ALLAHABAD HIGH COURT

G.N. Verma

Vs.

Hargovind Dayal

Criminal Contempt Case No. 43 of 1973

(J.M.L. Sinha and B.N. Katju, JJ.)

22.05.1974

JUDGMENT

J.M.L. Sinha, J.

1. The contemners opposite parties have been called upon to show cause why they should not be punished for having committed contempt of this Court. The facts leading upto the issue of the notice can be stated as below :

> Sarvasri Hargovind Dayal Srivastava and Hargun Sharan Srivastava, Contemners Nos. 1 and 2 respectively, are members of the Avadh Bar Association. The former is the President of that Association and holds a position of eminence. Contemners Nos. 3, 4 and 5 are printers and publishers of the National Herald, the Pioneer and the Northern India Patrika respectively. The first named the two papers are published at Lucknow and have an extensive circulation in this State. The Northern India Patrika is published at Allahabad. As is well known, till 1948 the Allahabad High Court and the Chief Court at Lucknow had separate identity. In 1948 came the U. P. High Courts Amalgamation Order by which the High Court in Allahabad and the Chief Court in Oudh were amalgamated to constitute one High Court by the name of the High Court of Judicature at Allahabad. A Bench of this Court was retained at Lucknow. Since then there has been controversy regarding the jurisdiction of the Bench at Lucknow and of this Court as sitting at Allahabad. Sri S. K. Verma assumed the office of the Chief Justice of this Court in 1971 and representations were then made to him as well regarding the same matter. In the meantime the question of jurisdiction of the Bench at Lucknow came up for consideration before a Full Bench of this Court in the case

Nirmal Das Khaturia v. State Trans. Trib., U. P.[1] Thereafter representations were again made to Sri S. K. Verma, the then Chief Justice to take action in conformity with the decision of the Full Bench. It appears that an Action Committee had been formed by the Avadh Bar Association to pursue the matter on or about February 3, 1973, the Avadh Bar Association passed a resolution demanding immediate amendment of the High Court Amalgamation Order and stating that the Amalgamation Order vests the Chief Justice with power to transfer cases of the territory of Avadh to Allahabad, which in practical working has been abused and misused. The abovementioned portion of the resolution was printed and published in the National Herald dated February 4, 1973, in the following manner :

'It demanded the immediate amendment of the High Court' Amalgamation Order which vests the Chief Justice with power to transfer cases of the territory of Avadh to Allahabad, 'which in practical working has been abused and misused."On April 18, 1973, the Chief Justice issued a fresh notification under Clause 14 of the Amalgamation order giving exclusive jurisdiction to the Lucknow Bench on nine districts of Avadh. The notification, however, further said that cases pertaining to the three districts of Faizabad, Sultanpur and Partapgarh could be entertained and disposed of either at the Lucknow Bench or in the Court at Allahabad. This notification failed to satisfy the members of the Avadh Bar. One of the members of the Avadh Bar was reported to have expressed that the notification had been issued to befool the lawyers and the litigant public of Avadh. The sentiments expressed by the members of the Avadh Bar got wide publicity through a news item in the Pioneer dated April 20, 1973. The impugned portion of the news item reads as follows :
"The notification has been issued to befool the lawyers and the litigant public of Avadh. "On May 3, 1973 the Action Committee passed a resolution, which *inter alia* said :

"The Action Committee is of the opinion that the Chief Justice is acting in the discharge of administrative power under Clause 14 of the U. P. High Courts Amalgamation Order, 1948 in a most partisan manner under

the influence of Allahabad Bar quite unbecoming of the office which he holds." The news item regarding the passing of the aforesaid resolution was published in the National Herald and the Northern India Patrika dated May 6, 1973. The National Herald published the latter portion of the resolution in the following manner :

"It also said that the Chief Justice had acted in a partisan manner while exercising his powers under Clause 14 of the U. P. High Courts (Amalgamation) Order, 1948, presumably influenced by or under the pressure of the Allahabad Bar. "The Northern India Patrika reported in the following manner :

"The Action Committee he said was of the opinion that "the Chief Justice was acting in a most partisan manner under the influence of Allahabad Bar."

2. On May 18, 1973. Sri G. H. Verma, Honorary Secretary, High Court Bar Association, Allahabad, lodged an application in this Court bringing to its notice the earlier mentioned resolutions and the publication thereof in the National Herald, the Pioneer and the Northern India Patrika. The application said that the contemners (opposite parties) were guilty of having committed contempt of this Court in passing and publishing the aforesaid resolutions and may be punished accordingly. Under orders of then Chief Justice this application was listed before one of us, who then was sitting on the Bench which dealt with contempt cases. Since, however, the allegations contained in the application amounted to criminal contempt and a Single Judge could not take cognizance of it, it was directed that the matter be laid before the Chief Justice for nominating a Bench of two Judges for its disposal. The application was then directed to be listed before the life imprisonment Bench consisting of two Judges. On August 17, 1973, that Bench directed issue of notice to contemners 2 to 4. At a later stage on 18th of February, 1974, when the matter came up before us, we, recorded the statement of Hargur Charan Srivastava (Contemner No. 2) and, in view of the material contained in his statement, we passed an order the same day directing that show cause notice may also issue to contemner No. 1. It is thus that all the contemners have appeared before this Court to show cause against the notice issued to them.

3. The contemners have filed separate counter-affidavits raising a number of pleas. Learned Counsel appearing for contemner No. 1 and contemner No. 5, raised some fresh pleas during their arguments before us. The legal pleas raised on behalf of the contemners in the counter-affidavits and in the arguments made on their behalf can be enumerated as follows :

(1) That the jurisdiction to try the present case lies with the Bench at Lucknow and that this Court has no jurisdiction to try it.

(2) That the Contempt of Courts Act, 1971, is a new Act. The rules contained in the Rules of Courts cannot be applied to it. In the absence of rules it was the Full Court only which could direct issue of notice.

(3) That while the High Court can take action to punish its contempt suo motu, a private individual cannot move the Court except with the consent or authority of the Advocate-General. Since Sri G. N. Verma has moved the application without the intervention of the Advocate-General, the Court could not take cognizance on that application, nor could it be utilised to act suo motu. The contention further is that the Court having acted on that application, the entire proceedings are without jurisdiction.

(4) That the notification issued by the Hon'ble Chief Justice under High Courts Amalgamation Order was illegal, being contrary to the Full Bench decision of this Court and consequently did not exist in the eye of law. The contention further is that therefore anything said about it cannot amount to contempt.

(5) That when the Chief Justice acts under Clause 14 of the High Court' Amalgamation Order, he exercises a legislative power and that anything said about the exercise of such a power by the Chief Justice cannot amount to contempt. Article 19 of the Constitution was also invoked.

(6) That the constitution and organization of High Courts fall under Item 78 of the Union List while Administration of Justice falls under Item 3 of the State List. The Amalgamation Order, having been passed by the centre, related to constitution and organization of court and not to administration of justice and consequently the order passed by the Hon'ble Chief Justice under Clause 14 will also relate to constitution and organization of courts and not to administration of justice. The contention further is that therefore anything said about the Hon'ble Chief Justice in that regard cannot attract application of any of the clauses of Section 2 of

the Contempt of Courts Act, 1971.

(7) That the Chief Justice, acting under Clause 14, acts as a persona designate and not as Chief Justice and, therefore, anything said about him in connection with exercise of his power under Clause 14 cannot amount to contempt of court.

(8) That under Clause 14 of the High Courts Amalgamation Order it is none of the duties of the Chief Justice to hold negotiations with the members of the Bar. The fact that he was having negotiations with the Bar should lead to the conclusion that he was not acting as Chief Justice but otherwise and, consequently, anything said about him should not amount to contempt.

(9) That the impugned resolutions were passed in the background stated in the counter-affidavit of contemner No. 1, that they related to non-judicial acts of the Hon'ble Chief Justice and, in view of the law laid down by this Court in the case of *Rex v. B. S. Nayyar,* [2] the resolutions in question are not punishable as they do not amount to contempt of this Court.

(10) That the decision of the Supreme Court in the case of *Baradakanta Mishra v. The Registrar of Orissa High Court.* [3] only lays down that when the 'Court' sits in disciplinary proceedings against subordinate judicial officers it does an act in the administration of justice and if intemperate language is used against the Court while acting in that capacity so as to undermine its authority or prestige, the Court can take action under the Contempt of Courts Act. According to learned Counsel, however, that case should not be taken to be an authority for the view that intemperate language used about an administrative or legislative act of the Chief Justice, as distinguished from that of the Court, shall also amount to contempt.

4. We propose to deal with the aforesaid points in the order in which they have been stated.

5. The expression "criminal contempt" is defined in Section 2 (c) of the Act as follows :

"Criminal contempt means the publication whether by words spoken or

otherwise, 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 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."

6. In the instant case the resolution that was passed on or about February 3, 1973, was published in the National Herald. The expression of opinion that notification had been issued to befool the lawyers and the litigant public of Avadh had been published in the Pioneer dated April 20, 1973, and the resolution dated May 3, 1973, was published in the National Herald and the Northern India Patrika dated May 6, 1973. It is true that the first two items were published for the first time at Lucknow in the National Herald and the Pioneer. Since, however, both the papers have their circulation also in the districts beyond those attached to the Lucknow Bench, and particularly at Allahabad, it should be deemed that the publication of the offending utterances also took place beyond the jurisdiction of the Lucknow Bench and within the jurisdiction of this Court. Consequently this Court would have jurisdiction to take cognizance of it.

7. It was urged before us that once the first two items were published in the newspapers at Lucknow, the offence was complete and the re-publication of those items through the circulation of those papers at Allahabad would not confer jurisdiction on this Court to take cognizance of the matter. We have given our careful thought to this point, but we are unable to accept it. It may be recalled that publication is also a necessary ingredient of the offence of defamation. In the case *Empress v. McLeod,* [4] defamatory matter was first published in a newspaper at Calcutta. Thereafter the newspaper containing the defamatory matter was addressed to a subscriber at Allahabad and it was held that it constituted the publication of the defamatory matter at Allahabad. In case *Emperor v. Jhabbermal,* [5] copy of a newspaper was sent from Delhi to Dehradun and it was held that publication of the defamatory matter therefore took place at Dehradun within the jurisdiction of this Court. In case *Radha*

Govind Datta v. Saila Kumar Mukherji, [6] certain leaflets containing defamatory matter against the complainant were distributed. The leaflet was later published in a newspaper in the form of questions and answers asking the complainant to clear himself by answering the questions. It was held that it amounted to a re-publication of the defamatory statements in the leaflets and, therefore, the editor was guilty of defamation. In the case *Queen Empress v. Girja Shankar Kashi Ram,* [7] a paper containing defamatory article was published in Bombay. Copies of the paper were sent to persons living in Ahmedabad and it was held that it constituted a publication of the defamatory matter in Ahmedabad. In the famous case of *Queen Empress v. Bal Gangadhar Tilak,* [8] an article was published in KESRI, a newspaper published at Poona, exciting and attempting to excite feelings of disaffection against the Government. Prosecution was launched in regard to that article at Bombay and a question arose whether the High Court at Bombay had jurisdiction to try it and it was observed :

> "The Kesri is a weekly paper published in Marathi every Tuesday at Poona. It has considerable circulation, having six or seven thousand subscribers, not only in Poona but in many other places, including Bombay - This particular issue of the 15th June contained these two articles and it was sent by bus from the office at Poona to the subscribers in Bombay and elsewhere. So the paper' publication extended to Bombay. I only mention this matter of publication in Bombay, because it gives this Court jurisdiction to try this case. Sending the newspapers by bus from the office where it is published to other places constitutes in law the publication in Bombay or any other place to which it is so sent."

8. In view of all these decisions, it should be accepted that even though the publication of the first two impugned items initially took place at Lucknow, where the newspapers National Herald and Pioneer are published, the impugned items found republication at Allahabad and other districts within the jurisdiction of this Court when the aforesaid newspapers reached there in the course of their usual circulation. The contention, to the contrary raised on behalf of the contemners cannot be accepted.

9. It may further be added that the most offending resolution is that passed on May 3, 1973. It was published in the Northern India Patrika, which has its office at Allahabad. In fact the notice issued to O. P. No. 5 is based on the

publication of that resolution only. There should be no doubt about the fact that this Court does possess jurisdiction to take cognizance of that resolution and to punish contemner No. 5, if that resolution amounts to criminal contempt. We do not think anything contained in the notification issued by the Chief Justice under Clause 14 of the High Court' Amalgamation Order, 1948 would countenance that part of the case should be tried at Lucknow and part of the case should be tried at Allahabad.

10. Thus looked at from any angle, we have no doubt in our mind that this Court has jurisdiction to try the case - The first contention raised on behalf of the contemners therefore stands rejected.

11. The Rules of Court were framed under Article 225 of the Constitution. Rule 19 of Chapter XVIII of the Rules of Court contains a provision regarding the manner in which an application for taking of proceedings in contempt of court should be made. It *inter alia* states that when the application is presented before a Judge other than the Chief Justice, it should be laid before the Chief Justice for orders. The present application was presented before M. H. Hussain, J., who was an application Judge, and he directed it to be laid before the Chief Justice. Thereafter it was under the orders of the Chief Justice that it was laid before the Life Imprisonment Bench, which first consisted of D. S. Mathur, J. (as he then was) and H. N. Kapur, J., and later before us. Rule 19, having been framed under Article 225 of the Constitution, continues to exist, and the enactment of the Contempt of Courts Act, 1971, (hereafter to be called the Act) can have no bearing on its existence. It is, therefore, incorrect to say that it was only the Full Court which could direct issue of notice. The Bench before which it was laid under orders of the Chief Justice was under Rule 19 of the Rules of Court competent to do so. The second contention raised on behalf of the contemners is also therefore negatived.

12. It is true that an application was lodged by Sri G. N. Verma, Honorary Secretary, High Court Bar Association, bringing to the notice of this Court the impugned resolutions and utterances. It is also true that the application has been filed without the consent in writing of the Advocate-General. The fact, however remains that in the case of criminal contempt other than *ex facie* contempt this Court can also take action suo motu. In order to take action suo motu the Court

has to receive information from one source or the other. In this case the information was provided by Sri G.N. Verma through his application dated 18th of May, 1973. In paragraph 6 of the application it was specifically stated :-

> "That the information is bringing the facts to the notice of the Hon'ble High Court, so that the Hon'ble High Court may take action (on its) own and punish the opposite parties in accordance with law."

13. We see no reason why the information contained in the application cannot be utilised by the Court to take action suo motu. Once it is accepted that the Court could utilise information contained in the application of Sri G. N. Verma to take cognizance suo motu, the contention raised that the proceedings are without jurisdiction becomes devoid of all substance and must be rejected.

14. Making a reference to the decision of this Court in the case (supra) learned Counsel urged that it was not open to the Chief Justice to confer concurrent jurisdiction on the Lucknow Bench and this Court in regard to cases of the districts of Faizabad, Sultanpur and Partapgarh. Learned Counsel contended that the order passed by the Hon'ble the Chief Justice under Clause 14 was therefore illegal and consequently did not exist in the eye of law. It was vehemently pressed that in that view of the matter anything said about that Order could not amount to contempt of Court. Assuming for the purposes of this case that the order passed by the Hon'ble the Chief Justice conferring concurrent jurisdiction on the Lucknow Bench and on the Court sitting at Allahabad over cases relating to Faizabad, Sultanpur and Partapgarh was illegal, it may have been open on that account for the contemners 1 and 2 to say anything with regard to the notification itself. The fact, however, remains that in the resolution dated 3rd of May, 1973, the contemners did not keep themselves confined to the notification only but proceeded to make scandalous remarks against the Hon'ble the Chief Justice. It was stated in the resolution that the Chief Justice in the discharge of his administrative power under Clause 14 acted in a most partisan manner under the influence of Allahabad Bar. According to the resolution reproduced in the counter-affidavit of Sri Hargur Charan, it further stated that the act of the Chief Justice was unbecoming of high office which he held. The mere fact that the notification issued by Hon'ble the Chief Justice was not in conformity with the Full Bench decision of this Court and

was therefore not a legal notification, could not confer a right on either of the contemners to make a scurrilous remark of that nature against the Chief Justice. The contention raised by learned Counsel is accordingly rejected.

15. Learned Counsel next contended that while issuing the notification under Clause 14 of the Amalgamation Order the Chief Justice acted in a legislative capacity and not in a judicial or administrative capacity. It was urged with some vehemence that anything said by any of the contemners about any act done by the Chief Justice in his legislative capacity should not constitute contempt. It is worthy of notice that the stand of the contemners 1 and 2, as also that of other members of the Avadh Bar, initially was that anything said about an administrative action of the Chief Justice could not constitute contempt. This was apparent from the language used in the last paragraph of the resolution dated May 3, 1973, reproduced in the counter- affidavit of contemner No. 2. It specifically states that the Chief Justice exercised his administrative power while acting under Clause 14 of the Amalgamation Order. In taking this stand, they were presumably guided by the view of this Court, as expressed in the case AIR 1950 Allahabad 549. That view, however, no more holds the field, in view of the decision of the Supreme Court in the case AIR 1974 Supreme Court 710 (supra). It was firmly held in this case by the Supreme Court that if the attack on the Judge functioning as a Judge substantially affects administration of justice, it is punishable for contempt and it matters not whether such an attack is based on what a Judge is alleged to have done in the exercise of his administrative responsibility. The contemners probably felt that after this decision of the Supreme Court they could not successfully take the stand that since the Chief Justice acted in his administrative capacity while issuing notifications under Clause 14 of the Amalgamation Order, anything said about him in that capacity would not constitute contempt. They have, therefore, modified their stand to say that the Chief Justice acts in a legislative capacity while issuing notifications under Clause 14. We, however, think that this too cannot improve the position in favor of the contemners. In the case of AIR 1974 Supreme Court 710 the Supreme Court observed :

> "Judicial capacity Is an ambivalent term which means 'capacity of or proper to a judge' and is capable of taking in all functional capacities of a Judge whether administrative, adjudicatory or any other, necessary for the

administration of justice", (Underlining is by us).

Therefore, in the opinion of the Supreme Court whether any action of the Judge is adjudicatory, administrative or legislative, it can be the subject-matter of contempt proceedings provided the act is connected with or is necessary for the administration of justice. Reference in this connection was made by the Supreme Court to the case of *Rex v. Almon,* [9] and In re Motilal Ghosh (supra). In the former case a pamphlet was published in which the Chief Justice and, impliedly, all the Judges of the Court of King' Bench were accused of deliberately delaying or defeating the issue of the process of habeas corpus by introducing a new rule. In the latter case an imputation was made against the Chief Justice of the Callcutta High Court that he was improperly motivated in constituting a Bench to hear a particular class of appeals. A Chief Justice constitutes Benches in exercise of right conferred on him by the rules passed in that behalf. In both the cases thus it was the so-called legislative action of the Chief Justice against which the imputation was made and in both the cases it was held that the imputation was punishable as contempt of court. Needless to say that the act of the Chief Justice in the instant case in issuing notification under Clause 14 was an act intimately connected with the administration of justice. Therefore, whether the act was administrative or legislative in nature, the imputations made against the Chief Justice in that regard, if they fall within the definition of criminal contempt as contained in the Act of 1971, would be punishable by this Court.

16. Reference was also made by learned Counsel for contemners 3 to 5 to. Article 19 of the Constitution and it was said that publication of a news item in regard to the administrative or legislative act of the Chief Justice cannot constitute subject-matter of proceedings under the Contempt of Courts Act, 1971. The scope of Article 19 of the Constitution vis-a-vis the proceedings of this nature was considered by the Supreme Court in the case *C. K. Daphtary v. O. P. Gupta,* [10] and it was held that the law of contempt of court imposed reasonable restrictions within the meaning of Article 19 (2) of the Constitution. After making a reference to some other decisions as also the Constitution of the United States of America, on which reliance was placed by the other side the Supreme Court observed –

> "We are unable to appreciate how the law as summarized in the two cases, places unreasonable restriction on the freedom of speech. But the argument of the first respondent was that we have now a written Constitution, like the United States of America and if in the United States in order to give effect to the liberty of speech and freedom of expression the common law has been departed from we should also follow in their footsteps. But the American Constitution and the conditions in the United States are different from those in India. In the American Constitution there is no provision like Article 19 (2) of our Constitution."

17. In view of the above decision of the Supreme Court, the contention raised by learned Counsel for the contemners Nos. 3 to 5 that they were protected by Article 19 of the Constitution cannot be accepted.

18. Learned Counsel then urged that since Constitution and Organization of High Courts fall under Item 78 of the Union List and "Administration of Justice" falls under Item 3 of the State List and since the Amalgamation Order had been passed by the Central Government, it should be held that it related to "Constitution and Organization of Courts". Learned Counsel further contended that therefore when the Chief Justice acts under Clause 14 of the Amalgamation Order, he does not act in the administration of justice. According to learned Counsel the act of the Chief Justice in issuing the notification under Clause 14 relates to "Constitution and Organization of Court" as distinct from "Administration of Justice" and, therefore, anything said about the Chief Justice in that capacity should not amount to contempt. The argument appears to be too technical. It can very well be accepted that the Amalgamation Order related to constitution and Organization of High Courts. It cannot, however, be denied that when the Chief Justice acts under Clause 14 of the Amalgamation Order, that act is directly connected with the Administration of Justice by the Bench of this Court sitting at Lucknow and the Court sitting at Allahabad. The Judges sitting at Lucknow acquire jurisdiction over the cases brought before them only under the notification issued under Clause 14. Since the act of issuing notification under Clause 14 of the Amalgamation Order is an act. in furtherance of the administration of justice, anything said about the Chief Justice while acting in that capacity can form subject-matter of proceedings under the contempt of

Courts Act.

19. Learned Counsel also urged that the Chief Justice acting under Clause 14 is a "persona designate" and, therefore, anything said about him while acting in that capacity should not constitute subject-matter of contempt proceedings. We are once again unable to agree. A persona designate is a person selected to act in his private capacity and not in his capacity as a Judge. He is a person pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character. *Maharaja Dharmendra Prasad Singh v. State of U. P.,* [11] *Ram Chandra Rao v. State of Madras,* [12] and *Ram Milan v. Banshi Lal,* [13] A perusal of the Amalgamation Order would show that it provided for amalgamation of the two Courts into one Court and for the transacting of business therein. Reference to the Chief Justice can be found in the Amalgamation Order at more than one place. Thereafter in Clause 14 it is stated that the Chief Justice can nominate two or more Judges to sit at Lucknow in order to exercise jurisdiction in respect of the case arising in such cases of Oudh as the Chief Justice may direct. The power so conferred on the Chief Justice was conferred on him as Chief Justice of the Court and not as an individual in his private capacity. It can therefore by no means be accepted that the Chief Justice while acting under Clause 14 of the Amalgamation Order acts as a persona designate. The contention raised by learned Counsel must therefore be rejected without dilating any further on the subject.

20. Learned Counsel argued that since the Chief Justice, before issuing notification under Clause 14, had talks with the members of the Bar at Lucknow and at Allahabad ,it should be presumed that he was acting in his private capacity and not as Chief Justice. In fact an application was also moved before us praying that Sri S. K. Verma the then Chief Justice, may be summoned to appear before this Court so that he could be cross-examined on the point as to in what capacity did he act while talking to the members of the Bar at Lucknow and at Allahabad. The argument was, however, not at all understandable to us. Obviously no person other than the Chief Justice could issue a notification under Clause 14 of the Amalgamation Order. There is no controversy before us about the fact that Mr. S. K. Verma held the office of the Chief Justice during the period in question. Merely because he had a talk with the members of the Bar at Lucknow and Allahabad before taking action under Clause 14 it can by

no means be said that he was acting in any capacity other than that of the Chief Justice. The above-mentioned application moved on behalf of O. P. No. 1 was rejected by us for that reason and we have no hesitation in rejecting this argument also on the same ground.

21. Much stress was laid by learned Counsel for the contemner No. 1 on the background in which the impugned resolutions were passed and utterances were made. Particular reference was made by him to the fact that the Chief Justice had made a promise that the matter had been referred to the Full Bench and that action will be taken as soon as the matter was decided by the Full Bench. Learned Counsel argued that the notification issued by the Chief Justice on April 18, 1973, was not in conformity with the decision of the Full Bench in the earlier mentioned case. It was also pointed out that according to the decision of this Court in the case of AIR 1950 Allahabad 549 (supra) no action by way of contempt of court could be initiated except for the judicial act of Judge. It was stressed that the issue of notification under Clause 14 was not a judicial act and consequently could not form the basis for contempt proceedings. The argument is not very intelligible to us. If the contention of learned Counsel for the contemner No. 1 is that since the then Chief Justice did not keep his promise and issued notification contrary to the decision of the Full Bench, he was justified in using intemperate language against the Chief Justice, we need only say that justification cannot be pleaded in proceedings under the Contempt of Courts Act. So far as the view expressed by this Court in the case AIR 1950 Allahabad 549 is concerned, we have already stated earlier that it no more holds the field in view of the decision of the Supreme Court in the case AIR 1974 Supreme Court 710 (supra). It may be added at this place that the Supreme Court made a reference to a number of earlier decisions, including the decision in the case of *Debi Prasad Sharma v. The King Emperor,* [14] in order to reach the conclusion that scandalous talks on Judges while acting in administrative capacity also can form basis of contempt proceedings. The view expressed by this Court in the case AIR 1950 Allahabad 549 (supra) cannot, therefore, provide a valid defense to contemners Nos. 1 and 2.

22. Learned Counsel appearing for contemner No. 5, urged that the decision in the case of AIR 1974 Supreme Court 710 (supra) lays down the rule that even when the court sits in disciplinary proceedings against subordinate judicial

officers it does an act in the administration of justice and anything said about the court while acting in that capacity to undermine its authority can amount to contempt. Learned Counsel stressed that the aforesaid decision should not be taken to be an authority for the view that anything said about an administrative or legislative act of the Chief Justice can also amount to contempt. We cannot persuade ourselves to accept this contention. After taking into consideration the various sub-clauses of Section 2 (c) of the Act the Supreme Court observed :

> "It is, therefore, clear that scandalization within the meaning of sub-clause (i) must be in respect of the Court of the Judge with reference to administration of justice.

"Thereafter it was stated in paragraph 49 :-

> "Canalization of the court is a species of contempt and may take several forms. A common form is the vilification of the Judge. When proceedings in contempt are taken for such vilification the question which the court has to ask is whether the vilification is of the Judge as a Judge or it is the vilification of the Judge as an individual. If the latter the Judge is left to his private remedies and the Court has no power to commit for contempt. If the former, the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt.

" Further on the Court observed :

> "But if the attack on the Judge functioning as a Judge substantially affects administration of justice it becomes a public mischief punishable for contempt, and it matters not whether such an attack is based on what a Judge is alleged to have done in the exercise of his administrative responsibilities. A Judge' functions may be divisible, but his integrity and authority are not divisible in the context of administration of justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory function."

23. The above being the majority opinion is the opinion of the Court and is

binding on us.

24. In our opinion therefore it can safely be held on the basis of the decision of the Supreme Court in the earlier mentioned case that if a scandalous attack is made on a Judge in his administrative or other capacity of non-adjudicatory nature, it can amply form basis of contempt proceedings.

25. Having disposed of the legal pleas, we now proceed to examine whether the contemners or any of them are guilty of having committed contempt of this Court and whether any of them deserve to be punished. It will be convenient to examine the case of each contemner separately. We shall first take up the case of Sri Hargur Charan Srivastava (contemner No. 2).

26. There are three accusations against Sri Hargur Charan Srivastava (Contemner No. 2). The Avadh Bar Association of which the contemner is a member, passed a resolution on February 3, 1973, which *inter alia*, asked for the amendment of the High Court Amalgamation order stating that "it vests the Chief Justice with power to transfer cases of the territory of Avadh to Allahabad, which in practical working has been abused and misused." This part of the resolution was printed in the National Herald dated 4th February 1973 in the following words :

> "It demanded immediate amendment of the High Court' Amalgamation order which vests the Chief Justice with power to transfer cases of the territory of Avadh to Allahabad' which in the practical working has been abused and misused."

27. Proceedings under the Contempt of Courts Act are quasi-criminal in nature and no action under that Act should be taken unless a clear case is made out. It is worthy of notice that the petition of Sri. G. N. Verma, does not disclose as to whether contemner no. 2 was activity associated with the passing of the resolution. Avadh Bar Association is a big body and indeed every member of that association cannot be punished because it passed a resolution of the nature specified above. It is also not shown that on February 3, 1973, when the aforesaid resolution was passed, Sri Hargur Charan Srivastava (Contemner no. 2) was an office-bearer of the Avadh Bar Association. The petition also does not

state that it was contemner No. 2 who had handed over the resolution to the press for publication. In order to satisfy ourselves on that point, we have gone through the entire press report, as published in the National Herald dated February 4. 1973, and we find that the name of contemner No. 2 does not find mention in it in any manner whatsoever. It is true that the contemner No. 2, in the counter-affidavit sworn by him, has not stated that he was not connected with the passing of the resolution dated February 3, 1973. We cannot, however, ignore that a particular fact should first be alleged against a party before he can be called upon to confirm or deny it. Since there was no clear assertion that contemner No. 2 was in any manner connected with the passing of the resolution dated February 3, 1973, the omission on his part to deny his association with it in his counter-affidavit should not lead to an inference adverse to him being drawn.

28. The result, therefore, is that, by the material on record, it is not proved that contemner No. 2 was in any manner connected with the passing of the resolution dated February 3, 1973. As already indicated earlier the first accusation against the contemner is based on that resolution. The contemner No. 2 cannot be held guilty of it.

29. In view of the above finding, it is not necessary to consider whether the aforesaid resolution dated February 3, 1973, does or does not amount to "criminal contempt" as defined in Section 2 (c) of the Act of 1971.

30. The second accusation is based on a statement issued by the members of the Avadh Bar on April 20, 1973. in which it was *inter alia* stated "the notification has been issued to befool the lawyers and the litigant public of Avadh."

31. The position in regard to this accusation also appears to be the same as was found in regard to accusation No. 1. The petition of Sri G. N. Verma, which reproduces the statement issued to the press and published in Pioneer dated April 20, 1973, does not mention that the aforesaid statement was made by or with the connivance of the contemner No. 2. We have also perused the whole report as published in the Pioneer dated April 20, 1973, and we find that the name of contemner No. 2 does not find mention in any part of it. The impression that we get on reading the report as published in the newspaper is

that the statement was made by one Sri Brij Bahadur Saxena as a spokesman of the members of the Avadh Bar.

32. It is once again true that the contemner No. 2, in the counter- affidavit sworn by him. has not expressly denied having been associated with the aforesaid statement. Since, however, there was no positive allegation to the effect that he was connected with the making of the aforesaid statement the omission on the part of contemner No. 2 not to swear in his counter- affidavit that he was not connected with the issue of the aforesaid statement cannot be attached any importance.

33. We accordingly find that the contemner No. 2, is not guilty of the second accusation as well.

34. The third and final accusation against contemner No. 2 is that on May 3, 1973, the Action committee of the Avadh Bar, of which he was a convener, passed a resolution in which, among other things, it was also said :

> "The Chief Justice was acting in a most partisan manner under the influence of the Allahabad Bar.
> " If we can make use of the counter- affidavit filed by the contemner No. 2, which reproduces the entire resolution, and a copy of which resolution has been forwarded by the contemner No. 2 to the Chief Justice (which we have obtained from the High Court office), the whole of the relevant portion of the resolution reads thus :
> "The Action Committee is of the opinion that the Chief Justice is acting in the discharge of administrative power under Clause 14 of the U. P. High Court' Amalgamation Order, 1948, in a most partisan manner under the influence of Allahabad Bar quite unbecoming of the high, office which he holds.
> "It was not controverted before us that, as convener of the Action Committee, a copy of the resolution was made over by the contemner No. 2 to the Press Trust of India, which in its turn passed on the resolution to the various newspapers, including the Northern India Patrika and National Herald for publication. This fact is also borne out from the

endorsement below the copy of the resolution forwarded by the contemner No. 2 to the Hon'ble the Chief Justice of this Court. The impugned portion of the resolution was printed in the National Herald dated May 6, 1973, in the following manner :

"It also said that the Chief Justice had acted in a partisan manner while exercising his power under Clause 14 of the U. P. High Court' Amalgamation Order, 1948, presumably influenced by or under the pressure of Allahabad Bar.

" In the Northern India Patrika dated May 6, 1973, it was published in the following manner :

"The Action Committee, he said, was of the opinion that the Chief Justice was acting in most partisan manner under the influence of the Allahabad Bar."

35. From the copy of the resolution, from the reports published in the newspapers connecting with the resolution, and from the statement of Sri Hargur Charan recorded by us in Court it is conclusively proved that on May 3, 1973, the Action Committee of the Avadh Bar, with the contemner No. 2 as its convener passed a resolution which contained the words quoted earlier. In fact the contemner No, 2 also has at no stage of these proceedings denied that fact. In the counter-affidavit he merely said that he did not preside over the meeting of the Action Committee that day. In the statement recorded in Court he clarified that it was the contemner No. 1 who presided over the meeting.

36. The question which then falls for consideration is whether the earlier quoted portion of the resolution dated 3rd May, 1973, amounts to "criminal contempt" within the meaning of that expression as defined in the Act of 1973.

37. Turning to the resolution once again, it charged the Chief Justice with acting in most partisan manner and under the influence of Allahabad Bar. The resolution thus contained a clear imputation to the effect that the Chief Justice, while acting under Clause 14, was not acting in a fair and independent manner but that he was favoring a particular section of the Bar. There is also an imputation to the effect that the Chief Justice has permitted himself to be influenced by the members of a particular section of Bar in passing Orders or notifications under Clause 14. There can be not an iota of doubt that the

aforesaid words were used against the Chief Justice in his capacity as Chief Justice and not as an individual. It is the first quality of a Judge to act in a fair and impartial manner without being influenced by one party or the other in the least. If a Judge does not act in a fair and independent manner and permits himself to be influenced by one party or the other he is hardly worthy of being called a Judge. To say that a particular Judge does not act in a fair or independent manner or that in his actions he is influenced by a particular section of the public or the members of the Bar, is tantamount to saying that he is not honest, and, that certainly undermines his prestige and authority as also the confidence which the public should repose in him. Such an allegation tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the Judge. The mere fact that the aforesaid words were used about the Chief Justice while acting in his administrative capacity can make no difference, for, as remarked by the Supreme Court in the case of AIR 1974 Supreme Court 710 (supra).

> "A Judge' functions may be divisible but his integrity and authority are not divisible in the context of the administration of Justice. An unwarranted attack on him for corrupt administration is as potent in doing public harm as an attack on his adjudicatory functions."

38. We accordingly hold that since contemner No. 2 was actively associated with the passing of the resolution dated February 3, 1973, which contained disparaging remarks about the Chief Justice, quoted earlier and since he also issued that resolution for publication in newspapers, he is guilty of "criminal contempt."

39. This takes us to the case of contemner No. 1. Notice was issued to him on 18th of February, 1974. According to Section 20 of the Act of 1971, proceedings for contempt cannot be initiated after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. The first accusation in the case is that on February 3, 1973. the Avadh Bar Association of which the contemner No. 1 is the President, passed a resolution in which it was *inter alia* stated that the Amalgamation Order vests the Chief Justice with power to transfer cases of the territory of Avadh to Allahabad and which power in practical working had been abused and misused. Since this

resolution was passed beyond a period of one year from the date on which we issued notice to contemner No. 1, it is not open to us to take that resolution into consideration against him.

40. The second accusation in the case is that on April 20, 1973, a statement was issued to the press in which, among other things, it was said that the notification (issued by the Chief Justice dated 18th April, 1973) had been issued to befool the lawyers and litigant public of Avadh. It does not, however, appear either from the petition or from the press report published in the Pioneer dated April 20, 1973, that the statement was made by the Avadh Bar Association. The press report has used a general expression "Lawyers of Avadh". From the body of the report it appears that the impugned portion of the statement was made by one Sri Brij Bahadur Saxena, Sri Hargur Charan Srivastava (Contemner No. 2) was examined by us in Court and he stated that "Sri Brij Bahadur Saxena, being Secretary of the Lucknow Bar Association, had also given statement to the press, referred to in paragraph 5 of the petition and published in the issue of the Pioneer dated April 20. 1973". We are told that Lucknow Bar Association is a different body from that of the Avadh Bar Association. The contemner No. 1 in the counter-affidavit has sworn in clear terms that no resolution of the above nature was passed either by the Avadh Bar Association or by the Action Committee. There is no reason to disbelieve that part of the statement contained in the affidavit sworn by contemner No. 1.

41. We accordingly find that contemner No. 1 was not in any manner connected with the statement published in the Pioneer dated April 20, 1973, which forms the basis of accusation No. 2.

42. The third accusation against the contemner No. 1, is that on February 3,1973, the Action Committee of the Avadh Bar under his presidentship passed a resolution in which it was *inter alia* stated that the Chief Justice, in the discharge of administrative power under Clause 14 of the U. P. High Court' Amalgamation Order, 1.948, was acting in a most partisan manner under the influence of Allahabad Bar.

43. The fact that the contemner No. 1 presided over the meeting of the Action Committee which passed the abovementioned resolution is proved by the statement of Sri Hargur Charan recorded by us in Court and it has also not been

controverted by the contemner No. 1. It may be mentioned in this connection that before issuing notice to the contemner No. 1 the purport of the statement of contemner No. 2 was incorporated by us in the order-sheet dated 18th of February, 1974, and we had directed that while issuing notice to contemner No. 1, a copy of that order-sheet together with a copy of the petition may be sent to him. It was, therefore, necessary for the contemner No. 1 to confirm or deny whether he did or did not preside over the meeting of the Action Committee dated 3rd of May, 1973, which passed the impugned resolution. In the first counter-affidavit sworn by him, he referred to the entire history and the background of the controversy. He did not, however, either confirm or deny in that counter-affidavit the allegation that he had presided over the meeting of the Action Committee dated 3rd May, 1973. Later in the day, however, a supplementary counter-affidavit, was filed by him. The last but one sub-para of paragraph 3 of the supplementary counter-affidavit reads as follows :

> "As regards the extract from Northern India Patrika dated May 6, 1973, the deponent submits that he did not read it when it was published. The extract, however, contains portions of the resolution passed by the Action Committee.
>
> " Paragraph 5 of the supplementary counter-affidavit reads as follows :
> "The resolution mentioned in the counter-affidavit of O. P. No. 2 was unanimously passed by the Action Committee in an atmosphere surcharged with keen disappointment prevailing amongst the members of the Bar on account of the failure of Sri S. K. Verma, the then Chief Justice, to carry out the assurances given by him to recall his notification dated 18th April, 1973, by which he had conferred concurrent jurisdiction on the Allahabad Bench over the three Avadh districts of Faizabad, Sultanpur and Partapgarh.
> "It will thus appear that the contemner No. 1, has not disowned the fact that he presided over the meeting of the Action Committee dated May 3, 1973, which passed the impugned resolution.

44. While considering the above resolution vis-a-vis contemner No. 2 we have already reached the conclusion that it amounts to criminal contempt. It is not

necessary to repeat those reasons over again. Since the resolution was passed under the Presidentship of the contemner No. 1. we hold that he is as much guilty of having committed contempt as contemner No. 2 was.

45. So far as the contemner Nos. 3 and 4 are concerned, the former is printer and publisher of the National Herald, Lucknow, and the latter is the printer and publisher of the Pioneer, Lucknow. The resolutions, which form basis of accusations Nos. 1 and 3 mentioned earlier, were published in the issues of National Herald dated February 3, 1973 and May 6, 1973. The statement which forms basis of accusation No. 2 was published in the issue of the Pioneer dated April 20, 1973. Both the contemners, in the counter- affidavits sworn by them, have said that in case this Court feels that the act committed by them in printing and publishing the aforesaid items amounts to contempt of court, they tender their unconditional apology. In view of the fact that they have tendered their unconditional apology, the notices issued to them should be discharged and nothing further needs being said about them.

46. Contemner No. 5 is the printer and publisher of the Northern India Patrika. The accusation against him is that in the issue of the Northern India Patrika dated 6th May, 1973, he printed and published a portion of the resolution passed by the Action Committee of the Avadh Bar on May 3, 1973, which contained disparaging remarks about the Hon'ble the Chief Justice. The impugned portion of the publication reads as follows :
"The Action Committee he said was of the opinion that the Chief Justice was acting in most partisan manner under the influence of the Allahabad Bar."

47. In the counter-affidavit sworn by contemner No. 5 it is stated that the news item published by him was supplied by a news Agency i.e., Press Trust of India and that the same was published in good faith as a public duty and service. It was further said that the contemner No. 5 never had the intention to commit contempt of court, or scandalise or lower the authority of the court or to prejudice or interfere or tend to interfere with the due course of any judicial proceeding, or to interfere or to tend to interfere or obstruct or tend to obstruct the administration of justice in any manner. The contemner has thus tried to justify the publication of the resolution.

48. We have already concluded earlier that the impugned portion of the resolution amounted to criminal contempt. The person who gives publicity to a scandalizing attack on a Judge or Court is as much guilty of criminal contempt as the person who makes the attack. Since the contemner No. 5 gave publicity to the scandalizing attack on the Chief Justice by publishing the resolution dated 3rd May, 1973, he is also guilty of contempt of court.

49. The result, therefore, is that contemners 1, 2 and 5 are guilty of contumacious conduct, the first two having been responsible for the passing of the impugned resolution and contemner No. 5 being responsible for giving publicity to it.

50. The question that now falls for consideration is whether the contemners 1, 2 and 5 should be punished for the contempt of which they have been adjudged guilty. In the case of *Brahma Prakash Sharma v. The State of Uttar Pradesh,* [15] that portion of the resolution passed by the Bar Association which said that the officers were thoroughly incompetent and their work did not inspire confidence was held to be contemptuous. The Supreme Court, however, observed :
"But leaving out cases of *ex facie* contempt, where the question arises as to whether a defamatory statement directed against a Judge is calculated to undermine the confidence of the public in the capacity or integrity of the Judge, or is likely to deflect itself from a strict and unhesitant performance of its duties, all the surrounding facts and circumstances under which the statement was made and the degree of publicity that was given to it would undoubtedly be relevant circumstances" (Underlining is by us). The Supreme Court thereafter held that the contempt committed by the appellant in that case was of a technical nature and did not call for any punishment. In the case of *Sammbhu Nath Jha v. Kedar Prasad Sinha,* [16] The Supreme Court repeated the same principle as follows :
"The court has to take into account the surrounding circumstances and the material facts of the case and on conspectus of them to come to a conclusion whether because of the contumacious conduct or other sufficient reason the person proceeded against should be punished for contempt of court.

"In the case AIR 1974 Supreme Court 710 (supra) the Supreme Court

expressed itself thus :

"When proceedings in contempt are taken for such vilification, the question which the court has to ask is whether the vilification is of the Judge as a Judge or it is the vilification of the Judge as an individual. If the latter, the Judge is left to his private remedies and the Court has no power to commit for contempt. If the former the Court will proceed to exercise the jurisdiction with scrupulous care and in cases which are clear and beyond reasonable doubt. Secondly, the Court will also have to consider the degree of harm caused as affecting administration of justice and if it is slight and beneath notice. Courts will not punish for contempt. This salutary practice is adopted by Section 13 of the Contempt of Courts Act, 1971." (Underlining is by us).

51. Now, in the instant case a controversy was raging since some time about the jurisdiction of the Bench of this Court sitting at Lucknow, and the members of the Avadh Bar were agitating for the extension of that jurisdiction. They believed that the Bench at Lucknow should have exclusive jurisdiction over the district of Faizabad, Sultanpur and Partapgarh. In carrying the belief that there could be no concurrent jurisdiction over the aforesaid districts of Avadh they were also guided by certain observations contained in the decision of this Court in the case (supra) and by the decision of this Court in *Jagannath Wahal v. State Transport Authority* [17] (referred to at page 10 of the counter-affidavit of contemner No. 1). Further, as also pleaded by them, the decision of this Court in the case of AIR 1950 Allahabad 549 (supra) made them believe that anything said about an administrative act of the Chief Justice could not constitute contempt. It was in these surrounding circumstances that the impugned resolution dated May 3, 1973, was passed and given publication.

52. It also deserved some consideration that the resolution dated May 3, 1973, was directed against a single act of the Chief Justice, namely the passing of the notification dated April 18, 1973. It is not shown that the contemners persisted in the same contumacious conduct even after May 3, 1973.

53. Keeping in mind the surrounding circumstances in which the impugned resolution was passed and keeping in mind that it refers to a single act of the Chief Justice, we do not think that the resolution had the potentiality of causing

such a degree of harm as may call for the said contemners being punished. While it is the duty of all to protect the courts against an unwarranted attack, that duty and obligation rests especially upon the members of the Bar. It is a matter of regret that the contemners Nos. 1 and 2, who are prominent members of the Avadh Bar, should have themselves embarked on the path of vilifying the Chief Justice, of this Court. We do not, however, want to be over-sensitive in the matter. Keeping in mind the surrounding circumstances in which the contumacious act was committed by them and also keeping in view the fact that it was a single act of the Chief Justice for which the attack was made, we do not propose to punish contemners Nos. 1 and 2 for the contumacious conduct of which we have adjudged them guilty though we express our strong disapproval of that conduct and hope that the indiscretion will not be repeated.

54. Since we do not propose to punish contemners Nos. 1 and 2, it would not be expedient to punish contemner No. 5 as well though he too has been adjudged guilty. So far as contemners Nos. 3 and 4 are concerned, we have already accepted the apology tendered by them.

55. In the result, therefore, the notices issued to contemners nos. 1 to 5 are discharged.

Notices discharged.

Cases Referred.

1. 1972 All LJ 70
2. AIR 1950 All 549
3. AIR 1974 SC 710
4. (1881) ILR 3 All 342
5. AIR 1928 All 222
6. AIR 1950 Cal 343
7. (1890) ILR 15 Bom 286
8. (1898) ILR 22 Bom 112
9. (1765) 97 ER 94
10. (1971) 1 SCC 626
11. AIR 1969 All 484 (FB)

12. AIR 1962 And Pra 58
13. AIR 1958 Mad Pra 203 (FB)
14. AIR 1943 PC 202
15. AIR 1954 SC 10
16. (1972) 1 SCC 573
17. Special Appeal No 15 of 1972 (All)