Relevance of Leila David v. State of Maharashtra in the Context of Contempt Law

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Contempt Law and Its Origin

The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to, the dignity and authority of the courts have to be respected and protected at all costs. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts, whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute by scandalizing them and obstructing them from discharging their duties without fear or favor.[1] The rules embodied in the Law of Contempt of Court are the means by which the law vindicates the public interest in the due administration of justice.[2] The law does not exist to protect the private rights of parties or litigants though such individuals undoubtedly benefit from the protection that the law of contempt provides.[3] Hence the summary power of punishing for contempt has been given to courts- "to keep a blaze of glory around them, and to deter people from attempting to render them contemptible in the eyes of the public."[4]

The law of contempt is of fundamental contemporary importance though it is of ancient origin- 'contemptuous curial' has been a recognized phrase in English law since the twelfth century.[5] Contempt power first originated in the United Kingdom and has largely been developed at the common law. Superior courts of record have inherent powers of punishing for contempt whether committed inside or outside the court. Inferior courts may be conferred power by statute to punish for contempt committed ex facie.

Broadly speaking, contempt can be by disobedience or by interference, traditionally classified as civil or criminal contempt. The purpose of punishment for contempt in either case is to uphold the effective administration of justice. Situations in which the Courts may have to invoke contempt jurisdiction are myriad. Globalisation of information and newer technology for its publication pose new challenges particularly in the sphere of interference with the course of fair trials. A proper balance must be maintained between the right of freedom of expression and avoidance of extraneous influence upon the court arising from information available through media. There has to be reappraisal of the ways by which trials are protected from prejudice due to publication particularly in view of the great strides being made in the field of information technology.

Definition of Contempt

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[1] *Vinay Chandra Mishra, In re*, (1995) 2SCC 584: AIR 1995 SC 2348; *Arundhati Roy, In re*, (2002) 3 SCC 343; *Anil Ratan Sarkar v. Hirak Ghosh*, (2002) 4 SCC 21.

[2] *A.G. v. Times Newspaper Ltd*., (1974) AC 273 at 315.

[3] Borrie & Lowe: *The Law of Contempt*, Third Edn., p. 1.

[4] Oswald's: *Contempt of Court*, Third Edn., First Indian Reprint 1993, p.9.

[5] Fox: The History of Contempt of Court, (1927), p.1.

In the Contempt of Courts Act, 70 of 1971 the provision in Section 2 defines:

(b). 'Civil Contempt' means willful disobedience to any judgment, decree, direction, order, writ, or other process of a court or willful breach of an undertaking to a court;

(c). 'Criminal Contempt' means the publication (whether by words, spoken or written or by signs or by visible representations or otherwise) of any matter or the doing of any other act, whatsoever which-

(i). 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.

The aforesaid definition may be subject to criticism as a legislative encroachment on the judicial power to demarcate what exactly is contempt of the court in a given set of circumstances.

It is however opposite to refer the oft-quoted Lord Hardwick's three fold classification of contempt[6] which is:

- Scandalizing the Court itself.
- Abusing parties who are concerned in the causes, in the presence of court.
- Prejudicing the public against persons before the cause is heard.

Civil and Criminal Contempt

Civil contempt consists in wilful disobedience to the judgments, orders or other processes of the court. Any wilful disobedience to the order of the court to do or abstain from doing any act, or the breach of any undertaking given to the court, is prima facie a civil contempt. A disobedience to the summons issued from the court is also a civil contempt.

Criminal contempt are criminal in nature. They include outrages on Judges in open court, interference with persons attending court, defiant disobedience to the Judge in court, libels on Judges or courts or their officers, insolence to Judges or comments in court on their decisions, interfering with witnesses or officers of the court, creating disturbance in court, and any publication which offends the dignity of the court or tends to prejudice the course of justice in any pending trial or litigation. While criminal contempt offends the public and consists in conduct that offends the majesty of Law and undermines the dignity of the court, civil contempt consists in failure to obey the court's order issued for the benefit of the opposing party. The principal object in the latter is to secure the enforcement of the order to meet the ends of private justice. Unless disobedience is wilful civil contempt is not invoked.[7] But in the case of criminal contempt, intention, motive or even knowledge is not the criterion though they may be considered for the mitigation of sentence. Some piquant situations occur where the concept of contempt gives room for much thought. Thus the question whether contempt proceeding was civil or criminal in nature came up for consideration in a 1966 Allahabad case.[8] The facts were these:

A member of the Congress organization instituted a suit for declaration that election of certain organisational bodies of Congress was influenced by alleged irregularities. An injunction was granted. Consequent to this the member (plaintiff) was expelled from Congress by the opposite parties who also got the injunction dissolved on the plea that the plaintiff was no more a member of the Congress. The plaintiff moved for contempt action against the opposite parties in that he was removed from Congress during the pendency of the stay order and the suit. It was held that there was contempt of court as the removal of membership was during the stay order in force, which was clear interference

[6] St. James Evening Post case, (1742) 2 Atk 469.

[7] *State v. Dasarathi Jha*, AIR 1951 Pat 443.

[8] *Vijay Pratap Singh v. Ajit Prasad*, AIR 1966 All 305.

with the due administration of justice. Since the contempt lay in hampering the progress of the suit and in obstructing the normal process of law and since the applicant prayed for punishment of the contemners it was held the contempt was clearly of a criminal nature. It was further held that true distinction between a civil and criminal contempt seemed to be that in a civil contempt the purpose is to force the contemner to do something for the benefit of the other party. In criminal contempt the is by way of punishment for a wrong not so much to a party or individual but to the public at large by interfering with the normal process of law or diminishing the majesty of the court.[9] However, if a civil contempt is enforced , say, by fine or imprisonment of the contemnor for non-performance of his obligation imposed by a court, it merges into a criminal contempt and becomes a criminal matter at the end. Such a contempt being neither purely civil nor purely criminal in nature is sometime called sui generis.[10]

Constitutional Validity of Contempt Law

In Noordeen Mohammad v. A.K. Gopalan[11] the Kerela High Court held that the law of contempt of court as understood in India is a valid law. Merely because there is an absence of statutory definition of contempt of court. [12]It cannot be said to be violative of Article 19(1)(a) of the Constitution in view of Article 19 (2) and Article 215. The law of Contempt of Court was an existing law when the Constitution came into force. Article 19 (2) appears to have been expressly designed to save it from attack under Article 19 (1) (a) so long as the restrictions it imposed were reasonable. In the instant case the contemnor made a speech prejudicing the fair trial of a pending case. The court pointed out that a law which prohibits speech with reference to a cause that is pending or is imminent in such a manner as to interfere with the course of justice and which provides for the punishment of such interference after due trial, only imposes a reasonable restriction, reasonable in substance as well as in procedure, on the freedom of speech. The term 'existing law' in relation to contempt should be understood as used in the marginal note of Article 372 rather than in the sense in which it is defined in Article 366 (1) as meaning "enacted law". Article 372 has in the marginal note the words "continuance in force of existing laws and their adaption" In a Full Bench decision[13] imminence of proceedings was held to be there once the machinery of law had been set in motion to bring the wrongdoer to justice. In cognizable offences it is enough if proceedings under Chapter XIV, CrPC, have been commenced by the police.

The power of a court of record to punish for contempt summarily is in a way recognized by the Constitution[14], in as much as, the term "existing law" is retained in Article 19(2) which says that nothing in Article 19(1)(a) shall affect the operation of any existing law or prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of the right (freedom of speech) in Article 19 (1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

The Law of Contempt cannot be said to be violative of Article 14, for, the classification is intelligible, having a rational relation to the object in the matter of contempt.[15] The procedure providing for summary trial is not violative of Article 14. It must be clearly understood that the punishment in the contempt proceedings is awarded summarily not with the object of providing protection to individual

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[9] *Vijay Pratap Singh v. Ajit Prasad,* AIR 1966 All 305.

[10] *Ibid.*

[11] AIR 1968 Ker 301*, relies* on AIR 1953 SC 185; AIR 1954 SC 10; AIR 1954 SC 186; AIR 1950 ALL 556 (FB) and AIR 1954 Pat 203.

[12] This was so only in the 1952 Act. Contempt is, however, defined in the 1971 Act. This does not affect the law as called in *Noordeen Mohammad case*, cited above.

[13] *Sher Singh v. Raghupati*, AIR 1968 Punj 217 (FB).

[14] *Ibid.*

[15] *Ibid.*

Judges but in the interest of administration of Justice so that the public confidence in the impartiality of the Judges is not shaken. It is this object with which the proceedings in contempt of court have been classified as proceedings of a class by themselves with a procedure of their own.[16]

As the High Court has powers of superintendence over all courts and tribunals subordinate to it under Article 227 it follows that it has powers of revision in respect of contempt matters following the orders of those courts and tribunals. This power is intended to keep the subordinate courts and tribunals within the bounds of their authority. The High Court will not interfere unless otherwise grave injustice is caused, and unless it comes to the conclusion that the findings recorded are based on no material or were otherwise perverse.[17]

The history of the High Court's power and jurisdiction in the matter of contempt law has been well set out in Advocate General of Andhra Pradesh v. Ramanarao.[18] It was observed:

"The High Court of Andhra Pradesh having inherited all the powers and authority and jurisdiction of the chartered High Court of Madras, has the authority and jurisdiction to punish summarily contempt of itself or its Judges. The three chartered High Courts of Calcutta, Bombay and Madras, have been exercising the summary jurisdiction to punish for contempt at least from 1867. While this was the position of law the Government of India Act, 1915, was passed and Section 106 thereof continued to all the High Courts then inexistence the same jurisdiction, power and authority as they had at the commencement of the Act. Section 113 of the Government of India Act, 1915, empowered establishment of new High Courts by Letters Patent and conferment of the same jurisdiction as are vested or may be conferred on the High Court existing at the commencement of the Act. The Government of India Act, 1935, similarly continued this power, authority and summary jurisdiction to the various High Courts then existing. By Section 220 (1) it declared that every High Court shall be a court of record and by Section 223 it continued the summary jurisdiction and powers which they had immediately before the commencement of part of this Act.

Under Article 215 of the Constitution it has been declared that 'every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 225 has continued to the High Courts the jurisdiction and powers which they possessed immediately before the commencement of the Constitution'.[19]

In the aforesaid Ramanarao case[20] it was held that:

> The Law of Contempt of Court is not violative of Article 19(1)(a) having been expressly saved by clause (2) of that article which seeks to bring in an adjustment between the individual freedom of speech and expression on the one hand and the need for healthy social over that freedom on the other. The very fact that the contempt jurisdiction is vested in the High Court is sufficient to hold that the restriction is reasonable. Knowledge of the High Court's manner and the restraint in the exercise of the power have prompted the Constitution makers to continue such power under Article 225 of the Constitution. The position is as if the power and practice which the courts have been exercising following prior to 1952 got incorporated into the Contempt of Courts Act, 1952.[21]

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[16] *Ibid.*

[17] *Chandan Bhan v. Chattar Singh*, AIR 1968 Delhi 229.

[18] AIR 1967 AP 299.

[19] *Ibid*, refers to (1867) Suth WR Cr 32, 33: (1883) 10 IA 171, 179 (PC) ; (1907) ILR 29 All 96 (PC): AIR 1926 All 623 (SB); AIR 1926 Lah 1 (FB); AIR 1929 Pat 72 (FB); AIR 1954 SC 186; AIR 1942 Lah 105; AIR 1945 PC 134, 136.

[20] *Ibid.*

[21] *Ibid*, follows AIR 1959 Bom 182; AIR 1960 Pat 430 (FB); AIR 1953 All 342; AIR 1955 Ori 36. It may be stated that the position is the same even after the 1971 Act.

Neither the exercise of summary jurisdiction by the High Court in matters of contempt nor the fact that evidence of the parties is not recorded by the court nor that evidence by way of justification of the contempt of court is not allowed to be led, makes the law as it exists today an unreasonable restriction on the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. The object of the Law of Contempt of Court and contempt proceedings being that the confidence of the public in the courts of law is not shaken and to see that the due course of administration of justice is not obstructed by seeking to prove the truth of the publication which is plainly calculated to impair the confidence of the public in the courts and in the administration of justice, the objects instead of being advanced get frustrated. Therefore it is that justification by truth is not a defence in contempt proceedings. [22]

The Law of Contempt of Court cannot be deemed to violate the freedom guaranteed in Article 19(1)(g) in practicing one's profession, e.g., the journalist. He can do so without committing contempt of court which certainly is no part of his profession.

Does not the Law of Contempt of Court violate Article 21 in that it is not a law having no procedure established by law? The summary jurisdiction and the powers of the High Courts to punish contempt of themselves have been successively preserved by the Government of India Act, 1915 (Section 2), which was replaced by the Government of India Act, 1935 (Section 3), and Article 215 of the Constitution of India. Further clause 38 of the Letters Patent of the Madras High Court which applies to the High Court of Andhra Pradesh also regulates the proceedings by the procedure and practice which was in force prior to the commencement of the Constitution and not merely to it as a statute law.[23]

In S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow v. Vinay Chandra Misra[24] it was held that both Articles 129 and 215 preserve all the powers of the Supreme Court and High Court respectively as a court of Record which include the power to punish contempt of itself. There is no curb on this power except that this be subject to the constitutional provisions in Articles 129 and 215. The entries 77 and 14 in List I and List III respectively in the seventh schedule give the power to define and limits the powers of the courts in punishing contempt of court and its procedure.

The court's inherent power to act suo motu is drawn from the aforesaid Articles 129 and 215. Consent of the Advocate General or consultation with him by the court of record is not contemplated.[25]

In Subodh Gopal Bose v. State of Bihar[26], it was held that even the State is subject to the jurisdiction of the court in the matter of injunction and its officers are guilty of contempt in case of disobedience and violation of the order of injunction, so long as it exists. It would not affect the liability of the State even if it had acted on a wrong legal advice. That fact may be considered while determining the question of punishment which is to be meted out. Where an apology is offered the question of whether the apology is genuine has to be considered on the circumstances of each particular case. In the instant case the apology of the State was accepted as genuine and unqualified in so far as it had taken steps to correct its action. The State was ordered to cancel the leave granted by it in violation of the orders of the High Court.

There cannot be any State law in contravention of the Contempt Of Courts Act, 1952, a Central Statute. The 1971 Act also has the same precedence over any State Acts. This in Nitin Chakrabarti v. V.S.C. Banerjee[27] , the provision in Section 7 of the Bengal Board of Revenue Act 2 of 1913,28 was

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[22] AIR 1942 Lah 105

[23] *Ibid*., *follows* AIR 1959 Bom 182; AIR 1960 Pat 430 (FB) and AIR 1954 SC 186, *refers to* SIR 1960 SC 1335 and AIR 1965 SC 1061.

[24] (1918) 1 SCC 436: 1981 SCC (Cri) 175: 1981 Cri LJ 283. See also 1981 Cri LJ 843 (Karnt).

[25] *Ibid.*

[26] AIR 1969 Pat 72 *relies on* AIR 1937 Cal 601; *refers to* AIR 1961 Pat 1; AIR 1940 Pat 407, *distinguishes* AIR 1961 SC 221.

[27] AIR 1970 Cal 477.

held repugnant to the Contempt of Courts Act, 1952 and was also found to be hit by Article 254 of the Constitution.

Section 7 aforesaid reads:

> "The Board of Revenue for West Bengal shall have the same powers of dealing with Contempt of the Board or in respect of any proceeding before the Board as if the Board were a High Court referred to in Article 214 of the Constitution of India."

Analysis of the Leila David Case

Introduction

The case of Leila David v. State of Maharashtra[29] is one of much importance in determining the offence of contempt of Court in the face of the Supreme Court. Numerous instances have taken place since the Narmada Bachao Andolan (Dharna incident)[30] , where the Supreme Court has been treated vehemently by the petitioners. In Jurisprudence, Austinian theory of sovereignty speaks about the indivisible power of the sovereign. It is distinguished by two characteristics, one positive and the other negative. The positive characteristic is that the bulk of a given society must render habitual obedience to a common superior who must be a human being i.e. a person or a body of persons. The negative characteristic is that the common superior must not be in the habit of rendering obedience to another determinate human superior. Relating the same theory with the Indian judiciary, it can be said that Supreme Court is the paramount authority of law, hence accounts as sovereign. The Indian Judiciary is independent of the executive and legislative branches of government according to the Constitution (Part V, Chapter IV). According to the Constitution, the role of the Supreme Court is that of a federal court, guardian of the Constitution and the highest court of appeal. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. Primarily, it is an appellate court which takes up appeals against judgments of the High Court of the States and territories. However, it also takes writ petitions in cases of serious human rights violations or any petition filed under Article 32 which is the right to constitutional remedies or if a case involves a serious issue that needs immediate resolution. Therefore, disrespecting such a "body of law" not only gives out the message of lawlessness but also demeans the object of having a court of law.

In Dharna case, with regard to dharna the court held[31] to protest a decision of a court may not per se amount to contempt, we must not be understood as approving the holding of a 'dharna' before the Court. On the other hand it is deprecated and must be discouraged otherwise every disgruntled litigant could adopt this method of ventilating his grievance. It is, in any case, an inappropriate form of protest since the object of holding a dharna is either to raise public opinion or to exhibit the extent of public opinion against a decision of the court. Neither of these objects weigh with courts when deciding a case. Judges are required to decide what they think is right according to the law applicable and on the material placed before them and not be swayed by public opinion on any particular issue.

The Supreme Court has reiterated the same view in the present case where issues involved are ex facie curiae and summary procedures. The dissenting views of Justice Passayat and Ganguly has been discussed thoroughly in Chapter 4 of the thesis.

Contempt of Court is a serious challenge to the grandeur of law. Sometimes it is committed negligently, i.e., the contemnor has no knowledge as to the meaning of the contempt. The Contempt of Courts Act, 1971 defines it as a civil contempt or criminal contempt. The definition of 'contempt of court' is not exhaustive. It is an act or omission which interferes or tends to interfere with the administration of justice, provided that if the interference with the administration of justice is in the

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[28] As amended by Bengal Board of Revenue (Amendment) Act, 1953 and the Adaption of Laws Order, 1950.

[29] (2009) 4 SCC 578.

[30] *J.R. Parashar v. Prashant Bhushan*, (2001) 1 SC 80.

[31] *J.R. Parashar v. Prashant Bhushan*, (2001) 1 SC 80.

form of disobedience to the order of the court or breach of undertaking given to the court, it will amount to contempt of court only when the obedience or breach is wilful. Under the Contempt of Courts Act, 1971 contempt have been categorized into two categories- civil contempt and criminal contempt.

Civil contempt has been defined as wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt of Court means the publication of any matter or doing of any other act which has resulted or likely to result in any one of the following consequences:-

- Scandalizes or tends to scandalize or lowers or tends to lower the authority of, any court;
- Prejudices or interferes or tends to interfere with, the due course of any judicial proceedings; or
- Interferes or tends to interfere with or obstruct or tends to obstruct the administration of justice in any other manner, e.g., interference with the court's officers including the advocate discharging the professional function, interference with the parties, interference with professional function, interference with the parties, interference with the witnesses, abuse of the process if Court, etc.

The contempt jurisdiction of the subordinate court is based on the statutory provisions and therefore their contempt jurisdiction may be controlled or regulated by the statutory provisions, but the contempt jurisdiction of the Supreme Court and High Court is based on the provisions of the Constitution[32] and therefore, it cannot be taken away or made ineffective by any statute. The contempt jurisdiction is available to the Supreme Court and High Court because of because of being Court of Record. Article 129 of the Constitution declares the Supreme Court as the Court of Record and Article 215[33] declares the High Court as the Court of Record. It is now well settled that the Supreme Court and the High Court as the Court of Record. It is now settled that the Supreme Court and the High Court have inherent power not to punish only of their own contempt but also contempt of their subordinate courts.

Facts of the Case

The petitioner along with three others had filed writ of mandamus against twelve judges of Bombay High Court asking for directions to initiate criminal proceedings and strongest punishment.

The matter was heard in front of a divisional bench(Justice Arijit Pasayat and Justice A.K. Ganguly) in March, during the proceedings one of the petitioners threw a chappal at the Judges and started using abusive language thereby condescending the court and, was held for contempt in the face of supreme court.

The petitioners were asked to withdraw the allegations, but they refused to do so and submitted that they stand by these averments and strongly urged that this Court should issue process to arrest the twelve Judges of Bombay High Court.

Despite being repeatedly told to mind her language and aggressive behavior, one of the petitioners(Ms. Annette Kotian) continued her tirade and asserted that she would continue to use such indecorous, indecent, slanderous, and offensive language as it was her fundamental right to protect herself under Article 21 of the Constitution. She also asserted that she was exercising her fundamental right to free speech, guaranteed under Article 19 of the Constitution.

The contempt proceedings were heard the same day where Justice Pasayat sentenced the contemnors for simple imprisonment of three months, but Justice A.K. Ganguly dissented.

The matter was then placed before the Chief Justice, who constituted a three judge bench to hear the matter.

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[32] Constitution of India, Articles 129 and 215.

[33] *Ibid*, Article 215.

Legal Issues Involved

Whether the petitioners committed the offence of contempt of court in the face of the Supreme Court. What amounts to contempt of court? Whether summary jurisdiction is maintainable?

Whether Freedom of Speech provided in Article 19 of the constitution is an absolute right and, application of right to protect oneself envisaged in Article 21?

Whether procedural flaws in the petition and the language used, scanting the court and the offices of the President, the Prime Minister and the Attorney General to be considered as a ground for contempt or not, under the Contempt of Courts Act, 1971?

Law Laid Down

Issue no. 1

Contemptuous act ex facie curiae

In the instant case, the court held that, the act of throwing of chappal at the Judges was held as contempt[34] of court as it is demeaning the paramount authority of law.

In India the definition of contempt of court is found in clause (c) of section 2 of the Contempt Of Courts Act, 1971. It provides that "Criminal Contempt" means the publication whether by words, spoken or written or by signs, or by visible representations, or otherwise of any matter of the doing of any act whatsoever which-

- Scandalizes or tends to scandalize or lower or tends to lower the authority of any Court; or
- Prejudices or interferes or tends to interfere with the due course of any judicial proceeding; or
- Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

Thus, the criminal contempt means publication or doing of any other act which scandalizes or tends to scandalize or lower or tends to lower the authority of any court, or prejudices or interferes or tends to interfere with the due course of any judicial proceedings or interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

The definition of criminal contempt is wide enough to include any act of a person which would tend to interfere with the administration of justice or which would lower the authority of the Court.[35] The scope of Criminal Contempt has been made very wise so as to empower the Court to preserve the majesty of law ingredients of the criminal contempt it is better to deal with certain issues which are relevant in respect of all the ingredients.

In Arunadhati Roy,[36] the Supreme Court has held that the defence that allegations contained in reply filed to contempt notice cannot be contempt in view of section 299 of Indian Penal Code is not tenable. The law of defamation under the Penal Code cannot be equated with the law of contempt of Court.

The likelihood of scandalization or interference, etc. – To constitute the criminal contempt it is not necessary that the publication or other act should have actually resulted in scandalizing or lowering the authority of the Court or interference with the due course of judicial proceeding or administration of justice. The essence of the offence is that the acts complained of are likely to result in scandalizing

[34] Section 2(c), Contempt Of Courts Act, 1971.

[35] *Delhi Judicial Services Association v. State of Gujarat & Others*, (1991) 4 SCC 406, at p. 456.

[36] AIR 2002 SC 1375.

or lowering the authority of the court or interferes with due course of judicial proceeding or administration of justice.[37] The essence of the offence is that the acts complained of are likely to result in scandalizing or lowering the authority of the court or interferes with due course of judicial proceeding or administration of justice.[38] The law of contempt is deterrent in nature and it is concerned, essentially, with the prevention of scandalization or prejudice or interference with due course of judicial proceeding or administration of justice rather than merely applying sanctions to comments or acts which have scandalized or lowered the authority of the Court or prejudiced or interfered with the due course of judicial proceeding or administration of justice. Thus, the offence of contempt is complete by mere attempt and does not depend on actual deflection of justice.[39]

Relevancy of Intention. – The strict liability rule is applied in the case of Criminal Contempt.[40] The intention to interfere with the administration of justice is not necessary to constitute the criminal contempt.[41] The essence of the offence of contempt lies in the tendency to interfere with the due course of justice and motive, good faith, etc. of the alleged contemnor are immaterial.[42] It is enough if the action complained of is inherently likely so to interfere.[43] Mens rea, in the sense of intending to lower the repute of a Judge or Court, is not an essential ingredient of the criminal contempt.[44] What is material is the effect of the offending act and not the act per se.[45] In re P.C. Sen[46] the Supreme Court has observed that the question is not so much of the intention of the contemnor as whether it is calculated to interfere with the administration of justice, what is intentionally published includes matter which tends to interfere with due administration of justice, then contempt is made out.[47] Where intention is referred to in dealing with this class of contempt, it is the intention lying behind the act intentionally done i.e., publication.[48] The intention of the contemnor, thus, not essential ingredient of the criminal contempt, but certainly knowledge of the publication or act complained of is necessary to constitute criminal contempt, e.g., it is necessary that the contemnor has knowledge that his publication contains the matter complained of.[49] The concept ' knowledge' may be distinguished from the concept ' intention'. 'Knowledge' signifies a state of mental realization with the bare state of conscious awareness of certain facts in which the human mind remains supine or inactive, while 'intention' is taken to mean a conscious state in which mental faculties are roused into action for the purpose of achieving a conceived end and, thus, in the case of 'intention' the mental faculties are projected in a set direction.[50] To constitute criminal contempt the knowledge that the act complained of will produce a contumacious act, he may be held liable for the criminal contempt and his intention

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[37] *Hira Lal Dixit v. State of U.P*., AIR 1954 SC 743.

[38] *Hira Lal Dixit v. State of U.P*., AIR 1954 SC 743.

[39] *In the matter* of a letter concerning Suit No. 1947 of 1952, AIR 1959 Cal 174.

[40] *In re* P.C. Sen, AIR 1970 SC 1821; *Reliance Petrochemical Ltd. V. Proprietors of Indian Express Newspapers Bombay Ltd.*, AIR 1989 SC 190.

[41] *A.G. v. Butterworth*, (1963) 1 QB 696.

[42] Ishar, I.S., Freedom of Speech and Contempt by interfering with the due date administration of justice, Journal of Bar Council of India, 1981, Vol. VIII (2) at p.330.

[43] *A.G. v. Butterworth*, (!963) 1 QB 696 at p.726.

[44] *In re* P.C. Sen, AIR 1970 SC 1821; In re *D.C. Saxena and Dr. D.C. Saxena v. Hon'ble, the Civil Justice of India*, AIR 1996 SC 2481.

[45] *In re D.C. Saxena and Dr. D.C. Saxena v. Hon'ble The Chief Justice of India, Ibid*., at p. 2496.

[46] AIR 1970 SC 1821.

[47] *Supreme Court Equity Division v. McPherson*, (1980) 1 NSLR 688 at p. 696.

[48] *Supreme Court Equity Division v. McPherson*, (1980) 1 NSLR 688 at p. 696.

[49] McLeod v. St. Aubyn, (1899) AC 549.

[50] *Jai Prakash v. State*, 1991 (2) SCC 32.

will not be relevant for this purpose. For determining the knowledge it is to be seen whether objectively the effect of the publication or act would result in scandalizing the Court or interfere with the administration of justice.[51]

In Rex v. Dolan,[52] Palles C.B., has observed that actual intention to prejudice is immaterial. However, it is taken into consideration in considering the nature of punishment to be awarded, as, for instance whether it should be imprisonment.

The observation of Palles[53] appears to be the present position of law on this issue not only in England but also in India. The Supreme Court of India[54] has made it clear that mens rea is not a defence but it is a mitigating circumstances in considering the question of punishment. There is a view that no one should be found guilty of contempt in respect of any kind of publication, unless it is shown that they had intent to commit contempt or did jurisdiction. The Court has been conferred on the contempt jurisdiction to punish the contemnor quickly and this object cannot be achieved, if the provision is made that the contemnor cannot be punished, unless it is proved that he had intent to commit contempt or did not act on good faith. However, innocent publication or innocent distribution of publication is not taken as contempt. It is for the person charged to prove that the publication or the distribution of the publication was innocent.

(ii). Summary jurisdiction

In the instant case, the three judges bench of the Supreme Court concluded:

> "As far as the suo motu proceedings for contempt are concerned, we are of the view that Arijit Pasayat.J, was well within his jurisdiction in passing a summary order, having regard to the provisions of Articles 129 and 142 of Constitution of India. While, as pointed out by Ganguly.J, it is a statutory requirement and a salutary principle that a person should not be condemned unheard, particularly in a case relating to showing cause against the action proposed to be taken against him/her, there are exceptional circumstances in which such a procedure may be discarded as being redundant."

The summary procedure has very ancient origin.[55] The instances of the exercise of the contempt power following the summary procedure are found even in the 13th century.[56] Thus, the common law courts did have powers to deal summarily with contempt committed in their presence.[57] However, in the early days a distinction was made between the acts in and out of the presence of the Judges. The summary procedure was adopted in case of the contempts committed in the presence of the Court and not in case of the contempts committed outside the Court except the contempt by the officers of the Court.[58]

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[51] *In re Subramanayam*, AIR 1943 Lah 329.

[52] (1907) 2 LR 260.

[53] *Ibid*.

[54] *In re P.C. Sen*, AIR 1970 SC 1821; *Delhi Development Authority v. Skipper Construction*, 1995 Cr LJ 2107; *In re Dr. D.C. Saxena and Dr. D.C. Saxena v. Hon'ble the Chief Justice of India*, AIR 1996 SC 2481

[55] *R. v. Almon, Wilmot's Notes*, 243.

[56] Fox, History of Contempt of Court, (1927) p.50.

[57] Fox, History of Contempt of Court, (1927) p.50.

[58] *Ibid*, 156-163. See also J.Fox, "The writ of attachment", (1924) 40 LQR 43 at p. 59.

In India also the Courts of record can deal summarily with all types of contempt.[59] It appears that there s uniformity in the judicial opinion that the power to punish summarily for contempt is not a creature of statute but inherent incident of every Court of Record, i.e., it is a power available to every Court of record because of being a Court of Record. The High Courts[60] and the Federal Courts[61] were recognized as Courts of Record even under the Government of India Act, 1935. The existing Constitution of India contains specific provision for recognizing the High Courts and the Supreme Court as Court of Record. Article 215 declares that every High Court shall be a Court of Record and shall have all the powers of such a Court including the power to punish for contempt of itself. Similarly, Article 129 provides that the Supreme Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Since the High Court and the Supreme Court are the Courts of Record, they have inherent power to punish for contempt summarily.[62]

The summary procedure is justified on the ground that quick mode of determining punishment for the contempt is necessary for inspiring confidence in the public as to the institution of justice. The confidence of the people in the judicial administration is necessary for the maintenance of law and order in the society.

In case of Vinay Chandra Mishra[63], the Supreme Court has observed that the threat of immediate punishment is the most effective deterrent against misconduct. The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyzed the Court for a time.

In case of Vinay Chandra Mishra[64] the Court has made it clear that the fact that the process is summary does not mean that the procedural requirement, viz., that an opportunity of meeting the charge, is denied to the contemnor. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegation is made clear or otherwise the contemnor is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation.[65] The consensus of opinion among the judiciary and the alike is that despite the objection that the Judge deals with the contempt himself and the contemnor has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot, but it is the only realistic way of dealing with certain offenders.[66] This procedure does not offend against the principle of natural justice, Nemo judex in sua causa, since the prosecution is not aimed at protection the Judge personally, but protecting the administration of justice.[67]

In the case of summary procedure also the alleged contemnor is informed the charge against him and given reasonable opportunity of hearing in his defence.

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[59] *In re* Abdul Hasan Jauhar, AIR 1926 All 623; *In the matter of* Muslim Outlook, Lahore AIR 1927 Lah 610; *Emperor v. Murli Manohar Prasad*, AIR 1929 Pat 72; *Pritam Pal Singh v. High Court of M.P.*, AIR 1992 SC 904: 1992 Cr LJ 1269 (SC); Delhi *Judicial Services Association v. State of Gujarat*, AIR 1991 SC 2183; *In re* Vinay Chandra Mishra, AIR 1995 SC 2348.

[60] The Government of India Act, 1935, S. 220.

[61] *Ibid*, S. 203.

[62] *Sukhdev Singh v. Hon'ble Chief Justice Teja Singh*, AIR 1954 SC 186; *Delhi Judicial Services Association Tis Hazari v. State of Gujarat*, AIR 1991 SC 2183; Pritam *Pal Singh v. High Court of M.P.*, AIR 1992 SC 904: 1992 Cr LJ 1269 (SC); *In re Vinay Chandra Mishra*, AIR 1995 SC 2348.

[63] AIR 1995 SC 2348, at p. 2361.

[64] AIR 1995 SC 2348, at p. 2361.

[65] *In re* Vinay Chandra Mishra, AIR 1995 SC 2348.

[66] AIR 1995 S.C. 2348, at p. 2361.

[67] *Ibid*.

In Arun Paswan v. State of Bihar,[68] the Court has held that a party which fails to avail of the opportunity to cross-examine the concerned persons at the appropriate stage is precluded from taking the plea of non-observance of principles of natural justice at a later stage.

It is well established that the procedure prescribed under Cr. P.C. or Evidence Act is not attracted to the proceedings initiated under Section 15 the Contempt of Courts Act. The High Court can deal such matters summarily and adopt its own procedure. The only caution that has to be observed by the Court in exercising this inherent power of summary procedure is that the procedure followed must be fair and contemnors are made aware of the charges leveled against them and given a fair and reasonable opportunity.[69]

In the case of Vinay Chandra Mishra,[70] the Supreme Court has made it clear that the criminal contempt no doubt amounts to an offence but it is an offence sui generis and hence for such offence, the procedure adopted both under the common law and the statute law in the country has always been summary.

Issue No. 2

The petitioner Ms. Annette Kotian, when pin-pointed by the Court about her mannerisms suggested that she was exercising her right to free speech and expression guaranteed under Article 19(1)(a). The opinion in M.S.M. Sharma v. Shri Krishna Sinha[71] makes it clear that the guarantee of freedom of speech in Article 19 is only to the citizens. The liberty of the press is implicit in the freedom of speech and expression which is conferred on a citizen. A non-citizen running a newspaper is not entitled to invoke this freedom. The restrictions on this freedom as set out in Article 19(2) include the liability of the citizen to the existing law of contempt and any other reasonable restrictions of the freedom in future laws in the interest of contempt of court. Prior to the Constitution of India, there was no constitutional or statutory enunciation of the freedom of speech of the subjects or the liberty of the press.

The fundamental rights of freedom of speech and expression are subject to the limitation on the scope of reporting of a judicial proceeding envisaged by Section 4 (of 1971 Act) which constitutes a reasonable restriction.[72]

Issue No. 3

The court held that:

> "The very form of the writ petition, the language used and the prayers made therein, besides being highly objectionable, offensive and scandalous, also amounts to abuse of the process of court. This kind of writ petition, purportedly made in furtherance of the fundamental right of freedom of speech, as guaranteed under Article 19 of the Constitution, is nothing but an attempt to denigrate and vilify not only the judiciary and the legal system, but also other constitutional authorities of this country."

Conclusion

The case of Leila David v. State of Maharashtra clearly emphasizes on the aspect of holding a person guilty of contempt when his/her actions prove to be scandalous thereby undermining the Apex Court. While dismissing the writ petition the three Judge benches held that "having regard to the intemperate

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[68] AIR 2004 S.C. 721.

[69] See *In Re* Vinay Chandra Mishra, AIR 1995 SC 2348; *Daroga Singh v. B.K. Pandey*, AIR 2004 SC 2579.

[70] *Ibid.*

[71] AIR 1959 SC 395.

[72] *See* observations in *Leo Roy Frey v. R.Prasad*, AIR 1958 Punj 377; *E.T. Sen v. E. Narayanan*, AIR 1969 Del 201 (FB): 1969 Cri LJ 884 (Del) (FB).

and obnoxious language used in writ petition showing scant regard to the Court we have no option but to issue yet another rule of contempt against the three writ petitioners."

Keeping in view the austerity of this case, the Judges also held that Justice Pasayat's decision to take suo-motu cognizance and hold summary trial was completely justified and well within his jurisdiction as the contemnors were given a chance to apologize which they arrogantly refused and stubbornly stuck to their ill-behavior. The use of slanderous language by the petitioner was grave misconduct and must be condemned

However, in my opinion section 14 being a statutory rule must not be over looked. Adherence to this procedure will lay a foundation of trust in the judiciary. Otherwise the power of suo-motu cognizance will be misused. This is the reason why the judgment in this case must be open to interpretation and reconsideration.

Till such time, however, one must garner comfort from the wise words of Justice Felix Frankfurter:

"The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise."[73]

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[73] *Pennekamp v. Florida, 328 US 331, 336 (1946).*