Paras 4, 5 and 6 whereof he stated as under :-

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

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

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

5. This application was considered by the Court (Hon'ble Dr. Justice A. S. Anand and Hon'ble Mr. Justice M. K. Mukherjee) on 20-2-96 and in the Order passed thereon it was, inter alia, stated as under:-

"In spite of the petitioner's attention having been drawn to the above noted passages on 15-12-1995, which we felt prima facie, tended to scandalise the Court/Courts in relation to the judicial matters and had the tendency to interfere with the administration of justice and that the attack against the judges was indecent, wild intemperate and abusive, the petitioner refused to these objectionable passages and on the contrary. in his petition (Crl. M.P.No. 132 of 1986), he has asserted that he is not prepared to remove the objectionable passages/sentences. On the other hand the petitioner asserts that this Court "is bound to hear the petitioner and decide the same" without the petitioner

being obliged to remove the objectionable passages. This clearly discloses the adamant and defiant attitude of the petitioner.

We, therefore, direct that Rule be issued against the petitioner asking him to show cause why he should not be punished for committing criminal contempt of Court for the use of the objectionable language in this petition and the subsequent application. The petitioner should file his reply to the Rule within eight weeks.

List on 26th April, 1996.

The petitioner-in-person has been informed of the date and has been bound down to appear on the next date. No fresh notice, therefore, need be issued to him.

A copy of the order issuing the Rule shall be handed over to the petitioner-in-person.

We request the Solicitor General, Shri Dipankar Gupta to assist the Court in these proceedings either himself or by nominating some other law officer.

The record of the case may be forwarded to the learned Solicitor General.

This special leave petition is dismissed in view of what we have noticed above as also on merits. The contempt proceedings shall be separately numbered."

6. The contempt matter has since been registered as Contempt Petition (Crl.) No.2/96. The contemner, in the meantime, moved application for recall/review of the Order dated 20-2-96 but the application was rejected by Order dated 9-8-96. The Contemner also filed a Contempt Petition (Crl.) No. 13/96 against Hon'ble Dr. Justice A. S. Anand and Hon'ble Mr. Justice M. K. Mukherjee which was rejected by this Court (Hon'ble Mr. Justice J. S. Verma and Hon'ble Mr. Justice B. N. Kirpal) on 5-8-96 by the following Order:-

"We regret to find that the petitioner who is a practising lawyer of some standing has chosen to resort to such a proceeding which, in our view, is misconceived. We find no merit in the same, but before dictating this order, we have tried to explain this position to the petitioner with the hope that

he will appreciate that as a member of the Bar, he is expected to utilise his time in a better manner to assist in the administration of justice. The contempt petition is dismissed."

7. The contemner has since filed an application for recall of the above order and for deciding the criminal contempt petition on merits. In the affidavit accompanying this application, it is stated that if all matters are not decided on merits, the contemner would be compelled to observe continuous hunger strike from 25-9-1996. A copy of the application to the President of India for permission to prosecute Hon'ble Dr. Justice A. S. Anand and Hon'ble Mr. Justice M. K. Mukherjee, for their behaviour in Court on 15-12-1995, as also two months notice to the President, were filed with this application.

8. The Contempt Petition No. 2/96 in SLP (Cri.) No. 4114/96 was taken up on 9-8-96 in which the following Order was passed by Hon'ble Dr. Justice A. S. Anand and Hon'ble Mr. Justice M. K. Mukherjee.

"On 20-2-1996, we directed rule to be issued to the applicant asking him to show cause why he should not be punished for committing criminal contempt of the Court for use of objectionable language in the SLP and the applications. He was given eight weeks time to file his reply to the rule. Instead of filing a reply to the rule, through these two applications, the applicant seeks recall/review of the order dated 20-2-1996 passed in SLP (Cri) No. 411/95, Criminal Miscellaneous Petitions Nos. 6242-624/95 and SLP (Cri) 819-820 of 1996 which were dismissed by this Court and of the rule issued to him. We do not find any reason to recall or review that order. There is no merit in these applications which also bristle with scandalous remarks and are couched in objectionable language. The criminal miscellaneous petitions filed by the applicant on 24-2-1996 are, therefore, dismissed.

In our order dated 20-2-1996, we had directed the issuance of rule and to number the contempt proceedings against the applicant separately.

Those have since been numbered as criminal contempt petition No. 2 of 1996.

The prayer of the applicant to transfer the case to 'another bench' as he does not "wish to appear before this Bench" apart from being itself contumacious is rejected because a litigant cannot be permitted forum shopping. The case stands assigned to this Bench.

Since the applicant has not filed his reply to the notice to show cause why he should be punished for committing criminal contempt of Court, we, as a matter of indulgence, grant him another

opportunity to file the reply, if any, within six weeks. List the matter for further proceedings and hearing on 27-9-1996. the alleged contemner Ajay Kumar Pandey, who is present in Court, has been informed of the date of hearing is directed to remain present on the next date of hearing, i.e. 27-9-1996, whether or not he files his reply to the show cause notice. No fresh shall be issued to him for his appearance.

Since Shri Dipankar Gupta has resigned, the Solicitor General of India is requested to assist the Court in the contempt proceedings either himself or by nominating any other law officer."

9. The petitioner subsequently moved an application dated 12-8-96 for recall of the aforesaid order at the end of which he put a `note' as under:-

"If this Hon'ble Court would not hear and decide the matter on their merits then the petitioner will be compelled to observe the continuous hunger strike in Supreme Court premises since 25-9-96."

10. In this application he indicated that he had already given to the President of India an application dated 19-12-95 in which he, inter alia, stated as under:-

Thereafter, they harassed, compelled and threatened me for withdrawing the petitions or removing all things and filing the fresh petitions and also did not allow me to submit the arguments although the matter was fresh and two petitions had to dispose of finally according to the settled law and passed an order in hasty manner to this effect. "The petitioner will remove all the allegations from petitions and file the fresh petitions and thereafter the matter will be listed after 8 weeks otherwise the contempt proceedings be drawn against him etc.

Thereafter I again mentioned the matter at 2P. W. and clearly said. "I not in a position to remove anything and file the fresh petitions and my petitions may be heard immediately as it is because I wrote only facts and made the grounds according to the Indian Penal Code, Contempt of Courts Act, evidence Act and Constitution, etc." but they without saying retired to their chambers. Then I immediately moved an application in the Registry of the Court and clearly said about each and everything and also said, "I am not in a position to remove anything and the Court is bound to hear the same and decide the same according of Law and settled norms of justice.

I am bringing the facts in the knowledge of your excellency that the Supreme court has heard the contempt petitions against many citizens of the country i.e. Advocates, Bureaucrats, Leaders and Police Officer, etc. and has punished against some corrupt people who had defrauded and cheated

me and destroyed/fabricated some judicial records to conceal their nefarious acts by exercising their judicial powers then Mr. Justice A. S. Anand and Mr. Justice M. K. Mukherjee harassed, compelled and threatened me in open Court and also did not allow me to submit the arguments and even they had gone in saying that they would see me and forfeit my license advocacy despite the fact that I have been appearing in person and the matter had no connection with my profession or professional capacity.

I am saying with great sorrow and the matter is also very serious that the above two judges consider themselves the lord paramount/almighty and attacked at the integrity and dignity at a human being/litigant and also threatened a young Advocate/boy although, the God is one and only who makes every body either he is king or ordinary man and every human being is also equal along with equality before law and the Court is bound (the paramount duty) to hear the case as it is despite the fact that who is O.P. (King or Judge or ordinary man), but it is very unfortunate and horrendous that the above two judges have fully forgotten that the God is seeing the acts of everybody by his spiritual eyes and almighty lives in every soul and attacking on any people is amounted to insult the God.

I am also saying that both the judges broke the decorum of the Court, dismantled the temple of justice and thus embarrassed the Goddess of justice. Their hurling upon me is attack at the human dignity, and fundamental and legal rights of a honest and genuine litigant and also restraining a poor litigant to pursue his case and obstruction in the way of justice/holy stream of justice.

I am requesting to your excellency that being the head of the nation/the highest constitutional authority, kindly suggest Mr. Justice A. S. Anand and Mr. Justice M. K. Mukherjee of the Supreme Court to feel sorry before me for their highly objectionable behaviour with me on 15-12-95 otherwise I will be at liberty to take any action according to law and in that case the whole world will see the power of truth/dharma and they will be responsible not I."

11. This application was given to the President of India for sanction to prosecute the two Judges (Hon'ble Dr. Justice A. S. Anand and Hon'ble Mr. Justice M. K. Mukherjee) for offences under Sections 167, 504 and 506, IPC with two months' notice to the President indicating therein that if the sanction was not granted within two months, it shall be deemed to have been granted.

12. He further stated in paras 5 and 6 of the application as under :-

"5. That the petitioner had received the letter D/- 11-3-96 and No. P1-999 from the Rashtrapati Bhavan and according to that his excellency sought the opinion of the ministry of the law and justice in the matter. The copy of letter D/- 11-3-96 is annexed as annexure No. 3 to this application

for the perusal of this Hon'ble Court.

6. That on the expiry of two months from 1-3-96 i.e. from the date of notice to his excellency, the petitioner had obtained the formal sanction under Section 197 to prosecute Mr. A. S. Anand and Mr. M. K. Mukherjee.'

13. He ultimately prayed as under:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to recall the order dated 9-8-96 passed in the case mentioned above and hear all the matters immediately be constituting a larger bench/Constitutional Bench other wise great injury would be caused to the applicants."

14. The contemner, thereafter, filed on 23-9-96 Complaint Case No. 122/1 of 1996 in the Court of Shri Nepal Singh, A.C.M.M., New Delhi against Hon'ble Dr. Justice A. S. Anand and Hon'ble Mr. Justice M. K. Mukherjee for offences under Sections 167, 504 and 506, IPC. In this complaint, it was stated by the contemner as under :-

"1. That the Complainant had filed S.L.P. (Crl.) No. 4114/95 and Cr. M. P. No. 6242-43/95 along with Crl. Contempt Petitions/Diary No. 16199, 17021 and 17022/95, in the Supreme Court of India in the month of October/November, 95 and they were first come up for hearing on 4-12-95, before the Court No. 2 of the apex Court and bench concerned after some time hearing ordered to this effect, 'List these matters before some other bench'.

2. That thereupon the petitions had come up for hearing on 15th day of December, 95, before the Court No. 9 at serial Nos. 28 and 42 and on that day the accused were on the bench there.

3. that on the calling of the matter on that day, the complainant who reached from Lucknow, stood before the Court but as soon as he stood the accused without any authority, basis, immorally and illegally hurled upon him with highly derogatory, insulting, offending and threatening remarks with the following sentences :-

The accused No. 1 hurled, "Your filed the petitions against the High Court Judge etc. Your will withdraw your petitions otherwise we will take action against you and start the contempt proceedings." The Complainant requested, 'Let me argue', then the accused No. 1 again hurled, "we will send you in jail otherwise withdraw the petitions or remove all things from the petitions and file

the fresh petitions." The Complainant refused to comply with their illegal and offending directions and again said, 'Let me argue. ' Then the accused No. 2 hurled upon the Complainant in a highly objectionable manner. "You do the practise in Lucknow, you understand yourself very competent and intelligent, you abused your professional priviledge, we will see you and forfeit your licence. The Complainant again prayed. 'submit me arguments'. Thereupon the accused No. 1 again hurled, "we will not allow you to submit the arguments on the points which you raised and give the chance to the audience to hear the same otherwise every body will know the matter".

15. In para 4 of the complaint, the contemner reproduced the Order passed by Hon'ble Dr. Justice A.S. Anand and Hon'ble Mr. Justice M.K. Mukherjee as under :-

"4. That thereafter the accused passed the following order in a hasty manner :-

"In all the petitions, we find that attack in indecent, wild, intemperate, and even abusive language on the named Judges has been made at various places in each one of the petitions. The petitioner, who is an advocate, has permitted himself the liberty of using such expression, which prima facie tend to scandalize the Court in relation to judicial matters and thus have the tendency to interfere with the administration of the justice. We are inclined to initiate contempt proceedings against the petitioner, but on his request grant him 6 weeks time to delete all the objectionable expressions used in the petitions and file the fresh petitions. He shall also remove other defects, as pointed out in the office report when he files the fresh petitions. If the fresh petitions are file the same shall be listed after eight weeks. Otherwise, these petitions shall be put up for drawing up contempt proceedings against the petitioner after eight weeks."

16. In paras 5, 6, 7, 8, 9, 10 and 11 of the complaint, it was stated:-

"5. That on the such goondaism of the accuseds, the Complainant left the Court Room and again he gone there at 2P. M. and mentioned and also tried to give in writing. 'I am not in a position remove any thing and file the fresh petitions and my petitions be heard as it is immediately because I wrote only the truth but the accuseds retired to their Chambers without saying anything. It is the most important to mention here that the Complainant never prayed to grant 6 weeks time for removing any thing from the petitions, filing fresh cases and the accuses dictated the orders in this regard by their own falsely, only with the sole motive to waste the money and valuable time of the complainant, any how harass him coupled with hide the sins/corruption of their subordinate people.

6. That thereafter the complainant had immediately moved an application No. 132/95 in the registry of the apex Court and clearly said about his harassment by the accuseds and their open goondaism and also prayed for hearing of his petitions as it is and decide the same according to the settled

norms of justice.

7. That the complainant also informed the Hon'ble President of India about the goondaism of the accuseds through registered letter No. 162 and D/-12-12-95 along with copies to Hon'ble the Vice President of India/Chief Justice of India through the certificate of posting.

8. That since the acts of the accuseds were the offences as per the mandate and by virtue of the Indian Penal Code so an application under Section 197 of Cr. P. C. along with two months specific notice to accord the sanction to prosecute the accuseds under Sections 167, 500, 504 and 50-6 of IPC had also been sent to his excellency vide registered post receipt No. C-2174 and dated 2-3-96. It is the most important to mention here again that although the offences as stated in proceedings para don't come in many manner whatsoever within the judicial acts/never did while the accuseds had been discharging their judicial duties but in spite of this facts and for saving any future complication in the matter, the complainant filed the application before Hon'ble the President and requested his excellency to decide the matter in two months from the date of notice.

9. That in response to the above notice/application the complainant had received a letter dated 11-3-96 and No. P1-999 from the Rashtrapati Bhavan and according to the contents of the same his excellency sought the opinion of the Ministry of Law and Justice in the matter. The said letter was received by the complainant in the third week of March, 1996.

10. That the complainant had also given registered notice to the accuseds to tender unconditional apology in writing to him for their misdeeds on 15-12-95 and gave him one month time for making the unconditional apology from the date of notice. The registered notices were sent to both the accuseds on 10-8-96 vide registered letter No. 2888 and 2889 dt. 10-8-96 but they did not think fit and proper/necessary to response the notices and tender the unconditional apology, however, served on 12-8-96.

11. That the accused committed the offences as contemplated in the Indian Penal Code and liable to be dealt with strictly and exemplary otherwise it will be licensed to the judicial goondaism and the Courts/law would have become the instrumentality of the people like the accuseds and so the interest of the litigants will be jeopardised which is not permissible in law."

17. He made the following prayer in the complaint:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to take

the cognizance of the above mentioned offences and punish the accuseds deterrently and severely under the above stated circumstances and facts along with pass other necessary orders in the matter and for which act of kindness the complainant shall ever pray as in duty bound."

18. A copy of this complaint was filed by the petitioner himself on 24-9-96 before the Registrar in Criminal Contempt case No. 2/96. In his letter addressed to the Registrar, he stated as under:-

"I filed some papers in the Cases mentioned above and the same are the important documents. Since the matter is listed in Court on 27-9-96 so the papers be circulated for the perusal of the Hon'ble Court and read as part of the petitions."

19. As stated by the contemner himself in his aforesaid complaint, he had issued a notice dated 10-8-96 to both the learned Judge in which he, inter alia, stated as under :-

"2. That there after the above petitions had been listed before the Court No. 9 on 15-12-95 and both of you were on the Bench. On the calling of the matter on that day, I who reached from Lucknow, as soon as stood before the Court to argue, then both of you without any authority, basis, immorally and illegally hurled upon me with highly derogatory, insulting, offending and contemptuous remarks with the following sentences :-

The addressee number 1 hurled, "your filed the petitions against the High Court Judge etc. You will withdraw your petitions otherwise we will take action against you and start the contempt proceedings." I requested, "Let me argue". You, addressee No. 1 hurled, "we will send you in jail otherwise withdraw the petitions or remove all things form the petitions and file fresh petitions." I refused to do so and said, "Let me argue." Then you the addressee No. 2 hurled upon me in a highly objectionable manner, "You do the practise in Lucknow, you understand yourself very competent and intelligent, you abused your professional privilege, we will see you and forfeit your license," then I again prayed, "submit me arguments," then you, addressee No. 1 again hurled, we will not allow you to submit the arguments on the points which you raised and give the chance to the audience to hear the same otherwise every body will know the matter."

4. That on the above happening left the Court room and again had gone there at 2 P. M. and mentioned and also tried to give in writing, "I am not in a position to remove any thing and file the fresh petitions and my petitions be heard as it is immediately because I wrote only the truth but both of you without saying anything retired to your chambers. It is the most important to mention here that I had never prayed to grant six weeks time for removing anything from the petitions, filing the fresh petitions and you dictated absolutely false in your order in this regard only with the sole motive to waste the money and valuable time of the petitioner and any how harass me along with

hide the corruption, fraud, cheating and forgery etc. in a short word, 'sins' of the people who are the contemnors in the above said petitions."

20. In paras 5, 6 and 7 he, inter alia, stated as under :-

"5. But I am also warning you that the said application was moved before his excellency only to avoid any future complications in the matter otherwise according to the settled law viz. judicial precedents, as you also know very well, the acts mentioned in paras 2 and 3 of this notice were your personal acts and neither come in the definition of the official acts nor were come in your judicial duties rendered by you. As you know very well and according to the Indian Penal Code, your acts were offences according to Sections 167, 500, 504 and 506 and due to your falsity, I suffered from a heavy financial loss.

6. That it is not worthy that due to your falsity I suffered from the loss of Rupees two thousand (2000/-) for appearing on that day in the case so I also entitled for the compensation from you.

7. That I am warning you that from the date of this notice, both of you tender unconditional written apology to me for your offences on 15-12-1995 in the Court No. 9 of the Supreme Court of India coupled with the compensation of Rupees two thousand (2000/-) and a handsome amount for my mental harassment. The written apology along with compensation be paid by you in a month from the date of this notice otherwise I will be compelled to initiate the criminal proceedings against you in the competent criminal Court and you will be responsible for all cost and consequences.

21. The aforesaid notice constitutes the basis of Contempt Petition (Crl.) No. 55/96 while the complaint filed by the contemner against the two Hon'ble Judges of this Court is the basis of Contempt Petition (Crl.) No. 56/96.

22. The notice issued to (sic) as also the complaint subsequently filed against the two Hon'ble Judges of this Court were placed before Hon'ble the Chief Justice of India who directed the same to be placed before the Court. That is how these matters have come before us.

23. The aforesaid notice dated 10-8-96 issued by the contemner to the two Hon'ble Judges calling upon them to tender unconditional written apology to him and also to pay compensation, was placed with the office report dated 12-9-96 before the Court when the following order was passed on 16-9-96:

"Mr. Ajay Kumar Pandey, Advocate, C-2230, Indira Nagar, Lucknow - 226016 has sent registered letters dated August 10 ,1996 to two Hon'ble Judges of this Court. The language and the tenor of the letter prima facie amounts of scandalising and lowering the authority of this Court. We issue contempt notice to Mr. Pandey, returnable on 30th September 1996, He may show cause why he be not held guilty of the contempt of Court and punished suitably. Registry to serve the respondent through the Additional Registrar of the Lucknow Bench of Allahabad High Court. Mr. Pandey shall be personally present in Court on 30th September, 1996 at 10.30 a.m."

24. When the matter was taken up on 30-9-1996, the following order was passed :

"Mr. Ajay Kumar Pandey advocate, the contemner is present before us. Initially, he had refused to accept summons of this Court but later on he himself contacted the Registry of this Court on September 27, 1996 and obtained the summons. Apart from derogatory and scandalous language written in the letter addressed to two Hon'ble Judges of this Court he also threatened them that he would file criminal complaints against them. He has, as a matter of fact, filed complaint case No. 122/1/96 on September 23, 1996. The contents of the complaint, in totality, relates to the proceedings conducted in Court No. 9 of this Court. This complaint is full of scandalous and abusive language. We issue notice to Mr. Ajay K. Pandey why he should not be held guilty of contempt of Court and be punished suitable for filing this scandalous complaint before Mr. Nepal Singh, Additional Chief Metropolitan Magistrate, We take suo motu notice of the complaint filed before the A.C.M.M. The complaint is wholly frivolous and amounts to the abuse of the process of the Court. We quash the complaint. We are told that the A.C.M.M. has further marked that complaint to Ms. Renu Bhatnagar, Metropolitan Magistrate who has fixed the date some time in March ,1997. We quash the complaint and the proceedings before Ms. Renu Bhatnagar, M. M. Mr. Ajay K. Pandey, standing before us, has fairly stated that he has no objection to the quashing of the complaint. We are further of the view that A.C.M.M. and M.M. who have dealt with this complaint have acted without any application of mind. It seems that they have not even read the contents of the complaint. We issue notice to both of them to show case why contempt proceedings be not initiated against them.

Mr. Pandey may file his reply within one week from today in this Court in both the contempt petitions. He may file all the documents, affidavits of himself or of any other person he wishes to file in support of his defence along with the reply. The contempt petitions shall be heard on 10-10-96 at 10.30 A. M.

On our suggestion, Mr. Pandey states that he would not mind having the assistance of a counsel. Mr. Mukul Mudgal, learned counsel present in Court states that he would request Ms. Manju Goel, Secretary, Supreme Court Legal Services Committee to assign a counsel to assist this Court on behalf of the contemnor. We request Mr. G. L. Sanghi learned senior counsel to assist this Court. A set of papers be sent to Mr. G. L. Sanghi, learned counsel.

The matter regarding contempt notice to Additional Chief Metropolitan Magistrate and Metropolitan Magistrates be listed on 30-10-1996. They shall be personally present in Court."

25. Separate notice for contempt were issued to the two Magistrates, who are being dealt with separately.

26. When the matter was taken up on 10-10-1996, the contemner filed unqualified and unconditional apology to the following effect.

"I, Ajay Kumar Pandey, Advocate, the Respondent contemner herein do hereby tender my unqualified and unconditional apology to this Hon'ble Court for addressing registered letters dated 10-8-1996 to two Hon'ble?? Judges of this Hon'ble Court, for the language and contents of the said letters, for filing a criminal complaint dated 23-9-1996 in the Court of Additional Chief Metropolitan Magistrate, New Delhi, against two Hon'ble Judges of this Hon'ble Court and for the language and contents of the said complaint. I respectfully submit that these actions of mine and the language used by me in relation to the Judges of this Hon'ble Court were as a result of my losing control over myself for which I am genuinely repentant. I humbly seek forgiveness from this Hon'ble Court and pray to this Hon'ble Court to accept my apology and show mercy on me. I undertake not to repeat such conduct in the future."

27. The Court, however, passed the following order on that date :

"We have heard Mr. Raju Ramchandran, On our request he is appearing for the contemnor, A. K. Pandey, We have also heard Mr. G. L. Sanghi, who on our request is appearing to assist the Court. We have also heard Mr. A. K. Pandey. Initially Mr. Pandey stated that he could not file reply because the registry declined to permit him to inspect all the records. We placed the records before him and permitted him to examine the same. Mr. Pandey, who is present in Court states that he does not want to inspect the records, Mr. Pandey has filed unqualified and unconditional apology. This may be taken on record.

We adjourn the hearing of this case to October 30, 1996. Meanwhile, Mr. Pandey may file his reply to the Contempt Petition, if he so wish. The application and the apology which are already on the record shall be taken into consideration on the next date of hearing. The contemnor to be present in Court on October 30, 1996.

28. On 30-10-1996 when the case was next taken up, the Court passed the following order:-

"Mr. Arun Jaitely, Sr. Advocate, represent Mr. Nepal Singh, Additional Chief Metropolitan Magistrate and Ms. Renu Bhatnagar, Metropolitan Magistrate is represented by Mr. Rajiv Gar, Advocate. Both the contemners are present in Court. To enable them to file affidavits in reply to the contempt notice, we adjourn the hearing to 4th November, 1996. Meanwhile, we direct Registrar of Delhi High Court to send the personal files of these two officers to this Court. We are told that Justice J. K. Mehra and Justice S. N. Kapoor are the inspecting Judges so far as these two judicial officers are concerned. We would request Hon'ble Judges to give their comments regarding these two officers. The earlier order of this Court in this case may also be sent to the Registry of the Delhi High Court.

To come up on 4th November, 1996.

Orders to be pronounced on 4th November, 1996 in respect of Mr. Ajay Kumar Pandey."

29. The background facts set out above would indicate that the contemner is a practising Advocate who himself had filed criminal complaint against a brother advocate (Mr. Mahesh Giri) and Ms. Saroj Bala who was a member of the lower judiciary posted as VII Addl. District Judge at Lucknow, after giving them a notice demanding compensation for having defamed him by publicly saying that he had sexual relations with one of them, namely, Ms. Saroj Bala. This complaint was dismissed at the initial stage as indicated in the earlier part of this judgment, but he raised a number of controversies, including a demand for enquiry to be set up by the then District Judge, Lucknow, Mr. J. C. Mishra, who is now a sitting Judge of the Allahabad High Court. The contemner filed a Revision before the High Court against the order by which his complaint was dismissed and the application for summoning the witnesses through Court process was rejected. This revision, as pointed out earlier, was dismissed by Mr. Justice Virendra Saran. In the Special Leave Petition filed against that judgment, the contemner has criticised Justice Virendra Saran in intemperate language and termed his judgment as forged and fictitious, besides imputing bad motive.

When this Court noticed the scandalous and even abusive language by the contemner used against Mr. Virendra Saran and other officers of the judiciary, it required the contemner to delete those sentences or portions and/or file a fresh petition. Now satisfied, the contemner moved an application for recall of the order and in that application he again used intemperate language and thereafter started making efforts to avoid the Court (Hon'ble Anand and Mukherjee, JJ.) and for this purpose, he adopted derogatory and bad tactics. He gave notice to the two Hon'ble Judges seeking unconditional apology from them for their conduct and behaviour in the Court and also demanded compensation from them. He wrote to the President of India for sanction to prosecute the Hon'ble Judges for offences under Sections 167, 500, 504 and 506, IPC giving two months time to the President to grant sanction or else he would treat the sanction to have been granted to him. He also threatened to go on hunger strike before the Supreme Court with effect from 25-9-1996. He then filed a complaint against the Hon'ble Judges branding their conduct as "goondaism". He pleaded for

his case to be listed before some other Bench or to be referred to the Constitution Bench on the ground that both the Hon'ble Judges were personally involved in the case and, therefore they need not hear the matter, but he was unsuccessful.

This Court, as the highest Court of the land, has not only the right to protect itself from being denigrated, but has also the right, jurisdiction and authority to protect the High Courts and the subordinate Courts from being insulted, abused or in any other way denigrated. All the Courts, be they the lower or the highest, function for the noble cause of dispensing justice. Since they have to decide litigation between two contesting parties, it is obvious that they have to have full freedom and independence in settling the litigation. The Presiding Officers who run the Courts and conduct the proceedings therein have to act fearlessly. Any action on the part of any person or litigant or lawyer, which tends to interfere or obstruct that process of justice, has to be deprecated so that the proceedings may be held in an orderly fashion and everyone who participate in those proceedings may have the feeling of liberty to address the Court for proper adjudication of his case.

An Advocate, as a citizen of this country, has the fundamental right of freedom of expression and speech under Article 19 of the Constitution. This right is also guaranteed to him under the Advocates Act. Apart from that, the legal profession has the inherent right to express itself in the best manner possible in uninhibited language, but the right to express also carries with it the duty to be dignified in the use of expression and to maintain decorum and peace in the Court proceedings.

In *Dr. D. C. Saxena v. Hon'ble the Chief Justice of India*, (1996) 5 SCC 216 : (1996 AIR SCW 3082), this Court observed, inter alia, as under (at pp. 3097-98 of AIR) :

"Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice. It plays its part in helping to secure the protection of other fundamental human rights. Freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. But they equally owe countervailing duty to maintain dignity, decorum and order in the Court proceedings or judicial process. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary."

It was further observed in that above case as under (at p. 3099, Para 4 of AIR) :

"Scandalising the Court would mean hostile criticism of judges as judges or judiciary. Any personal attack on a judge in connection with the office he holds is dealt with under law of libel or slander. yet defamatory publication concerning the Judge as a Judge brings the Courts or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a Judge calculated to lower the dignity of the Court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the judge as a judge, in other words imputing partiality, corruption, bias, improper motives to a judge is scandalisation of the Court and would be contempt of the Court. Even imputation of lack of impartiality or fairness to a judge in the discharge of his official duties amounts to contempt. The gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. When the contemner challenges the authority of the Court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or generation or production of tendency bringing the judge or judiciary into contempt."

In the present case, we are concerned with the notice issued by the contemner to the two Hon'ble Judges demanding apology and compensation, and the subsequent compliant filed by him in the Court of A.C.M.M., Delhi, and the contents thereof. The notice relates to the proceedings of the Court on 15-12-1995. It is said that both the Judges, without any authority, basis, immorally and illegally hurled upon "me" with highly derogatory, insulting, offending and contemptuous remarks."

After setting out what the Judges allegedly said, it is mentioned in the notice as under :

"It is the most important to mention here that I had never prayed to grant six weeks time for removing anything from the petitions, filing the fresh petitions and you dictated absolutely false in your order in this regard only with the sole motive to waste the money and valuable time of the petitioner and any how harass me along with hide the corruption, fraud, cheating and forgery etc, in a short word, 'sins'.

The notice also mentions his application to the President of India for sanction and in it he held out a threat to the two Hon'ble Judges that if they did not tender unconditional written apology to him he would initiate criminal proceedings in the competent criminal Court.

The criminal contempt is defined in Section 2(c) of the Contempt of Courts Act, 1971 as under :

"2(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever."

According to the definition reproduced above, the first pre-condition is the publication or doing of any other act and the second is that the publication or doing of the act has resulted in the consequences set out in Section 2(c)(i), (ii) and (iii), namely :

scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

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

In view of the definition, the contemptuous conduct may be either due to the publication or consist in the doing of any other act.

In *Delhi Judicial Service Association v. State of Gujarat*, (1991) 4 SCC 406 : (1991 AIR SCW 2419), it was observed by this Court that (Para 42 of AIR) :

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

In *Dr. D. C. Saxena's case* (1996 AIR SCW 3082) (supra), this Court has already laid down that if a Judge, on account of the proceedings conducted by him in his Court, is threatened that he would be prosecuted in a Court of law for the judicial act done by him, it amounts to criminal contempt as it lowers and tends to lower the dignity of the Court.

We are also of the same opinion. We may observe that any threat of filing a complaint against the Judge in respect of the judicial proceedings conducted by him in his own Court is a positive attempt to interfere with the due course of administration of justice. In order that the Judges may fearlessly and independently act in the discharge of their judicial functions, it is necessary that they should

have full liberty to act within the sphere of their activity. If, however, litigants and their counsel start threatening the Judge or launch prosecution against him for what he has honestly and bona fide done in his Court, the judicial independence would vanish eroding the very edifice on which the institution of justice stands. It would also be in violation of the statutory protection available to the Judges and Magistrates under the Judicial Officers (Protection) Act as also the Judges (Protection) Act.

Having seen the entire record, we are fully satisfied that the contemner, by questioning the conduct of the Judges through his notice and demanding apology and compensation from them as also the complaint lodged against them, especially in the language employed by him, is guilty of the "criminal contempt" and is liable to be punished therefor in both the cases.

In relation to the quantum of punishment, we may observe that the contemner, who is a practising advocate and is young in age, had on 10-10-1996, tendered before us an unconditional and unqualified apology in writing, withdrawing all the objectionable remarks, sentences and words used by him in the application, notice and complaint and had expressed his regrets. The Court, however, is not bound to accept the apology unless there is real feeling of repentance in the contemner. The contemner had already been given an opportunity at the initial stage by both the learned Judges to withdraw his remarks against a Judge of the Allahabad High Court and other officers of the lower judiciary, but he insisted to proceed with the case. He even initiated contempt proceedings against both the Hon'ble Judges. But this Court took a lenient view and instead of initiating any other action against him, dismissed the criminal contempt petition by order dated 5-8-1996, passed by Hon'ble J.S. Verma and Hon'ble B. N. Kirpal, JJ.

The jurisdiction of this Court under Article 129 of the Constitution is independent of the Contempt of Courts Act and the power under Article 129 cannot be denuded, restricted or limited by the Contempt of Courts, Act, 1971. Thus there is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction. But we do not intend to travel far and beyond.

Having convicted the contemner for obstructing the course of justice by trying to threaten and overawe the Court by using insulting and disrespectful language and issuing notice and also launching criminal prosecution against two Hon'ble Judges, we sentence the contemner for the offence of criminal contempt as under:

The contemner Ajay Kumar Pandey is hereby sentenced to undergo imprisonment for a period of six months. On serving this sentence for two weeks, the remaining sentence shall stand suspended for a period of two years and may be activated in case the contemner is convicted for any other offence of contempt of Court within the said period. He shall be taken into custody forth-with but will be released after two weeks, to be taken into custody again if and when his remaining sentence

stands activated.

The Contempt Petitions are disposed of accordingly.

Order accordingly.