FULL BENCH

Before S. S. Sandhawalia, P. C. Jain, M. R. Sharma,

R. N. Mittal and Surinder Singh, JJ.

COURT ON ITS OWN MOTION—*Petitioner*

versus

BANSI LAL, M.P. AND ANOTHER—*Respondents*

Criminal Original No. 12—CRL. of 1977

March 20, 1978.

Contempt of Courts Act (LXX of 1971)—Sections 6, 10, 12, 13 and 23—Contempt of Courts (Punjab and Haryana) Rules, 1974—Rules 5(2) and 15(3)—Advocates Act (XXV of 1961)—Section 49(c)—Kinds of Contempt—Duty of Courts in respect thereof—Degree of proof required for conviction in contempt proceedings—Objects of Contempt Law—Justification or plea of truth—Whether can be raised as a defence in contempt charge—Subordinate Courts and Courts of Record—Whether stand on same footing in contempt matters—Conduct and action of third parties—Whether can be evaluated in contempt proceedings—Orders passed in judicial proceedings—Whether can be adversely commented upon in contempt proceedings—State of mind of the contemner—When relevant for determining punishment—Conditional apology—Whether should be accepted—Conviction in contempt proceedings—Objects of—Contempt by a lawyer in discharge of professional duties—Whether a mitigating circumstance.

Held (per majority, M. R. Sharma J.) that generally speaking the opportunity to exercise jurisdiction to punish for contempt arises in cases of three types. Firstly, when a citizen seeks redress against the wrong done by the executive. In that case it is the bounden duty of the Court of Record to come to the aid on the citizen. Secondly, in civil disputes injunctions sometimes are disobeyed. In such cases, the Court is under an obligation to not only punish the wrong doer but also to undo the wrong done to the citizen by ordering restitution etc. Thirdly, the occasion to exercise jurisdiction arises when there is an attack on the administration of justice made indirectly by using insulting language against the Presiding Officer of a Court. There is a greater duty to act with circumspection in this category of cases because the court in a way acts as a Judge in its own cause. It is desirable that the Court, in proceedings for punishing either for its own contempt or for the contempt of Subordinate Judicial Officers, should pay added regard to the oft repeated principles that justice should not only be done but also

appear to be done; that an accused person is under no obligation to prove his innocence beyond reasonable doubt and that he can rest content by bringing on record some circumstances from which an inference of his innocence can be drawn.

(Paras 116 and 118)

Held (per S. S. Sandhawalia and P. C. Jain JJ. contra) that the principle and purpose underlying the Contempt Law is to endeavour to maintain and uphold the confidence of the public in the Courts of justice. It is the pernicious tendency of contempt to poison the fountain of justice and to create distrust and destroy the confidence of the public in the Courts which is sought to be stemmed by the law of contempt. The primary principle underlying the same, therefore, is to uphold the majesty and dignity of law Courts and their image in the minds of the public. The law of contempt is not for the sake of Judges as individuals or to vindicate their honour as private persons but basically because they are the medium through which justice is conveyed to the people. It is a fundamental fallacy to conceive an action of contempt as if it was a *lis* betwixt the Presiding Officer of a court on the one hand and the contemner on the other.

(Para 55)

Held (per majority M. R. Sharma J.) that section 6 of the Act carves out an exception to the general rule that nobody should be able to use derogatory language against the Presiding Officer of a Court. Anybody who claims the benefit of an exception has to bring his case strictly within the four corners of the statutory provisions. This section only allows a person to make some allegations against a Court in a *bona fide* manner when an enquiry is taken up by a higher court. If the Legislature had intended to allow justification being offered for an act constituting criminal contempt, it would have made a provision in this behalf in clear terms. By and large it is not open to a person to offer justification for criminal contempt. At the same time, every attempt at justification cannot be regarded as contumacious. The spirit of section 6 allows a contemner to bring on record the mitigating circumstances when an enquiry against him is being held by the High Court.

(Para 125)

Held (per majority R. N. Mittal J.) that it is not open to a person to offer justification for criminal contempt both as regards superior and subordinate courts. However, in case the contemner wants to bring some mitigating circumstances to the notice of the Court so that his apology may be accepted or he may be treated leniently, he can do so.

(Para 154)

Held (per majority Surinder Singh J.) that the law as it stands now confers upon a delinquent facing a charge of Contempt of Court to make a reference to any facts or circumstances which would tend to explain as to how he behaved in a particular manner during the alleged incidents. He is not permitted to utilise this opportunity for purposes of justification but for the limited purpose of mitigation.

(Para 168)

Held (per S. S. Sandhawalia and P. C. Jain JJ. contra) that the law of criminal contempt is concerned with the protection and the maintenance of public confidence in the Courts of law and it is primarily for this reason that the law of criminal contempt forbids the plea of justification. It is manifest that once such a plea is allowed to be raised then far from building up and maintaining the public confidence in the impartiality and integrity of the courts of law it would enable litigants to rake up controversies and throw mud which in the ultimate analysis would erode the same confidence and trust in the courts of law which is sought to be protected by criminal contempt. It is for this reason that criminal contempt is on a signicantly distinct footing from the ordinary law of criminal defamation. However, once a plea of justification is to be allowed, it at once brings down the Presiding Officer of a Court to the level of a complainant in a prosecution for defamation. One shudders even to think of the consequences which must inevitably ensue if in cases of contempt of subordinate courts, the contemner is first allowed to lead evidence in order to establish the truth or justification for the scandalous or defamatory allegations made by him. Such a course far from bringing the contemner to trial instead puts the Presiding Officer himself virtually in the dock. Such a principle once allowed can plainly submerge the very fabric of some meagre protection afforded to the subordinate courts under the law of contempts and expose their Presiding Officer to insufferable burden of the whimsical revengefulness of disgruntled or fractious litigants to defame them. It cannot be said that by and large it is not open to a person to offer justification for criminal contempt. How is this 'by and large' to be determined in actual practice except by leading evidence in an attempt at justification ? Once it is so, the mischief is done and the fundamental principle of non-justification of contempt is naturally eroded. It must, therefore, inevitably be concluded that any plea of justification or truth on a charge of contempt of court is totally impermissible and indeed would amount to a fresh contempt by itself.

(Paras 55, 61, 63 and 67)

Held (per Full Bench) that there is neither any principle nor precedent for creating an invidious distinction betwixt the Courts of Record and the Courts subordinate thereto so far as the right of the contemner to raise a plea of justification is concerned. The hallowed

rule of non-justification of contempt is based on a sound and salutary judicial principle and there is no rationale by which the subordinate courts are to be excluded from the ambit of this rule. Indeed the drawing of such a distinction tends to strike at the root of the fundamental concept that justice according to law channelled through the courts of law is an integrated and indivisible entity. It is unwarranted to fracture it into two. Again the necessity and the protection of the law of contempt of Court is needed more with regard to the courts which have to dispense justice at the grass roots. The superior courts of record by their very nature and the aura of respect that surrounds them in actual practice rarely need resort to the law of contempt and it is indeed the Subordinate Courts which times out of number are exposed to the venom of fractious, disgruntled and unprincipled litigants for their ulterior ends. By allowing the plea of truth or justification to be raised to a charge of contempt with regard to these courts and permitting evidence to prove the same would rob the law of contempt of its primary content where it is most needed. The plain language of section 10 of the Act does not admit of any other construction except this that the law, procedure and practice in respect of the contempt of Court are identical both for the High Court itself as also for the Courts subordinate thereto.

(Paras 56 to 60)

Held (per majority M. R. Sharma, R. N. Mittal and Surinder Singh, JJ. S. S. Sandhawalia and P. C. Jain JJ; contra) that a case may arise in which considering the point of view put forth by the contemner the action of a third party may have to be looked into. If that party is impleaded, the proceedings would undoubtedly get lengthy. At the same time if the court disallows the contemner to lead evidence of his choice, the course adopted might result in grave miscarriage of justice. To obviate the aforesaid two contingencies, it looks proper that the contemner be allowed to have his full say and the observations made against third parties would be confined to the decision of the contempt proceedings only.

(Para 126)

Held (per S. S. Sandhawalia and P. C. Jain, JJ. contra) that the Contempt of Courts (Punjab and Haryana) Rules 1974 have been framed governing the procedure generally as also for the trial of criminal contempt. The hallowed rule of judicial procedure is that no person who is not a party or has not been impleaded in a proceeding can be adjudicated upon behind his back. Both the rules of natural justice and of justice according to law seem to be one on the point that no person or party is to be condemned unheard. The system of jurisprudence which we administer has always prided itself on the fact that there cannot be any criminal trial *in absentia*. There is no rule or principle which would authorise a court to consider and pronounce on the conduct of third parties without giving them the

least opportunity of being heard and then to hold that the findings arrived at are confined to the particular case. The rules also do not either expressly or impliedly warrant even remotely the adoption of such a procedure. It is scant satisfaction to any such person or party to say that the adverse and condemnatory findings with regard to its conduct by the Full Bench of the High Court are binding only for the purposes of that case.

(Para 71)

Held (per S. S. Sandhawalia and P. C. Jain, JJ. contra) that the orders passed in the exercise of judicial discretion by a judicial officer against which no appeal or revision is taken up by the parties achieve finality in their own way. It is not open to the court of law in collateral judicial proceedings to adversely comment on an earlier judicial order or proceeding which is not before it in appeal or revision. The courts of law have the jurisdiction to decide rightly or wrongly and in proceedings the court is not warranted to sit on judgment as to the correctness, the form and contents of an earlier judicial order and as to what it should or should not have contained. No aspersion whatsoever on an order in a judicial proceeding or its author can and need be cast when the same is not before the court in appeal, revision or other supervisory jurisdiction. In fact, an order or judgment of this nature is entitled to respect on the assumption that it has been truly and correctly rendered if not varied by a superior court.

(Para 75)

Held (per S. S. Sandhawalia and P. C. Jain, JJ. contra) that a person will not be responsible for his act if he is in a state of *delirium tremens* which in law absolves him from legal liability or responsibility. A contemner then comes within the Mc Naughten rule so as to be not responsible for his designed act and conduct. Merely being in an irritable state of mind or loss of temper is no defence. The irritability and loss of temper of an accused person or some alleged ill-treatment at the hands of the police cannot be deemed to be an adequate justification or mitigating circumstance for hurling an ultimate insult at the Presiding Officer imputing the basest motives to him without cause.

(Paras 80 and 81)

Held (per majority M. R. Sharma, R. N. Mittal and Surinder Singh, JJ., S. S. Sandhawalia and P. C. Jain, JJ. contra) that prior to the Act of 1971, qualified apology was not considered as a proper apology as the Courts considered that it was not indicative of remorse and contrition. The view of the Courts was that in order to dilute the gravity of offence, it should be unconditional and exhibited at the very outset. By enactment of the explanation to section 12 of the Act the right of contemper to tender a conditional apology has been given statutory recognition. It has thus been made clear by the

legislature that even if the apology is qualified or conditional, it can be accepted by the Court.

(Para 157)

Held (per S. S. Sandhawalia and P. C. Jain, JJ. contra) that it is well settled that the true and indeed the sole test for acceptance of an apology is an extremely and genuine contrition felt and exhibited at the very outset. It is open for contemner to show that as a matter of actual fact he had not uttered the contumacious words attributed to him or committed the act constituting the contempt, However, it does not and cannot lie in his mouth to say that he did use profanely contumacious words, that, in fact, those words were true and justified; then to lead evidence to prove their truth and justification; and when all has failed, then to turn round and say that he tenders an apology. That would be making a farce of the law of criminal contempt. It must therefore, inevitably follow that the pretence of a conditional apology must necessarily be excluded from consideration as a matter of law.

(Paras 85 and 87)

Held (per majority M. R. Sharma, R. N. Mittal and Surinder Singh JJ:, S. S. Sandhawalia and P. C. Jain JJ. contra) that conviction for contempt is not punitive or vindictive, but objective. Mercy of the Court is, however, always available to the contrite. Conviction of a contemner, who has held high positions in life is itself a sufficient punishment and further imposition of punishment is unnecessary. It would be a permanent blot on his career.

(Para 164)

Held (per S. S. Sandhawalia and P. C. Jain, JJ, contra) that it is settled law that the whole object and purposes of law of criminal contempt is punitive. There is a catena of cases in which both in the context of a tendered apology, and otherwise, deterrent sentences of imprisonment have been imposed to maintain the confidence of the public in the integrity and impartiality of the Courts of law.

(Para 95)

Held (per S. S. Sandhawalia and P. C. Jain JJ, contra) that an Advocate is an officer of the Court and with that privilege, responsibility must follow in its wake. His primary allegiance is to the Court and it is no part of the professional duties of an Advocate to act merely as a mouthpiece of his client. It has been a settled legal ethic which has now secured statutory recognition by virtue of the rules framed under section 49(c) of the Advocates Act, 1961, that a member of the bar should use best efforts to restrain and prevent his client from resorting to any unfair or sharp practice. Indeed rule 4 thereof in terms provides that an Advocate shall not consider himself as a mere mouthpiece of his client and shall exercise his own

judgment in the use of restrained language and by avoiding scurrilous attacks in pleadings and using intemperate language during arguments in Court. What perhaps may be charitably condoned in the case of a person who is not a member of the bar would still be improper and unpardonable for an Advocate. Thus, the plea that a lawyer was acting in the discharge of his professional duty at the time when the contempt is committed, far from being any justification or mitigation of any offence is in fact an aggravation thereof.

(Para 82)

Case taken up by Court on its own motion on receipt of a reference No. 4076-G, dated 24th August, 1977 from the Court of Shri R. S. Gupta, District and Sessions Judge, Bhiwani; in F.I.R. No. 320, dated 23rd August, 1977, under sections 406, 408, 420, 467, 468 and 120-B of the Indian Penal Code pertaining to Police Station City Bhiwani, pending in the Court of Shri Gorakh Nath, Chief Judicial Magistrate, Bhiwani, for taking contempt proceedings against Shri Bansi Lal, Former Defence Minister of India and Shri H. R. Bharadwaj, Advocate, Supreme Court of India.

S. C. Mohunta, A.G. with A. S. Nehra, Additional A.G. and Naubat Singh, D.A.G. Hy.

K. S. Thapar, Advocate, with Dalip Singh, Advocate, *for respondent No.* 1.

H. R. Bharadwaj, *respondent No.* 2, with his Counsel M. C. Bhandare and M. S. Liberhan, Advocates.

JUDGMENT

S. S. Sandhawalia, J.

(1) I have the privilege of perusing the exhaustive judgment recorded by my learned brother Sharma J. With the greatest humility and extreme deference to my learned brother, I feel that the view expounded therein would virtually erode the meaningful law of contempt of court to a dead letter and in particular lay bare the subordinate judiciary to wanton and malicious attack by any and every wayward litigant. I am thus compelled to resort to the onerous duty of dissent in unequivocal terms both as regards the facts found and the law enunciated.

(2) To arrive at a correct perspective, it is first necessary to recapitulate the broad canvas of facts against which the incident took place leading to this rather unusual trial for contempt by a Full Bench

of five Judges of the High Court. Respondent No. 1, Ch. Bansi Lal, rising from the robust peasant stock of this very district of Bhiwani rose to considerable heights of political power first as the Chief Minister of Haryana and then as the Defence Minister of the Union of India. In March, 1977, though a sitting member of the Rajya Sabha, he chose to contest the Lok Sabha seat from his home constituency of Bhiwani, but was decisively defeated. Thereafter followed a precipitate fall from power and an eclipse in political terms. On the 1st of August, 1977, a case (F.I.R. No. 106 of 1977) under section 161 of the Indian Penal Code and section 5(2) of the Prevention of Corruption Act was registered against him at Police Station, Bhiwani on the statement of Shri Randhir Singh Yadav, D.S.P. Bhiwani. Respondent No. 1 approached the High Court for the grant of anticipatory bail and Hon'ble Mr. Justice Harbans Lal,—*vide* his judgment, dated the 16th of August, 1977, granted the relief sought with a direction that respondent No. 1 should join the investigation of the case. Apparently in pursuance thereto respondent No. 1 on his own drove from Delhi to Bhiwani to join in the investigation. However, on the 23rd of August, 1977, a fresh case,—*vide* F.I.R. No. 320 of that date under sections 406, 420, 467/120-B, Indian Penal Code, was registered against him at Police Station, Bhiwani on the statement of Shri Raj Singh, S. P. Vigilance, Haryana and respondent No. 1 was arrested and taken in custody by Shri Raj Singh, Superintendent of Police (Vigilance).

(3) Shri H. R. Bhardwaj, Advocate, respondent No. 2, had been engaged by respondent No. 1 with regard to the criminal proceedings instituted against him in Bhiwani in the first case as well. It is not in dispute that on the instructions of respondent No. 1 Ch. Bansi Lal, Shri H. R. Bhardwaj respondent No. 2 appeared in the Court of Shri Gorakh Nath, Chief Judicial Magistrate, at Bhiwani on 23rd August, 1977 at 3 p.m. and presented an application, Exhibit C.W. 1/2 in which the specific prayer made was for his admission in a fully equipped hospital where expert physician might be available at the time of need. Therein it was averred that respondent No. 1 was a chronic patient of asthma and was also suffering from hypertension and fever at the time. The learned Chief Judicial Magistrate immediately issued notice of this application to the Public Prosecutor,—*vide* his order Exhibit C.W. 1/4 and on that very day by 4 p.m. the Assistant Public Prosecutor submitted the report of the Investigating Officer to the effect that respondent No. 1 Ch. Bansi Lal, whilst in custody had not complained of an illness and that in any case

if any such complaint was made, he would be immediately referred to the Chief Medical Officer, Bhiwani and would be provided all possible medical aid available there. In that reply it was averred that respondent No. 1 did not appear to be suffering from any ailment at that time. The learned C.J.M. heard respondent No. 2 Shri H. R. Bhardwaj in support of the application and the Assistant Public Prosecutor and in view of the report submitted, he came to the conclusion that there was no adequate justification for granting the application which was accordingly declined,—*vide* a detailed order Exhibit C.W. 1/5. It is respondent No. 1's own case that he was informed by his counsel respondent No. 2 at about 8 p.m. at the police station that the learned Chief Judicial Magistrate had declined the prayer at about 5 p.m.

(4) It is the common case that the arrest of respondent No. 1 at Bhiwani on the 23rd August, 1977, did cause a stir in the town and in the constituency of Bhiwani, to which respondent No. 1 belonged. On the following day, that is, 24th August, 1977 at 11.30 a.m. Ch. Bansi Lal, respondent No. 1 was produced in the Court of the Chief Judicial Magistrate Shri Gorakh Nath for the purpose of remand and at that time he was also accompanied by his counsel Shri H. R. Bhardwaj and of course the police officials and others. It is the common case that the Court room and the precincts outside were crowded with persons who for convenience may be called as the political supporters and opponents of respondent No. 1. As soon as respondent No. 1 was brought in the Court room, he evinced his desire to make a statement and though the purpose and the provision under which the statement was sought to be made were hardly clear or specified the learned Chief Judicial Magistrate acceded to the request. He proceeded to record in his own hand the statement Exhibit C.W. 1/7, which was duly read out to respondent No. 1 and was accepted correct and signed by him. The material part of the aforesaid statement reads as under:—

> "* * *. I am such a patient, who can die in a short time. Shri Devi Lal, Chief Minister, Haryana, Ch. Dharam Singh, DIG/CID, Haryana and Shri Raj Singh, S.P. Special Enquiry Agency, Haryana, who are my enemies have joined the conspiracy to kill me. Besides them, Shri Banarsi Lal Inspector, etc. have joined. Yesterday on the dismissal of my application for medical examination I have become sure that the present C.J.M. Bhiwani is also a party in this conspiracy. In case my death occurs in

Police custody, these persons should be held responsible for my death. My heirs and my counsel Shri H. R. Bhardwaj shall disclose the names of other persons."

It is the case that after having made the aforesaid statement, respondent No. 1 in the crowded open Court room flagrantly levelled the following contemptuous allegations against the learned Presiding Officer Shri Gorakh Nath:—

1. He contemptuously shouted in the Court that the Presiding Officer was a party to the conspiracy hatched by Ch. Devi Lal, Chief Minister, Haryana, Dharam Singh D.I.G. and Raj Singh S.P. to kill him.

2. That he had been told by the police outside the Court room that they would get five days police remand from the Court and he was convinced that the Presiding Officer would remand him to police custody for the aforesaid period.

The learned Chief Judicial Magistrate in face of the gravest provocation, however, kept his composure and told respondent No. 1 that he had yet to make up his mind and to record a decision on the police application for his remand. Respondent No. 1 thereupon flared up and further added the following allegations openly and loudly in Court:—

3. That the Presiding Officer was a liar and a criminal; and

4. That no justice could, therefore, be expected from such a liar and a criminal.

Throughout the time when the aforesaid allegations were made in open Court, respondent No. 1 heavily and contemptuously thumped at the bar of the Court.

(5) Shri H. R. Bhardwaj who is an Advocate of considerable standing and from whom dignified behaviour could be expected equally made common cause with his client. He addressed the Presiding Officer in open Court to the effect that he did not expect any justice from the Court because it was a party to the conspiracy to kill Ch. Bansi Lal, respondent No. 1. He contumaciously declared that he would not make any submissions to the Court because

it was obviously partisan and was siding with the police and declared that the Court had already conspired to give five days police remand. He further repeated that because the Presiding Officer had earlier rejected an application of the respondent No. 1 for admission to a hospital, he was convinced that no justice could be expected from him.

(6) When the aforesaid incident took place, apart from others in the crowded Court room, Mr. Jai Bhagwan Sharma and Mr. M. P. Mehndiratta, two probationer Judicial Magistrates of the Haryana Civil Service, who were undergoing judicial training with him, were also present with the learned Chief Judicial Magistrate on the dais of the Court.

(7) It brings reasonable credit to C.W. 1 Shri Gorakh Nath that despite the flagrant insult hurled, he maintained his composure and told both respondents Nos. 1 and 2 that as they had expressed such lack of confidence in him and levelled such malicious allegations he would verify whether any other Magistrate was available to deal with the application for remand and he would, therefore, take up the matter in about half an hour's time. Thereafter he retired to his Chamber and forthwith dictated the order, Exhibit C.W. 1/9 in which inevitably reference was made to the unseemly incident aforesaid. Earlier he deputed his Reader to verify if Shri S. D. Arora, Judicial Magistrate, Charkhi Dadri, who was camping in Bhiwani was there and even personally verified and found that he was not present in his Court room. Thereupon he went and met Shri R. S. Gupta, District and Sessions Judge, Bhiwani in his chamber and narrated the entire incident to him and further informed him that Shri Arora was not available in Bhiwani. The learned District Judge, however, informed him that in fact Shri Arora had proceeded on four days leave and since there was no other Magistrate Ist Class available to deal and dispose of the matter of the police remand of respondent No. 1, he should proceed to do so.

(8) Later on the same day at about 12.45 P.M., respondent No. 1 Shri Bansi Lal was produced along with respondent No. 2 before the learned Chief Judicial Magistrate and he informed both of them that no other Magistrate in the entire district of Bhiwani was available and he was therefore, compelled to dispose of the matter before him. He consequently proceeded to hear the arguments of the Assistant Public Prosecutor Shri T. D. Kheterpal and thereafter announced

his decision that there was no justification for the police remand and directed the remand of respondent No. 1 to judicial custody till the 5th of September, 1977. It deserves recalling in this context that no application for bail was moved on behalf of respondent No. 1 before the Chief Judicial Magistrate. The aforesaid proceedings were completed at about 1.00 P.M., and on retiring to his chamber, the learned Chief Judicial Magistrate dictated the order of remand, Exhibit C.W. 1/11 and thereafter he dictated a report of the whole incident for forwarding the same to the High Court which has been proved on the record as Exhibit C.W./1-12. It may be recalled that there are standing instructions of the Court that any unseemly or untoward incident in a subordinate Court should immediately be communicated to the High Court. The aforesaid report along with an attested copy of the statement made by respondent No. 1, the earlier application for his medical examination and the order passed thereon by the learned Chief Judicial Magistrate was forwarded to the Registrar of this Court on that very date by Shri R. S. Gupta, District and Sessions Judge, Bhiwani along with his covering letter. The aforesaid papers were directed to be placed before a Full Bench of five Judges by the Hon'ble the Chief Justice and on the 29th of August, the Bench finding that a *prima facie* case of a criminal contempt was made out against both the respondents, issued notice to them.

(9) Now the basic stand of both the respondents firmly adhered to in their pleadings, during the course of trial and even at the stage of argument is one of justification. Respondent No. 1 Ch. Bansi Lal in his affidavit in reply to the notice of contempt has pleaded that Shri Devi Lal, the present Chief Minister of the State of Haryana was deeply inimical to him and equally Shri Dharam Singh, D.I.G. who was personally supervising the investigation, Shri Raj Singh, Superintendent of Police (Vigilance) and Shri Partap Singh, then posted as the Deputy Commissioner, Bhiwani were biased against him for one reason or another. It is his case that the criminal cases instituted against him were, therefore, *mala fide* and motivated by extraneous considerations at the instance of the persons aforesaid including the one in which he was arrested on the 23rd of August, 1977. On that date under his instructions, his counsel Shri B. R. Bhardwaj, respondent No. 2, had moved an application for medical assistance and he was informed at about 8.00 P.M. on that day at the police station that the Chief Judicial Magistrate of Bhiwani had declined the same at about 5.00 P.M. On the following day of the 24th of August, 1977 this respondent alleges that he was handcuffed

and taken in an open jeep to the Court. It is his specific case that within the Court room he was surprised to find Shri Partap Singh, Deputy Commissioner present on the dais of the Court with the learned Chief Judicial Magistrate and he was pressing the latter to retire to his chamber before remanding the deponent. It is pleaded that the presence of Shri Partap Singh D.C., whom he had suspended for misconduct during his tenure as the Chief Minister of Haryana was highly uncalled for. However, the making of the statement purporting to be the dying declaration of respondent No. 1 before the C.J.M. and the levelling of the scurrilous charge against him of being a member of the conspiracy is admitted. However, it is pleaded that after he had got the aforesaid statement recorded, respondent No. I did not say a word thereafter and that the allegation that he had called the learned C.J.M. a liar or a criminal is incomprehensible and this respondent did not say so in Court. Whilst it is admitted that this respondent had to speak loudly in the Court because of the rush and noise within the Court room, it is denied that he had shouted therein or thumped at the bar. It is then pleaded that after the incident the deponent suffered a serious set back in health and was admitted in the medical hospital for medical attention and his health has not been restored to normal thereafter. In the last paragraph it is pleaded that because of the circumstances delineated earlier, the respondent has not committed any contempt of Court of the C.J.M. but if in the opinion of the Court, the account is found to constitute contempt then he would tender an apology therefor.

(10) Shri H. R. Bhardwaj, respondent No. 2 in his affidavit has chosen to level allegations of misbehaviour, misconduct and his maltreatment at the hands of the learned Chief Judicial Magistrate even prior to the material dates of 23rd and 24th of August, 1977, apparently to justify his conduct at the material time. It has been pleaded that he is a lawyer of nearly 16 years standing and it is not indispute that he had been engaged in a number of cases by respondent No. 1 and his son Ch. Surrinder Singh, Advocate, M.L.A. to represent them. He states that under instructions of the latter he had moved certain applications before the learned C.J.M. on the 10th, 11th and 12th of August, 1977 but he had found the C.J.M. not in a receptive mood and patently disapproving the filing of the same. On the 11th of August, 1977, this respondent moved another application on behalf of Ch. Surrinder Singh M.L.A. in which certain allegations were made against Shri Raj Singh, S.P. Vigilance and Shri Banarsi Lal, S.H.O. Police Station City Bhiwani. It is alleged that the respondent was

made to wait in the Court right from 2.00 P.M. to 3.30 P.M. and at that time Shri Raj Singh S.P. came out of the chamber of the learned Chief Judicial Magistrate and later the C.J.M. also came out and started smoking in open Court. The respondent, however, was kept on waiting in a contemptuous manner. In paragraph 6 of the affidavit, allegations are sought to be made that the learned C.J.M. deliberately misrepresented material facts in the matter of issuing a search warrant for the house of respondent No. 1 and his son Ch. Surrinder Singh.

(11) It is admitted that on the 23rd of August, 1977 this respondent moved an application before the learned Chief Judicial Magistrate at about 3.00 P.M. for medical attention to respondent No. 1. It is alleged that the learned C.J.M., however, was sitting in Court with his legs stretched upon the table and was smoking a cigarette from a packet lying on the court dais. It is alleged that after securing a report on the aforesaid application, the learned C.J.M. retired to his chamber along with Shri Banarsi Lal, Inspector of Police whilst respondent No. 2 went on waiting in Court till 5 P.M. At last when he sought to make enquiries regarding the said application, the learned C.J.M. is alleged to have come to the door of his chamber and told him that he could go and that he would reject his application and he could obtain a copy of the order on the following day. This respondent, however, requested him to announce the order in his presence whereupon the learned C.J.M. called him a bloody fool and also adversely commented on the drafting of the petition. Thereafter this respondent left the Court room and informed respondent No. 1 about the same.

(12) On the 24th of August, 1977 respondent No. 2 again went to the Court of C.J.M. and despite his request for the copy of his order, the same was declined to him. Thereafter this respondent moved an application before the District and Sessions Judge, Bhiwani who marked the same to the Chief Judicial Magistrate and it is alleged that the same was handed over to him for being personally presented before the C.J.M. When he did so at about 11.00 A.M., the C.J.M. is alleged to have again remarked that this respondent did not know how to draft an application and further stated *"kaya tattoo bahas kar rahe ho"*, upon which respondent No. 2 stopped making any submission in support of the said application. By about 11.30 A.M., respondent No. 1 was brought into the Court room where a crowd was already collected and it is the allegation that at the time of his production, the Deputy Commissioner of Bhiwani was present on the dais with the learned C.J.M. and had asked him to retire to his

chamber and pass orders thereon. Respondent No. 2 is then alleged to have made enquiry from the C.J.M. as to who that gentleman was and as to why he was interfering with the proceedings of the Court whereupon the C.J.M. told him that the gentleman was the Deputy Commissioner. After the statement of Shri Bansi Lal had been recorded by the learned C.J.M., the latter asked respondent No. 2 to advance his arguments. Thereupon this respondent told that learned C.J.M., that he had been called a fool a day earlier and a *tattoo* immediately before Shri Bansi Lal was brought in Court and further that the Deputy Commissioner was being allowed to continue on the dais and interfere with the proceedings and therefore no useful purpose would be served if respondent No. 2 made submissions on behalf of his client. It is reiterated that the learned C.J.M. had been continuously making unwarranted, unjustified and unbecoming remarks against this respondent from time to time and had not been maintaining the decorum and dignity of the Court. The derogatory and contemptuous remarks attributed to this respondent had been specifically denied and on the other hand it has been pleaded that he had all along been acting with restraint. It is pleaded that no case of contempt of Court had been made out against the deponent and that the notice issued to him should be withdrawn. On the other hand it is alleged that the pointed and derogatory remarks made towards this deponent by the learned C.J.M. amounted to a contempt of his own Court of which he was guilty. Lastly it is repeated that there was no intention on his part to insult, scandalise and use derogatory and contemptuous language towards the Chief Judicial Magistrate, Bhiwani, but if in the view of the Hon'ble Court, the action of the respondent is found to constitute contempt then he would tender an apology for the same.

(13) The evidence against both the respondents first consists of the oral testimony of C.W. 1 Shri Gorakh Nath, C.J.M., Bhiwani, and a number of documents which he has proved on the record. It is not in dispute that at the relevant time, two members of the Haryana Judicial Services Shri Jai Bhagwan Sharma and Shri M. P. Mehndiratta were present at the dais as trainees attached to the C.J.M. and the affidavits of both the aforesaid officers in complete corroboration of the version given by C.W. 1 have been placed on the record. Shri T. D. Kheterpal, Assistant District Attorney, Bhiwani, who at the time was conducting the case on behalf of the prosecution and whose presence in Court room is again not in dispute has also sworn an affidavit totally in consonance with the aforesaid

version. Similarly Shri Shyam Khosla, the staff correspondent of the Daily Tribune deputed to cover the case and whose presence also is not doubted has put in his affidavit and was later called to be cross-examined on behalf of the respondents. The affidavit of Shri Randhir Singh, D.S.P., Bhiwani, has been placed on record. Lastly, the affidavit of Shri R. S. Gupta, District and Sessions Judge, Bhiwani, to whom the incident was immediately related after its occurrence has been put on the record and he was also called and cross-examined on behalf of the respondents. Shri Partap Singh, Deputy Commissioner, Bhiwani, was also examined as C.W. 2.

(14) On behalf of respondent No. 1, thirty affidavits have been filed and the stand of the learned Advocate General, Haryana with regard to these was that he denied the contents of these affidavits but in order to avoid the inordinate wastage of the Court's time he was refraining to summon them for cross-examination and prayed that only one witness Shri Raghbir Singh might be called for cross-examination as a sample. He was accordingly called and cross-examined at length by the learned Advocate General. On behalf of respondent No. 2 no evidence in defence was laid nor any affidavit filed in support of his case.

(15) Both the respondents were given the fullest opportunity to make their statements or adduce evidence in defence. On behalf of respondent No. 1 Ch. Bansi Lal who did not himself choose to make an appearance in Court and whose personal presence was exempted on his repeated requests, it was stated that he did not wish to appear as a witness or to make a statement personally with regard to the allegations against him and further no evidence was sought to be laid apart from the affidavits filed in the Court earlier.

(16) Respondent No. 2 after the close of the evidence took up the plea that whatever he had done in the Court of the C.J.M. he had done in the discharge of his professional duties and that he had refused to address any arguments in his Court when he found that the atmosphere was not good. He reiterated that he had been subjected to undignified treatment by the C.J.M. on all occasions when he had earlier appeared in his Court.

(17) Inevitably the star witness against the respondent is Shri Gorakh Nath, Chief Judicial Magistrate, Bhiwani, whose oral testimony and his corroborating documentary evidence provides the core of the case against the two respondents. In appreciating his testimony it has to be prominently borne in mind that he had taken

charge at Bhiwani only on or about the 9th of August, 1977. So far as respondent No. 1 is concerned, there is not the least hint or suggestion even that this witness had any earlier animus or bias against him whatsoever. On the other hand at best there could have been some respect or deference to him because of the high office which he had earlier held as the Chief Minister of Haryana and later as the Defence Minister. Even as regards respondent No. 2 there is not the least suggestion that this witness had any previous personal or particular animus against him, apart from the sketchy suggestion that he had not been given due accommodation in Court in some of the applications professionally moved by him. On the other hand the witness categorically affirmed in Court on oath that he did not even know Ch. Devi Lal, Chief Minister of Haryana personally and this stand was not even remotely challenged by way of cross-examination nor was it even suggested to him that he had any peculiar cause or connection with the prosecution as such or the persons conducting the same. It, therefore, emerges that Shri Gorakh Nath is an entirely disinterested and independent witness with not the least bias or animus against the two respondents nor has he any connection or partiality for the prosecution in the case from which the proceedings arise.

(18) It has then to be noticed that this witness has alleged the use of a scurrilous attack against him which is gravely damaging and scandalous to him both personally and primarily in his capacity as a Judicial Officer. The allegations proved by him against the two respondents on the record indeed put him also in an extremely unenviable position. They are of a gravely defamatory nature which could be of serious consequence to him both personally and in his career as a Judicial Officer. Therefore there could be no earthly reason why a Judicial Officer of his standing and status would even remotely wish to attribute the levelling of such scandalous allegations to himself unless they were actually made and he was compelled to seek protection against the same.

(19) The evidence of C.W. 1 Gorakh Nath in Court is totally in support of the facts delineated in the earlier part of the judgment. It would be wasteful to repeat his examination-in-chief which, as already noticed, is utterly consistent with the case laid against the two respondents. I may recall that the demeanour of the witness in the Court throughout was of a forthright and frank nature which was both commendable and added weight and credibility to his testimony on oath.

(20) Curiously the cross-examination of this witness on behalf of respondent No. 1 was directed primarily on the fringes of the case with regard to the alleged earlier happenings of the 10th, 11th, 12th and the 23rd of August, 1977, rather of the actual incident of the 24th August, 1977 at 11.30 A.M.

(21) Mr. K. S. Thapar, learned counsel for respondent No. 1 at the very first instance had taken the stand that he wished to establish that this witness was a part and parcel of the conspiracy to kill respondent No. 1 and admittedly his cross-examination was directed to this end and the Court had to record the same to this effect when the relevancy of certain questions was enquired from the counsel. Indeed learned counsel went to the length of specifically putting to the witness that he had forged certain search warrants in conspiracy with Shri Raj Singh S.P. and obviously the suggestions were categorically repelled. It is significant to note that it was not even put to the witness in Court that the alleged contemptuous words attributed to respondent No. 1 were in fact not used by him. No attempt seems to have either been made to attack or erode the forthright stand of this witness with regard thereto by any subtle cross-examination either.

(22) On behalf of respondent No. 2 also the cross-examination was again directed to the earlier search warrants and orders thereon with effect from 10th to the 12th of August, 1977. The witness was categorical that even at no earlier stage had he ever used any undignified language against respondent No. 2 or denied him any reasonable accommodation or consideration in Court. Both in his examination-in-chief and the cross-examination, the witness was categorical that Shri Partap Singh, Deputy Commissioner was not present at the time when the blatantly contemptuous words of contempt were hurled against him at 11.30 A.M.

(23) On this aspect there is perhaps no choice but to conclude that the cross-examination of the witness on behalf of both the respondents far from in any way detracting from the great weight of his testimony in actual effect reaffirmed the candid and the forthright version of the incident rendered by him.

(24) Two factors which belie the stand of bias and highlight the extreme fairness and impartiality of Shri Gorakh Nath C.W. 1 cannot be missed from consideration. Even on behalf of the respondents it was not disputed that respondent No. 1 was produced not

once but twice before the C.J.M. for the purpose of the remand after an interval. Indeed this aspect of the matter has not at all been assailed. Now it appears that in face of one of the worst provocations and the blatantly contemptuous language used against him, the learned C.J.M. went to a great length of exemplary fairness by forthwith staying his hands and refusing to deal with the matter on the ground of patent lack of trust and confidence which had been voiced by both the respondents against him. That he did his very best to wash his hands off the whole matter without passing any orders on the application for remand after the unseemly attitude of both the respondents must inevitably redound to his credit. Immediately after the incident he adjourned the proceedings and forthwith made the most diligent enquiries if the matter could be transferred to the Court of Shri Arora, who at that time was the only other Magistrate at Bhiwani on a visit. He immediately, thereafter contacted the Sessions Judge and it was only when it was known that Shri Arora had proceeded on leave and no other Magistrate was available that the learned C.J.M. felt compelled to entertain the proceedings under the orders of the Sessions Judge. What again brings credit to him is the fact that despite the conduct of respondents Nos. 1 and 2 and their proclamation in Court that they did not expect any justice from him and that he was in league with the prosecution to give the remand to police custody for five days of respondent No. 1, he to their utter surprise did not give a single days police remand of respondent No. 1 and despite the accusations of conspiracy and the allegations of a closed and conspiratorial mind against him. He ordered the remand of respondent No. 1 to judicial custody and what particularly has to be borne in mind in this context is that admittedly no application for the grant of bail was even made to him on behalf of respondent No. 1 and this was the most favourable order which he could pass in the case of respondent No. 1 in the circumstances. Now the conduct of this witness in staying his hands and the subsequent passing of the order of judicial custody for respondent No. 1 is plainly indicative of the great fairness and the maturity of the learned Chief Judicial Magistrate which indeed leaves nothing to be desired in the very difficult position in which he found himself placed.

(25) It has then to be borne in mind that the learned Chief Judicial Magistrate was the Presiding Officer of the Court where the incident took place. It is axiomatic that as regards any incident or happening in a Court of Law, the version of the Presiding Officer is

entitled to pre-eminence and obvious acceptance and it is only in the rarest case that it should be disregarded. This has been authoritatively laid by their Lordships in *Union of India* v. *T. R. Varma* (1) in the following terms:—

> "We have thus before us two statements, one by Mr. Byrne and the other by the respondent, and they are in flat contradiction of each other. The question is which of them is to be accepted. When there is a dispute as to what happened before a Court or tribunal, the statement of the Presiding Officer in regard to it is generally taken to be correct, and there is no reason why the statement of Mr. Byrne should not be accepted as true.
>
> He was admittedly an officer holding a high position, and it is not suggested that there was any motive for him to give false evidence. There are moreover, features in the record, which clearly show that the statement of Mr. Byrne must be correct."

(26) On an overall appraisal of the evidence of Shri Gorakh Nath I am of the view that the witness clearly falls in the category of the wholly truthful and reliable witness as enunciated by their Lordships in *Vadivelu Thevar* v. *The State of Madras* (2). His solitary oral testimony indeed is sufficient to sustain the version which he has forthrightly and credibly given.

(27) However, herein conclusive corroboration, both documentary and oral, is available. A reference in this regard may first be made to Exhibit C.W. 1/7, a copy of the statement of Ch. Bansi Lal, respondent No. 1 made in Court. The making of the statement and the recording of the same is admitted and the relevant portion thereof has already been quoted *in extenso* in the opening part of this judgment, which includes the crucial incriminatory allegations that the present C.J.M. was also a party to the conspiracy to kill him as hatched by Ch. Devi Lal, Chief Minister, Ch. Dharam Singh, Deputy Inspector General of Police, C.I.D. and Shri Raj Singh and others. It may then be recalled that immediately after the unseemly incident Shri Gorakh Nath had retired to his chamber and dictated the order Exhibit C.W. 1/9. Neither the factum of this immediate

(1) A.I.R. 1957 S.C. 882.
(2) A.I.R. 1957 S.C. 614.

recording nor the contents thereof are the subject-matter of any challenge whatsoever on behalf of the respondents. This document prepared contemporaneously with the incident has the following crucial contents which were recorded without any time lag whatsoever:—

> "The accused has orally stated in a shouting contemptuous and insulting language that I am also a party to the conspiracy of Ch. Devi Lal, Chief Minister of Haryana, Shri Dharam Singh, D.I.G., C.I.D., Haryana and Shri Raj Singh, S.P., Special Enquiry Agency, Haryana, Chandigarh, to kill him. He further stated that I am a criminal and that I am also a liar. He further asserted that the police had told him outside the court room that they are going to get the police remand for five days and that he feels convinced that I am going to remand him to police custody for five days. He further asserted that he could not expect any justice from a criminal and a liar. He also remained thumping the bar. I told Ch. Bansi Lal, that all these allegations were false and imaginable and that he was using insulting and contemptuous language. Shri H. R. Bhardwaj the counsel for Ch. Bansi Lal was also present in the Court by the side of Ch. Bansi Lal and he asserted that he did not expect any justice from this Court because I was also a party in the conspiracy to kill Ch. Bansi Lal and it was on that account that I had yesterday rejected his application for getting admitted Ch. Bansi Lal in some fully equipped hospital. He further stated that he was not prepared to make any submissions in this Court because this Court was siding with the police and had already told the police to give five days police remand of the accused".

After remanding respondent No. 1 to judicial custody at 1 p.m., the learned C.J.M. had recorded an exhaustive order of remand, Exhibit C.W. 1/11, which is again unassailed and the contents thereof speak volumes in support of the version given by Shri Gorakh Nath and his fairness and equanimity in appreciating the merits of the case. Lastly in this context is the unchallenged fact that immediately thereafter the learned C.J.M. recorded Exhibit C.W. 1/12 a report to the High Court of the incident as required under the instructions. This again recounts in great detail the incident as a whole and in particular the contemptuous language used against him by both the respondents. As this has already been quoted in the context of C.W. 1/9, it need not be

repeated here. Without delay this was sent to the District and Sessions Judge, who forwarded the same to the High Court with his own covering letter, which again is entirely in consonance with the version. That not the least time was lost before the whole version was subject-matter of record in judicial or official communication is hardly in dispute in the present case.

(28) There is then the affidavit and the testimony in Court of Shri R. S. Gupta, District and Sessions Judge, Bhiwani, to whom the matter was rightly recounted as soon as it was possible. The relevant part of his affidavit bears repetition and is in the following terms:—

> "That Shri Gorakh Nath, Chief Judicial Magistrate, Bhiwani, then brought to my knowledge that while he was dealing with the application of the police for police remand of Shri Bansi Lal, Shri Bansi Lal called him a liar, a criminal and a conspirator with Shri Devi Lal, Chief Minister of Haryana, Shri Dharam Singh, D.I.G., C.I.D., and Shri Raj Singh S.P. in conspiracy to kill him. He further told me that Shri Bansi Lal went on pounding the bar counter and shouted at him with gross contempt. Shri Gorakh Nath impressed upon me that all these allegations were baseless and that Shri Bansi Lal had deliberately insulted him. Shri Gorakh Nath expressed his hesitation to proceed with the matter in view of the allegations levelled against him and because Shri Bansi Lal had expressed that he did not expect justice from him".

It is significant to notice that Shri R. S. Gupta, District and Sessions Judge, was called as C.W. 3 at the request of respondents for cross-examination. However, in his cross-examination the aforesaid version and the material aspects of his affidavit were hardly put to any challenge. However, insult again was sought to be added to the injury when even *qua* this witness the stand was firmly taken by Shri K. S. Thapar, learned counsel that he was also a part and parcel of conspiracy against respondent No. 1. However, there is nothing whatsoever in the fragmentary cross-examination of this witness which in the least detracts from his forthright testimony given in affidavit. It provides the closest corroboration and support to what C.W. 1 had deposed.

(29) There are then the affidavits of the two Judicial Officers Shri Jai Bhagwan Sharma and Shri M.P. Mehndiratta on the point. It is

not in dispute that they were at the relevant time attached to the Court of the Chief Judicial Magistrate as trainees nor is their presence on the dais the subject-matter of any challenge. The respondents had not even chosen to ask for the cross-examination of these witnesses and their testimony, therefore, must be obviously accepted. Neither in the course of arguments nor during the trial could anything be even suggested to cast any doubt on the veracity of these affidavits. What has been said in their context applies equally to the testimony of Shri T. D. Kheterpal by way of affidavit. It is not disputed that he was at the time the Assistant District Attorney conducting the case on behalf of the prosecution in the Court of the Learned Chief Judicial Magistrate and his presence at the time of the incident is thus unchallenged as also the version given by him. Lastly in this context is the affidavit of Shri Shyam Khosla, correspondent of the Daily Tribune and his testimony in Court. It may be mentioned that the presence of Shri Shyam Khosla in the Court room at the time of the incident has not been disputed on behalf of either of the two respondents. He has been the staff correspondent of the Tribune for the last eleven years and had been specially deputed to cover the said case. The respondents in cross-examination themselves got produced Exhibit C.W. 4/1 being the publication in the Daily Tribune based on the report of this correspondent made immediately after the incident. It deserves mention that at that stage any contempt proceedings could hardly be contemplated yet the immediate press version substantially corroborates and lends the greatest credence to the case and evidence against the two respondents. The relevant portion of Exhibit C.W. 4/1 which, as already noticed, has been got proved on the record by the respondents themselves is as follows:—

> "Mr. Bansi Lal and his counsel created an unsavoury scene in the jam-packed court by shouting at the Presiding Officer and thumping the table. They used insulting language against the court and made a personal attack on the Presiding Officer.
>
> Mr. Bansi Lal repeatedly said that he did not expect justice from the court and there was no point in the court trying him.
>
> Both the former Defence Minister and his counsel alleged that the Presiding Officer had already decided to remand the

accused in police custody for five days and that the court was a party to the conspiracy to kill Mr. Bansi Lal.

Mr. Gorakh Nath listened to the outburst with patience and remained calm and composed. He advised Mr. Bansi Lal and his counsel not to lose their temper. He further told them that the accusations were false and imaginary".

At this very stage, a reference may also be made to the relevant part of the press report in the 'Hindustan Times' which was got proved on the record on behalf of the respondents themselves *vide* Exhibit C.W. 2/2.

This reads as under:—

"When Mr. Bansi Lal was produced in the Court, he and his counsel created a scene alleging that there was a conspiracy to murder him.

Thumping the Magistrate's desk and raising his voice, Mr. Bansi Lal insisted upon making a statement, which he called 'is my dying declaration'. The statement was re-recorded by the Magistrate in his own hand after which Mr. Bansi Lal signed it. Ordering that Mr. Bansi Lal be produced again after half an hour, the Magistrate retired to his chamber."

(30) Apart from the overwhelming mass of almost conclusive evidence against the two respondents are two factors worthy of notice. One is the unavoidable admission of respondent No. 1 on the point of having made the statement Exhibit C.W. 1/7 purporting to be his dying declaration. This is part and parcel of the judicial record and therein specific terms a conspiracy to kill him was alleged and in equally unequivocal terms it was got recorded by him in open Court that he was sure that the present C.J.M., Bhiwani, was also a part and parcel of that conspiracy. Consistent with that allegation has been the stand and the conduct of the trial on behalf of both the respondents. Their learned counsel made no secret of his stand that his whole plea was to establish that C.W. 1 Shri Gorakh Nath was from virtually the date of his taking over at Bhiwani a part and parcel of the conspiracy to kill respondent No. 1. This stand, as already, noticed, was in terms repeated by the learned counsel for respondent No. 1 and allegations of forging and tampering with the judicial record in pursuance thereto were also unreservedly levelled against him. The matter indeed was not left at

that but identical allegations were sought to be levelled even against the learned District Judge Shri R. S. Gupta when he was in the witness-box. It is indeed evident that the whole case on behalf of the two respondents has been contested on the footing that they were wholly justified in the contemptuous language used by them. This position in its tends to support the case agains the respondents in so far as the alleged use of contemptuous language against the Presiding Officer is concerned.

(31) Now the factual corner-stone of this plea of justification is sought to be rested on behalf of both the respondents on the allegations that when respondent No. 1 was produced for the first time at 11.30 a.m., on the 24th of August, 1977, before the learned C.J.M., he found Shri Partap Singh, Deputy Commissioner, Bhiwani, present on the dais of the Court itself and exhorting the C.J.M. to retire to his chamber before remanding him to police custody. It is their case that Shri Partap Singh aforesaid was equally biased against respondent No. 1 and it was his presence on the dais and his alleged conduct thereat, which had provoked respondent No. 1 to launch a tirade against the Presiding Officer. Indeed in the course of the trial, the specific case put and the stand seems to have been taken was that Shri Partap Singh aforesaid at that material time was in fact sitting on the dais of the Court.

(32) The aforesaid plea has been forcefully and if I may say so rightly assailed by the learned Advocate-General for the State of Haryana as being a blatant falsehood which was a patent afterthought on the part of the respondents to bolster some semblance of justification for a gross contempt which was patently unpardonable. The learned Advocate-General rested his attack on a variety of factors amongst which the purported dying declaration of respondent No. 1 Exhibit C.W. 1/7 was put in the forefront. It was plausibly pointed that respondent No. 1 in the said statement had named Shri Devi Lal, Chief Minister, Haryana, Shri Dharam Singh, D.I.G., C.I.D., Shri Raj Singh, S.P. and Shri Banarsi Das, Inspector, specifically as the members of the conspiracy to kill him and in terms added the name of the C.J.M., Bhiwani, as party thereto. The absence of the name of Shri Partap Singh either directly or even by the remotest implication in this dying declaration is, therefore, conspicuous. It was rightly submitted that if Shri Partap Singh, Deputy Commissioner, at the time of the recording of the dying declaration was present on the dais or even visible in the Court room, neither of the two respondents or their supporters would ever have missed to bring the

factum of the same on record in the statement, Exhibit C.W. 1/7. It is not even remotely the case of respondent No. 1 that any part of his purported dying declaration was excluded from being recorded. That being so, it has been very rightly argued by the learned Advocate-General, Haryana, that if this plea had the least quantum of truth therein then respondent No. 1 could not possibly have missed to spontaneously point out and get the same recorded that his arch-enemy Shri Partap Singh had been allowed to be present and even to sit on the dais of the Court.

(33) Now apart from the above, the intrinsic implausibility of the stand that the Deputy Commissioner of the district should choose to be present on the dais with the Judicial Magistrate when the issue of the remand to police custody of respondent No. 1 was being considered itself deserves to be highlighted. Firstly, this was a matter entirely between the police authorities who were well-represented by the Assistant District Attorney on the one hand and respondent No. 1 who was equally well assisted by his counsel (respondent No. 2) on the other. The Deputy Commissioner of the district either officially or otherwise could not figure anywhere at any stage of these proceedings, Even the learned counsel for the respondents had to concede that it would indeed be unusual that a Deputy Commissioner should choose to participate or to be present on the dais in the judicial proceedings for the remand of an accused person. Equally the political and sensitive nature of the case itself would make it even more unlikely, if not virtually impossible, that the Deputy Commissioner should choose to expose himself publicly by being on the dais of a crowded Court wherein a sizable number of persons present were the supporters of respondent No. 1 in his home constituency of which he undoubtedly had remained an undisputed leader for a considerable time, It was only when the unfortunate incident in Court had taken place and the proceedings had been adjourned and the consequent tension and the danger of the law and order situation had accentuated that the Deputy Commissioner at about 1 P.M. was compelled to appear and make a request to the learned C.J.M., that the proceedings if possible, be held in camera which prayer was pre-emptorily rejected. The learned Advocate-General, Haryana, therefore, seems to be on a firm footing that in these peculiar circumstances the suggestion that any Deputy Commissioner worth his salt in the very first instance would choose to be on the dais of the learned Chief Judicial Magistrate at such a critical juncture is on the face of it farcical.

(34) Now coming to the testimony on this point, there is first the categoric statement of CW 1 Shri Gorakh Nath to the effect that during the production of respondent No. 1 at 11.30 a.m., Shri Partap Singh was not there. Equally unequivocal is CW 2 Shri Partap Singh himself on the point that at that time he was not at all present in or even near the Court room. The statement of Shri Shyam Khosla, CW 4, the press correspondent of the Tribune on the point is equally clear that at the material time, the Deputy Commissioner was not on the dais. The affidavit of Mr T. D. Kheterpal, Assistant District Attorney, Mr. Jai Bhagwan Sharma and Mr M. P. Mehndiratta, Probationer, Judicial Magistrates are equally specific on the point that at the time of the production of respondent No. 1 at 11.30 a.m. Shri Partap Singh was not in the Court room. It deserves recalling that both the respondents have not chosen to challenge the testimony of the aforesaid witnesses by way of their affidavits. There is not the least reason to doubt the overwhelming weight of this direct testimony.

(35) The stand of the two respondents on this point is then belied by the spontaneous press reporting of the incident which appeared in the press next day and as already noticed has been proved on the record by the respondents themselves. Exhibit CW 4/1, the report in the Daily Tribune got recorded by Shri Shyam Khosla does not have the least hint or mention that Shri Partap Singh, Deputy Commissioner, was present on the dais or had participated in any way in the proceedings at 11.30 a.m. This was a matter too important and sensational to be missed by the press, if it was even remotely so. Similarly Exhibit C.W. 2/2, the report in the 'Hindustan Times' which was got placed on the record by the respondents themselves is conspicuous by its silence on the point of the presence of the Deputy Commissioner on the dais.

(36) On the present record, there seems to be no choice but to hold that the plea of justification and the evidence in support thereof on the point that Shri Partap Singh, Deputy Commissioner, Bhiwani, was present on the dais at 11.30 a.m. on the 24th of August, 1977, is false and a designed afterthought to give a twist to the facts. It inevitably follows that an ingenious and deliberate attempt has been made on behalf of both the respondents to queer the pitch and to fabricate evidence in a last ditch stand to set up a plea of justification where none in fact had existed.

(37) It is here that I must refer to my learned brother Sharma J's. view on this point to the effect that because of the conflicting stands taken by the parties it was difficult for him to give a positive finding on this point. Conflict of testimony in a contested matter is always inevitable and as I said earlier this is an issue which forms the core of the plea of justification raised on behalf of both the respondents in support of which evidence was led and which was pressed before us to the last up to the stage of arguments. With respect, a finding thereon cannot be left in the mid air and indeed appears to me that the present case cannot be decided without a firm conclusion thereon.

(38) Adverting rather briefly to the rest of the evidence adduced on behalf of respondent No. 1 it first deserves notice that throughout the long drawn out proceedings in this trial he did not choose to present himself personally in Court and his persistent prayers for exemption were acceded to. Even at the close of the evidence, his learned counsel Shri K. S. Thapar took up the stand that he did not wish to produce Ch. Bansi Lal either as a witness or to make a statement personally in Court with regard to the allegations against him nor was any further defence evidence led apart from the thirty-three affidavits filed on his behalf earlier.

(39) I may notice specifically that at no stage whatsoever including that of argument did anyone of the learned counsel for the respondents even refer to the contents of the aforesaid affidavits. None of them canvassed for the acceptance of the version given therein and little or no reliance whatsoever was placed upon them. My learned brother Sharma, J., in his otherwise exhaustive judgement has rightly chosen not to make the least reference to 24 of these affidavits and equally ignored the remaining 8 except for a passing factual reference regarding their filing. Nevertheless because the case assumes the nature of an original trial, I deem it necessary to refer to them albeit briefly.

(40) The learned Advocate-General, Haryana, was on firm ground that in evaluating these affidavits certain undisputed facts must be borne in mind. Respondent No. 1 had himself started life as an Advocate and had practised for a considerable time in the very area of Bhiwani. It is not in dispute that his younger brother RW 1 Shri Raghbir Singh Adv[illegible]

the Bar in Bhiwani. The latter had remained the President of the Bar Association, Bhiwani, for nearly three to four years and was also the Chairman of the Bar Council of Punjab and Haryana. It is in this context that it has been forcefully argued that the procuring of some affidavits from the practising members of the profession was an entirely simple and innocuous exercise of influence on behalf of this respondent. It has also been pointed out that he had been for long a leading political figure not only within this area itself but in larger field of the State of Haryana itself and continues to enjoy a modicum of political support. It was, therefore, equally easy to secure the rest of the affidavits on his behalf.

(41) However, it is the mechanical, identical and the stereotyped nature of these affidavits placed on the record which deserves to be highlighted. It has been rightly pointed out that included amongst them are the affidavits of the younger brother and eldest son of respondent No. 1 whose interestedness is patent. An examination of the affidavits Nos. 1 to 7 would show that they are so identical with each other as to be virtually the same word for word and comma for comma. It is significant that even the mistakes in some of these affidavits are identical and common including those of spellings and typography and including the corrections made with hand therein, etc. Again it is stated in all of them, as if by rote that respondent No. 1 did not thump at the bar. Similarly affidavits Nos. 10 to 20 and 24 to 27 are again identical word for word. Significantly none of these affidavits attribute any statement or action to Shri Partap Singh, Deputy Commissioner, in contradistinction to what was sought to be averred in some of the earlier affidavits. Affidavits Nos. 21 to 23 are then again identical with affidavits Nos. 28 to 33. A perusal of the contents thereof would uphold the stand of the learned Advocate-General of Haryana that all these affidavits have been prepared, typed and secured at the behest of respondent No. 1, from a common source. He had, therefore, rightly contented himself by controverting the contents of these affidavits and by calling RW 1 to the witness-box for cross-examination only as an example in order to avoid the inordinate wastage of the Courts time. In fact the learned counsel on either side had themselves treated this evidence with considerable disdain and the Court cannot possibly do otherwise.

(42) Though respondent No. 2 had not led any evidence in defence nor filed any affidavit in support of his case he has attempted to add fuel to the fire by taking up the stand that he has been

subjected to undignified treatment by the Chief Judicial Magistrate on all occasions when he had appeared in his Court as a justification for his conduct. In his affidavit he has chosen to lay a host of allegations of misconduct against CW 1 Shri Gorakh Nath and concluded in para 10 thereof with the stand that the learned Chief Judicial Magistrate had committed contempt of his own Court as he did not maintain dignity and decorum of the Court and should be punished therefor.

(43) In this context I may at the very beginning indicate that this plea of justification stands unsubstantiated and in parts proved to be false. This respondent had alleged that on the 11th of August, 1977, when he appeared before the Chief Judicial Magistrate the latter started smoking in open Court and again on the 23rd of August, 1977, the learned Chief Judicial Magistrate had stretched his legs upon the table of the Court and was openly smoking there with a packet of 'Wills Cigarettes' placed on the dais of the Court. The learned Chief Judicial Magistrate when in the witness-box categorically and indignantly denied any such indecent and indecorous conduct on his part and it is significant to notice that respondent No. 2 whilst cross-examining him in person did not even have the courage to put these scandalous allegations to him. There is not a tittle of any other evidence to support these allegations. It must necessarily be held that these have been made only with intent to raise a lot of dust with the hope that if enough mud is slung, some of it might stick.

(44) It has then been averred in the affidavit by respondent No. 2 that on the 23rd of August, 1977, the Chief Judicial Magistrate in open Court called him 'bloody fool'. It deserves recalling that it is the common case that prior to August, 1977, there was no occasion for any animus or bias betwixt CW 1 Shri Gorakh Nath and respondent No. 2. It is respondent No. 2's own case that he is a counsel of standing and on the material day he was appearing in an important case for an equally distinguished client. It is unimaginable that the Chief Judicial Magistrate would use such unheard of language against a respectable member of the bar who had specially come from Delhi to conduct the case on behalf of respondent No. 1. Whilst in the witness-box CW 1 Shri Gorakh Nath has on oath denied any such allegation and I am unable to find any reason to distrust his testimony. Apart from merely putting the case to the witness on this point, there is nothing else which could substantiate this scandalous allegation. I would, therefore, hold that this allegation remains totally and utterly unsubstantiated either.

(45) However, it is with regard to the application, Exhibit CW 1/13 admittedly moved before the Court of Session after 10 a.m. on the 24th of August, 1977 that respondent No. 2 seems to have been caught on the wrong foot. It was averred on his behalf that he had appeared in support of this application at 11 a.m. on the very day before the Chief Judicial Magistrate and the latter had then insultingly remarked that *"Kya Tattoo Bahis Kar Rahe Ho"*. The evidence on the record seems to leave no manner of doubt that this plea was designedly set up to give a colour of justification for the incident which immediately followed thereafter at 11.30 a.m., when respondent No. 1 was first produced before the Court for the first time.

(46) Exhibit CW 1/13 being the original application moved on behalf of respondent No. 1 for the purpose of getting him medically examined is indeed a tell-tale document. Its very heading indicates that it was filed in the Court of Sessions Judge, Bhiwani and undoubtedly it hears the signatures of respondent No. 2 Shri H. R. Bhardwaj and R.W. 1 Shri Raghbir Singh, Advocate, the younger brother of respondent No. 1. Four of the typed lines in paragraph 3 therein have been crossed out in ink. R.W. 1 Shri Raghbir Singh admitted in his cross-examination that this document was signed by him and he had himself put the date of 23rd August, 1973 below his signatures in his own hand. Rather curiously he attempted to explain that the date had been put inadvertently and the application was in fact brought to him as drafted by Shri H. R. Bhardwaj on the 24th August, 1977. However, the witness was forced to admit that the typed date given at the end of this application was originally 23rd of August, 1977 and had thereafter been typed over again and altered to 24th of August, 1977. He had similarly to concede that on the top of the application also, the date which was originally 23rd of August, 1977 had been overwritten and altered to 24th of August, 1977. The witness further admitted that the crossed over portion of paragraph 3 of the said document clearly mentions that the Chief Judicial Magistrate had on the 23rd of August turned down the request for medical aid. The penultimate part of paragraph 5 again prayed that the Court of Session should correct the error of law committed by the learned Chief Judicial Magistrate. The evidence in the case read with the obvious alteration in the date of the aforesaid application lead to a single inference that this application was drafted and got typed on the 23rd of August, 1977 after the Chief Judicial Magistrate had declined the earlier application Exhibit CW 1/2 and further that by that time both respondent No. 2 and Raghbir Singh, RW 1 were fully aware of the announced orders of the Chief Judicial Magistrate rejecting the same.

(47) In the cross-examination of CW 1 Shri Gorakh Nath, respondent No. 2 who conducted the same personally took up a stance which deserves specific notice. It was particularly put to the witness that the application CW 1/13 was presented before him by respondent No. 2 at 10 a.m. on 24th August, 1977 and that he had declined to accept the same. As was noticed earlier, this application on the face of it was addressed to the Court of Session, Bhiwani and sought to make a grievance of the earlier order of the Chief Judicial Magistrate. Therefore, the suggestion that it was first sought to be presented to the Chief Judicial Magistrate himself is obviously farcical. It was then put to this witness that later this application was presented to him at about 11 a.m. apparently after having been routed through the Court of Session and whilst appearing in support thereof, the Chief Judicial Magistrate insultingly referred to respondent No. 2's manner of argument. These suggestions were forthrightly characterised by the learned Chief Judicial Magistrate as wholly false and since according to him no application had been moved before him by Shri H. R. Bhardwaj on the 24th of August, 1977, no question of any argument or comment thereon could possibly arise. This position is fully borne out again from CW 1/13 itself and the statement of RW 1 on the point. The latter admitted that on both 23rd and 24th August, 1977 he had instructions to appear on behalf of his brother Ch. Bansi Lal respondent No. 1. This witness far from making any mention of the application, Exhibit C.W. 1/13 having been ever first moved by respondent No. 2 before the Chief Judicial Magistrate took the stand that he himself had presented the same to the Superintendent of the Sessions Court at 10.30 a.m. This is well borne out by the stamp and the orders passed to the same effect by the Superintendent. Later when presented before the learned Sessions Judge, Bhiwani he passed the order Exhibit CW 9/1 thereon and forwarded the same to the Chief Judicial Magistrate. It is at the stage following that the evidence of RW 1 Shri Raghbir Singh appears to be conclusive. He stated that he alone had appeared in support of the application CW 1/13 before the Chief Judicial Magistrate and not Shri H. R. Bhardwaj at all. He admitted that his statement was duly recorded by the Chief Judicial Magistrate and signed by him and this took place at about 3.30 p.m. long after the orders for the judicial remand of respondent No. 1 had been passed. The presence of Shri Raghbir Singh, Advocate alone for the petitioner duly recorded on the application, his statement in Hindi Exhibit CW 1/15 and the subsequent orders

passed by the Chief Judicial Magistrate Exhibit CW 1/17 lend conclusive documentary proof to the evidence of RW 1 himself that before Shri Gorakh Nath CW 1 only RW 1 Shri Raghbir Singh, Advocate had appeared in support of Exhibit CW 1/13.

(48) The aforesaid evidence and the intrinsic factors noticed above give the lie direct to the respondent No. 2's allegation that in fact at 11.00 a.m. on the 24th of August, 1977 he had appeared and argued the application before the Chief Judicial Magistrate leading to unsavoury remarks against him by the Chief Judicial Magistrate which according to this respondent immediately preceded the unseemly incident that followed within minutes thereafter.

(49) I may conclude that the particular stand of respondent No. 2 that earlier he had been insulted, maltreated and even abused in Court by the learned Chief Judicial Magistrate is a designed attempt at the vilification of the Presiding Officer in order to falsely create some semblance of justification for his admittedly contemptuous conduct.

(50) To sum up on the factual aspect of the present case I hold that it has been established beyond any manner of doubt that on the 24th of August, 1977 at 11.30 a.m. when respondent No. 1 was produced before Shri Gorakh Nath, C.J.M., he forthwith got recorded in his statement Exhibit CW 1/7 that the Presiding Officer was a part and parcel of a criminal conspiracy to kill him. This fact is indeed admitted and is part of the judicial record. Thereafter respondent No. 1 in the crowded Court room contemptuously shouted in face of the Presiding Officer that he was a party to the conspiracy hatched by Ch. Devi Lal, Chief Minister of Haryana, Ch. Dharam Singh, D.I.G., C.I.D., and Shri Raj Singh, Superintendent of Police to kill him and also insultingly levelled the charge that he had pre-judged the issue of his remand and agreed with the police authorities to entrust his personal custody to them for a period of five days and that he was convinced that the Presiding Officer was going to do so. Thumping heavily and insultingly at the bar of the Court, respondent No, 1 then declared that the Presiding Officer was a liar and further reiterated that he was a criminal and thereafter concluded that no justice could be expected from such a liar and a criminal. Further the plea, that at the material time Shri Partap Singh, Deputy Commissioner was with the learned Chief Judicial Magistrate on the dais of the Court, set up on behalf of both the respondents is a patent afterthought and a designed attempt to fabricate evidence in order to bolster up some semblance of justification for conduct which would be otherwise unpardonable.

(51) It is equally well established that respondent No. 2 appearing as the counsel of respondent No. 1 at the identical time made common cause with his client. He also addressed the Court to the effect that he did not expect any justice from it because he was a party to the conspiracy to kill his client Ch. Bansi Lal. On this ground he declared that he was not prepared to make any submission to the Court on the issue of remand because it was obviously partisan and was siding with the police. Respondent No. 2 openly alleged that the Presiding Officer had pre-judged the issue and already clandestinely agreed with the police to remand respondent No. 1 to police custody for a period of five days. He further alleged that the rejection by the Presiding Officer of the earlier application of respondent No. 1 for admission to a well-equipped hospital had convinced him that his client could not get any justice from the Court. He followed up his allegation by refusing to argue the matter before the learned Chief Judicial Magistrate. The allegation of indecorous conduct in Court laid at the door of the Presiding Officer by this respondent and his alleged claim that he was earlier insulted and maltreated stands wholly unsubstantiated and is a deliberate attempt on his part to further scandalise and vilify the Presiding Officer.

(52) It appears to me that in so far as this factual aspect is concerned, the matter hardly admits of two opinions and I am tempted to reproduce verbatim the findings arrived at by my learned brother Sharma, J., with which I unreservedly agree:—

> "* * * Apart from the affidavit sworn by the learned Chief Judicial Magistrate, the learned Advocate-General Haryana has placed on record the affidavits of Shri Jai Bhagwan Sharma and Shri M. P. Mehndiratta, Judicial Magistrates 2nd Class, who were receiving training in the Court of the learned Chief Judicial Magistrate, Bhiwani and the affidavit of Shri T. D. Khetarpal, Assistant District Attorney, Bhiwani who was present in Court. The affidavits contained allegations to the effect that the respondent No. 1 used offensive language against the learned Chief Judicial Magistrate. On the other hand, respondent No. 1 besides denying this matter on oath has relied upon the affidavit of respondent No. 2 and the affidavits of eight Advocates practising at Bhiwani in which it has been categorically stated that respondent No. 1 did not utter these words. *I am, however, inclined to hold that the stand taken by the learned Chief*

Judicial Magistrate on this point appears to be more convincing".

* * * *

"After having cleared this ground, I would like to discuss the merits of the pleas raised by the respondents. The gravamen of the charge against respondent No. 1 is that he falsely accused the learned C.J.M. of being in conspiracy with the executive authorities to put an end to his life by keeping him in police custody.

At the very outset, I might observe that this charge is wholly groundless. The learned Presiding Officer was transferred to this station on August 9, 1977. He was holding a very heavy charge inasmuch as about 2,500 files were pending in the Court as against the norms of 500 files. In this situation, it was well nigh impossible for him to keep a close track of all the cases pending before him, nor could he devote as much attention to an individual case as he would have done if the workload had not been so heavy. If he issued a search warrant after hearing a police officer, no fault could be found with the performance of his duties nor could his integrity be doubted merely because some police officers called on him and saw him in his chambers for paying respect as for any other official business. When he told the respondents in Court that he had not given any assurance to any police officer that he would remand respondent No. 1 to police custody for 5 days, the latter should have accepted his word. It goes to the credit of the learned C.J.M. that when respondent No. 1 said that he did not expect justice from him he adjourned the case in order to find out whether the same could be entrusted to Shri S. D. Arora, learned Judicial Magistrate, Charkhi Dadri, who used to come to Bhiwani, or not. Since Mr. Arora was not available, he was forced by the circumstances to take up the case himself and even then he remanded respondent No. 1 to judicial custody. *Mr. M. C. Bhandare, the learned Senior counsel for respondent No. 1 frankly conceded that the learned C.J.M. acted with utmost restraint and approached the case with an open and a fair mind.*

(53) However, having found as above and even after ruling as a matter of law that the plea and evidence of justification is impermissible my learned brother Sharma, J., has however, proceeded to appraise and take into consideration the self-same evidence. This, I believe cannot be done. It is on the basis of that evidence that he has chosen to accept the apology (which I would endeavour to show hereafter that it is hardly one) of both the respondents and discharged the rule against them. It is with regard to this conclusion that with great humility I must record a categoric difference of opinion. With respect if such, blatant offensive conduct *in facie curiem* labelling the Presiding Officer of the Court as a conspirator, murderer, criminal and a liar and vilifying the Judge as a Judge can be papered over by a pretence of an apology then perhaps nothing short of physical assault on him in the seat of justice itself would ever merit the imposition of a sentence.

(54) That brings me to the significant question of law in the present case, namely, whether justification or the plea of truth can be raised as a defence against a charge of contempt of Court. It is manifest that the whole trial on behalf of the two respondents was conducted on the basis of justification and truth. Evidence in support of the said plea was determinedly pressed before us by the learned counsel for the respondents and this argument received consistent and pronounced approval of my learned brother Sharma J., because of which it had to be tentatively admitted at that stage. One is now, therefore, compelled to factually consider and appraise the plea and the evidence of justification raised on behalf of the respondents. I have found the plea untenable and false. It would perhaps become necessary in the later part of this judgment to advert, however, briefly to some of the alleged earlier circumstances of 10th to 12th of August, 1977, which have also been called in aid to sustain the plea of justification. However, at this stage, I would wish to forthrightly reiterate what appears to me as settled law that no plea of truth or justification is permissible on a charge of contempt either of a Court of record or the Courts subordinate thereto.

(55) Now in adverting to this legal issue, it first becomes necessary to highlight the very concept of the Contempt of Court and the principle and purpose underlying the law therefor both statutory and otherwise. There is no manner of doubt that the gravamen herein is the endeavour to maintain and uphold the confidence of the public in the Courts of justice. It is the pernicious tendency of contempt to poison the fountain of justice and to create distrust and destroy the

confidence of the public in the Courts which is sought to be stemmed by the law of contempt. The primary principle underlying the same, therefore, is to uphold the majesty and the dignity of the law Courts and their image in the minds of the public. It has been repeatedly and authoritatively stated that the law of contempt is not for the sake of Judges as individuals or to vindicate their honour as private persons but basically because they are the medium through which justice is conveyed to the people. Therefore, it appears to me as a fundamental fallacy to conceive an action of contempt as if it were a *lis* betwixt the Presiding Officer of a Court on one hand and the contemner on the other. This aspect cannot be put in better perspective than in the oft-quoted and celebrated words of Wilmot J. (in Almon's case) which the passage of nearly two centuries has not dimmed:—

> "The arraignment of the justice of the Judges is arraigning the King's justices; it is an impeachment of his wisdom and goodness in the choice of his Judges and excites in the minds of the people a general dissatisfaction with all judicial determinations, and indisposes their minds to obey them; and whenever men's allegiance to the law is so fundamentally shaken it is the most fatal and most dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever, not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people".

So far as the High Courts and the Courts of records are concerned, the matter admits of no controversy. It is unnecessary and indeed wasteful to either advert to the history of the law or to the numerous precedents on this point because as far as this Court is concerned, the matter is concluded by the following statement of the law by the Full Bench *in re K. L. Gauba, Barrister-at-law, Lahore* (3):—

> "The respondent filed a list of 25 witnesses whom he wished to examine with the object of proving that the allegations made by him in the book were true. This application is entirely misconceived and is based on the assumption that where a person has scandalised the Court or the Judges by broadcasting a publication imputing injustice, dishonesty corruption or improper motives to them in their judicial

(3) A.I.R. 1942, Lahore 105.

capacity it is open to him to show that the allegations are true. I have no doubt that this course is not open to the respondent and that any attempt to justify a libel on a Judge by attempting to show that the libel was justified would itself be a fresh contempt. A contemner who has been called upon to show cause why he should not be punished for an attack on the Court or its Judges does not occupy the position of a defendant in a libel action where he may plead or prove justification or the position of an accused person in a prosecution for defamation".

The aforesaid view to my knowledge has not ever been dissented from and indeed an affirmance thereof has been made by the final Court itself in *Perspective Publications (Pvt.) Ltd. and another* v. *The State of Maharashtra* (4) in the following words:—

"* * * It may be that truthfulness or factual correctness is a good defence in an action for libel, but in the law of contempt there are hardly any English or Indian cases in which such defence has been recognised. It is true that in the case of *Bathina Ramakrishna Reddy* (5) there was some discussion about the *bona fides* of the person responsible for the publication, but that was apparently done to dispose of the contention which had been raised on the point. It is quite clear that the submission made was considered on the assumption that good faith can be held to be a defence in a proceeding for contempt. The words 'even if good faith can be held to be a defence at all in a proceeding for contempt' show that this Court did not lay down affirmatively that good faith can be set up as a defence in contempt proceedings".

Even a more categoric reiteration of the law on this point has followed in *Shri C. K. Daphtary and others* v. *Shri P. P. Gupta and others* (6)—

"We indicated to him during the course of the hearing that he should file his affidavit or affidavits dealing with the merits of the case but that he would not be permitted to lead any

(4) A.I.R. 1971 S.C. 221:
(5) A.I.R. 1952 S.C. 149.
(6) A.I.R. 1971 S.C. 1132:

other evidence to justify contempt. We have already referred to cases which show that he cannot justify contempt. If a judgment is criticised as containing errors, and coupled with such criticisim, dishonesty is alleged, the Court hearing the contempt petition would first have to act as an appellate Court and decide whether there are errors or not. This is not and cannot be the function of a Court trying a petition for contempt. If evidence was to be allowed to justify allegations amounting to contempt of Court it would tend to encourage disappointed litigants—and one party or the other to a case is always disappointed to avenge their defeat by abusing the Judge."

It must, therefore, inevitably be concluded that so far as the superior Courts are concerned any plea of justification on a charge of contempt of Court is totally impermissible and indeed would amount to a fresh contempt in itself.

(56) Being faced by a stone wall of principle and precedent on the point, both the learned counsel for the respondents attempted a flank attack by forthrightly taking the stand that the Subordinate Courts stood entirely on a different footing from that of the Courts of Record. It was forcefully argued before us that with regard to the Subordinate Courts not only can a plea of justification be raised but the contemner is entitled as a matter of right to establish the same by evidence.

(57) I am unable to detect any merit in this contention and would presently endeavour to show that neither principle nor precedent is available for this invidious distinction betwixt the Court of Record and the Courts subordinate thereto. With great emphasis, I say that such a view erodes the fundamental distinction between the law of contempt on the one hand and the law of defamation on the other, and if adhered to in actual practice is likely to be fraught with great public mischief.

(58) Now examining the matter first on principle *de horse* the authorities, it is worth recalling that the hallowed rule of non-justification of contempt is based on a sound and salutary judicial principle. If that be so and undoubtedly it is, then by what rationale are the Subordinate Courts to be excluded from the ambit of this rule. If no justification can be pleaded for the contempt of a High

Court Judge by what principle is this to be allowed in the case of a contempt of a District Judge or the Courts of justice subordinate thereto ? I have given the matter deep and pensive thought but am unable to find any foundation for drawing this artificial line. Indeed it appears to me that the drawing of such a distinction tends to strike at the root of the fundamental concept that justice according to law channeled through the Courts of law is an integrated and indivisible entity. It is unwarranted to fracture it into two and in this context it would perhaps be instructive to go back again to the famous words of Wilmot, J.—

> "By our constitution, the King is the fountain of *every species of justice* which is administered in this Kingdom. The King is *de jure* to distribute justice to all his subjects and because he cannot do it himself to all persons he delegates his powers to his Judges who have the custody and the guard of the King's oath and sit in the seat of the King concerning his justice."

The aforesaid passage highlights in illimitable language the basic concept that every species of justice is deserving of the same sanctity and respect. This statement of the law by Wilmot, J. in the specific context of contempt has received repeated affirmance not only in the Courts of England eversince but also by their Lordships of the Supreme Court. What Wilmot, J., said in the context of the King's justice is emphatically and equally applicable to the concept of justice in the Indian Republic. As in England so in India, the majesty and the sanctity of the Courts of law is not to be easily allowed to be either whittled down or divided.

(59) Now viewing it from another angle it again appears to me that indeed the necessity and the protection of the law of contempt of Court is needed more with regard to the Courts which have to dispense justice at the grass roots. The Superior Courts of record by their very nature, and the aura of respect that surrounds them in actual practice rarely need resort to the law of contempt. Experience has shown unmistakably that it is indeed the Subordinate Courts here which times out of number are exposed to the venom of fractious, disgruntled and unprincipled litigants for their ulterior ends. By allowing the plea of truth or justification to be raised to a charge of contempt with regard to these Courts and permitting evidence to prove the same would in my view rob the law of contempt of its

primary content where it is most needed. The Superior Courts in my humble view would be failing in their duty if they ever wish to put themselves on a higher pedestal and thereby whittle down the high principle that the administration of justice must remain one integrated whole from the highest to the lowest hierarchy of Courts of law through which justice flows down to the people.

(60) If there is nothing in principle or rationale from which one may derive this supposed distinction between the Courts of record and the courts subordinate thereto with regard to the plea of justification to a charge of contempt then where else can one possibly find sustenance for this novel doctrine. I have closely gone through the Halsbury's Laws of England (Lord Simonds third edition, Vol. 8, Part I) exhaustively dealing with the concept of the contempt of Court without discovering the least reference to any such distinction between the Courts of record and the inferior Courts. It appears to me that the fallacy stems from the lone distinction which is a product of history in the development of law in England that whilst the Courts of record were clothed with inherent powers (irrespective of any statute) to punish contempt in a summary manner by committal themselves, the inferior Courts not being possessed of any inherent powers were under the protective wing of the Queens Bench Division for punishing contempts in order to prevent persons from interfering in the course of justice in such Courts. I am unable to detect any inkling in the laws of England from which we derive our own law of contempt which entitles a contemner of a Subordinate Court to add insult to injury by calling evidence to allegedly prove the truth or justification of his contemptuous words or conduct. Nor do I find anything in the voluminous statement of law in Corpus Juris Secundum Vol. 17 which could provide the least basis for this doctrine. I have closely perused the various central statutes on contempt beginning with the Contempt of Courts Act 1926 and including the present Contempt of Courts Act 1971 without finding anything there in which would warrant such a line to be drawn between the superior Courts and the Subordinate Courts. Indeed the scheme and the frame of the Contempt of Courts Act 1971 tend to belie any such distinction. The material part of section 10 is in these terms:—

> "Power of High Court to punish contempts of *subordinate courts.*
>
> Every High Court shall have and exercise the same jurisdiction, powers and authority in accordance with the same

procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself."

The plain language aforesaid does not appear to admit of any other construction except this that the law, procedure and practice in respect of the contempt of Court are identical both for the High Court itself as also for courts subordinate thereto. A reference to section 15 of the Act would again show that apart from an insignificant difference to the mode of taking cognizance. there is no distinction whatsoever as regards the law applicable. The same conclusion seems to flow from the perusal of sections 17, 18 and 19 of the Act. One can safely conclude that neither the Laws of England (from which we primarily derive our Law of Contempt) or America nor the statutory provisions for contempt directly applicable in India give the least indication for the supposed distinction between the superior and the subordinate Courts as regards the plea of truth and justification to a charge of contempt.

(61) Again it is the fundamental distinction between the law of criminal contempt and the law of defamation which must be pointedly borne in mind. The nature of the offence of criminal contempt may be best summarised as given in 17 Corpus Juris Secundum page 8:—

"Although a contempt of court is in a sense *sui generis* it is commonly regarded as in the nature of a crime although not necessarily as a criminal offence. However, criminal contempts, being directed against the dignity and authority of the court, are offences against organised society and public justice which raise an issue between the public and accused and the proceedings to punish it are punitive."

It bears repetition that the underlying principle of criminal contempt is not the protection or vindication of the Presiding Officers as persons or individuals which could perhaps be also left to the law of defamation. The law of criminal contempt is concerned with the protection and the maintenance of public confidence in the courts of law and it is primarily for this reason that the law of criminal contempt forbids the plea of justification. It is manifest that once such a plea is allowed to be raised then far from building up and maintaining the public confidence in the impartiality and integrity of the courts of

law it would enable litigants to rake up controversies and throw mud which in the ultimate analysis would erode the same confidence and trust in the Courts of Law which is sought to be protected by criminal contempt. It is for this reason that criminal contempt is on a significantly distinct footing from the ordinary law of criminal defamation. However, once a plea of justification is to be allowed, it at once brings down the Presiding Officer of the Court to the level of a complainant in a prosecution for defamation. It is, however, worth recalling that even in the ordinary law of criminal defamation, truth or justification is not permissible as a defence *ipso facto* unless it can be clearly shown to be for the public good under exception 1 to section 499 of the Indian Penal Code. Therefore, to allow the plea of justification or truth to be pleaded in a case of contempt of a subordinate Court would be placing its Presiding Officer even at a level lower than an ordinary citizen seeking redress for criminal defamation. That can hardly ever be the intent or the purpose of the law of contempt. One shudders even to think of the consequence which must inevitably ensue if in cases of the contempt of subordinate Courts, the contemner is first to be allowed to lead evidence in order to establish the truth or justification for the scandalous or defamatory allegations made by him. Such a course far from bringing the contemner to trial instead puts the Presiding Officer himself virtually in the dock. Such a principle once allowed can plainly sub-merge the very fabric of some meagre protection afforded to the subordinate Courts under the law of Contempt and expose their Presiding Officers to the insufferable burden of the whimsical revengefulness of disgruntled or fractious litigants to defame them. As their Lordships of the Supreme Court have pointed out, one or the other of the litigants in the cause must inevitably be disappointed.

(62) Indeed the present case itself is a significant and pre-eminent example of the unsavoury and if I may say so the disastrous results which ensue if a plea of truth and justification and evidence in support thereof is allowed to be entered. Because of this claim raised on behalf of the respondents, and the doubts expressed on the law in view of the considered stand taken by my learned brother Sharma J., evidence and cross-examination had to be allowed during the trial with regard to this plea. Even my learned brother Sharma J. has concluded that the version of the learned Chief Judicial Magistrate in the present case was convincing and that the charge of criminal conspiracy openly levelled against him in a crowded

Court was wholly groundless. The end-result, however, has been that the learned Chief Judicial Magistrate who had done nothing more or less than what was his duty in an exemplary and impartial manner was compelled to face the ignominy of cross-examination to the effect that from the date he took charge at Bhiwani he was part and parcel of a deep seated conspiracy against respondent No. 1 and had ultimately joined hands with others in an attempt to murder and liquidate him. In the crowded Court rooms during the trial, and equally well publicised in the Press, it was laid at the door of the learned Chief Judicial Magistrate that he was guilty of indecorous and infamous conduct in Court, that he had forged documents and tampered with Judicial records and that he had deliberately garbled his judicial orders to cover the traces of his alleged crime. These allegations were specifically put to him by the learned counsel for the respondents. Not only the learned Chief Judicial Magistrate but even the learned District Judge who was also called in for cross-examination by the two respondents was also tarnished with the same brush of conspiracy and it was expressly put to him as well that he was acting in concert therewith. Wide publicity of these proceedings in the press and public inevitably ensued. To the very last the learned counsel for the respondents in the course of the arguments continued to assail the testimony of the learned Chief Judicial Magistrate and his stand in the witness-box as the most untruthful and unworthy of reliance and bordering on perjury.

My learned brother Sharma J. in his considered judgment has chosen not to accept the forthright and categoric stand on oath in the witness-box of the learned Chief Judicial Magistrate (unshaken as it is by all cross-examination) that on the 24th of August, 1977 at 11.30 A.M. Shri Partap Singh, Deputy Commissioner, Gurgaon was not on the dais and in fact he had not even seen him in the Court. Instead it has been held that he had judicially disposed of applications in a manner that could give rise to a feeling in the mind of respondent No. 1 that the Chief Judicial Magistrate had given him a raw deal and to further entertain a belief that the authorities both Executive and Judicial had joined hands in liquidating him while he was in police custody. Whilst castigating the conduct of the Executive, credence has been given to the view that the learned Chief Judicial Magistrate did not bring to bear that aggressive approach on the problem which was expected of him as head of the Magistracy in the district whilst disposing of the application of the son of respondent No. 1. Doubts have been raised that the search warrant issued

on the 11th of August, 1977 was not in fact so done on that date and was created later on by all concerned to counter the effect of the application dated the 10th of August, 1977 filed by Shri Surrinder Singh, son of respondent No. 1.

(63) My learned brother Sharma J., again left the matter open by observing that as at present advised, he was of the view that by and large it is not open to a person to offer justification for criminal contempt. How is this 'by and large' to be determined in actual practice except by leading evidence in an attempt at justification ? Once it is so, the mischief is done and the fundamental principle of non-justification of contempt is naturally eroded.

(64) It is in the aforesaid context that one has to pose and answer the question whether such a procedure envisaging justification of contempt engenders the confidence of the public in the impartiality or integrity of the Courts of law even in a case of the present kind where the allegation of conspiracy laid at the door of the Presiding Officer has been found to be utterly groundless. Does it not in actual effect totally tend to erode or destroy the trust and assumption of absolute impartiality and integrity of the Courts of law which must be engendered in the public mind. Public image once destroyed is not easy to rebuild. On these terms no Presiding Officer of a subordinate Court, however, perniciously insulted can ever dare risk to seek protection of the law of contempt which far from either vindicating his position or maintaining the public confidence in his integrity and impartiality might well expose him to unmerited further vilification. Indeed the practical effect of the acceptance of the doctrine of justification and truth on a charge of contempt would reduce the meaningful law of criminal contempt so far as the Presiding Officer of subordinate Courts are concerned to a printed joke. The mischief that inevitably arises in degrading the Presiding Officer of a Subordinate Court to the level of complainant in a libel action can perhaps be best summarised in the weighty words of Kent C.J. in *Yates* v. *Lansing* (6-A).

> "Whenever we subject the established Courts of the land to the degradation of private prosecution, we subdue their importance and destroy their authority. Instead of being venerable before the public, they become contemptible, and we thereby embolden the licentious to trample upon

(6-A) (1810) 5 Johnson 282.

everything sacred in society and to overthrow those institutions which have hitherto been deemed the best guardians of civil liberty."

(65) Adverting now to precedent on the point, not a single case could be brought to our notice in which the plea of justification with regard to the Subordinate Courts has ever been sustained. On the contrary there is a plethora of precedent holding otherwise. In *re Ram Mohan Lal Aggarwala*, (7) an Advocate of the High Court had cast serious aspersions on the Subordinate Courts and then moved an application for calling witnesses to prove his allegations. Summarily rejecting such a plea, the Bench observed:—

"* * * Clearly there can be no justification of contempt of Court, even assuming that the writer of the manifesto believed all he stated therein to be true. If anything in the manifesto amounts to contempt of Court, he is not permitted to lead evidence to establish the truth of his allegations. Contempt of Courts is saying or writing anything about the Court which may lower the prestige of the Court or bring it into contempt. Learned counsel was unable to cite any case in which evidence had been permitted in justification of an offence in a case for contempt."

The aforesaid view and the judgment was referred to with approval by the F. B. *in K. L. Gauba's case.*

(66) In the *Advocate-General, Andhra Pradesh* v. *Sri D. Seshagiri Rao*, (8) the contempt expressly was of a Second Class Judicial Magistrate and was sought to be justified before the High Court. Categorically repelling any such stand, the Division Bench consisting of P. Chandra Reddy C.J. and Jaganmohan Reddy J. observed as follows:—

"In our opinion, it is not permissible to a contemner to establish the truth of his allegations as the arraignment of the Judges 'excites in the minds of the people a general dissatisfaction with all judicial determinations and indisposes their minds to obey them,' and that is a very dangerous

(7) A.I.R. 1935 Allahabad 38.

(8) (1959)1 Andhra Pradesh I.L.R. 1282.

obstruction to the course of justice. In our view, the contemner does not occupy the position of a defendant in a libel action who could plead justification."

Following the view as also the observations in *K. L. Gauba's case,* the Division Bench in *The Advocate General, Kerala State* v. *T. V. John,* (9) in the express context of the contempt of Munsiffs Court held that it was not permissible to a contemner to attempt to establish the truth of his allegations. To my mind the distinction sought to be created in this context between the Superior Courts and the Courts subordinate thereto has been now conclusively repelled by the observations of Palekar J., in *Shri Baradakanta Mishra* v. *Registrar of Orissa High Court and another,* (10) rendered in the context of a case of criminal contempt even with regard to the exercise of administrative functions:—

"We thus reach the conclusion that the Courts of justice *in a State from the highest to the lowest* are by their constitution entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all those who have or likely to have business therein that the Courts perform all their functions on a high level of rectitude without fear or favour, affection or ill-will."

In this very judgment, Krisha Iyer J., in his concurring observations enunciated the principle as follows:—

"* * * In this sector even truth is no defence, as in the case of criminal insult—in the latter because it may produce violent breaches and is forbidden in the name of public peace, and in the former because it may demoralise the community about courts and is forbidden in the interests of public justice as contempt of Court."

(67) I would, therefore, conclude both on principle and precedent that no plea of justification or truth against a charge of contempt of Court can be allowed to be established by evidence both as regards the superior and the subordinate Courts within India.

(9) A.I.R. 1965 Kerala 49.
(10) A.I.R. 1974 S.C. 710.

(68) Having held as above on the significant question of law, it must inevitably follow by its application that all evidence supposedly led on the plea of justification in the present case must be scrupulously excluded from consideration. I am firmly of the view that in line with the law laid down by the binding precedent of the Full Bench in *K. L. Gauba's case* and the other authorities referred to by me above, the plea of justification and the leading of the evidence thereon virtually constitute a fresh action of contempt deliberately and designedly pursued on behalf of both the respondents. The present case, therefore, has to be considered and adjudged solely on the findings of fact arrived at by me and by totally ignoring the evidence of any alleged justification.

(69) Though speaking for myself, I am clearly of the aforesaid view but nevertheless it becomes necessary for me to advert to and opine, however, briefly on the evidence led here in justification because of the fact that the same has found favour with my learned brother Sharma J. for the acceptance of the apology. Also it must not be lost sight of that by virtue of sections 18 and 19 of the Contempt of Courts Act, 1971, the proceedings before us have assumed the nature of an original trial against which a statutory appeal lies as of right to their Lordships of the Supreme Court. It, therefore, becomes imperative for me to record my findings of fact on this aspect of the case even though as a matter of law I have clearly held that evidence on this point is neither admissible nor permissible.

(70) Now to put the record straight in this context, it must first be highlighted that the proceedings in this trial have been initiated by this High Court itself under section 15(2) of the Act. Notice of contempt in the present case was issued by us on the basis of a report received through the District and Sessions Judge, Bhiwani and the continuation of the proceedings thereafter are by the Court itself and no person other than the two respondents are a party thereto. This fact deserves pointed attention because references in the earlier part of my judgment and those of my learned brother Sharma J., to the Advocate-General, Haryana may perhaps be slightly misleading. This Court has framed the Contempt of Courts (Punjab and Haryana) Rules, 1974 and by virtue of rule 5(2) and rule 15(3) thereof as also other procedural rules of practice of this Court, it is settled that whenever proceedings of contempt are initiated with respect to the contempt of a subordinate Court, the conduct thereof is inevitably entrusted to the Advocate-General of the said State on behalf of the

Court. It was in this position as *amicus curiae* that we had called upon Mr. S. C. Mohunta, the learned Advocate-General, Haryana to assist us in the present case which he dutifully did. The State of Haryana as such, the Chief Minister Ch. Devi Lal, Ch. Dharam Singh, DIG, CID, Sh. Raj Singh; S.P. (Vig.) and Sh. Banarsi Das, Inspector of Police were at no stage even remotely associated with the present proceedings. The conduct of the executive and the aforesaid persons has come in for adverse comment by my learned brother Sharma J., and it is on that basis that he has chosen to accept the conditional apology. At the cost of repetition, I may mention that neither the learned counsel for the respondents moved for, nor the Court on its own motion did ever remotely consider the bringing in of the aforesaid persons as parties to the present proceedings.

(71) Now to evaluate the conduct and action of the Executive and the third parties specified aforesaid, my learned brother Sharma J., has devised a procedure for the consideration and appraisal thereof which can be best described in his own words:—

> "* * * The emphasis is on a quick disposal of the proceedings but at the same time the contemner has to be given full opportunity of putting forth his point of view and the mitigating circumstances, if any. A case may arise in which while considering the point of view put forth by the contemner the action of a third party may have to be looked into. Now if that party is impleaded, the proceedings would undoubtedly get lengthy. At the same time if the Court disallows the contemner to lead evidence of his choice, the course adopted might result in grave miscarriage of justice. To obviate the aforementioned two contingencies, it looks proper that the contemner be allowed to have his full say and it be made clear that the observations made would be confined to the decision of the proceedings in hand only I propose to adopt this principle for the decision of this case".

With the greatest humility I am unable to persuade myself for the adoption of a procedure of this nature or to resort to a method which appears to me as unheard of in judicial proceedings of a quasi-criminal nature. I may first point out that this Court has in terms framed Contempt of Courts (Punjab and Haryana) Rules governing the procedure generally as also for the trial of criminal contempt. These rules

do not either expressly or impliedly warrant even remotely the adoption of such a procedure. It appears to me that the hallowed rule of judicial procedure is that no person who is not a party or has not been impleaded in a proceeding can be adjudicated upon behind his back. Both the rules of natural justice and of justice according to law seem to be one on the point that no person or party is to be condemned unheard. The system of jurisprudence which we administer has always prided itself on the fact that there cannot be any criminal trial *in absentia*. Despite considerable research I am unable to trace any rule or principle which would authorise a Court to consider and pronounce on the conduct of a third party without giving him least opportunity of being heard and then to hold that the findings arrived at are confined to the particular case. With great respect where else and how is such a person and party to vindicate his position except in that very particular case wherein the findings are given? Even otherwise how possibly can a Court of Law in the total absence of the particular party and without having the least inkling of its stand or its version proceed to adjudicate in a vacuum on the barest insinuation of the opposite party regarding its conduct. I believe, it is scant satisfaction to any such person or party to say that the adverse and condemnatory findings with regard to its conduct by the Full Bench of the High Court are binding only for the purposes of this case.

(72) Now it is by the adoption of the aforesaid procedure that the ultimate finding has been arrived at by my learned brother Sharma J., that at the material time all the officers holding key posts at Bhiwani were prejudiced against respondent No. 1 and the Executive authorities deliberately denied him the necessary medical and other facilities in spite of the repeated attempts made by him to approach the Chief Judicial Magistrate who had also acted in a manner as to give rise to a feeling that he also was giving him a raw deal. The conduct of the authorities, both Executive and Judicial has been held to be of such a nature as to give respondent No. 1 a reasonable belief that they had joined hands in liquidating him while he was in police custody.

(73) Here again I am unable to agree with the greatest respect. First in this context are the judicial proceedings and orders passed by the learned Chief Judicial Magistrate immediately on his taking over this post at Bhiwani on the 9th of August, 1977. It deserves recalling that the earlier search warrants, dated the 3rd of August, 1977 for the search of the house of respondent No. 1's son Shri Surrinder Singh were issued by his predecessor and apparently were executed on the

5th of August, 1977 in the afternoon which along with the recovery memos. etc., were sent back to the Court on the same day. All this happened long before the taking over of C.W. 1 at Bhiwani. Before him an application Exhibit C.W. 1/24 was moved on the 10th of August, 1977 by Shri Surrinder Singh aforesaid seeking a report from the police about the execution of the said warrants and for directing them to submit the warrants back immediately and supplying him with a copy of the record prepared by the police during the search. On this application, the learned Chief Judicial Magistrate had immediately given notice to the Public Prosecutor for the following day and also directed that the previous papers be put up. A reply thereto was secured from the Public Prosecutor and in compliance therewith Shri Raj Singh, S.P. (Vig.) filed a parawise report, Exhibit C.W. 1/22 thereto controverting in terms every allegation of any irregularity during the course of the search and denying any malice against respondent No. 1 and his relations. This report was placed on the record by the Additional Public Prosecutor on the 11th of August, 1977 and the matter was fixed for consideration on the following day. After hearing the counsel for the applicant and on the basis of the record, the learned Chief Judicial Magistrate recorded a consideration order dated the 12th August, 1977, Exhibit C.W. 1/26 directing that the copy of the records prepared by the police be supplied to the applicant free of cost. He was solicitous enough to hold that the record of 23 pages was at some places illegible and, therefore, directed the Copyist to prepare a fresh copy of this entire record for being supplied to the applicant and further directed the Additional Public Prosecutor to assist the Copyist in preparing the requisite copy. He fixed the matter for scrutiny again on the 18th of August, 1977. It is the common case that the applicant was apparently satisfied as he preferred no appeal or revision against the same.

(74) It is also evident from C.W. 1/20 that the S.P. (Vig.) had on the 10th of August, 1977 moved for a search warrant under section 93, Criminal Procedure Code, 1973 in the Court of the Chief Judicial Magistrate, Bhiwani. On the material placed before the learned Chief Judicial Magistrate he had granted the search warrant and with respect I am unable to see how any adverse inference can be raised against him merely on the ground that he did not make express mention thereof in his order Exhibit C.W. 1/26. Reference has already been made earlier to the circumstances in which the order Exhibit C.W. 1/5 running into nearly two typed pages dated the 23rd of August, 1977 was passed whereby he declined the prayer made on

behalf of respondent No. 1 for admission in a fully equipped hospital primarily on the assurance of the authorities that in case of any complaint of illness by the respondent (No. 1) he would be immediately attended to by the Chief Medical Officer, Bhiwani and would be provided with all possible aid. The firm stand of the authorities at this stage was that respondent No. 1 did not appear to be suffering from any ailment. On the following day the learned Chief Judicial Magistrate had recorded considered orders in the course of judicial proceedings being Exhibit C.W. 1/9, C.W. 1/17 and C.W. 1/11 the last being the rejection of the prayer for remand to police custody of respondent No. 1.

(75) The conduct of the aforesaid judicial proceedings and the orders recorded by the learned Chief Judicial Magistrate have come in for some adverse comment and trenchant criticism at the hands of my learned brother Sharma J. With respect I say that these orders were passed in the exercise of his judicial discretion by the learned Chief Judicial Magistrate and they are well reasoned orders against which admittedly no appeal or revision was even later taken up by the parties and therefore they had achieved finality in their own way. I have very grave doubts whether it is open to the Court of Law in collateral judicial proceedings to adversely comment on an earlier judicial order or proceeding which is not before it in appeal or revision. It has been oft-repeated eversince the famous dictum of Lord Hobhouse that Courts of Law have the jurisdiction to decide righty or wrongly. With great humility, I say that in the present proceedings for contempt we are not warranted to sit on judgment as to the correctness, the form and contents of an earlier judicial order and as to what it should or should not have contained. On principle, it seems to me wholly clear that no aspersion whatsoever on an order in a judicial proceeding or its author can and need be cast when the same is not before the Court in appeal, revision or other supervisory jurisdiction. If I may say so, in fact an order or judgment of this nature is entitled to respect on the assumption that it has been truly and correctly rendered if not varied by a superior Court. Principle apart, the issue to me is concluded by the following observations in *C. K. Daphtary's case*:—

> "* * * If a judgment is criticised as containing errors, and coupled with such criticism, dishonesty is alleged, the Court hearing the contempt petition would first have to act as an appellate Court and decide whether there are

errors or not. *This is not and cannot be the function of a Court trying a petition for contempt."*

The Court is precluded from examining the propriety of the orders and the conduct of the Chief Judicial Magistrate in rendering them or to adversely comment on the same. It is only because of some trenchant disapproval on this score by my learned brother Sharma J., that I have been compelled to weigh and opine on these judicial orders and proceedings and for the reasons recorded above, I do not find the least justification for any criticism thereof.

(76) Now because of some observations which have fallen from the pen of my learned brother Sharma J., I find it necessary to hold that on the present record there does not appear to be anything which can possibly cast any cloud on the learned Chief Judicial Magistrate whose conduct appears to me throughout as exemplary, impartial and dignified. Indeed one cannot but have some modicum of sympathy for him, because of the unpleasant situation in which he has been placed for reasons no other than this that he was attempting to discharge his judicial duties according to the light of his conscience. I am unable to agree that there is any ground for holding that the conduct of the learned Chief Judicial Magistrate in the course of his judicial duties had in any way deviated from the exemplary norm or was of a nature which gives rise to or in any way attributes to any belief *bona fide* or otherwise that he had joined hands with the Executive authorities in liquidating respondent No. 1 whilst he was in police custody nor am I able to subscribe to the view that the learned Chief Judicial Magistrate had given any cause to the son of respondent No. 1 or anyone else to raise any doubt that he was giving any raw deal to him prior to his appearance in Court at 11.30 A.M. on the 24th of August, 1977.

(77) It is expressly so mentioned that the primary reason for accepting some of the pleas raised in the affidavits filed by respondent No. 1 and respondent No. 2 by my learned brother Sharma J., is that the allegations therein had not been rebutted or controverted by the persons against whom the same were levelled. It is in this context that it deserves recalling that this Court had on its own summoned Shri Partap Singh, Deputy Commissioner as C.W. 2 and it was for that reason only that he had occasion and opportunity to controvert categorically on oath all allegations of *mala fides* laid against him by the respondents. As I have said earlier neither

Ch. Devi Lal, C.M. of Haryana, Ch. Dharam Singh D.I.G., Shri Raj Singh, S.P. (Vig.) and Banarsi Das, Inspector of Police nor the State of Haryana as such were even remotely parties to these proceedings. It is, therefore, that any adverse finding or criticism on their conduct in these proceedings appears to me as wholly uncalled for. What consolation is it to them that the adverse findings against them are confined only to the facts of this case. How can one expect any of them to swear affidavits in reply to allegations made in the present case behind their back and how can one raise any adverse inference against them or in favour of the two respondents for the alleged non-filing of affidavits by them.

(78) Some capital was sought to be made on behalf of the respondents on the ground that respondent No. 1 was handcuffed when arrested in the case and was produced in the same state before the Chief Judicial Magistrate. Now as regards the handcuffing at the time of arrest and out of Court, there is not the least evidence or material before this Court to opine about the same. Indeed it is plain that whether there was justification or otherwise to do so is an issue upon which there is not the least evidence as to the circumstances necessitating the same, and even otherwise being a matter entirely of administrative decision by the police authorities according to the prevailing circumstances (and at best being of a political nature) it must deservedly be excluded from the ken of any legal findings.

(79) As regards the production of respondent No. 1 in handcuffs before the Court it was suggested that the same was violative of High Court Rules and Orders. However, no High Court Rule or Order was brought to our notice during the course of argument but reference has been made in the judgment of my learned brother Sharma J., to rule 19 of Chapter 27 of the Rules and Orders of the Punjab High Court, Vol. III. Now a reference to the very heading of Chapter 27 would show that it relates to regulation and the management of and control over judicial lock ups. The essential difference between a judicial and police lock-up is highlighted itself in rules 1 and 2 of the said Chapter. Reading of the whole of rule 19 leaves no manner of doubt that it pertains to judicial lock-ups under the control of a Magistrate. In the present case it is not in dispute that right from the arrest of respondent No. 1 on the 23rd till his production in Court he was in police custody and if confined was in a police lock-up. The mandatory provisions in this regard,

therefore, would be rule 26.22 of the Punjab Police Rules, 1933, Vol. III. The relevant portions thereof are as under:—

"26.22(1) Every male person falling within the following category, who has to be escorted in police custody, and whether under police arrest, remand or trial, shall, provided that he appears to be in health and not incapable of offering effective resistance by reason of age, be carefully handcuffed on arrest and before removal from any building from which he may be taken after arrest:—

(a) Persons accused of a non-bailable offence punishable with any sentence exceeding in severity a term of three years' imprisonment.

(b) * * * * *

(c) * * * * *

(d) * * * * *

(e) Persons who are violent, disorderly or obstructive or acting in a manner calculated to provoke popular demonstration.

(f) Persons who are likely to attempt to escape or to commit suicide or to be the object of an attempt at rescue. This rule shall apply whether the prisoners are escorted by road or in a vehicle."

Now in view of the charges upon which respondent No. 1 had been arrested, it is evident that sub-rule (a) aforesaid would be automatically attracted to his case whilst on the accepted facts the applicability of sub-rules (e) and (f) cannot also be ruled out. The following rule 26.23 then provides that the handcuffs of persons in Court shall be removed only as provided in rule 27.12(2). A reference to that provision makes it evident that if in accordance with rule 26.23, persons had been brought to the Court in handcuffs, the handcuffs shall not be removed in Court unless this is specially ordered by the Presiding Officer.

(80) Having already held that the evidence of justification is impermissible. I, therefore, deem it unnecessary to delve in greater

detail therein and it would suffice to record that in my view the question whether the Government as a whole or the Executive authorities at Bhiwani at the material time had victimised and ill-treated respondent No. 1 and it was their overall conduct which contributed to the situation are matters on which no adequate evidence was led in the absence of the concerned third parties and therefore, the same cannot be adjudicated upon by the Court. However, if one is compelled to pronounce thereon even on the existing material I would say that *prima facie* there is nothing to sustain any such summary condemnation of the executive authorities as is sought to be laid at their door.

(81) Whilst I have the greatest admiration for the erudition of my learned brother and he has cited scripture in support of his view, it is nevertheless my misfortune to disagree with his finding that because respondent No. 1 had lost his temper then his consequent acts became automatic and were, therefore, pardonable. Respondent No. 1 forthwith on appearing in Court at 11.30 A.M. on the 24th of August, 1977 desired to have a statement recorded and persisted in his claim even when the absence of any statutory provision for the purpose was pointed out. On his request being acceded to he cooly made a statement maligning his alleged political and personal enemies by name in the most direct terms and concluded by including the Presiding Officer of the Court as a party to the alleged conspiracy against him. Having got recorded and signed the above statement he then in terms offensively elaborated his theme and uttered those words in face of the Court which amount to the ultimate insult which can possibly be offered orally to a Presiding Officer. Can it be said that he was not responsible for his act ? Was he in a state of *delirium tremens* which in law absolves a person from legal liability or responsibility ? Did he come within the McNaughten rule so as to be not responsible for his designed act and conduct. On the other hand this conduct was forcefully assailed by the learned Advocate General of Haryana as a designed tactic to gain political publicity and to avoid further police remand. Whether it was designed or otherwise it is undeniable that it did admirably serve those ends. Now if merely being in an irritable state of mind or loss of temper is a defence, then one has yet to see an accused person, immediately arrested, who can maintain the stoic composure of a Diogenes. If the irritability and loss of temper of an accused person or some alleged ill-treatment at the hands of the

police can be deemed to be an adequate justification or mitigation for hurling an ultimate insult at the Presiding Officer imputing the basest motives to him without cause, then I have perhaps no other choice but to differ.

(82) Now one plea advanced by respondent No. 2 Shri H. R. Bhardwaj is that he had merely acted as the mouth-piece of his client. In his statement at the end of the evidence in the case he stated that :—

> "Whatever I had done in the Court of the C.J.M. I had done in the discharge of my professional duty."

I am of the view that a plea of this nature far from being any justification or mitigation of the offence is in fact an aggravation thereof. It is settled law that an Advocate is an officer of the Court and with that privilege responsibility must follow in its wake. His primary allegiance is to the Court and it is no part of the professional duties of an Advocate to act merely as a mouth-piece of his client. It has been a settled legal ethic which has now secured statutory recognition by virtue of the rules framed under section 49(c) of the Advocates Act, 1961, that a member of the bar should use best efforts to restrain and prevent his client from resorting to any unfair or sharp practice. Indeed rule 4 thereof in terms provides that an Advocate shall not consider himself a mere mouth-piece of his client and shall exercise his own judgment in the use of restrained language and by avoiding curious attacks in pleadings and using intemperate language during arguments in Court. What perhaps may be charitably condoned in the case of a person who is not a member of the bar would still be improper and unpardonable for an Advocate. Any misconception as to where the duties of an Advocate lie in this context were authoritatively rooted out by the final Court more than two decades back in *M. Y. Shareej and another* v. *The Hon'ble Judges of the High Court of Nagpur and others*, (11) in the following words :—

> "* * * They think that when there is conflict between their obligations to the Court and their duty to the client, the latter prevails. This misconception has to be rooted out by a clear and emphatic pronouncement, and we think it

(11) 1955 S.C.R. 757.

should be widely made known that counsel who sign applications or pleading containing matter scandalising the Court without reasonably satisfying themselves about the *prima facie* existence of adequate grounds therefor, with a view to prevent or delay the course of justice, are themselves guilty of contempt of Court, and that it is no duty of a counsel to his client to take any interest in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications."

The aforesaid view was elaborated and applied even more stringently by the Division Bench in *Sarat Chandra Biswai and another* v. *Surendra Mohanty* (12). It, therefore, inevitably follows that acting in concert and as the mouth-piece of respondent No. 1 by respondent No. 2 far from being an alleviating circumstance is an aggravation thereof.

(83) I may conclude, what is significant here is the fact that the malicious and unwarranted attack on the learned Chief Judicial Magistrate was directed pointedly to the exercise of his judicial functions which he was sworn to administer without fear or favour. It was not his personal or private capacity which was assailed publicly in a crowded Court room but his judicial capacity. In the clearest terms the allegation was that in the exercise of his judicial discretion he had already conspired with the police to remand respondent No. 1 to police custody for five days, that he had conspired allegedly with the Executive to secure his liquidation whilst in police custody and that he was a liar who was trying to conceal his criminal activity and guilt in this regard. This appears to me as the ultimate insult that can be offered to a Court in its face. It is a case of the grossest vilification of a Judge as a Judge. It was got recorded in a judicial document and repeated *in facie curiam*, persisted in throughout during the course of this trial, was sought to be justified and supported by evidence which has miserably failed to do so, and indeed has boomeranged on the two respondents. I accordingly hold that both the respondents are guilty of gross contempt and hereby convict them under section 12 of the Contempt of Courts Act, 1971.

(12) A.I.R. 1969 Ori. 117.

(84) That inevitably brings me to the question of punishment and evaluation of some lip-service sought to be paid on behalf of the respondents to the pretence of an apology contained in the affidavits filed on their behalf. Herein, however, at the very threshold arises the question whether the same can at all be seriously taken into consideration in a case where the basic and fundamental stand on behalf of the respondents has been one of truth and justification of the contempt committed followed by a determined attempt to establish the same by evidence. We cannot, in this context, refrain from recalling the picturesque words of Vivian Bose J. in *Sub-Judge, First Class* v. *Jawahar Lal Ramchand Parwar* (13) which have consistently received judicial approval and have held the field:

> "There appears to be an impression abroad that an apology consists of a single magic formula of words which has but to be uttered as an incantation at the last possible moment when all else has failed and it is evident that retribution is inevitable, to stave off punishment. It appears to be felt that a man should be free to continue unfounded attacks upon another's honour and character and integrity with the utmost license till the last possible moment and then when he is unable to stave off the consequences of his infamous conduct any longer, all he need do is to wave this magic formula referred to as an apology in a Judge's face in order to emerge triumphantly from the fray. Nothing can be further from the truth.
>
> An apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong doer's power. Only then it is of any avail in a court of justice.
>
> * * * * *
>
> Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology; it ceases to be

(13) A.I.R. 1940 Nagpur 407.

the full, frank, manly, confession of a wrong done which it is intended to be. It becomes instead the cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head. It then deserves to be treated with the contempt with which cowards and bullies who do not hesitate to threaten others and to impugn their honesty and character without the slightest foundation and who cring and wail when their own safety is at a stake, are treated."

(85) By now it is indeed well settled that the true and indeed the sole test for the acceptance of an apology is an extreme and genuine contrition felt and exhibited at the very out set. Of course, it is open for a contemner to show that as a matter of actual fact he had not uttered the contumacious words attributed to him, or committed. the act constituting the contempt. However, it does not and cannot lie in his mouth to say that he did use profanely contumacious words; that, in fact, those words were true and justified; then to lead evidence to prove their truth and justification; and when all has failed, then to turn round and say that he tenders an apology. That, to my mind, would indeed be making a farce of the law of criminal contempt.

(86) Now it appears to me that apart from principle and rationale it is equally well settled by precedent that a plea of justification, coupled with the evidence in support thereof cannot go hand in hand with the tendering of an apology and indeed one is destructive of the other. The Division Bench in *Giani Ram* v. *Ramnath Dutt* (14) in the context had this to say:—

"We take this opportunity of pointing out that this was the proper method for tendering an apology and not the one which was adopted by the petitioner in his written reply where he has sought to justify his action in the first instance and then in the alternative offered an apology. The reason to our mind is simple and that is that the opposite party could not both justify his conduct and offer an apology, the two things being incongruous.

(14) AIR 1955 Rajasthan 123.

The issue seems to be clinched by the following categoric observations of their Lordships in *M. Y. Shareef and another* v. *The Hon'ble Judges of the High Court of Nagpur and others* (15).—

> "The proposition is well settled and self-evident that there cannot be both justification and an apology. The two things are incompatible. Again an apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness."

Again, the Division Bench in *Sarat Chander Biswal and another* v. *Surendra Mohanty, Editor "Kalinga" and others* (16) put the matter in the same perspective with the following words :—

> "No doubt, the Court has power to pardon on sincere and contrite apology tendered unconditionally, but in such a case, there cannot be both justification and apology. To seek to justify an act and at the same time seek forgiveness can be nothing short of incongruous and a party cannot be allowed to blow hot and cold at the same time."

(87) It must, therefore, inevitably follow that in the present case, the pretence of a conditional apology must necessarily be excluded from consideration as a matter of law. This proposition was forcefully urged before us by the learned Advocate-General of Haryana, but my learned brother Sharma, J., has not chosen to advert to this legal aspect.

(88) Apart from the legal position aforesaid, can one possibly spell out any sense of contrition or genuine remorse on behalf of both the respondents for the virtually admitted and in any case established Court's content *in facie curiae* in the present case. With some distress I have to hold that I do not find the least evidence thereof here apart from a momentary lip service to an apology only to escape punishment as a matter of last resort. It deserves recalling in this context that at the very first stage while filing the affidavits, both the respondents had sought to sling further mud at

(15) (1955)1 S.C.R. 757.

(16) AIR 1969 Orissa 117 (at page 134).

the Presiding Officer. The stand taken by respondent No. 1 was that he had committed no contempt of Court of the learned Chief Judicial Magistrate, but only conditionally it was stated that if in view of the Hon'ble Court, it was found to be constituting contempt, then the respondent would tender apology. Respondent No. 2, on the other hand, even in his affidavit took the stand that the learned Chief Judicial Magistrate, in fact, was guilty of the contempt of his own Court and had not maintained the dignity and decorum thereof. Both the respondents were adamant to establish the plea of justification by evidence. This stand was adhered to throughout the conduct of the trial in the present case and some aspects thereof deserve recalling. The cross-examination of CW1 Shri Gorakh Nath, Chief Judicial Magistrate, on October 14, 1977 was directed entirely to establish the stand of justification and truth, and the Court had to notice and record the same as follows :—

> "*Note.*—Mr. K. S. Thapar wishes to prove on the record certain documents dated 10th and 11th of August, 1977, from which the learned counsel says that he will establish that the witness was part and parcel of the conspiracy to kill respondent No. 1."

Evidence was led and documents were proved in pursuance of this stand and in fact, the following question was specifically put to the learned Chief Judicial Magistrate :—

> "Q. I put it to you that these search warrants were forged by you in conspiracy with Shri Raj Singh, Superintendent of Police, because Shri Raj Singh was an illegal trespasser in the house of Shri Bansi Lal, respondent No. 1 ?
>
> A. It is absolutely false."

(89) Respondent No. 2, who conducted the cross-examination of the learned Chief Judicial Magistrate himself in terms put it to him, that he had falsely implicated him and recorded a false report to the High Court in order to prevent respondent No. 2 from becoming a witness for respondent No. 1. It is unnecessary to advert in any greater detail to this aspect, because it is evident that no indignity worth the name was spared in an attempt to establish to the last that in fact the learned Chief Judicial Magistrate was a conspirator in the intended crime of murdering respondent No. 1 whilst he was in

custody and further that he was lying, prevaricating and forging to cover up the traces of his guilt.

(90) This very stand was taken then with regard to CW2 Shri Partap Singh, Deputy Commissioner, Bhiwani to whom it was specifically put that at 11-30 a.m. he had gone and sat on the dais with the Chief Judicial Magistrate and that it was only when respondent No. 1 saw him on the dais that he made the alleged dying declaration before the Chief Judicial Magistrate. What is equally significant is the fact that even when the learned District and Sessions Judge, Bhiwani was compelled to appear in the witness box on the demand of the respondent, it was put to him as late as October 25, 1977, and the cross-examination was again directed on the point that even he was a party to the conspiracy. The Court had to record as follows:—

> "*Note.*—When required to elaborate the relevancy of the question, Mr. K. S. Thapar says that he wishes to establish that the witness was also a part and parcel of the conspiracy against respondent No. 1."

(91) As noticed earlier, evidence has been placed on record on behalf of the respondents to belie the stand taken by the learned Chief Judicial Magistrate and to justify their action and further vilify the Presiding Officer. RW1 the brother of respondent No. 1 was equally firm on this issue whilst in the witness-box. Right upto the stage of arguments in the end of November 1977, the stand persisted upon by the respondents was that in fact all the allegations made against the Chief Judicial Magistrate were the gospel truth. The learned counsel for both the respondents obviously, on instructions, assailed the testimony of the learned Chief Judicial Magistrate as being the most untruthful, his whole conduct from the date of his taking over at Bhiwani as being utterly and judicially dishonest and unpardonable. As I have already held that this evidence regarding the presence of CW1 Shri Partap Singh on the dais at the material time of the commission of the contempt was brought in to buttress and support the plea of justification.

(92) As I said earlier, the true test for appraising and accepting the apology is that of a genuine contrition exhibited by the contemner at the very outset. Can one detect the least remorse or regret here ? On the other hand, the last nail in the coffin of any contrition on the part of the respondents is driven by the affidavits

filed long after the close of the evidence in the case and even after the close of arguments on behalf of respondent No. 2 by Mr. M. C. Bhandare. It deserves pointed recalling that on behalf of respondent No. 1, a number of petitions were moved which we found wholly without merit. Criminal M. 5552/1977 was filed as late as November 19, 1977 claiming in terms that the contempt of Court in this case had really been committed by Shri Gorakh Nath, Chief Judicial Magistrate himself and by CW2 Shri Partap Singh, Deputy Commissioner. In the affidavit of respondent No. 1 sworn at Delhi on November 19, 1977 allegations were still reiterated that the search warrant and the report dated August 12, 1977 were indeed forged much later by the alleged conspirators, including Shri Gorakh Nath, Chief Judicial Magistrate and he had, therefore, committed the contempt of his own Court. Shri Raj Singh, Superintendent of Police and Shri Partap Singh, Deputy Commissioner had also committed the contempt of the same Court.

(93) In another affidavit sworn by respondent No. 1 on November 25, 1977 in support of Criminal M. 5672/1977, the firm stand still was that Shri Partap Singh was on the dais at the material time and it was this fact which had justified the outburst by respondent No. 1. It is, thus, amply manifest that right upto the close of the trial and arguments and more than three months after the alleged act of contempt, the consistent stand on behalf of both the respondents was one of justification and truth and persistence in the allegations of criminality and falsity levelled against the learned Chief Judicial Magistrate. So much for the supposed contrition and the remorse felt by the respondents in the present case.

(94) Indeed to be candid, it appears to me that far from there being the least signs of any contrition here, one can only detect an impudent tongue in the cheek attitude which appears to be symptomatic of an imperious denigration of the Courts of law. I am clear that on settled legal principles the pretence of an apology here is to be totally excluded from consideration in view of the consistent stand of justification taken on behalf of both the respondents and in any case no ground whatsoever for the acceptance of the same has been made out.

(95) Now it is settled law that the whole object and purpose of the law of criminal contempt is punitive. There is a catena of

cases in which both in the context of a tendered apology, and otherwise, deterrent sentences of imprisonment have been imposed to maintain the confidence of the public in the integrity and impartiality of the Courts of law. Reference in this connection may be made to *M. G. Kadir* v. *Kesri Narain Jaitly and others* (17), *Giani Ram* v. *Ramnath Dutt* (14 supra) *The State of Bihar* v. *S. M. Abdul Samad*, (18), *First National Bank Ltd.* v. *Kali Charan*, (19), *The Advocate General, Kerala State* v. *T. V. John* (9 supra) and *Sarat Chandra Biswal and another* v. *Surendra Mohanty* (16 supra).

(96) Their Lordships of the Supreme Court themselves have apparently put their seal of approval on this sentencing policy in confirming or themselves imposing prison sentences in *Perspective publications* v. *State of Maharashtra* (4 supra) and *C. K. Daphtary* v. *O. P. Gupta*, (6 supra) even in the context of a contempt of milder nature than the one in the present case. Therefore, speaking for myself, the larger interest of the confidence in the judiciary, and the maintenance of the majesty of law, would equally require a deterrent sentence of this nature in the present case. However, primarily in view of the fact that my learned brother Sharma J., has thought otherwise on the issue of sentence and for whose opinion I have great esteem I would impose a sentence of Rs. 1000 only on each of the two respondents and in default thereof two months simple imprisonment.

(97) Criminal Miscellaneous Nos. 5672, 5673, 5552, and 5017 of 1977 were found by us to be without merit and are hereby dismissed.

Prem Chand Jain, J.—I agree with brother Sandhawalia, J.

M. R. Sharma, J

(98) The learned District and Sessions Judge, Bhiwani,—*vide* his letter dated August 24, 1977, forwarded a report to this court made by the learned Chief Judicial Magistrate, Bhiwani, about what happened in his Court on August 24, 1977, when respondent No. 1 Shri Bansi Lal, ex-Defence Minister of India, was produced before him by the police for obtaining remand. It is stated therein

(17) A.I.R. 1945 Allahabad 67.
(18) A.I.R. 1959 Patna 183.
(19) A.I.R. 1959 Pb. 627.

that at the very outset respondent No. 1 desired to make a statement in Court which he styled as his dying declaration. He was allowed to do so. The statement Ex. P.W. 1/7 made by him reads as under:—

> "I am an old patient of Asthma and heart. I always have high blood pressure. Yesterday I asked my counsel to file an application in the Court for my medical examination. The cases being instituted against me are politically motivated and with the intention to cause my death. I am such a patient who can die in a short time. Shri Devi Lal, Chief Minister, Haryana, Ch. Dharam Singh DIG/CID, Haryana, and Shri Raj Singh, S.P., Special Enquiry Agency, Haryana who are my enemies have joined the conspiracy to kill me. Besides them, Shri Banarsi Lal, Inspector etc., have joined. Yesterday on the dismissal of my application for medical examination, I have become sure that the present C.J.M., Bhiwani is also a party in this conspiracy. In case my death occurs in police custody, these persons should be held responsible for my death. My heirs and my counsel Shri H. R. Bhardwaj shall disclose the names of other persons."

(99) The report further goes on to state that after the statement of respondent No. 1 was recorded, he started shouting and using contemptuous and insulting language against the Court. He also proclaimed that the learned Chief Judicial Magistrate was a criminal and a liar. About Shri H. R. Bhardwaj, the learned Advocate who was appearing before the learned Chief Judicial Magistrate on behalf of respondent No. 1, it has been alleged that:—

> "he asserted that he did not expect any justice from this Court because this Court was also a party in the conspiracy to kill Shri Bansi Lal and that it was on that account that I had yesterday rejected his application for getting admitted Shri Bansi Lal in some fully equipped hospital. Shri H. R. Bhardwaj further stated that he was not prepared to make any submissions in this Court because this Court was siding with the police and had already told the police to give 5 days police remand of the accused. He was told by me that I have passed written orders on his application yesterday and that it

did not yehove him to use derogatory language and that all his allegations against me were false and imaginary."

(100) According to the learned Chief Judicial Magistrate, the aforementioned allegations made by the respondents were totally false and imaginary and that he had never given any prior information to the police that he would remand respondent No. 1 to police custody for five days. Since the respondents had expressed lack of confidence in the learned Chief Judicial Magistrate, he verified whether Shri S. D. Arora, Judicial Magistrate Ist Class, Charkhi Dadri, Camp at Bhiwani, was available so that he might refer the police to produce respondent No. 1 and the application for police remand before him but he came to know that Shri S. D. Arora, the learned Judicial Magistrate, was on leave. In the circumstances there was no alternative with the learned Chief Judicial Magistrate other than to dispose of the application of the police for remand of respondent No. 1 to police custody himself, which he did. However, respondent No. 1 was remanded to judicial custody only till September 5, 1977. Along with the report, the learned Chief Judicial Magistrate, Bhiwani, forwarded a copy of the application Ex. CW 1/2 dated August 23, 1977, in which it had been prayed that respondent No. 1 be admitted in a fully equipped hospital where expert physicians might be available at the time of need. Copy of the order Ex C.W. 1/5 passed by the learned Chief Judicial Magistrate on this application and the copy of the statement made by respondent No. 1 before him were also forwarded along with the report.

(101) Under the orders of the Hon'ble Chief Justice, the matter was placed before this Full Bench on August 29, 1977. Since a *prima facie* case of criminal contempt against the two respondents was made out, the Full Bench directed the issuance of a notice under section 15 of the Contempt of Courts Act, 1971 (hereinafter called the Act) in conformity with section 17 of the Act and the Rules framed thereunder by this Court. It was also ordered that a copy of the report submitted by the learned Chief Judicial Magistrate and the enclosures attached thereto should also be served on both the respondents along with the said notice.

(102) On that day, Shri K. S. Thapar, the learned counsel for respondent No. 1, pointed out to the Court that respondent No. 1 was in a delicate state of health and would not be able to attend the Court in person. In view of this peculiar circumstance, respondent

No. 1 was granted exemption from personal appearance in Court on September 19, 1977. Shri H. R. Bhardwaj respondent No. 2 however, appeared in Court on that day.

(103) On that very day, the case was adjourned to enable the respondents to file their written statements. In accordance with rule 15(3) of the Contempt of Courts (Punjab and Haryana) Rules, 1974, framed under section 23 of the Act, the Court directed the learned Advocate General, Haryana, to conduct these proceedings on its behalf.

(104) In the reply affidavit of respondent No. 1 it has been stated that he had been granted anticipatory bail on August 16, 1977, by Harbans Lal, J., in Criminal Miscellaneous Petition No. 3095 of 1977 in a case arising out of first information report No. 106 dated August 1, 1977, of Police Station, Sadar Bhiwani. The second case was registered against him on August 23, 1977, as a device to circumvent the order of bail granted in his favour. He was a patient of chronic Asthama and had suffered a severe attack of the said disease shortly before his arrest. He had also high blood-pressure in those days and was under constant medical care. After his arrest on August 23, 1977, he directed his counsel-respondent No. 2 — to arrange for a medical examination in the hospital and to move the Court for that purpose. That application was summarily rejected by the learned Chief Judicial Magistrate at about 5 P.M. On August 24, 1977, he was brought in handcuffs and paraded in an open jeep before being produced in court. Shri Devi Lal, the present Chief Minister of Haryana is his old enemy and he had hand-picked Shri Dharam Singh Deputy Inspector-General of Police (C.I.D.) and Shri Raj Singh, S.P. (Vigilance) to fabricate false cases against him and the members of his family. He has been informed that Shri Raj Singh, S.P. (Vigilance) had been with the learned Chief Judicial Magistrate on August 11, 1977, and Shri Banarsi Lal, Inspector of Police, was with him in his chamber on August 23, 1977, when he summarily rejected the application for medical facilities without announcing the order to his counsel in spite of his request in that behalf. It is also stated that he was surprised to find Shri Partap Singh, Deputy Commissioner, Bhiwani, on the dais of the learned Chief Judicial Magistrate when he was produced in handcuffs on August 24, 1977. According to him, Shri Pratap Singh was pressing the learned Chief Judicial Magistrate to retire to his chamber before remanding him

to custody. While he was the Chief Minister of Haryana he had placed Shri Pratap Singh under suspension. Apart from the statement made by him in writing before the learned Chief Judicial Magistrate, he did not use any derogatory language against him. About this statement it is stated that the same was made purely out of reasonable and *bona fide* apprehensions arising out of the series of happenings stated in the earlier paragraphs of the affidavit and there was absolutely no intention on his part to insult or to scandalise the Court. It was also stated that respondent No. 1 had—

> "the highest regard for all the Courts and firmly believes that the judicial process is the rock bottom basis of the rule of law and for a civilized society. The deponent (respondent No. 1) sincerely believes that the dignity of the law courts must be maintained. In these circumstances, the deponent (respondent No. 1) submits that he has committed no contempt of the Court of the learned Chief Judicial Magistrate and if, in view of this Hon'ble Court the action of the deponent (respondent No. 1) is found to constitute contempt of Court, the deponent (respondent No. 1) tenders a sincere and *bona fide* apology to this Hon'ble Court."

Respondent No. 2 has stated on affidavit—

> "That on 11th August, 1977, the deponent moved another application on behalf of Ch. Surinder Singh, M.L.A. Shri Manphool Singh, Advocate, also accompanied the deponent who was present in the court on all aforesaid dates. In the application the applicant Surinder Singh had made certain allegations against Shri Raj Singh, S.P. Vigilance, Haryana, and Shri Banarsi Lal, S.H.O. Bhiwani City. The deponent waited in the court room till right from 2.00 P.M. to 3.00 P.M. At about 3.30 P.M. Shri Raj Singh, S.P. (Vigilance) Haryana, came out of the chamber of the learned Chief Judicial Magistrate, A few minutes thereafter the learned Chief Judicial Magistrate also came out. He started smoking in the open court. The deponent kept on standing in the court room, waiting for his permission to move the application and make submissions in support of the application. The learned Chief Judicial Magistrate directed A.P.P. to show to the deponent the report

of Shri Raj Singh, S.P. (Vigilance) in which it had been mentioned that warrants of search had been returned on 6th August, 1977.

That on 12th August, 1977 also the deponent moved an application on behalf of Shri Surinder Singh against Shri Raj Singh, S.P. (Vigilance) and the learned Chief Judicial Magistrate passed an order dated 12th August 1977, conveying to Shri Narendar Kaushik that warrants of search had been returned on 6th August, 1977. But later on it was discovered that a warrant had been purportedly issued on 11th August, 1977 and returned on 22nd August, 1977.

That on 23rd August, 1977, Shri Bansi Lal, ex-Defence Minister, now Member, Rajya Sabha, was arrested by Shri Raj Singh, S.P. (Vigilance). It may be mentioned here that in the F.I.R. No. 320, dated 23rd August, 1977, Shri Raj Singh himself is the complainant and this F.I.R. is stated to have been recorded by him at 7.40 A.M. on 23rd August, 1977 itself. Shri Bansi Lal has been suffering from acute Asthama for the past several years and is also a heart patient. Shri Bansi Lal had obtained anticipatory bail from this Hon'ble Court and one of the grounds that he is a heart patient and has been suffering from acute Asthama. On his arrest by Shri Raj Singh, S.P. (Vigilance), Haryana, Shri Bansi Lal informed me that he was feeling uneasy and had recently suffered an attack of Asthama and high blood pressure and instructed the deponent to move an application before the learned Chief Judicial Magistrate for being admitted in a local hospital for necessary medical aid.

That under instructions from Shri Bansi Lal the deponent moved an application before the learned Chief Judicial Magistrate at about 3.00 P.M. At the time of moving the application Shri Manphool Singh, Advocate, was also present in the court. The learned Chief Judicial Magistrate was sitting in the court and was smoking in the court and had stretched his legs upon the table with a packet of "Wills" cigarettes on the court dais. He made a pointed remark towards the deponent 'Are you very impatient ?' On presentation of the application he called for the report by 4.00 P.M. After the presentation of the application by the

deponent, Shri Banarsi Lal, Inspector of Police, also came there. The learned Chief Judicial Magistrate retired to the chamber. Shri Banarsi Lal, Inspector, followed him, and was present inside the chamber. The deponent stood outside in the court room waiting for the report. The deponent went on waiting in the court room till 5.00 P.M. At about 5.00 P.M. the deponent enquired as to what had happened to his application whereupon the learned Chief Judicial Magistrate came up to the door of his chamber and told the deponent that he could go and that he would reject his application, (He can obtain copy of the order on the following day). At that time the deponent requested the learned Chief Judicial Magistrate to announce the order in his presence. Thereupon the learned Chief Judicial Magistrate called the deponent 'bloody fool'. He also remarked that the deponent had not quoted any provision of law in the application and that he had to apply his mind. Thereupon the deponent left the court. At about 8.00 P.M. the deponent informed his client Shri Bansi Lal about the result of the application and the behaviour of the learned Chief Judicial Magistrate. At about 10 A.M. on 24th August, 1977, the deponent again went to the court of the learned Chief Judicial Magistrate and requested him for copy of the order. The learned Chief Judicial Magistrate declined to give the copy.

Thereafter, the deponent moved an application before the court of the District and Sessions Judge, Bhiwani, for the medical examination of Shri Bansi Lal in a well equipped hospital. The learned District and Sessions Judge marked this application to the Chief Judicial Magistrate and handed it over to the deponent to be personally presented before the Chief Judicial Magistrate. At about 11.00 A.M., the deponent presented the application before the learned Chief Judicial Magistrate who looked at the application and made pointed remarks to the deponent that you do not know how to draft an application', *'kya Tatto Bahas Kar Rahe ho.'* Upon these remarks of the learned Chief Judicial Magistrate, the deponent stopped and did not make any submission in support of the application.

That at this stage crowd started collecting in the court room and at about 11.30 A.M. Shri Bansi Lal was produced by the police in the court of the learned Chief Judicial Magistrate, Bhiwani, in handcuffs. A huge crowd had gathered in the court room and the atmosphere was quite surcharged. At the time of production the Deputy Commissioner of Bhiwani went upto the dais of the learned Chief Judicial Magistrate and asked him to retire to his chamber and pass orders in his chamber. The deponent enquired from the Chief Judicial Magistrate as to who this gentleman was and as to why he was interfering with the proceedings of the court. The learned Chief Judicial Magistrate told the deponent that the gentleman is 'D.C. Sahib'. He directed the deponent to start his arguments. Shri Bansi Lal said that he would like to make a statement which may be recorded. A.P.P. objected to the making and recording of the statement of Shri Bansi Lal. The learned Chief Judicial Magistrate thereupon recorded the statement of Shri Bansi Lal. After recording of the statement he asked the deponent to advance his arguments. The deponent submitted that he had been called a fool a day earlier; a *Tatoo* immediately before Shri Bansi Lal was brought in the court, the Deputy Commissioner was allowed to continue on the dais and interfere with the proceedings and Shri Bansi Lal had made his statement, therefore, no useful purpose will be served if the deponent makes submissions on behalf of his client. The deponent did not use any derogatory remarks to the Presiding Officer as said to be attributed to the deponent by the Chief Judicial Magistrate in his report. The learned Chief Judicial Magistrate has been continuously making unwarranted and unjustified and unbecoming remarks against the deponent from time to time in the court. The learned Chief Judicial Magistrate has not been maintaining the decorum and dignity of the court. As already stated the learned Chief Judicial Magistrate was sitting in the court room and smoking while stretching his legs upon the dais of the court. The learned Chief Judicial Magistrate was quite prejudiced against the deponent and even went to the extent of remarking that what type of Delhi lawyer he was. It is not correct and is specifically denied that the deponent

asserted that 'he did not expect any justice from this Hon'ble Court because this court was also a party in the conspiracy to kill Shri Bansi Lal and it was on that account that I had yesterday rejected his application for getting amitted Shri Bansi Lal in some fully equipped hospital (sic).' It is incorrect that the deponent was not prepared to make any submission in court because the court was siding with the police and had already been told by the police to give five days 'remand to the accused.' It is denied that the deponent used any derogatory language towards the court of the Chief Judicial Magistrate or made any remark not becoming of a member of the legal profession. The deponent has always been respectable to the Presiding Officer and maintained dignity and decorum expected of a lawyer of a standing. It is incomprehensible and it is not expected of a lawyer of a standing of the deponent who has got experience of regular appearance both in the trial court as well as in the High Court and the experience of having worked as Public Prosecutor for a State like Delhi for a period of five years to make such derogatory remarks about the Presiding Officer of the Court. The deponent has all along been acting with restraint. It may be mentioned here that as already stated hereinabove the deponent has been regularly appearing both before the trial court and in the High Court and has never given any occasion to any Presiding Officer of the court to have a complaint against his conduct in representation of cases on behalf of his clients. The deponent has not committed any contempt of court. I say and submit that no case for contempt of court has been made out against the deponent by the learned Chief Judicial Magistrate in his report and the notice issued by this Hon'ble Court dated 29th August, 1977, be withdrawn. The fact that the deponent did not make any derogatory remark about the Presiding Officer is fully borne out from the various newspaper reports dated 25th August, 1977. The reporters of Hindustan Times and the Indian Express are present in the court."

In the end he stated—

"If, in view of this Hon'ble Court, the action of the deponent (respondent No. 2) is found to constitute contempt of court,

the deponent (respondent No. 2) tenders a sincere and *bona fide* apology to this Hon'ble Court."

(105) On September 26, 1977, the respondents raised a preliminary contention that the facts alleged against them constitute an offence under section 228 of the Indian Penal Code, and as laid down in proviso to section 10 of the Act, this Court was debarred from proceeding against them under the Act. The learned Advocate-General, Haryana, repelled the contention and relied upon *State of Madhya Pradesh* v. *Revashankar* (20). In that case, one Revashankar had levelled four allegations against the learned trial Magistrate which were summarised by the Court as follows :—

> The first aspersion was that from the order dated October 12, 1958, it appeared that Mr. N. K. Acharya wanted to favour Mr. Uma Shankar Chaturvedi. The second aspersion was that from certain opinions expressed by the Magistrate, Revashankar asserted that he was sure that he would not get impartial and legal justice from the Magistrate. The third aspersion was of a more serious character and it was that the Magistrate had a hand in a conspiracy hatched by Messrs. Mohan Singh and Uma Shankar Chaturvedi regarding certain ornaments of Chandra Mukhi Bai with the object of involving Revashankar and his brother Sushil Kumar in a false case of theft of ornaments. The fourth aspersion was that Mr. Uma Shankar Chaturvedi had declared that he had paid Rs. 500 to the Magistrate through Ganga Ram."

(106) The aforesaid allegations were also repeated by him in a subsequent affidavit. The learned trial Magistrate reported the matter to the High Court which after notice to the contemner, held that by reason of section 3(2) of the Contempt of Courts Act, 1952, it had no jurisdiction to proceed under that Act because the act complained of constituted an offence under section 228, Indian Penal Code. While reversing this judgment of the High Court, the Supreme Court observed :—

> "We are of the opinion that the learned Judges were wrong in their view that *prima facie* the act complained of amounted

(20) A.I.R. 1959 S.C. 102.

to an offence under seciton 228, Indian Penal Code, and no more. We are advisedly saying *prima facie,* because the High Court did not go into the merits and we have no desire to make any final pronouncement at this stage on the merits of the case."

(107) The preliminary contention raised was consequently repelled *vide* an order dated September 29, 1977, and the proceedings were allowed to be continued so that the plea put forth by the respondent might be gone into.

(108) The learned C.J.M., Bhiwani, was ordered to be summoned as a witness. It was further ordered that in view of the allegations made in the affidavits filed by the respondents regarding the alleged presence of Shri Pratap Singh, Deputy Commissioner, Bhiwani, at or near the dais of the learned Chief Judicial Magistrate when respondent No. 1 along with his counsel respondents No. 2 was produced before him, it had become necessary to examine the Deputy Commissioner also. Consequently, he and the learned Chief Judicial Magistrate were ordered to appear in Court on October 4, 1977. The learned Advocate-General, Haryana, was also allowed to examine other witness if he considered it necessary.

(109) On October 4, 1977, the statements of Shri Gorakh Nath, learned Chief Judicial Magistrate, Bhiwani, and Shri Pratap Singh, Deputy Commissioner, Bhiwani, were recorded as C.W. 1 and C.W. 2 respectively. The respondents were given full opportunity to cross-examine them.

(110) On October 5, 1977, the learned Advocate-General, Haryana, prayed for summoning of six additional witnesses so that they may testify on oath in Court but in view of sub-rule (3) of rule 8 of the Contempt of Court (Panjab and Haryana) Rules, 1974, it was ordered that the evidence of these witnesses be received in affidavit form. The learned counsel for the respondents also wished to tender evidence on their behalf on affidavits. They were allowed to do so. It was ordered that the affidavits of the parties should be filed in Court by October 11, 1977, with copies thereof to the opposite party.

Pursuant to the aforementioned orders, the learned Advocate-General, Haryana, filed affidavits of—

(1) Shri T. D. Kheterpal, Assistant District Attorney, Bhiwani;

(2) Shri Jai Bhagwan Sharma, Judicial Magistrate, IInd Class (under training), Bhiwani;

(3) Shri M. P. Mehndiratta, Judicial Magistrate, IInd Class, Karnal;

(4) Shri Shyam Khosla, Correspondent, The Daily Tribune, Rohtak;

(5) Shri Randhir Singh, Deputy Superintendent of Police, Bhiwani;

(6) Shri R. S. Gupta, District and Sessions Judge, Bhiwani.

(111) The respondents filed affidavits of 33 persons including the affidavits of 8 advocates practising in Bhiwani Courts.

(112) The learned counsel for the respondents prayed that they be allowed to cross-examine Shri R. S. Gupta, learned District and Sessions Judge, Bhiwani, and Shri Shyam Khosla, representative of the Daily Tribune at Rohtak. This request was allowed and the aforementioned witnesses were ordered on October 12, 1977, to appear in Court on October 25, 1977. On that date, i.e., October 25, 1977, the learned counsel for the respondents did cross-examine the two witnesses.

(113) On the same day, an application filed by the learned Advocate-General, for permission to cross-examine Shri Raghbir Singh Advocate was allowed. That witness was summoned and allowed to be cross-examined by the learned Advocate-General, Haryana, on November 1, 1977. On that day, respondent No. 2 made a statement that he did not wish to lead any evidence in defence. The learned counsel for respondent No. 1 stated that he did not wish to produce his client either as a witness or to make a statement personally in Court with regard to the allegations made against him. He also stated that he did not wish to lead any further defence evidence. However, on November 23, 1977, the learned counsel for respondent No. 1 made an application that he be allowed to place on record some documents showing that respondent No. 1 was admitted in the hospital with some damage to his heart. *Vide* application dated November 24, 1977, permission of the Court was sought to place on record a copy of the news-item appearing in the

Times of India dated August 25, 1977. Since the respondents had already closed their defence, the Court did not allow these documents to be placed on record.

(114) So far as respondent No. 1 is concerned, the controversy centres around the fact whether he had used the words "liar" and "criminal" in relation to the learned Chief Judicial Magistrate or not, because he has admitted having made the statement Exhibit P.W. 1/7 dated August 24, 1977, before him. On this point, apart from the affidavit sworn by the learned Chief Judicial Magistrate, the learned Advocate-General, Haryana, has placed on record the affidavits of Shri Jai Bhagwan Sharma and Shri M. P. Mehndiratta, Judicial Magistrates, Second Class, who were receiving training in the Court of the learned C.J.M., Bhiwani, and the affidavit of Shri T. D. Kheterpal, Assistant District Attorney, Bhiwani, who was present in Court. The affidavits contain allegations to the effect that the respondent No. 1 used offensive language against the learned Chief Judicial Magistrate. On the other hand, respondent No. 1 besides denying this matter on oath has relied upon the affidavit of respondent No. 2 and the affidavits of eight Advocates practising at Bhiwani in which it has been categorically stated that respondent No. 1 did not utter these words. I am, however, inclined to hold that the stand taken by the learned Chief Judicial Magistrate on this point appears to be more convincing. While in the witness box, he stated as under:—

> "He further stated that he was convinced that he would be remanded to police custody for the aforesaid period. I, however, told him that I had yet to make up my mind and record a decision on the application. Thereupon, he shouted that I was a liar. He further stated that I was a criminal. He then shouted that what justice could be expected from a liar and a criminal. Throughout this period, he thumped heavily at the bar of the Court."

(115) As shall be shown hereinafter, respondent No. 1 besides being highly excited was stated to be in a bad state of health and in view of the attendant circumstances he was not prepared to believe that the learned Chief Judicial Magistrate was yet to make up his mind and that he had already decided to remand him to police custody for 5 days. This information was allegedly given to respondent No. 1 by some member of the police guard. Instead of containing himself, he burst out in sheer anger and uttered these words to

convey that the learned Chief Judicial Magistrate was not speaking the truth and that he was a criminal in the sense that he was also a party to the criminal conspiracy to kill him. It was a tirade even though misguided against the person of the learned Presiding Officer. The question arises in what manner should he be dealt with under the Act for this default ?

(116) Generally Speaking the opportunity to exercise jurisdiction to punish for contempt arises in cases of three types. Firstly, when a citizen seeks redress against the wrong done by the executive. In that case it is the bounden duty of the Court of Record to come to the aid of the citizen. Secondly, in civil disputes injunctions are sometimes disobeyed. In such cases, the Court is under an equal obligation to not only punish the wrong-doer but also to undo the wrong done to the citizen by ordering restitution etc.

(117) In American Jurisprudence Volume 12 page 392, while distinguishing civil contempts from criminal ones, it was observed as under:—

> "Criminal contempt proceedings are those brought to preserve the power and vindicate the dignity of court and to punish for disobedience of its orders. Civil contempt proceedings are those instituted to preserve and enforce the rights of private parties to suits and to compel obedience to orders and decrees made for the benefit of such parties. The former are criminal and punitive in their nature and the Government, the courts, and the people are interested in their prosecution. The latter are civil, remedial, and coercive in their nature, and the parties chiefly interested in their conduct and prosecution are those individuals for the enforcement of whose private rights and remedies the suits were instituted."

(118) Even if an ordinary remedy is available to an aggrieved party, the Court steps in to undo the wrong which had resulted out of disobedience of a lawful order passed by this Court or a subordinate Court. Thirdly, the occasion to exercise this jurisdiction arises when there is an attack on the administration of justice made indirectly by using insulting language against a presiding officer of a Court. There is a greater duty to act with circumspection in this category of cases because the Court in a way acts as a Judge in its

own cause. Besides, sentiments of a democratic society can fairly be depended upon by the judiciary as a protection against unfounded attacks levelled against it. If the Court readily goes to the aid of a citizen who is either aggrieved by executive action or by the wrong done by a private party, its respect for rule of law gets enhanced but when it seeks to protect its own dignity or of the subordinate courts the resultant effect may not necessarily be the same. It is therefore desirable that this Court, in proceedings for punishing either for its own contempt or for the contempt of a subordinate judicial officer, should pay added regard to the oft repeated principles that justice should not only be done but also appear to be done; that an accused person is under no obligation to prove his innocence beyond doubt and that he can rest content by bringing on record some circumstances from which an inference of his innocence can be drawn.

(119) History shows that over-zealous resort to this jurisdiction has resulted in its erosion to a great extent. Under the common law, a Court of Record could pass an unlimited sentence of imprisonment on a contemner. Even after the Contempt of Courts Act No. 12 of 1926 was brought on the statute book section 3 of which provided that a person held guilty of contempt of court might be punished with simple imprisonment for a term which might extend to six months or with fine which might extend to Rs. 2,000 or both. Some High Courts, including this Court (*In re Lala Harkishan Lal* (21), held that the aforementioned section did not prevent the High Court to pass unlimited sentence of imprisonment on a contemner. The Legislature then hastened to amend the Act. The Contempt of Courts (Amendment) Act No. 12 of 1937 received the assent of the Governor General on March 10, 1937, and the following proviso was added to section 3 of the Act (No. 12 of 1926):—

> "Provided further that notwithstanding anything elsewhere contained in any law no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it."

While moving the relevant Bill, the then Hon'ble Law Member Sir Nripendra Nath Sircar said:—

> "We have tried to make the position perfectly clear: we are trying it a second time, and I hope that this time the

(21) A.I.R. 1937 Lahore 497 (F.B.)

intention will be carried out. It has been said that law still exists, of summary procedure, for contempt of Court, and it has been felt that such a power must be retained by the Court. On the other hand, eminent English Judges have also remarked that this is an archaic procedure and the situation is really an incongruous one, viz., the prosecutor taking upon himself the roll of the Judge; but as I said, Hon'ble Members need not be troubled, so far as this Bill is concerned, with any of those bigger problems. What is intended to be done by this Bill is to carry out a promise which was made to this house, viz., that after the Bill was passed, it would not be possible for any High Court to inflict any longer sentence than six months." (The Law of Contempt of Court and of Legislature by Tek Chand and H. L. Sarin, 1949 Edition, page 111).

(120) Till the arrival of the present Act on the statute book, no attempt was made to give a statutory definition to the words "contemt of court". It was left to the Judges to decide on the basis of available precedents what constituted "contempt". In some cases when a defamatory attack was levelled against the person of a subordinate Judge, it was held that since he became embarrassed and the public at large had lost confidence in his integrity, the course of justice stood scandalized. Even if the conduct of a contemner had insignificant or minimal effect on the course of justice, there was no bar against punishing him. This view also held the field that a conditional apology was no apology in the eyes of law because justification and an apology being anti-thesis of each other could not go together. The result was that in some cases even innocent persons refrained from coming forth with valid defences open to them on account of the fear that if they somehow or other failed to establish them, they would be losing the opportunity of having their apologies accepted. No time limit was provided for initiating action for contempt of court and even busybodies were allowed to move the High Court for initating action under this jurisdiction as and when they chose.

(121) The Legislature took due notice of this situation when it passed the 1971 Act. Under section 2(b) and (c) of it, civil and criminal contempts were given a statutory defiintion. Sections 4 and 5 of the Act lay down that fair and accurate report of judicial proceedings and fair criticism of judicial acts shall not constitute

contempt. Section 6 of the Act lays down that a person shall not be guilty of contempt in respect of any statement made by him in good faith concerning the presiding officer of any Subordinate Court to a higher Court. The explanation appearing under section 12 of the Act provides that a *bona fide* apology should be accepted even if it is conditional. Section 13 of the Act brought about an important change in the earlier law. It reads as under :—

> "*Contempts not punishable in certain cases.*—Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice."

(122) Now, it is not open to the High Court to punish for each and every criminal contempt. It has first to determine whether the action complained of substantially interferes or tends substantially to interfere with the due course of justice. Under section 15 of the Act a curb has been placed on the activities of the busybodies to initiate proceedings for criminal contempt because under the present law such proceedings can either be initiated by the High Court **suo motu** or by the Advocate-General or by any person with the consent of the latter. In section 20 of the Act a bar of limitation has been created against initiation of contempt proceedings after a period of one year with effect from the date on which the contempt is alleged to have been committed.

(123) If the reforms introduced by the Act are closely scrutinised, it becomes obvious that further fetters have been placed on the earlier somewhat wider jurisdiction of the High Courts in this behalf. It is desirable that this jurisdiction, which is an instrument of service to the people, should be exercised as sparingly as possible and with as much caution as possible.

(124) Considerable arguments were raised at the Bar on the point whether it is open to a contemner to offer any justification for his act which constitutes contempt, but it is not necessary to dilate on this point in view of the following dicta laid down by the Supreme Court in *Perspective Publications (P) Ltd. and another* v. *The State of Maharashtra* (4 supra).

> "As regards the third contention no attempt was made before the High Court to substantiate that the facts stated in the article

were true or were founded on correct data. It may be that truthfulness or factual correctness is a good defence in an action for libel, but in the law of contempt there are hardly any English or Indian cases in which such defence has been recognised. It is true that in the case of *Bathina Ramakrishna Reddy* v. *State of Madras* (5 *supra*), there was some discussion about the bona fides of the person responsible for the publication but that was apparently done to dispose of contention which had been raised on the point. It is quite clear that the submission made was considered on the assumption that good faith can be held to be a defence in a proceeding for contempt. The words 'even if good faith can be held to be a defence at all in a proceeding for contempt' show that this court did not lay down affirmatively that good faith can be set up as a defence in contempt proceedings. At any rate, this point is merely of academic interest because no attempt was made before the High Court to establish the truthfulness of the facts stated in the article. On the other hand, it was established that some of the material allegations were altogether wrong and incorrect."

(125) Mr Thapar, the learned counsel for the respondents, has tried to distinguish this case on the grounds that, firstly, it related to the contempt of a Court of Record and, secondly, in view of the change in the law the aforementioned observations do not hold the entire field. He has further argued that if a person can make a statement in good faith against a Presiding Officer before the High Court, it should be open to him to offer justification of his acts when he is arrayed before the High Court on a charge of contempt. I am not impressed with these submissions made by the learned counsel. The observations made by the highest Court of the land are clear and unambiguous. Further, section 6 of the Act carves out an exception to the general rule that nobody should be able to use derogatory language against the Presiding Officer of a Court. Anybody who claims the benefit of an exception has to bring his case strictly within the four corners of the statutory provisions. This section only allows a person to make some allegations against a Court in a *bona fide* manner when an enquiry is taken up by a higher Court. If the Legislature had intended to allow justification being offered for an act constituting criminal contempt, it would have made a provision in

this behalf in clear terms. As at present advised, I am of the view that by and large it is not open to a person to offer justification for criminal contempt. At the same time, every attempt at justification cannot be regarded as contumacious as laid down by their Lordships of the Supreme Court in *M. Y. Shareef and another* v. *The Hon'ble Judges of the High Court of Nagpur and others* (11 supra) The spirit of section 6 allows a contemner to bring on record the mitigating circumstances when any enquiry against him is being held by the High Court.

(126) The next question which deserves to be considered relates to the procedure to be adopted in such enquiries. In a large number of decided cases, it has been laid down that a High Court can devise its own procedure consonant with the principles of natural justice for punishing contemners in a summary manner. The emphasis is on a quick disposal of the proceedings but at the same time the contemner has to be given full opportunity of putting forth his point of view and the mitigating circumstances, if any. A case may arise in which while considering the point of view put forth by the contemner the action of a third party may have to be looked into. Now if that party is impleaded, the proceedings would undoubtedly get lengthy. At the same time if the court disallows the contemner to lead evidence of his choice, the course adopted might result in grave miscarriage of justice. The obviate the aforementioned two contingencies, it looks proper that the contemner be allowed to have his full say and it be made clear that the observations made would be confined to the decision of the proceedings in hand only.

(127) I propose to adopt this principle for the decision of this case. Besides, I propose to give due importance to circumstantial evidence while considering the questions of fact.

(128) After having cleared this ground, I would like to discuss the pleas raised by the respondents. The gravamen of the charge against respondent No. 1 is that he falsely accused the learned Chief Judicial Magistrate of being in conspiracy with the executive authorities to put an end to his life by keeping him in police custody.

(129) At the very outset, I might observe that this charge is wholly groundless. The learned Presiding Officer was transferred to this station on August 9, 1977. He was holding a very heavy charge inasmuch as about 2500 files were pending in his Court as against the

norm of 500 files. In this situation, it was well nigh impossible for him to keep a close track of all the cases pending before him, nor could he devote as much attention to an individual case as he would have done if the workload had not been so heavy. If he issued a search warrant after hearing a police officer, no fault could be found with the performance of his duties nor could his integrity be doubted merely because some police officers called on him and saw him in his chambers for paying respects or for any other official business. When he told the respondents in Court that he had not given any assurance to any police officer that he would remand respondent No. 1 to police custody for 5 days, the latter should have accepted his word. It goes to the credit of the learned Chief Judicial Magistrate that when respondent No. 1 said that he did not expect justice from him he adjourned the case in order to find out whether the same could be entrusted to Shri S. D. Arora, learned Judicial Magistrate, Charkhi Dadri, who used to come to Bhiwani, or not. Since Mr Arora was not available, he was forced by the circumstances to take up the case himself and even then he remanded respondent No. 1 to judicial custody. Mr M. C. Bhandare, the learned Senior counsel for respondent No. 1 frankly conceded that the learned Chief Judicial Magistrate acted with utmost restraint and approached the case with an open and a fair mind.

(130) However, the finding that the learned Chief Judicial Magistrate was not in conspiracy with the executive does not necessarily imply that respondent No. 1 must be punished for levelling these accusations against him. In order to do that, the Court has to consider the circumstances in which he uttered these words, the state of his mind and the mitigating grounds, if any, while making a decision.

(131) In his affidavit respondent No. 1 has stated that the present Chief Minister of Haryana was inimically disposed towards him and he had hand-picked some officers to institute false cases against him and the members of his family. According to him, they were Shri Pratap Singh, CW 2, Deputy Commissioner, Bhiwani, Shri Dharam Singh, D.I.G. (C,I,D,), Haryana, Shri Raj Singh, S.P. (Vigilance), Haryana. and Shri Banarsi Lal, S.H.O., Police Station, Bhiwani Sadar. Shri Pratap Singh, Deputy Commissioner, while appearing as CW 2 has admitted in cross-examination that he was suspended during the tenure of Chief Ministership of respondent No. 1 and had remained so suspended for a period of eight months before his appointment as Deputy Commissioner on June 28, 1977. He has also

admitted that he was proceeded against for contempt of court because he happened to go to the court of Shri H. R. Goel, Judicial Magistrate, Panipat, when a case was pending in the court of that judicial officer in which his own father-in-law was remotely involved. The final part of the order Exhibit CW 2/1 in *Court on its own Motion* v. *Partap Singh* (22), however, reads—

> "Since the respondent has placed himself at the mercy of the Court, the rule for contempt of Court is discharged with an admonition to the respondent to be more careful in future."

This witness has of course denied that he was selected by the present Chief Minister of Haryana with the specific purpose of hunting down respondent No. 1. Naturally enough, he could not state on oath as to what is the state of mind of the third parties. However, towards the end of paragraph 5 of the affidavit sworn by respondent No. 1, it is stated—

> "The enmity of Shri Devi Lal with the deponent (respondent No. 1) is a fact which is not even denied in the replies filed by the investigating officers in the Court."

Even when this mater was specifically raised, no effort was made to rebut the allegations.

(132) It is also a fact that a case was instituted against respondent No. 1 on the basis of first information report No. 106 dated August 1, 1977, lodged at Police Station, Bhiwani Sadar, in which he was allowed anticipatory bail by Harbans Lal, J., *see Bansi Lal* v. *State of Haryana, etc.* (23). The learned Judge had directed respondent No. 1 to appear before the Investigating Officer as and when required to do so. It is also a fact that he had proceeded to Bhiwani on August 23, 1977 pursuant to a requisition for his attendance made by the S.H.O., Bhiwani City, when another first information report No. 320 was registered at the said police station, pursuant to which he was taken in custody on that very day. It is stated in paragraph No. 4 of the affidavit filed by respondent No. 1 that on the morning of August 24, 1977, he was brought to the Sadar Police Station, Bhiwani, at about 5.30 A.M. in the out-skirts of the town but was taken back to Police Station City, Bhiwani, around 7 a.m. on rceeipt

(22) Cr. 0.6 of 1972, decided on 11th February, 1972.

(23) Cr. Mis. 3095 of 77, decided on 16th August, 1977.

of some telephonic message. He was handcuffed and paraded in open jeep while he was brought to the Courts. These allegations also stand unrebutted. The learned counsel for respondent No. 1 stated that the later was taken to the Court in handcuffes by ignoring the directions contained in rule XIX, Chapter 27, of the Rules and Orders of The Punjab High Court, Volume III, which reads as under:—

> "Under-trial prisoners while being escorted to and from Court by the Police should not be handcuffed, unless there is a reasonable expectation that such prisoners will use violence, or that an attempt will be made to rescue home."

When questioned about this matter, the learned Advocate-General, Haryana, stated that in the then prevailing atmosphere when a large number of people had gathered outside the Court slogans and counter-slogans were being raised, the police could not have acted otherwise. It is difficult for me to accept this explanation. When people started gathering somebody should have visualised the situation, made arrangements for coping with law and order situation and removed handcuffs from the hands of respondent No. 1 while he was being taken to the Court.

(133) Respondent No. 1 has stated in his affidavit that he was a patient of chronic Asthma and had suffered a very severe attack of the same malady before his arrest. He had also high blood pressure during those days and was under constant medical care. An effort was made on behalf of respondent No. 1 to substantiate the allegation regarding his ill-health by filing some documents in Court but his request in this behalf was turned down by us, even then there is already some evidence on the record of this case to show that this respondent was in fact referred to hospital after his arrest. Shri Shyam Khosla, representative of the Daily Tribune, while appearing as C.W. 4 has admitted in his cross-examination that after respondent No. 1 was released on bail and hospitalised in Bhiwani, he had gone to find out the state of his health. At that time he was very much excited and shouted at him but he did not recollect what he had said. Had respondent No. 1 not been suffering from ill-health there would have been no need for his hospitalisation at Bhiwani especially when he had been enlarged on bail.

(134) At this stage, I would like to mention that even if the highest executive authority is inimically disposed towards a person

that does not confer any immunity upon him against investigation of crimes committed by him and his subsequent punishment by a Court of law after a trial in accordance with the procedure laid down. All that the executive authorities are expected to do is to show respect for basic human rights which every citizen in a free society, wedded to the rule of law expects it to do. Even a rank criminal when arrested in connection with a criminal case deserves to be afforded medical facilities by the executive authorities including the investigating agency without the intervention of a Court. When confronted with this situation, the learned Advocate-General, Haryana, referred to a report made by Shri Raj Singh, S.P. (Vigilance) on the application CW 1/2, dated August 23, 1977, made by respondent No. 1 for grant of medical facilities in which it was stated that respondent No. 1 had not complained of any illness and that he did not appear to be unwell. It is difficult for me to believe that respondent No. 1 after his arrest did not make a verbal request for being afforded medical facilities to the police officers especially when his counsel was time and again knocking at the doors of the courts for getting such a relief. The report made by this officer only illustrates the mood of the investigating agency at the relevant time. Whether respondent No. 1 was actually guilty of any offence or not, one thing is quite certain that the treatment meted out to him must have made him extremely irritable and excitable.

(135) I may now try to gauge the state of the feelings vis-a-vis the treatment meted out to him by the Court from his point of view.

(136) The house of respondent No. 1 was searched pursuant to a warrant issued by the then learned Chief Judicial Magistrate on August 3, 1977. The police made the search and returned the warrant to the Court on August 5, 1977, but neither respondent No. 1 nor his son had any intimation about the warrant having been sent back to the Court after compliance. In his application Exhibit C.W. 1/24, dated August 10, 1977, Surinder Singh, son of respondent No. 1 stated:—

> "That the petitioner's house was searched by a police party in the early hours of the morning of 4th August, 1977, presumably on the strength of a warrant of search issued by this Hon'ble Court.
>
> That the petitioner has been informed that the search was carried out with proper compliance of the provisions of

law relating to the search and in the absence of all male and female members of the petitioner's family knowingly and the same continued day and night of 4th August and completed on the 5th August, 1977 (sic). The police severely damaged the household and other articles lying in the house. The library books of the petitioner were thrown out of the shelves and are still lying on the ground alongwith the photographs of various V.I.Ps. which were adoring the walls of the petitioner's house. That although the purpose and purport of the warrant of search was accomplished inasmuch as that the search had been completed on 5th August, 1977, in terms of the warrants of search it should have been returned to this Hon'ble Court after the search immediately but out of sheer malice and ulterior motive the police has not returned the same for using the same for insulting and humiliating the family of the petitioner.

That Shri Raj Singh, S.P. Vig. and Shri Banarsi Lal S.H.O: City Bhiwani brought a number of policemen and ordered them to enter into the house of the petitioner and stay there. These policemen have been permanently camping in the premises of the petitioner and are still there. They have been moving about in every nook and corner of the petitioner's house during day and night and have been interfering in the privacy of the dwellers. They keep close and constant watch on the persons who visit the house and indulge in taking their search and by their actions they are restraining the free movement of the members of the petitioner's family and their sympathisers.

That Shri Raj Singh, S. P. Vigilance and Shri Banarsi Lal keep on visiting off and on to ensure that the officers and men of the police continue camping in the house of the petitioner's family. The aforesaid police officers are doing so out of sheer vengeance and malice towards Shri Bansi Lal against whom they are making all out efforts to fabricate false evidence and make false public records and subject the petitioner's family to insult and mental injury and torture. Yesterday, out of the police officer who were camping inside, the names of Shri Sumer Chand S.I., Ram Narain No. 586 and Amar Singh No. 62 were disclosed by them when enquired by the petitioner's family.

Besides, at night of the 8th August, 1977 one Constable Chand Ram No. 620 as strolling in the compound of the house while other policemen were relaxing in the compound when the counsel of the petitioner and other members of his family reached Bhiwani from Delhi at 2.00 A.M. The circumstances under which these police officers and men are moving about during dark hours of the night unchecked and unruffled go to show that the police is bent upon planting something incriminating in the house in order to fabricate false evidence against Ch. Bansi Lal, M.P. and also defame him in the public. All this is being done under the pretext of the execution of search warrants issued by this Hon'ble court although the fact remains that this was never the intent purpose of the warrants."

(137) In the end it was prayed that the report of the police be called for and they be ordered to submit back the warrants immediately. After receiving the report of the police the learned Chief Judicial Magistrate passed the following order on this application:—

"A.P.P. has filed reply of the application. For consideration to come up tomorrow, i.e. 12th August, 1977."

(138) The order does not show that any direction had been issued to the police force to refrain from interfering with the normal activities of the householders nor does it show any resentment having been expressed against the conduct of the police force to enter the house of respondent No. 1 after the warrant had been deposited back in the court. Section 165, Criminal Procedure Code, provides for certain safeguards when the house of a citizen is searched. This provision came up for consideration before a Division Bench of Lahore High Court in *Emperor* v. *Mohammad Shah,* (24). In that case the accused person had been charged under section 353, I.P.C. for assaulting an Inspector of Police with intent to prevent him from discharging his duties as such. When the Police Inspector went to make a search of the house of the accused, the latter resisted the police party by violently striking at them with his *dang.* The learned trial Magistrate held that provisions of section 165 of the Code of Criminal Procedure had not been complied with by the police officer when he went to make a search of the house of the accused.

(24) AIR 1946 Lahore 456.

Consequently, he held that even on the facts found no conviction of the accused could be recorded. The State filed an appeal against the acquittal of the accused. Marten, J., who wrote the leading judgment observed as under:—

> A perusal of the general provisions contained in Chapter VII, Criminal Procedure Code, as regards search and entry, clearly discloses that it was the undoubted intention of the Legislature to preserve the common right of privacy by requiring that no such entry or search should be conducted without the written order of a Court. These provisions are based on the law of England where an Englishman's house is said to be regarded as his castle and cannot be easily invaded even by the Forces of the State. Similar safeguards are even more necessary in this country where an Indian's house is also his *zenana*, in which his womenfolk, who by custom must be protected from the gaze of strangers should find safe asylum and refuge. Section 165, Criminal Procedure Code, was enacted as an exception to the general law of searches because it was recognised that in certain exceptional emergencies it was necessary to empower responsible police officer to carry out searches without first applying to the Courts for authority. But it was clearly the intention of the Legislature that the powers under this section should be limited and restricted and that those members of the general public against whom they were to be applied should be provided with safeguards in order to prevent abuse of these powers."

(139) Bhandari, J., (as the learned Chief Justice then was) quoted with approval the following observations of Lord Camdon C.J. in *Entick* v. *Carrington*, (25):—

> "The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by positive law, are various. Distresses, executions

(25) 95 E.R. 807.

> forfeitures, taxes, etc. are all of this description; wherein every man by common consent gives up that right, for the sake of justice and the general good. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action though the damage be nothing : which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact he is bound to show by way of justification that some positive law has empowered or excused him. The justification is submitted to the Judges; who are to look into the books; and if such a justification can be maintained by the text of the statute law, or by the principles of common law. If no such excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment."

Towards the end of the judgment; he observed:—

> "Having regard to the language of section 165 and the general object intended to be secured by that section I have no doubt in my mind that it must be deemed to be obligatory with an implied nullification for disobedience. It follows as a consequence that compliance with the terms of the section is a condition percedent to the validity and legality of the search."

(140) The accused person was consequently acquitted. It is precisely for this reason that I have all along been emphasising that the police should conduct investigations strictly in accordance with the salutary provisions of the Code of Criminal Procedure.

(141) It is contended that the respondent had a feeling that the learned Chief Judicial Magistrate did not bring to bear that aggressive approach on the problem which was expected of him as the head of the magistracy in the district, while disposing of an application of a citizen in which he had prayed that the privacy of his house should be protected. It is further submitted on their behalf that a local commissioner could have been appointed for making a report after visiting the spot and then if the facts stated in the application were found

to be correct necessary relief could have been provided to the petitioner, or else the petitioner could have been informed that the police party was present at his house without authority of law and that he could avail of the remedies available to him.

(141A) On August 11, 1977, Shri Raj Singh S.P. (Vigilance) made an application to the Court of the learned Chief Judicial Magistrate for the issuance of fresh warrants for the search of the lawns of the house of respondent No. 1 on the ground which was reported latter that due to rains these lawns could not be dug up during the pendency of the earlier warrants of search issued by his learned predecessor-in-office. Whether rains make it easier for the ground to be dug up or not, it is a different matter, but the fact remains that the learned Chief Judicial Magistrate allowed this prayer. On August 12, 1977, Shri Surinder Singh, son of respondent No. 1 made another application through his counsel that the police were illegally camping in his house. On this application, the learned Chief Judicial Magistrate passed an order calling upon the police to submit report. In this order he did make a mention of the warrants of search issued on August 3, 1977, but made no reference whatsoever to the similar warrants issued by him on August 11, 1977. It is claimed on behalf of respondent No. 1 that had the learned Chief Judicial Magistrate actually issued search warrants on August 11, 1977, he would have referred to that fact in his order dated August 12, 1977. It is further submitted that proceedings against a person of the importance of respondent No. 1 could not be easily forgotten by any Court. Could he not in these circumstances entertain a suspicion in his mind that the evidence regarding the issuance of the second search warrant was created later on by all concerned to counter the effect of application dated August 10, 1977, filed by Shri Surinder Singh, son of respondent No. 1 ? In this context, it is relevant to notice that the investigating agency took adjournments on August 12 and 18, 1977, for filing a reply to the applications filed by Shri Surinder Singh, on August 11 and 12, 1977, and did not proclaim that a fresh warrant of search had been issued by the learned Chief Judicial Magistrate. The warrant said to have been issued on August 11, 1977, was filed in Court on August 22, 1977, with the following report made by Shri Raj Singh, Superintendent of Police (Vigilance)—

> "The search was conducted in accordance with the provisions of law. Nothing incriminating was recovered nor taken into possession. Submitted."

(142) The report does not explain why the warrant which was executed on August 12, 1977, was filed in Court as late as on August 22, 1977. These are tell tale circumstances which could possibly have affected the mind of respondent No. 1.

(143) On August 23, 1977, respondent No. 2 on instructions from respondent No. 1 after his arrest filed an application Ex. C.W. 1/2 before the learned Chief Judicial Magistrate with a prayer that the latter be admitted to a fully equipped hospital at the time of need in view of his delicate state of health. This application was rejected by the learned Chief Judicial Magistrate on the report made by Shri Raj Singh, Superintendent of Police (Vigilance), which has been referred to earlier. The learned Magistrate has noticed in his order that it was pointedly brought to his notice that respondent No. 1 needed to be admitted to a hospital where facilities for E.C.G. and blood-pressure measuring instruments were available and yet, it is argued by the learned counsel for the respondents, he dismissed the application primarily on what was stated by a police officer. About the state of health of respondent No. 1 on August 24, 1977, respondent No. 2 made another application of the same type before the learned Sessions Judge, Bhiwani, which according to him was immediately forwarded to the learned Chief Judicial Magistrate by the former. It is argued that even this application was not disposed of till about late in the afternoon. The version given by respondent No. 2 about these applications is contained in paras Nos. 7 and 8 of his affidavit quoted above.

(144) It may be that this version is exaggerated but again the question to be seen is how the mind of respondent No. 1 would react when his counsel conveyed him such information.

(145) On the question whether Shri Partap Singh, Deputy Commissioner was present at the dais of the learned Chief Judicial Magistrate at 11.30 A.M. on August 24, 1977, when respondent No. 1 was produced for obtaining remand, the evidence both oral and circumstantial is conflicting. According to the learned Chief Judicial Magistrate, Shri Partap Singh, Deputy Commissioner approached his dais when respondent No. 1 was produced before him for the second time. To the same effect is the statement of the Deputy Commissioner. The latter has, however, admitted in his examination-in-chief that even on August 23, 1977, large crowds had collected in Bhiwani. If that was so, he should have foreseen that there was a greater

possibility of the swelling of the crowd on the following day when respondent No. 1 was to be produced in court. In this situation, if he had some concern for law and order, he would have been naturally present in the court during the morning session. It is also in evidence that Shri Partap Singh, Deputy Commissioner, on one occasion perhaps did approach a court. As against these two circumstances which might enable me to draw an inference in favour of respondent No. 1, there is his own conduct. Had the Deputy Commissioner been sitting on the dais, he would not have forgotten to mention this fact in his statement made before the learned Chief Judicial Magistrate. On the available material, it is difficult for me to give a positive finding on this point. Though it is open to me to give a finding in favour of respondent No. 1 on the principle that if the evidence is equally balanced benefit of doubt should go to the accused, yet I am not inclined to use this circumstance either for or against him.

(146) To sum up, my conclusions are that respondent No. 1 was having indifferent health when he went to Bhiwani in response to a call made by the Investigation Officer in connection with first information report No. 106 dated August 1, 1977. At that time he was under a belief that all the officers who were holding key posts were inclined to be prejudiced against him. Whereas according to him he deserved to be afforded medical facilities by the executive authorities, the same were not made available to him even though he made repeated attempts to approach the learned Chief Judicial Magistrate. The complaints made by his son to the learned Chief Judicial Magistrate regarding the conduct of the police in making the search of his house were disposed of in a manner that it could give rise to a feeling in his mind that the learned Chief Judicial Magistrate also gave him a raw deal. As a result of cumulative effect of all these circumstances, he must have been in a very excitable state of mind which rendered him incapable of making rational decisions. He could possibly have entertained a belief that the authorities both executive and judicial had joined hands in liquidating him while he was in police custody. Instead of containing himself he made an outburst as soon as he was produced before the learned Chief Judicial Magistrate.

(147) The state of the mind of respondent No. 1 can be best judged by the statement he made in writing. He started his life as

an Advocate and possesses sufficient experience as a member of the legislative bodies. It could not have been unknown to him that under section 32 of the Evident Act, the statement made by a person assumes the legal character of a dying declaration only if its maker dies and yet he insisted that his dying declaration be recorded, Did he see the angel of death dancing before his eyes ? Was it an act of bravery or an act of sheer desperation ? Once he had lost his temper, his consequence acts became automatic, for to quote Text 63, Chapter 2 of Bhagavad Gita—

Krodhad bhavati sammohah

sammohat smrti — vibhrammah

smrti-bhransad buddhi-naso

buddhi-nasat pranasyati

Translation

From anger, delusion arises, and from delusion bewilderment of memory. When memory is bewildered, intelligence is lost, and when intelligence is lost, one falls down again into the material pool."

(*Bhagavad Gita* As It Is— Page 150. By His Divine Grace A. C. Bhaktivedanta Swami Prabhupada).

In that state of mind, he was naturally disinclined to accept the protestations made by the learned Chief Judicial Magistrate by dubbing him as a criminal and a liar. Perhaps, he did thump the table also without knowing at that time what he was actually doing. There is no manner of doubt in my mind that by using insulting language in the face of the Presiding Officer of the court, he committed his contempt and I hereby hold him guilty of that charge. However, in view of the attendant circumstances indicated above, I accept the apology tendered by him and reiterated by his counsel at the Bar.

The learned Chief Judicial Magistrate has levelled the following allegations against respondent No. 2 in his report dated August 24, 1977:—

> "Shri H. R. Bhardwaj, Advocate for Shri Bansi Lal, was also present in court by the side of Shri Bansi Lal and he asserted that he did not expect any justice from this court because this court was also a party in the conspiracy to kill Shri Bansi Lal and that it was on that account that I had yesterday rejected his application for getting admitted Shri Bansi Lal in some fully equipped hospital. Shri H. R. Bhardwaj further stated that he was not prepared to make any submission in this court because this court was siding with the police and had already told the police to give 5 days police remand of the accused. He was told by me that I have passed written orders on his application yesterday and that it did not behove him to use derogatory language and that all his allegations against me were false and imaginary."

(148) Shri R. S. Gupta, the learned Sessions Judge, Bhiwani, while appearing as C.W. 3 stated as under :—

> "Mr. Gorakh Nath had brought to my notice the specific words of insult used by respondent No. 2 against him. He had told me that Mr. Bhardwaj alleged that he did not expect any justice from him and that he was siding with the police. He further told me that Mr. Bhardwaj had alleged that he had already made up his mind to send respondent No. 1 to police custody. So far as I can recollect, Mr. Gorakh Nath did not say anything else regarding respondent No. 2."

(149) The allegations attributed to respondent No. 2 were narrated by the learned Chief Judicial Magistrate to the learned Sessions Judge, Bhiwani, immediately after this occurrence. The statement made by Shri R. S. Gupta, the learned Sessions Judge, Bhiwani, therefore, substantially corroborates the stand taken by the learned Chief Judicial Magistrate. Respondent No. 2 being a member of the legal profession was an officer of the court. It was

his duty to be very respectful to the court while addressing it. Instead of doing that, he used words which were derogatory of the office of the learned Chief Judicial Magistrate. In so doing, he also committed his contempt and I hold him guilty of the same. Since I have accepted the apology of respondent No. 1 I did not wish to treat him more harshly and accept the apology tendered by him and reiterated by his counsel at the Bar. I do hope, he would be more careful in discharge of his professional duties in future.

(150) As a result of the foregoing discussion, the rule stands discharged against both the respondents.

(151) Before, parting with this case, I would like to make it clear once again that no observation made herein shall be taken to have been proved for any purpose other than this case against the present Chief Minister of Haryana Ch. Devi Lal, Shri Dharam Singh, Deputy Inspector General of Police (C.I.D.), Haryana, Shri Raj Singh, Superintendent of Police (Vigilance), Haryana, and Shri Banarsi Lal, Inspector of Police, because none of them has either filed an affidavit nor was any one of them impleaded as a party to these proceedings.

(152) The magnanimity of my learned brother S. S. Sandhawalia, J,. is as unbounded as is wisdom. He has laid bare only a few of my numerous shortcomings. Whether I succeed in this behalf or not, I shall make sincere efforts to come up to his expectations.

Rajendra Nath Mittal, J.

(153) I have the privilege of going through the judgments of my learned brothers Sandhawalia and Sharma, JJ. In view of the difference between them on some questions, I would like to add a few words of mine.

(154) The important question which has been debated before us and on which we are required to pronounce, is whether the plea of justification or truth can be allowed to be taken and established against a charge of contempt of Court. On the question as to whether it is open to person to offer justification for criminal contempt, Brother Sandhawalia, J., has expressed unequivocally that no such

justification can be permitted both as regards superior and subordinate courts. Brother Sharma J., concluded the discussion with the observations that by and large it is not open to a person to offer justification for criminal contempts. I respectfully agree with the view of Sandhawalia, J. I will, however, like to mention here that in case the contemner wants to bring some mitigating circumstances to the notice of the Court so that his apology may be accepted or he may be treated leniently, he can do so. I do not want to dilate any further on this point.

(155) The main question which requires consideration is whether the respondents were guilty of contempt of the Court of Mr. Gorakh Nath, Chief Judicial Magistrate, Bhiwani. Both my learned brothers, after a detailed discussion, came to the conclusion that the respondents are guilty of contempt of Court. It is not necessary for me to elaborate any further as I am also of the view that the respondents are guilty of contempt of Court. I consequently hold accordingly.

(156) The only other question for determination is whether it is necessary, in the circumstances of the present case, to impose any punishment on the respondents or their apology may be accepted. There is some difference between the learned Judges and, therefore, I will like to discuss the matter in slight detail.

(157) Before adverting to the evidence, I will refer to the provisions regarding punishments in the Contempt of Courts Acts of the years 1926, 1952 and 1971. In all the three Acts, imprisonment extending to six months and fine upto Rs. 2,000/- or both have been prescribed. Proviso has been added to the relevant Section in all the Acts which authorises the Courts to discharge the contemner or remit the punishment on an apology being made to its satisfaction. In 1971 Act, in the section relating to punishment, after the proviso, an explanation has been added for the first time which reads:—

> "An apology will not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona-fide".

It is significant to note that no such provision existed earlier. Prior to the Act of 1971, a qualified apology was not considered as a proper apology as the Courts considered that it was not indicative of remorse and contrition. The view of the Courts was that in order to

dilate the gravity of the offence, it should be unconditional and exhibited at the very outset. By enactment of the explanation, the right of contemner to tender a conditional apology has been given statutory recognition. It has thus been made clear by the legislature that even if the apology is qualified or conditional, it can be accepted by the Court. This aspect of the case was also stressed at the time of arguments, and I have, therefore, given due consideration to the same.

(158) I may now advert to some of the salient facts which have a direct bearing on the point of punishment. Respondent No. 1 was arrested on August 23, 1977 by the police at Police Station, Sadar Bhiwani, when he went there to join investigation on the direction of the High Court in F.I.R. No. 106 of 1977, relating to the same Police Station. He was detained there throughout the night. An application was moved on his behalf on August 23, 1977 stating therein that he was ill and he be admitted in some well equipped hospital. That application was declined by the learned Chief Judicial Magistrate on the same day. On the next day, i.e., August 24, 1977, he was taken from the Police Station to the Court handcuffed in an open jeep on two kilometer way. In the Hindustan Times, dated August 25, 1977 (Exhibit CW. 2/2), the manner in which he was transported, the atmosphere prevailing in Bhiwani and the State of his health have been depicted as follows:—

> "The excitement and tense day-long drama started when Mr Bansi Lal was brought down handcuffed from the first-floor room of the Inspector in the Bhiwani City police station at 9.30 a.m.
>
> Mr. Bansi Lal, wearing khadi kurta and pajamas, appeared frail and ruffled from the experience of the past 24 hours. On seeing the horde of newsmen and cameramen, he grew even more glum.
>
> From the police station, he was taken in an open jeep to the courts. The 500 strong crowd that had gathered outside the police station raised pro and anti-Bansi Lal slogans.
>
> In view of the crowd outside the police station and along the route, the police gave up their earlier plan to take Mr. Bansi Lal on foot to the courts, about 2 km. away.

> The jeep carrying Mr. Bansi Lal arrived at the courts at 9.40 a.m. The large crowd assembled there surged forward as the handcuffed Mr. Basi Lal got off the jeep".

From the aforesaid report it is evident that at that juncture, he was highly disturbed, weak in health and had been brought from police station in handcuffs in an open jeep. Along the news item, a photograph showing respondent No. 1 in a jeep has been printed. In the photograph, respondent No. 1 is shown sitting alongwith police officers. When Mr. Bansi Lal was Chief Minister of Haryana, he was invited to lay the foundation stone of the Mini Secretariat where the courts are situated. Mr. Shaym Khosla (C.W. 4) in his report to 'The Tribune' (Exhibit C.W. 4/1) described it as an accused in the building, the foundation stone of which was laid by him. The report of Mr. Shyam Khosla reads as follows:—

> "It is an irony of fate that Mr. Bansi Lal appeared as an accused person in a building the foundation stone of which was laid by him as Chief Minister of Haryana in 1975. The judicial complex was inaugurated only last week by Mr. Devi Lal, Chief Minister".

Alongwith the news-item, a photograph has been printed wherein Mr. Bansi Lal is shown walking handcuffed alongwith the police officers. The news appeared in headlines in both the newspapers. The Tribune has a large circulation in Punjab, Haryana and Delhi; and Hindustan Times in Northern India. From the above facts, it is evident that large publicity was given to this news.

(159) Respondent No. 1 is a resident of Bhiwani where he had been practising as a lawyer. Later, in political life, he rose to the status of Chief Minister of Haryana State and Defence Minister of India, which facts have been noticed by my learned brothers. It was well known that the arrest of Mr. Bansi Lal and his parading through the streets of Bhiwani in handcuffs would be given a wide publicity in the country. The adverse effect on his health and sentiments on account of the above fact can well be imagined.

(160) It also appears from the evidence that Mr. Bansi Lal was not enjoying good health at that time. In the Hindustan Times as well as The Tribune (Exhibits C.W. 2/2 and C.W. 4/1), news-items dated August 24, 1977 appeared that Mr. Bansi Lal was admitted to

the local hospital after having been examined by the Chief Medical Officer of Bhiwani. At about 5.00 P.M., he was running slight temperature. Mr. Raghbir Singh, District and Sessions Judge released him on bail on August 25, 1977. Mr. Shaym Khosla (C.W. 4) candidly admitted that Mr. Bansi Lal shouted at him when after his release on bail, he went to inquire about his health in the hospital. This fact is further affirmed from a certificate of Dr. Lt. Col. L. C. Kajla dated September 15, 1977 which was filed to seek exemption for appearance in this Court. It is mentioned in the certificate that three weeks ago, Mr. Bansi Lal had an episode of I.H.D. in Bhiwani where he was admitted in the hospital and advised three weeks rest. The Doctor gave an opinion that he needed further rest for three weeks with effect from the date of issue of certificate i.e., September 15, 1977.

(161) The report sent by Mr. Gorakh Nath, Chief Judicial Magistrate was listed for hearing before us on August 29, 1977, on which notice was issued to the respondents. Mr. K. S. Thapar counsel for respondent No. 1 who was present in the Court pointed out that Mr. Bansi Lal was in a delicate state of health and was not able to appear personally on the next date. In view of the circumstance, an exemption from personal appearance was given to him. Thereafter, the case was adjourned for more than a dozen times during a period of about three months and he was although granted exemption from personal appearance on the ground of health.

(162) From the aforesaid circumstances, it is established that respondent No. 1 was not enjoying good health in those days and was in extreme mental agony. Dismissal by the Court of his application for admission to some hospital on August 23, 1977 naturally caused him great annoyance. While making the above observations, I am not finding any fault with the order of the learned Chief Judicial Magistrate who, I believe, acted as an upright officer and I am all praise for his conduct. It is also worth mentioning that Mr. Gorakh Nath, as an honest officer would do, admitted that Mr. Banarsi Lal, Inspector of Police had met him on August 23, 1977, i.e., a day earlier in his chamber to pay respects. The occasion for doing so was that he (Banarsi Lal) had been transferred to Sirsa. There was nothing wrong on the part of the Chief Judicial Magistrate in meeting Mr. Banarsi Lal when he came to pay him respects.

(163) It, however, appears all the aforesaid circumstances, contributed to the outburst exhibited by the respondent. I am not

defending the conduct of respondent No. 1 in doing so, whom I have already held guilty of contempt. But these mitigating circumstances cannot be overlooked while considering the question of punishment. My learned brother, Sharma, J., has dealt with some other mitigating circumstances also and it is unnecessary to repeat them.

(164) Conviction for contempt is not punitive or vindictive but objective. Mercy of the Court is, however, always available to the contrite. Conviction of Mr. Bansi Lal who has been an Advocate, Haryana Chief Minister and Defence Minister of India, is itself a sufficient punishment and further imposition of punishment, in my view, is unnecessary. It would be a permanent blot on his professional as well as political career. I am, therefore, inclined to and do accept his apology under proviso to sub-section (1) of section 12 and do not propose to pass any sentence.

(165) Mr. Bhardwaj, respondent No. 2, who is a fairly senior advocate was expected to conduct himself in a more dignified manner but he failed to do so. His conviction will also be a permanent blot on his professional career. In the circumstances, I consider it proper that he is dealt with in the same manner in which respondent No. 1 is being dealt with. The view which I am taking has a support of judicial precedent in *M. Y. Shareef and another* v. *The Hon'ble Judges of the High Court of Nagpur and others*, (15 *supra*) on which reliance has been placed by my learned brothers also. The observations of their Lordships are as follows:—

> "It has also to be kept in view that condemnation for contempt by the High Court of Senior Members of Bar is itself a heavy punishment to them as it affects them in their professional career and is a great blot on them".

The conviction of the respondents under the Contempt of Courts Act, in my view, is also enough vindication of the honour of the Court. I, therefore, accept the apology tendered by both the respondents.

Surinder Singh, J.

(166) I think enough has been said in this matter by my brother Sharma, J. and much more in the critical analysis rendered by Sandhawalia, J., both in regard to the facts and the law. I have

also perused the additional facts which have been noticed and taken into consideration by Mittal, J. for adopting the conclusion of Sharma, J. to accept apology tendered by both the respondents. It would be futile to repeat the facts or to enter upon an exposition of law on the point in regard to which there is indeed no difference of opinion amongst my learned brothers and with which I am also in unanimity, namely, the proposition that it is not permissible to establish a plea of justification or truth against a charge of contempt of Court, both as regards superior and the subordinate Courts. At the same time, I would adopt the view expressed by Sharma and Mittal, JJ. that it is open to a person facing a charge of Contempt of Court to bring on record relevant facts and circumstances, for the purpose of supporting his plea of mitigation and not of justification of his conduct because if he is not allowed to do so, there may not be any material before the Court to gauge whether the apology is *bona fide* and is capable of being accepted or not.

(167) On the question as to whether the two respondents had committed Contempt of the Court of Chief Judicial Magistrate, Bhiwani, I am absolutely in agreement with the conclusions of my learned brothers that both the respondents are guilty of Contempt and I also hold so.

(168) There is no dispute with the proposition that a plea of justifiication cannot go hand-in-hand with the tendering of an apology but due significance has to be given to the Explanation added to section 12 of the Contempt of Courts Act, 1971, which provides that an apology will not be rejected merely on the ground that it is qualified or conditional. Obviously, the law as it stands now, confers upon a delinquent facing a charge of Contempt of Court to make reference to any facts or circumstances which would tend to explain as to why he behaved in a particular manner during the alleged incident. Of course, as already stated by me, he is not to be permitted to utilise this opportunity for purposes of justification but for the limited purpose of mitigation.

(169) As regards imposition of punishment, apart from the facts mentioned by Sharma, J., the circumstances noticed by Mittal, J. make it evident that it is not a case where either of the respondents should be visited with any further penalty apart from holding them guilty for Contempt of Court. The state of health of respondent No. 1 at relevant time and the various other circumstances connected

with the incident propel me to the same conclusion. I would, therefore, accept their respective apologies and discharge the rule against them.

Order.

ORDER OF THE COURT

(170) Both the respondents are unanimously held guilty under section 12 of the Contempt of Courts Act 1971.

(171) By majority (Sandhwalia and Jain JJ., contra) the apology tendered by both the respondents is accepted and the rule against them is discharged.

N.K.S.

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